

Report to the Scottish Ministers

ROADS (SCOTLAND) ACT 1984 ACQUISITION OF LAND (AUTHORISATION PROCEDURE) (SCOTLAND) ACT 1947

Report by David Buylla and Nick Smith, reporters appointed by the Scottish Ministers

- Case reference: CPO-270-3, EPW-270-1, ROD-270-3, ROD-270-4
- Site Address: A96 Trunk Road, Inverness to Nairn (including Nairn Bypass), IV18 0LF
- Promoter/Acquiring authority: Transport Scotland
- The Orders sought:
 - The A96 Trunk Road (Inverness to Nairn (Including Nairn Bypass)) Compulsory Purchase Order 201[];
 - The A96 Trunk Road (Inverness to Nairn (Including Nairn Bypass)) (Trunking and De-trunking) Order 201[];
 - The A96 Trunk Road (Inverness to Nairn (Including Nairn Bypass)) (Side Roads) Order 201[];
 - and,
 - The A96 Trunk Road (Inverness to Nairn (Including Nairn Bypass)) (Extinguishment of Public Rights of Way) Order 201[]
- Dates of site inspections: 05 and 06 June 2018 and 08 November 2018
- Dates of inquiry and hearing sessions: 30 October to 20 November 2018

Date of this report and recommendation: 17 October 2019

CONTENTS

	Page
Using this document	2
Finding individual objections	3
Summary Report	7
Preamble	20
Abbreviations used in the report	21
Chapters	
1. Background and environmental information	25
2. Matters of Principle	52
3. Stratton Lodge Road and Milton Road, Culloden	123
4. Smithton, Culloden, Allanfearn, Balloch and the Hedges	151
5. Newton of Petty to Gollanfield	253
6. Gollanfield to River Nairn	334
7. River Nairn to Nairn East	454
8. Nairn East to Hardmuir	517
9. Conclusions and recommendations	675
Appendices	
Appendix 1: Documents	
Appendix 2: Parties that withdrew	
Appendix 3: Representations from Scottish Government agencies	

Using this document

This document has been broken into chapters, whose contents are summarised below.

To find the chapter(s) containing individual objections please turn to the next page.

Summary	This is a high level summary of the general issues covered by objectors, Transport Scotland and the Reporters. The detailed consideration of objections is covered in chapters 2 to 8.	
Preamble	This is a summary letter to Scottish Ministers that prefaces the report.	
Chapter 1. Background and environmental information	This chapter summarises Transport Scotland's position on the background to the proposed scheme and the environmental information in the environmental statement (ES). Objections are not considered in this chapter.	
Chapter 2. Matters of Principle	This chapter covers objections to the principle of the proposed scheme, route selection and alternatives, criticisms of process and similar high level and strategic matters.	
Chapter 3. Stratton Lodge Road and Milton Road, Culloden	<p>Chapter 3 to 8 look at objections based on their geography.</p> <p>Objections considered here relate to locality specific matters, including individual localities, properties, homes and businesses.</p> <p>Often the objections relate to wider matters such as route selection. In these instances cross references are made to the relevant section of Chapter 2.</p> <p>For the most part objections are considered for each individual objector. However, sometimes one objector covers similar matters to other objectors. In many of these instances it was sensible to consider those objections together.</p>	
Chapter 4. Smithton, Culloden, Allanfearn, Balloch and the Hedges		
Chapter 5. Newton of Petty to Gollanfield		
Chapter 6. Gollanfield to River Nairn		
Chapter 7. River Nairn to Nairn East		
Chapter 8. Nairn East to Hardmuir		
Chapter 9. Conclusions and recommendations		This chapter outlines the reporters' conclusions and any recommendations they make to Scottish Ministers regarding modification of the draft Orders.
Appendices		These contain general information that may be of assistance to the reader but which does not form part of the chapters listed above.

Finding individual objections by chapter

This table identifies each individual objector and shows the chapter(s) where their respective objections/concerns are covered. Given the wide range of matters raised some parties' objections/concerns are covered by more than one chapter.

Objecting party		Chapter 2	Chapter 3	Chapter 4	Chapter 5	Chapter 6	Chapter 7	Chapter 8
OBJ/001	Transform Scotland	✓						
OBJ/003	Mr Richard Brady			✓				
OBJ/004	Mr David Gow	✓		✓				
OBJ/006	Mr Donald Peterkin		✓					
OBJ/007	Smithton and Culloden Community Council		✓	✓				
OBJ/008	Mr Donald Keith		✓					
REP/009	Mrs Margaret and Mr Lewin Wilson		✓					
OBJ/010	MacDonald Hotels Investments Ltd		✓					
OBJ/011	Mr William Hardie		✓					
OBJ/012	Mr Paul Hay		✓					
OBJ/013	Mr and Mrs Lathan		✓					
OBJ/014	Ms Ailsa Hart		✓					
OBJ/015	Ms Sharron Lukas		✓					
OBJ/016	Mr Andrew Mackenzie		✓					
OBJ/017	Mr Donald H and Mrs Ellen V Williams		✓					
OBJ/018	Mr Roddy MacPhee		✓					
OBJ/020	Ms Shona Frame and Mr William Frame		✓					
OBJ/021	Ms Pamela Martin		✓					
OBJ/022	Ms Rachel Kinsman		✓					
OBJ/023	Ms Marion Hasson		✓					
OBJ/024	Ms Kate Maclean		✓					
OBJ/025	Mr Michael Carson		✓					
OBJ/026	Ms Margaret McAllister		✓					
OBJ/027	Ms Faye Armitstead	✓		✓				
OBJ/028	Mr John and Mrs Anne Callum		✓					
OBJ/029	Ms Helen Keltie			✓				
OBJ/030	Mr Alan Armitstead	✓		✓				
OBJ/031	Mrs Terri-Anne Sinclair	✓		✓				
OBJ/032	Ms Penny Williamson	✓		✓				
OBJ/033	Ms Linda Simpson	✓	✓	✓				
OBJ/034	Mrs Janferie Mackintosh		✓	✓				
OBJ/035	Mr Andrew Kirkland	✓		✓				
REP/036	Mr Gordon Ross			✓				
OBJ/037	Mr Kenneth I Munro			✓				
OBJ/038	Ms Liza Grant			✓				

Objecting party		Chapter 2	Chapter 3	Chapter 4	Chapter 5	Chapter 6	Chapter 7	Chapter 8
OBJ/039	Mrs J Bradley and Mr C Cumming			✓				
OBJ/040	Mr B Grant			✓				
OBJ/041	Mr Martin Macleod			✓		✓		
OBJ/042	Mr N and Mrs E Green	✓		✓				
OBJ/043	Mr Steven Robertson			✓				
REP/044	Mrs Mary and Mr Eric Quemby	✓		✓				
OBJ/047	Mr Hamish Johnston	✓		✓				
REP/048	Mr Douglas Lamont			✓				
REP/049	Ms Gillian Spalding			✓				
OBJ/050	Balloch Community Council	✓		✓				
REP/051	Balloch Village Trust	✓		✓				
OBJ/052	Ms Sheena Fraser and Ms Ann Hulse	✓		✓				
OBJ/053	Mr Ewen Macdonald	✓		✓				
OBJ/054	Mr David Mitchell	✓		✓				
OBJ/055	Ms Anna Gow	✓		✓				
OBJ/056	Mr Fraser Gow	✓		✓				
OBJ/057	Mr Robert Cavaye (Snr)			✓				
OBJ/058	Mr John W Brown			✓				
OBJ/059	Mr Alexander and Mrs Marion Bennie	✓		✓				
OBJ/060	Mr Allan and Mrs Lorna Robertson	✓		✓				
OBJ/061	Ms Ashley Sutherland	✓		✓				
OBJ/062	Mr Alex Shaw	✓		✓				
REP/063	Mr William Mackintosh			✓				
OBJ/064	Ms Norma Duncan			✓	✓			
OBJ/066	Mr James S Brennan				✓			
REP/067	Mr Wayne and Mrs Fiona Macdonald				✓			
REP/068	Mr Nigel and Mrs Julie Smith				✓			
OBJ/071	Croy and Culloden Moor Community Council	✓						
REP/072	NATS (En Route) plc (NERL) Safeguarding	✓						
OBJ/073	Mr David Macbean				✓			
OBJ/074	Mr Peter McGibbon				✓			
REP/075	Mr Graham and Mrs Elizabeth Rae				✓			
OBJ/076	Mr Tamer Tamasiz				✓			
REP/080	Ms Karen Scally and Mr Ruairidh Scally							
OBJ/081	Mrs Elaine de Ste Croix	✓			✓			
OBJ/082	Mr William Rose				✓			
OBJ/083	Mr Colin H Philip					✓		
OBJ/084	Mr John MacLennan					✓		
REP/085	Mrs Bridie Charteris					✓		

Objecting party		Chapter 2	Chapter 3	Chapter 4	Chapter 5	Chapter 6	Chapter 7	Chapter 8
REP/086	Mr Gerry and Mrs Morven McMonagle					✓		
OBJ/087	Mr Oliver Mackintosh					✓		
OBJ/088	Ardersier Port Limited					✓		
OBJ/089	The Right Honourable Angelika Ilona Dowager Countess Cawdor					✓		
OBJ/090	The Cawdor Maintenance Trust					✓		
OBJ/091	Mr Stewart and Mrs Verena MacKinnon					✓		
OBJ/092	Mr and Mrs Andrew MacDonald					✓		
OBJ/093	Mr John and Mrs Joanna Baird					✓		
OBJ/096	Mr Sean Gallagher					✓		
OBJ/097	Partners and Trustees of the Firm of JM & LM Forbes & Firm of JM & LM Forbes (Lochdu)	✓				✓		
OBJ/098	Mr Charles William Hynman Allenby and Mr James David Carnegie Arbuthnott (Executors of the Estate of Charles Hynman Allenby)	✓				✓		
REP/099	Mr Jacob Christensen					✓		
REP/100	Mr Peter Mason							✓
OBJ/101	BDW North Scotland Limited (Barratt) and Robertson Homes Ltd	✓				✓		
OBJ/102	Mr John Graham						✓	
OBJ/103	Mr David Philip and Mr Daniel Philip						✓	
OBJ/105	Mr John R MacKintosh and Company						✓	
OBJ/106	Mr Ronald D Gordon, Mr P Scott Gordon and Mrs Mhari Blanchfield (Kinstearly Woodland Estate)						✓	
OBJ/107	Mr George D Strawson			✓				
OBJ/108	Auldearn Community Council							✓
REP/109	National Grid Plant	✓						
OBJ/110	Mr James A Philip	✓					✓	
OBJ/111	Firm of Auchnacloch Farm (Trustees for firm of Auchnacloch)	✓						✓
OBJ/112	Mr John and Mrs Frances Farquhar	✓						✓
OBJ/113	Mr J Ledsham	✓						✓
OBJ/114	Mr Mark Pinder	✓						✓
OBJ/115	Mrs C Turvey	✓						✓
OBJ/117	Mr R and Mrs K Grantham	✓						✓
OBJ/118	Mrs Jean Peck	✓						✓
OBJ/120	Mr George Fraser	✓						✓
OBJ/121	Mrs Doreen M Davidson	✓						✓
OBJ/122	Mr D Davidson	✓						✓

Objecting party		Chapter 2	Chapter 3	Chapter 4	Chapter 5	Chapter 6	Chapter 7	Chapter 8
OBJ/123	Mr Malcolm S Davidson and Ms Jennifer M Philips	✓						✓
OBJ/124	Mr Derek L Prior and Ms L M Rutter	✓						✓
OBJ/125	Mr K and Mrs K James	✓						✓
OBJ/126	Mr Alfred and Mrs M James	✓						✓
OBJ/127	Mr P and Mrs J James	✓						✓
OBJ/128	Mr Hugh and Mrs Nicola Urquhart	✓						✓
OBJ/129	Mr Stephen R and Mrs Elaine Bailey	✓						✓
OBJ/130	Nairnshire Farming Society					✓		
OBJ/131	Mr James and Mrs Ellen Maxwell	✓						✓
OBJ/132	Mr Niall B Holden and Mr Euan J Holden	✓						✓
OBJ/133	Mr Richard McCulloch	✓						✓
OBJ/134	Mrs Carolyn Mitchell	✓						✓
OBJ/135	Mrs C Scott	✓						✓
OBJ/136	Penick Farms	✓						✓
OBJ/138	Mr Philip and Mrs Gillian Pullan	✓						✓
OBJ/139	Mr Hugh Andrews and Ms Janet Banks							✓
OBJ/141	Mr James D and Mrs Sylvia AG Clarke							✓
OBJ/142	Mr Jamie B and Mrs Elizabeth Watson	✓						✓
REP/144	The Highland Council – Development and Infrastructure Service	✓	✓	✓	✓			
REP/145	The Highland Council – Access Officer, Inverness, Nairn and East Lochaber	✓						
REP/146	The Highland Council –Community Services	✓						
REP/147	Cllr Kate Stephen	✓	✓	✓				
OBJ/148	Cllr Trish Robertson		✓	✓				
REP/149	Sky Telecom Services Ltd.	✓						
REP/152	Historic Environment Scotland	✓						
REP/153	Scottish Environment Protection Agency	✓						
REP/154	Scottish Natural Heritage	✓						
OBJ/155	Stephanie Wood and A Gibson				✓			
OBJ/156	Mr Robert Deacon				✓			

Planning and Environmental Appeals Division
 Summary of Report into draft Orders for
 dualling the A96 from Inverness to Nairn
 (including Nairn bypass)



Scottish Government
 Riaghaltas na h-Alba
 gov.scot

• Case reference	CPO-270-3, ROD-270-3, ROD-270-4 and EPW-270-1
• Case type	Compulsory Purchase Order, Trunking and De-trunking Order, Side Roads Order and Extinguishment of Public Rights of Way Order
• Reporters	David Buylla and Nick Smith
• Promoting authority	Transport Scotland
• Other Parties	<p>OBJ/001 Transform Scotland OBJ/003 Mr Richard Brady OBJ/004 Mr David Gow OBJ/006 Mr Donald Peterkin OBJ/007 Smithton and Culloden Community Council OBJ/008 Mr Donald Keith REP/009 Mrs Margaret and Mr Lewin Wilson OBJ/010 MacDonald Hotels Investments Ltd OBJ/011 Mr William Hardie OBJ/012 Mr Paul Hay OBJ/013 Mr and Mrs Lathan OBJ/014 Ms Ailsa Hart OBJ/015 Ms Sharron Lukas OBJ/016 Mr Andrew Mackenzie OBJ/017 Mr Donald H and Mrs Ellen V Williams OBJ/018 Mr Roddy MacPhee OBJ/020 Ms Shona and Mr William Frame OBJ/021 Ms Pamela Martin OBJ/022 Ms Rachel Kinsman OBJ/023 Ms Marion Hasson OBJ/024 Ms Kate Maclean OBJ/025 Mr Michael Carson OBJ/026 Ms Margaret McAllister OBJ/027 Ms Faye Armitstead OBJ/028 Mr John and Mrs Anne Callum OBJ/029 Ms Helen Keltie OBJ/030 Mr Alan Armitstead OBJ/031 Mrs Terri-Anne Sinclair OBJ/032 Ms Penny Williamson OBJ/033 Ms Linda Simpson OBJ/034 Mrs Janferie Mackintosh OBJ/035 Mr Andrew Kirkland REP/036 Mr Gordon Ross OBJ/037 Mr Kenneth I Munro OBJ/038 Ms Liza Grant OBJ/039 Mrs J Bradley and Mr C Cumming OBJ/040 Mr B Grant</p>

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REP/146 The Highland Council –Community Services

	REP/147 Cllr Kate Stephen OBJ/148 Cllr Trish Robertson REP/149 Sky Telecom Services Ltd. REP/152 Historic Environment Scotland REP/153 Scottish Environment Protection Agency REP/154 Scottish Natural Heritage OBJ/155 Stephanie Wood and A Gibson OBJ/156 Mr Robert Deacon
• Date of Orders	29 November 2016
• Date case received by DPEA	08 November 2017
• Methods of consideration and dates	Pre Inquiry Meeting on 5 June 2018 Unaccompanied site inspections on 05 and 06 June and 08 November 2018 Original objections/representations and further written submissions/outline statements Statements of case/hearing statements Precognitions, summary precognitions and rebuttals Inquiry and hearing sessions (30 October 2018 to 20 November 2018)
• Dates of closing submissions	Objectors - 07 December 2018 Transport Scotland - 21 December 2018.
• Date of report	17 October 2019
• Reporter's recommendation	That the orders be confirmed subject to Transport Scotland's proposed modifications and to there being a favourable outcome from any appropriate assessment.

The Proposed Scheme

The proposed scheme is the first phase of a wider programme to dual the A96 between Inverness and Aberdeen by 2030. This first phase is for a category 7A dual carriageway with entry and exit via grade separate junctions only. It would utilise the existing carriageway from Seafield Roundabout to Smithton and then an entirely new dual carriageway running parallel or close to the existing A96 for the remainder of the 31 kilometres from Smithton Roundabout (Inverness) to Gollanfield, then south of Nairn (via the Nairn bypass section) to Hardmuir (just east of Auldearn), where the proposed scheme ends. Future phases are at earlier stages of design and consideration and do not form part of this proposed scheme or this inquiry. They will be subject of separate processes.

The draft Orders

The draft Orders were published by TS for consultation on 29 November 2016 along with the associated Environmental Statement (ES). The draft Orders are as follows:

- CPO-270-3 - The A96 Trunk Road (Inverness to Nairn (Including Nairn Bypass)) Compulsory Purchase Order 201[];
- ROD-270-3 - The A96 Trunk Road (Inverness to Nairn (Including Nairn Bypass)) (Trunking and Detrunking) Order 201[];
- ROD-270-4 - The A96 Trunk Road (Inverness to Nairn (Including Nairn Bypass)) (Side Roads) Order 201[]; and,

- EPW-270-1 - The A96 Trunk Road (Inverness to Nairn (Including Nairn Bypass)) (Extinguishment of Public Rights of Way) Order 201[]

The Legal context

Roads (Scotland) Act 1984 (CD020)

This is the enabling statute that empowers the Scottish Ministers, as trunk roads authority, to promote the proposed scheme as a trunk road.

Acquisition of Land (authorisation procedure) (Scotland) Act 1947 (CD021)

This governs the procedures of relevance to compulsory acquisition of land by the Scottish Ministers as trunk roads authority.

Trunk Road Environmental Impact Assessment (EIA)

The proposed scheme is a Schedule 1 development in terms of the [Environmental Impact Assessment \(EIA\) \(Scotland\) Regulations 2011](#) (CD026). These, as amended, formed the operational regulations at the time when DMRB Stages 2 and 3 were carried out and when the draft Orders and Environmental Statement (ES) were published in November 2016, although Parts III and IV of the [Environmental Impact Assessment \(Scotland\) Regulations 1999 Regulations](#) (CD023) concerning Roads, Bridges and Land Drainage, remained extant following the introduction of the 2011 regulations. Regulation 3A of the 2011 regulations (CD026) sets out the environmental impact assessment process and the role that different parties in that process (including in this case Scottish Ministers) must play in that process.

[Annex E of Circular 8/2007](#) (Scottish Government 2007) (CD067) provides guidance on EIAs of trunk road projects, with reference to the Environmental Impact Assessment (Scotland) Regulations 1999. Despite the introduction of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011, which consolidated, updated and replaced Part II of the Environmental Impact Assessment (Scotland) Regulations 1999 the guidance contained in Circular 8/2007 in Annex E continues to apply and is relevant to the proposed scheme.

[The Roads \(Scotland\) Act 1984](#) (CD020) incorporates specific requirements that prevent Scottish Ministers proceeding with the construction of a new road or the carrying out of certain road improvement projects where an EIA is required, unless an EIA has been carried out and environmental information has been taken into account. The relevant procedures are set out in sections 20A and 55A of the 1984 Act. The obligations imposed upon the Scottish Ministers in the decision making process in relation to the ES are contained in Schedule 1 to the 1984 Act. In terms of Schedule 1, the Scottish Ministers must take into consideration the ES, consultation responses and representations from third parties on the ES or project before reaching a decision on whether or not to grant the statutory consents sought under the 1984 Act.

Background and history

Work by The Highland Council during the early 2000s identified potential for growth in the Inverness to Nairn corridor dependent on transport improvements; including of the A96.

Proposals to dual the A96 from Inverness to Gollanfield with a single carriageway bypass of Nairn were proposed in the [Strategic Transport Projects Review](#) (STPR) (2009) (CD036). However, the Scottish Government subsequently committed to dual the full route of the A96 between Aberdeen and Inverness by 2030 in the [Infrastructure Investment Plan \(2011\)](#) (CD037.01) and [National Planning Framework 3](#) (NPF3) (2014) (CD044.02).

Since work had already commenced to design the Inverness to Nairn (including Nairn bypass) section it became the first phase of the dualling programme for the A96 and the Nairn bypass section design was subsequently worked up to dual carriageway standard.

DMRB Stage 2 route options selection took place between 2013 and 2014 with associated public engagement. Following preferred route selection in October 2014, DMRB Stage 3 design development began. This culminated in several amendments to junctions and alignments in particular localities and these were presented at public exhibitions. The draft Orders and associated ES for the proposed scheme were published for a period of public engagement that ran between November 2016 and January 2017.

Over 150 parties commented on the draft Orders. These were a mixture of statutory and non-statutory objectors. During the subsequent months a number of parties fully or partially withdrew their objections but most objections remained.

At the pre-inquiry meeting on 05 June 2018 most objectors were content to rest on their original objections and/or further written representations. Inquiry and hearing sessions were held between 30 October and 20 November 2018 for the 18 parties (including one collective group of residents north of Auldearn) that wished to give oral evidence. Two parties subsequently withdrew with a third doing so during the final inquiry session. A further two parties were unable to attend their respective hearing sessions but maintained their objections and were offered the opportunity to submit closing statements should they wish.

The Cases for the Objectors

There are a variety of statutory and non-statutory objectors along the route of the proposed scheme. Whilst some oppose the principle of the proposed scheme, the vast majority of objectors support it in principle but object to individual impacts relating to specific property or localities.

Those objecting to the principle of the proposed scheme argue that there is not a sound rationale or business case for dualling the whole of the A96, including the section north of Auldearn.

Some parties consider that:

- the proposed scheme is not in the public interest and/or breaches the European Convention on Human Rights.
- inadequate and unequal public engagement has taken place and the decision making process does not support open scrutiny.

Most owners or tenants of farmland and/or forestry (who tend to be statutory objectors) object to one or more of the following: loss of productive land; severance of land; loss of or proposed new access; fencing; drainage; flood risk; pollution; and, related concerns for

the future of their respective agricultural and/or forestry businesses. Similar, equivalent objections have been raised by those who own other types business or who argue that their land has planning permission or is allocated in the development plan. Many of the farm/forestry objectors also reside on the same holding. They and many residents along the proposed route (the latter of whom tend to be non-statutory objectors) object to a mixture of residential amenity impacts that they consider would affect their respective homes and/or living environment. These include some or all of the following: flood risk; noise; vibration; air quality; health; landscape; and, visual impacts. In each instance the arguments relate to the perceived magnitude of impact and/or significance of effect and the need for mitigation/sufficiency of proposed mitigation.

Several of these parties also contest the noise mitigation thresholds set out in the ES that were used to determine what, if any, noise mitigation is proposed. Criticisms are also made of activities during the baseline assessment work for the air quality and noise assessments.

Several individual objectors and groups of objectors challenge the decision for the preferred route, arguing that other routes would result in fewer or less adverse impacts or effects, including those upon residential amenity or business operations. This is particularly the case for objectors south of Nairn, at Auldearn and north of Culloden/Balloch.

In the case of Auldearn and some areas south of Nairn the argument is that the route selection failed to adequately consider the residential amenity and business impacts / effects of the preferred route and should instead have selected an alternative that is the same as or similar to one of those considered at DMRB Stage 2. This relates to both the proposed dual carriageway and to the design and location of the proposed Nairn East and Nairn West junctions.

Criticism is also made of the proposed Hardmuir junction and the tie-in where the proposed dual carriageway would transition to single carriageway. Here alternative suggestions are proposed for the junction and alternative layouts for local roads were proposed.

At Culloden/Balloch the argument is more strongly related to the proximity of the proposed scheme and the anticipated impacts / effects on residential amenity and business operations. Alternatives are proposed which reflect routes considered at DMRB Stage 2 and alternative designs and locations for the proposed Balloch grade-separated junction.

Proposed side road improvements and junction designs also form the basis of several objections. Similar concerns of proximity, residential amenity and business impacts are raised. Alternative junction locations or routes for side roads or new junctions are suggested. These include but are not limited to objections relating to proposed side road improvements for Stratton Lodge Road/Milton Road, the B9006 and Milton of Breachlich Road (U1025), the A939, the C1172 and the proposed realignment of the existing A96 at Courage and Hardmuir (including the proposed Hardmuir junction). It also includes suggestions for new or different access arrangements and criticisms of provision for non-motorised users (NMU) and public transport.

Some concerns are also raised regarding the impacts / effects of the proposed scheme on wildlife (including protected and non-protected species), habitats and cultural heritage.

These include criticism of proposed wildlife mitigation and suggested alternative locations for bat boxes. It also includes criticism of how cultural heritage has influenced proposed elements of the proposed scheme and its design.

WHO Noise Guidelines 2018

Immediately before the inquiry began at the end of October 2018, the World Health Organisation (WHO) published new guidance on noise levels (CD140). This new guidance was presented to the inquiry by TS and a supplementary precognition was submitted. Participants were invited to consider this during the inquiry and to provide written comments alongside any closing statement, if they wished.

Those that chose to comment made the following points:

- this evidence was introduced very late.
- the new [WHO guidelines \(2018\)](#) (CD140) appear to have lower noise level thresholds than the proposed scheme noise assessment and so these should be adopted for the proposed scheme by modifying the noise assessment or by carrying out a new one.
- adoption of the thresholds in the WHO guidelines (2018) (CD140) would justify the provision of further mitigation against the health and wellbeing impacts of noise from the proposed scheme.
- failure to adopt the new WHO guidelines (2018) (CD140) could mean that later phases of the A96 dualling programme are completed to different standards than the proposed scheme.
- if the noise metrics used differ then TS should provide the conversion calculation for objectors.

The Case for Transport Scotland

Transport Scotland (TS) has made its case for the proposed scheme and responded to the objections. The position taken by TS is summarised below and presented from TS's perspective.

The proposed scheme would fulfil the policy intentions of Scottish Ministers as well as broader national, regional and local planning, economic and transport policies and objectives.

A Scottish Transport Appraisal Guidance (STAG) appraisal was carried out and a sound business case was prepared and this remains the case. Full and up to date traffic modelling has taken place using the Moray Firth Transport Model (MFTM), which has been informed by proposed development in the respective development plan and with planning permission. This has informed assumptions about traffic flow for various assessments carried out for the ES such as noise and air quality for example.

The proposed scheme is in the public interest and, when this is the case, the acquisition of privately owned land and assets does not contravene the European Convention on Human Rights.

A full and equal consideration of all route options against identical criteria was carried out at DMRB Stage 2 and a preferred route was selected. No single route performed best for every single one of the criteria but the alternative routes (including those proposed by objectors) are not better than the preferred route.

In so far as possible the preferred route avoids sensitive locations; including designated cultural, historic and natural heritage, habitats, flood risk areas and homes and/or gardens. The majority of the proposed scheme crosses farmland with approximately half of that being of prime quality.

DMRB Stage 3 saw development of the design for the preferred route; including the modification of some elements of the design to reflect the more detailed level of information and design at this stage. The proposed scheme includes the remodelling and realignment of several junctions and sections of dual carriageway or side roads; to respond to issues identified on the ground and/or through public feedback.

A full public engagement exercise has taken place to coincide with key stages of the proposed scheme, such as options consideration, preferred route and draft Orders.

Public feedback has been fully considered and has informed the proposed scheme design at DMRB Stage 3; including the redesign of junctions and realignment of parts of the proposed scheme.

The land in the draft compulsory purchase order (CPO) is required for the construction, maintenance or operation of the proposed scheme including the dual carriageway, grade separated junctions, side roads and associated landscape and ecological mitigation. A CPO is necessary to deliver certainty and voluntary acquisition of land is not appropriate.

A full environmental impact assessment (EIA) was carried out using an iterative process to identify potential issues and then use design to avoid or limit impacts. Such measures include earth bunds, sustainable drainage systems (SuDS), cuttings, false crests and low noise road surfacing (LNRS). Mitigation is also proposed to avoid or further limit impacts, including landscape and ecological planting, wildlife crossings and mammal fencing, amongst other things.

Mitigation has been proposed where a need has been identified based on the findings of the Environmental Statement (ES). The noise mitigation thresholds have been based on the appropriate guidance and recognise the complexities of different metrics that have been used for different purposes. No lower noise mitigation thresholds are known to have been adopted for any other trunk road proposal elsewhere in Scotland.

Mitigation and accommodation works are proposed to provide, for example; new field access, new access tracks, new/replacement drainage and fencing, amongst other things. Claims for compensation by those from whom land would be acquired for the proposed scheme can be made to the District Valuer. It may also be that parties from whom land is not being acquired, but who believe they would be affected by the proposed scheme, are able to claim compensation via the District Valuer for any depreciation in the value of an interest in land that is caused by noise, vibration, smell, fumes, smoke and artificial lighting, and the discharge onto the land of any solid or liquid substance under Part 1 of the [Land Compensation \(Scotland\) Act 1973](#) (CD086).

WHO Noise Guidelines (2018)

The WHO Guidelines 2018 (CD140) have been published but have not yet been adopted in Scotland and therefore do not have legislative force or form policy.

These use the L_{den} noise metrics, which differ from both the L_{Aeq} and $L_{night,outside}$ metrics currently used by WHO ([CD090](#) and [CD091](#)) and the $L_{A10,18h}$ and $L_{night,outside}$ metrics in the ES noise assessment. The noise metrics quoted in the WHO Guidelines (2018) (CD140) also exclude façade noise. These are therefore not directly comparable with one another.

The WHO Guidelines (2018) (CD140) recognise that research is still needed and that this could result in any future adopted noise thresholds being different from those quoted in that document (CD140).

One cannot therefore retrofit the existing noise assessment with the thresholds in the new WHO guidelines (2018) (CD140). There is also not yet any adopted legal or policy requirement or evidence basis upon which to carry out a new noise assessment using the WHO Guidelines (2018) (CD140). Any new noise assessment based on new metrics and new thresholds would be likely to result in different noise mitigation requirements. This would likely require additional land and would also require further environmental assessment to consider the landscape, visual and other associated environmental impacts.

The Reporters' Findings

The proposed scheme is justified in policy and the technical evidence does not suggest any failing to make the appropriate business case or to properly consider the future traffic movements of the existing roads and the proposed scheme. The evidence suggests improvements in safety, operation and in support of future growth of Inverness and the locality. These demonstrate that the proposed scheme is based on a variety of aspects of public interest.

The European Convention on Human Rights allows for compulsory acquisition of private assets where it provides legal certainty, is in the public interest and is proportionate to the ends sought. The proposed scheme would provide legal certainty and be carried out in a legally certain context. It is in the public interest and, by acquiring only the land necessary for construction, maintenance and operation, would be proportionate to the ends sought.

The role of this inquiry is not to select a route but instead to determine if sufficient consideration has been given to the route that has been selected. This includes giving consideration to the arguments that alternative routes or alignments could be better, or, that the preferred route was selected using a flawed process.

The preferred route has been considered equally alongside other feasible options at DMRB Stage 2. It has also been carefully selected and designed to avoid, in so far as a major infrastructure project can, sensitive sites, homes and gardens. It has largely achieved this with only a small amount of demolition being proposed. Although it would suit some objectors better if an alternative route had been selected, none of those proposed by objectors are better than the preferred route selected by TS.

Full public engagement has been carried out and it does not appear that any particular party has been given greater weight in their response. Alternative alignments and junction designs have been incorporated at DMRB Stage 3 to overcome a variety of practical issues identified at this more detailed stage and following public feedback. Whilst the result may not please all objectors this does not mean that engagement has failed and does not mean that the decisions reached by TS are incorrect or have been

arrived at in a manner that is questionable. We find that the changes that were made at DMRB Stage 3 were not so significant as to undermine the route selection process at DMRB Stage 2 or to introduce such significant changes to the proposed scheme that the route selection process should have been re-run.

The variety of assessments contained in the ES have been carried out as part of an iterative design process. To some extent this has anticipated potential environmental effects and incorporated features within the design to limit or avoid these altogether. Examples include cuttings and earth bunds to limit noise and visual impacts and SuDS to manage drainage, flood risk and water pollution. Subsequent mitigation measures have been proposed to limit impacts or resolve them, such as landscape and ecological planting to blend the proposed scheme into the landscape, to replace lost vegetation, to provide new habitat or to provide visual screening. The proposed scheme would also include a construction environmental management plan (CEMP) to limit disturbance and disruption during the construction phase.

The noise mitigation thresholds adopted by TS are informed by the appropriate DMRB and WHO guidance. This takes account of different metrics and sets out a noise mitigation strategy that has been implemented in a consistent manner. Where thresholds are exceeded but mitigation not proposed, this is because the exceedance already exists; because the magnitude of noise level change that would bring it about would be imperceptible; or, because it would come about due to traffic volumes on roads that do not form part of the proposed scheme.

The proposed scheme has also designed-in or proposed mitigation/accommodation works to provide new means of access (e.g. for farmers' fields) and to replace or provide new fencing and drainage amongst other things. Negotiations would also take place with the respective parties to ensure that accommodation works are acceptable and fit for purpose.

All mitigation and accommodation works would form part of the construction contract. This would bind the contractor to provide them. The contractor would work within an independent inspection regime where Transport Scotland's site operator would oversee the contractor.

Whilst the contractor would have some design freedom this would remain within the bounds of the contract and the Orders. Design amendments would need to be considered within the independent inspection regime and any significant departures would need to be reassessed through the EIA process to avoid unintended and/or unwelcome consequences that had not been foreseen by the original ES. This would also ensure that the impacts are no more significant than those already identified through the original ES.

We accept the findings of the ES as to the significant residual environmental effects that cannot or would not be further mitigated. These may entitle the respective party to make a claim for compensation through the appropriate process. Such judgements would be for the District Valuer and not for Scottish Ministers.

Where significant residual environmental effects remain, we are satisfied, having regard to all of the environmental information, that these would not compromise the public interest value of the proposed scheme.

WHO Guidelines 2018

The proposed noise level thresholds in the WHO guidelines (2018) (CD140) use different metrics and so are not directly comparable with those of the WHO guidance (1999) (CD090), the WHO Night Noise Guidelines (2009) (CD091) and those used for the noise assessment in [ES Chapter 8](#) (CD005). It would therefore be illogical and misleading to directly substitute the thresholds quoted in WHO Guidelines (2018) (CD140) for those already used in the ES noise assessment.

WHO Guidelines (2018) (CD140) confirm a knowledge gap and the need for longitudinal studies on health impacts from exposure to environmental noise to properly inform future recommendations for thresholds. The WHO Guidelines 2018 (CD140) therefore recognise that the noise thresholds they quote are not necessarily expected to be adopted verbatim. Whatever thresholds are ultimately adopted, following research and any subsequent pre-adoption engagement process, could differ from those quoted in the WHO Guidelines 2018 (CD140).

The WHO Guidelines (2018) (CD140) do not yet form legislation or Scottish Government policy. The adopted guidance available to TS when carrying out the noise assessment and also now (at the time of writing this report) is the WHO guidance (1999) (CD090) and the WHO Night Noise Guidelines (2009) (CD091) as well as the respective parts of DMRB.

Any changes to mitigation provision that were required in order to satisfy the 2018 WHO Guidelines might require additional land and environmental assessment, which could require new Orders to be drafted and a new Environmental Statement. We see no basis to justify advising Scottish Ministers to instruct a new noise assessment since the basis for doing so and any new standards upon which it would be based are yet to be determined.

If the WHO Guidelines (2018) (CD140) were adopted over the coming years (in their current form), later sections of the A96 dualling towards Aberdeen (and, by implication, other roads) might be subject to different noise thresholds compared with the proposed scheme. This would be unavoidable in any field of development where standards of design change over time. Any proposal must be assessed against the requirements of the time. This is the case with the proposed scheme.

Protected species and Natura 2000 sites

The proposed scheme would affect the habitats of several protected species (including European Protected Species - EPS). In [TS266](#) Scottish Natural Heritage (SNH) has confirmed that TS would need to apply for the relevant licences with regards to the protected species affected by the proposed scheme. We note that SNH has been involved in the scoping and preparation of the ES and has not objected. We have noted the requirements in [ES Chapter 20](#) (CD005) under various mitigation items to retain trees that form habitat and to provide replacement habitat, amongst other things. We have also noted the ES requirement to carry out species surveys prior to commencement of works and for the contractor to employ an environmental clerk of works. These and other related factors being covered in the ES means that they would form part of the contract and therefore be binding on the contractor. For these reasons we conclude that the proposed scheme has appropriately considered the risks to protected species (including

EPS) and proposed mitigation measures that would make the proposed scheme capable of maintaining favourable conservation status for the respective species.

The proposed scheme would be close to and would have the potential to affect several Natura 2000 sites. Scottish Ministers, as the competent authority (decision maker) have a duty to determine whether the proposed scheme would be likely to have a significant impact on the qualifying interests of the respective Natura 2000 sites. Were they to conclude that this is the case then Ministers would need to carry out an appropriate assessment. TS has carried out a [Habitats Regulations Appraisal \(HRA\)](#) (CD010) which concluded that the proposed scheme would be likely to have a significant impact on the qualifying interests of a Natura 2000 site. It concluded the need for an appropriate assessment and that various measures could resolve this (CD010). In TS266 SNH accepts and agrees with these conclusions.

We therefore find it reasonable for Scottish Ministers to adopt the evidence presented in CD010 and, based on this we agree with TS (and SNH) that the proposed scheme would be likely to have a significant effect upon the qualifying interests of a Natura 2000 site. Should Scottish Ministers agree then they would need to carry out an appropriate assessment and we find it would be reasonable for them to use the evidence in CD010 as the basis for that assessment and their subsequent, respective conclusions.

The Reporters' conclusions and recommendations

Transport Scotland has negotiated with the objecting parties and has reached agreement with several. In these instances Transport Scotland has agreed to modify the draft Orders and the respective parties have agreed to withdraw their objections in return. These modifications have therefore been recommended to Scottish Ministers and they are detailed in [Transport Scotland's Closing Statement Appendix B](#).

Where agreement has not been reached and objections have been maintained, we have considered each very carefully. However, our conclusion is that there are no grounds to recommend that Ministers make any changes to the draft Orders beyond those suggested by Transport Scotland or that they refuse to confirm the Orders as drafted.

Having considered the role we have played in the EIA process under Regulation 3A of the [Town and Country Planning \(Environmental Impact Assessment\) \(Scotland\) Regulations 2011](#) (CD026) and the conclusions we have set out in the main report, Scottish Ministers will need either to adopt our findings as their own, or conduct their own identification, description and assessment of the significant effects of the proposal on the environment, in accordance with the requirements of Regulation 3A.

Subject to a favourable outcome of any appropriate assessment, the Orders as amended by Transport Scotland, should be confirmed.

Preamble

Scottish Government
Planning and Environmental Appeals Division
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Callendar Business Park
Callendar Road
Falkirk
FK1 1XR

DPEA case references: CPO-270-3
EPW-270-1
ROD-270-3
ROD-270-4

The Scottish Ministers
Edinburgh

Ministers

In accordance with our [minute of appointment](#) dated 22 May 2018, we conducted a Public Inquiry in connection with the draft Orders for the A96 Trunk Road Inverness to Nairn (including Nairn Bypass). This was required because there are statutory and non-statutory objections to the draft Orders that have not been withdrawn.

We held a pre-inquiry meeting on 05 June 2018 to consider the arrangements and procedures for the inquiry. Most parties chose to rest on their further written submissions and/or their original objections/representations. However, some objectors wished their evidence to be heard through oral procedure. We have considered and addressed the substance of each of the submissions, regardless of whether classified by TS as an objection or a representation.

In the [note of the pre-inquiry meeting](#) and in [subsequent correspondence](#), it was confirmed that three inquiry sessions and ten hearing sessions would be held. However, two participants withdrew prior to commencement of proceedings. Another objector withdrew following negotiations during an adjournment of proceedings. The oral procedures therefore ran from 30 October until 20 November 2018, with cancelled and shortened sessions respectively for those who withdrew.

We conducted the inquiry, heard all of the evidence presented (including statements of case, hearing statements, precognitions and rebuttals) and considered all written submissions including original objections/representations and various submitted evidence documents for all parties, where appropriate. .

In the days prior to the inquiry commencing new guidelines for noise were published by the World Health Organisation (WHO). We permitted Transport Scotland to submit this document and a related supplementary precognition. We also provided this to all parties attending oral procedure and permitted them to discuss this matter and, should they wish, to submit written comments alongside their closing statements. Several parties including Transport Scotland did so and we have accepted these comments as further written submissions.

We conducted unaccompanied site inspections on 05 and 06 June and 08 November 2018. On these site inspections we followed a [route proposed by Transport Scotland](#) that other participants had had opportunity to comment on. We also explored the localities surrounding this route to understand the immediate localities, including those that formed the basis of objections.

We permitted all parties taking part in oral process to submit closing statements by 7 December 2018. We allowed Transport Scotland until 21 December 2018 to submit its statement. However, we subsequently allowed an additional period (until 25 January 2019) for it to submit an addendum to this, following the delayed receipt of a closing statement from one of the objectors.

We have also considered matters relating to the duties placed on Scottish Ministers to provide a reasoned conclusion on the significant effects of the proposed development on the environment taking into account an examination of the Environmental Statement and all other environmental information and Scottish Ministers' duty to consider the impacts on protected species and their habitats. This includes the impacts on the qualifying interests of Natura 2000 sites and the possibility of any requirements for Scottish Ministers to conduct an appropriate assessment.

We have recognised that the proposed scheme would affect protected species (including European Protected Species – EPS) and the various licencing issues associated with this. We have also accepted the evidence presented by TS in its [Habitats Regulations Appraisal \(CD010\)](#) (and supported by SNH in [TS266](#)) which concludes that the proposed scheme would be likely to have a significant effect upon the qualifying interests of a Natura 2000 site and therefore would need an appropriate assessment. We also find no reason why Scottish Ministers should not accept the evidence in CD010 to inform their decision about whether an appropriate assessment is necessary and drawing the subsequent, respective conclusions.

Our report provides a brief background to the proposed scheme, the need for the draft Orders as set out by the promoter and the associated environmental information, in chapter 1. In chapter 2, we consider objections relating to matters of principle such as the proposed scheme rationale, route selection and alternatives and scrutiny, amongst others. In subsequent chapters (3 to 8) we consider the objections, together with our findings relating to five geographic areas along the proposed route running west to east. We have found this to be a helpful way to present the variety of objections in relation to the proposed scheme. Finally chapter 9 sets out our conclusions and recommendations to Scottish Ministers.

We rejected one objection, made by R Sleigh (Landscapes) Ltd (a statutory objector), since this was made on 24 May 2018; over a year after the closing of the original objections period for the draft Orders and ES in January 2017.

Abbreviations

$\mu\text{g}/\text{m}^3$	Micrograms per cubic metre (a measure of concentration)
AA	Appropriate Assessment
AADT	Average Annual Daily Travel

AEP	Annual Exceedance Probability (a flood risk term)
ALS	Area Landscape Significance (a landscape term)
AOD	Above Ordnance Datum
AQMA	Air Quality Management Area
AWI	Ancient Woodland Inventory
AWPR	Aberdeen Western Peripheral Route
BAP	Biodiversity Action Plan
BCR	Benefit to Cost Ratio
CAR	Water Environment (Controlled Activities)(Scotland) Regulations 2005
CEMP	Construction Environmental Management Plan
CIEEM	Chartered Institute of Ecology and Environmental Management
CIRIA	Construction Industry Research and Information Association
CO ₂	Carbon Dioxide
CPO	Compulsory Purchase Order
CRTN	Calculation of Road Traffic Noise
dB	Decibels (a measurement used in acoustics)
DfT	Department for Transport (UK Government Department)
DMB	Do Minimum Baseline Year
DMF	Do Minimum Future Year
DMRB	Design Manual for Roads and Bridges
DSB	Do Something Baseline Year
DSBM	Do Something Baseline Year with Mitigation
DSF	Do Something Future Year
DSFM	Do Something Future Year with Mitigation
DWS	District Wildlife Site
ECoW	Ecological Clerk of Works
ECHR	European Convention on Human Rights
EIA	Environmental Impact Assessment
EPAQS	Expert Panel on Air Quality Standards
EPS	European Protected Species
EPW	Extinguishment of Public Rights of Way
ES	Environmental Statement
EU	European Union
FRA	Flood Risk Appraisal
GDL	Gardens and Designed Landscapes
GWDTE	Ground Water Dependent Terrestrial Ecosystem
Ha	Hectare (a measurement of area)
HAWRAT	Highways Agency Water Risk Assessment Tool
HES	Historic Environment Scotland (a Scottish Government body)
HGV	Heavy Goods Vehicle
HiTRANS	Highland Regional Transport Partnership

HMP	Habitats Management Plans
HRA	Habitats Regulations Appraisal
HSE	Health and Safety Executive (a UK Government body)
HWLDP	Highland Wide Local Development Plan
IAQM	Institute of Air Quality Management
IEMA	Institute of Environmental Management and Assessment
IFU	Individual Farm Unit
IIP	Infrastructure Investment Plan
IMFLDP	Inner Moray Firth Local Development Plan
IT	Interim Target
KM	Kilometre
KPH	Kilometres per hour
kV	Kilo Volt (a measure of electromotive force e.g. for power lines)
LBAP	Local Biodiversity Action Plan
LCA	Land capability for agriculture (an agricultural land classification category)
LDP	Local Development Plan
LDT	Limited Duration Tenancy
LED	Light Emitting Diode
LLCA	Local Landscape Character Area
LNRS	Low Noise Road Surface
LOAEL	Lowest Observable Adverse Effect Level
LVIA	Landscape and Visual Impact Assessment
M ²	Square metre (a measure of area)
M ³	Cubic metre (a measure of volume)
MFTM	Moray Firth Transport Model
MPH	Miles per hour
MTS	Modern Transport Strategy
NCN	National Cycle Network
NCR	National Cycle Route
NEC	Noise Exposure Category
NMU	Non-Motorised Users (e.g. pedestrians, cyclists and equestrians)
NNG	Night Noise Guidelines (published by WHO)
NO ₂	Nitrogen Dioxide
NO _x	Oxides of Nitrogen
NPF	National Planning Framework
NRIP	National Renewables Infrastructure Plan
NRTF	National Road Traffic Forecasts
NSR	Noise Sensitive Receptor (e.g. homes, schools, hospitals)
NTEM7	National Trip End Model 7 (a traffic forecasting model)
NTS	National Transport Strategy
PAN	Planning Advice Note

PED	Pre Earthwork Ditches (a drainage feature)
PM ₁₀	Particulate matter less than 10 micrometres in diameter
PM _{2.5}	Particulate matter less than 2.5 micrometres in diameter
PPG	Pollution Prevention Guidelines
PWS	Private Water Supply
QUADRO	Queues and Delays at Roadworks (a software tool)
RoW	Right of Way
SAC	Special Area of Conservation
SAM	Scheduled Ancient Monument
SBC	Strategic Business Case
SDA	Settlement Development Area
SEA	Strategic Environmental Assessment
SEPA	Scottish Environment Protection Agency (a Scottish Government body)
SFRA	Strategic Flood Risk Appraisal
SGN	Scotia Gas Network (a private gas infrastructure operator)
SHEP	Scottish Historic Environment Policy
SINS	Site of Interest to Natural Science
SNH	Scottish Natural Heritage (a Scottish Government body)
SPA	Special Protection Area
SPP	Scottish Planning Policy
SRO	Side Road Order
SSSI	Site of Special Scientific Interest
STAG	Scottish Transport Appraisal Guidance
STPR	Strategic Transport Projects Review
SuDS	Sustainable Drainage Systems
SWF	Surface Water Feature
SWMP	Surface Water Management Plan
TAG	Transport Appraisal Guidance
TAN	Technical Advice Note
TEE	Transport Economic Efficiency
TELMoS	Transport, Economic and Landuse Model for Scotland (a transport model)
TRN	Trunk Road Network
TS	Transport Scotland (a Scottish Government body)
TSM	Traffic Signs Manual
TUBA	Transport User Benefits Analysis
UK	United Kingdom
WEBS	Wider Economic Benefits
WFD	European Union Water Framework Directive
WHO	World Health Organisation
ZTV	Zone of Theoretical Visibility

CHAPTER 1: BACKGROUND AND ENVIRONMENTAL INFORMATION

Background to the proposed scheme

1.1 The proposed scheme is for dualling of the A96 from Inverness to Nairn (including Nairn bypass). The proposed scheme would run from Inverness Seafield Roundabout eastwards to Hardmuir (east of Nairn). It is the first of several proposed phases to dual the whole of the A96 from Inverness to Aberdeen by 2030.

1.2 The existing A96 between Inverness Seafield Roundabout and Hardmuir is a single carriageway road. It serves communities east of Inverness, Inverness Airport and Industrial Estate and passes through the town of Nairn. It includes many individual access points on and off the A96 to side roads of A, B and U class as well as private accesses e.g. for farms, woodland and fields. Many of the side roads are single carriageway for two way traffic but some are narrower single track roads that vary in width.

1.3 The proposal is for a new category 7A dual carriageway between Inverness and Hardmuir with entrance and exit only possible via six grade-separated junctions. With the exception of the section running between Seafield Roundabout and Smithton Interchange the proposed scheme is for a wholly new dual carriageway from Smithton Interchange to Hardmuir via the proposed Nairn Bypass. Between Seafield and Smithton the existing A96 would form one of the carriageways, thereafter the proposed scheme would be a new, offline dual carriageway.

Proposed new route

1.4 The proposed new route would begin at Seafield Roundabout to the east of Inverness. It would run in a north easterly direction on the south side of the existing A96 to Smithton Roundabout. Here a new grade-separated junction is proposed.

1.5 The route would continue in a north easterly direction on the south side of the existing A96 from Smithton junction to the north end of Milton Road, Culloden. Here the proposed dual carriageway would swing south of Allanfearn Farm (still on the south side of the existing A96). At the current A96/Barn Church Road Junction at Balloch, the new Balloch grade-separated junction is proposed.

1.6 The route would continue eastwards to Newton of Petty and swing south of farm buildings at Morayston on the south side of the existing A96. It would then travel northwards, crossing to the north side of the existing A96. Here it would run through Tornagrain Wood before emerging on land to the north of the current Mid Coul Roundabout and south of Inverness Airport and the Aberdeen to Inverness Railway. This is the location of the proposed new Mid Coul grade-separated junction.

1.7 The route would continue eastwards on the north side of the existing A96 and north of Culblair Farm. East of here the route would swing southwards on the south side of Milton of Gollanfield Farm. It would continue in an easterly direction to the current Brackley Junction. A new grade-separated junction is proposed at this location. The proposed route would cross to the south side of the existing A96 at the new Brackley junction.

1.8 The route would continue eastwards on the south side of the existing A96 and cross the Aberdeen to Inverness Railway via a new bridge. The route would then reach

Blackcastle Quarry. This is the proposed location of the Nairn West grade-separated junction.

1.9 The route would continue eastwards along what is proposed to be the new Nairn Bypass, running south of the town. The existing A96 would continue to run through the town. The proposed dual carriageway route would cross the River Nairn south of Broadley and Crook Cottage.

1.10 After crossing the River Nairn the route of the proposed bypass would then swing in a north easterly direction via the south side of Blackpark Farm and through Russel's Wood. It would cross the existing A96 on the east side of Nairn and west side of Auldearn. This is the location of the proposed Nairn East grade-separated junction.

1.11 At the proposed Nairn East grade-separated junction the route would cross to the north side of the existing A96 and swing eastwards along the northern side of Auldearn. It would then swing south to the south side of the existing A96 just west of Auldearn close to Courage. Here the existing A96 would cross the proposed dual carriageway via a new overbridge and run along a modified alignment on the north side of the proposed dual carriageway.

1.12 The route of the dual carriageway is then proposed to run eastwards along the southern side of the existing A96 through the northern part of Wester Hardmuir Wood before transferring to single carriageway and merging into the existing A96 single carriageway west of the proposed Hardmuir junction. The proposed scheme would end at Hardmuir Toll.

1.13 Separate proposals are currently progressing for the Hardmuir to Fochabers phase. This does not form part of the proposed scheme and is not covered by the draft Orders before us.

1.14 A shared use NMU route is proposed to run alongside the proposed dual carriageway and through the proposed grade separated junctions between Inverness and Nairn.

1.15 The entire proposed scheme is also proposed to be drained using SuDS with various ponds/basins proposed at different points along the route to feed into existing watercourses.

1.16 Several new or improved side roads and multiple new points of access are also proposed to overcome severance or other issues that would be caused by the proposed dual carriageway. A small number of public rights of way would also be extinguished and replaced with new rights of way or stopped up and modified under the proposed scheme.

1.17 The proposed route, side roads and related infrastructure are shown in [ES Figure 4.1 \(CD007\)](#).

The draft Orders

1.18 The draft Orders were published by TS for consultation on 29 November 2016 along with the associated Environmental Statement (ES). The draft Orders are as follows:

- CPO-270-3 - [The A96 Trunk Road \(Inverness to Nairn \(Including Nairn Bypass\)\) Compulsory Purchase Order 201\[\]](#);
- ROD-270-3 - [The A96 Trunk Road \(Inverness to Nairn \(Including Nairn Bypass\)\) \(Trunking and Detrunking\) Order 201\[\]](#);
- ROD-270-4 - [The A96 Trunk Road \(Inverness to Nairn \(Including Nairn Bypass\)\) \(Side Roads\) Order 201\[\]](#); and,
- EPW-270-1 - [The A96 Trunk Road \(Inverness to Nairn \(Including Nairn Bypass\)\) \(Extinguishment of Public Rights of Way\) Order 201\[\]](#)

Historical and policy context

1.19 The Highland Council has been considering the growth of Inverness and the A96 corridor over a period of many years. [The A96 Growth Corridor Development Framework](#) (The Highland Council/Transport Scotland, 2007) (CD056) recognised the role that improved transport links, including a dualled A96, could provide in enabling and supporting growth to the east of Inverness and the corridor to Nairn.

1.20 [Highland-wide Local Development Plan](#) (HwLDP) (2012) (CD061) and the [Inner Moray Firth Local Development Plan](#) (IMFLDP) (2015) (CD062) emphasise the importance of the dualling of the A96 in relation to the future development aspirations for the majority of Inverness City's growth in the medium and long term. This growth is focused in the A96 Corridor between Inverness and Nairn, which includes major development proposals such as Stratton, Tornagrain, Inverness Airport Business Park and Nairn South.

1.21 [The Strategic Transport Projects Review](#) (STPR) (2009) (CD036) committed to a dual carriageway from Inverness to Gollanfield (west of Nairn) with a single carriageway Nairn bypass and then on/off dual sections between Inverness and Aberdeen.

1.22 However, in the [Infrastructure Investment Plan \(IIP\) \(2011\)](#) (CD037.01) (and subsequent [IIP 2015](#) CD037.02) the Scottish Government announced its commitment to dual to A96 between Inverness and Aberdeen by 2030. This was intended to provide a number of benefits including improved journey times and reliability, delivering economic growth, improved connectivity and reducing the rate and severity of accidents. These commitments are also reflected in [National Planning Framework 3 \(NPF3\) \(2014\)](#) (CD044.02) and the [National Transport Strategy \(NTS\) \(2016\)](#) (CD041).

1.23 The proposed scheme was the most worked up of all sections and so it became the first phase of the entire dualling programme between Inverness and Aberdeen. This involved the modification of proposed designs to accommodate dual carriageway standards for the Nairn bypass from Gollanfield to Hardmuir.

1.24 TS considered different route options at DMRB Stage 2 during 2013/14 and identified its preferred route option in October 2014. Corresponding public consultations took place in October 2013 to consider route options and in October 2014 for the preferred option.

1.25 DMRB Stage 3 is a more detailed stage where the preferred option design is considered in greater detail and modified accordingly. TS has published various documents (e.g. TS220 to TS228) which explain the many considerations that took place to modify the design the proposed scheme during DMRB Stage 3.

1.26 The proposed scheme was subject of an environmental impact assessment based on the design of the proposed scheme derived through DMRB Stage 3. The draft Orders and associated environmental statement (ES) were published for public consideration on 29 November 2016.

1.27 The proposed scheme would form the basis for the detailed design to be constructed by the appointed contractor(s), subject to agreement with Transport Scotland and adherence to environmental mitigation identified within this ES.

Summary of the need for the proposed scheme as stated by Transport Scotland (TS)

1.28 TS's objectives for the proposed scheme include the following:

- to improve the operation of the A96 and inter-urban connectivity through:
 - reduced journey times;
 - improved journey time reliability;
 - increased overtaking opportunities;
 - improved efficiency of freight movements along the transport corridor; and
 - reduced conflicts between local traffic and other traffic in urban areas.
- to improve safety for motorised and non-motorised users through:
 - reduced accident rates and severity;
 - reduced driver stress; and
 - reduced non-motorised user conflicts with strategic traffic in urban areas.
- to provide opportunities to grow the regional economies on the corridor:
 - through improved access to the wider strategic transport network; and
 - through enhanced access to jobs and services.
 - to facilitate active travel in the corridor.
 - to facilitate integration with public transport facilities.
 - to minimise the environmental effect on the communities in the corridor.

1.29 TS considers that the upgrade of the A96 to dual carriageway would help assist economic growth through improved access to the wider strategic transport network and enhance access to jobs and services. It also considers that dualling of the A96 would improve journey times, reduce accident rates and reduce the conflict between local traffic and other traffic in urban areas.

1.30 TS expects the proposed scheme to remove traffic from the existing A96. It expects that traffic volumes on the existing A96 through the centre of Nairn to be reduced by approximately 50% by 2036. This, it argues, would help to address environmental, social and economic concerns in relation to traffic congestion in the centre of Nairn.

1.31 From the accident appraisal that TS has undertaken, the anticipated number of accidents for the existing A96 in the Do-Minimum scenario (without the proposed scheme) would be 17 in the future year of 2021 (opening year), and 14 in the future year of 2036 (design year). In the Do-Something scenario (with the proposed scheme in place) the anticipated number of accidents for the proposed scheme in the opening year (2021) would

be nine, and in the design year (2036) would be eight. There would also be a small number of accidents anticipated to occur on the remaining existing sections of the existing A96 with the proposed scheme in place, of approximately four accidents in 2021 and four in 2036.

Legal Context

1.32 [The Roads \(Scotland\) Act 1984](#) (CD020) is the enabling statute that empowers the Scottish Ministers, as trunk roads authority, to construct new trunk roads.

1.33 [The Acquisition of Land \(authorisation procedure\) \(Scotland\) Act 1947](#) (CD021) governs the procedures of relevance to compulsory acquisition of land by the Scottish Ministers as trunk roads authority.

1.34 Each of the draft Orders is made under the following legislation:

- the Compulsory Purchase Order (CPO) would be made under sections 103 to 108 inclusive as read with section 110(2) of the Roads (Scotland) Act 1984.
- the (Trunking and Detrunking) (TDO) Order would be made under section 5(2) and (6) of the Roads (Scotland) Act 1984.
- The Side Roads Order (SRO) (CD003) would be made under the Roads (Scotland) Act 1984 sections 12(1), (3), (5), 70(1) and 71(3) and all other powers enabling Scottish Ministers to do so.
- The Extinguishment of Public Rights of Way Order (EPW) (CD004) would be made under section 3 of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 and all other powers enabling Scottish Ministers to do so.

Trunk Road Environmental Impact Assessment (EIA)

1.35 The proposed scheme would form part of the trunk road network and is a Schedule 1 development in terms of the [Town and Country Planning \(Environmental Impact Assessment \(EIA\)\) \(Scotland\) Regulations 2011 \(as amended\)](#) (CD026). These, as amended, formed the operational regulations at the time when DMRB Stages 2 and 3 were carried out and when the draft Orders and Environmental Statement (ES) were published in November 2016.

1.36 [Annex E of Circular 8/2007](#) (Scottish Government 2007) (CD067) provides guidance on EIAs of trunk road projects, with reference to the [Environmental Impact Assessment \(Scotland\) Regulations 1999](#) (CD023). Although the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 consolidated, updated and replaced Part II of the Environmental Impact Assessment (Scotland) Regulations 1999, Parts III and IV of the 1999 Regulations concerning Roads, Bridges and Land Drainage, remain extant. Consequently the guidance contained in Circular 8/2007 in Annex E continues to apply and is relevant to the proposed Scheme.

1.37 The Roads (Scotland) Act 1984 incorporates specific requirements that prevent Scottish Ministers proceeding with the construction of a new road or the carrying out of certain road improvement projects where an EIA is required, unless an EIA has been carried out and environmental information has been taken into account. The relevant

procedures are set out in sections 20A, 20C and 55A of the 1984 Act. We have found that the proposed scheme requires an EIA under Schedule 1 of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011, as identified by those provisions of the 1984 Act (above). The obligations imposed upon the Scottish Ministers in the decision making process in relation to the ES are contained in Schedule 1 to the 1984 Act. In terms of Schedule 1, the Scottish Ministers must take into consideration the ES, consultation responses and representations from third parties on the ES or project before reaching a decision on whether or not to grant the statutory consents sought under the 1984 Act.

Environmental Information

1.38 We have examined the environmental statement and are satisfied that the information and analysis therein can be accepted. We have also examined all other environmental information, including submissions from objectors and the views of consultees. Where there are objections relating to the promoter's environmental information or the conclusions drawn using this information we have found, in the subsequent chapters 2 to 8, that the objections are not sufficient to convince us that the environmental information is deficient or that the methods or conclusions are erroneous.

1.39 Below we summarise the environmental information set out in the ES. This is taken directly from the summaries contained within the respective ES chapters (CD005). We note that the ES chapter summaries and many of TS's response letters often refer to environmental 'impacts' and their significance rather than to the significance of environmental 'effects'. However, we also accept that many objectors, possibly unaware of the distinction between impact and effect, have used the word 'impact' to describe both. As such we recognise TS's use of the word 'impact' in much of its correspondence to be an attempt to address the objections / representations in a manner that is clear and understandable to the respective parties. We find that each chapter of the ES itself (CD005, CD006 and CD007) has appropriately and adequately distinguished between the magnitude of impact, sensitivity of receptor and significance of effect. It is this that has informed our understanding of the matters covered in this report.

1.40 Our role in the process, using all of the environmental information that is before us – including the ES, other environmental reports such as the promoter's Habitats Regulations Appraisal (CD010) and the submissions of objectors and other interested parties - has been to identify, describe and assess, in the light of the circumstances relating to the proposal, the direct and indirect effects of the proposed development on human beings, fauna and flora, soil, water, air, climate, the landscape, material assets and cultural heritage and the interaction between those factors. We present our findings in subsequent chapters of this report. Ministers will need either to adopt our findings as their own, or conduct their own identification, description and assessment of such effects.

1.41 [Chapter 21](#) (CD005) of the ES summarises the effects that are predicted to remain significant following mitigation.

Air quality

1.42 An air quality assessment has been undertaken to assess the impacts of the proposed development upon local air quality, designated sites, and regional air quality. This is set out in [ES Chapter 7](#) (CD005). We have used air quality environmental

information principally to identify, describe and assess the direct and indirect effects of the proposed development on the air and on human beings.

1.43 The impact of construction of the proposed scheme has the potential to lead to dust impacts at sensitive receptors. The implementation of specified mitigation measures ([ES Appendix A7.3](#) – CD006), would reduce these potential impacts to acceptable levels.

1.44 A detailed air quality assessment has been undertaken for potential local air quality impacts of the proposed scheme. The assessment has utilised the ADMS Roads dispersion modelling software to produce predictions of nitrogen dioxide (NO₂) and particulates (PM₁₀ and PM_{2.5}) concentrations at selected receptors in the Do-Minimum (DM) (without the proposed scheme) and Do-Something (DS) (with the proposed scheme) scenarios.

1.45 The study area was identified based on changes in traffic between DM and DS scenarios as a result of the proposed scheme using qualifying criteria published in DMRB [HA207/07](#) (CD049.14). The baseline conditions were established by a six month diffusion tube survey and a desk based assessment.

1.46 The local air quality assessment indicates that the proposed scheme would result in a reduction in air pollutant concentrations at a number of properties within Nairn and along the existing A96, whilst there would be increases closer to the proposed new dual carriageway alignment. Overall, more properties would receive an improvement in air quality than those which would experience a worsening. No receptor is predicted to experience pollutant concentrations in excess of the applicable standards.

1.47 The air quality assessment at relevant designated sites did not identify any significant impacts. The assessment of regional air quality indicated increases in NO_x, PM₁₀ and CO₂ emissions. However, there is no available guidance to determine significance of impacts, and regional scale emissions are managed at a national level only. The increase in emissions from the proposed scheme is very small in the context of the national UK emissions.

1.48 Overall, TS concludes that after the implementation of the proposed mitigation that is detailed in the ES, no significant effects on air quality would arise as a result of the proposed scheme.

Noise and vibration

1.49 Assessments of noise and vibration are covered in [ES Chapter 8](#) (CD005). We have used noise and vibration environmental information principally to identify, describe and assess the direct and indirect effects of the proposed development on human beings, fauna and material assets.

1.50 The study area was defined as one kilometre from existing routes that are proposed to be improved or bypassed and any proposed new routes, between the start and end points of the physical works associated with the proposed scheme. Within the one kilometre boundary a calculation area was defined as being the area that extends 600 metres from existing bypassed and/or improved routes and 600 metres from any affected routes within the one kilometre study area. Noise modelling was undertaken for all noise sensitive receptors (NSRs) within the defined 600 metre calculation area. As

part of the assessment a baseline noise survey was undertaken at 27 identified NSRs to gain an understanding of the existing noise climate within the vicinity of the proposed scheme.

1.51 All potential impacts on NSRs are discussed in full in the ES. [ES Appendix A8.3](#) (Predicted Noise Levels at Receptors) (CD006) contains the predicted noise levels for all NSRs, [ES Appendix A8.4](#) (Wider Road Network Assessment) (CD006) contains predicted noise levels on affected roads that are outwith the one kilometre study area, [ES Appendix A8.5](#) (Noise Impacts on Committed Developments) (CD006) contains the predicted noise impacts at all identified sensitive committed developments and [ES Appendix A8.6](#) (Noise Impacts on Amenity Areas) (CD006) contains the predicted noise impacts at all identified sensitive amenity areas.

1.52 In the short-term assessment with the proposed scheme at ground floor level and without mitigation there are predicted to be 2,548 dwellings and 15 other NSRs that would experience an increase in noise level of at least 1 dB and 2,826 dwellings and 26 other NSRs that would experience a decrease in noise level of at least 1 dB. A 1 dB increase is considered the threshold at which a short-term noise level change is perceptible.

1.53 In the long-term assessment with the proposed scheme at ground floor level and without mitigation there are predicted to be 1,360 dwellings and 10 other NSRs that would experience an increase in noise level of at least 3 dB and 91 dwellings that would experience a decrease in noise level of at least 3 dB. A 3 dB increase is considered the threshold at which a long-term noise level change is perceptible.

1.54 The results indicated that there were 10 properties that may qualify for noise insulation at ground and first floor levels.

1.55 Proposed mitigation includes the use of low noise road surfacing (LNRS), the inclusion of earthwork bunds and false cuttings in the proposed scheme design and the use of receptor-specific mitigation in the form of noise barriers for noise sensitive residential dwellings which met the mitigation criteria.

1.56 In the short-term assessment with the proposed scheme at ground floor level and with receptor-specific mitigation there are predicted to be 2,522 dwellings and 15 other NSRs that would experience an increase in noise level of at least 1 dB and 2,826 dwellings and 26 other NSRs that would experience a decrease in noise level of at least 1 dB.

1.57 In the long-term assessment with the proposed scheme at ground floor level and with receptor-specific mitigation there are predicted to be 1,323 dwellings and 10 other NSRs that would experience an increase in noise level of at least 3 dB and 91 dwellings that would experience a decrease in noise level of at least 3 dB.

1.58 The results indicate that with receptor specific mitigation there would be eight properties that may qualify for noise insulation at ground and first floor levels.

1.59 A number of significant post-mitigation noise effects are predicted in [Chapter 21](#) (CD005) of the ES both at the year of opening of the proposed road and 15 years after.

1.60 A Slight / Moderate Adverse effect at ground floor level is predicted for 1,601 dwellings and eight other noise sensitive receptors at year of opening and for 732 dwellings and five other noise sensitive receptors, 15 years after opening.

1.61 A Moderate / Large Adverse effect at ground floor is predicted for 441 dwellings and two other noise sensitive receptors at year of opening and for 401 dwellings and five other noise sensitive receptors, 15 years after opening.

1.62 A Large / Very Large Adverse effect at ground floor level is predicted for 480 dwellings and five other noise sensitive receptors at year of opening and for 190 dwellings, 15 years after opening.

1.63 A Slight / Moderate Beneficial effect at ground floor level is predicted for 2,127 dwelling and 16 other noise sensitive receptors at year of opening and for 86 dwellings, 15 years after opening.

1.64 A Moderate / Large Beneficial effect at ground floor is predicted for 673 dwellings and 10 other noise sensitive receptors at year of opening and for five dwellings, 15 years after opening.

1.65 A Large / Very Large Beneficial effect at ground floor is predicted for 26 dwellings at the year of opening.

Landscape

1.66 The landscape assessment of the proposed scheme is set out in [ES Chapter 9](#) (CD005). It is linked with the assessment of visual effects which are set out in [ES Chapter 10](#) (CD005). We have used landscape environmental information principally to identify, describe and assess the direct and indirect effects of the proposed development on flora, soil, water, the landscape and material assets.

1.67 A study area of up to three kilometres from the proposed scheme was defined following an appraisal of the theoretical visibility. The baseline conditions were established through desk-based assessment, mapping of theoretical visibility (ZTV), site surveys and consultation. This existing landscape is described and classified into 13 Local Landscape Character Areas (LLCAs), which are areas of distinctive character which assist in the evaluation of the sensitivity of the landscape and the development of mitigation proposals.

1.68 The landscape in this area is predominantly rural, characterised by low coastal plateau of the Moray Firth which is backed by rolling hills. Areas of forestry, woodland and open farmland are cut through by the wooded River Nairn valley. Settlement is concentrated around Inverness and the coastal town of Nairn. The local landscape is generally assessed as being of low to medium sensitivity to change with the River Nairn valley of medium to high sensitivity. Apart from four Gardens and Designed Landscapes (GDLs) no other national, regional or local landscape designations were identified. Effects are assessed for both winter year of opening (when all mitigation elements would be in place but the mitigation planting would not be fully effective) and during the summer 15 years after opening (when mitigation planting would have become established and contribute to screening).

1.69 All potential effects on the LLCAs are discussed in full in ES Chapter 9 (CD005). Details on the evaluation of sensitivity for each LLCA are contained within [ES Appendix A9.1](#) (CD006). The Landscape Objectives developed to focus the mitigation design for the proposed scheme are set out in [ES Appendix A9.2](#) (CD006). At winter year of opening, potential effects on the LLCAs were identified as significant for eight LLCAs due to direct effects of the proposed scheme and one LLCA due to indirect effects of the proposed scheme, with no significant effects to any of the GDLs.

1.70 Mitigation measures to integrate the proposed scheme into the landscape include careful alignment and grading out and sensitive profiling of embankments to reflect the local topography and enable the land to be returned to agriculture, where appropriate. Mitigation measures would also comprise the retention and management of existing vegetation and the planting of native mixed, broadleaf and coniferous woodland, scrub woodland, riparian planting and seeding of species-rich grassland. Woodland planting is proposed in areas where the surrounding landscape is more wooded and where integration, replacement, restoration or screening is required. Planting mitigation measures are proposed to improve the fit of the proposed scheme within the surrounding landscape, enhance the local landscape character and biodiversity whilst reducing the impact of the proposed Scheme over time as vegetation establishes.

1.71 By summer 15 years after construction, following the establishment of mitigation planting, direct residual effects were identified as significant for four of the LLCAs, with no significant indirect residual effects on any of the LLCAs and no significant residual effects to any of the GDLs.

Visual

1.72 The visual assessment of the proposed scheme is linked with the assessment of landscape effects in ES chapter 9 (CD005). ES [chapter 10](#) (CD005) assesses the degree of anticipated change the proposed scheme would have upon the visual amenity along the dual carriageway and predicts the likely visual effects upon buildings, outdoor public areas, local roads, railways and routes used by pedestrians, cyclists and equestrians, which are collectively described as 'built and outdoor receptors'. We have used visual environmental information principally to identify, describe and assess the direct and indirect effects of the proposed development on human beings and material assets.

1.73 A study area of up to three kilometres from the proposed scheme was defined following an appraisal of the potential visibility of the proposed scheme. The baseline conditions were established through desk-based assessment, mapping of theoretical visibility (ZTV), site surveys and consultation.

1.74 Within the study area, 675 individual properties (forming 179 receptor groups), and 67 outdoor receptor locations have been identified. Effects on each receptor are assessed for both winter year of opening (when all mitigation elements would be in place but the mitigation planting would not be fully effective) and during the summer 15 years after opening (when mitigation planting would have become established and contribute to screening).

1.75 Proposed mitigation includes sensitive grading of earthworks to provide integration with the surrounding landform, road cuttings, retention of existing trees and vegetation, extensive new planting of mixed and deciduous woodland, feathered and standard trees,

riparian and scrub woodland and hedgerows and seeding adjacent to the proposed scheme to replace trees lost during construction, provide screening where appropriate, enhance biodiversity and to reflect and enhance local landscape character.

1.76 The mitigation proposals are shown on [ES Figure 9.5](#) (CD007), whilst ES Appendices [A10.1 \(Built Receptor Assessment Table\)](#) and [A10.2 \(Outdoor Receptor Assessment Table\)](#) (CD006) provide detailed information on the application of the specific mitigation measures for individual receptors. Cross-sections indicating the relationship between the proposed scheme and various visual receptors, together with mitigation proposals, are shown on [ES Figure 9.6](#) (CD007).

1.77 In the winter of the proposed scheme year of opening, 365 (54.1 %) individual built receptors and 30 (44.8%) outdoor receptors would be affected by significant (Moderate or greater) adverse effects. By the summer, 15 years after the proposed scheme opening, mitigation would reduce the total number of properties affected by significant adverse effects to 150 (22.2%), and for the outdoor receptors, the total would have reduced to 19 (28.4%). [ES Table 10.6](#) (CD005) summarises the total number of receptors affected to different degrees in the winter year of opening and residual effects by summer 15 years after opening.

Habitats and Biodiversity

1.78 [ES Chapter 11](#) assesses the potential impacts of the proposed scheme on terrestrial and freshwater species and habitats. This ecological impact assessment is presented in context of the dualling of the A96 between Inverness and Nairn (including Nairn bypass) and was carried out in accordance with all relevant legislation and guidelines. The approach is based on Design Manual for Roads and Bridges (DMRB) and the Chartered Institute of Ecology and Environmental Management (CIEEM) guidance. We have used habitats and biodiversity environmental information principally to identify, describe and assess the direct and indirect effects of the proposed development on fauna, flora, soil, water, air, climate and material assets.

1.79 The study area was defined as the proposed scheme footprint plus a 500 metre buffer to create a one kilometre wide survey area, with variations to take into account standard survey guidance for specific ecological features.

1.80 Arable land and other types of farmland comprise the majority habitat types within the ecology study area together with other areas of semi-natural habitats represented by woodland, marshy grassland, wet heath and freshwater habitats. Some of these are valuable habitats supporting protected species; including badgers, bats, breeding birds, red squirrels, otters and water voles.

1.81 There are four sites designated for nature conservation in the vicinity of the proposed scheme; the Inner Moray Firth Special Protection Area (SPA), Loch Flemington SPA, Longman and Castle Stuart Bays Site of Special Scientific Interest (SSSI) and Kildrummie Kames SSSI. Areas of Ancient Woodland Inventory (AWI) habitat are also present within the ecology study area.

1.82 Potential impacts would be mitigated through the application of best practice guidance for construction and operation together with specific measures such as provision of bat boxes, creation/enhancement of habitats through replacement planting, and inclusion

of fencing to direct animals to safe crossing points. The proposed scheme also includes embedded mitigation as part of the design such as dry mammal underpasses and an enhanced overbridge.

1.83 There are no predicted significant long-term negative residual impacts on terrestrial or freshwater receptors following implementation of proposed mitigation measures.

1.84 Although ES [Chapter 21](#) (CD005) concludes that, after the implementation of the proposed mitigation, no significant effects on habitats and biodiversity would arise as a result of the proposed scheme, we note the conclusion in [ES Chapter 11](#) (CD005) of a significant positive residual impact with increased safe permeability for species including badger and otter through provision of suitably designed crossing locations.

Geology, soils, contaminated land and groundwater

1.85 [ES Chapter 12](#) identifies and describes the existing geology, soils, contaminated land and hydrogeology within the study area. It assesses the potential impacts of the proposed scheme on these features and outlines measures for avoiding or mitigating these impacts where possible. We have used geology, soils, contaminated land and groundwater environmental information principally to identify, describe and assess the direct and indirect effects of the proposed development on human beings, fauna, flora, soil, water, air, climate, the landscape and material assets.

1.86 Geological SSSIs present within the study area have been assessed, and it has been identified that impacts would be negligible and therefore no mitigation is required for superficial and solid geology, with the exception of peat deposits that would be excavated. The re-use of these peat deposits would be maximised, where feasible.

1.87 Impacts on aquifers within the superficial and bedrock deposits and associated receptors have been assessed. This identifies that two private water supplies should be monitored during the construction phase. Residual impacts on the hydrogeology of the northern part of Blar nam Fiadh peat bog is assessed as Slight/Moderate significance. However, the more healthy part of the Blar nam Fiadh peat bog located to the south of the railway, is unaffected by the proposed scheme.

1.88 Further detailed assessment is required on indirect dewatering impacts on some surface water receptors. Potential indirect dewatering impact on nearby infrastructure and properties have been assessed as generally Negligible/Slight, with the exception of a few areas that need to be assessed in more detail. Post implementation of mitigation measures, residual impacts on properties and infrastructure are expected to be Slight to Negligible/Slight.

1.89 Several potential sources of contamination have been identified within the study area (including made ground; backfilled quarries; former landfills; railway; former mining and industrial facilities). A number of potential contaminated land issues were identified, which would require mitigation measures during construction. The residual impacts on contaminated land are expected to be of Low to Very Low significance.

1.90 Overall, having regard to proposed mitigation, [Chapter 21](#) (CD005) of the ES predicts no significant effects with regard to geology, soils, contaminated land and hydrogeology.

Road drainage and water environment

1.91 [Chapter 13 of the ES](#) assesses the potential impacts of the proposed scheme on the water environment, comprising surface water hydrology, flood risk, fluvial geomorphology and water quality, and identifies measures for mitigating these impacts. We have used the environmental information for road drainage and the water environment principally to identify, describe and assess the direct and indirect effects of the proposed development on human beings, fauna, flora, water and material assets.

1.92 For fluvial geomorphology and water quality, the study area was defined as the proposed scheme footprint plus a 500 metre buffer around it. The study area for hydrology and flood risk was based on a conceptual understanding of the likely propagation of impacts. The baseline conditions were informed by consultation, desk-based assessments, site walkover and topographic survey. Hydraulic modelling of five areas, was undertaken to assess the capacity of the existing crossings structures on the proposed scheme and also to assess potential flood risk. The Highways Agency Water Risk Assessment Tool (HAWRAT) has been used to determine impacts on surface water features (SWFs) from route runoff and spillage risk.

1.93 There are several environmentally sensitive SWFs within the study area. The largest SWF in the study area, the River Nairn, and two of its tributaries are Protected Areas for Freshwater Fish under the Water Framework Directive. Within the study area, a number of SWFs to the east and south-east of Nairn form tributaries to the River Nairn. In addition, a number of SWFs to the west of Nairn flow into the Moray Firth, which is designated as a Ramsar site, Special Area of Conservation, Special Protection Area and Site of Special Scientific Interest.

1.94 All potential impacts before mitigation are shown in full in ES chapter 13 (CD005). The potential residual impacts are presented in [ES Appendix A13.4](#) (Residual Impact Tables (Road Drainage and the Water Environment)) (CD006) and summarised in [ES Section 13.10](#) (Summary) (CD005).

1.95 The results of the HAWRAT routine runoff assessments and HAWRAT spillage risk assessments are summarised in ES chapter 13 (CD005). The parameters and detailed results are presented within [ES Appendix 13.3](#) (Water Quality Calculations) (CD006).

1.96 Before mitigation, a number of potential impacts on SWFs of Moderate significance or above were identified as a result of construction and operation of the proposed scheme. These include impacts on flood risk/hydrology, fluvial geomorphology, water quality/supply, dilution and removal of waste products and biodiversity.

1.97 Mitigation during construction would include adherence to relevant SEPA Pollution Prevention Guidelines (PPGs). Watercourse realignments would be sensitively designed as mitigation to create a sinuous low flow channel with a sinuous planform, varied bank profiles and natural substrate, where practicable. The watercourses realignments would be designed to prevent deposition of fine sediment and/or cause scour issues. With the implementation of the proposed mitigation during construction, residual impacts on the majority of surface water features would be reduced to Slight or Negligible significance. However, impacts on the attribute 'biodiversity' have the potential to be of Moderate adverse significance for SWF 03, SWF 24 and SWF 26. This significance is due in part to the importance of this attribute for these SWFs (very high importance because Protected

Area for Freshwater Fish or presence of internationally important fish species). These impacts would be temporary and are reflective of the level of risk of a pollution incident with mitigation in place.

1.98 Mitigation for the operational phase would include use of Sustainable Drainage Systems e.g. Basin and Pond (SuDS) to protect receiving waterbodies and inclusion of agricultural land within the CPO to provide compensatory storage areas to accommodate water during a flood event where the proposed scheme encroaches into areas identified as part of existing floodplains. With the proposed mitigation, the vast majority of residual impacts during operation are predicted to be reduced to Neutral, with a small number of Slight significance impacts.

1.99 Overall, having regard to proposed mitigation, [Chapter 21](#) (CD005) of the ES predicts no significant effects with regard to road drainage and the water environment.

Cultural heritage

1.100 [Chapter 14 of the ES](#) assesses the potential impacts of the proposed scheme on cultural heritage assets comprising archaeological remains, historic buildings and the historic landscape. We have used cultural heritage environmental information principally to identify, describe and assess the direct and indirect effects of the proposed development on human beings, the landscape, material assets and cultural heritage.

1.101 The study area was defined as the proposed scheme footprint plus a 200 metre buffer around it. The baseline conditions were established through consultation, a desk-based assessment and site surveys. Statutorily designated assets which lay outside the study area, but whose settings could be affected by the proposed scheme were included in the baseline. These studies identified 210 archaeological remains, 69 historic buildings and 19 historic landscape types, dating from the Mesolithic period to the recent past.

1.102 All potential impacts on designated assets are discussed in full in ES chapter 14 (CD005). For undesignated assets, any potential impacts considered to be significant (of Moderate significance or above) are discussed in full, with details of non-significant impacts presented in [ES Appendix A14.4](#) (Cultural Heritage Impact Tables) (CD006).

1.103 Before mitigation, potential significant impacts on nine designated assets and potential significant impacts on 30 undesignated assets were identified as a result of construction of the proposed scheme. Potential significant impacts on four designated and two undesignated assets were identified as a result of operation of the proposed scheme.

1.104 Proposed mitigation includes a programme of archaeological recording, historic building recording and photographic survey. Landscape planting to mitigate potential impacts on the settings of cultural heritage assets is also proposed.

1.105 After mitigation, significant residual construction impacts (Moderate adverse) were predicted for twelve assets (nine of which are designated). The significance of residual impact during operation on two assets was predicted to be Moderate adverse for the Isle View Ring Cairn (Asset 85) and Auldearn Battlefield (HLT25)).

People and communities – Community and private assets

1.106 [Chapter 15 of the ES](#) considers the potential impacts from the proposed scheme on community and private assets, including land use. The main settlements in the area are Inverness, Smithton, Culloden, Balloch, Nairn and Auldearn. The study area contains the following land uses: residential, commercial and industrial land, community land, land allocated for development and land supporting agriculture, forestry and sporting activity. We have used people and communities – community and private assets environmental information principally to identify, describe and assess the direct and indirect effects of the proposed development on human beings and material assets.

1.107 The development of the proposed scheme design has sought to avoid, where possible, community and private assets. Additional mitigation measures to reduce construction and operational impacts have been developed. The proposed scheme would require land-take of approximately:

- 10 hectares from residential, commercial and industrial land, including the acquisition of one residential property;
- 4 hectares from land within development land allocations;
- 73 hectares of land with extant planning permissions;
- 245 hectares of agricultural land of which 116 hectares (47%) is identified as prime agricultural land;
- 47 hectares of forestry and scrubland; and
- 11 hectares of other land.

1.108 A further 19 hectares of land-take would be required from land of unknown ownership. Of the total land-take from the proposed scheme, approximately 2 hectares relates to servitude rights. Where land-take of community and private assets is required, landowners would be entitled to compensation in accordance with the District Valuer's assessment.

1.109 The land-take involves the demolition of one field shelter, two rail bridge structures and one derelict property. It should be noted that, in relation to the demolition of the field shelter, this is included within the acquisition of the residential property (6 Milton of Culloden), and in relation to the derelict property, this is included within land which is subject to an extant planning application. Furthermore, the proposed scheme would construct three new rail bridges carrying the mainline of the proposed road and a local road over the Aberdeen to Inverness Railway Line.

1.110 [Chapter 21](#) (CD005) identifies a number of significant post-mitigation effects on community and private assets.

1.111 Moderate effects are predicted for Seafield, Ashton Farm Cottages, Milton of Culloden Smallholdings, Milton of Gollanfield, Lochside, Brackadale and Easter Glackton, East Lodge Cottage and Mill of Both and Innesfree. Such effects are due to the need for increased vehicle journey distances and partial loss of land. A Moderate Beneficial effect is predicted for Balnaspirach due to reduced vehicle journey distance. A Moderate / Substantial effect is predicted for 6 Milton of Culloden where there would be partial loss of a field, demolition of a field shelter and loss of garden. This entire plot is proposed for acquisition by TS.

1.112 Moderate residual effects are predicted for Polfalden Kennels and Cattery and Grigorhill Industrial Estate due to additional journey distances.

1.113 A Moderate residual effect is predicted at Seafield for pedestrians and cyclists due to the severance of Core Path IN08.10 and the consequent need to take the alternative provided route.

1.114 A Substantial effect is predicted for pedestrians at Allanfearn due to the severance of Core Paths IN08.15 and IN08.16 and the consequent need for a longer diversion.

1.115 A Moderate effect is predicted for cyclists at Grigorhill, Newton of Park and Craggie due to the proposed stopping-up of the U3010 Granny Barbour Road and the consequent need for a diversion.

1.116 A Substantial effect is predicted for pedestrians at Waterloo and Milhill due to severance of public right of way R1.

1.117 A Moderate Beneficial effect is predicted due to reduced traffic levels in Nairn and also due to increased employment opportunity during construction.

1.118 A Significant Adverse effect is predicted on the mixed use land allocation LA07 (Milton of Culloden) due to the direct take of 3.74 hectares of land.

1.119 A Significant Beneficial effect is predicted for allocation PA19 (Tornagrain) as the proposed scheme would deliver improvements to the A96 that are identified as necessary in the development plan for the delivery of that development allocation.

1.120 Significant mixed effects are predicted for PA04 (land at Stratton and East Seafield), PA18 (Inverness Airport) and PA20 (Highland Food Stop) due to a combination of direct land-take, the proximity of the proposed road and the improved connectivity the proposed scheme would provide.

1.121 ES [Chapter 21](#) (CD005) predicts Significant post-mitigation effects for 30 agricultural, forestry and sporting land interests. Of these, 11 are predicted to be Moderate, 16 Moderate / Substantial and three Substantial. Factors that have informed these predictions include land loss, severance, loss of boundary features, increased windthrow to retained woodland, and the introduction of servitude rights.

1.122 Adverse impacts on likely future farm viability have been identified on two agricultural units (2 Milton of Culloden and Lands at Lochside).

People and communities – Effects on all travellers

1.123 [Chapter 16 of the ES](#) assesses the potential impacts of the proposed scheme on travellers including pedestrians, cyclists and equestrians (collectively referred to as non-motorised users (NMUs)), and vehicle travellers. We have used people and communities – effects on all travellers environmental information principally to identify, describe and assess the direct and indirect effects of the proposed development on human beings and material assets.

1.124 The assessment of NMUs has been conducted in line with DMRB, Volume 11, Section 3, Part 8, Pedestrians, Cyclists, Equestrians and Community Effects. This assessment has assessed impacts to the journeys made by NMUs within local residential areas.

1.125 The assessment of vehicle travellers has utilised guidance set out in DMRB, Volume 11, Section 3, Part 9, Vehicle Travellers. The assessment relates to the driving environment and likelihood of driver stress, the provision of public transport and changes to the 'View from the Road' within the existing A96 and proposed scheme road corridors.

1.126 At present NMUs are limited in how they move around the existing A96 corridor between Inverness and Auldearn, with provision largely restricted to footpaths between communities. A small number of NMU routes would be adversely affected by the proposed scheme, however in designing the proposed scheme, the provision of new NMU facilities and structures has taken into account the needs of NMUs.

1.127 There is a limited amount of provision along the existing A96, whilst crossings of the trunk road are uncontrolled and at-grade, apart from through Nairn. The proposed shared use path would provide a connection between Inverness and Nairn, with controlled at-grade crossings where necessary along the proposed scheme. Links between communities would also be permanently enhanced and access to outdoor areas would be improved. In addition to being used for short journeys to access outdoor areas, it is hoped the new shared use path facility would be utilised for more long distance journeys, ultimately improving the continuity of journeys within the study area.

1.128 The introduction of road infrastructure into a largely rural environment would adversely affect the amenity value of some footpaths, with the proposed scheme becoming visible in certain areas, particularly with the introduction of new junctions and embankments. However, the majority of impacts to sensitive NMU routes has been deemed to be neutral/negligible or slight adverse/beneficial. Landscaping and planting would be incorporated along the proposed scheme to mitigate these impacts.

1.129 With regard to public transport there would be no effect on access to Nairn and Inverness Railway Stations, and an overall improvement for access to bus stops.

1.130 The existing A96 is a single carriageway road. As a result, driver stress levels are currently likely to be moderate or high in sections along the road in or on approach to urban areas, given the lack of overtaking opportunities. However, in rural sections of the road, as expected, low levels of driver stress exist given the low population levels nearby and the lack of major junctions along the trunk road. During construction there would be temporary delays on the local road network which may lead to frustration and an increase in driver stress. However, once operational, the dualling of the existing A96 would significantly reduce the levels of driver stress, with low stress levels also expected to be experienced along the majority of the proposed scheme. The assessment of 'Views from the Road' has concluded that overall vehicle travellers would experience an improvement in views from the proposed scheme in comparison to the views experienced from the existing A96.

1.131 Overall, [Chapter 21](#) (CD005) of the ES predicts significant post-mitigation effects on all travellers in three instances. A Substantial Beneficial effect is predicted from the creation of 30 kilometres of shared use path. A Moderate Adverse effect is predicted for 15 of the existing 80 NMU routes due to the introduction of road infrastructure into a largely

rural environment and / or to increased journey length. Substantial Adverse effects are predicted for Core Paths IN08.15 and IN08.16 due to severance and the need for users to take a longer diversion.

Materials

1.132 [Chapter 17 of the ES](#) assesses the potential impacts of the proposed scheme associated with the use of material resources and the management of waste. It outlines measures for mitigating these impacts where possible and describes any residual impacts that may occur with mitigation in place. We have used materials environmental information principally to identify, describe and assess the direct and indirect effects of the proposed development on human beings, fauna, flora, soil, water, air, climate, the landscape and material assets.

1.133 By applying key material and waste management principles, such as the waste management hierarchy, the effects on natural resources and need for permanent disposal of wastes would be reduced. In particular, this would be achieved by re-using existing soils and redundant or demolition material where possible, taking into consideration the environmental impacts of products during their purchase, and sourcing materials from local suppliers.

1.134 The potential for impacts on materials or waste disposal facilities is related to the performance of the appointed contractor during completion of the construction works. Any surplus materials or waste sent off site could have a resultant impact on the available waste management infrastructure and resources. The risk of such impacts occurring would be managed and reduced through the development and application of several plans addressing different aspects of construction site management, such as a Construction Environmental Management Plan (CEMP) and a Site Waste Management Plan (SWMP).

1.135 With the application of these plans and the proposed mitigation measures, the significance of impacts affecting material resources and waste would be reduced to 'Slight' or 'Neutral' (not significant). However, the proposed scheme's carbon emissions during construction and operation are predicted to constitute a Major Adverse effect.

Policies and plans

1.136 The policies and plans assessment in [Chapter 18 of the ES](#) considers the proposed scheme's compliance with national, regional and local planning policy and strategy documents considered material to the proposed scheme. The assessment identifies areas of policy conflict or compliance, with detailed commentary on each provided in [ES Appendix A18.2](#) (Assessment of Development Plan Policy Compliance) (CD006).

1.137 The proposed scheme embodies a Ministerial commitment to improve connectivity to the local and regional area which would promote opportunities for regeneration and social and economic growth. The proposed scheme and wider improvements to the A96 are outlined in national policy, including [National Planning Framework 3](#) (CD044.02).

1.138 The proposed scheme also supports regional transport policy objectives to assist in providing enhanced connectivity to deliver prosperity and connect communities across the region.

1.139 Due to the promoter's recognition that there would be some residual harm, particularly to landscape, as a consequence of the proposal this has the potential to conflict with some aspects of individual policies. There is also a significant amount of material required during construction and operation that would contribute to a large carbon footprint. These matters have the potential for non-compliance with specific policy aims.

1.140 [ES Chapter 20](#) (Schedule of Environmental Commitments) (CD005) proposes extensive mitigation measures to ensure that the long-term impacts would be reduced. Furthermore, in relation to the amount of material required to construct and operate the proposed scheme, it should be noted that equivalent scale roads infrastructure projects throughout Scotland and the UK that have a similar Major impact have been approved on the basis of the suggested mitigation and the acceptance that essential road infrastructure schemes of this scale would normally require a significant amount of materials to construct. The potential non-compliance should also be balanced against the overarching benefits of the proposed scheme, such as improving connectivity, enhancing safety for all users, and promoting social and regional economic opportunities.

1.141 Overall, the ES predicts no significant post-mitigation effects on policies and plans.

Cumulative effects

1.142 [ES Chapter 19](#) (CD005) concludes that there are no significant cumulative impacts resulting from the proposed scheme, or as a result of the proposed scheme in combination with other committed developments.

1.143 Depending on the detailed design for the remaining dualling schemes of the A96 Dualling Programme, additional cumulative impacts are possible. In ES Chapter 19 TS acknowledges this and remarks that it will continue to consider this at a strategic level and that this will form part of future scheme assessments as more information becomes available.

Consultation authorities

1.144 Scottish Environment Protection Agency (SEPA), Historic Environment Scotland (HES) and Scottish Natural Heritage (SNH) are all statutory consultation authorities for the EIA. They have been involved throughout the EIA from scoping stages through to making representations on the draft Orders and ES following publication in November 2016.

1.145 None of the three objected to the draft Orders or the ES. HES and SEPA each raised a series of technical queries relating to information in the ES. These are considered in the respective chapters of this report, including in Chapter 2: Matters of Principle. In each instance TS subsequently answered the respective queries. We have therefore concluded that any issues initially raised have been subsequently resolved with respect to all three organisations.

Human rights

1.146 The Human Rights Act 1998 (the 1998 Act) incorporates the European Convention of Human Rights (ECHR) into United Kingdom law. Subject also to the Scotland Act 1998, section 6 of the 1998 Act provides that it is unlawful for a public authority, such as the Scottish Ministers, to act incompatibly with the Convention rights under the 1998 Act.

1.147 Article 1, Protocol 1 of the ECHR protects against improper state expropriation or restriction on the use of property. Under Article 1, Protocol 1 any interference in property rights (including compulsory acquisition such as for the proposed scheme) must meet the test of legal certainty, have a legitimate aim that must be justified by the general or public interest and the means selected must be proportionate to the ends sought to ensure a fair balance.

Habitats Regulations Appraisal

1.148 In accordance with the Conservation (Natural Habitats, &c) Regulations 1994, Scottish Ministers, as the 'competent authority', must undertake an appropriate assessment should it be concluded that one is necessary.

1.149 TS prepared a [Habitats Regulations Appraisal \(CD010\)](#) at DMRB Stage 3 which concludes that:

- an appropriate assessment would be needed.
- no adverse effects to the site integrity of any European/Ramsar sites from the proposed scheme could be identified provided that embedded and other proposed mitigation was applied.

1.150 REP/154 SNH shares this view in its response letter to the draft Orders and ES consultation ([TS266](#)). Neither SNH nor any other parties suggest any reasons for us to recommend that Scottish Ministers should not adopt the information contained in the Habitats Regulations Appraisal (CD010) in their consideration of whether an appropriate assessment is needed and the conclusions they draw if they deem an appropriate assessment to be necessary. Scottish Ministers may wish to take their own legal and environmental advice on these matters.

Protected species

1.151 The ES has identified that the proposed scheme would affect the habitats of several protected species (including European Protected Species - EPS). These include bats, badger, otter and red squirrel, amongst others. Impacts on wild birds have also been covered including those that form part of the qualifying interests of Natura 2000 sites affected by the proposed scheme, which are covered in the HRA (CD010) (see paragraphs 1.126 to 1.128 above). These matters are confirmed by SNH in TS266.

1.152 With regard to protected species Scottish Ministers have two general duties:

- the duty on every public body and office-holder to further the conservation of biodiversity so far is consistent with the proper exercise of their functions (imposed by Section 1(1) of the Nature Conservation (Scotland) Act 2004); and
- the duty on competent authorities i.e. any Minister, government department, public body or person holding public office, to have regard to the EC Habitats Directive and Wild Birds Directive in the exercise of their functions (imposed by regulations 3(2) and 3(4) of the Habitats Regulations 1994).

1.153 European Protected Species are listed on Annex IV of the Habitats Directive and receive strict protection throughout Europe. In Scotland, this protection is implemented through inclusion of species on Schedule 2 (animals) and Schedule 4 (plants) of the

Habitats Regulations 1994 as amended. These lists exclude birds, which are dealt with separately under the European Birds Directive.

1.154 In TS266 SNH has confirmed that TS would need to apply for the relevant licences with regards to the protected species affected by the proposed scheme. In applying for a licence relating to EPS, SNH (the licence issuer) has limited discretion over the following three tests:

- the reason for the licence must relate to one of several purposes specified in regulation 44(2) of the Conservation (Natural Habitats &c.) Regulations 1994 (as amended).
- there must be no satisfactory alternative.
- the proposed action must not be detrimental to maintaining the species at 'favourable conservation status.'

1.155 We note that SNH has been involved in the scoping and preparation of the ES and has not objected (TS266). We also note from TS266 that SNH has also accepted and agreed with the evidence and conclusions reached by TS's HRA for DMRB Stage 3 (CD010). We have noted the requirements in ES Chapter 20 (CD005) under various mitigation items to retain trees that form habitat, to provide replacement habitat e.g. for bats and amphibians, and, to provide dry mammal underpasses and culverts. We have also noted the ES requirement to carry out species surveys prior to commencement of works and for the contractor to employ an environmental clerk of works. These and other related factors being covered in the ES means that they would form part of the contract and therefore be binding on the contractor. For these reasons we conclude that the proposed scheme has appropriately considered the risks to protected species (including EPS) and proposed mitigation measures that would make the proposed scheme capable of maintaining favourable conservation status for the respective species.

1.156 These factors persuade us that the presence of protected species (including EPS) has been recognised and formed an integral part of the proposed scheme. The evidence does not suggest any obvious reason that the proposed scheme would fail the three tests above (regarding EPS licencing) or that it would lead Scottish Ministers to fail in their duties (described above).

Public inquiry

1.157 The relevant date notice was issued on 26 April 2018 and the relevant date was 24 May 2018. This was the date by which further written submissions or outline statements were to be submitted.

1.158 The pre-Inquiry meeting took place at Jury's Inn Inverness on 05 June 2018. Most parties were content to rest on their original objections and further written submissions. A smaller proportion of objectors, approximately 18 parties (including one residents group) wished to have their evidence heard in oral process.

1.159 Following the pre-Inquiry meeting and subsequent correspondence the dates for submission of evidence and inquiry/hearing sessions were set (see table below). The deadline for Statements of Case was 14 September 2018 and for precognitions (for Inquiry sessions only) and any hearing statements (hearings only) was 28 September 2018.

1.160 Several extensions of time were granted for the submission of precognitions and hearing statements to enable negotiations to progress between TS and the respective objectors. In several cases the objectors withdrew. These time extensions were absorbed into the overall timescale and did not result in any delay to the process.

1.161 The following parties appeared at the respective inquiry and hearing sessions:

30 Oct to 2 Nov 2018 - Session 1: Rationale and Route Selection	
Procedure: Inquiry	
For Transport Scotland: Ms Ruth Crawford QC Mr Douglas Milne – Morton Fraser Mr Craig Cameron – (Justification) TS Mr Graeme Herd – (DMRB3) Jacobs Ms Helen Gregory – (DMRB2) Jacobs Mr Andrew Willo (Flood risk) – Jacobs Dr David Palmer – (Noise) Jacobs Mr Perter Simpson – (EIA) Jacobs Ms Gillian Baillie – (Planning) Jacobs Mr Euan Barr – (Traffic Assessment) Jacobs	Objecting Parties: OBJ/110 Mr James A Philip represented by Mr Atholl Newlands of Bowlts Chartered Surveyors OBJ/129 Mrs Elaine Bailey for residents north of Auldearn (OBJ/112 etc.) and for herself and Mr Bailey OBJ/133 Mr Richard McCulloch OBJ/138 Mr Philip Pullan and Mrs Gillian Pullan OBJ/060 Mr Allan and Mrs Lorna Robertson were unable to attend at late notice and provided closing statements.
6 Nov 2018 - Session 2: Allanfearn Farm	
Procedure: Hearing	
For Transport Scotland: Ms Ruth Crawford QC Mr Douglas Milne – Morton Fraser Mr Craig Cameron - TS Mr Graeme Herd – (DMRB3) Jacobs Ms Helen Gregory – (DMRB2) Jacobs Mr Andrew Willo (Flood risk) – Jacobs Dr David Palmer – (Noise) Jacobs Mr Perter Simpson – (EIA) Jacobs Mr Graeme Kerr – (Agricultural Land) Jacobs Dr Hazel Peace – (Air Quality) Jacobs Ms Gillian Baillie – (Planning) Jacobs Mr Euan Barr – (Traffic Assessment) Jacobs for TS Mr Simon Young – (Stakeholder Engagement) Jacobs Ms Kate Smith – (Visual and Landscape) Jacobs	Objecting Parties: OBJ/039 Mr Cumming and Mrs J Bradley represented by Mr Bradley
6 Nov 2018 - Session 3: Balloch	
Procedure: Hearing	
For Transport Scotland: Ms Ruth Crawford QC Mr Douglas Milne – Morton Fraser Mr Craig Cameron - TS Mr Graeme Herd – (DMRB3) Jacobs Ms Helen Gregory – (DMRB2) Jacobs Mr Andrew Willo (Flood risk) – Jacobs Dr David Palmer – (Noise) Jacobs Mr Perter Simpson – (EIA) Jacobs Mr Graeme Kerr – (Agricultural Land) Jacobs	Objecting Parties: OBJ/055 Mrs A Gow and OBJ/056 Mr F Gow Only Mr F Gow in attendance OBJ/060 Mr Allan and Mrs Lorna Robertson were unable to attend at late notice and provided closing statements.

Dr Hazel Peace – (Air Quality) Jacobs Ms Gillian Baillie – (Planning) Jacobs Mr Euan Barr – (Traffic Assessment) Jacobs Mr Simon Young – (Stakeholder Engagement) Jacobs Ms Kate Smith – (Visual and Landscape) Jacobs	
7 Nov 2018 - Session 4: Number 6 Milton of Culloden Procedure: Hearing	
Objector Withdrew	
7 Nov 2018 - Session 5: Culblair Farm Procedure: Hearing	
or Transport Scotland: Ms Ruth Crawford QC Mr Douglas Milne – Morton Fraser Mr Craig Cameron - TS Mr Graeme Herd – (DMRB3) Jacobs Dr David Palmer – (Noise) Jacobs Mr Perter Simpson – (EIA) Jacobs Mr Graeme Kerr – (Agricultural Land) Jacobs Mr Simon Young – (Stakeholder Engagement) Jacobs	Objecting Parties: OBJ/082 Mr William Rose and his representative Mr Alistair Campbell of Bidwells
8 Nov 2018 - Session 6A: Moray Estates etc. Procedure: Inquiry	
Objector Withdrew	
9 Nov 2018 - Session 6B: Milton of Gollanfield Farm Procedure: Hearing	
For Transport Scotland: Ms Ruth Crawford QC Mr Douglas Milne – Morton Fraser Mr Craig Cameron - TS Mr Graeme Herd – (DMRB3) Jacobs Ms Helen Gregory – (DMRB2) Jacobs Mr Andrew Willo (Flood risk) – Jacobs Dr David Palmer – (Noise) Jacobs Mr Perter Simpson – (EIA) Jacobs Mr Graeme Kerr – (Agricultural Land) Jacobs Mr Simon Young – (Stakeholder Engagement) Jacobs Ms Kate Smith – (Visual and Landscape) Jacobs Mr John Dempsey – (Cultural Heritage) Jacobs	Objecting Parties: OBJ/073 Mr David Macbean and his representative Mr Alistair Campbell of Bidwells
13 Nov 2018 - Session 7: North Kildrummie Farm Procedure: Hearing	
For Transport Scotland: Ms Ruth Crawford QC Mr Douglas Milne – Morton Fraser Mr Craig Cameron - TS Mr Graeme Herd – (DMRB3) Jacobs Ms Helen Gregory – (DMRB2) Jacobs Mr Andrew Willo (Flood risk) – Jacobs Dr David Palmer – (Noise) Jacobs Mr Perter Simpson – (EIA) Jacobs	Objecting Parties: OBJ/091 Mr Stewart and Mrs Verena Mackinnon and their representative Mr David Campbell of Land Consultancy Services Ltd

<p>Mr Graeme Kerr – (Agricultural Land) Jacobs Dr Hazel Peace – (Air Quality) Jacobs Ms Gillian Baillie – (Planning) Jacobs Mr Euan Barr – (Traffic Assessment) Jacobs Mr Simon Young – (Stakeholder Engagement) Jacobs Ms Kate Smith – (Visual and Landscape) Jacobs</p>	
<p>13 Nov 2018 - Session 8: Blackpark Farm Procedure: Hearing</p>	
<p>For Transport Scotland Ms Ruth Crawford QC Mr Douglas Milne – Morton Fraser Mr Craig Cameron - TS Mr Graeme Herd – (DMRB3) Jacobs Ms Helen Gregory – (DMRB2) Jacobs Mr Andrew Willo (Flood risk) – Jacobs Dr David Palmer – (Noise) Jacobs Mr Perter Simpson – (EIA) Jacobs Mr Graeme Kerr – (Agricultural Land) Jacobs Dr Hazel Peace – (Air Quality) Jacobs Ms Gillian Baillie – (Planning) Jacobs Mr Euan Barr – (Traffic Assessment) Jacobs Mr Simon Young – (Stakeholder Engagement) Jacobs Ms Kate Smith – (Visual and Landscape) Jacobs</p>	<p>Objecting Parties: OBJ/105 Mr John R Mackintosh and Company – Mr Mackintosh, Mrs Mackintosh and their representative Mr Alistair Campbell of Bidwells</p>
<p>14 Nov 2018 - Session 9: Mr Philip</p>	
<p>Cancelled at objector's request – objector matters covered by their attendance in session 1</p>	
<p>14 Nov 2018 - Session 10: Auchnacloch Farm Procedure: Hearing</p>	
<p>For Transport Scotland: Ms Ruth Crawford QC Mr Douglas Milne – Morton Fraser Mr Craig Cameron - TS Mr Graeme Herd – (DMRB3) Jacobs Ms Helen Gregory – (DMRB2) Jacobs Mr Andrew Willo (Flood risk) – Jacobs Dr David Palmer – (Noise) Jacobs Mr Perter Simpson – (EIA) Jacobs Mr Graeme Kerr – (Agricultural Land) Jacobs Dr Hazel Peace – (Air Quality) Jacobs Ms Gillian Baillie – (Planning) Jacobs Mr Euan Barr – (Traffic Assessment) Jacobs Mr Simon Young – (Stakeholder Engagement) Jacobs Ms Kate Smith – (Visual and Landscape) Jacobs</p>	<p>Objecting Parties: OBJ/111 Firm of Auchnacloch Farm – Mr Alexander Ross, Mrs Helen Ross and Mrs Mary Taylor and their representatives: Mr Jamie Whittle of R & R Urquhart, Mr Neil Cameron of Neil Cameron Associates and Mr Colin Anderson of Watson Bell Consultants Ltd</p>
<p>15 Nov 2018 - Session 11: North of Auldearn Procedure: Hearing</p>	
<p>For Transport Scotland: Ms Ruth Crawford QC Mr Douglas Milne – Morton Fraser Mr Craig Cameron - TS</p>	<p>Objecting Parties:</p>

<p>Mr Graeme Herd – (DMRB3) Jacobs Ms Helen Gregory – (DMRB2) Jacobs Mr Andrew Willo (Flood risk) – Jacobs Dr David Palmer – (Noise) Jacobs Mr Perter Simpson – (EIA) Jacobs Mr Graeme Kerr – (Agricultural Land) Jacobs Dr Hazel Peace – (Air Quality) Jacobs Ms Gillian Baillie – (Planning) Jacobs Mr Euan Barr – (Traffic Assessment) Jacobs Mr Simon Young – (Stakeholder Engagement) Jacobs Ms Kate Smith – (Visual and Landscape) Jacobs</p>	<p>OBJ/129 Mrs Elaine Bailey for residents north of Auldearn (OBJ/112 etc.) and for herself and Mr Bailey.</p> <p>OBJ/133 Mr Richard McCulloch unable to attend due to other commitments but submitted written comments. Comments accepted.</p>
<p>16 Nov 2018 - Session 12: Courage Procedure: Hearing</p>	
<p>For Transport Scotland: Ms Ruth Crawford QC Mr Douglas Milne – Morton Fraser Mr Craig Cameron - TS Mr Graeme Herd – (DMRB3) Jacobs Ms Helen Gregory – (DMRB2) Jacobs Mr Andrew Willo (Flood risk) – Jacobs Dr David Palmer – (Noise) Jacobs Mr Perter Simpson – (EIA) Jacobs Mr Graeme Kerr – (Agricultural Land) Jacobs Dr Hazel Peace – (Air Quality) Jacobs Ms Gillian Baillie – (Planning) Jacobs Mr Euan Barr – (Traffic Assessment) Jacobs Mr Simon Young – (Stakeholder Engagement) Jacobs Ms Kate Smith – (Visual and Landscape) Jacobs</p>	<p>Objecting Parties:</p> <p>OBJ/138 Mr Philip Pullan and Mrs Gillian Pullan representing themselves</p>
<p>20 to 24 Nov 2018 - Session 13: Stratton Newtown Procedure: Inquiry</p>	
<p>For Transport Scotland: Ms Ruth Crawford QC Mr Douglas Milne – Morton Fraser Mr Craig Cameron - TS Mr Graeme Herd – (DMRB3) Jacobs Ms Helen Gregory – (DMRB2) Jacobs Mr Andrew Willo (Flood risk) – Jacobs Dr David Palmer – (Noise) Jacobs Mr Perter Simpson – (EIA) Jacobs Mr Graeme Kerr – (Agricultural Land) Jacobs Dr Hazel Peace – (Air Quality) Jacobs Ms Gillian Baillie – (Planning) Jacobs Mr Euan Barr – (Traffic Assessment) Jacobs Mr Simon Young – (Stakeholder Engagement) Jacobs Ms Kate Smith – (Visual and Landscape) Jacobs</p>	<p>Objecting Parties:</p> <p>OBJ/002 Hazeldene (Inverness) Ltd and its representatives: Mr James Findlay QC Mr Alistair Burnett Ms Sarah Baillie – Addleshaw Goddard Mr Brian Clark advisor to Hazeldene (Inverness) Ltd Mr Brian Muir advisor to Hazeldene (Inverness) Ltd Mr Paul Danburgh of ITP Energised Ms S McGowan of ITP Energised</p> <p>Objector withdrew during the first day of the inquiry session (20 November 2018) following negotiations with TS.</p>

1.162 At inquiry sessions the witnesses for each party read selected extracts of their precognitions/summary precognitions. Following cross-examination by parties of opposing view, we also asked questions to clarify our understanding of their evidence.

1.163 At the hearing sessions areas for discussion were based on pre-circulated agendas prepared by us with general and specific areas of questioning. The areas for attention were based on the objections, statements of case, hearing statements and other submitted evidence. The hearings took the form of discussions with each party making points, asking questions of each other through us. We also asked questions to clarify our understanding of the matters being discussed.

1.164 Closing submissions were exchanged in writing by 7 December 2018, with the final closing submission (on behalf of TS) being lodged on 21 December 2018. Several additional matters were dealt with in January 2019 with Transport Scotland having the opportunity to provide final closing statements pertaining to those matters.

New information

1.165 Various other evidence was submitted at points between 14 September and the closing of the Inquiry. Amongst these TS submitted document CD140 WHO noise guidance (October 2018) and a supplementary precognition to the Public Inquiry. This document had just been published by WHO two weeks previous. At the inquiry, participants were given the opportunity to discuss this and then to submit any written views if they so wished by 7 December 2018. Our consideration of this matter is covered with other objections in chapters 2 to 8 of this report.

1.166 During the inquiry itself there were several instances where objecting parties asked to submit new information, including following freedom of information requests. Following discussions with the parties present we decided to allow this new information to be submitted in the interests of understanding the matters more fully in order to advise Scottish Ministers accordingly.

1.167 We have considered all written and oral evidence equally. Our consideration of this evidence, our findings and our recommendations to Scottish Ministers are contained in the Chapters 2 to 9 of this report. It will be for Scottish Ministers to decide what, if any, modifications to make to the draft Orders and then whether to confirm or to refuse them.

1.168 We are aware that in May 2019 HES issued new policy guidance for consideration of the historic environment. As Scottish Government Policy this is before us. We find this not to alter the manner in which cultural heritage has been considered by this report or by the ES. We did not consider it necessary to invite views of parties on the implications of that new guidance.

Rejected objection

1.169 We rejected one objection, made by R Sleight (Landscapes) Ltd (a statutory objector), since this was made on 24 May 2018; over a year after the closing of the original objections period for the draft Orders and ES in January 2017. The letter provided no explanation for the lateness nor any indication of the basis for why it should be considered late.

1.170 This matter was discussed at the pre-inquiry meeting with Bowlt's Chartered Surveyors, the agent for R Sleight (Landscapes) Ltd and other parties, and we ruled that this was a late submission that would be rejected. The [minutes of the pre-inquiry meeting](#), including our ruling on this matter, were copied to the agent for R Sleight (Landscapes) Ltd.

No subsequent representation has been made in relation to our decision to have no regard to it.

1.171 We noted in the letter from Bowlts Chartered Surveyors for R Sleigh (Landscapes) Ltd that the matters of concern relate to reassurances about proposed access and future business operations following proposed acquisition of Plots 1908 and 1909 by TS under the draft Orders. In that letter the R Sleigh (Landscapes) Ltd indicates its willingness to conduct discussions with TS and its representatives. At the pre-inquiry meeting TS confirmed it was continuing to have informal discussions with R Sleigh (Landscapes) Ltd.

1.172 As such we do not consider that our rejection of the objection would prevent R Sleigh (Landscapes) Ltd from commencing/continuing its discussions with TS and/or its representatives to gain the reassurances sought and to resolve the concerns it has raised.

CHAPTER 2: MATTERS OF PRINCIPLE

Introduction

2.1 This chapter of the report considers objections and representations that raise matters of principle. These include those objections or representations that challenge:

- the rationale for the proposed scheme (including the evidence base used to support it and the process used to consider alternatives);
- the adequacy of engagement process; and
- the adequacy of the scrutiny process;

2.2 This chapter also deals with a number of non-site-specific objections and representations that raise concerns with regard to:

- matters relating to the handover to Highland Council of new and de-trunked assets under the draft de-trunking and side roads Orders respectively.
- representations from national agencies;
- the proposed contracting arrangements for drainage and other engineering works; and,
- the decision not to incorporate the recently published Work Health Organisation (WHO) guidelines (2018) (CD140) within the proposed scheme's noise mitigation strategy.

2.3 We held an inquiry session to consider many of these matters in more detail. However, we have given equal weight to objections from those who did not participate in that process and chose to rely on their written submissions.

2.4 Those parties raising objections to the above matters, that are considered in this chapter, are listed below:

OBJ/001 Transform Scotland
OBJ/004 Mr David Gow
OBJ/027 Ms Faye Armitstead
OBJ/030 Mr Alan Armitstead
OBJ/031 Mrs Terri-Anne Sinclair
OBJ/032 Ms Penny Williamson
OBJ/033 Ms Linda Simpson
OBJ/035 Mr Andrew Kirkland
OBJ/042 Mr N and Mrs E Green
REP/044 Mrs Mary and Mr Eric Quemby
OBJ/047 Mr Hamish Johnston
OBJ/050 Balloch Community Council
REP/051 Balloch Village Trust
OBJ/052 Ms Sheena Fraser and Ms Ann Hulse
OBJ/053 Mr Ewen Macdonald
OBJ/054 Mr David Mitchell
OBJ/055 Ms Anna Gow
OBJ/056 Mr Fraser Gow
OBJ/059 Mr Alexander and Mrs Marion Bennie
OBJ/060 Mr Allan and Mrs Lorna Robertson
OBJ/061 Ms Ashley Sutherland
OBJ/062 Mr Alex Shaw

OBJ/071 Croy and Culloden Moor Community Council
 REP/072 NATS (En Route) plc (NERL) Safeguarding
 OBJ/081 Mrs Elaine de Ste Croix
 OBJ/097 Partners and Trustees of the Firm of JM & LM Forbes and Firm of JM & LM Forbes (Lochdu)
 OBJ/098 Mr Charles William Hynman Allenby and Mr James David Carnegie Arbuthnott (Executors of the Estate of Charles Hynman Allenby)
 OBJ/101 BDW North Scotland Limited (Barratt) and Robertson Homes Ltd
 REP/109 National Grid Plant
 OBJ/110 Mr James A Philip
 OBJ/111 Firm of Auchnacloch Farm (Trustees for firm of Auchnacloch)
 OBJ/112 Mr John and Mrs Frances Farquhar
 OBJ/113 Mr J Ledsham
 OBJ/114 Mr Mark Pinder
 OBJ/115 Mrs C Turvey
 OBJ/117 Mr R and Mrs K Grantham
 OBJ/118 Mrs Jean Peck
 OBJ/120 Mr George Fraser
 OBJ/121 Mrs Doreen M Davidson
 OBJ/122 Mr D Davidson
 OBJ/123 Mr Malcolm S Davidson and Ms Jennifer M Philips
 OBJ/124 Mr Derek L Prior and Ms L M Rutter
 OBJ/125 Mr K and Mrs K James
 OBJ/126 Mr Alfred and Mrs M James
 OBJ/127 Mr P and Mrs J James
 OBJ/128 Mr Hugh and Mrs Nicola Urquhart
 OBJ/129 Mr Stephen R and Mrs Elaine Bailey
 OBJ/131 Mr James and Mrs Ellen Maxwell
 OBJ/132 Mr Niall B Holden and Mr Euan J Holden
 OBJ/133 Mr Richard McCulloch
 OBJ/134 Mrs Carolyn Mitchell
 OBJ/135 Mrs C Scott
 OBJ/136 Penick Farms
 OBJ/138 Mr Philip and Mrs Gillian Pullan
 OBJ/142 Mr Jamie B Watson and Mrs Elizabeth Watson
 REP/144 The Highland Council – Development and Infrastructure Service
 REP/145 The Highland Council – Access Officer, Inverness, Nairn and East Lochaber
 REP/146 The Highland Council –Community Services
 REP/147 Cllr Kate Stephen
 REP/149 Sky Telecom Services Ltd.
 REP/152 Historic Environment Scotland
 REP/153 Scottish Environment Protection Agency
 REP/154 Scottish Natural Heritage

2.5 The following parties (listed below) responded collectively as the Auldearn Residents Group and are referred to as such in this chapter. This group was represented by at the Inquiry by OBJ/129 Mrs Bailey. In some instances certain of these parties raised their own individual representations. Where relevant these parties are identified individually such as Mr McCulloch and Mr and Mrs Bailey amongst others. For brevity, all Auldearn Residents Group objections have been grouped together. These are considered under the heading OBJ/112 etc. The Auldearn Residents Group.

The Auldearn Residents Group:

OBJ/112 Mr John & Mrs Frances Farquhar
OBJ/113 Mr J Ledsham
OBJ/114 Mr Mark Pinder
OBJ/115 Mrs C Turvey
OBJ/117 Mr R and Mrs K Grantham
OBJ/118 Mrs Jean Peck
OBJ/120 Mr George Fraser
OBJ/121 Mrs Doreen M Davidson
OBJ/122 Mr D Davidson
OBJ/123 Mr Malcolm S Davidson and Ms Jennifer M Philips
OBJ/124 Mr Derek L Prior & Ms L M Rutter
OBJ/125 Mr K and Mrs K James
OBJ/126 Mr Alfred and Mrs M James
OBJ/127 Mr P and Mrs J James
OBJ/128 Mr Hugh & Mrs Nicola Urquhart
OBJ/129 Mr Stephen R and Mrs Elaine Bailey
OBJ/131 Mr James Maxwell and Mrs Ellen Maxwell
OBJ/133 Mr Richard McCulloch
OBJ/134 Mrs Carolyn Mitchell
OBJ/135 Mrs C Scott

2.6 The Auldearn Resident's Group's outline statement advised that OBJ/116 L and T Firlez, OBJ/118 N Andrew and OBJ/119 J Grigor have moved away and are no longer part of the group. These parties have therefore been omitted from the list above. TS's closing statement paragraph 16.1 suggests that OBJ/118 Mrs Jean Peck has withdrawn but this was not indicated by correspondence from the Auldearn Residents Group. Either way, having raised identical objections to those other members of the Auldearn Residents Group (listed above) the matters of objection raised by the parties in this paragraph are identical to the remainder of the Group that have not withdrawn and these are covered in this Chapter of the report and also in Chapter 8: Nairn East to Hardmuir.

Relationship with other chapters

2.7 It has proved difficult to avoid some duplication in the consideration of the matters covered by the matters listed in paragraphs 2.1 and 2.2 (above), between this chapter and those that deal with specific geographical areas. This is because some challenges to the rationale for the proposed scheme and/or the route choice are the result of what objectors consider to be unacceptable localised impacts.

2.8 Our approach has been to consider objections that have more than a local or site-specific dimension in this chapter and to leave those that do not, to subsequent geographically-specific chapters.

2.9 Within this chapter we have tried to further break down objections into different sub-categories of objection such as those objecting to the principle of building a major new road scheme and those who do not necessarily question the need for a dual carriageway but disagree with the chosen specification or with the proposed route. In practice, we recognise that which sub-category to assign to a particular objection is likely to be a matter for debate and we have focussed on ensuring that the full range of objections (and the responses

thereto from the promoter) has been covered, rather than on the best way to categorise each objection.

Challenges to the rationale for the proposed scheme

Objectors

2.10 The parties listed below object in principle to the proposed scheme and challenge the rationale for the proposed dual carriageway:

OBJ/001 Transform Scotland
OBJ/004 Mr David Gow
OBJ/052 Ms Sheena Fraser and Ms Ann Hulse
OBJ/055 Ms Anna Gow
OBJ/056 Mr Fraser Gow
OBJ/071 Croy and Culloden Moor Community Council
OBJ/081 Mrs Elaine de Ste Croix
OBJ/133 Mr Richard McCulloch
OBJ/138 Mr Philip and Mrs Gillian Pullan
OBJ/142 Mr Jamie B and Mrs Elizabeth Watson

2.11 Some of the objections question the principle of building a significant new road scheme in environmental / public policy terms. Others challenge the technical evidence, which they argue, either does not adequately justify the decision to build a new dual carriageway at all, or does not justify the selection of the proposed scheme over alternative routes or alternative solutions to the transport needs of the A96 corridor. We have considered objections to the rationale for the proposal in that order.

Objections

The principle of a significant new road scheme

2.12 OBJ/001 Transform Scotland objects because it considers there to be a need for a multi-modal corridor study / full STAG appraisal to consider alternative options for improving connectivity before any further money is spent on the A96. It argues that Transport Scotland (TS) has not demonstrated that the proposed scheme is the most sustainable transport option for the corridor, and that all options should have been assessed, taking account of value for money, environmental and social considerations. It argues that the benefits of the proposal provide insufficient justification and that it represents a misuse of public funds at this time.

2.13 OBJ/081 Mrs Elaine de Ste Croix argues that bigger roads encourage more cars and thereby more pollution and that this would be inconsistent with the objective of landscape protection. She considers that the money would be better spent in localised widening of parts of the existing A96, by improving the A9, and in addressing traffic problems and danger in Nairn. Money could then be spent, in Mrs de Ste Croix's view, on providing cycling and walking infrastructure across the full length of the A96.

2.14 OBJ/071 Croy and Culloden Moor Community Council objects, arguing that:

- the forecast increase in traffic volumes is contrary to Scottish Government policy;
- there is limited access to the proposed A96 and the rural roads which currently provide access are unsatisfactory;
- no clear priority is given to the Nairn bypass; and,
- building the road would require a large amount of high quality arable land being taken out of production.

2.15 OBJ/142 Mr Jamie B and Mrs Elizabeth Watson object, arguing that the proposed scheme should be reconsidered in the context of economics, since the economy of the region is relatively small and other parts of the UK have far greater traffic problems and need for road improvements.

2.16 OBJ/133 Mr Richard McCulloch accepts that improvements to the A96 have the potential to deliver benefits and address existing issues. He also recognises that Scottish Ministers have stated their intention to deliver a dual carriageway between Inverness and Aberdeen, of which this proposal would form a part. However, he argues that, in accordance with DMRB, any improvements should be appropriate in scale and design to the issues they seek to address, balancing environmental, economic, safety and operational considerations. He also argues that, as the purpose behind Ministers' commitment to dualling was the delivery of economic benefits, it is essential that the proposal is, in fact economically justified.

2.17 Mr McCulloch notes that TS cites a benefit / cost ratio (BCR) of greater than 1.0 in support of its conclusion that the proposal would deliver value for money. However, he points out that, in order to arrive at that figure, the additional cost that was added on to compensate for 'optimism bias' was only 25% rather than the 44% that he believes is the norm and is required by the HM Treasury Green Book. He believes that, had a 44% optimism bias been applied, the chosen scheme would have demonstrated a BCR of less than 1.0.

2.18 Mr McCulloch contends that the proposed scheme is not justified on either economic, traffic or safety grounds. He argues that an uncertain traffic baseline has been used and an assumed level of traffic growth that he terms 'heroic'. He argues that the derivation of traffic forecasts is not transparent. He contends that measured traffic flows in 2012 show 9,000 vehicles per day on the A96 whereas the Environmental Statement (ES) applies a 2014 baseline figure of 11,500 (a 30% increase). He asks whether this was extrapolated from the Moray Firth Traffic Model (MFTM), which he believes is only relevant between Inverness and Nairn and not as far east as Auldearn. He believes no local validation was undertaken in respect of the Auldearn bypass routes, contrary to best practice. He also asserts that TS did not provide him with background information when asked.

2.19 Mr McCulloch notes that the ES predicts that 17,500 vehicles per day (a 52% increase on 2014) would use the route in the future. This increase, he argues, could easily be accommodated on the existing road and is well below the level required to support dualling. Applying the 52% growth to the 2012 baseline, he argues, would result in a future increase to only 13,680 vehicles per day.

2.20 Mr McCulloch argues that there has been a pre-disposition to the preferred route without proper consideration of alternatives or the 'do nothing' and 'do minimum' options which could include using the existing A96 Auldearn bypass. He argues that the 'do minimum' was not part of the shortlist because it was discounted prior to the options appraisal on arbitrary grounds and with no reference to cost. He argues this does not follow the HM Treasury Green Book expectation that all reasonable alternatives are analysed, including the do nothing or do minimum option.

2.21 Mr McCulloch argues that no economic benefits have been demonstrated. He contends that the proposed route in the vicinity of Auldearn would be significantly more costly than more direct alternative routes. He also argues that the wider economic benefits are unsubstantiated and considers that 'driver frustration' has already been factored into 'value of time' calculations and should not be repeated. He highlights interference with local tourism and agriculture businesses as examples of adverse economic consequences and believes that works necessary to make the junction to the east of Auldearn safe, would incur further costs. He considers that journey time savings estimated by TS are over-estimates.

2.22 Mr McCulloch questions whether traffic forecasts are consistent with the National Trip End Model 7 (NTEM 7) or are based on older projections that may no longer be reliable. He notes that the NTEM 7 guidance note anticipates flat growth other than from demographic change. Demographic changes will, he argues, result in largely neutral or declining demand and therefore further undermine the case for the road.

2.23 Mr McCulloch is also concerned that there appears to have been no sensitivity testing of the robustness of the findings that have been used to justify the proposal.

2.24 OBJ/138 Mr and Mrs Pullan argue that the evidence uses the worst case traffic flows and population change and is based on development plans which encourage significant upgrading to justify additional funding from central government. They contend that recent changes to the economy of the area make such growth unlikely. The actual figures, they contend, bear little resemblance to those used in support of the proposal. They argue that traffic flows only increase close to Inverness, Elgin and Inverurie. As such, they argue that this doesn't require a dual carriageway because, in their view, a single carriageway could cope. They also argue that TELMoS and other work show little signs of growth along the A96 corridor.

2.25 OBJ/004 Mr David Gow, OBJ/052 Ms Sheena Fraser and Ms Ann Hulse, OBJ/055 Ms Anna Gow and OBJ/056 Mr Fraser Gow all consider that the proposal is a waste of prime agricultural land. They consider this to be contrary to [Scottish Planning Policy \(SPP\) \(2014\)](#) (CD045) which they consider requires the use of existing routes where practicable. OBJ/071 Croy and Culloden Moor Community Council objects because it considers the proposed scheme would take too much land out of agricultural production. OBJ/133 Mr McCulloch criticises what he terms 'TS's bespoke assessment criteria' for not giving sufficient weight to Government policy and priorities such as the protection of prime agricultural land. He states that TS applied negligible weight to the loss of such land despite SPP (CD045) being clear that it should be protected unless no other suitable site is available. He regards TS's dismissal of this issue as unjustified.

2.26 The parties listed below object to the agricultural land take from the proposed scheme. They consider that this is contrary to SPP (2014) paragraph 80 (CD045) because it uses prime agricultural land when alternative routes from DMRB Stage 2 did not.

OBJ/111 Firm of Auchnacloch Farm (Trustees for firm of Auchnacloch)
OBJ/112 etc. Auldearn Residents Group
OBJ/129 Mr Stephen R and Mrs Elaine Bailey
OBJ/133 Mr Richard McCulloch

2.27 OBJ/129 Mr Stephen R and Mrs Elaine Bailey note that the preferred route for the Nairn bypass, which passes to the north of Auldearn uses the highest percentage of prime agricultural land of any of the route options. They argue that this is contrary to SPP (CD045).

Transport Scotland's response

The principle of a significant new road scheme

2.28 Transport Scotland (TS) states that the proposed scheme has been identified within a number of national strategies and policy frameworks as an important national infrastructure scheme. These include:

- [Scotland's Transport – Delivering Improvements](#) 2002 (CD034)
- Scotland's Transport Future 2004 (CD033) [[part 1](#), [part 2](#) and [part 3](#)];
- The National Transport Strategy (NTS) [2006](#) and [2016](#) (CD035 and CD041);
- [Strategic Transport Projects Review](#) (STPR) 2008 (CD036);
- Infrastructure Investment Plan (IIP) [2011](#) and [2015](#) (CD037.1 and CD037.2);
- [The Scottish Government Economic Strategy](#) 2011 (CD039);
- [Scotland's Economic Strategy](#) 2015 (CD040);
- [Scotland's Cities: Delivering for Scotland](#) 2011 (CD038); and
- [The Third National Planning Framework](#) (NPF3) 2014 (CD044.02).

2.29 TS refutes the suggestion that the proposal has not been subjected to adequate scrutiny from either a necessity, value for money or a sustainability point of view. It argues that a number of national strategies and policy frameworks since 2004 have considered the need for improvements to the Inverness to Aberdeen corridor and that the proposal that is before Ministers is the culmination of that long and carefully considered process.

2.30 TS states that the proposed scheme was specifically recommended in the Strategic Transport Projects Review 2008 (STPR) (CD036). This was a multi-modal evidence-based study of 20 transport corridors across Scotland that was carried out in accordance with Scottish Transport Appraisal Guidance (STAG) (CD105). It was the STPR that set out the strategic business case for the proposed scheme.

2.31 TS also points out that, as part of the wider Inverness to Aberdeen dualling project, the proposal is supported by the National Transport Strategies of 2006 and 2016 (the NTS) and the third National Planning Framework 2014 (NPF3).

2.32 TS states that the primary objective of the regional transport strategy - [The Transport Strategy for the Highlands and Islands 2008 to 2021](#) (CD042.01) is to improve the interconnectivity of the whole region and that the priority action for the strategic network

is to reduce journey times and improve journey reliability in the Inverness to Aberdeen corridor. It points out that the [delivery plan](#) (CD044.02), which accompanies the regional transport strategy, identifies the dualling of the A96 and bypass of Nairn as contributing positively to the competitiveness and growth of the region and improving safety and security. This position is maintained in the [draft regional transport strategy of 2017](#) (CD042.02).

2.33 In 2014, [the Inverness to Aberdeen Corridor Study – A96 Dualling Inverness to Aberdeen Strategic Business Case](#) (the SBC) (CD015) undertook an appraisal of this strategic transport corridor with a focus on the trunk road and rail network. A number of options were assessed against transport planning objectives, implementability (feasibility, affordability and public acceptability) and the STAG criteria relating to the environment, economy, safety, integration and accessibility and social inclusion.

2.34 TS confirms that the SBC appraisal concluded that dualling of the A96 would be the best way to meet the future needs of those living, working and travelling along the A96 corridor in the 21st century, that it would be best able to meet the transport planning objectives and that full dualling of the A96 would deliver significant wider economic and accessibility benefits.

2.35 In addition to these transport-focussed documents, TS notes that NPF3 recognises that the road network has an essential role to play in connecting cities by car, public transport and active travel, and offers specific support to the dualling of the A96 between Inverness and Aberdeen, including bypasses of towns along the route. TS notes that NPF3 predicts that such works would provide opportunities to link energy sectors in the two city regions and improve the quality of place within the towns that would be bypassed.

2.36 TS argues that the proposal can also draw support from planning policy at a local level, specifically, the [Highland Wide Local Development Plan](#) 2012 (the HWLDP) (CD061), the [Inner Moray Firth Local Development Plan](#) 2015 (the IMFLDP) (CD062) and the [Moray Local Development Plan](#) 2015 (CD063).

2.37 TS notes that the HWLDP directs most growth in Inverness over the period 2016 to 2031 to the corridor between Inverness and Nairn. It seeks to improve the strategic infrastructure needed to allow the economy to grow and specifies that later stages of the development of the Inverness to Nairn corridor, which includes the development sites of East Inverness, Culloden Moor, Tornagrain, the Airport Economic Initiative Area and Nairn, will be dependent upon infrastructure improvements, particularly transport. TS believes that this supports the delivery of the proposed scheme, which lies within and covers the length of the Inverness to Nairn corridor.

2.38 The IMFLDP defines an Inverness to Nairn Growth Area and states that ‘The delivery of the A96 (T) bypass will address many of the current concerns regarding the capacity of the road network to accommodate all the development opportunities identified in the Plan.’

2.39 Although none of the proposed scheme lies within the Moray Council area, TS believes that it would support the high-level planning policy aims and objectives of Moray Council as set out in its LDP. In particular, TS refers to the aspiration for: improved operation of the A96; improved safety for all road users; economic growth within the A96

corridor; more active travel; better public transport integration; and an improved environment for communities in the corridor.

2.40 TS believes that Mr McCulloch's criticism that the level of traffic that is forecast to use the road does not justify a dual carriageway is due to a misunderstanding on his part of [DMRB Volume 5 TA 46/97 \(CD049.05\)](#) 'Traffic Flow Ranges for use in the Assessment of New Rural Roads'. TS states that, for a dual-carriageway all-purpose road with two lanes in each direction, the recommended traffic flow range is from 11,000 to 39,000 vehicles per day. The traffic flow on the proposed scheme at the year of opening is predicted to be 12,100 vehicles per day, which is within the DMRB recommended range for a road of this type to be economically justified.

2.41 TS believes that Mr McCulloch's claim that a 'do minimum' option was discounted prior to the options appraisal process is a reference to the November 2013 design options 2B and 2F. It confirms that the 'do minimum' scenario is defined in DMRB as follows:

- where works will be carried out in the 'do minimum' network regardless of whether or not the 'do- something' is built;
- where the existing network may be improved to form a 'do minimum' scheme which can be tested as an alternative to carrying out major 'do-something' improvements;
- where traffic conditions can be improved without significant capital expenditure; and,
- where the area covered by the appraisal network includes trunk or non-trunk road proposals other than the one under immediate consideration.

2.42 TS confirms that the 'do minimum' scenario for the proposed scheme is described in [DMRB Stage 2 Scheme Assessment Report section 18.5 \(CD011\)](#) and [DMRB Stage 3 Scheme Assessment Report section 5.5, paragraphs 5.5.9 and 5.5.10 \(CD008\)](#). It argues that the 'do minimum' scenario meets the DMRB criteria and includes committed schemes elsewhere in the network, comprising both public transport and road infrastructure.

2.43 TS carried out a traffic and economic appraisal at both DMRB Stage 2 and Stage 3. Both used the Moray Firth Transport Model (MFTM). The traffic and economic justification for the proposal and the appropriateness of the MFTM were discussed in some detail during the public inquiry.

2.44 TS contends that traffic analysis that it carried out as it developed the proposed scheme followed best practice, used a recognised model and data sources that were updated with real-world measurements and input from The Highland Council, and was independently audited. It states that, when considering potential adverse effects from the proposal, a high-growth scenario was used in order to give a worst-case situation. However, when analysing the justification for the proposals, a low-growth scenario was assumed, which again represented a worst-case situation.

2.45 Economic benefits were modelled using the Transport User Benefits Analysis (TUBA) software. Again, the analysis assumed a low-growth (worst-case) scenario. TS confirms that wider economic benefits (WEBS) and driver frustration were considered as part of the strategic business case in order to provide additional information for the economic assessment of the six options. However, at DMRB Stage 3, when the detailed economic case for the proposal was set out, neither factor was taken into account. Instead, the economic case for the proposal was established using the Transport Economic

Efficiency (TEE) method, which uses travel time benefits, vehicle operating costs, changes to user charges, accident benefits and construction and maintenance impacts (such as delays caused by roadworks).

2.46 In response to the suggestion that it has overstated the value of travel time benefits, TS states that the predicted journey time savings amount to a 10 minute time saving for 50% of traffic on an approximate pro rata basis, and a significant amount of traffic would experience a meaningful time saving benefit - of the order of 3 minutes or more. Furthermore, TS states that any saving in journey times is a benefit (and is assessed in TUBA) even if not subjectively experienced by the traveller.

2.47 Accident benefits were analysed using the Highways Agency's COBALT software, which uses UK national accident rates. TS regards this as the best means of ensuring consistent assessment of the accident implications of all options including the 'do minimum'. TS accepts that some sections of the existing A96, such as the Auldearn bypass, will have lower accident rates. However, it argues that other parts will have higher accident rates and that the most appropriate approach is to consider the corridor as a whole.

2.48 TS looked at the economic effects of delays caused by the construction process using the Highways Agency's Queues and Delays at Roadworks (QUADRO) software.

2.49 Taking all of the predictions into account, TS calculated a benefit to cost ratio for each of the route options at DMRB Stage 2. These are set out in Tables 20.8 and 20.10 in the [Stage 2 Assessment](#) report (CD011). TS found that, using the low growth forecast, most of the options for the Inverness to Gollanfield section had a BCR in the range from 1.0 to 1.2. Options 1A(MV) and 1B(MV) had a BCR below 1.0, suggesting they would not deliver value for money. Most of the options for the Nairn Bypass section had a BCR in the range from 1.0 to 1.1. Options 2B and 2H had a BCR below 1.0. Its conclusion at that stage was that BCR differences between the route options were not significant enough to point individually to a preferred option. Instead, they were factors that fed into the route selection process along with all of the other considerations.

2.50 At DMRB Stage 3, where the preferred solution and the do minimum alternative were assessed, TS states that particular attention was paid to the Raigmore Interchange, being a key junction in the trunk road network. It was found that this junction would be unable to function effectively beyond 2021 without, as a minimum, full signalisation. TS predicts that the proposal would deliver significant benefits to users of that junction when compared with the 'do minimum'. It accepts that in some other locations, similar benefits would not be experienced. Indeed, it accepts the potential for some traffic travelling to Nairn from the east to experience a delay as a result of the proposed scheme. However, it points out that, when considered holistically, the proposed scheme would deliver a wide range of benefits across its entire length.

2.51 TS confirms that the outcome of all of these analyses was that the proposed scheme would provide significant travel time benefits, accident benefits and improved network resilience, which would outweigh the estimated scheme costs – with a BCR of 1.1 assuming low-growth or 1.3 in a high-growth scenario.

2.52 TS submits that the scheme would provide value for money over a 60 year period in accordance with HM Treasury's Green Book.

2.53 TS does not accept that the proposal would be contrary to the objective of landscape protection. It states that ES Chapters [9](#) and [10](#) (CD005) show the care that has been taken to minimise landscape and visual effects. Detail of specific landscape and visual effects is discussed in subsequent chapters of this report.

2.54 TS believes the proposal would provide significant benefits for non-motorised users (NMUs), particularly when compared with the existing A96, which, it argues, provides very limited connectivity along its route for cyclists and pedestrians. It describes NMU provision as an integral feature of the proposed scheme, with approximately 30 kilometres of new shared-use path being provided.

2.55 In response to OBJ/071 Croy and Culloden Moor Community Council on the forecast growth in road traffic, TS explains that the ES considered future traffic growth predictions arising from committed development projects such as Tornagrain, Ashton Farm and Stratton Farm. It is these developments, which TS describes as key drivers of the local, regional and national economies, that are forecast to increase traffic levels and not the proposed road.

2.56 TS argues that policy aspirations for reduced reliance on the private car and the encouragement of more active forms of travel have been incorporated within the proposed scheme through its accommodation of the proposed railway station at Dalcross and Network Rail's aspirations for twin-tracking of the railway between Aberdeen and Inverness, and by the provision of approximately 30 kilometres of non-motorised user (NMU) facilities.

2.57 In response to Croy and Culloden Moor Community Council's concerns over limited access onto the proposed road, TS states that Scottish Ministers' commitment in the Infrastructure Investment Plan and the approval by the Minister for Transport and Veterans of 15 April 2015 was for a Category 7A all-purpose dual carriageway. This is the highest category of all-purpose road, incorporating only grade-separated junctions and a smooth flowing alignment. Such design features, and the objectives that inform them, preclude multiple junctions with minor roads and private accesses.

2.58 TS describes the benefits of a category 7A road in the following terms:

- Category 7A provides a smooth flowing alignment which maximises the benefit in journey times and journey time reliability;
- Category 7A allows for safer crossings by non-motorised users through grade separated junctions;
- Category 7A removes potential conflicts caused by traffic travelling at different speeds joining a dual carriageway which may arise with at grade junctions or with 'left-in, left-out' arrangements;
- it addresses road safety issues and assists driver understanding through consistency of standard and layout;
- Category 7A provides the optimal maximum level of benefits by minimising disruption to various traffic streams.

2.59 Following construction of the proposed scheme, local traffic from minor roads would connect with the existing A96 and from there, if desired, would be able to join the new dual carriageway via a number of grade-separated junctions. TS regards this as providing the right balance between accessibility to the new road for rural communities and the need for it to operate efficiently and safely.

2.60 TS recognises that some members of the community wish to see a bypass for Nairn provided as a priority. However, it believes that other parties would favour other route improvements being carried out first. TS is committed to completing the dualling of the A96 between Inverness and Aberdeen by 2030, but cannot comment at this stage on which stages of the proposal would take place first.

2.61 TS accepts that approximately 245 hectares of agricultural land would be required for the proposed scheme, of which 47% would be prime quality (Classes 1, 2 or 3.1). However, it argues that it has sought to avoid prime agricultural land as far as possible. It also points out that SPP's (CD045) presumption against the loss of such land permits exemptions to be made, for example in the case of essential infrastructure provision where no suitable alternative site is available. All of the route options for the dualling of the A96 between Inverness and Nairn and the bypass of Nairn would involve the loss of prime agricultural land. Therefore, TS concludes that there is no means of avoiding the loss of such land if Ministers' commitment to improve the A96 is to be delivered.

2.62 With regard to SPP, TS also makes the point that, at paragraph v. on page 3, it is made clear that SPP should be read and applied as a whole. Therefore, it disagrees with objectors who have argued that certain policies such as the protection of prime agricultural land should be given more importance than others. TS's position is that a balanced approach needs to be taken to arrive at an overall view as to policy compliance. TS recognises that all development proposals are likely to have some policy conflict and that the correct approach to assessing policy compliance (whether with SPP or any other policy document) is to consider the full range of policies and the full extent of scheme impacts (both positive and negative).

2.63 TS states that its approach to the design development of the proposed scheme was to carry out an iterative assessment of policy compliance, which aimed to design-out, where possible, any identified policy conflict or to identify mitigation measures, as the design process progressed.

2.64 TS also states that mitigation is proposed to reduce impacts on the agricultural capability of the land to be acquired. This includes reinstating land to agricultural use where possible (post construction), and adopting appropriate measures during construction and reinstatement to ensure soil resources are properly managed to avoid potential damage to agricultural capability (see CD005 [ES Table 15.23](#): Agricultural, Forestry and Sporting Mitigation Measures).

Findings of fact

The principle of a significant new road scheme

2.65 We find that the Scottish Ministers as Trunk Roads Authority under the [Roads \(Scotland\) Act 1984](#) (CD020) are under a statutory duty to keep the trunk road network in Scotland under review and to manage and maintain that network in a way that ensures safe and efficient operation. It appears to be accepted by most parties to the inquiry that there is a need for some improvement to the A96. However, there is disagreement over the scale and nature of works that are required and also over the priority that should be given to such improvements in comparison with other transport interventions such as improvements to the rail corridor between Inverness and Aberdeen.

2.66 We note from the evidence that the issue of how best to improve connectivity between Inverness and Aberdeen has been under consideration for many years. Work to produce proposals to improve the section between Inverness and Nairn originally proceeded on the basis of a dual carriageway with at-grade junctions and a single carriageway bypass of Nairn. However, following a firm commitment by the Scottish Government to full dualling of the A96 between Inverness and Aberdeen as part of its pledge to link all of Scotland's cities in that way by 2030, the proposals for the section now under consideration needed to be revised.

2.67 As far back as 2002, with the publication of [Scotland's Transport – Delivering Improvements](#) (CD034), which set out a commitment to undertaking targeted motorway and trunk road improvements, forecast significant growth in road traffic was recognised as undesirable, and a commitment was made to investment in public transport and other alternatives to the car.

2.68 The [2006 National Transport Strategy](#) (CD035) recognised that the key challenge was to develop Scotland's transport infrastructure and services to meet future requirements, while recognising that there is a carbon imprint to transport spending. The importance of public transport and the need to reduce emissions were stressed. However, a strong commitment remained to improving journey times and journey time reliability on trunk roads. The strategy confirmed that not all individual projects and policies would satisfy all three of its key strategic outcomes which were: improved journey times and connections; reduced emissions; and improved quality, accessibility and affordability. The aim was to demonstrate measurable progress on all three outcomes over a 20 year period taking into account all of the transport improvements that would be undertaken.

2.69 The [Strategic Transport Projects Review 2008](#) (STPR) (CD036) considered how best to develop a safe, efficient and effective strategic transport system in 20 corridors across Scotland that would deliver the very different requirements of residents and businesses in both rural and urban locations, while recognising the role transport plays in the generation of climate-changing emissions and the need, so far as is within Scottish Government's power, to support efforts to reduce such emissions. This review constitutes Stage 1 in the DMRB assessment process of the proposed scheme.

2.70 The STPR identified a number of transport investments that were selected as most effectively supporting the Scottish Government's stated Purpose to create a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth.

2.71 Potential interventions within each of the 20 route corridors were assessed against STAG criteria: environment; safety; economy; integration and accessibility; and social inclusion. The likely success of each potential intervention in delivering the Scottish Government's Purpose was also assessed.

2.72 Within the Inverness to Aberdeen corridor, Intervention 18 – 'Upgrade A96 to dual carriageway between Inverness and Nairn' is directly relevant to the proposed scheme. Also of relevance is Intervention 4 'Targeted programme of measures to reduce accident severity in North and West Scotland' and Intervention 22 'Targeted road congestion / environmental relief schemes'. Also within this corridor is Intervention 19 – 'Rail service enhancements between Aberdeen and Inverness'. More detail on these is set out in the [Background Statement](#) that was prepared by TS for the inquiry (TS208).

2.73 The STPR recognised that road travel is a particularly high contributor to climate-changing and health-harming emissions, and that even if measures to encourage modal shift from road to rail were as successful as could reasonably be expected, this would be unlikely to reduce overall emissions to a significant degree, given the likelihood that road travel will continue to remain the preferred mode of transport for many (and the only viable option for some).

2.74 Our view is that, in accordance with sustainable development principles, it is necessary to consider the full range of environmental consequences and also those with economic and / or social implications. The STPR recognised that Intervention 18 would not, of itself, encourage modal-shift away from private vehicles to less polluting forms of travel. However, it also recognised that a significant reduction in accident rates could be expected, with reduced journey times and improved journey time reliability, along with economic benefits from an increased labour catchment for Inverness. Therefore we do not agree that the STPR's identification of a dual carriageway between Inverness and Nairn failed to evaluate its sustainability credentials or to follow the STAG approach to the assessment of potential strategic transport schemes. As was set out in the 2006 NTS, it is the overall suite of transport interventions across Scotland rather than each individual project that must strive to achieve all three key strategic outcomes.

2.75 In 2011, the Scottish Government published its Agenda for Cities '[Scotland's Cities: Delivering for Scotland](#)' and an [Infrastructure Investment Plan](#) (the IIP). These identified the importance of connecting cities with strong, reliable and resilient transport infrastructure as a key characteristic to support growth. A specific commitment was made to complete the dual carriageway network between all of Scotland's cities by 2030. This clearly signalled a more ambitious commitment to enhancement of the A96 than had been recommended in the STPR. We consider this to be a critical element of the policy background against which the principle of the current proposal must be assessed.

2.76 The A96 Dualling Inverness to [Aberdeen Strategic Business Case 2014](#) (the SBC) (CD015) built upon earlier analyses of the transport needs of the Inverness to Aberdeen corridor to set out the business case for proceeding with the dualling of entire route between the two cities. Again, it followed the STAG approach, using an evidence-led analysis of the strategic case for the project, the problems and opportunities to be addressed and an appraisal of the options that could address these.

2.77 Key issues that were identified within the corridor included: a declining population in Moray; a perception amongst the business community that the existing A96 was a constraint to business travel; heavy reliance on the private car for travel; travel time delays in Nairn and Elgin and accident rates that are above the national average in Nairn, Keith and Huntly.

2.78 The following six options for transport improvements within the corridor were identified:

- 1 rail enhancements / rolling stock Improvements to provide an end-to-end travel time of around 1 hour 45 minutes;
- 2 rail service enhancements to allow a 15 minute frequency into both cities during peak periods with a 30 minute frequency for services into both cities outside of peak periods;
- 3 targeted trunk road improvements;

- 4 targeted trunk road improvements and new (single carriageway) bypasses on the A96;
- 5 dual carriageway bypasses and dualling of heavily trafficked sections of the A96 plus targeted trunk road improvements; and
- 6 A96 Full Dualling plus targeted Trunk Road Improvements.

2.79 These were assessed against a range of criteria including: environment; safety; economy; integration; and accessibility and social inclusion. Cost to the public sector was also estimated. The Transport Model for Scotland 2012 (TELMOS) provided most of the quantification required to appraise the options with the exception of Option 3, where a national model was not appropriate. The 'do minimum' option was also taken into account.

2.80 Option 6 – A96 full dualling plus targeted trunk road improvements (of which the current proposal is a part) was recognised to score less well against certain aspects of the 'environment' criterion; specifically with regard to global emissions – with a predicted minor negative effect. However, even the best performing option in this regard – rail enhancements / rolling stock improvements, was predicted to achieve only a generally neutral effect on global emissions. Against other criteria, option 6 was predicted to perform significantly better.

2.81 The recommendation of the SBC was for Option 6, as it was considered to best meet the needs of existing and future route users. Option 5 (partial dualling and other improvements) was found to offer slightly better value for money. However, that option would not provide the consistency of carriageway standard of a full dualling approach (Option 6) or the highest Present Value of Benefit. It was also found not to score as highly in terms of reduced driver frustration or the delivery of wider economic benefits.

2.82 Within the Scottish Government's aspirations for Aberdeen and the north east, as set out in the [third National Planning Framework](#) (NPF3) (CD044.02), reference is made to dualling of the A96 being complete by 2030. A96 dualling is also mentioned as a project that will bring economic and connectivity benefits to Inverness, the Inner Moray Firth and Elgin. NPF3 confirms that the road network has an essential role to play in connecting cities by car, public transport and active travel. Under the theme of improving rural accessibility, improvements to the rail network and dualling of the A96 between Inverness and Aberdeen, including bypasses of towns along the route, are predicted to provide opportunities to link the energy sectors in the two city regions as well as improving the quality of place within the towns.

2.83 The [2016 refresh of the NTS](#) (CD041) retains the three key strategic outcomes from the 2006 strategy. It also confirms the Scottish Government's commitment to delivering the largest road investment programme the country has ever seen, including dualling of the A96 between Inverness and Aberdeen by 2030.

2.84 Taking all of the evidence into account, we are satisfied that TS has thoroughly (and in accordance with STAG methodology) investigated the benefits and disbenefits of carrying out the proposed scheme. We find that it has demonstrated that the proposed scheme is the most sustainable transport option for the corridor and that all options have been assessed, taking account of value for money, environmental and social considerations. While we recognise that in regard to global emissions, the proposed scheme would perform less well than certain potential alternatives – such as improvements to the Aberdeen to Inverness railway, we are satisfied that it scores more highly against

other objectives such as the delivery of benefits to the local economy than alternative solutions. We are also satisfied that, through its design, the proposed scheme would not hinder any investment in the railway that might take place in the future.

2.85 We turn now to the alleged lack of justification for the proposed scheme in economic or traffic terms and the adequacy of the evidence that has been put forward to support the proposal in those terms.

2.86 The public inquiry heard evidence from the consultant who led the traffic and economic appraisal of the proposed scheme and from those who had questioned this aspect of it. This investigated the extent to which the project was likely to achieve its objectives and the evidence that was used to support TS's cost / benefit predictions.

2.87 We do not accept Mr McCulloch's claim that TS did not properly assess potential solutions against the 'do minimum' option. TS defined a 'do minimum' scenario at DMRB Stage 2 to represent the committed and most likely changes to the transport network (both road and rail) that could be expected to occur between 2009 and each of the subsequent appraisal years of 2016 (opening year) and 2036 (future year). In accordance with STAG expectations, it excluded interventions that would be categorised as 'significant'. Each DMRB Stage 2 'do something' option was then compared against that 'do minimum'.

2.88 With regard to Mr McCulloch's suggestion that forecast daily traffic volumes are insufficient to justify the proposed scheme, we note that he did not dispute that a figure of 11,000 vehicles per day represents the lower level in DMRB at which a dual carriageway would be justified. We note from DMRB Table 2.1 in [TA 46/97](#) (CD049.05) that a traffic flow of up to 21,000 vehicles per day could be accommodated by a WS2 carriageway (a wider than usual, two lane, single carriageway road). That would accommodate the forecast flow rate in the year of opening at the quieter (Auldearn) end of the proposed route, where 12,100 vehicles per day are forecast. However, it would be inadequate to accommodate the forecast daily flow of 28,000 between Smithton and Balloch. Given that fact, and the safety benefits of maintaining a consistent and free-flowing road layout across the length of the proposed scheme, we find that the choice of a full dual carriageway option is not in conflict with DMRB TA 46/97 (CD049.05). We are also, of course, conscious of Scottish Ministers' commitment to full dualling of the route between Inverness and Aberdeen.

2.89 The Moray Firth Transport Model (MFTM), which TS used at both DMRB Stage 2 and Stage 3 to undertake the traffic and economic appraisals of the projects, was developed for The Highland Council as a tool for planning and forecasting transport projects in the area. It takes account of all of the land-use allocations in the council's development plans and the likely travel demand that would arise from those in the future. The model covers the Inverness travel to work area and includes all trunk roads, non-trunk principal roads and key local roads. Although Mr McCulloch had some concerns with the modelling process, he did not dispute TS's statement that the MFTM has been calibrated and certified to the appropriate standards. At the inquiry, TS's witness confirmed that the geographical coverage of the MFTM includes all of the route of the proposed scheme. This is confirmed in the [MFTM Base Model Update, Local Model Calibration and Validation Report](#) (TS250) and in [Figures 5.1a and 5.1b](#) within volume 2 of the DMRB Stage 3 Scheme Assessment Report (CD009). Consequently, we regard it as an appropriate basis for the modelling of the proposal.

2.90 The Highland Wide and Inner Moray Firth Local Development Plans propose a significant level of future development in the A96 corridor. We find that, rather than simply assume that all of this development will take place, TS worked with The Highland Council to consider how the justification for the project might be affected by different future growth scenarios. These took account of economic uncertainty leading to different levels of growth. Details of the 'low', 'mid' and 'high' population and employment scenarios can be found in the [A9/A96 Connections Study – MFTM Alternative Demand Scenario Memorandum](#) (TS243).

2.91 Forecast increases in population / employment growth for the study area range from +9% / 10% in the low growth scenario to +18% / 17% in the high growth scenario over the period 2011 to 2031. While some objectors suspect that even the low growth prediction is over-optimistic, no party has presented evidence to justify an alternative figure. There can never be certainty about the future and we accept that macroeconomic issues like Brexit provide a further source of uncertainty. However, we are satisfied that the forecasting work undertaken by TS, with the assistance of The Highland Council, provides a sufficiently robust basis for its modelling work and also for the assessment of likely environmental effects.

2.92 TS predicts that in 2036, assuming a high growth scenario, journey time reductions in the AM peak period would be 10.5 minutes for vehicles travelling in both directions. In the PM peak period, journey times are predicted to be reduced by 12 minutes eastbound and 9 minutes westbound. In the inter-peak period, the figures would be 12.5 minutes eastbound and 8.5 minutes westbound. As no party challenged these predictions with calculations of their own, we accept them as reasonable predictions.

2.93 TS predicts improved journey time reliability and increased overtaking opportunities across the entire length of the route. These predictions appear to be accepted by all and we regard them as important benefits of the proposal.

2.94 There was some disagreement over the likely benefit the proposed scheme would bring in terms of accident reduction. TS predicts a reduction in accident rates particularly in the numbers of fatal and serious accidents when compared with the 'do minimum' situation. Over a 60 year appraisal period, TS estimates that approximately four fatal accidents and between 39 and 48 serious accidents would be avoided.

2.95 Mr McCulloch questioned the accident data, pointing out that the section in which he is particularly interested (the existing Auldearn bypass) has a very good safety record. However, we note that, in its Stage 3 assessment, TS used actual accident records from the existing A96 as part of its analysis, rather than rely upon national accident rates. These recorded 63 accidents between 2010 and 2014 within its A96 study area. TS accepts that this is below the national average and that some parts of the existing route have better accident rates than others, although it points out that the proportion of fatal and serious accidents (2% and 17% respectively) is consistent with the national average and that 75% of accidents on this part of the A96 were at a junction.

2.96 As this project proposes a comprehensive redesign of this section of the A96, we consider it appropriate to address the accident record of the entire length of the proposed scheme, rather than looking at accident rates of individual locations separately and carrying out targeted improvements at each location. Overall, we find the accident benefits analysis

TS carried out to be reliable and we agree that the proposal should deliver tangible accident reduction benefits across the proposed scheme as a whole.

2.97 We note that the total cost estimate for the proposed scheme increased quite significantly between DMRB Stages 2 and 3. A number of objectors, particularly Mr McCulloch, questioned whether this suggests that, at the stage when alternative approaches were being considered, the true figure of the favoured approach was not used. If that were true then Mr McCulloch suggests the comparison process was unfair.

2.98 The DMRB Stage 2 Scheme Assessment (CD011) set out cost estimates for each of the route options. The Q1 2014 cost excluding VAT of the various route options that were assessed at Stage 2 ranged from £192 million to £202.4 million for the Inverness to Gollanfield section, and from £214.4 million to £240.2 million for the Nairn bypass. The preferred route options (1C (MV) and 2E) were £192 million and £214.4 million respectively; both being the lowest cost option for each phase.

2.99 At stage 2, the total scheme cost estimate for the preferred option was therefore £394.4 million. This had risen to £429 million in the stage 3 assessment. TS explains that this increase was largely due to a general increase in construction costs rather than to post-Stage 2 changes in the design. It argues that there was no need to reassess the relative costs of the alternative proposals because there was very little between the various options in the original traffic and economic appraisal.

2.100 We accept that changes to the proposed scheme design that were made after DMRB Stage 2 will have affected the cost of the chosen option. However, there is no evidence to undermine TS's conclusion that this did not require a reconsideration of the route options. We note that the Stage 3 transport and economic appraisal used an updated MFTM and also used revised forecast years of 2021 and 2036 (rather than 2016 and 2031) to reflect year of opening and a design year 15 years later. We find no evidence to suggest that had the route selection process been reconsidered, the outcome of that process would have changed as a result of the cost increases that were identified at DMRB Stage 3.

2.101 Using the revised cost forecasts at Stage 3 and assuming a low growth scenario, TS found that the preferred route would achieve a BCR of 1.1. This relied upon an optimism bias of 12% (see [Jacobs' response to the independent auditor's observation on page 22 of TS246](#)). Mr McCulloch is critical that the proposed scheme costs were not assessed on the basis of a 44% optimism bias, which he believes is required by the HM Treasury green book. However, the independent auditor did not challenge the use of 12% and we accept that, as a scheme becomes more fully developed and the potential for previously unforeseen costs is reduced, it is reasonable to reduce the level of additional cost that is added on to reflect optimism bias.

2.102 Taking all factors into account, we are satisfied that the likely economic costs and benefits of the project have been carefully assessed and find no evidence to support the accusation that it represents a waste of public money.

2.103 The proposal would make significantly better provision for NMUs than exists at present, while delivering other benefits. Therefore, we do not agree that it would be a better use of public money to undertake a less ambitious programme of road improvements in conjunction with the delivery of a wider range of NMU facilities.

2.104 The various studies have shown that growth in road traffic on the A96 corridor is predicted to occur regardless of any improvements to that road. Therefore, we do not agree that the forecast road traffic growth is a valid reason to criticise this proposed scheme, which seeks to cater for, rather than to generate, additional road traffic.

2.105 A Government commitment to dualling the A96 between Inverness and Aberdeen has already been made and we find no reason to doubt TS's conclusion that all options to satisfy that commitment would involve the loss of prime agricultural land. Therefore, we agree that the fact that a quite significant quantity of such land would be lost, should not weigh heavily against the proposed scheme.

2.106 SPP's presumption against the loss of such land is not absolute and we are satisfied that this proposal can benefit from the exception that is given for essential infrastructure where no other suitable site is available. We do not accept that it is realistic to look at individual sections of the route and expect each to minimise the loss of such land. Such an approach would be unlikely to achieve the free-flowing alignment that is required of a Category 7A road. We also accept TS's argument that SPP requires to be read as a whole and that it is inappropriate to seek to elevate some of its policy aspirations above others when there is no such ranking of policy priorities in the document itself.

2.107 Similarly, we consider it reasonable to conclude that any proposal to fulfil the commitment to full dualling of the A96 will have some adverse landscape character and visual amenity effects. Therefore, the fact that these would arise from this proposal is not, in principle, a reason to resist it, provided that appropriate efforts have been made to mitigate any harm. We discuss such matters in later chapters of this report where we deal with location-specific objections.

Claims the technical justification for the proposal is flawed

Objections

2.108 Objections that question the technical justification for the proposed scheme raise a range of concerns over how TS has sought to justify the proposal. These include:

- that evidence used to support the preferred option was inadequate or was inappropriately weighed;
- concern that alternative options, including the option of minimal intervention (the do minimum scenario) were not seriously considered; that inappropriate use was made of DMRB guidance - regarding it as a design constraint rather than a source of guidance; and
- that TS adopted a flawed design approach that could worsen rather than improve road safety.

2.109 We have considered each of these issues below.

Inadequate consideration of alternatives and weighing of evidence

2.110 OBJ/133 Mr Richard McCulloch, OBJ/138 Mr Philip and Mrs Gillian Pullan and OBJ/142 Mr Jamie B and Mrs Elizabeth Watson all argue that the technical evidence and/or the assumptions which support the proposed scheme contain flaws and fail to justify the decision to build a dual carriageway.

2.111 OBJ/060 Lorna and Allan Robertson allege that TS did not carry out the value for money workshop comparison of route options on a fair basis. They claim that too much weight was given to certain issues such as the ability to accommodate the Tornagrain development and the avoidance of effects on the Moray Firth SPA, and too little to issues such as noise and vibration and effects on certain heritage sites.

2.112 Mr McCulloch believes that too much weight was given to considerations that have no formal status in policy. Examples include the use of materials, where he claims the scoring process relied upon a preliminary alignment design that differs significantly from the final design, and public transport to which he believes disproportionate weight was given, without proper consideration of whether a route would be commercially attractive to a public transport operator.

2.113 Mr McCulloch questions the appropriateness of the modelling work that has informed both the choice of the preferred route over alternatives (at DMRB Stage 2) and the subsequent design development of the preferred option (as DMRB Stage 3). He notes that, at Stage 2, the TUBA-derived valuation for journey time savings ranged from £230 million to £233 million, whereas at Stage 3 the prediction was for savings valued at between £346.4 million and £420.7 million. He does not understand how both figures can be correct and asserts that TS has failed to explain the significant difference. If the Stage 2 figures are inaccurate then, he argues, this undermines the route selection process. If those at Stage 3 are higher than they should be, then the BCR of the proposed scheme would be reduced, he predicts, to below 1.0.

2.114 Mr and Mrs Pullan state that the project is based on improving journey times and the economy. However, they argue that this could be achieved more quickly and cheaply by three single-carriageway bypasses (one each for Keith, Nairn and Inverurie) along with improved route geometry and an increase in the number of passing places.

2.115 A number of parties' objections involve a preference for an alternative design option, which was either not considered or was rejected by TS in favour of the current proposal.

2.116 The following parties all favour Options 1A and/or 1B from DMRB Stage 2 for the section between Inverness and Nairn:

OBJ/035 Mr Andrew Kirkland
OBJ/042 Mr N & Mrs E Green
REP/044 Mrs Mary & Mr Eric Quemby
OBJ/050 Balloch Community Council
REP/051 Balloch Village Trust
OBJ/060 Mr Allan & Mrs Lorna Robertson

2.117 The following objectors each argue that the route of the proposed scheme between Inverness and Nairn should be north of Allanfearn and closer to the shore:

OBJ/033 Ms Linda Simpson
OBJ/047 Mr Hamish Johnston
OBJ/052 Ms Sheena Fraser and Ms Ann Hulse
OBJ/053 Mr Ewen Macdonald
OBJ/054 Mr David Mitchell

OBJ/061 Ms Ashley Sutherland
OBJ/062 Mr Alex Shaw

2.118 The following parties raised route selection objections or representations about the Seafield to Newton of Petty and Newton of Petty to Gollanfield sections (both part of the route between Inverness and Nairn) without expressing a clear preference for one of the alternative options:

OBJ/004 Mr David Gow
OBJ/027 Ms Faye Armitstead
OBJ/030 Mr Alan Armitstead
OBJ/031 Mrs Terri-Anne Sinclair
OBJ/032 Ms Penny Williamson
OBJ/033 Ms Linda Simpson
OBJ/042 Mr N Green and Mrs E Green
OBJ/047 Mr Hamish Johnston
OBJ/059 Mr Alexander & Mrs Marion Bennie
REP/147 Cllr Kate Stephen

2.119 Parties who favour either route options 1A or 1B or who would simply prefer the road to run to the north of Allanfearn, are essentially dissatisfied with the decision to route the A96 (and especially the proposed Balloch junction) closer to Culloden and Balloch than the existing road. They are concerned over the potential for noise, air pollution, loss of trees, effects on house prices and the severing of public footpaths / cycle routes. Balloch Community Council also notes the existing high rate of wildlife road casualties and is concerned that the proposals would worsen this. These matters are discussed in more detail in Chapter 4.

2.120 OBJ/004 Mr David Gow points out that the preferred option (1C (MV)) between Inverness and Gollanfield has been recognised by TS as leading to 873 households being 'seriously annoyed' by daytime noise levels and that 242 households will have night time noise levels that cause 'adverse health effects due to sleep disturbance'. He argues that if this route must be followed, then a compromise solution would be cutting the road into the landscape so that it causes less noise and visual harm. He regards the proposed retention of the A96 – B9039 junction as a wasted opportunity to improve local road safety. The area specific aspects of this objection are covered in Chapter 4, here we consider this in the context of the rationale for Mr Gow's objection to the selection of the preferred route by TS. We also note that some other objectors raise similar objections from the perspective of the locality. These are also covered in Chapter 4.

2.121 OBJ/027 Ms Faye Armitstead and OBJ/030 Mr Alan Armitstead do not understand how the option of dualling the existing A96 was not selected; rather than building a new dual carriageway closer to existing and proposed homes, schools and other facilities. They stress the role played by road pollution in a number of health issues and confirm that the existing road already has an adverse effect on their lives in terms of noise.

2.122 OBJ/031 Mrs Terri-Anne Sinclair believes that the effects of road pollution on asthma are increased with closer proximity – as is proposed in this scheme in respect of Culloden and Balloch. She also believes that using the existing A96 would be a significantly cheaper and therefore more appropriate solution.

2.123 OBJ/032 Ms Penny Williamson highlights NHS evidence that sleep disturbance can lead to obesity, heart disease and diabetes. She fears that these circumstances would arise from the decision not to use the existing A96 alignment but to bring the proposed scheme closer to Culloden and Balloch.

2.124 OBJ/033 Ms Linda Simpson supports dualling of the A96 from a safety perspective and for the benefit of Inverness as a whole. However, she confirms that noise from the existing A96 is already experienced inside her home and she fears that the proposed alignment, which would be closer, would make this much more audible. These matters are considered in Chapter 4 of this report. She also seeks alternatives to the proposed widening of Stratton Lodge Road. These matters are considered separately in Chapter 3 of this report.

2.125 OBJ/042 Mr N and Mrs E Green do not believe that TS has honoured its commitment to taking account of effects on receptors during the route selection process or to using noise barriers and other acoustic screening where road traffic could increase noise impacts at nearby properties. They note that the ES identifies widespread noise impacts. They also believe that the number of properties likely to be affected would be higher still, due to, what they consider to be, over-stating the benefits of low noise road surfacing (LNRS) and not properly accounting in the ES for traffic increases in Culloden Road and Barn Church Road.

2.126 Mr and Mrs Green believe the noise mitigation threshold is too high and that what limited mitigation is proposed would be ineffective. We consider detailed noise effects in relation to Culloden and Balloch in Chapter 4. Of relevance to the technical justification for the route selection that we discuss in this chapter, is Mr and Mrs Green's assertion that the consideration of noise impacts at DMRB Stage 2 (being prior to the detailed analysis in the ES) was 'grossly-unrepresented' and not therefore properly accounted for in the decision to favour the preferred option (Option 1C (MV)) over other options such as 1A or 1B. Mr and Mrs Green do not consider it fair to regard a noise reduction benefit for residents of Nairn as justification for increasing levels of noise nuisance for the residents of Culloden and Balloch.

2.127 OBJ/031 Terri-Anne Sinclair argues that using the existing A96 would be better cost wise. OBJ/047 Mr Hamish Johnston argues that insufficient evidence was presented for the preferred route and it is unclear why it should pass so close to Balloch and, as such, need to cross the existing A96 and railway. A route further north would not, in his view, require the same level of noise and light pollution mitigation. He contends that TS's choice of the preferred route, which he contends would affect 2,000 residents in Culloden and Balloch in both the short-term and long-term was motivated by the short-term benefit of avoiding compulsory purchase.

2.128 REP/147 Cllr Kate Stephen considers that the visual impacts from the proposed new route could be resolved either by moving it further north or by altering the design of the proposed Balloch junction. Her proposal for junction alteration, which would see Barn Church Road as a flyover rather than as an underpass at the junction, is considered in Chapter 4.

2.129 OBJ/059 Mr Alexander and Mrs Marion Bennie point out that TS's noise measurements in their garden confirmed that they live in a 'very quiet' environment. They want this to be maintained and suggest reverting to the original preferred option due to the

proximity of the current proposals to Balloch. We assume this to mean an option that does not bring the road closer to Culloden and Balloch.

2.130 For the Nairn bypass section of the route, the three parties listed below support alternative route 2H from DMRB Stage 2 because it is located further south and avoids their land or land where they have a commercial interest:

OBJ/097 Partners and Trustees of the Firm of JM & LM Forbes & Firm of JM & LM Forbes (Lochdu);

OBJ/098 Mr Charles William Hynman Allenby and Mr James David Carnegie-Arbuthnott (Executors of the Estate of Charles Hynman Allenby); and,

OBJ/101 BDW North Scotland Ltd (Barratt) and Robertson Homes Ltd

2.131 These parties argue that the preferred route contradicts or ignores Highland Council's [A96 Development Framework](#) (CD056) which, they state, is supplementary guidance to the [Highland Wide Local Development Plan](#) (2012) Page 158 (CD061). This document, they argue, shows long-term growth of Nairn spreading southwards to meet the bypass route which is shown in the plan.

2.132 OBJ/101 BDW North Scotland Ltd (Barratt) and Robertson Homes Ltd therefore argue that the proposed route is not supportive of long-term growth because it would, in their view, constrain development.

2.133 OBJ/097 Partners and Trustees of the Firm of JM & LM Forbes & Firm of JM & LM Forbes (Lochdu) also consider that TS's route choice gives undue weight to the Kildrummie Kames SSSI, which is nearby to the southwest. The Partners and Trustees etc. argue that Scottish Natural Heritage's principal concern is that the route would not adversely affect the SSSI. However, the objectors note that the SSSI already has the B9091 road running across it. They therefore consider this to mean that the route options should have been properly explored with Scottish Natural Heritage to assess any environmental impact.

2.134 OBJ/098 Mr Charles William Hynman Allenby and Mr James David Carnegie-Arbuthnott (Executors of the Estate of Charles Hynman Allenby) argue that a crossing of the River Nairn further south would not be as expensive as that which is proposed and that TS's route justification was insufficient.

2.135 OBJ/098 also states that planning permission was refused on appeal (reference PPA-270-2097) in relation to development on part of their land due to access and transport issues. The access/transportation constraints could, in their view, be overcome by the provision of slip roads to these areas off the proposed new bypass. This modification to the proposal, which they have sought since 2014, would, in their view, ensure that the proposed road takes proper account of the development potential of this land.

2.136 More detailed aspects of the objections raised by OBJ/097, OBJ/098 and OBJ/101 are covered in the respective parts of Chapter 6.

2.137 The parties listed below object because they consider little recognition was given in the ES to agriculture as a local wealth generator and/or that the proposed scheme would adversely affect agricultural interests. They also argue that the route selection assessment at DMRB Stage 2 failed to recognise a flood plain north of Auldearn and the impact that this would have on the cost of the preferred option (chosen, they argue, as the cheapest

by £1.9 million). Therefore, they argue that the preferred route is probably not the best route.

OBJ/110 Mr James A Philip

OBJ/111 Firm of Auchnacloch Farm (Trustees for firm of Auchnacloch)

OBJ/112 etc. Auldearn Residents Group

OBJ/131 Mr James and Mrs Ellen Maxwell

OBJ/132 Mr Niall B Holden and Mr Euan J Holden

OBJ/133 Mr Richard McCulloch

OBJ/136 Penick Farms

OBJ/142 Mr Jamie B and Mrs Elizabeth Watson

2.138 OBJ/131 Mr James and Mrs Ellen Maxwell also argue that:

- the cost of bringing additional materials to raise level of the road would be excessive due to being in an area that is at risk of flooding;
- the existing A96 cut off the area north of Auldearn from the village [Auldearn] when it was built. They argue that the preferred route for the proposed scheme would further sever this, leaving an area sandwiched between the two A96s. These concerns are shared by other objectors in this locality and are considered collectively in Chapter 8;
- tweaks have been made to the route in favour of land owners and that these have resulted in more adverse impacts for home owners who are only subject to Part 1 [of the Land Compensation (Scotland) Act 1973] claims at a later date.

2.139 OBJ/111 Firm of Auchnacloch Farm (Trustees for firm of Auchnacloch) argue that the route selection process should have considered all of the financial implications, including the losses to objectors. This would, in their view, have provided a more accurate cost / benefit analysis.

2.140 The parties listed below specifically favour use of the route of the existing A96 (either Option 2F or a variation of that):

OBJ/110 Mr James A Philip

OBJ/111 Firm of Auchnacloch Farm (Trustees for firm of Auchnacloch)

OBJ/131 Mr James and Mrs Ellen Maxwell

OBJ/132 Mr Niall B Holden and Mr Euan J Holden

OBJ/133 Mr Richard McCulloch

OBJ/142 Mr Jamie B and Mrs Elizabeth Watson

2.141 OBJ/110 Mr James A Philip argues that the existing Auldearn bypass (Route Option 2F) would be better than the proposed route because the latter would have a substantial and unnecessary impact on local wildlife and wildlife habitats, which could have been avoided and mitigated by use of the existing A96.

2.142 OBJ/133 Mr Richard McCulloch proposes a route alignment (RM1) that broadly follows the line of the existing A96 Auldearn bypass. It is similar to option 2F. Mr McCulloch proposes a route alignment (RM1) that broadly follows the line of the existing A96 Auldearn bypass. It is similar to option 2F, but would involve parallel widening of the existing Auldearn bypass rather than the construction of a new road in the position of the existing. Mr McCulloch argues that this would offer the potential for less disruption during construction. Mr McCulloch also states that his proposal takes account of concerns

expressed by nearby landowners and addresses design aspects of Option 2F that he feels were weak. He points out that existing severance of the houses and farms to the north of the existing bypass would be addressed in his proposal, which would incorporate an overbridge, relinking those properties with the village. OBJ/111 Firm of Auchnacloch Farm (Trustees for firm of Auchnacloch) also supports Mr McCulloch's RM1 option.

2.143 OBJ/128 Mr Hugh and Mrs Nicola Urquhart and OBJ/129 Mr Stephen R and Mrs Elaine Bailey argue that the route option south of Auldearn would have been further from people's homes but instead the route with the most significant impact was chosen.

2.144 OBJ/129 Mr Stephen R and Mrs Elaine Bailey allege that, at DMRB stage 2, when there was little to differentiate between the alternative options, a decision was made to go for the route to the north of Auldearn on the basis of it being £1.9 million cheaper. However, they contend that, at that stage the significance of the flood plain in this area was unknown and that, when it was fully appreciated in 2015, the process should have been re-run, taking into account the additional costs involved in raising the road level to clear the flood risk and also the environmental implications of doing so. Instead, Mr and Mrs Bailey allege that TS simply went ahead with option 2E as the preferred route regardless of the significantly altered situation.

2.145 Mr and Mrs Bailey / The Auldearn Residents Group describe the change in the height of the section east of Nairn that took place at DMRB Stage 3 as a massive elevation, making the road higher than roof height at Waterloo House and Waterloo Cottages. They contend this was a significant deviation from the proposed route shown at DMRB Stage 2 that would have a very large adverse impact on those houses in particular, but also on houses at Millhill, Drumshee, Drumduan Mill, Drumduan Farm and Drumduan Cottages. Even if this was a consequence of changes to the Nairn East junction, such as avoiding utilities and minimising local road realignment, as TS stated at the inquiry (rather than due to having originally failed to appreciate the flood plain issue), the objectors believe such changes should not have been adopted without proper consideration of the effects on local people.

2.146 Mr and Mrs Bailey / The Auldearn Residents Group suggested that, if the proposed route is primarily to satisfy a commitment to providing a dual carriageway link between Inverness and Aberdeen, it should simply follow a straight line between the two cities, rather than being routed close to existing settlements to the detriment of those living there.

2.147 Mr and Mrs Bailey also believe that TS did not properly take into account the fact that the proposed Nairn bypass would not provide a route for heavy traffic visiting Grigor Hill Industrial Estate. All such traffic would, they contend, have to leave the new A96, drive back into Nairn, past a cemetery and a housing estate on a narrow road to reach its destination. Similar objections are raised in respect of traffic seeking to access the proposed A96 from Gordon's Sawmill or the 200 new homes that are proposed to the south of the town, all of which would have to go through the town. They state that, when they raised this with TS, they were advised that a solution to that issue would have to be from a subsequent scheme. Mr and Mrs Bailey contend that this should have been resolved in route selection issues from the outset.

2.148 OBJ/123 Mr Malcolm S Davidson and Ms Jennifer M Philips, OBJ/131 Mr James and Mrs Ellen Maxwell and OBJ/136 Penick Farms each propose termination of the route in the vicinity of Auchnacloch – to the east of Nairn and to the west of Auldearn.

Inappropriate use of DMRB

2.149 Mr McCulloch contends that TS has considered the DMRB to be a significant design constraint rather than a source of advice. In his submission, DMRB at [TD9/93](#) (CD049.05) specifically encourages the development of roads which minimise environmental impact and ensure value for money by moving away from rigid adherence to standards and accepting relaxations or departures where appropriate. He believes TS has applied its recommendations and requirements selectively and that the preferred route offers neither minimal environmental impacts nor value for money. This is, he argues, because TS is adamant this should be a category 7A dual carriageway even though that is not dictated in the National Infrastructure Plan [assumed to refer to the Infrastructure Investment Plan 2011 – CD037.01]. He also questions whether, in DMRB terms, overbridges require as much clearance as the scheme proposes.

2.150 Mr McCulloch asserts that the design of the proposed grade-separated junctions constitutes over-engineering and is excessive for the level of traffic they would carry. He argues that if a more restrained or flexible approach had been taken to the design of the junctions and to the route in general, other options such as the on-line route that he proposes using the existing Auldearn bypass (route RM1) would not have been so easy to dismiss.

2.151 OBJ/129 Mr Stephen R and Mrs Elaine Bailey point out that DMRB is not policy but a set of guidelines. As such, they argue, it should not take priority over national policy such as that concerned with protecting prime agricultural land. In addition, DMRB states that local considerations must be taken into account in the design of any proposal. Mr and Mrs Bailey do not believe this has happened. An example of this is in the design of the proposed grade-separated junctions, which, they argue, may be an ideal solution from a safety perspective but are not mandatory and would cause harm, they say, to the local environment. Mr and Mrs Bailey believe there has been an unwillingness to develop a scheme that is suited to the environment of the Highlands and highlight TS's willingness to accept at-grade lay-bys on the proposed road as being inconsistent with its insistence on grade-separated junctions.

2.152 Mr McCulloch argues that the proposed junction configurations are likely to result in more accidents east of Nairn – he suggests a fivefold increase. Mr McCulloch also refers to the safety and accident assumptions at grade separated junctions in DMRB [TD16/07](#) (CD049.10). This appears to contrast the road safety record of the existing Auldearn bypass (one slight accident in five years and zero fatal or serious injuries) with the junction safety assumptions in DMRB used for Nairn East to infer that there would be a greater level of safety risk from the proposed junction than without it.

2.153 Mr McCulloch also argues that the Auldearn bypass has few accesses and both junctions into Auldearn have what he terms 'very good visibility and could be improved further at minimum cost'. He also criticises the junction arrangement for the Hardmuir tie-in as unsafe with an at-grade junction and an unimproved single carriageway. Details of the Hardmuir tie-in are discussed in more detail in Chapter 8.

2.154 OBJ/138 Mr and Mrs Pullan contend that the route has been designed without sufficient site knowledge, using a casual reliance on 'digital engineering' and that this has led to a proposed scheme with compromised safety.

2.155 OBJ/123 Mr Malcolm S Davidson and Ms Jennifer M Philips believe that the proposed Hardmuir junction would be dangerous and that its 'temporary' nature (which is likely to be a period of several years) does not justify any lowering of road safety standards. These matters are considered here within the context of objections to the route proposals. The local specific matters relating to the proposed Hardmuir junction itself are covered separately in Chapter 8: Nairn East to Hardmuir.

2.156 OBJ/060 Lorna and Allan Robertson are concerned that construction of the proposed Balloch junction would create conflict between construction vehicles and local traffic, leading to road safety concerns.

Road safety

2.157 The objections discussed above have made specific reference to current and future road safety, in particular the arguments of Mr McCulloch and Mr and Mrs Pullan. The objectors' arguments regarding road safety have been considered earlier as part of their arguments relating to proposed scheme rationale and route selection (including alternative route options).

2.158 The road safety aspects of specific locations along the proposed route are discussed in more detail in the relevant chapters which follow. At this point in the report, we deal with general matters.

Transport Scotland's response

Inadequate consideration of alternatives and weighing of evidence

2.159 Transport Scotland notes that the proposed scheme is specifically supported in the STPR, IIP, NTS, SBC and NPF3. It points out that the full range of options were considered at various stages and that none was found to be more favourable than the proposed scheme.

2.160 TS refutes the claim by OBJ/060 Lorna and Allan Robertson that the value for money workshop process was flawed or unfair. It states that a transparent scoring process was applied to the assessment of the various route options using an appraisal framework that considered a wide range of assessment topics. A series of six assessment criteria was employed, each with a number of sub-criteria. This approach is set out in the value for money workshop report ([DMRB Stage 2 Scheme Assessment - CD011, Appendix A22.1](#)).

2.161 TS acknowledges that the chosen route option for the Inverness to Gollanfield section (option 1C (MV)) performed less favourably in that assessment than alternative options against the noise and vibration, landscape and visual, road drainage and water environment, cultural heritage, and agriculture and forestry sub-criteria of the environment criterion. However, it demonstrated a number of advantages over alternatives including avoiding the need to demolish two homes, having less impact on access to local properties and businesses, less impact on public transport and shorter journey times for residents of Milton, Allanfearn, Brecknish and Alturlie.

2.162 TS refutes Mr and Mrs Robertson's claim that the existence of the Inner Moray Firth SPA was enough to discount routes 1A and 1B. It states that this issue was only one of nine sub-criteria under the environment assessment criterion and, in any event,

option 1C(MV) was found to have similar implications for the SPA to options 1A and 1B save for a section close to Alturlie Point.

2.163 TS disagrees that noise and vibration impacts were ignored in the value for money workshop. It points out that option 1C (MV) was found in that workshop to perform less well against that sub-criterion. It also points out that the issue of noise and vibration was then considered in greater detail once a preferred route had been selected through the development of a programme of mitigation (no allowance having been made for mitigation at the value for money workshop stage).

2.164 TS refutes the suggestion that the Cullernie ring cairn was forgotten at the route selection process, as Mr and Mrs Robertson allege. It points out that this asset, and all other designated and undesignated heritage assets that might be affected, was noted in the DMRB Stage 2 Scheme Assessment report (CD011). The effects of the proposed scheme on all such assets were taken into account in the value for money workshop.

2.165 In response to the suggestion that too much weight was given to avoiding the Tornagrain development site, TS states that all route options were assessed in terms of the effect they would have on development plan land allocations along with all the other assessment criteria.

2.166 A number of objectors raise concerns that the design changes that were made at DMRB Stage 3, such as to the Balloch junction or to the section north of Auldearn were so significant that they undermine the comparative assessment process that was undertaken at Stage 2. TS's response is that the design development is always an iterative process and that changes at DMRB Stage 3 do not invalidate the route selection process, provided that the changes remain proportionate. It states that when the preferred route option was announced in 2014 it was made clear that this was indicative and that it would be developed further during the next stage.

2.167 TS states that changes that were made at Stage 3 were assessed against the preferred option from Stage 2. As an example, sections 3, 5 and 6 of the [Balloch Junction Design Development Report](#) (TS228) compare the revised junction design with that identified at Stage 2. TS states that the purpose of the design changes at DMRB Stage 3 was to provide a better balance of assessment impacts. It confirms that the Stage 3 design refinements resulted in: the overall size of the junction being reduced; a reduced impact on the major utilities; a reduced impact on the Cullernie Ring Ditch; optimised drainage arrangements; limited impact on the drainage system and watercourse; and reduced field severance. TS states that there would also be a simplified construction sequence with a reduction in the number of road closures from the preferred option. TS acknowledges that the effect of these changes would result in increased cost and a reduction in the separation between the junction and its nearest residential neighbour of 30 metres. However, TS argues that this did not undermine the value for money analysis and any effects on neighbouring properties would not be materially different.

2.168 In response to criticisms over the proposal's use of materials and generation of waste, TS accepts that the estimated materials use for the preferred option at DMRB Stage 3 (CD005, [ES Table 17.9](#)) exceed the estimates that were made at DMRB Stage 2 (CD011, [Table 17.5](#)). However, it argues that it is a normal part of the development process for this to occur due to the level of detail in the proposals increasing with each stage. TS does not accept that the increase in materials use (and consequent expense)

invalidates the comparative assessment at Stage 2, as the comparison was done on an equitable basis. TS also disagrees that it is reasonable to analyse materials usage over a limited section of the route rather than consider the route proposal as a whole. It argues that, in accordance with the principle of sustainability, materials use and the generation of waste has been evaluated for the entire scheme.

2.169 With regard to public transport, TS states that the retention of the existing A96 for public and school transport was an important consideration. It set out to reduce or avoid any reduction in the number of bus stops or any increase in walking distances to those stops. In the case of Auldearn, it argues that this objective tended to count against using and upgrading the existing A96 Auldearn bypass as this would have made it difficult to maintain existing public transport services, which currently enter and pass through the village from the existing bypass. It directed us to [ES Chapter 16](#) pages 16-39 and 16-40 (CD005) for an assessment of public transport effects.

2.170 In response to Mr McCulloch's suggestion that maintenance of public transport services had been given too much weight when the future viability of such services had not been taken into account, TS states its aim has been to separate strategic through-traffic from local traffic including public transport services serving local communities. In the case of Auldearn, TS argues that the chosen design maintains the existing Auldearn bypass, which provides access to the village for public transport and other users. TS argues that adopting an off-line route to the north essentially maintains the existing arrangement.

2.171 TS does not accept that the environmental effects of the proposed scheme have not been adequately assessed. It refers to the EIA of the proposed scheme that has been carried out (as presented in the ES).

2.172 In response to objections that call for the route to be taken further from Culloden, TS states that this option was fully evaluated within the DMRB process. Two route options were considered for the section between Smithton Junction and Newton of Petty. One followed the line of the existing A96 until Allanfearn and then passed to the north of the existing road. The second option, which is the route that TS is proposing, remained entirely to the south of the existing A96, passing through farmland between that road and the communities of Culloden and Balloch.

2.173 TS states that key issues that were considered when evaluating these alternatives included: avoidance of the need to acquire and demolish residential properties; the need to maintain access to properties, bearing in mind the Category 7A standard of the proposed road (which would not permit direct at-grade accesses); the need to maintain existing public transport services, the avoidance of key environmental constraints and designated sites; and the effect on journey times for residents at Milton, Allanfearn, Brecknish and Alturlie, who would have had their existing access via the existing A96 severed by a northern alignment.

2.174 TS chose the route to the south of the existing road because: it was generally offline and therefore would have fewer effects on accesses onto the existing A96; it would have reduced costs; it would cause less disruption during construction; it would improve safety on the existing A96 due to reduced traffic levels; it would reduce the need for residential property acquisition and would not impact upon the development capacity of Inverness Airport and Tornagrain.

2.175 TS accepts that the preferred southern option is closer to residents in Culloden and Balloch and would affect the popular walking route known as 'The Hedges'. However, for the reasons that are set out and discussed in more detail in Chapter 4 of our report, concludes that no unacceptable effects would arise. It also states that the preferred route would have some of the lowest impacts on habitats and biodiversity, geology and soils, effects on all travellers, resource use and waste, residential and commercial assets and development land.

2.176 With regard to wildlife road casualties, TS states that its proposals for mammal-deterrent fencing, which is designed to guide animals to dry underpasses and culverts, has been developed in consultation with its own ecologists and Scottish Natural Heritage (SNH).

2.177 TS does not accept that it has taken an inconsistent approach in terms of the development of the design of the proposed route in relation to the Kildrummie Kames SSSI. It confirms that appropriate consultation was held with SNH and other statutory and non-statutory consultees throughout the DMRB process. This is set out in the DMRB Stage 2 Assessment Report (CD011), and in the [ES Chapter 6](#) (Consultation and Scoping) (CD005). In addition, it points out that SNH is a member of the Environmental Steering Group which was set up for the A96 Dualling Programme and has received regular updates and provided feedback to the project team. TS considers that the route selection process and the alignment and design of the preferred route option is consistent with the advice of SNH with regards the avoidance of impacts on this SSSI.

2.178 With regard to objections that favour a route for the Nairn bypass section that is further to the south than the preferred route, TS confirms that Route Option 2H, which was assessed at DMRB Stage 2, is broadly similar to the route option that is favoured in such objections. TS accepts that this route option, along with options 2D and 2I, was assessed as having the least, overall, impact on development land at Nairn. However, this was only one of a range of factors considered in the assessment. In the DMRB Stage 2 assessment, Option 2H was found, overall, to have greater adverse implications (including on Kildrummie Kames SSSI, the need for a longer River Nairn structure, higher earthworks import quantity and a higher scheme cost) and fewer benefits than the preferred option.

2.179 Further information is available in the [DMRB Stage 2 Assessment Report, Part 5](#) (CD011) which summarises the reasons for the preferred option selection.

2.180 TS states that the selection of the preferred option for the Nairn bypass section and its subsequent design development was in line with the assessment process set out in the DMRB and is typical for schemes such as the A96 Dualling Inverness to Nairn (including Nairn Bypass). The selection of the DMRB Stage 2 preferred option (Option 2E) was the result of a detailed process which included the assessment of a number of factors to select the best overall option. TS argues that, while there are differences between the options at individual topic level, the conclusion of the overall environmental assessment is much more finely balanced, with no one option substantially and materially better than the others. On balance, across the full range of assessment criteria, Option 2E was the best performing option. Specifically, TS points out the following issues:

- it had the best cut/fill balance, with the second lowest fill requirement and the highest acceptable material generated;
- the required River Nairn viaduct is shorter for Option 2E, by a length of approximately 15 to 40 metres when compared to Option 2H;

- it was expected to have the lowest estimated cost of all the route options;
- it was expected to have some of the lowest impacts on all travellers (e.g. path network) when compared to other options; and
- it avoids impacting on the Kildrummie Kames SSSI.

2.181 In relation to the environmental assessment, the preferred option was expected to have some of the lowest impacts in relation to noise and vibration, geology and soils, water quality, materials, residential and commercial assets and development land. The stage 2 assessment recognised that there were potential impacts in relation to landscape, habitats and biodiversity, cultural heritage and agriculture and forestry, which would be taken forward for consideration within the DMRB Stage 3 assessment.

2.182 TS does not accept that the route of the proposed scheme is north of the route envisaged in the Highland Wide Local Development Plan (HWLDP) (2012) (CD061). It states that the route shown on the settlement map for Nairn in the HWLDP was for an aspiration for a bypass of the town. It was not for the current proposed scheme, which forms part of the Scottish Government's commitment to upgrading the A96 between Inverness and Aberdeen to dual carriageway by 2030 ([ES Chapter 2](#) – CD005 - provides context).

2.183 TS points out that it is clearly stated in the settlement proposal map for the HWLDP that 'all proposed new roads are indicative and are subject to detailed consideration by Transport Scotland'. The DMRB Stage 2 Scheme Assessment (CD011) considered a route option (Option 2H, along with Options 2D and 2I) which followed a more southerly route, broadly similar to that contained in the HWLDP. The finding of this assessment favoured the route that is now proposed.

2.184 TS points out that the land to the south of Nairn that is referred to by objectors as having potential as development land (OBJ/097 Partners and Trustees of the Firm of JM & LM Forbes & Firm of JM & LM Forbes (Lochdu), OBJ/098 Mr Charles William Hynman Allenby and Mr James David Carnegie-Arbutnott (Executors of the Estate of Charles Hynman Allenby) and OBJ/101 BDW North Scotland Limited (Barratt) & Robertson Homes Ltd) has, in fact, no status as development land. It states that development aspirations such as developer options cannot be taken into account as there is no certainty that this land would ever be allocated or developed.

2.185 TS does not agree that it would make sense to incorporate into the road proposal, slip roads serving potential development land. It points out that the purpose of the Nairn bypass is not to provide a local distributor road but to form part of the strategic road network between Inverness and Aberdeen. The proposal would incorporate junctions to the east and west of Nairn that would, TS argues, serve the town adequately.

2.186 TS argues that the junction access strategy for the Nairn Bypass route options (DMRB Stage 2) was consistent and appropriate. All options, included a grade separated junction with the existing A96 to the west of Nairn and a grade separated junction with the existing A96 to the east of Nairn. For options passing south of Auldearn (options 2C, 2D, 2G and 2I) the junction to the east of Nairn was considerably further east and was developed as a half-diamond layout with east-facing slip roads only, due to the proximity to existing residential property at Meadowfield and the limited benefits which west-facing slip roads would have made. As a result, an intermediate junction was introduced at

the A939 for options passing south of Auldearn to provide access to and from the east of Nairn onto the proposed scheme.

2.187 TS denies that it was originally unaware of the flood plain in the vicinity of Auldearn and disagrees with the assertion that the implications of flood risk for the proposed scheme were not properly taken into account until after a decision had been made to favour route option 2E. TS states that it and its consultants were fully aware of the flood risk areas associated with the Auldearn Burn throughout the scheme development process; including during DMRB Stage 2 route option assessment. It argues that:

- [DMRB Stage 2 Scheme Assessment Report Figures 13.1 to 13.9](#) show the areas at risk of flooding from rivers and the sea based on SEPA data provided in March 2013. These were taken into account in the Stage 2 option development and assessment.
- The DMRB Stage 3 scheme assessment used updated SEPA flood risk maps (published in January 2014 and updated in 2015) in addition to detailed flood risk modelling undertaken by Jacobs. This is shown in [ES Figures 13.1a – 13.1d](#) (November 2016) (CD007).

2.188 TS argues that this shows the flood risk extents in the vicinity of the Auldearn Burn at Stage 3 are very similar to those in the Stage 2 report with some refinement in relation to the coloured shading for different percentages of Annual Exceedance Probability. In addition, it argues, the flood risk modelling undertaken by Jacobs to support the Flood Risk Assessment, as reported in the ES, confirms the flood risk extents shown on the SEPA flood maps where the proposed scheme crosses the Auldearn Burn.

2.189 TS's flood risk lead for the proposed scheme gave evidence to the inquiry. He confirmed that, for the Nairn bypass section of the route, no route option avoided areas of flood risk, due to the extent of the functional flood plain in that area. At DMRB Stage 2 (the route selection stage) it was concluded that with appropriate mitigation, all route options could be made acceptable in this regard, but that for certain route options, including 2E, which became the preferred option, this would be more difficult than for others.

2.190 TS's overall position on prime agricultural land is set out in paragraphs 2.28 to 2.64 above. With regard to the Nairn bypass route options specifically, it confirms that [DMRB Stage 2 Scheme Assessment Report paragraphs 16.10.38 to 16.10.44](#) (CD011) summarise the impact in relation to Agricultural and Forestry Interests. [Table 16.56](#) (CD011) quantifies the potential impact for prime, non-prime and total land take area as well as the number of land interests affected, the number of fields affected and the number of land interests with magnitude of impact medium or above. TS is satisfied that the differences in the potential impacts between the route options was appropriately reflected in the scoring and ranking of options and the weighting of the assessment criteria.

2.191 TS contends that, as with the development of any trunk road scheme, a range of assessment criteria must be considered. The loss of prime agricultural land is only one of those criteria. It acknowledges that the preferred route is not the best performing option with regard to all the individual assessment criteria. However on balance, across the full range of assessment criteria, it considers the preferred route is the best performing option.

2.192 With regard to the suggestion that the proposal could be terminated before reaching Auldearn, TS argues that it was necessary to consider how the Inverness to Nairn (including Nairn Bypass) scheme would connect to a future section of dual carriageway, to

the east of Nairn, given the Scottish Government's commitment to dualling the entire extent of the A96 between Inverness and Aberdeen. It points out that the Scottish Government has recently awarded a contract to carry out route option assessment and detailed design work for dualling the 29-mile section of the A96 between Hardmuir and Fochabers. The proposed scheme was therefore extended to a location on the existing A96 at Hardmuir which TS considered appropriate to provide the opportunity for route options to be considered north and south of Forres as part of the adjacent scheme [next phase]. TS argues that this also allowed dual carriageway options for the Nairn Bypass which pass to the north and south of Auldearn to be considered on a like for like basis. This included options which followed the line of the existing A96 Auldearn Bypass.

2.193 TS explains that [ES Chapter 3](#) (CD005) describes the various stages of route option evaluation undertaken during the development of the proposed scheme, in terms of traffic, economic and engineering feasibility, and the environmental assessment of route options. During DMRB Stage 2 route options assessment, it confirms that nine route options for the Nairn Bypass (Options 2A – 2I) were assessed in the same level of detail. These included options to the south of Auldearn (Options 2C, 2D, 2G and 2I) and along the existing A96 Auldearn Bypass (Option 2F). Option 2E, which passes through farmland to the north of Auldearn, was identified as the preferred option. The full assessment and consideration of each option is set out in the DMRB Stage 2 Scheme Assessment Report (CD011).

2.194 TS contends that it fully considered the option to follow the line of the existing A96 Auldearn Bypass (option 2F which is similar to Mr McCulloch's RM1 proposal) which is favoured by a number of objectors. It states that some key issues in relation to this route option were:

- consideration of access to local residential properties, businesses and land. The proposed dual carriageway standard (category 7A) requires full grade separation of junctions with no minor at-grade junctions or gaps in the central reserve. Alternative arrangements in the form of parallel access roads would be necessary to both the north and south of the proposed dual carriageway to maintain local access to residential properties and agricultural land;
- maintaining existing public transport services, which currently enter and pass through the village.
- consideration of ways to avoid the potential acquisition and demolition of residential properties along the existing A96 road corridor;
- the design would have required acquisition of community owned land forming part of the playing fields adjacent to Auldearn Primary School;
- property, businesses and land to the north of the existing A96 would suffer severance from the village of Auldearn;
- option 2F was considered alongside and in the same level of detail as other options and, on balance, Option 2F was assessed to have greater impacts or fewer benefits than the preferred option (Option 2E).
- in the assessment of the options, the cost estimate for Options 2E and 2F were similar;
- in the option assessment the online option (2F) was considered marginally better in relation to community and private assets (including agriculture and forestry) but was considered to be poorer in the following areas:
 - safety of non-motorised users due to the interface between motorised and non-motorised users along the A96 corridor through Auldearn;
 - noise and vibration;

- road drainage and the water environment due to the proximity to the Tributary of the Auldearn Burn at Meadowfield;
- cultural heritage due to the impact on the Meadowfield Enclosure;
- effect on all travellers due to the impact on the path network in the vicinity of the village and the reinforcement of the severance between Auldearn and Boath House, Broombank and land north of Auldearn for motorised and non-motorised users;
- promotable/deliverable through statutory process based on the public feedback received following the November 2013 public consultation;
- disruption of the local community during construction; and,
- operational resilience.

2.195 TS confirms that it considered Mr McCulloch's alternative proposal (RM1) separately to option 2F. In document [TS216](#), which is a portfolio of drawings to which TS referred in Inquiry Session 1, drawing number A96PIN-JAC-HML-26700-SK-CI-0001 is a layout drawing prepared using road design modelling software by TS's consultant Jacobs that was based upon Mr McCulloch's proposal. This sought to develop his proposal in more detail, taking account of DMRB requirements. TS states that this allowed it to examine the merits of this alternative proposal in more detail, from which process it was concluded that the proposal had a number of deficiencies including its horizontal alignment, issues with access to nearby property, flood risk issues and compromised facilities for public transport. TS also concluded that it would not be technically feasible to construct the proposed Boath Road overbridge, which would mean greater rather than reduced severance from the village for properties to the north.

2.196 TS states that the DMRB Stage 2 Scheme Assessment report (CD011) acknowledged that Option 2E (the preferred option) was not the best performing option with regard to all of the individual assessment criteria and that no single option performs better than others for every assessment criterion. It found that, on balance, across the full range of assessment criteria, Option 2E remained the best performing option.

2.197 With regard to impacts on wildlife TS argues that:

- an assessment of the impacts of the proposed scheme on habitats and species is provided in [ES Chapter 11](#) (CD005) and accompanying figures and appendices;
- ES Figures [11.1b: Ecological Designations](#), [11.2g: Phase 1 Habitat](#) and [11.6g: Protected Species](#) (CD007) show that at this location north of Auldearn there are no designated ecological sites affected by the proposed scheme, which is characterised as arable land;
- no protected species were identified at this location at the time of survey;
- mitigation principles outlined in ES Chapter 11 and [ES Chapter 20](#) (CD005) would enable potential impacts on local wildlife to be managed and reduced in accordance with best practice principles.

2.198 With regard to costs, in the assessment of the options, TS states that the cost estimate for options 2E and 2F were similar.

2.199 With regard to objections that call for a route to the south of Auldearn, TS states that the southern options were assessed to have greater impacts or fewer benefits than the preferred option (Option 2E). The full assessment and consideration of options is set out in the DMRB Stage 2 Scheme Assessment Report (CD011).

2.200 TS concludes that all other options for the Nairn bypass section of the route were assessed to have greater impacts or fewer benefits than the preferred option in the DMRB Stage 2 assessment. The reasons for TS's selection of the preferred option (Option 2E) included the following:

- it benefits from being able to utilise the former quarry site at Blackcastle for the Nairn West junction;
- it has the lowest estimated scheme cost of all the Nairn Bypass options;
- the River Nairn Crossing at Broadley is preferred to the crossing further south at Howford as it would be shorter and the lower cost of the structure more than offsets the cost of diverting the nearby 132kV electricity transmission lines;
- it has the best earthworks balance, reducing the requirement to import fill and lowering costs;
- it can be constructed with less disruption or impact during construction to road users and the local community since the route is further away from the existing A96 and the communities at the west of Nairn and Auldearn;
- overall, it has some of the lowest impacts on all travellers (e.g. path network), noise and vibration, geology and soils, water quality, materials, residential and commercial assets and development land, although performs less favourably in relation to landscape and visual, habitats and biodiversity, cultural heritage and, agricultural and forestry land;
- it offers greater safety benefits than other options due to having fewer junctions (reduced conflicts with traffic and also non-motorised users such as pedestrians, cyclists and equestrians);
- the impacts from Options 2B and 2F, past Auldearn, are avoided, specifically in relation to noise, cultural heritage, path network and disruption during construction;
- the impacts from options 2C, 2G, 2D and 2I are avoided specifically in relation to landscape and visual impacts particularly around the A939, Nairn East Junction, Newmill and at Kinstearry House; and
- it allows bus routes to be maintained through Auldearn.

2.201 TS rejects the suggestion that routing the proposed link between Inverness to Aberdeen (of which the current proposal is a part) along the straightest possible path would satisfy the objectives of the scheme. It points out that such a route would require visitors to the settlements along the existing A96 corridor (most obviously Nairn) to travel many more miles between the town and the bypass. TS also points out that this option was considered and rejected at a very early stage of the project in the sifting of improvement strategies at DMRB Stage 1.

2.202 In response to claims that the proposed Nairn bypass would not properly serve the town, TS points out that the A96 dual carriageway is designed to serve a strategic function and not to act as a local distributor road around Nairn. Various options were considered for how to access Nairn from the proposed dual carriageway and TS considered that the existing A96 from the east and west would provide the most suitable route for traffic to enter and leave the town. Traffic wishing to access the Grigorhill Industrial Estate could continue to do so from the existing A96 or A939, as it does now – there being no proposals to change this arrangement within this proposed scheme.

2.203 TS points out that, as part of the proposed scheme, a new link road would be provided between the existing A96 Delnies junction and the existing C1170 Moss-side Broadley Road/B9091 Balblair Road junction. This new link road would allow traffic to access Gordon's Sawmill from the proposed Nairn West Junction without the need to travel

through Nairn. Similarly, this road may potentially allow access to future housing areas to the south of Nairn, although TS notes that the final access arrangements for such developments would be a matter for the developer(s) and The Highland Council.

Inappropriate use of DMRB

2.204 TS does not accept that its approach to DMRB was inappropriate. It describes DMRB as providing standards, advice notes and other documents relating to the design, assessment and operation of trunk roads in the United Kingdom. While these do not necessarily have to be adhered to on all occasions, TS states that, in designing a proposed road, it is important for driver understanding and road safety that the standard of dual carriageway and junctions is consistent across the length of the proposed scheme.

2.205 With regard to one specific example, it rejects Mr McCulloch's suggestion that a 'compact design' standard could have been applied to the proposed junctions in preference to that specified in [DMRB Volume 6 Section 2 Part 1 TD22/06](#) (CD049.09). TS states that the junction design decision took account of predicted traffic flows and road safety reasons to allow the predicted traffic to accelerate and decelerate in a safe and appropriate manner which would be prejudiced by tight radii. Account is required to be taken of the fact that different types of traffic (for example, school transport, agricultural traffic, public transport and local traffic) would be using the route to access numerous locations along the corridor. TS found that the junctions had to be designed in such a way that all those uses could be safely accommodated. This, TS argues, justified a design that complied with DMRB expectations.

2.206 In response to Mr and Mrs Bailey's query as to why grade-separated junctions are considered essential for safety reasons and yet lay-bys are also permitted, TS states that the two features perform different functions and that the latter are used by a smaller number of drivers. The DMRB provides specific advice on lay-by design, which TS argues it has followed.

2.207 TS cites other examples where the proposed scheme design does not accord with DMRB standards. For example, in the lighting between ch850 and ch2970, which is proposed to be provided in order to mitigate for the substandard geometric weaving length. This proposal constitutes a departure from DMRB standards but was considered the best solution to the proposal, taking all considerations into account.

Road safety

2.208 TS argues that the proposed scheme would reduce accident rates, along with improving journey time and reliability, tackling congestion and improving connectivity between Inverness and Aberdeen. It argues that the section of the proposed scheme that bypasses Nairn would also reduce conflict between local and strategic traffic and provide congestion and environmental relief to the town. As such TS contends the proposed scheme would deliver benefits to road safety.

2.209 TS is satisfied that the road layout at the eastern end of the proposed scheme (which is discussed in more detail in Chapter 8) including the at-grade junction at Hardmuir would not have an adverse impact on road safety. It confirms that the transition at this point from a single carriageway to a dual carriageway and the forward sight distances for eastbound and westbound vehicles as well as the visibility splay from the side road, all

achieve the highest standards outlined in DMRB. TS contends that the arrangements proposed at Hardmuir are found commonly across the trunk road network and have shown no serious safety issues in terms of recorded road accidents.

2.210 With regard to road safety during the construction period, TS explains that the [Scheme Design Development Report](#) (TS209) provides a general overview of traffic management during construction. It argues that arrangements would follow a general approach that has proved successful on numerous occasions elsewhere, which would minimise disruption to local road users while maximising safety.

Findings of fact

Inadequate consideration of alternatives and weighing of evidence

2.211 We first cover the consideration of alternatives to a category 7A dual carriageway before addressing objections which contend that alternative routes were not adequately considered.

2.212 Mr McCulloch contends that the Scottish Government's commitment to full dualling of the A96 does not require a category 7A solution and that a lower standard of dual carriageway could deliver the benefits that are sought at lower cost and with fewer disbenefits for those who live near the proposed route. He also argues that acceptance of a lower standard of dual carriageway could also facilitate his request for the existing Auldearn bypass to be incorporated into the proposed scheme (as is shown in his proposal RM1) rather than the routing of the road to the north, to which he and a number of local residents are opposed (site-specific objections in respect of that location are discussed in Chapter 8).

2.213 The A96 Dualling Inverness to Aberdeen DMRB Stage 1 Assessment Report (CD018) 2015 sets out, for the entire Inverness to Aberdeen project (of which the proposal that is before Ministers is a part) the existing conditions on the route, a description of different improvement strategies that could be applied, an assessment of these in engineering, environmental and traffic / economic terms, and a recommendation for future action at DMRB Stage 2.

2.214 In that report, it is confirmed that initial proposals for upgrading the A96 to dual carriageway between Inverness and Nairn and providing a Nairn bypass did not achieve full category 7A standard. Indeed the Nairn bypass proposal at that stage was intended to be single carriageway.

2.215 TS explained that a category 7A road is the highest standard of dual carriageway – featuring only grade-separated junctions and a smooth, fast-flowing alignment. It confirms that a decision to upgrade the entire length of the A96 between Inverness and Aberdeen to 7A standard was accepted by the TS A96 Dualling Programme Board in January 2014 and was approved by the relevant Minister in August of that year and then by the Cabinet Secretary for Infrastructure, Investment and Cities in April 2015. This required a reconsideration of the initial proposals for the Inverness to Nairn section so as to be compatible with that broader commitment.

2.216 As we set out earlier, we accept Mr McCulloch's point that the forecast traffic numbers do not, in themselves, necessarily require a category 7A road. We also agree that a lower standard of road could have delivered some of the benefits that a category 7A road

would deliver. For example – the separation of local traffic in Nairn from the through traffic that currently passes through the town, reduced accident rates and air pollution in the town and improvements to overtaking opportunities and therefore to journey times and journey time reliability. We also accept that adopting a lower standard of road could have made Mr McCulloch's RM1 proposal to incorporate the existing Auldearn bypass more feasible.

2.217 However, we accept TS's evidence that the smooth-flowing alignment and absence of any at-grade junctions on a category 7A road are essential if optimal benefits are to be achieved in terms of driver safety, reduced travel time, increased travel time certainty, and reduced potential for driver confusion and fatigue. We also regard as highly significant, the Scottish Government commitment that to full dualling of the A96 between Inverness and Aberdeen. That effectively rules out the suggestions from some opponents of this proposed scheme for a part dual- part single-carriageway solution and also puts into doubt the ability of a lower standard of dual-carriageway than 7A for this section to deliver what Ministers expect from the full-dualling commitment.

2.218 Therefore, we are satisfied that the choice of a Category 7A solution was appropriate and justified.

2.219 We now turn to the objections and representations that challenge TS's selection of its preferred route option over other alternatives. They do so because they consider that alternative routes, considered at DMRB Stage 2, would reduce or remove adverse consequences that they consider result from the preferred route. Some of the objectors also challenge the route selection process because they consider that it failed to recognise issues that may, in their view, have resulted in a different preferred route.

2.220 We accept TS's overall response that, in accordance with EIA legislation, it did carry out an analysis of all reasonable alternatives and provided justification for its decision for its chosen selection. A useful summary of that process may be found in [The Scheme Design and Consideration of Alternatives report](#) (TS209).

2.221 We also agree with TS that, when considering submissions that favour an alternative to the proposed route, the test is not whether the alternative might be feasible, but whether it would be better than the proposed scheme, taking into account all relevant considerations including the implications for the proposal as a whole and the scheme objectives. We accept that delay to the project would be undesirable and that the development of an alternative solution to that proposed by TS would inevitably cause delay. The potential for delay needs to be taken into account. However, we have not given that issue significant weight because if an alternative proposal proved to be genuinely better than the scheme TS has put forward, then our conclusion is that it is likely to be worthwhile accepting the consequences of delay in order to secure an improved scheme.

2.222 With the exception of the 'RM1' proposals put forward for the vicinity of Auldearn by Mr McCulloch and the design suggested for the vicinity of Hardmuir by Mr and Mrs Pullan, generally, where an objector to the scheme has not favoured one of the alternative route options that were considered at DMRB Stage 2, but has instead suggested an alternative approach, there is only limited detail of what that alternative might involve. That is to be expected and it would be unreasonable to expect opponents to the current proposals to provide fully worked-up proposal of their own. In this regard, our consideration of any suggested alternative approaches has been assisted by the analysis that TS has provided of each. In all cases, we are satisfied that we have sufficient detail of the likely positive and

negative aspects of all of the potential alternatives for us to make recommendations as to whether any would be better, overall, than what TS proposes.

2.223 Balloch Community Council and a number of residents in Balloch and Culloden would prefer the route of the dual carriageway to follow the line of the existing A96 or to be routed further to the north of that road (between the existing A96 and the shore) rather than be routed across farmland to the south of the existing road, bringing it closer to the settlements of Culloden and Balloch.

2.224 We can understand why residents in those settlements would consider it illogical or even unfair to route the proposed dual carriageway closer to their homes than the existing road, when options that would have taken it further away from them were also on the table. However, it is clear to us that at DMRB stage 2, the positive and negative attributes of each alternative solution were fully and properly evaluated.

2.225 While it is true that options 1A or 1B would have taken the route further away from these settlements, there is no evidence to undermine TS's conclusion that both would have incurred additional expense and a number of other disbenefits when compared with the selected route. In addition, as we set out in Chapter 4, we are satisfied that the effects with which objectors are particularly concerned – noise, air pollution, traffic and interference with NMU access, are all either likely to prove less significant than is feared, or could be adequately mitigated by proposals that TS has outlined.

2.226 As part of the inquiry process, TS prepared a Scheme Design Development and Consideration of Alternatives Report (TS209). This describes (among other things) the process it went through in selecting the proposed scheme, describes the alternatives that were considered, and explains why it favoured this option over all others that were assessed.

2.227 Mr McCulloch and a number of residents in the vicinity of Auldearn favour a route that uses the existing alignment of the Auldearn bypass (either TS's option 2F or Mr McCulloch's RM1). In addition to considering the various alternative route options (including 2F) at DMRB Stage 2, we find that TS subsequently gave careful consideration to alternative RM1. This is confirmed in its development of that proposal into a more detailed design in the drawing contained within [TS216](#) and in the analysis was given by TS to the alternative proposal, which is summarised in the precognition of TS's witness Mr Herd. During Inquiry Session 1, Mr McCulloch accepted that TS had made a reasonable attempt to develop his proposal RM1 into a proposal that could be compared with others. We find that proposal RM1 has a number of disadvantages in comparison with the selected route option 2E and that for some of these, such as the predicted difficulty in constructing the proposed Boath Road overbridge (without which the proposal would increase community severance) there appears to be no potential solution. There is no evidence before us to suggest that route option RM1 would be better than what is proposed.

2.228 The DMRB Stage 2 Scheme Assessment Report (CD011) set out an assessment of the route options in engineering, environmental and traffic / economic terms. These assessments considered the Inverness to Gollanfield section and the Nairn Bypass section (from Gollanfield to Hardmuir) separately.

2.229 Volume 2 of the DMRB Stage 2 report (CD012) includes preliminary drawings of the route options that were assessed. Eight route options were considered for the Inverness to Gollanfield section and nine options were assessed for the Nairn Bypass section.

2.230 The DMRB Stage 2 report (CD011) first assessed the existing route in terms of geometric design standards, traffic levels, physical conditions, accident rates, non-motorised user (NMU) provision and bus services. It found that 22 of the 31 junctions with side roads or private accesses were substandard in at least one respect when compared with DMRB standards.

2.231 Section 3.5 of the DMRB Stage 2 report (CD011) describes the 'do minimum' scenario, which are the road and rail interventions that are set out in the Moray Firth Transport Model (MFTM). We discussed that document earlier in this chapter.

2.232 The report then considers alternative route options. This built upon earlier work from 2010 and 2011, at which time the proposal was for a dual carriageway between Inverness and Nairn (with at-grade junctions) and a single carriageway Nairn bypass. Following the commitment from the Scottish Government to full dualling of the A96 with grade-separated junctions, the options were re-assessed and new options added. Perhaps the most significant change to the options being assessed was the extension of the Nairn bypass to Hardmuir (so that it could link to a subsequent phase further east) rather than ending the bypass between Nairn and Auldearn.

2.233 The Stage 2 engineering assessment (CD011) considered the ease with which each of the route options might be built. This took account of geotechnics, earthworks requirements (cut to fill balance), public utilities, constructability and effects on other land interests and existing roads.

2.234 An initial assessment of each option's likely environmental effects was then undertaken. This considered issues including noise and vibration, landscape and visual, drainage, geology and soils, habitats and biodiversity, cultural heritage, effects on all travellers, materials requirements and effects on community and private assets.

2.235 A Stage 2 Scheme Options Value for Money Workshop was held in 2014. This scored each option against a series of assessment criteria to derive a utility score. This was then divided by the estimated cost of that option to produce a Value Index measure for each route option. The highest performing options route in this process were options 1D and 2G.

2.236 A number of criticisms of the value for money workshop have been made. These suggest that the process was unfair, because the panel who conducted the workshop were allegedly not independent and allegedly applied different and inappropriate weighting to different assessment criteria.

2.237 The workshop panel was composed of 17 individuals from a range of disciplines. All were employed either by TS or its consultant Jacobs. Details can be found at page 23 of [Appendix A22.1](#) in CD011. We see no problem in principle with including within the workshop team only persons employed (either directly or indirectly) by TS and note that an independent facilitator was also used. Our view is that, provided that the process that was followed by the workshop team was clearly set out and demonstrably fair, it was appropriate

and indeed logical for the workshop team to include persons who had previous knowledge of this or similar projects.

2.238 The workshop assessed each of the route options for the Inverness to Gollanfield and Nairn bypass sections against six criteria: economy; safety; environment / sustainability; accessibility; integration; and 'other'. A number of sub-criteria were listed below each main criterion. A comparative assessment was then made of each of the route options with the best performing option scoring 10 and others compared against that. Different weightings were applied to each sub-criterion to reflect the relative importance of each. The output of that process was a utility score, which was then divided by the predicted capital cost of each option to produce a value index (as described in paragraph 2.235 above).

2.239 We find that the weighting to be applied to each sub-criterion is inevitably a matter for debate. Persons who put more emphasis on environmental protection would be likely to apply a higher weighting to factors such as air quality effects and ecology and nature conservation than to reductions in journey times or enhancements to economic growth potential. The rationale behind the chosen weighting is based on the objectives of the scheme. We regard this as a logical and fair approach. We also note that, in regard to some of the issues that most concern those who are opposed to the proposed scheme or to the preferred route, such as air quality and noise / vibration, there is generally little to differentiate the different options. This means that, even if the weighting given to those factors had been increased, the outcome of the process might not have changed. As an example, if the weighting given to agriculture and forestry had been raised to 20 (making it a main criterion) to reflect the concerns that were expressed by the Auldearn Residents Group, route option 2E for the Nairn bypass section would have remained the preferred option.

2.240 A number of objectors raise concerns that the design changes that were made at DMRB Stage 3, such as to the Balloch junction or to the section north of Auldearn were so significant that they undermine the comparative assessment process that was undertaken at Stage 2.

2.241 We explored the issue of flood risk in some detail in the inquiry. This was in response to concerns by some living to the north and west of Auldearn that the route option that was selected at DMRB Stage 2 ran at a much lower level than the final design that is now being promoted. The concern raised was that this elevation of the road level was prompted by a belated recognition of the extent of fluvial flooding in this area, which ought to have been recognised at the route selection stage and properly fed into the comparative assessment.

2.242 During Inquiry Session 1, TS's flood risk and engineering experts confirmed that flood risk in the vicinity of the Nairn East junction had been part of the reason for its redesign. This is confirmed in [TS225](#). They explained that they had been aware of the presence of flood risk in the locality, but that SEPA flood maps, which had been relied upon, were amended by SEPA after DMRB Stage 2. They confirmed that a detailed flood risk assessment was carried out at DMRB Stage 3, which we note at [ES Appendix A13.2](#) (CD006).

2.243 Both TS's flood risk and engineering experts confirmed that DMRB Stage 2 options are pre-mitigation. Given their knowledge of the flood risk issue, this was identified and it

was known that it could be mitigated. At Inquiry Session 1 Mrs Bailey queried why a road in cutting was proposed given prior knowledge of a flood plain. TS's flood risk expert explained that no route was without water environment implications or water crossings and that the issue was how to mitigate rather than purely the presence of the risk. We accept that local topography does not necessarily mean that a trench with a road in would fill with water during a flood event. The issue, as noted by TS's flood risk expert, was the potential loss of functional flood plain. A mitigation measure could have been the replacement of this elsewhere, albeit that this would have needed further consideration at DMRB Stage 3.

2.244 DMRB Stage 2 options did not include mitigation and so each route option was directly comparable in that sense. DMRB Stage 3 includes mitigation and also realignment works. It is therefore not directly comparable with DMRB Stage 2 options.

2.245 The [DMRB Stage 2 Scheme Assessment Report Figures 13.7b](#) (CD013) shows the south eastern roundabout of the then proposed Nairn East Junction to be located in an area of flood risk. [Figures 13.1 to 13.9](#) (CD013) also confirm TS's assertion that no route was without at least some flood risk issues. [ES Figure 13.1d](#) (CD007) shows that the relocation and redesign of the junction avoids the area of flood risk. This suggests that sufficient recognition was given to flood risk.

2.246 Our conclusion from the inquiry evidence is that the raising of the road level in the vicinity of Auldearn was due to the redesign of the Nairn East junction. While some of the design constraints on that junction are flood risk related, there is no evidence to support the claim by some residents that changes to the proposed scheme after DMRB Stage 2 were due to a failure by TS at Stage 2 to understand the risk of flooding from the Auldearn Burn on the section of the route between the Nairn East junction and Auldearn. The evidence confirms that it was known at that stage that options 2A, 2B, 2F and 2H, as well as the preferred option 2E, would have faced particular challenges from flooding and that this issue was factored into the assessment process.

2.247 Public feedback following the preferred route selection in October 2014 also raised a variety of other matters in this locality which were considered in a consistent manner in TS225 alongside flood risk. As described in TS209 Section 4.8 and TS225, these matters included public access (including for NMUs) along the B9111, retention of local recreation facilities, avoidance of utilities including power lines and retention of the Auchnacloch underpass, amongst others.

2.248 Critically, there is no evidence to suggest that the proposed road would be at risk of flooding or that any property close to it would have its flood level raised by more than a negligible amount as a result of the proposed scheme.

2.249 The other point that was raised in connection with the increase in height of the road level at this point is that, whatever the reason for the increase, fuller consideration should have been given to the effects of such a change on local residents. Our consideration of effects on residents in this area is set out in Chapter 8.

2.250 Turning to the issue of materials use and the generation of waste, we note that at DMRB Stage 2, a prediction was made for each of the route options of the volume of imported materials that would be required, the cost of structures and the potential sources of waste. This information is set out in [DMRB Stage 2 Scheme Assessment Part 3, Chapter 17](#) (CD011).

2.251 For the Inverness to Gollanfield section, imported materials volume predictions ranged from just over 2 million cubic metres for option 1C (MV) to approximately 2.7 million cubic metres for option 1B (MV). For the Nairn bypass, the option with the lowest predicted imported materials requirement was option 2E at just over 1 million cubic metres. The highest figure was for option 2C at 2.2 million cubic metres.

2.252 The predicted cost of structures at Stage 2 for the Inverness to Gollanfield section ranged from £8.0 million for option 1C (MV) to £10.4 million for option 1B. For the Nairn bypass, option 2B had the lowest predicted structures cost at £31.0 million. Option 2H was predicted to have the highest structures cost at £39.2 million. For option 2E, which became the preferred option, the estimate was £34.6 million.

2.253 Potential sources of waste for each option were analysed at DMRB Stage 2 by estimating the number of buildings to be demolished, the area of woodland to be cleared and the number of contaminated land sites that would be directly affected. Building demolition was not predicted to be a significant differentiator, as the variation between route options ranged only from zero to one. With regard to loss of woodland, for the Inverness to Gollanfield section, option 1A would require the smallest area of woodland removal (7.8 hectares). The highest option was 1D (MV) at 15.1 hectares. Option 1C(MV), which was to become the preferred option was predicted to require 8.3 hectares of woodland to be removed. With regard to contaminated sites, option 1C(MV) would directly affect the fewest (8 sites). The highest figure was for options 1B and 1D (14 sites directly affected).

2.254 For the Nairn bypass section, no buildings would require demolition in any option. Option 2I would require the least woodland removal (19.6 hectares). The highest figure was for option 2C (43.4 hectares). Option 2E, which was to become the preferred option, was predicted to require 21.8 hectares to be removed. Options 2E, 2F and 2G were predicted to directly affect the lowest number of contaminated sites (6 in each case). The maximum values were recorded for options 2A, 2B and 2C at 13 sites.

2.255 The later assessment of the chosen route options (1C (MV) and 2E) can be found in [ES Chapter 17](#) (CD005). This sets out in greater detail a breakdown of all sources of materials and waste for the chosen options. It also relates to the route design as it had evolved, rather than to as it was outlined at Stage 2.

2.256 [ES Table 17.9](#) (CD005) estimates the volume of construction materials likely to be required for the proposal (sections 1C (MV) and 2E combined). The volume of bulk earthworks (soils and/or rock) is estimated at 5.1 million cubic metres. In [ES Table 17.10](#) (CD005) the estimated net import and export quantities of earthworks materials are stated. This excludes site-won material that can be reused on the project. Figures of 2.9 million cubic metres of imported earthworks material and 90,000 cubic metres of unsuitable material to be exported from the site are given.

2.257 From our analysis of the evidence, while it is not possible to compare all of the estimates directly between DMRB stages 2 and 3, due to the ES considering the proposal as a whole rather than breaking it down into the Inverness to Gollanfield and Nairn bypass sections, it does not appear that there has been any significant divergence between the levels of materials usage and waste generation overall that were predicted at DMRB stages 2 and 3. It may be the case that, for the Nairn bypass section, the chosen option (2E) in its revised form would require more than the stage 2 estimated 1 million cubic metres of imported material. However, there is no evidence to suggest that this issue would

have affected the overall assessment of the different route options at DMRB stage 2 – materials usage being but one of a large number of considerations. We also find that, in relation to materials usage, the proposed scheme needs to be considered as a whole, as materials arising in one part of the project where they are not required can be used elsewhere where there is a deficiency.

2.258 The evidence confirms that an initial sifting process at DMRB Stage 1 for the A96 dualling Inverness to Aberdeen project considered a wide range of potential solutions to the desire to link the two cities. This can be seen in the [DMRB Stage 1 Assessment report](#) for that project (CD018.01). It was at this stage that TS rejected the option of following the straightest possible link between the cities rather than one more closely aligned with existing settlements. We agree with TS that such a proposal would have left settlements such as Nairn with significantly poorer access to the new road, contrary to the scheme objectives.

2.259 We agree with TS that the existence of land to the south of Nairn that is referred to by a number of objectors as having development potential does not justify route option 2H or a similar route that would run further to the south of the proposed scheme, avoiding such land and potentially enhancing its development potential. We find that TS properly considered the status of this land and that its conclusions were justified. These matters are also considered in Chapter 6.

2.260 The stated purpose of the Nairn bypass is to remove through-traffic from Nairn by means of 'bypassing' the town. It is also intended to form part of a continuous dual carriageway between Inverness and (ultimately) Aberdeen. The MFTM evidence considered above, suggests that the bypass would be successful at removing most Nairn through traffic. This is confirmed in [ES Figures 2.1 and 2.2](#) (CD007).

2.261 The Nairn East junction is designed to facilitate access to Nairn from the east via the dual carriageway. [ES Figure 4.1j](#) (CD007) shows this would be the case. It also shows that traffic using the A939 could continue to do so. A939 traffic could also travel to/from the Nairn East junction via the B9101/B9111 or via the A939/existing A96 junction, as it could presently. It also shows that traffic from west of Nairn could bypass Nairn and use the Nairn East junction or use the Nairn West junction and existing A96 and, potentially, the modified C1136, B9091, C1170 and/or B9090 roads.

2.262 The reduction in Nairn through-traffic also has the potential to make other journeys within Nairn easier and to improve the environment of Nairn. Grigorhill Industrial estate forms part of Nairn and, therefore, the need to access it and nearby locations from the Nairn East junction or existing local roads does not constitute a failure of the proposed scheme.

2.263 The evidence does not suggest a need for local road improvements as a result of the proposed scheme besides those already identified in the [draft SRO](#) (CD003). The need for additional road improvements for new development in Nairn is covered by the [IMFLDP](#) paragraph 4.39 (CD062).

2.264 While these factors demonstrate that the bypass only provides access to Nairn at the eastern and western ends, this does not, in our view, demonstrate that it would fail to serve Nairn properly. Having regard to the aims of the proposed scheme, we agree with TS that it is not essential that the proposed Nairn bypass provides alternative access routes for existing traffic generators within the town such as the Grigorhill Industrial Estate or provides

slip roads to serve potential development sites. We can understand the attraction of seeking to resolve all of the town's traffic issues in one go. However, that would take the project well outside its intended scope. We agree with TS that the proposed scheme would allow the potential for some local traffic to bypass the town centre using the proposed link between the existing A96 Delnies junction and the C1170.

2.265 We accept the point made by Mr McCulloch that retaining access to public transport facilities (in this case bus routes / stops in particular) does not guarantee that such facilities will continue to exist in the future - operators may decide to withdraw services despite the proposed scheme having been designed in order to accommodate them. However, we do not agree that this undermines the route selection process that TS undertook in which the maintenance of access to bus services was a consideration. The future willingness of a public transport provider to operate a particular service may be impossible to predict, but we do not consider that this lessens the importance of maintaining the potential for continued public transport access and taking that factor into account when considering route options.

2.266 Turning to the question of whether the proposed scheme should have been terminated between Nairn and Auldearn rather than extending to Hardmuir, we find it essential to bear in mind the Scottish Government's commitment to dualling the entire extent of the A96 between Inverness and Aberdeen. This means that the question of how (and where) to route a dual carriageway past Auldearn would not have been avoided by such a modification to the proposed scheme; it would merely have been postponed. There is no evidence to undermine TS's conclusion that terminating this proposed phase of the Aberdeen to Inverness route at Hardmuir allowed for the consideration of a wider range of potential route options around Forres and also for the Nairn bypass section and we find no justification to recommend that Ministers modify the draft Orders to terminate the proposal to the west of Auldearn. We deal below with road safety issues which have been raised in respect of the proposed Hardmuir junction as well as for other parts of the proposal.

Inappropriate use of DMRB

2.267 The Design Manual for Roads and Bridges (DMRB) (CD049) provides a set of standards and advice across the UK relating to the design, assessment and operation of trunk roads. It is not a set of rules that must (or even could be) followed precisely on all occasions. Rather, it provides a consistent and evidence-based framework for road assessment and design, in which processes, professional judgement and the consideration of site- and proposal-specific issues remains essential. Certain provisions within the DMRB are contained within a bold box, meaning they are mandatory. However, departures can be applied for where justified.

2.268 The DMRB expects trunk road proposals to be assessed in three stages. Stage 1 is a strategic assessment of the issues and the justification for any improvement strategy. Stage 2 is development and assessment of different route options for the proposed road and the identification of a preferred option. Stage 3 takes the preferred option and develops it further so that it can be subject to EIA and can be used to inform the drafting of CPOs and other orders.

2.269 We find no evidence that TS has used DMRB inappropriately. Each stage of the project has followed the expectations of DMRB, including the carrying out of a number of independent audits of issues such as road safety and the traffic and economics analysis.

2.270 The proposed scheme incorporates several departures from DMRB standards. These are set out in documents TS217 and TS218. In accordance with DMRB these departures were applied for and granted. The fact of their existence tends to disprove the suggestion that TS considered itself bound by DMRB to the detriment of the proposed scheme design.

Road safety

2.271 The evidence suggests that the proposed scheme should deliver tangible road safety improvements, through its adoption of a Category 7A standard and from the removal of through-traffic from the centre of Nairn.

2.272 We conclude in Chapter 8 that the proposed road layout at the eastern end of the proposed scheme including the at-grade junction at Hardmuir would not have an adverse impact on road safety. If the proposed scheme and the subsequent section from Hardmuir heading east (currently in the design stages) goes ahead, this junction would either prove to be a temporary solution or might not even be employed at all. However, it is clear from the evidence that it has not been designed to any lower standard than if it had been intended to remain a permanent feature. The design details of the proposal were discussed in some detail during the inquiry, but we heard no argument to convince us that TS's position that, in all respects, it achieves the highest standards in DMRB, was inaccurate or unreasonable.

2.273 We can understand why those living close to the proposed scheme might have concerns over road safety during the construction period – the proposal represents one of the biggest engineering projects in the area in living memory. However, the evidence confirms that TS has already developed outline proposals for how construction and other traffic would be managed and we find no evidence to support a conclusion that there is anything particularly challenging about this proposal that would make it likely that a safe and suitable arrangement for traffic management during the construction process could not be developed.

The engagement process

Objections

2.274 Mr McCulloch is dissatisfied that he was denied access to baseline information and larger scale or electronic copies of the scheme drawings.

2.275 OBJ/060 Mr Allan and Mrs Lorna Robertson and OBJ/052 Ms Sheena Fraser and Ms Ann Hulse each consider that the draft Orders are misleading as they refer to dualling of the A96 rather than to building a new dual carriageway that does not use the existing A96. It is argued that many local residents may have assumed that what is proposed is similar to what has taken place on the A9, where the existing road has been widened rather than what is actually proposed – an entirely new road alignment that is closer to many homes.

2.276 Mr and Mrs Robertson suggest that public understanding would have been aided by the line of the preferred route being marked on the ground.

2.277 OBJ/129 Mr Stephen R and Mrs Elaine Bailey and OBJ/138 Mr Philip and Mrs Gillian Pullan believe that, in the Auldearn area, TS's consultant Jacobs did not properly engage with the public, but instead relied upon the views of Auldearn Community Council

which, they contend, are unrepresentative of public opinion. They state that the community council's representation raised constraints upon taking the route to the south of Auldearn but did not mention the constraints that exist to the north such as the flood plain. Mr and Mrs Bailey believe that the community council's late publication of its representation denied members of the public the opportunity to make their own (contrary and alternative) objections to TS at DMRB Stage 2.

2.278 OBJ/112 etc. The Auldearn Residents Group, submitted documents AGrp2 to AGrp6 and AGrp8, which include reports from the time and complaints made to The Highland Council about the community council.

2.279 Mr and Mrs Bailey claim that TS has sought to design the proposed scheme to suit those from whom land would be compulsorily acquired at the expense of those living very close to route who would be most affected and who would have only very limited rights to claim for harm to their amenity. They believe that there was greater engagement with users of local woodland and dog walkers than with those living closest to the proposed route. They also feel that the public inquiry was the first opportunity for their views to be listened to.

2.280 Mr and Mrs Bailey contend that, due to what they believe was a breakdown in communications between TS and its representative, to whom they made requests for design changes, an opportunity to re-design the route so as to improve its impact on near neighbours, was lost. They say that consideration was only given to their views after the proposed scheme design had progressed to a point where meaningful changes were unlikely to be made.

2.281 A number of objectors suggest that changes that were made to certain parts of the proposed scheme at DMRB Stage 3 were too significant to be regarded as the development of the design that had been selected at Stage 2. Instead, they contend that the revisions to the preferred route effectively created a new route that should have been reassessed at DMRB Stage 2 against other options to see whether it remained the best option. TS's 'failure' to do this is regarded as an example of inadequate public engagement by some of the objectors. As these types of objection have been made in respect of individual sections of the route, we have addressed the specifics of these during subsequent chapters of this report.

Transport Scotland's response

2.282 TS considers that the published reports, which include the DMRB Stage 2 and Stage 3 Scheme Assessment Reports and the ES, contain all the relevant information required by affected parties to understand and examine the baseline information and the scheme proposals. It states that it undertook a rolling programme of engagement with local communities and other stakeholders, which started with the November 2013 DMRB Stage 2 route option consultation.

2.283 TS confirms that further public exhibitions and other information events took place at key stages in the design development of the proposed scheme in October 2014 (preferred option announcement), August 2015 ('Meet the Team'), February 2016 (DMRB Stage 3 design development update) and December 2016 (draft Order publication). Throughout the scheme development process, TS states that it received feedback from

local residents, landowners, property owners and other stakeholders which was carefully considered as part of the scheme design development.

2.284 TS submits that, having regard to the level of engagement undertaken, there can be no question of having misled the public as Mr and Mrs Robertson suggest. It points out that at the public exhibitions, the route of each option and the extent to which it would be on the line or off the line of the existing A96 were presented, with representatives of TS on hand to explain and discuss the proposals with any interested party.

2.285 TS states that Auldearn Community Council engaged with it through the public exhibitions and also through its programme of Community Council Forums. However, TS was fully aware of the concerns of those to the north of Auldearn who did not agree with the position taken by Auldearn Community Council in its letter of 23 January 2014. TS states that the views expressed by Auldearn Community Council did not unfairly influence the route option assessment process.

2.286 TS does not accept that it failed to engage with those who would be affected by the proposal. It states that its approach to route selection and design was to minimise the number of residential properties that would need to be acquired and also to minimise the extent of land acquisition from domestic gardens of residential properties. TS accepts that, in a number of places, the proposed scheme passes close to existing properties. For such properties, it assessed the requirement for environmental mitigation in the ES.

2.287 TS refutes the claim made by Mr and Mrs Bailey that the public inquiry was the first opportunity for their views to be heard. It states that it listened to the views of all parties throughout the development and design of the proposed scheme. It highlights the difference between listening to and considering objections and representations, and modifying the scheme to satisfy them. The fact that TS was not persuaded by a particular objection does not, it says, mean it ignored the objection.

2.288 TS states that mitigation proposals for affected properties were developed based on the outcome of the EIA in accordance with the requirements of DMRB, other relevant regulations and guidance, and based on the professional judgement of the specialists who carry out the EIA. Where possible and reasonably practicable, TS states that potential adverse environmental impacts of the proposed scheme were prevented through an iterative approach to the design process, rather than relying on additional abatement measures to mitigate the effects. Where complete prevention of potential effects was not feasible, it argues that measures have been proposed to reduce potentially significant effects through abatement measures either at source, at the site (e.g. visual screen planting and landscaping), or at the receptor (e.g. design of culverts).

2.289 TS states that, while public feedback is taken into account, it is not normal procedure to engage in detailed public consultation on every aspect of its mitigation proposals in advance of the ES being published. In addition, in the interests of fairness, it has sought to apply a consistent approach to mitigation for all affected properties rather than engage individually with all parties living close to the route.

2.290 TS argues that engineering drawings of the proposed scheme at 1:2500 scale on A1 sheet size support both the Stage 2 and Stage 3 Scheme Assessment Reports and the ES is supported by a detailed series of environmental figures (each of which is and was available on the Transport Scotland website).

2.291 TS states that it was not possible for it to mark the position of the preferred route on the ground as it does not own or have control of the land at this stage.

Findings of fact

2.292 While it may be true that, in the early stages of the project some parties did not feel able to access sufficient information on the proposals, there is no evidence to suggest that TS or its consultants withheld access to information. On the contrary, it appears that widespread publicity for the proposals was undertaken and that TS was willing to provide detailed oral and written responses to all who had objected to the proposed scheme, setting out its response to their concerns.

2.293 We do not accept that the way in which the proposed scheme has been described and publicised by TS was likely to have misled people that what is proposed is an on-line upgrading of the road rather than a largely off-line replacement road. From the first public exhibition in February 2012, it would have been clear to anyone who had wished to find out about the proposal that several options were being considered including some that involved off-line construction. We do not consider it reasonable to criticise TS's engagement if a local resident or business owner decided not to investigate the precise details of the proposal due to an erroneous assumption that it would inevitably follow the on-line approach that has been taken to widening various sections of the A9.

2.294 In the Auldearn area, we accept that the views of the community council do not reflect those of many local people. In Inquiry Session 1, Mrs Bailey stated that 99% of the community opposed the community council's DMRB Stage 2 response. We cannot test the accuracy of that statement and we note that there was some support for the chosen route north of Auldearn from residents of the village itself. However, we understand these frustrations. Nevertheless, it is not the role of this inquiry to scrutinise the decision making procedures of a community council.

2.295 It is to be expected that there will be a range of views within a community. A community council conveys the majority view of its members rather than of the local community, and it is clear that TS treated it as such and did not assume that the entire community of Auldearn and the surrounding area concurred with those views. It seems unlikely that potential objectors to the proposed scheme would not submit their own objections or representations simply because they assumed that the community council would convey views with which they agreed.

2.296 The evidence supports TS's statement that it listened and responded to the objections of local residents and that it is inaccurate to state that, only at the public inquiry, did such parties have their views heard. The file contains many examples of detailed correspondence between TS and objectors, along with evidence in some cases of meetings having taken place. The fact that this process may not have secured changes to the proposed scheme that the objector desired does not mean it did not take place or was not handled appropriately by TS and its consultants. Our impression is that TS took the objections and representations seriously into consideration.

2.297 The [Auldearn Residents Group rebuttal precognition](#) for Inquiry Session 1 argued that only 11 weeks was allowed for the consultation on the draft Orders, including the Christmas period. TS argued that this was satisfactory since it allowed consideration of the draft Orders and related material, feedback and time for the project team to consider and

respond. TS also argued that there is no statutory limit. This is correct, though we note that the [Acquisition of Land \(Authorisation Procedure\) \(Scotland\) Act 1947](#) (CD021) Part 1, Section 3(2) specifies a minimum of 21 days for objections to be made to a proposed extinguishment of certain public rights of way over land which is or could be compulsorily acquired. Therefore 11 weeks (including Christmas) exceeds this and is not an unfair or unreasonable timescale for comment. We also note that TS accepted some comments after the January 2017 deadline.

2.298 We can understand the anxiety and frustration that residents who live close to the route might feel when the promoter of the proposed scheme was unwilling to make changes to it or to introduce additional mitigation that they consider essential in order to avoid significant changes to their quality of life. However, we accept that TS was not able to satisfy all who made objections or representations about the proposal and that, when considering the need to mitigate any residual effects from the chosen route, TS's adoption of a consistent mitigation strategy across the entire route rather than an approach based upon separate negotiation with each affected party was appropriate. This is because this ensured that mitigation was provided when and where justified by the predicted effects of the proposal rather than by the willingness or ability of a particular objector to argue their case.

The scrutiny process

Objections

2.299 OBJ/112 etc. Auldearn Residents Group and OBJ/129 Mr Stephen R and Mrs Elaine Bailey consider the proposed scheme is not in the public interest because, they argue, there is 'no public scrutiny and Scottish Ministers are the judge and jury'.

2.300 OBJ/129 Mr Stephen R and Mrs Elaine Bailey / the Auldearn Residents Group believe that it is TS's consultants Jacobs that have driven the project forward and they question what TS's role has actually been. Because Scottish Ministers have instructed TS, their agency, to carry forward this project, the objectors do not consider it fair or democratic for Scottish Ministers to assess the merits of the draft Orders.

2.301 Mr and Mrs Bailey / Auldearn Residents Group emphasise that, in line with the provisions of Article 1, Protocol 1 of the European Convention on Human Rights, supported by the relevant legislation in the Scotland Act of 1998, it is a fundamental freedom that all are entitled to peaceful enjoyment of their properties. They feel that so far, the treatment they have received from TS and Jacobs has demonstrated a 'total disregard for their rights'.

Transport Scotland's response

2.302 TS does not accept that the process of route selection and promotion has not been subject to appropriate scrutiny. It states that the process for promoting a Trunk Road scheme is set out in relevant legislation including the Roads (Scotland) Act 1984 (CD020) and the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (CD021).

2.303 TS confirms that the Roads (Scotland) Act 1984 sets out the circumstances in which Scottish Ministers are required to hold a public local inquiry. In those circumstances, a Reporter will be appointed to consider objections made and not withdrawn. It argues that that has happened in this case.

2.304 TS also advises that the proposed scheme is required by the [Town and Country Planning \(Environmental Impact Assessment\) \(Scotland\) Regulations 2011](#) to be environmentally assessed, leading to the production and publication of an Environmental Statement (ES).

2.305 TS confirms that the Scottish Ministers are required to take into consideration the ES, the consultation responses and representations (which includes both objections and support) from third parties on the ES or the proposed scheme before reaching a decision on whether or not to grant the 1984 Act statutory consents.

2.306 TS recognises that it would be unlawful for the Scottish Ministers to act in a way that was contrary to The Human Rights Act 1998, which incorporates the European Convention on Human Rights (ECHR) into UK law. However, it does not agree with objections that contend that the proposal is incompatible with Article 1, Protocol 1 of the ECHR.

2.307 In the submission of TS it will be for Ministers to reach a view (informed by our findings of fact on the evidence and by legal advice) whether making of the draft Orders would amount to a violation of Article 1, Protocol 1. However, it has set out its views on the matter in response to the objections.

2.308 Article 1, Protocol 1 states:

‘Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contribution or penalties.’

2.309 TS accepts that, where property is acquired by compulsory purchase, this would amount to expropriation of that property by the state which would engage Article 1, Protocol 1 and require the proposal to be justified under the terms of the legislation.

2.310 For property that would not be acquired but which might be affected by the proposal, TS accepts that Article 1, Protocol 1 might be engaged, depending upon the extent to which there would be an interference with the peaceful enjoyment of the property.

2.311 Where Article 1, Protocol 1 was engaged, TS recognises that the actions of the state (Scottish Ministers) would need to be justified in terms of: meeting the test of legal certainty; having a legitimate aim to satisfy the general or public interest; and demonstrating a reasonable degree of proportionality between the means selected and the ends that are sought to be achieved.

2.312 With regard to the legal certainty test, TS refers to the proposed scheme being promoted under the Roads (Scotland) Act 1984 and The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947, and relevant procedural rules enacted thereunder.

2.313 TS states that the proposed scheme has a legitimate aim and that it is in the public interest that it be constructed.

2.314 TS contends that the proposals are proportionate having regard to:

- (i) the design and development of the proposed scheme;
- (ii) the consideration of alternatives;
- (iii) the environmental impact assessment;
- (iv) the consultation process;
- (v) the availability for compensation for compulsory acquisition and of Part 1 claims under the Land Compensation (Scotland) Act 1973, and
- (vi) the Public Local Inquiry process at which competing views were considered and assessed.

2.315 TS refutes the suggestion that the proposed scheme should be subjected to a further post-inquiry quality audit, as was suggested by OBJ/060 Mr Allan and Mrs Lorna Robertson. TS regards the public local inquiry as the appropriate forum in which to assess the route selection process at DMRB Stage 2, the design development at DMRB Stage 3 and whether the Orders should be made. TS believes that the public local inquiry was an open and transparent process which had the benefit of considering all the documents produced and of hearing expert evidence from its staff and consultants, as well as evidence from objectors. Therefore it believes there is no justification for any further process.

2.316 TS states that, ultimately, the Court of Session can be asked to review the process by way of an application to the Court. The process is therefore, in its view, one which involves independent scrutiny and satisfies the relevant legal requirements.

Findings of fact

2.317 [Circular 6/2011: Compulsory purchase orders](#), paragraph 17 (OBJ002-3.16) and document [AGrp025](#) (Toolkit from protocol number one detailing the fair balance test) make clear that the ECHR does not preclude compulsory acquisition of land for public infrastructure projects. Instead it expects this to be done by achieving a fair balance between the rights of the individual and the public interest. The expectation is that the acquiring authority properly assesses the public benefit in what it proposes against the impact on the people likely to be affected. It should also properly assess any reasonable alternative ways that it might realise its aims.

2.318 Concerns that have been expressed in regard to human rights appear not to doubt the legal certainty requirement or the requirement for the proposed scheme to demonstrate a legitimate aim to satisfy the general or public interest. Instead, it is claimed that the harm that would be caused to those who would be most affected as a consequence of the chosen solution is not proportionate to the issues that the project would address. We can understand those concerns, particularly in circumstances when those who fear they will be particularly affected by proposals might experience fewer benefits in return. However, when considered objectively, it is clear to us that TS has taken a consistent and fair approach to its assessment of how its proposals would affect those closest to the proposed route. We find no evidence to suggest that it has given inadequate weight to such issues or has failed to take a proportionate approach to the design of the scheme.

2.319 Ministers will no doubt seek legal advice on whether the necessary requirements have been met as a matter of law. However, on the basis of the factual evidence placed before us and considered by us, we believe, when the entire process to date is considered – including the public inquiry at which those affected by the draft Orders had the opportunity

to explain their concerns – that the procedural requirements of the ECHR and associated legislation have been met to our satisfaction.

Matters relating to the handover to The Highland Council of new and de-trunked assets

Representations

2.320 REP/144, REP/145 and REP/146 The Highland Council has not objected to the proposed scheme. However, it has raised concern at the extent of road assets that would be transferred to it, including not only the nine sections of de-trunked existing A96 totalling 29.1 kilometres in length, but also approximately 119 sections of proposed side roads totalling 18.6 kilometres. It raises specific concerns that it wishes to be resolved before it takes responsibility for new and de-trunked assets under the draft SRO (CD003) and draft Trunking/de-trunking Order (TDO) (CD002) respectively. This also includes several suggestions for improvement prior to hand over.

2.321 With regard to assets that would become The Highland Council's responsibility following de-trunking of the existing A96, the council makes the following representations:

- the Council requires information for the existing A96 and side roads that are to be transferred to it.
- the Council expects modifications to the existing A96 prior to transfer and this could include aspects such as, but not limited to: signs; changed speed limit; prohibition of motor vehicles; drainage; road markings; new cycle track; access gates; street lighting and signals.
- the Council currently seeks LED lighting on any road that it adds to the List of Public Roads. There is a significant length of urban section (Nairn) of the existing A96 (T) that would require street lighting to be upgraded prior to the asset handover.
- the Council would require signal controlled crossings to be provided as part of the change-over from Trunk Road to Local Road to ensure effective safer routes to school and an effective change in the 'Place and Movement' status of this road (Scottish Government Designing Streets Policy).
- road numbering would need to be amended and this would require changes to the existing List of Public Roads and also to existing direction signs. The Council expects that TS would fund the administration for these changes and also any amended road signs. The council argues that a signing strategy would be required and this should also include any tourism signs (brown signs) at appropriate junctions. The Council is keen to work with TS to achieve the best tourism signposting outcome.

2.322 The council identifies the following as possible errors and/or potential areas for modification in the draft TDO (CD002):

- the section of the existing A96 between point CE and the Tomhommie Road junction shown on draft TDO Plan TR3 (CD002) is indicated as being de-trunked and passed to the Council as part of the local road network. However, on draft SRO Plan SR11 this section of road is shown hatched as 218 which would be Stopped Up. The council highlights that it is expecting this section (1,800 metres) of the existing A96 would indeed be Stopped Up and any error in part 2 of the De-trunking Order would be corrected.
- in the vicinity of the McDermott's Road (U2218) the existing A96 is indicated as being de-trunked (shown on draft TDO Plan TR3 – CD002). However, there appears to be an

anomaly where there are sections of stopped up roads shown on draft SRO Plan SR12 (CD003) for hatched areas 220 and 223.

- the section of the existing A96 between point CA and CB shown on draft TDO Plan TR1 (CD002) (covering the section from Seafield Farm to Smithton Roundabout) is indicated that this would become part of the local road network. This section would provide access to a private property that previously took access from the trunk road. The council's Community Services Committee considers that this 0.5 kilometre section should be treated as a private access.

2.323 The council has the following comments on side roads in the draft SRO (CD003):

- new side roads are proposed in the vicinity of Seafield Farm shown on draft SRO Plan SR1 (CD003) with stippled areas 1, 2 and 3. These areas should not be treated as local roads but instead be 'private access' (see de-trunking section above).
- the arrangements at Mid Coul junction in the vicinity of Inverness Airport shown on draft SRO plan SR7 (CD003) do not show the non-motorised user (NMU) infrastructure that is proposed as far as the roundabout on the existing A96 (T) (point G on plan). The detail should be amended to reflect the current proposed NMU infrastructure and any additional changes arising from the response submitted by the Director of Planning and Development (on behalf of the Planning Development and Infrastructure Committee) about NMU infrastructure at this key junction.
- new side roads are proposed in the vicinity of Brackley junction shown on draft SRO Plan SR9 (CD003) with stippled areas 36, 37, 40 and 41. The Highland Council considers that the arrangements at these two private properties should be treated as 'private accesses' and not local roads.
- there is a change to the existing road layout shown on draft SRO plan SR14 (CD003). As part of this change a new structure crossing the railway is to be constructed. The Council highlights that this new bridge should remain with TS and the new local road would cross the railway over it.
- the changed road layout arrangements at Skene Park Cottages are shown on draft SRO plan SR18 (CD003) (areas 82 and 83). The modified side road will only serve the cottages and so should be treated as a private access.

2.324 The council has the following comments on stopping up proposals:

- there are parts of the B9006 at Brackley junction, south of the existing A96, which are proposed to be Stopped Up. These are shown as areas 208, 209 and 210 on draft SRO plan SR9 (CD003). These areas should be extended along the full length of the existing B9006 from a point in line with the proposed new road alignment to the south of the new A96 dualling. This would enable the old sections of the B9006 to become 'private accesses' for the two existing properties.
- the proposed arrangement at the Blackpark-Grigorhill-Newmill Road (U3310) (shown on draft SRO Plan SR19 (CD003) hatching 239) would result in a future situation where all traffic taking access to this location would need to enter Nairn via the existing A96 and A939. The Council considers that access for all road users should be provided to ensure connectivity and enable more direct journeys avoiding the need for longer trips through the urban area. TS is requested to amend the proposal and provide access, via an overbridge over the new A96 dualling

2.325 The Highland Council requests that, if possible, the Nairn Bypass element of the proposed scheme be progressed as a priority.

2.326 The council also notes that the new road would create physical severance between north and south, which would have a negative effect on public access to the outdoors. The most immediate impact would be during the three to four year construction period but would also persist beyond that. It expressed particular concern over the effect on NMU routes near Balloch, which are dealt with in Chapter 4.

Transport Scotland's response

2.327 TS acknowledges that the proposed scheme would add a significant length to The Highland Council's list of roads. TS states that it would provide asset condition information for the existing A96 as the council has requested. It confirms that, until the point of transfer, TS would retain responsibility for maintenance of the trunk road and that it is agreeable to the council's request for joint inspections of the assets to be transferred. That would also provide the opportunity for negotiation over the scope of works that TS would undertake prior to transfer such as the provision of new signage.

2.328 TS states that is willing to consider the points raised by the council over the de-trunking process.

2.329 With regard to the section of the existing A96 between points CA and CB, TS does not agree that this should become private access, as it would provide access to multiple properties. TS considers it should, therefore, be a local road, as is promoted in the draft Orders.

2.330 With regard to the council's queries over sections of the trunk road that appear to be both stopped up and transferred to the council, TS confirms that the trunk road would be stopped up and, as a consequence, removed from the trunk road network. However, these would not be transferred to the Highland Council. The Scottish Ministers would retain (or where being acquired, assume) responsibility for these areas going forward.

2.331 TS notes the council's request for sections of new side road between Seafield Farm and Smithton Roundabout (draft SRO Plan SR1 points a, 2 and 3) (CD003), in the vicinity of Brackley Junction (draft SRO Plan SR9 points 36, 37, 41 and 41) (CD003) and at Skene Park Cottages (draft SRO Plan SR18 points 82 and 83) (CD003) to be treated as private accesses. However, as these would each serve multiple properties, which currently have direct access to an adopted road, TS contends these should remain as local roads, as promoted in the draft Orders.

2.332 TS explains that NMU shared-use paths are not normally shown on road Orders plans. Certain exceptions apply and TS states it has followed a consistent and established approach.

2.333 TS does not agree that it should have responsibility for the railway crossing that would support the B9091 to C1163 Link Road (shown as number 65 on draft SRO Plan SR15 – CD003), as that route would be a local road of which the proposed structure would form a part. TS confirms that it did consider combining that crossing with the dual carriageway crossing of the railway (which would be TS's responsibility). However, that was rejected on grounds of cost and constructability.

2.334 In response to the Council's request that the B9006 be stopped up at Brackley junction so that it becomes a private access, TS confirms its position that, as this road

currently serves a number of properties which enjoy direct access to an adopted road, it would be inappropriate for this section of road to become a private access. TS contends that it should remain a local road, as promoted in the draft Orders.

2.335 TS does not agree with the Council that a new side road bridge over the proposed dual carriageway for Granny Barbour's Road (the Blackpark – Grigorhill – Newmill Road (U3010) is justified. It states that this road has low traffic flows where it is proposed to be stopped up, is narrow, has limited passing opportunities and is not therefore a feasible future alternative access into Nairn, in comparison with roads such as the A939 and B9111, which would continue to serve that purpose. TS also argues that a major utility close to the dual carriageway would also make any overbridge an expensive undertaking due to the need for a diversion.

2.336 In connection with the delivery of the proposed scheme, TS states that it is promoting the proposed scheme as a single scheme, although it accepts that it will be developed in stages. It notes the Council's preference that the Nairn Bypass section of the proposed route to be delivered early in the construction process and undertakes to work with the Council and other affected parties as it develops the contract documentation, should the draft Orders be confirmed.

2.337 TS states that it is inevitable that approximately 31 kilometres of new dual carriageway would have some effect on NMU provision – requiring paths to be stopped up or diverted. However, it argues that the overall benefit of the proposed scheme with its associated NMU provision significantly outweighs the perceived negative impacts associated with localised instances of severance, change in amenity or greater journey length. It points out that ES Appendix A16.6 (CD006) assesses the effect of the proposed scheme on 80 NMU routes. For the majority, the effect was found to be neutral / negligible or slight adverse / beneficial. For 15 paths, a moderate adverse effect was predicted and for only three would there be a substantial adverse effect. These are in the vicinity of Balloch, and are dealt with in Chapter 4 of this report.

Findings of fact

2.338 In the event that the proposed scheme goes ahead, a significant stretch of the existing A96 would be de-trunked, which means that future maintenance responsibility would transfer from TS to the Highland Council. The council would also assume responsibility for a number of side roads.

2.339 In a number of instance, we note that the Council believes that access routes which would serve a small number of properties should be provided as private accesses rather than local roads for which it would be responsible. However, bearing in mind the fact that such properties currently enjoy direct access onto an adopted road, it seems appropriate to us, as TS has proposed, that these properties should retain that benefit rather than either being obliged to assume joint responsibility for a shared private access or having to rely upon a right of access over land owned by Scottish Ministers when currently they have direct road access.

2.340 With regard to the council's queries over certain sections of the trunk road that appeared to the Council as being both stopped up and also transferred to the Council, we accept TS's explanation that these would not be transferred to The Highland Council but would be the responsibility of Scottish Ministers to maintain.

2.341 We also accept TS's explanation that NMU shared-use paths are not normally shown on road Orders plans and that the draft Orders are consistent with normal practice.

2.342 We agree with TS that the proposed railway crossing that would convey the B9091 to C1163 Link Road should (in conjunction with the road it would support) become the responsibility of the Council. It seems illogical to us and potentially problematic for there to be a division in the responsibility for this road crossing of the railway.

2.343 With regard to Granny Barbour's Road, we agree with TS that, once one has gone beyond the industrial units at the north western end of this road (to which access would logically be taken from Nairn) the road becomes a narrow and (in our experience at our site visits) lightly trafficked, country lane. It seems very unlikely to us that significant numbers of road users approaching Nairn from the south or heading away from the town in that direction, would chose this route over the nearby A939. Therefore, we see no justification for the draft Orders to be rejected on the basis that they propose this road to be stopped up where its route is crossed by the proposed dual carriageway rather than being provided with an overbridge that would have allowed access into and out of Nairn via this route.

2.344 In connection with the delivery of the proposed scheme, we note that TS will consider the preference of the Council (and a number of objectors) that the Nairn Bypass section is delivered at an early stage of the proposed scheme. However, we agree with TS that the best way for the proposed scheme to be developed will depend on a number of factors that cannot be finalised at this stage. Therefore, we do not find the aspirations for an early solution to the problems experienced in Nairn (however understandable they may be) to require any modification of the draft Orders.

2.345 With regard to effects on routes that are used by NMUs (including core paths), we note that ES Chapter 16 (CD005) confirms that the proposed scheme would deliver approximately 30 kilometres of new NMU route. We regard this as a significant improvement to NMU provision when compared with the existing situation. We accept that the proposed scheme would adversely affect some existing routes, particularly in the vicinity of Balloch (which we discuss in Chapter 4). However, we are satisfied that the net effect of the proposed scheme on NMU provision across the length of the route would be positive.

Representations from Scottish Government agencies

2.346 Three national agencies who were all statutory consultees – Historic Environment Scotland (HES), the Scottish Environmental Protection Agency (SEPA), and Scottish Natural Heritage (SNH) raised no objections to the proposal. However, each made representations that, for completeness, are addressed in this report. We have set out below, the representations of all three and the responses thereto from TS, followed by our conclusions.

Representations

2.347 REP/152 Historic Environment Scotland (HES) raises points of clarity with regard to the assessment of historic assets and the proposed Construction Environmental Management Plan (CEMP).

2.348 It notes that the title of asset 163 reported in the cultural heritage assessment (Possible Pit Circle) refers to the Highland Historic Environment Record site (MHG2832)

that does not reflect the entirety of the scheduled area. HES confirms that, while the description provided within [ES Appendix A14.1: Cultural Heritage Desk-Based Survey](#) (CD006) does relate to the monument it should also be noted that the same description has mistakenly been attributed to Asset No. 164 to the north.

2.349 These issues are of concern to HES, given the potential impacts on the scheduled monument within this area. HES confirms that:

- the scheduled monument in question comprises of four prehistoric roundhouses and lies in close proximity to a proposed new means of access (SR10 – 375 and 376) off the rerouted road proposal for the B9006. t
- the archaeological remains are visible as cropmarks, are currently under plough and lie within sloping ground to the east of the proposed new access road.

HES notes that the assessment considers that there would be moderate magnitude of impact on the setting of this site and that the significance of this effect is assessed as Moderate.

2.350 HES argues that the magnitude of impact associated with this intervention would rest on the ability to avoid disturbance of the scheduled archaeological remains either directly or indirectly. At this stage it is unclear to HES from the information provided what level of intervention would be required to facilitate this access. It notes that mitigation has been put forward that involves demarcating the scheduled area to avoid construction impacts. Given the uncertainties introduced into the assessment of this monument through the issues highlighted above, HES explains that TS would have to ensure that direct impacts on this monument are avoided. Should facilitating this access simply require an opening off the associated road proposal relating to the B9006 with no further engineering in the vicinity of the archaeological remains, HES would be satisfied with the mitigation offered. However, it remains unclear to HES whether any intervention required would lead to destabilisation of the archaeological remains adjacent to the access route. It is also unclear to HES the effect planting of mixed woodland as depicted in the Landscape and Ecological Mitigation plan [assumed to be referring ES Figure 9.5 – CD007] in such proximity to the monument could have through damage as a result of tree roots. HES would therefore welcome further details on this issue prior to the works being commenced in this area in order for the identified mitigation for this site to be delivered.

2.351 HES welcomes the inclusion of the specific mitigation measures for identified cultural heritage impacts as outlined in [ES Table 20.9](#) (CD005). It notes that there is no specific mention of the historic environment as part of the General Requirement Mitigation as outlined in [ES Table 20.1](#) (CD005). It considers that the proposed CEMP should advise of the constructors' responsibilities towards managing impact on the historic environment (either known or unforeseen) during the development and implementation of the proposed scheme. This would, it argues, reflect the requirements of the general mitigation strategy for the historic environment as stated in Mitigation Item CH1 of ES Table 20.9 (CD005). HES also considers that it would be important to recognise the avoidance of impact from such factors as roadside signage (either for diversions during construction or permanent signage for the new roads). It considers that these do not appear to have been considered as part of the assessment.

2.352 HES also confirms that:

- as part of its Dual Designation project, it has reviewed the listing of the Boath Dovecot and concluded that scheduling is the most appropriate mechanism to secure the preservation of this structure as a monument of national importance.
- the Dovecot is therefore no longer a listed building but remains part of the scheduling of this site.

2.353 HES notes that:

- no assessment has been carried out on land for construction compounds and welcomes the commitment in [ES paragraph 14.7.4](#) (CD005) that avoidance of impacts on designated assets as a result of construction related activity would be required in all cases;
- separate planning applications would be required for construction compounds outside of the land identified on the draft CPO, and confirms that any proposal for such a compound that would directly affect a scheduled monument would require prior written consent from HES, including any potential land acquisition scenarios noted in [ES paragraphs 4.8.10 to 4.8.12](#) (CD005).

2.354 REP/153 Scottish Environment Protection Agency (SEPA), in its letter dated 31 January 2017, does not object to the proposed scheme. However, in appendix 1 to that letter SEPA identifies the following issues:

- Water Framework Directive and the River Basin Management Plan;
- Groundwater dependent terrestrial ecosystems;
- Flood Risk, particularly regarding Cairnlaw Burn, Rough Burn, Tributary of Ardersier Burn, Auldearn Burn, Minor watercourses and SEC mitigation;
- Engineering activities in the water environment including hydromorphology;
- Mitigation items, including their contribution towards the water framework directive for water quality;
- Surface water drainage;
- Waste management;
- Impacts on peat;
- Groundwater including private water supplies;
- Invasive non-native species;
- Construction site licences;
- Air quality; and,
- Contaminated land.

2.355 In most instances it concludes that the proposed scheme would not present significant issues but reminds TS of the need to apply for licences such as Controlled Activities Regulations (CAR) licences for various activities. In some instances further technical information is sought, for example, relating to technical specifications for SuDS, water channels and related works.

2.356 SEPA also raised a series of points with regard to proposed waste management arrangements.

2.357 SEPA explains that Granish Landfill Site does not have sufficient capacity remaining to deal with the waste from the proposed scheme. SEPA notes that The Highland Council may consider accepting some subsoils for operational purposes and top soils for remediation if they were ready for doing a phase of restoration. SEPA argues that there is not space for stockpiling material. Furthermore, it points out that any peat waste (which falls into the definition of liquid waste) would not be accepted at this site or any other site operated by The Highland Council. It confirms that these are considerations for the Site Waste Management Plan (SWMP).

2.358 Following an exchange of correspondence between the parties (between May and July 2017), SEPA concluded that it is satisfied with the proposals and that it will continue its role through the development of material to support CAR and other licence applications for the proposed scheme.

2.359 REP/154 Scottish Natural Heritage (SNH) confirms that there are natural heritage interests of international importance on the site, but it does not consider that these would be adversely affected by the proposed scheme.

2.360 In relation to European Protected Sites, SNH advises that:

- the proposed scheme is likely to have a significant effect on a number of qualifying interests.
- an appropriate assessment would be required.
- it is content with the conclusions drawn in TS's Habitat Regulations appraisal (CD010).
- based on the information provided, the proposed scheme would not adversely affect the integrity of the site.

2.361 For European Protected Species (EPS), SNH confirms that:

- all species of bat are EPS;
- three roost sites, containing three species (brown long-eared, common pipistrelle and soprano pipistrelle) were identified within the proposal area.
- currently these roost sites are not scheduled for destruction or disturbance, but if this changes, a licence would be required;
- pre-construction surveys may identify new roost sites, and if so this should be dealt with through a species licence application;
- a Species Protection Plan should be completed and agreed with SNH prior to the commencement of works.

2.362 In relation to otter, SNH confirms that:

- Otter are EPS, and a number of resting sites were identified in the proposal area.
- the ES identifies that a Species Protection Plan would be produced.
- this should be agreed with SNH prior to works commencing.
- mitigation outlined in [ES Table 11.11](#) (CD005) should be included in this species protection plan.
- should works be planned within 30 metres of a holt or couch, a species licence would be required.

2.363 For other protected species, SNH confirms that:

- badgers are protected under the Protection of Badgers Act 1992;
- they are widespread along the A96 corridor and the survey work in the ES reflects that;
- two setts have been marked for destruction, and two artificial setts are proposed;
- this would require a licence, and should be discussed with the SNH licensing team at the earliest opportunity;
- the licence application would be informed by both the survey work and a species protection plan which should be prepared (mentioned in the ES as mitigation item E2);
- red squirrel are protected under the Wildlife & Countryside Act 1981 (as amended);
- the surveys within the ES record a number of red squirrel signs, but no dreys were recorded;
- pre-construction surveys should be carried out for all suitable woodland that would be felled;
- if dreys are found, a species licence should be sought; and,
- a species protection plan should be agreed with SNH prior to work commencing.

Transport Scotland's response

2.364 In response to REP/152 HES, TS acknowledges the error, and confirms that relevant updates will be incorporated in future documents relevant to the Asset, to remove any confusion with the Highland Historic Environment Record site MHG2832.

2.365 TS confirms that:

- it would be possible to locate the proposed new means of access a greater distance from the Scheduled Monument (Asset 163), while complying with the draft SRO (CD003);
- the minimum distance between the Scheduled Monument and proposed works would now be 2.75 metres (previously 1.5 metres). A 2.0 metre offset between the proposed works and the CPO boundary would be maintained, and therefore a gap of 0.75 metres would now exist between the CPO boundary and the Scheduled Monument;
- in order to avoid potential damage from roots, there would be no planting undertaken between the proposed new means of access and the Scheduled Monument;
- the Scheduled Monument would be demarcated and fenced off during construction.

2.366 Regarding the removal of the Category B Listed Building designation of Boath House Dovecot (Asset 313) through the Dual Designation project, TS confirms that it will update its records to take this into account.

2.367 Regarding the Auldearn Battlefield, TS confirms that it will explore the proposed mitigation and compensatory measures with The Highland Council's Historic Environment Team and TS's archaeological advisor.

2.368 TS acknowledges the need to avoid impacts on designated assets as a result of construction activity, with reference to ES paragraph 14.7.4 (CD005).

2.369 TS confirms its understanding that:

- separate planning applications would be required for construction compounds outside of land identified in the draft CPO.
- any proposal for a compound that directly affected a scheduled monument would require prior written consent from HES, including potential land acquisition scenarios noted in ES paragraphs 4.8.20 to 4.8.12 (CD005). [The reporters assume that TS's reference to ES paragraph 4.8.20 is a typing error that should refer instead to ES paragraph 4.8.10].

2.370 TS confirms that the CEMP would advise of the constructor's responsibilities towards managing impacts on the historic environment (both known and unforeseen) during the development and implementation of the proposed scheme. In addition, TS confirms, the CEMP would include requirements to site temporary signage in a way that avoids direct impacts on Scheduled Monuments.

2.371 No specific additional response was made to SEPA's representations, given that all issues have been resolved to the parties' mutual satisfaction.

2.372 Similarly, with regard to SNH, no further response was made by TS, reflecting the agreement between the parties.

Findings of fact

2.373 We note that HES (Appendix 3 of this Report) does not object to the proposed scheme because it concludes that the draft Orders would not bring adverse consequences for the historic environment.

2.374 HES has considered the impacts of proposed mitigation on the identified assets above and reaches the same conclusions as the ES. This supports our conclusion that the ES has reached appropriate conclusions in respect of this historic environment and that it is not deficient.

2.375 TS acknowledges the labelling error regarding Assets 163 and 164 in its response to HES (dated 31 July 2017). However, we find no evidence to suggest any failure to consider the impacts of the proposed scheme (and indeed, HES does not suggest this). There is, therefore, no reason to conclude that the ES is deficient or that it has failed adequately to consider the impacts of the proposed scheme.

2.376 We note from its response to HES (dated 31 July 2017) that TS is willing to move the proposed new access further away from Asset 163 and to avoid any planting between the two. It also proposes that the Scheduled Monument would be demarcated and fenced off during construction as stated in [ES Table 20.9](#) (CD005) under the third entry for Mitigation Item CH1.

2.377 This suggests that it would be possible to meet both the requirement for a new access and the protection of the scheduled monument without one compromising the other. This appears to meet with HES's wishes.

2.378 We are satisfied that HES's decision to remove the Category B listed building designation from Boath House Dovecot (Asset 313) through its Dual Designation project is a change in recording that does not undermine the ES or its conclusions.

2.379 Neither party disputes that any proposal for a construction compound, even those described in [ES paragraphs 14.7.4 and 4.8.10 to 4.8.12](#) (CD005), would require prior approval from HES in the event that they affect a scheduled monument. This does not conflict with how the ES addressed this issue.

2.380 ES Table 20.1 (CD005) identifies the need for a CEMP but this does not specifically identify a need to advise the constructor of their responsibilities towards managing impacts on the historic environment (known and unforeseen) during the development and implementation of the proposed scheme. In its response to HES (dated 31 July 2017) TS commits to include requirements to site temporary signage in a way that avoids direct impacts on Scheduled Monuments. This appears to be a reasonable manner of achieving the outcome sought by HES. The ES would form part of the construction contract and would therefore be covered by the TS's appointed onsite overseer (Jacobs) and be binding on the contractor. As such this would also ensure that sensitive cultural heritage assets identified therein along with any proposed mitigation would also form part of the contract.

2.381 With regard to the matters raised by REP/153 SEPA, these appear to have been the subject of a series of technical clarifications based on the correspondence between the two parties (Appendix 3 of this Report). We note from that correspondence that TS has provided sufficient clarity to satisfy SEPA. Our consideration of that information does not suggest any deficiency in the ES and its consideration of matters that were of interest to SEPA. Both parties appear to have an understanding of the need for specific licencing processes to take place, as appropriate, and for the requisite information to be provided. As such we are satisfied that there are no further matters to resolve.

2.382 With regard to the submissions from REP/154 SNH ([TS266](#)), SNH does not object and there appears to be no dispute between the parties regarding the further advice it has provided. Both parties recognise the need to ensure that the mitigation measures identified in the ES are fulfilled and the requisite licencing arrangements are in place, where appropriate and necessary. We are satisfied that there are no matters to resolve.

The proposed contracting arrangements for drainage and other engineering works

Objections

2.383 A consistent theme across many of the objections, particularly from farming respondents, is TS's proposal to defer the final design of proposals for drainage and other works to the contractor who would be carrying them out. Objectors are concerned that it makes it more difficult for them fully to understand the implications of the proposal at this stage and could allow the contractor too much flexibility or the potential to 'cut corners'.

2.384 As these objections are based upon site-specific issues, we have addressed them in full detail in later chapters of this report and have only covered them briefly here.

Transport Scotland's response

2.385 TS states that it intends that the proposed scheme would be procured by means of a Design and Build (D&B) contract. It confirms that the contractor would undertake the detailed design and construction of the proposed scheme. However, the design and construction would be required to be in accordance with the relevant statutory documents approved for the proposed scheme including the ES, the constraints imposed by the ES,

the Schedule of Environmental Commitments (containing the mitigation identified through the EIA process) set out in [ES Chapter 20](#) (CD005), and the statutory Orders. TS also confirmed that its consultant Jacobs would be on-site during the construction process.

Findings of fact

2.386 We agree with objectors that, whatever is agreed in terms of mitigation or accommodation works with TS, ultimately their interests will only be protected if the contractor who carries out those works, actually delivers what the objector was expecting to an appropriate standard and in a timely manner. However, as TS points out, the appointed D&B contractor will not simply be able to ignore the approach to scheme design and mitigation that TS has taken (often in direct consultation with affected parties) because they will be constrained by the requirement to accord with the proposed scheme that has been environmentally assessed.

2.387 It would clearly not be in TS's interests to allow the contractor's approach to raise questions over the validity of the EIA process and we are confident that its appointment to a contractor supervisory role of the same advisor who prepared the ES and has taken the project through the inquiry process, should ensure that the contractor is not able to vary the scheme design in a way that would materially worsen its environmental effects. Our consideration of these specific concerns, as raised by individual objectors, is covered separately for each objector in the subsequent chapters of this report.

Work Health Organisation (WHO) noise guidelines 2018

2.388 At the start of the inquiry TS advised that the Work Health Organisation (WHO) had recently published guidelines on noise (CD140). TS advised that the proposed scheme's noise mitigation strategy would not be modified to address these new guidelines. We gave TS the opportunity to explain the reasons for this, both at the inquiry and subsequently, and then allowed other participants the chance to set out their views in writing once they had had the chance to read the guidelines and consider TS's position.

2.389 TS's position is that neither the noise impact assessment nor the noise mitigation strategy are required to be revised as a consequence of the publication of the [2018 WHO guidelines](#) (CD140).

2.390 A number of objectors raised concerns about noise. These have been considered in subsequent chapters on a location by location basis. A number of objections also challenged TS's position on the new 2018 WHO guidelines (CD140), which are considered in this chapter as well as in subsequent chapters for specific objectors.

2.391 Mr McCulloch notes that the 2018 WHO guidance refers to traffic generating noise at levels that would be harmful to human health and seeks to impose maximum exposure thresholds to avoid this. He states that no evidence or comfort was provided by TS that the proposed noise levels could be maintained within these thresholds [those in CD140] or how many households would experience noise levels above these thresholds.

2.392 The Auldearn Residents Group and Mr and Mrs Bailey feel disappointed that TS has refused to change its opinion in relation to noise despite the recent publication of new recommendations from experts [CD140]. They believe that TS's reticence is motivated purely by a desire to achieve deadlines and save costs.

2.393 The Auldearn Residents Group notes that TS places great weight on the human safety benefits of a Category 7A road, but appears to ignore the evidence presented in the new WHO guidelines (CD140) as to the effects of excessive noise on the health and wellbeing of populations, which they feel ought to go hand-in-hand with human safety. The Auldearn Residents Group believes that prompt attention should be given to the 'strong recommendation' in the new WHO guidelines (CD140) and that no forward-looking government would deny this benefit to its citizens.

2.394 Given that the Inverness to Aberdeen dualling project is not projected to be complete until 2030, the Auldearn Residents Group argues that other sections of the route are likely to adopt the standards in the new WHO guidelines (CD140). It contends that it would be illogical and unfair not to apply them to this stage of the proposal, particularly when much of the assessment of its future effects uses a 2036 assessment date.

2.395 The Auldearn Residents Group believes that when new information is available, presumably based on years of learned research by appropriate professionals, particularly in the field of human health, it should be adopted as quickly as possible for the benefit of all. It states that TS seems to instinctively resist adoption of the new WHO recommendations for the A96 project without reasoned debate. As members of the public, the Auldearn Residents Group expects government agencies to act in the best interests of the public they serve and believes that TS has a duty to direct an evaluation of the new recommendations as a matter of urgency, rather than looking for excuses for doing nothing.

2.396 The Auldearn Residents Group accepts that the recommendations in the new WHO guidelines (CD140) are applicable to several different aspects of transport and other technologies. However, it does not accept this as justification for delaying adoption and implementation in a certain area, particularly when a proposed scheme is still at the planning stage and not yet approved by Ministers. It asserts that TS is 'blatantly disregarding' the 'long term benefits that the new WHO guidelines (CD140) recommendations will have on the health and well-being of affected citizens' and it believes that public opinion on this matter will not allow the government to ignore this issue.

2.397 OBJ/082 Mr William Rose, Mid Coul Farms, OBJ/105 John R Mackintosh & Company, Blackpark Farm, OBJ/073 Mr David Macbean, Milton of Gollanfield Farm and OBJ/084 Mr J MacLennan, Easter Glackton Farm all object to TS's decision not to reassess the noise impact of the proposals using the new WHO guideline (CD140). While these objectors do not feel qualified to make a direct comparison between the previous and latest standards, they regard the latest WHO publication (CD140) as recommending enhanced protection based upon evidence of harmful impacts on human health and wellbeing. As is discussed elsewhere in this report, these objectors are dissatisfied that TS has declined to provide specific noise mitigation measures on the basis that predicted noise levels do not reach the mitigation threshold. They argue that, as a consequence of the new WHO guidelines (CD140), the mitigation threshold may be required to be lowered.

Transport Scotland's response

2.398 TS's position is that the noise impact assessment that it carried out and reported in the ES provides sufficient information to confirm that the proposed scheme would not lead to unacceptable noise impacts and that the proposed noise mitigation strategy would provide a reasonable, appropriate, proportionate and justified approach, which would

protect against road traffic noise exposure risks to human health and in particular the risks from annoyance and sleep disturbance.

2.399 TS notes that the noise-related health risks that the new [WHO guidelines](#) (CD140) seek to address are the same as have been addressed in the ES, which relied upon the previous WHO guidelines ([CD090](#) and [CD091](#)). Those earlier WHO guidelines have been adopted for use in other road proposals and remain the relevant guidelines until such time as the newly published standards (or some other standards) are adopted for use in UK road projects.

2.400 During the inquiry, TS's noise witness advised that there had been no consultation with The Institute of Acoustics prior to WHO publishing the 2018 guidelines (CD140).

2.401 TS argues that the WHO looked at a range of noise-related effects on human health including cardiovascular and metabolic effects; annoyance (a percentage of the population highly annoyed); effects on sleep (a percentage of the population who self-reported high sleep disturbance); cognitive impairment; hearing impairment and tinnitus; adverse birth outcomes; and quality of life, mental health and well-being.

2.402 It argues that the 2018 guidelines (CD140) found a 5% increase in the relative risk of ischaemic heart disease at a noise exposure level of 59.3 dB L_{den} . The noise exposure level at which 10% of people are 'highly annoyed' was found to be 53.3 dB L_{den} . For night time noise, the 2018 guidelines (CD140) found that 3% of participants in studies were highly sleep disturbed at a noise level of 45.4 dB L_{night} .

2.403 TS's noise witness pointed out that the L_{den} and L_{night} metrics that are referred to in the 2018 WHO guidelines (CD140) are not the same as those used in the noise impact assessment for the proposed scheme. He stated that this means that direct numerical comparisons are inappropriate.

2.404 TS explains that L_{den} and L_{night} measurements refer to measurement or calculation of noise at the most exposed façade outdoors but do not take account of noise reflected from the façade. The WHO recommendation in the 2018 guidelines (CD140) is that noise exposure levels from road traffic should be kept below 53 dB L_{den} to avoid adverse health effects and below 45 dB L_{night} to avoid adverse effects on sleep.

2.405 TS points out that the 2018 WHO guidelines (CD140) recognise a knowledge gap in the evidence base with a requirement for longitudinal studies on health impacts from exposure to environmental noise to properly inform future recommendations. TS argues that WHO also recognised that, as regards the prediction of the percentage of the population highly annoyed, a full meta-analysis of the individual data is required.

2.406 TS also highlights the fact that, in the recommendations section of the 2018 [WHO guidelines](#) (CD140), WHO advises that the guidelines should serve as the basis for a policy-making process in which policy options are quantified and discussed and that it needs to be recognised. It goes on to explain that the guidelines say that in that process additional considerations of costs, feasibility, values and preferences should also feature in decision making when choosing reference values such as noise limits for a possible standard or legislation.

2.407 TS takes from these statements by WHO that the 2018 guidelines (CD140) do not represent a finalised policy position and that individual states will need to have regard to the guidelines when drawing up noise policies in the future, bearing in mind issues such as costs and feasibility. TS concludes that it is impossible to determine when, how or even if, the thresholds in CD140 will be adopted in their current form into any specific noise limits. It argues that this will be a matter for the Scottish Government, following consultation with a range of agencies to decide what, if anything, is done in response to the 2018 WHO guidelines (CD140).

2.408 TS submits that the weight which can rationally and properly be attached to WHO 2018 is very limited indeed, and that the ES provides all the relevant required information under the [Town and Country Planning \(Environmental Impact Assessment\) \(Scotland\) Regulations 2011](#) (CD026). TS therefore argues that the ES remains up to date as regards the significant effects on the environment.

Findings of fact

2.409 The potential for noise and vibration effects from the proposal is one of most widely raised concerns by local residents and businesses. The noise mitigation strategy for the proposed scheme is set out in [ES paragraphs 8.2.24 to 8.2.34](#) (CD005).

2.410 As objections on noise grounds raise site-specific concerns, we have dealt with these in detail, for each objector, in subsequent chapters. In this chapter we outline briefly TS's overall approach to noise assessment and noise mitigation before considering whether it is reasonable and appropriate for it not to have taken the [2018 WHO guidelines](#) (CD140) into account.

2.411 TS's approach to noise assessment is set out in [ES Chapter 8](#) (CD005). This considered a study area of one kilometre from existing routes that would be improved or bypassed as well as the proposed route itself. Within that one kilometre study area, a 600 metre calculation area was defined in which computer noise modelling was carried out for all noise sensitive receptors (NSRs) including residential properties. In order to check that the model was predicting accurate data and to gain an understanding of the existing noise climate, a baseline noise survey was undertaken at 27 representative NSRs (as outlines in ES Chapter 8 – CD005).

2.412 We identify later in this report a number of objections that suggest that TS has relied too heavily on noise modelling rather than actual noise measurement. TS's response is that it is normal practice to do this, as it enables long-term traffic patterns to be analysed and avoids influence from short-term extraneous noise sources that might otherwise skew the predictions. We consider that there is nothing unusual or inherently unreliable in using computer modelling to predict traffic noise and we have seen no evidence to suggest that the findings TS obtained from that modelling were flawed. We note that, in accordance with STAG, TS has made a formal commitment to a post-opening evaluation of the project, which would include a review to confirm whether the noise mitigation measures detailed in the ES have been implemented, whether they are in a satisfactory condition and to determine whether any additional mitigation would be required. TS has confirmed that this would allow anyone concerned that their property was experiencing a greater than predicted noise effect to raise this. TS would then consider appropriate mitigation if the results were found to be significantly more adverse than the ES predicted.

2.413 In the short term, the ES predicts that 2,548 dwellings and 15 other NSRs would experience an increase in noise of at least 1 dB (the threshold above which a short-term noise level increases is likely to be perceptible). In the same analysis, it is predicted that 2,826 dwellings and 26 other NSRs would experience a 1 dB decrease in noise. Those predictions are based on a ground level assessment with no mitigation. The ES assesses such effects as 'Slight / Moderate'.

2.414 When looked over the long-term, the ES predicts that 1,360 dwellings and 10 other NSRs would experience a noise level increase of at least 3 dB, while 91 dwellings are expected to experience a 3 dB or greater noise reduction. A 3 dB noise level change is regarded as the level above which a long-term change in noise levels would be perceptible. Again, all predictions were for ground floor level and assumed no mitigation and the ES assesses such effects as 'Slight / Moderate'.

2.415 As is discussed elsewhere in this report, the ES took the modelled noise effects of the proposal and developed a mitigation strategy for each affected property, based upon there being a predicted short-term noise level increase of at least 1 dB or a long-term 3 dB increase and also provided that the resultant absolute noise level exceeded a noise mitigation threshold of 59.5 dB $LA_{10,18h}$ and / or 55 dB $L_{night,outside}$. This means that where predicted noise levels at a property would be above that level, noise mitigation measures would be provided, but where the level was less than that, they would not, even if the increase in noise level at the property was predicted to be perceptible.

2.416 During Inquiry Session 1, TS's noise witness confirmed that the 59.5 dB $LA_{10,18h}$ threshold was commonly applied and is derived from the [1999 WHO guidance](#) (CD090). We note that the WHO Night Noise Guidelines (CD091) deal with night noise levels and the 55 dB $L_{night,outside}$ threshold. He accepted that in some instances, noise levels could increase by more than 10 dB without being mitigated. However, he argued that was reasonable, provided that the resultant noise level remained below the mitigation threshold for absolute noise levels of 59.5 dB $LA_{10,18h}$. The witness also confirmed that he had never encountered a road proposal where a lower mitigation threshold had been applied.

2.417 After undertaking mitigation works (which would include low noise road surfacing, earthwork bunds and false cuttings along with receptor-specific noise barriers, where indicated by the mitigation strategy) it is predicted that 2,522 dwellings and 15 other NSRs would experience a short-term noise level increase of at least 1 dB. In the long-term, 1,323 dwellings and 10 other NSRs would experience a noise level increase of at least 3 dB.

2.418 We appreciate why residents who believe they enjoy a particularly quiet existing environment, believe a lower mitigation threshold should be applied than is used elsewhere - for example in an urban location where traffic noise is already a noticeable part of day to day life. However, there is a difference between assessing the effect a certain noise level might have on living conditions and the trigger for mitigating those effects.

2.419 The ES takes into account how quiet the existing environment is at each receptor location when estimating the significance of noise effects that would arise from the proposed scheme. For example, for some receptors, it is predicted that there would be an increase in excess of 10 dB. In such cases, the ES identifies a very significant adverse effect for those receptors. Such effects were factored into the overall environmental assessment that is set out in the ES and must be taken into account in our recommendations to Ministers in respect of the draft Orders. However, this is a separate

process to the consideration of whether the resultant level of noise would reach a level that would require receptor-specific mitigation. In the case of that latter assessment, the question is not how significantly the receptor would notice the increase in noise, but whether, when considered objectively, the resultant noise level would reach a level that would be objectionable (thereby justifying receptor-specific mitigation).

2.420 As we conclude elsewhere in this report in response to site-specific noise objections, we are satisfied that TS's approach to noise modelling and to the provision of noise mitigation is robust, appropriate, in accordance with adopted standards, and consistent with best practice elsewhere. We are satisfied that the existing noise climate has not been ignored in the assessment of the proposed scheme and that the use of a standardised noise mitigation threshold, which follows the approach used in other road schemes across a wide variety of environments, is appropriate.

2.421 We do not doubt the potential importance of the 2018 WHO guidelines (CD140) for future policy development, as, subject to certain caveats that WHO itself points out (which we identify below), the research that has informed them seems to highlight a more significant link between noise and a range of human health issues than has perhaps previously been assumed.

2.422 [TS's closing statement](#) explains in paragraphs 4.8 to 4.12 that WHO acknowledges a 'knowledge gap' and a need for 'longitudinal studies on health impacts from exposure to environmental noise to inform future recommendations properly'. We find this to be recognised by the [WHO Guidelines 2018](#) (CD140) page 29 in the recommendations section which explains that the guidelines should:

...serve as the basis for a policy-making process in which policy options are quantified and discussed. It should be recognised that in that process additional considerations of costs, feasibility, values and preferences should also feature in decision-making when choosing reference values such as noise limits for a possible standard or legislation.

2.423 In the WHO Guidelines 2018 section 5 implementation guidelines (CD140), Section 5.1 reinforces this position recognising that the factors quoted above can 'feature in and can influence the ultimate value chosen as a noise limit.'

2.424 We find this to demonstrate that the WHO Guidelines 2018 (CD140) are not necessarily expected to be adopted verbatim, rather that work is incomplete. We agree with the points in [TS's closing submission](#) on WHO 2018 at paragraph 4.13. This explains that the WHO Guidelines 2018 (CD140) do not have legislative force, but are aspirational. This suggests to us that any adopting process must further consider the matters identified, carry out additional research and assess the practicalities of these matters before adopting threshold values.

2.425 We also find this to suggest that any threshold values that are ultimately adopted as a result of this additional work may differ from those currently presented in WHO Guidelines 2018 (CD140). Therefore it is not appropriate or rational to expect the thresholds identified in CD140 to automatically become the thresholds that would be ultimately adopted by Scottish Ministers, since the work to identify these has yet to take place and its conclusions cannot be known in advance.

2.426 TS's noise witness confirmed in Inquiry Session 1 that the noise mitigation threshold of 59.5 dB LA_{10,18h} is not the same as 59.5 dB L_{night} or 59.5 dB L_{den} referenced in the 2018 WHO guidance, since the metrics are different. Therefore it is wrong to state (as some objectors had) that TS's proposed mitigation threshold was set at a similar level to that found in the 2018 WHO guidelines as equating to a 5% increase in the relative risk of ischaemic heart disease (that being a noise exposure level of 59.3 dB L_{den}).

2.427 Based on the above considerations we find that one cannot simply take the existing noise assessment and alter the absolute noise level thresholds to reflect those in the new WHO guidelines 2018 (CD140). At Inquiry Session 1 TS's noise expert confirmed that a whole new noise assessment would be required if the thresholds of the WHO guidelines 2018 (CD140) were to be applied.

2.428 Furthermore, we have found that this new guidance (CD140) is not yet adopted and there is no current requirement for it to be followed. Similarly there is no guarantee what the respective noise thresholds would actually be. We also agree with TS's point that following any such research and conclusions would follow consultation and engagement as part of the normal framework for adoption of policy and/or legislation. We see no basis to justify advising Scottish Ministers to instruct a new noise assessment since the basis for doing so and any new standards upon which it would be based are yet to be determined.

2.429 Therefore, we agree with TS that the guidelines themselves do not represent a change in policy or legislation and that the WHO recognises that a wide range of considerations would need to be taken into account before a change in policy or standards was carried out. As is the norm, this would require the balancing of competing priorities.

2.430 The 2018 guidelines (CD140) do not cast any significant doubt on the appropriateness of the approach TS has followed. Therefore, we agree that there is no need for any further noise impact analysis or any revision to the adopted noise mitigation threshold as a consequence of their publication. The need for TS to revisit the noise assessment process, prepare a new environmental impact assessment and possibly a new compulsory purchase order (and the associated significant delay) is not a reason in itself to resist objectors' requests for the noise assessment process to be revisited. However, bearing in mind the status of the guidelines (as set out above) and the absence of any evidence to suggest that applying the 2018 guidelines now would lead to any better protection of living conditions or human health than is already secured by the existing noise mitigation strategy, we regard the delay that would introduce as an unjustified disbenefit of that approach.

2.431 Some objectors consider that adoption of the thresholds in the WHO guidelines (2018) (CD140) at a future date could result in later phases of the A96 Inverness to Aberdeen dualling programme being constructed to comply with different noise thresholds than the proposed scheme. As noted above the difference in metrics used in CD140 and CD090/CD091 means that these respective thresholds cannot be directly compared. Similarly, as discussed above one cannot assume that the thresholds stated in CD140 would be the ones ultimately adopted through any future process. As a matter of principle we agree that a future process could (our emphasis) result in future construction projects being required to meet more stringent standards for noise than is the case at present. Such circumstances would not be unique since any construction project must meet the requisite standards of the day. It is a simple reality that the standards of any day are likely to improve upon those of previous times. Were the outcome suggested by those objectors to

arise, it would fall to be considered in that eventuality and does not indicate any failure or deficiency in the proposed scheme.

2.432 To conclude, we confirm that we have had regard to the 2018 WHO guidelines (CD140) but do not find them to undermine the assessment of noise impacts or the noise mitigation strategy that is detailed in the ES or to require any further revisions to the proposal or any further research into this issue within the context of this proposed scheme.

Representations confirming no further comment and/or no objection

2.433 The organisations listed below responded to the consultation on the draft Orders and ES to confirm that they did not object. As such we consider there to be no further matters to consider with regard to these parties:

REP/072 NATS (En Route) plc (NERL) Safeguarding
REP/109 National Grid Plant
REP/149 Sky Telecom Services Ltd

CHAPTER 3: STRATTON LODGE ROAD AND MILTON ROAD, CULLODEN

Introduction

3.1 This chapter considers objections and representations to the proposed improvements to Stratton Lodge Road (U1058) and Milton Road (U1136). It also considers related objections and representations regarding land and property off these roads. Stratton Lodge Road is also sometimes referred to as Caulfield Road or the former Caulfield Road.

3.2 The new dual carriageway is proposed to run from Seafield Roundabout on the edge of Inverness in a north easterly direction along the southern side of the existing A96. It would sever the current vehicle access to the existing A96 at the north end of Milton Road (U1136). An NMU only underpass is proposed here.

3.3 The eleven residential properties and the agricultural fields along Milton Road (U1136) would be accessed from Barn Church Road (C1032) via an improved Stratton Lodge Road (U1058) including new and/or improved points of access along this road, and Milton Road ([draft SRO plan](#) SR2 - CD003).

3.4 Where Stratton Lodge Road and Milton Road meet is a crossroads. At this point these two roads join Caulfield Road (to the north east) which becomes part of the Core Path network known locally as 'the Hedges'. Directly south from this point a single track shared-use path links with Keppoch Road (U1855). The proposal would create a new bend to the west of the crossroads to carry traffic from Stratton Lodge Road to Milton Road. To the east of this bend (Point 344 on draft SRO Plan SR2 - CD003) would be the new NMU access to Caulfield Road to the east and the shared-use track linking Keppoch Road to the south.

Objectors

3.5 The parties listed below each raise objections / representations to the proposed scheme with regard to the improvements at Stratton Lodge Road and Milton Road:

OBJ/006 Mr Donald Peterkin
OBJ/007 Smithton and Culloden Community Council
OBJ/008 Mr Donald Keith
REP/009 Mr and Mrs Wilson
OBJ/010 MacDonald Hotels Investments Ltd
OBJ/011 Mr William Hardie
OBJ/012 Mr Paul Hay
OBJ/013 Mr and Mrs Lathan
OBJ/014 Ms Ailsa Hart
OBJ/015 Ms Sharron Lukas
OBJ/016 Mr Andrew Mackenzie
OBJ/017 Mr Donald H and Mrs Ellen V Williams
OBJ/018 Mr Roddy MacPhee
OBJ/020 Ms Shona and Mr William Frame
OBJ/021 Ms Pamela Martin
OBJ/022 Ms Rachel Kinsman
OBJ/023 Ms Marion Hasson

OBJ/024 Ms Kate Maclean
OBJ/025 Mr Michael Carson
OBJ/026 Ms Margaret McAllister
OBJ/028 Mr John and Mrs Anne Callum
OBJ/033 Ms Linda Simpson
OBJ/034 Mrs Janferie Mackintosh
REP/144 Highland Council (Development and Infrastructure Services)
REP/147 Cllr Kate Stephen
OBJ/148 Cllr Trish Robertson

3.6 Many, though not all, of these parties are residents of Walker Crescent whose homes back onto the southern side of Stratton Lodge Road. Others represent or administer the locality.

3.7 OBJ/010 MacDonald Hotels Investments Ltd own Stratton Lodge, a category B listed building to the north of Stratton Lodge Road. This property currently takes access from the north side of Stratton Lodge Road. It is allocated in the [Inner Moray Firth Local Development Plan](#) (IMFLDP) (2015) (CD062) as site IN77 for housing.

3.8 OBJ/017 Mr Donald H and Mrs Ellen V Williams own farm land north of Stratton Lodge Road which is allocated for mixed uses, including housing, in the IMFLDP (CD062) as site IN85.

3.9 OBJ/028 Mr John and Mrs Anne Callum have a farm business at Ashlea including land and property either side of Milton Road. Land to the western side of Milton Road forms part of site IN85 in IMFLDP (CD062).

Engagement

Objections

3.10 OBJ/025 Mr Michael Carson and OBJ/034 Mrs Janferie Mackintosh argue that the information and engagement on this proposal have been poor.

Transport Scotland's Response

3.11 TS argues that a public exhibition took place in February 2016.

Findings of Fact

3.12 Various parties along the route of the proposed scheme have objected on grounds that the engagement process was not adequate. We have considered engagement broadly in Chapter 2: Matters of Principle. No engagement exercise can be perfect since there will always be those who do not feel they have sufficient information. However, TS's responses to many of these objections refer to the public engagement programme explained in [ES paragraphs 6.2.6 to 6.3.2](#) (CD005). Documents TS131 to TS136 provide details of the various public engagement exercises that took place between 2013 and publication of the draft Orders in November 2016. The evidence does not indicate any inadequacies in the engagement process that would have prevented interested parties, such as the objectors, from raising objections or matters of concern.

Proposed improvements to Stratton Lodge Road/Milton Road

Objections

3.13 The parties listed in paragraph 3.5 (above) object to the proposed improvements to Stratton Lodge Road and Milton Road for varying reasons. Whilst not all object on all of the grounds presented below, each party raises one or more of these. Since the objections are interrelated they have been grouped together.

3.14 REP/144 Highland Council (Development and Infrastructure Services) seeks to ensure that the proposed improvements are a 'best fit' for what would become part of the local road network. It seeks continued dialogue with TS to deliver this.

Safety

3.15 The parties argue that widening Stratton Lodge Road would result in more car traffic that would risk the safety of non-motorised users (NMUs). They also argue it could be used as a short cut to access parts of the neighbouring proposed Stratton New Town development.

Amenity

3.16 The parties are concerned that the proposed road improvements would lead to loss of privacy and amenity, and air quality, noise and visual impacts resulting from the proximity of proposed scheme to existing homes. Some consider that the provision of new fencing could contribute to limiting some of these problems.

Parking and Congestion

3.17 The parties are concerned that, once widened, one of the two lanes would be used to park cars, thus creating congestion along the road. They also argue that there would be a bottleneck created by the new road arrangements for the proposed Smithton interchange and Barn Church Road.

Habitats

3.18 Several of the parties are concerned that the mature trees on the north side of Stratton Lodge Road would be lost. This, they argue, would affect the landscape as well as remove habitat; including for species such as owls as well as other impacts.

Practicalities

3.19 Some of the parties anticipated significant practicalities, arguing these would affect or inhibit the proposed road widening and need to be overcome. These include water pipelines in the verge area of the current road and a decrease in ground stability and drainage during the construction phase.

Property value and construction disturbance

3.20 OBJ/008 Mr Donald Keith, OBJ/011 Mr William Hardie and OBJ/016 Mr Andrew Mackenzie argue that the proposal would adversely affect the value of their respective

properties as a consequence of the noise, traffic and related impacts identified above. Mr Hardie considers that compensation would be needed to overcome these problems, including the consequent impact on the structural integrity of his home.

Alternatives to widening Stratton Lodge Road

3.21 Due to their objections (above) several of the parties listed in paragraph 3.5 (above) propose alternatives to improving Stratton Lodge Road/Milton Road which they consider would reduce or resolve their concerns. These are set out below:

-Vehicle underpass at the north end of Milton Road

3.22 OBJ/023 Ms Linda Simpson proposes installation of a vehicle underpass allowing continued vehicle access to Milton Road from the north via the existing A96. OBJ/006 Mr Donald Peterkin also appears to support this option.

-Link the south end of Milton Road with Keppoch Road

3.23 OBJ/025 Mr Michael Carson proposes upgrading the existing track which leads from Milton Road south eastwards to join Keppoch Road to the north west of Duncan Forbes Primary School.

-North of Stratton Lodge Road

3.24 The parties listed below propose that a new, alternative road is provided from Milton Road to Barn Church Road. They contend that this would run north of the mature trees along the north side of Stratton Lodge Road. They argue such a road could be delivered as part of the Stratton New Town proposal.

OBJ/007 Smithton and Culloden Community Council

OBJ/008 Mr Donald Keith

OBJ/010 MacDonald Hotels Investments Ltd

OBJ/011 Mr William Hardie

OBJ/012 Mr Paul Hay

OBJ/013 Mr and Mrs Lathan

OBJ/015 Ms Sharron Lukas

OBJ/017 Mr Donald H and Mrs Ellen V Williams

OBJ/018 Mr Roddy MacPhee

OBJ/021 Ms Pamela Martin

OBJ/023 Ms Marion Hasson

OBJ/024 Ms Kate Maclean

OBJ/026 Ms Margaret McAllister

OBJ/028 Mr John and Mrs Anne Callum

3.25 OBJ/010 Macdonald Hotels Investments Ltd, OBJ/017 Mr and Mrs Williams and OBJ/028 Mr and Mrs Callum also support the proposed new road alternative north of Stratton Lodge Road. They do so based on a series of property specific matters that are covered separately for each individual objector later in this chapter.

3.26 OBJ/148 Cllr Trish Robertson also supports an alternative route north of Stratton Lodge Road but proposes instead that it joins the road that was originally the hotel access road.

Transport Scotland's Response

Safety

3.27 TS states that the extent of the improvement works would only be that considered necessary to provide access to eleven residential properties at Milton of Culloden Smallholdings and to agricultural land currently accessed from Milton Road.

3.28 TS argues that:

- The Highland Council Development Plans Team has confirmed that the Council does not intend that the future development areas at Stratton Lodge (IN77) and Milton of Culloden South (IN85) would use the improved Stratton Lodge Road as their principal access.
- once the new vehicular access to Milton of Culloden Smallholdings is in place, the junction between the existing A96 and Milton Road would be stopped up to vehicles with no direct access to the proposed dual carriageway or the existing A96 single carriageway (which would be de-trunked and reclassified as a local road).
- the new route, comprising Milton Road, Stratton Lodge Road and a new section of road connecting the two (on the line of the old Caulfield Road), would remain a 'no through road' and the additional volume of traffic would be low.

3.29 TS argues that the circumstances described above would result in a limited amount of traffic using the improved Stratton Lodge Road/Milton Road and this would limit the impacts for NMUs and residents.

3.30 TS confirms that it will provide further information to local residents and other stakeholders on the proposed design of Stratton Lodge Road once it has developed the street design in continued consultation with The Highland Council. [The Reporters understand this information to have been provided in letters to the parties dated 30 July 2018 e.g. TS007.06.]

Amenity

3.31 TS states that a Construction Environmental Management Plan (CEMP) would be used to mitigate any potential impacts associated with disruption and noise during the construction phase. The CEMP, it argues, would set out the intended methods to manage potential environmental impacts from construction of the proposed scheme. This would include best practice measures to mitigate and manage construction noise impacts in compliance with the requirements of BS 5228 Code of practice for noise and vibration control of construction and open sites. TS argues that these best practice measures would include restricted construction working hours, which would be set in consultation with The Highland Council.

-Noise and vibration

3.32 TS argues that, since this widened section of road would only provide access for a low volume of traffic accessing current residential properties and agricultural land it would not lead to significant additional noise.

3.33 TS argues that appropriate mitigation has been included in the proposed scheme, such as, for example, low noise road surfacing (LNRS) on the dual carriageway, screening through design of the earthworks and installation of noise barriers.

Property value and construction disturbance

3.34 TS argues that the improvements would result in a limited amount of traffic using this road and this would limit the consequent implications for property values.

3.35 TS explains that its [Guidance on the Compulsory Purchase Process and Compensation](#) (CD046) provides information on entitlement to compensation and how to make a claim. All claims for compensation would be subject to an assessment by the District Valuer.

Habitats

3.36 TS argues that the mature beech tree avenue, along the north boundary of the proposed extension of Stratton Lodge Road, would be retained and measures would be taken to protect it during construction. However, TS acknowledges that the proposed new bend at the eastern end of Stratton Lodge Road would require the removal of some roadside vegetation on the northern side, at the bend onto Milton Road (U1136). In order to mitigate this loss, TS proposes to plant a new hedge with standard beech trees.

Alternatives to widening Stratton Lodge Road

3.37 TS explains that it considered several of the options proposed by objectors when considering how to resolve the severance of access at the north end of Milton Road by the proposed dual carriageway:

-Vehicle underpass (or bridge) at the north end of Milton Road

3.38 TS explains that it considered two options for the north end of Milton Road. One was a NMU underpass and the other was a new access road and bridge over the dual carriageway on the west side of Allanfearn Farm to connect Milton Road with the existing A96 and provide a NMU connection midway between Milton Road and 'The Hedges'.

3.39 TS confirms that both options were presented at a public exhibition in February 2016 (TS235). It states that the NMU access at the north end of Milton Road was selected as the best method with the lowest visual impact, smallest area of land and minimal impact on agricultural land use and lower cost. TS states that public feedback also preferred this option.

3.40 TS argues that a vehicular underpass at the north end of Milton Road would have required a minimum head room of 5.3 metres. Doing so would, it argues, require the dual carriageway embankment to be eight metres high at this location. TS argues that this would be constrained by existing utility routes, the Cairnlaw Burn and potentially negative environmental effects (noise and visual impacts). It therefore concluded this to be unsuitable.

-Link the south end of Milton Road with Keppoch Road

3.41 TS confirms that it considered upgrading the shared use path running south of Milton Road to join Keppoch Road for vehicular access. However, it concluded that this was a narrow corridor containing a water course and that the existing road layout of Keppoch Road was not suitable for a new junction.

-A new road north of Stratton Lodge Road

3.42 TS argues that:

- there are a variety of considerations for the western part of Stratton New Town.
- planning of developments such as those proposed for Stratton (IN84) and Milton of Culloden (IN85) require consideration of numerous factors including proposed land use, building type and density, street and public space design, traffic flows, NMU provision and environmental and engineering constraints, as well as the need to comply with the statutory consent process and undertake public consultation.
- the provision of a suitable access to Milton of Culloden Smallholdings is required as a result of the proposed scheme.
- it is not appropriate to become involved in addressing these wider considerations, through the provision of a road within this development area, unless it is necessary to the provision of this access.

Findings of Fact

3.43 TS has now prepared a design for the proposed widening of Stratton Lodge Road in its letter dated 30 July 2018 (for example [TS007.06](#)), which contained a detailed plan [A96PIN-JAC-HGN-XXX-SK-CI-0022](#). It would be for TS and The Highland Council to consider the appropriate design details and to agree any departures from standard such as those listed in TS217 and TS218.

Safety

3.44 The proposed land for widening Stratton Lodge Road is shown on [draft SRO Plan SR2 \(CD003\)](#). Detailed plans provided by TS are contained in its letter dated 30 July 2018, as plan A96PIN-JAC-HGN-XXX-SK-CI-0022. TS007.06 is one example, identical copies were also sent to other objectors in this locality. TS007.06 shows that the design involves two single lanes (one lane in each direction) running from the junction with Barn Church Road to just north east of the turn off (north) for Stratton Lodge. A further field access is proposed to land north of Stratton Lodge Road.

3.45 East of the junction for Stratton Lodge are four passing places. One of these is located on the new bend linking Stratton Lodge Road and Milton Road. This is immediately west of the location where these two roads currently meet along with local NMU paths (described in paragraph 3.4 above).

3.46 The measures (listed below) proposed on plan A96PIN-JAC-HGN-XXX-SK-CI-0022 (accompanying TS007.06 and equivalent letters from TS to objectors) offer some opportunity to lower risks to NMU safety:

- cutting the speed limit for Stratton Lodge Road from the current national limit of 60mph to 20mph.
- upgrading the footway on the southern side of Stratton Lodge Road to a three metre wide foot/cycleway.
- a new bend joining Stratton Lodge Road and Milton Road that separates this carriageway from the NMU paths linking to Keppoch Road and 'the Hedges'.
- the incorporation of formalised parking on Stratton Lodge Road ([TS008.06](#)) offering some opportunity to limit any current risks to NMUs from cars leaving Stratton Lodge Road to park informally on the grass verge, as they do at present.

3.47 We note TS's points that the improvements to Stratton Lodge Road are to enable access only to the 11 residential properties and the fields off Milton Road. We also note that there is no proposal to access development at Stratton New Town from Stratton Lodge Road. [The Inverness East Development Brief](#) (CD139) map 4.6 shows that the principal access for Stratton New Town (sites IN84, IN85 and IN77) would be taken via a new access road linking with the improved Barn Church Road to the west. Together these factors limit the likelihood of 'rat-running' and of increased traffic volumes associated with development of land to the north of Stratton Lodge Road.

3.48 Whilst it is impossible to remove all risk to NMUs from local traffic, the evidence above does not suggest a significant increase in traffic volumes or in the risk posed to NMUs along Stratton Lodge Road.

Amenity

-Air quality

3.49 The [Air Quality Report](#) (TS214) section 4.1 explains that traffic data from the Moray Firth Transport Model (MFTM) was used as the basis for the air quality predictions and undertaken using established guidance. In Chapter 2: Matters of Principle we have already concluded that this model was sound and its use was appropriate. The evidence does not suggest we should find otherwise.

3.50 [ES Appendix 7.4](#) (CD006) shows predicted air quality changes at receptor AQ_126 (Number 6 Milton of Culloden) located at the north end of Milton Road adjacent to the proposed dual carriageway. Although some distance from Stratton Lodge Road it serves as a reasonable proxy to illustrate air quality changes predicted for traffic volumes on the proposed dual carriageway. It is reasonable to assume that a widened Stratton Lodge Road would not and could not handle similar traffic volumes. ES Appendix 7.4 (CD006) shows that concentrations of Nitrogen Dioxide (NO₂) and particulate matter (PM₁₀ and PM_{2.5}) would increase at AQ_126 with the proposed scheme in place. However, they would remain well below the levels of the national air quality objectives set out [ES Table 7.3](#) (CD005).

3.51 ES Appendix A7.4 (CD006) also presents predictions for AQ_138 and AQ_144 (numbers 6 and 12 Fraser Court), AQ_404 (18 Maclean Court), AQ_407 (68 Walker Crescent) and AQ_408 (140 Walker Crescent). These properties are close to Stratton Lodge Road and serve as reasonable proxies for this locality. In each instance, with the proposed scheme in place, there would be slight increases in concentrations of NO₂ and particulates but these would remain well below the respective air quality objectives set out in ES Table 7.3 (CD005).

3.52 The Air Quality Report (TS214) explains that the most stringent Air Quality Objective is the annual mean objective for NO₂. [ES Figures 7.2a, 7.3a, 7.4a and 7.5a](#) (CD007) each show NO₂ concentrations only at locations along Stratton Lodge Road and Milton Road; including receptor AQ_126. No equivalent maps are presented for particulates.

3.53 ES Figure 7.2a (Do Minimum Base Scenario 2014) (CD007) shows concentrations of NO₂ as between 10 and 20 µg/m³ for locations at the north end of Milton Road (including receptor AQ_126) and also at the Barn Church Road/Stratton Lodge Road junction. The locations in-between, along Stratton Lodge Road and Milton Road, show concentrations

of 10 µg/m³ or less. ES Figures 7.3a (Do Minimum 2021) and 7.4a (Do Something 2021) both show NO₂ concentrations remaining within these ranges.

3.54 ES Figure 7.5a (Do Min 2014 vs Do Something 2021) shows that the changes in the concentration of NO₂ over this period as being +2 to +10 µg/m³ at the north end of Milton Road. On Milton Road and Stratton Lodge Road +0.4 to +1 µg/m³. The junction of Stratton Lodge Road South/Barn Church Road would vary between -0.4 to -1 µg/m³ and -0.4 to +0.4 µg/m³.

3.55 This evidence suggests that air quality at Stratton Lodge Road and Milton Road does not currently exceed the air quality objectives for NO₂ and particulates. Despite a small predicted increase in concentrations of these pollutants the evidence does not suggest an increase to levels anywhere near exceeding air quality objectives. Since these objectives are based on human health it does not suggest subsequent impacts or effects that would endanger human health.

-Noise and vibration

3.56 TS has not presented receptor-specific evidence in its responses to objectors. We accept that residents of the area are concerned that additional volumes of traffic using Stratton Lodge Road would result in unacceptable increases in noise. However, for the reasons set out above, we are persuaded that traffic volumes would not significantly increase since this would be a 'no through road' with a fixed and limited number of destinations.

3.57 [ES Appendix A8.3](#) (CD006) contains predicted noise levels with the proposed scheme in place (with mitigation and including façade reflection) compared to without it. It shows predicted noise levels for numerous properties on Walker Crescent, Maclean Court, Fraser Court and Galloway Drive, each of which contains properties that back onto Stratton Lodge Road.

3.58 For each, ES Appendix A8.3 (CD006) shows predicted changes in noise level for ground floor that, in general terms would increase by more than 1 dB in the short term (at year of opening) and would be slightly under or slightly over 3 dB in the longer term (15 years after opening) dependent on the property.

3.59 [ES Figure 8.9](#) (CD007) shows proposed noise mitigation, including a noise barrier at the point of the proposed Milton Road NMU underpass. [ES Figure 8.12b](#) (CD007) shows the impact of this mitigation on predicted noise levels comparing the opening year without the proposed scheme (Do Minimum Base year) with the proposed scheme in place 15 years after opening (Do Something Future year) (L_{A10,18h} free-field). This shows that the whole of Stratton Lodge Road, the southern end of Milton Road and also the very northern end of Milton Road would experience an increase of up to 3 dB. The middle section of Milton Road would experience a predicted increase of 3 to 5 dB.

3.60 DMRB [HD213/11](#) paragraph 3.37 (CD049.19) confirms that noise level increases above 1 dB in the short term and 3 dB in the longer term would be perceptible. The ES noise mitigation strategy ([ES paragraphs 8.2.24 to 8.2.34](#) – CD005) confirms that perceptible noise level changes could generate the need for noise mitigation, provided that the absolute noise level also exceeds 59.5 dB L_{A10,18h} as a result. ES Appendix A8.3 (CD006) confirms that absolute noise levels would not exceed this threshold for receptors on Walker Crescent, Maclean Court, Fraser Court or Galloway Drive. The exceptions to

this are a small number of properties on both Fraser Court and Galloway Drive which are expected to experience noise levels exceeding the 59.5 dB LA10, 18h threshold. These properties are understood to be those located close to Barn Church Road and/or its junction with Stratton Lodge Road.

3.61 However, it must be recognised that, in each of these instances, the respective absolute noise levels already exceeded the 59.5 dB LA10, 18h threshold without the proposed scheme, and, the associated magnitude of noise level change is predicted to be below 3 dB in the long term. As such these would not meet the requirements of the ES noise mitigation strategy (ES paragraphs 8.2.24 to 8.2.34 – CD005) which stipulates the need for both the magnitude of noise level change and (our emphasis) the absolute noise levels to exceed the respective thresholds.

3.62 Therefore, ES Appendix A8.3 (CD006) shows that, despite some predicted increase in noise levels this would not exceed the respective noise mitigation strategy thresholds and would not require additional, receptor-specific noise mitigation beyond that already proposed and covered by the noise assessment. This does not suggest we should conclude that the proposed improvements to Stratton Lodge Road would result in unreasonable or unacceptable noise levels or related environmental effects compared to the situation without the proposed scheme.

- Visual impact and loss of privacy

3.63 Whilst we accept that the proposed improvements to Stratton Lodge Road would be visible, these changes are not likely to fundamentally alter existing views. The retention of trees and vegetation on the north side of Stratton Lodge Road would contribute to screening views of the proposed dual carriageway. [ES Figure 10.3a](#) (CD007) shows visual effects for sections of Stratton Lodge Road as being 'Slight' at winter year of opening for both receptors 17 and 18. In summer 15 years after opening the visual effects are predicted to be 'Negligible/Slight' and 'Negligible' for receptors 17 and 18 respectively. Whilst this assessment covers the whole of the proposed scheme, it suggests that the proposed scheme as a whole is unlikely to result in significant adverse visual impacts on the locality.

3.64 For these reasons, and also our acceptance that the proposal is unlikely to result in significant additional traffic along Stratton Lodge Road, we consider that the impacts and resultant effects on privacy would also be limited.

- Overall amenity

3.65 The evidence above suggests that whilst the proposed improvements to Stratton Lodge Road/Milton Road would result in localised changes to the environment, these are unlikely to result in significant impacts to or effects upon residential amenity.

Parking and congestion

3.66 [TS008.02/TS008.03](#) and draft SRO Plan SR2 (CD003) show that the grass verge to the south side of Stratton Lodge Road would be used to widen the road. We saw on our site inspection that this verge is currently used for informal car parking. Existing, formal driveway accesses are proposed to be maintained, as shown in TS008.02/TS008.03. It would be unreasonable if the proposed widening of the road were to deprive property owners / occupiers of formal access where it presently exists. However, by the same token, one cannot expect TS to be obliged to formalise currently informal driveway access

arrangements, even if this would be the preference of an owner / occupier. Parties seeking to formalise currently informal driveway access would need to apply to The Highland Council (as local roads authority) through the normal processes for such works and/or reach appropriate agreement with TS.

3.67 Dedicated formal car parking spaces are proposed at three intervals towards the west of Stratton Lodge Road. Based on TS008.03 these number 21 in total. These spaces should go some way to overcoming the risks of double parking on Stratton Lodge Road. Any parking enforcement would be a matter for the local roads authority (The Highland Council).

3.68 The current junction with Barn Church Road and Stratton Lodge Road is controlled by give-way lines at the opening for Stratton Lodge Road. There is also a pedestrian crossing on Barn Church Road just east of the junction. Whilst traffic turning right into and out of Stratton Lodge Road would still need to cross on-coming traffic, the evidence does not suggest that any congestion at this junction would substantially differ from what is presently experienced.

Habitats

3.69 TS008.02/TS008.03 (and equivalent letters and plans) and draft SRO Plan SR2 (CD003) confirm that the mature trees on the north side of Stratton Lodge Road would be retained. New planting would replace vegetation lost at the new bend where Stratton Lodge Road is proposed to meet Milton Road. Both matters are identified as specific mitigation commitments in [ES Chapter 20](#) (CD005) Mitigation Item L19. The ES and its proposed mitigation measures would form part of any future construction contract. Provision of these measures would therefore be binding on the contractor and subject to an environmental clerk of works ([ES Table 20.1](#) Mitigation Item GR2 – CD005). The evidence therefore suggests that the proposed improvements to Stratton Lodge Road and Milton Road do not present a risk to local trees and associated habitats that cannot otherwise be overcome.

Alternatives to widening Stratton Lodge Road

3.70 We note that TS has directly or indirectly considered the alternatives put forward by objectors for maintaining vehicle access to the homes and fields off Milton Road. These are explained in TS letters to objectors dated 31 July 2017 (e.g. TS008.02).

-Vehicular underpass at the north end of Milton Road

3.71 Based on the standard headroom data in [DMRB TD27/05](#) Table 6-1 and Figure 6-1 (CD049.08) and the cross section in [DMRB Stage 3 Report Figure 3.1](#) Sheet 2 of 22 (CD009) we find no reason to doubt TS's explanation that it is not possible to provide the requisite height of vehicular underpass without raising the overall height of the dual carriageway at the north end of Milton Road.

3.72 The proposed vehicle underpass at the north end of Milton Road is considered in the [Milton of Culloden Design Development Report](#) (TS227) at Section 3 and Appendix A. TS227 Section 3 outlines four specific constraints including impact on nearby residential properties, drainage issues, the need for a retaining wall and impacts on major utilities including gas and fuel pipelines. The location of utilities in this locality is illustrated in [TS216](#) map B2103500-HW-2700-DR-002 Rev 2. These appear to confirm TS's position.

3.73 Increasing the dual carriageway embankment height would change the currently assessed environmental impacts (particularly visual and landscape impacts) in this locality and nearby areas. TS227 Section 3 concludes that the requisite construction of a retaining wall would result in substantial visual impacts on the area.

3.74 TS227 compares the differences in distance to nearby properties from a noise and visual / landscape perspective associated with the options it compares (see paragraph below). However, this evidence does not indicate the extent of any additional negative noise and visual impacts or effects resultant from this or any related mitigation requirements. We consider that an increase in embankment height at this location would likely attract at least a similar level of objection from parties who already object on visual and noise grounds from surrounding area (See also Chapter 4: Smithton, Culloden, Allanfearn, Balloch and the Hedges).

3.75 TS227 considers four options for crossing the dual carriageway north of Culloden, three of which would involve slightly different overbridge arrangements to transport traffic and NMUs between Milton Road and the existing A96. The overbridge proposals each cost in excess of £2.7 million compared with less than £1 million for the proposed scheme as designed. The overbridge proposals would also have required the acquisition of additional land for construction of access ramps and would result in more significant visual and landscape impacts compared with Option 4 (the proposed scheme as designed). We also consider these proposals in relation to the proposed severance of The Hedges in Chapter 4: Smithton, Culloden, Allanfearn, Balloch and the Hedges).

3.76 In both instances it is clear that these alternatives are likely to have more significant environmental impacts and costs. It is also clear that they would exacerbate the concerns already expressed with regard to visual and landscape impacts. The evidence does not suggest that these alternatives would be better than the proposed widening of Stratton Lodge Road and NMU underpass at the north end of Milton Road.

-Linking Milton Road and Keppoch Road along the shared use path

3.77 We note TS's consideration of this option and its reasons for dismissing it. We walked this path on our site inspection and observed the water course running alongside it. The evidence does not suggest that it was unreasonable for TS to dismiss this option as impractical.

-A route north of Stratton Lodge Road

3.78 [TS007.06](#) (and equivalent TS letters dated 30 or 31 July 2018) and ES Chapter 20 (CD005) explain that the mature trees north of Stratton Lodge Road would not be removed. Therefore a road running to their north would be no better placed to protect them than the current proposals for Stratton Lodge Road outlined in TS007.06.

3.79 The Inverness East Development Brief (2018) (CD139) Map 4.6 shows the principal access arrangements for sites IN84, IN77 and IN85 would be via a separate, new access road linking all three sites with a newly upgraded Barn Church Road to the west. We saw the Barn Church Road upgrade work in progress during our November 2018 site inspection. CD139 paragraph 3 makes clear that it is supplementary guidance and forms part of the development plan. Whilst the master plans are indicative there is no suggestion that Stratton Lodge Road would form the access for Inverness East.

3.80 The principal access road in The Inverness East Development Brief Map 4.6 (CD139) may reflect the locations sought by the objectors but it forms part of third party land which is proposed for development that is not part of the proposed scheme identified in the [draft CPO](#) (CD001). Therefore it is not for TS to involve itself in the broader land ownership, planning and other considerations for this. Unless it compulsorily acquired this land, TS cannot rely on the provision of this access road by these third parties to overcome the severed vehicle access for the fields and homes off Milton Road since the timescale and arrangements for the provision of this road and the wider planning of this area are not within TS's control.

-Overall for alternatives

3.81 The evidence suggests that none of the alternatives would better maintain vehicular access to Milton Road when compared with the proposed widening of Stratton Lodge Road etc. set out in the proposed scheme. Similarly none of the alternatives could be delivered through modification of the draft Orders since all require additional land. This would require new draft Orders with their associated EIA, consultation, public inquiry and any related delays. None of the alternatives appears to offer more favourable solutions from the point of practicality, protection of the environment and environmental impacts/effects or cost. As such it appears reasonable for TS to promote the proposed solution to Scottish Ministers.

Property value and construction disturbance

3.82 Residents of the locality may experience some short-term disruption during the construction phase of both the dual carriageway and the widening of Stratton Lodge Road. TS has indicated how it intends to respond to these issues as part of its CEMP and that the appropriate actions would be considered in conjunction with The Highland Council. The evidence does not suggest that the widening of Stratton Lodge Road would adversely affect the structural integrity of nearby houses. We agree with TS that where compensation is found to be necessary, that this would be determined by the District Valuer. Compensation is not a matter for this inquiry.

Overall

3.83 The matters identified in the objections / representations would either not occur as a result of the proposed scheme or would not be significant enough to justify additional mitigation besides that already designed into the proposed scheme and covered by the ES. Whilst there would be some residual effects these would not compromise the public interest of providing the proposed scheme and would not justify recommending that Scottish Ministers modify the draft Orders or refuse to confirm them.

Property-specific objections

3.84 Alongside their objections above, the three parties below raise property-specific objections:

OBJ/010 MacDonald Hotels and Investments Ltd
OBJ/017 Mr Donald H and Mrs Ellen V Williams, and
OBJ/028 Mr John and Mrs Anne Callum

OBJ/010 MacDonald Hotels Investments Ltd

Objectors

3.85 OBJ/010 MacDonald Hotels Investments Ltd owns Stratton Lodge, a category B listed building on the north side of Stratton Lodge Road. The building and its immediate grounds are allocated for housing in the [IMFLDP](#) (CD062) as site IN77.

Objection

Existing use and northern access

3.86 OBJ/010 MacDonald Hotels Investments Ltd argues that:

- the proposed scheme would sever the existing access track that runs north from Stratton Lodge preventing direct access to the existing A96.
- this connection is necessary following a 2002 consent for a new hotel and leisure complex at Stratton Lodge with conditions including a double track road from the existing A96.
- this was deemed essential for the success of the proposed hotel development.
- provision is already made for this connection where the A96 is specifically widened to allow the creation of a bell-mouth and the kerb is set back accordingly.

3.87 The objector contends that stopping up the northern access would blight development of the property for its designated use and would have a detrimental impact on alternative development value. This, it argues, would make the property substantially less attractive with an obscure circuitous access route. The proposed widening of Stratton Lodge Road would, in the objector's view, not adequately compensate for the removal of the existing A96 access to the north. It argues that TS has therefore failed to provide a 'like-for-like alternative' with suitable access to the A96.

Effect of proposed route on residential development

3.88 MacDonald Hotels Investments Ltd argues that the proposed route would potentially blight development land to the East of Inverness and place an 'unnecessary burden to agree access with third party land owners'. It contends that, removal of direct access to/from the A96 is not adequately replaced by the proposed widening of Stratton Lodge Road and its existing junction with Barn Church Road.

3.89 The objector argues that the proposed scheme takes no account of recent consents to develop Stratton Farm, which has an approved Masterplan and commitment to build a new road from Barn Church Road to Caulfield Road. This new road proposal is, it argues, approved by The Highland Council. It argues that the proposed scheme ignores a principal core aim of the approved Master Plan that is promoting connection and integration of development land in East Inverness.

3.90 The objector proposes that the draft Orders should be amended to give full access onto the dual carriageway, and to reject the proposed widening of Stratton Lodge Road in favour of an alternative route from Barn Church Road.

Transport Scotland's Response

Existing use and northern access

3.91 TS argues that the proposed severing of the northern access track to Stratton Lodge from the existing A96 would not result in the consequences argued by OBJ/010 MacDonald Hotels Investments Ltd.

3.92 It agrees that site IN77 is allocated in the IMFLDP (CD062) for 25 residential units, including the Category B Listed Stratton Lodge and its southerly access. The southerly access is, TS argues, the main entrance to the property because it forms part of allocation area of IN77 (IMFLDP Pg. 34). TS notes that IN77 does not cover the access track to the north of the lodge towards the existing A96.

3.93 Therefore, TS argues, the area of land proposed for compulsory purchase under the [draft CPO](#) (CD001) covers only some of the land close to the southern access (Plot 213). TS states that this plot is required for works associated with the proposed widening of Stratton Lodge Road. As such, it argues that this would ensure access to site IN77 from the south.

3.94 TS argues that Stratton Lodge Hotel does not appear to be in current use for any commercial or residential activity and has been assessed as such in [ES Paragraph 15.5.46](#) (CD005), where the impact of the proposed scheme has been assessed as 'Neutral' given the limited land-take and retained access onto Caulfield Road [Stratton Lodge Road].

3.95 TS argues that Conditions 1 and 2 in the [decision notice for consent 99/00506/FULIN](#) (TS307) relate to a proposed northern connection to the existing A96, with Condition No. 2 stating:

'The double lane width section of access from the A96 shall extend round the sharp bend on the driveway before reducing to single carriageway width; the passing place nearest to the A96 should be relocated at the curve adjacent to the beech tree marked 'G' on the approved plan, on the single track section of the access.'

3.96 TS argues that this consent was granted subject to the condition that the development must commence within five years of the date of the consent being granted (4th October 2002). It argues that this consent has lapsed because no development appears to have taken place to date. In [TS010.02](#) TS invites MacDonald Hotels Investments Ltd to provide information to the contrary.

3.97 TS argues that the associated EIA [assumed to be the EIA for the permission and consent covered respectively in [TS307](#) and [TS308](#)] noted that the northern access track would require extensive upgrading if it were to be used as adequate access to facilitate development. As such, TS argues, the loss of this access would not impact on the site's development potential, evidenced by its exclusion from allocation IN77 (above).

Effect of proposed route on residential development

3.98 TS argues that [draft CPO](#) Plots 151, 152, 153, 154 and 155 (CD001) do not impact on designated development land and as such have been assessed under forestry within [ES](#)

[Chapter 15](#) (CD005). The impact on Stratton Lodge Woodland is assessed as Moderate/Substantial and this is identified in [ES Appendix A15.7](#) page A15.7-51 (CD006).

3.99 TS argues that it is aware of the various applications and consents related to the Stratton development and has also consulted extensively with The Highland Council in developing the proposed scheme.

3.100 TS argues that Stratton New Town is allocated in the IMFLDP (Site IN84) and was granted planning permission in 2009 (09/00141/OUTIN). It argues that this approval is for Planning Permission in Principle (PPP) and therefore the draft masterplan and site layout is indicative. TS contends that a further application to provide the information required to discharge Matters Specified in Conditions (MSC) (including a detailed site layout) would be necessary.

3.101 TS argues that the only detailed permission for site IN84 relates to Phase 1 of Stratton New Town (south and west of Barn Church Road). It contends that this permission does not include the area of the Stratton site where this alternative route is suggested [assumed to be the alternative route sought by the objector]. TS states that it is not aware of a detailed layout having been approved which contains an east-west link road between Barn Church Road and Caulfield Road.

3.102 In TS010.02 TS argues that The Highland Council is preparing to consult on the future development of the broader Inverness East Development Brief growth area, of which the Stratton and Milton of Culloden sites form part, and there is a potential east to west link across these sites similar to the route described by the objector. However, TS argues, this option has no approved status at this time [the time of TS010.02] and would require further review and consultation. If taken forward with Council support, it would also require further planning permission. At this stage (July 2017 when TS010.02 was written), TS argues that, it is not therefore appropriate or possible that this indicative route be considered as an approved commitment for the design and assessment of the proposed scheme.

3.103 TS argues that the purpose of the proposed road improvements between Barn Church Road and Milton Road (U1136) is to provide access to eleven residential properties at Milton of Culloden Smallholdings, Stratton Lodge and to the agricultural land currently accessed from Milton Road. It argues that access to Stratton Lodge and the surrounding properties would also be retained. The extent of the improvement works would, it argues, only be that considered necessary to accommodate the increased traffic volumes that would result from providing access to the properties.

Findings of Fact

Existing use and northern access

3.104 IMFLDP (CD062) site allocation IN77 contains a southern access route connecting Stratton Lodge with Stratton Lodge Road. It does not include the access track leading to the existing A96 in the north. This land is not allocated for development. The proposed widening of Stratton Lodge Road, including Plot 213, would retain the southern access route (draft SRO - CD003 and TS008.03).

3.105 On our site inspection we saw the northern access from the existing A96. At the time of both our site inspections (June and November 2018) this access was a closed, metal

farm-style gate. The track behind the gate (to the south) was sunken and surrounded by trees and other vegetation. There was no sign of surfacing and what was seen appeared to be overgrown. Whilst the EIA for the planning permission and listed building consent in documents TS307 and TS308 is not before us, our observations are generally consistent with the TS analysis. This also makes clear that this access point is not operational. The evidence does not suggest we should reach an alternative conclusion.

3.106 The conditions of consent 99/00506/FULIN (TS307) are clear that it does not require a full two lane access, rather it requires a two lane access which drops to a single lane access with a passing place.

3.107 We also saw on our site inspections the current access from the south end, off Stratton Lodge Road. It is clear from its surfacing that it forms the main (and operational) access to the site for vehicles and that the northern access does not. [ES Appendix A15.4 Table 1 \(CD006\)](#) confirms that the hotel is currently closed. There is no further evidence to the contrary.

3.108 OBJ/010 Macdonald Hotels Investments Ltd has not provided any additional evidence either in their objection of 30 January 2017 ([TS010.01](#)) or subsequently that the planning permission is extant. Therefore the evidence does not suggest that TS is incorrect in arguing that permission 99/00506/FULIN (TS307) has expired ([TS010.02](#)), since more than five years has passed since approval.

3.109 Even were it extant, the proposal by the objector for direct access to the dual carriageway is not consistent with a Category 7A dual carriageway, which is accessed via grade separated junctions only. In Chapter 2: Matters of principle we have already accepted TS's rationale for promoting a category 7A dual carriageway. The evidence also does not suggest that we should find the ES consideration of the impacts of the proposed scheme on Stratton Lodge and allocated site IN77 as deficient in any way.

3.110 The evidence does not suggest that a blight notice has been issued for the site. The evidence above does not suggest that the proposed severance of the northern access track would prevent access to or development of the site.

Effect of proposed route on residential development

3.111 The Highland Council has now adopted the Inverness East Development Brief (2018) (CD139). Map 4.6 of that document shows that the principal access road for development land north of Stratton Lodge Road would run east to west joining an upgraded Barn Church Road to the west. We saw the Barn Church Road upgrading works underway during our site inspection in November 2018.

3.112 This east-west route (CD139) would transect the southern access route for IN77. We find this to indicate that site IN77 would become an integral part of the wider Inverness East area and take its principal access via the same arrangements as for sites IN84 and IN85 (i.e. the above referenced east to west link). The evidence, including TS301 to TS306, suggests that phase 1 of Stratton Farm (site IN84) does not include the area where the east to west link is proposed by the objector or indeed where highlighted in document CD139.

3.113 We agree with TS that any new road through sites IN84, IN85 and IN77 would be the subject of future planning proposals and all of the related considerations which accompany this (irrespective of how proposals for this area have moved on since TS010.02 in July 2017). It is not for TS to involve itself in this. TS also cannot rely on these third parties to provide replacement access for homes and fields that are presently accessed from Milton Road. Were site IN77 to commence prior to site IN84 and prior to the east-west access in CD139, it currently has an access route to the south via Stratton Lodge Road which is proposed to be upgraded. This upgrade requires the compulsory purchase Plot 213. This does not suggest that the proposed scheme (including the upgrade of Stratton Lodge Road) would inhibit access to Stratton Lodge (accepting the potential for limited disruption during the upgrade). However, we note TS's conclusion that the site is not presently operational for hotel, commercial or residential uses and neither our site inspection nor the evidence suggest we should find differently.

3.114 [ES Appendix A15.5](#) (CD006) and the updated considerations in the Development Land Report Appendix A (TS211) acknowledge the potential land take and amenity impacts but conclude the proposed scheme would not be expected to interfere with its use. These therefore conclude a neutral impact. The evidence above appears to confirm this.

3.115 The evidence therefore does not suggest that the proposed scheme would result in the site being rendered incapable of development since it would not be denied access as a result and forms part of a wider development brief which includes future access and other arrangements. Therefore, these matters do not suggest that we should recommend that Scottish Ministers modify the draft Orders or refuse to confirm them.

OBJ/017 Mr Donald H and Mrs Ellen V Williams

Objection

Land take and ownership

3.116 OBJ/017 Mr and Mrs Williams argue that the proposed compulsory purchase of Plots 209, 211 and 212 is excessive and that no consultation regarding this has taken place. They argue that Plot 209 contains a sewer crossing and that it is unclear who owns the road verge and solum of Caulfield Road [Stratton Lodge Road] (Plot 210) and that this is being investigated.

Access to land north of Stratton Lodge Road (Site IN85)

3.117 Mr and Mrs Williams argue that the proposed works to widen Stratton Lodge Road would adversely affect future access arrangements for [IMFLDP](#) (CD062) site IN85. In their view there has been no proper consultation between TS and The Highland Council to form an optimal route to support the long term growth of East Inverness. They contend that TS has ignored the current approved Master Plan for Stratton Farm; which includes a new link road between Barn Church Road and Caulfield Road. Instead they propose an alternative route should be adopted in coordination with approved consents on Stratton Farm to link Caulfield Road with Barn Church Road. Mr and Mrs Williams therefore argue that the Draft SRO is not supportive of long term growth in the LDP and, in their view, should be rejected.

Transport Scotland's Response

Land take and ownership

3.118 TS argues that Plots 209, 211 and 212 are necessary for the proposed scheme as follows:

- Plot 209 - widening and improvement of Milton Road (U1136), construction of a new side road to connect Milton Road to Stratton Lodge Road (U1058), construction of a drainage infiltration trench, and landscaping in the form of screening hedgerows.
- Plot 211 - for construction of a field access into Mr and Mrs Williams' land.
- Plot 212 - for construction of a drainage infiltration trench.

3.119 TS contends that consultations were held with Mr and Mrs Williams on 2 February 2016 and 26 October 2016 to update them on design developments and likely land-take requirements.

3.120 If, following construction, any land is deemed surplus TS confirms that it may be sold back to Mr and Mrs Williams in line with the Crichel Down rules.

3.121 TS states that Scottish Water has been contacted regarding the foul water and storm water sewers on Plot 209 to determine suitable diversions.

3.122 TS argues that extensive title searches were carried out but it was not possible to identify ownership of the solum of the former Caulfield Road [Stratton Lodge Road]. It explains that Mr and Mrs Williams are understood to be exploring this and are asked to forward any details they find. If they are found to own the land then TS confirms that this would be reflected in the finalised Order.

Access to land north of Stratton Lodge Road (Site IN85)

3.123 TS argues that:

- it is aware of the various applications and consents related to the Stratton development and has also consulted extensively with The Highland Council in developing the proposed scheme.
- Stratton New Town is allocated in the IMFLDP (Site IN84) and was granted planning permission in 2009 (09/00141/OUTIN).
- this approval is for Planning Permission in Principle (PPP) therefore the draft masterplan and site layout is indicative.
- a further application to provide the information required to discharge Matters Specified in Conditions (MSC) (including a detailed site layout) will be necessary.

3.124 TS understands that the only detailed permission for IN84 relates to Phase 1 of Stratton New Town (south and west of Barn Church Road). It argues that this permission does not include the area of the Stratton site where this alternative route is suggested. TS is not aware (in TS017.02) of a detailed layout having been approved which contains an east west link road between Barn Church Road and Caulfield Road.

3.125 In [TS017.02](#) TS argues that The Highland Council is preparing to consult on the future development of the broader Inverness East Development Brief growth area, of which the Stratton and Milton of Culloden sites form part, and there is a potential east to west link across these sites similar to the route described by the objector. However, this option has

no approved status at this time and would require further review and consultation. If taken forward with Council support, TS argues this would also require further planning permission. At this stage (July 2017 when TS017.02 was written), TS argues that, it is not therefore appropriate or possible that this indicative route be considered as an approved commitment for the design and assessment of the proposed scheme.

3.126 TS argues that the purpose of the proposed road improvements between Barn Church Road and Milton Road (U1136) are to provide access to eleven residential properties at Milton of Culloden Smallholdings, Stratton Lodge and to the agricultural land currently accessed from Milton Road. It argues that access to Stratton Lodge and the surrounding properties would also be retained. The extent of the improvement works would, it argues, only be that considered necessary to accommodate the increased traffic volumes that would result from providing access to the properties.

3.127 TS argues that the Highland Council Development Plans Team has confirmed that the Council does not intend that the future development areas at Stratton Lodge and Milton of Culloden South would use Stratton Lodge Road as their principal access to these developments.

3.128 TS argues that the planning of developments such as those proposed for Stratton and Milton of Culloden requires consideration of numerous factors; including proposed land use, building type and density, street and public space design, traffic flows, NMU provision and environmental and engineering constraints, as well as the need to comply with the statutory consent process and undertake public consultation. It argues that the provision of a suitable access to Milton of Culloden Smallholdings is required as a result of the proposed scheme, however TS does not consider it appropriate that it should become involved in addressing these wider considerations unless it were necessary to the provision of this access.

3.129 TS argues that the extent of the improvement works would be limited to those necessary for providing access to Milton of Culloden. TS confirms (TS017.02) that it will work with The Highland Council to develop an appropriate detailed design for this road improvement. It provides the proposed design for improvements to Stratton Lodge Road in [TS017.03](#).

Findings of Fact

Land take and ownership

3.130 [Draft SRO](#) Plan SR2 (CD003) shows that Plots 209, 211 and 212 (draft CPO Sheet 2 – CD001) are needed for the proposed improvements of Stratton Lodge Road. The [Crichel Down Rules](#) (CD047) provide sufficient scope to sell any surplus land back to the previous owner should it be deemed appropriate.

3.131 We note that TS is in liaison with Scottish Water regarding a diversion of the foul and storm water sewers on Plot 209. This should bring some reassurance to Mr and Mrs Williams that the presence of this infrastructure would not, on its own, prevent the proposed road widening from taking place.

3.132 We note the investigations that Mr and Mrs Williams have undertaken to establish the ownership of Plot 210. However, we do not consider this would affect the draft Orders

since they currently make clear that plot ownership is unknown. Discovery of the owner's identity would not alter the plot size as covered by the draft Orders. It is reasonable and in the interests of natural justice that, should the identity of the owner be discovered, then the draft Orders could be amended without the need for us to make a specific recommendation to Scottish Ministers.

Access to land north of Stratton Lodge Road (Site IN85)

3.133 TS is correct that the IMFLDP (CD062) does not identify access arrangements for site IN85. The evidence does not suggest that site IN85 has been granted planning permission. However, since TS response letter 31 July 2017 ([TS017.02](#)) The Highland Council has adopted the [Inverness East Development Brief](#) (2018) (CD139). CD139 third paragraph explains that this is statutory supplementary guidance, which forms part of the IMFLDP (CD062).

3.134 CD139 Map 4.6 shows that the principal access road for development land north of Stratton Lodge Road would run east to west joining an upgraded Barn Church Road to the west. We saw the Barn Church Road upgrading works underway during our site inspection in November 2018.

3.135 This may be similar to the objectors' proposed alternative route north of Stratton Lodge Road. However, the development brief (CD139) shows there to be no relationship between Stratton Lodge Road and future access arrangements for site IN85, even were it to be granted planning permission. Indeed the indicative masterplan on page 9 (CD139) identifies Stratton Lodge Road as a walking and cycling link and its remaining purpose is to ensure access to the homes and fields off Milton Road.

3.136 We agree with TS that any new road through sites IN84, IN85 and IN77 would be the subject of future planning proposals and all of the related considerations which accompany this (irrespective of how proposals for this area have moved on since TS017.02 in July 2017). We also agree that it is not for TS to involve itself in this, since development of this land does not form part of the proposed scheme as identified in the draft CPO (CD001). TS also cannot rely on these third parties to provide replacement access for homes and fields accessed from Milton Road.

3.137 Widening Stratton Lodge Road would not prevent access to the fields north of Stratton Lodge Road since new point of access 343 on draft SRO plan SR2 (CD003) using Plots 210 and 211 would provide this. This is also confirmed in [TS017.03](#). We also find that it remains necessary to provide access for homes and fields off Milton Road to overcome the vehicular severance caused by the proposed scheme.

3.138 [ES Appendix A15.5](#) (CD006) and the updated position in the [Development Land Report](#) Appendix A (TS211) confirm that the impact of the proposed scheme on site IN85 allocation as mixed. This is ostensibly because the proposed dual carriageway would pass through the northern part of the site and have some impact on amenity. However, the planning permission in principle (TS211 Appendix A) includes safeguarding of land for the proposed scheme, which itself overcomes transport constraints identified in the [HwLDP](#) (CD061). On balance therefore we do not consider the evidence above to suggest that the proposed scheme would unreasonably affect the future development of site IN85.

3.139 The factors above convince us that the proposed scheme, and in particular the widening of Stratton Lodge Road/Milton Road, are unlikely to prevent the development of Inverness East, including site IN85. Therefore the evidence above does not suggest that we should recommend that Scottish Ministers modify the draft Orders or refuse to confirm them.

OBJ/028 Mr John and Mrs Anne Callum

Objection

Access to farmland

3.140 OBJ/028 Mr and Mrs Callum argue that the proposed compulsory purchase of land would adversely affect access for combine harvesters to fields off Milton Road (fields 413/1 and 413/2). They argue that there is no alternative access since the current track is not suitable.

Drainage arrangements

3.141 Mr and Mrs Callum argue that the proposed drainage arrangements do not adequately address flood risk and containment of flood water. They argue that the Milton of Culloden Burn is often in spate due to the speed of run-off from the Culloden area. Therefore any proposals should, in their view, take account of this to avoid possible flooding.

Impact on site IN85

-Bat boxes

3.142 Mr and Mrs Callum argue that the [draft CPO](#) (CD001) would blight land at number 4 Milton of Culloden, which they state is designated for development in the [IMFLDP](#) (CD062). They also argue that the proposed compulsory purchase of Plot 220 would prevent access to 'zoned land' [assumed to mean land allocated for development in the development plan] from the public road [assumed to be Milton Road] and would place a burden to agree access with adjoining land owners. They argue that bat boxes proposed for Plot 220 would adversely affect development of the site and could be located elsewhere.

-Inverness East

3.143 Mr and Mrs Callum argue that the proposed widening of Stratton Lodge Road would not form the optimal route to support the development of East Inverness and does not take into account recent planning consents granted for Stratton Farm. They argue that the consented masterplan for Stratton Farm included a proposed new road from Barn Church Road to Caulfield Road and that any alternative route would be a waste of tax payers' money. As such, they contend that strategic housing considerations are being overlooked and/or jeopardised by what they term 'TS's failure to consider local planning policy and proposals'.

Transport Scotland's Response

3.144 In [TS028.02](#) TS argues that Mr and Mrs Callum's land at 3 Milton of Culloden is assessed in [ES Chapter 15](#) (CD005). [The Reporters note Mr and Mrs Callum's reference to Number 4 Milton of Culloden and therefore consider reference by TS to number 3 to be a

typing error that should instead refer to number 4. Either way we accept that TS is referring to the land which Mr and Mrs Callum have raised concerns about]. TS argues that the impacts on agricultural fields (references 413/1 and 413/2 in [ES Figure 15.6a](#) (CD007)) from the compulsory purchase of Plots 204 and 206 are detailed in [ES Appendix A15.7](#) on page A15.7-3 (CD006).

Access to fields 413/1 and 413/2

3.145 TS accepts that access to the field to the north west of Ashlea (413/2) from Milton Road (U1136) would be lost to construction of the proposed scheme. However, it argues, there are existing access points to field 413/2 via gated access at the southern side of the steading and also through the stack yard at the northern side of the steading.

3.146 TS proposes to provide access to this field via the existing farm track connecting Milton Road to the farm steading. TS states that this would include widening of the bell mouth entrance to this track at its junction with Milton Road to accommodate HGVs and combine harvesters, including allowing them to turn right from Milton Road. TS argues that this is shown as access Point 340 on [draft SRO](#) Plan SR1 (CD003) and that this reflects its previous consultations with Mr and Mrs Callum.

3.147 TS argues that beyond this point, and subject to Mr and Mrs Callum's agreement, any improvements necessary to allow a combine harvester to take access to field 413/2, to the north west of Ashlea, would be carried out as accommodation works as part of the construction contract for the proposed scheme.

3.148 TS argues that a change to the proposed scheme is needed regarding access to field 413/1. It states that the original proposal was for New Means of Access 341 on draft SRO Plan SR1 (CD003). However, TS argues, it became clear that this access required a departure from standards because it would have exceeded the permitted number of junctions in a given distance. TS states that The Highland Council advised that it was not willing to support this departure.

3.149 As such, TS states that it is proposed instead that the access to field 413/1 should be similar to that proposed for field 413/2 (above). This would be provided via the farm track connecting Milton Road to the farm steading (New Means of Access 340). TS argues that, the necessary improvements outwith the CPO boundary to facilitate combine harvester and HGV access to the field would be carried out as accommodation works, subject to Mr and Mrs Callum's agreement.

Drainage arrangements

3.150 TS argues that a detailed flood risk assessment was carried out as part of the ES ([ES Appendix A13.2](#) – CD006). TS states that the Milton of Culloden Burn is included in the Cairnlaw Burn hydraulic model and that an estimation of flows has been developed based on the existing catchment including the urbanisation upstream. TS argues that the proposed Smithton and Culloden Flood Alleviation Scheme is expected to result in lower flows to this location, however TS also argues that flood modelling has been based on the worst-case assumption that the flood alleviation scheme (mentioned above) does not progress.

3.151 TS argues that the model of existing conditions indicates that in flood conditions, the flood flow would overtop the north east bank of Milton of Culloden Burn, opposite number 4 Milton of Culloden, and travel overland, northeast of Milton Road, to the existing A96. To reduce this out-of-bank flooding, TS confirms that a bypass channel has been designed. It argues that this would increase overall channel capacity from upstream of the point where Kenneth's Black Well is culverted under the Milton Road.

3.152 TS argues that, including the proposed bypass channel in the hydraulic model would take 60% of the flows from the Milton of Culloden Burn during peak design flow. This, it states, is a flow with a 0.5% Annual Exceedance Probability (sometimes referred to as a 1 in 200 year event) plus an allowance for climate change. TS argues that the remaining flows would be contained within the existing channel of the Burn. TS states that the bypass channel has therefore been designed to cater for this amount of flow and has been sized accordingly; as two metres wide at its base and approximately two metres deep.

3.153 Upstream of the proposed culvert, TS states that the bypass channel would return to the Milton of Culloden Burn, approximately 50 metres from the proposed A96 dual carriageway. It states that there would be approximately 0.5 metres of freeboard (vertical clearance between peak water level and top of bank) within the bypass channel at this location, during the peak design event described above. Downstream of the proposed culvert, TS argues that the channel freeboard would increase to approximately 1.1 metres during the peak design event.

3.154 With regard to fly-tipping, TS argues that it would be difficult to develop a scheme that is fully resilient to blockage, especially from dumped material. Such a proposal would, it argues, require trash screens at the inlet and culverts, and a suitable inlet design. TS argues that the proposed two channels to convey flows, rather than the current single channel, should considerably reduce the impacts of blockage for residents adjacent to the Milton of Culloden Burn. TS confirms that it would be responsible for maintaining the new bypass channel and the culverts, except for culverts under Milton Road which would be maintained by The Highland Council.

Impact on Site IN85

-Bat mitigation

3.155 TS argues that land at 4 Milton of Culloden is part of the wider Milton of Culloden development allocation (IN85) identified in the IMFLDP (CD062) for mixed residential, business and community use. TS argues that this LDP contains a requirement to safeguard possible trunk road improvements within the requirements of the overall land allocation.

3.156 TS argues that Plot 220 is required for bat mitigation due to the loss and fragmentation of commuting habitats for bats, a European protected species. It argues that it is necessary to provide bat boxes in close proximity to lost habitats where an impact from the proposed scheme has been identified. The bat box mitigation, TS argues, needs to be situated a sufficient distance from the main works area so that it would not be compromised during works, but close enough so that it could effectively mitigate for the loss and fragmentation of commuting habitats, by providing additional shelter.

3.157 TS argues that Plot 220 was chosen as a suitable location for bat boxes for the mitigation of habitat being lost as part of the works at woodland to the south east of the property 'Oakdene'. TS states that the presence of suitable mature trees in an area

frequented by bats, and its accessibility for maintenance and monitoring of the boxes makes Plot 220 a highly suitable location for this mitigation. However, TS confirms that the extent of CPO stops short of Mr and Mrs Callum's existing access to this field and the existing access would remain in their ownership.

3.158 Given the existing presence of bats in the location ([ES Chapter 11](#) – CD005) and CPO Plot 220 being located on the periphery of IN85, TS does not consider that this would create any further constraints to future development there.

-East Inverness Development

3.159 TS states that it is aware of the various applications and consents related to the Stratton development and has also consulted extensively with The Highland Council in developing the proposed scheme.

3.160 In terms of current planning status, TS acknowledges that the Stratton New Town is allocated in the IMFLDP (site IN84) and was also granted planning permission in 2009 (09/00141/OUTIN). TS argues that this approval is for Planning Permission in Principle (PPP) therefore, it argues, the draft masterplan and site layout is indicative. TS argues that a further application to provide the information required to discharge Matters Specified in Conditions (MSC) (including a detailed site layout) would be necessary.

3.161 Furthermore, TS understands that the only detailed permission in place for IN84 relates to Phase 1 of Stratton New Town (to the south and west of Barn Church Road). TS argues that this permission does not include the area of the Stratton site where the objectors propose an alternative route. TS states that it is not aware (at the time of TS028.02) of any detailed layout that has been approved at any stage of the Stratton New Town application process which contains an east-west link road between Barn Church Road and Caulfield Road.

3.162 In [TS028.02](#) TS argues that The Highland Council is preparing to consult on the future development of the broader Inverness East Development Brief growth area, of which the Stratton and Milton of Culloden sites form part, and there is a potential east to west link across these sites similar to the route sought by Mr and Mrs Callum. TS argues that this option has no approved status (at the time of writing TS028.02) and would require further review and consultation. If taken forward with Council support, TS argues, it would also require further planning permission. TS argues that it was not therefore appropriate or possible that this indicative route be considered as an approved commitment for the design and assessment of the proposed scheme.

3.163 TS argues that the purpose of the proposed road improvements between Barn Church Road and Milton Road (U1136) is to provide access to 11 residential properties at Milton of Culloden Smallholdings and to agricultural land currently accessed from Milton Road. It argues that the extent of the improvement works would only be that considered necessary to accommodate the traffic volume that would result from providing access to these properties. TS states that the Highland Council Development Plans Team has confirmed that the Council does not intend that the future development areas at Stratton Lodge and Milton of Culloden South would use this section of road as their principal access to these developments.

3.164 TS argues that planning of developments such as those proposed for Stratton and Milton of Culloden requires consideration of numerous factors including proposed land use,

building type and density, street and public space design, traffic flows, NMU provision and environmental and engineering constraints, as well as the need to comply with the statutory consent process and undertake public consultation. It argues that provision of a suitable access to Milton of Culloden Smallholdings is required as a result of the proposed scheme. TS does not consider it appropriate for it to become involved in addressing these wider considerations unless it were necessary to the provision of this access.

3.165 TS argues that the extent of the improvement works would be limited to those necessary for providing access to Milton of Culloden. TS confirms that it would work with The Highland Council to develop an appropriate detailed design for this road improvement.

Findings of Fact

Access to fields 413/1 and 413/2

3.166 We note the proposed access arrangements for fields 413/1 and 413/2 as set out by TS; including the revision to the proposed arrangements in light of The Highland Council's decision not to accept a departure from standards. The evidence indicates that TS is committing to maintain access to these fields by HGV and agricultural machinery such as combine harvesters. The proposed widening of Stratton Lodge Road would form part of this.

3.167 More recent correspondence from TS on 31 July 2018 ([TS028.03](#)) provides detailed drawings of the proposed widening of Stratton Lodge Road and Milton Road. This includes a two lane carriageway (one lane in each direction) from the junction with Barn Church Road to just north east of the turn off for Stratton Lodge. Thereafter several passing places are proposed. TS has also committed in [TS028.02](#) to carry out the necessary accommodation works in liaison with Mr and Mrs Callum. This suggests that the necessary measures are being proposed in order to ensure that access to fields 413/1 and 413/2 is retained.

3.168 Section 13 of the [precognition of TS's Design Manager Mr Cameron](#) for Session 1 confirms certain modifications to the draft Orders that TS intends to carry out. One of these is the deletion of New Means of Access 341 on [draft SRO](#) Plan SR1 (CD003). This modification would be necessary in order to proceed in the manner proposed by TS to overcome opposition to the original access proposals from The Highland Council.

3.169 Mitigation and accommodation works along with any modifications to the draft Orders would ultimately form part of any construction contract. Therefore such terms would be binding on the contractor to deliver to the appropriate standard. [ES Table 20.1](#) mitigation item GR2 (CD005) explains that an environmental clerk of works would be appointed and TS has also appointed its scheme designer Jacobs to an on-site supervisory role during construction; thus providing an independent regime to hold the contractor to account. This should provide some reassurance to Mr and Mrs Callum that the proposed field access arrangements would be delivered to an appropriate standard.

Drainage proposals associated with the proposed scheme

3.170 We note the objectors' concerns regarding flood risk. However, this has been considered in the context of drainage for the wider area as part of the Cairnlaw Burn system. The proposal for an additional channel appears to offer a mechanism to manage

surplus water. Consideration has been given to the local flood alleviation scheme. The flood risk assessment is also based on a worst-case scenario in the event that this flood alleviation scheme did not progress. The evidence does not suggest we should doubt the findings of the flood risk assessment in [ES Appendix 13.2](#) (CD006). We attach weight to the fact that SEPA has not objected and conclude that the proposed arrangements are satisfactory in principle.

3.171 We accept TS's consideration of the risks to the watercourse from fly tipping and also that this presents some challenges for those with maintenance responsibilities; since the risk of fly tipping cannot be totally eradicated. The proposed additional channel should provide at least some short-term bypass whilst any blockage to the main channel is overcome.

Impact on site IN85

-Bat mitigation

3.172 We note TS's conclusions with regard to the necessity and rationale for locating bat boxes to mitigate lost habitat. On our site inspection we saw Plot 220 forms a narrow site on the southwest side of Milton Road just southeast of number 4 Milton of Culloden. It contains the Milton of Culloden Burn with mature trees and shrubs. The evidence does not suggest we should reach an alternative conclusion to that reached by TS.

3.173 The [draft CPO](#) (CD001) and [IMFLDP](#) (CD062) confirm that Plot 220 is on the northeast periphery of site IN85. We also note that Plot 220 stops short of Mr and Mrs Callum's existing field access, which TS explains would remain in the Callum's ownership. We see no reason to doubt this analysis. On balance, the proposed compulsory purchase of this land for bat boxes is unlikely to severely inhibit Mr and Mrs Callum's current access or use of their land. The presence of the Milton of Culloden Burn through this site is also likely to limit the alternative uses to which this plot could be put and is itself a feature that has the potential to attract bats.

-East Inverness Development

3.174 As noted above Plot 220 is a narrow site on the periphery of site IN85. It contains mature trees and the Milton of Culloden Burn. Were Plot 220 not to be part of the draft CPO the flood risk assessment (ES Appendix 13.2, Diagrams 4, 6 and 10 – CD006) demonstrates that it would be likely to be unsuitable for development due to flood risk.

3.175 Following TS028.02 (31 July 2017) The Highland Council has adopted the Inverness East Development Brief (2018) (CD139). CD139 paragraph three explains that this is statutory supplementary guidance that forms part of the IMFLDP (CD062). CD139 Map 4.6 shows that the principal access road for development land north of Stratton Lodge Road (including site IN85) would run east to west joining an upgraded Barn Church Road to the west. We saw the Barn Church Road upgrading works were underway during our site inspection in November 2018.

3.176 This east-west link may be similar to the proposed alternative north of Stratton Lodge Road. However, the development brief (CD139) shows there to be no relationship between Stratton Lodge Road and future access arrangements for site IN85, even were it to be granted planning permission. Indeed the indicative masterplan on page 9 (CD139)

identifies Stratton Lodge Road as a walking and cycling link and its remaining purpose is to ensure access to the homes and fields off Milton Road.

3.177 We agree with TS that any new road through site IN85 and IN84 would be the subject of future planning proposals and all of the related considerations which accompany this (irrespective of the fact that planning for this area has moved on since publication of TS028.02). We also agree that it is not for TS to involve itself in this since development of this land does not form part of the proposed scheme. TS also cannot rely on these third parties to provide replacement access for homes and fields accessed from Milton Road.

3.178 The widening of Stratton Lodge Road is required only to ensure continued vehicular access to the homes and fields accessed from Milton Road following severance by the proposed scheme. This would not prevent access to Mr and Mrs Callum's land. Stratton Lodge Road is not proposed as the main form of access for parts of Inverness East.

3.179 [ES Appendix A15.5](#) (CD006) and the updated position in the [Development Land Report](#) Appendix A (TS211) confirm that the impact of the proposed scheme on this allocation as mixed. This is ostensibly because the proposed dual carriageway would pass through the northern part of the site and have some impact on amenity. However, the planning permission in principle (TS211 Appendix A) includes safeguarding of land for the proposed scheme, which itself overcomes transport constraints identified in the [HwLDP](#) (CD061). On balance therefore we do not consider the evidence above to suggest that the proposed scheme would unreasonably affect the future development of site IN85.

3.180 The factors above convince us that the proposed scheme, and in particular the widening of Stratton Lodge Road/Milton Road, are unlikely to prevent the development of Inverness East, including site IN85. This does not represent a constraint on development and this does not provide any justification for rejecting this part of the [draft SRO](#) (CD003). Therefore the evidence above does not suggest that we should recommend that Scottish Ministers modify the draft Orders or refuse to confirm them.

Conclusions

3.181 Objections against the proposed improvements to Stratton Lodge Road and Milton Road and the impacts on adjacent land could be overcome through the design of the proposed scheme and/or programmed mitigation/accommodation works. Any residual impacts / effects would not override the public interest in providing the proposed scheme and do not warrant/cannot be overcome by modification to the draft Orders. Such residual impacts / effects are also not significant enough to recommend that Scottish Ministers refuse to confirm the draft Orders.

CHAPTER 4: SMITHTON, CULLODEN, ALLANFEARN, BALLOCH AND 'THE HEDGES'

Introduction

4.1 This chapter considers objections and representations regarding the proposed dualling of the A96 in the section from Seafield roundabout to Newton of Petty. This includes objections raised by residents and land owners/tenants in Smithton, Culloden, Allanfearn, Balloch and nearby.

4.2 Objections relating to the proposed improvements of Stratton Lodge Road and Milton Road (and land either side of these) are covered separately in chapter 3: Stratton Lodge Road and Milton Road.

Proposed scheme

4.3 The new dual carriageway is proposed to run north eastwards from Seafield roundabout along the southern side of the existing A96 and north of Smithton. A new grade-separated junction is proposed just south of the existing Smithton roundabout. The existing roundabout would form the northern part of this proposed new grade separated junction with proposed local road layout changes as shown in [draft SRO](#) plan SR1 (CD003).

4.4 Just northeast of Milton Road the new dual carriageway is proposed to swing south between Allanfearn Farm and Culloden and Balloch. South of Allanfearn Farm the route of the proposed scheme would sever a path network known locally as 'the Hedges'. This is shown at points 262 and 263 and 264 and 265 of draft SRO Plan SR3 (CD003).

4.5 A new grade-separated junction is proposed just north of Balloch to the south west of the present Balloch junction. This is shown on draft SRO plan SR4 (CD003), including the proposed closing off (point 196) and new alignment of Barn Church Road (point 17).

4.6 The dual carriageway is proposed to continue eastwards from the new Balloch junction on the south side of the existing A96 to beyond Newton of Petty. Objections covering localities east of and in the vicinity of Newton of Petty are considered separately in chapter 5: Newton of Petty to Gollanfield.

Parties making objections/representations

4.7 Objections/representations were received from the parties listed below:

OBJ/003 Mr Richard Brady
OBJ/004 Mr David Gow
OBJ/007 Smithton and Culloden Community Council
OBJ/027 Ms Faye Armitstead
OBJ/029 Ms Helen Keltie
OBJ/030 Mr Alan Armitstead
OBJ/031 Mrs Terri-Anne Sinclair
OBJ/032 Ms Penny Williamson
OBJ/033 Ms Linda Simpson
OBJ/034 Mrs Janferie Mackintosh
OBJ/035 Mr Andrew Kirkland

REP/036 Mr Gordon Ross
OBJ/037 Mr Kenneth I Munro
OBJ/038 Ms Liza Grant
OBJ/039 Mrs J Bradley and Mr C Cumming
OBJ/040 Mr Brian Grant
OBJ/041 Mr Martin MacLeod
OBJ/042 Mr N and Mrs E Green
OBJ/043 Mr Steven Robertson
REP/044 Mrs Mary and Mr Eric Quemby
OBJ/047 Mr Hamish Johnston
REP/048 Mr Douglas Lamont
REP/049 Ms Gillian Spalding
OBJ/050 Balloch Community Council
REP/051 Balloch Village Trust
OBJ/052 Ms Sheena Fraser and Ms Ann Hulse
OBJ/053 Mr Ewen Macdonald
OBJ/054 Mr David Mitchell
OBJ/055 Ms Anna Gow
OBJ/056 Mr Fraser Gow
OBJ/057 Mr Robert Cavaye (Snr)
OBJ/058 Mr John W Brown
OBJ/059 Mr Alexander and Mrs Marion Bennie
OBJ/060 Mr Allan and Mrs Lorna Robertson
OBJ/061 Ms Ashley Sutherland
OBJ/062 Mr Alex Shaw
REP/063 Mr William Mackintosh
OBJ/064 Ms Norma Duncan
OBJ/107 Mr George D Strawson
REP/144 Highland Council (Development and Infrastructure Services)
REP/145 The Highland Council – Access Officer, Inverness, Nairn and East Lochaber
REP/147 Cllr Kate Stephen
OBJ/148 Cllr Trish Robertson

4.8 Most of the parties listed above are residents of Culloden and Balloch from places including: Blackpark, Blackthorn Road, Cherry Park, Cullernie Road, Fir Place, Hazel Avenue, Larch Place, Macleod Road, Milton Road, Moray Drive, Upper Cullernie, Upper Cullernie Court, Wellside Avenue, Wellside Gardens, Wellside Place and Westfield Drive.

4.9 Others include those who own or tenant local farm land that would be affected by the proposed scheme, including land proposed for compulsory purchase.

Structure of this chapter

4.10 This chapter covers locality-wide matters relating to the impacts of the proposed scheme on the localities of Smithton, Culloden and Balloch as follows:

- Proximity impacts
- Air quality impacts
- Visual impacts and mitigation measures
- Noise impacts, mitigation thresholds and mitigation measures
- House prices
- Built and natural environment

- Proposed Balloch grade-separated junction
- Traffic and NMU safety
- The Hedges

4.11 This chapter also covers property-specific objections and concerns raised by the owners and/or tenants of land and buildings that are anticipated to be affected by the proposed scheme:

- Plots 146 and 161 (Mr George D Strawson)
- Milton of Culloden Farm and Ashton Farm
- Allanfearn Farm
- Upper Cullernie Farm

Procedural Matter

REP/063 Mr William Mackintosh

4.12 The evidence shows a chain of email correspondence between TS and Mr Mackintosh between December 2016 and January 2017. In this correspondence TS was trying to resolve correct details for Mr Mackintosh's land interests that would be affected by the proposed scheme. The correspondence appears to show that the matters that were in doubt were then resolved to the satisfaction of both parties. The evidence does not suggest that Mr Mackintosh has otherwise objected, unless he has done so through another party, since the correspondence shows him to be a part owner of land. We are satisfied that there is no objection for TS to answer.

Locality-wide Objections

Proximity Impacts

Objections

4.13 OBJ/064 Ms Norma Duncan, OBJ/043 Mr Steven Robertson and REP/044 Mrs Mary and Mr Eric Quemby consider that the proposed route is too close to homes, schools and other facilities in Balloch.

4.14 OBJ/060 Mr Allan and Mrs Lorna Robertson object to the disruption that they consider would result from the construction phase.

4.15 At the Inquiry Session 3, OBJ/056 Mr Fraser Gow made clear that he objects to the impacts of the proposed scheme, rather than the principle of dualling.

Transport Scotland's Response

4.16 TS's consideration of these objections is set out below under separate headings relating to air quality, noise and visual impacts. Its consideration of objections to the route selection process are set out separately in Chapter 2: Matters of Principle.

Findings of Fact

4.17 These objections cover proximity-related air quality, ecological, noise, visual and landscape impacts, the impacts of the proposed scheme on 'The Hedges', NMU access

and road safety. These matters are covered separately under related, individual headings below.

4.18 In other instances the objectors are challenging the proposed route choice, sometimes on account of the impacts / effects described above. Our consideration of route selection matters, including alternative routes, is covered separately in Chapter 2: Matters of Principle.

4.19 With regard to construction disruption, [ES Table 20.1](#) mitigation item GR1 (CD005) requires the appointed contractor to prepare a construction environmental management plan (CEMP). The CEMP would identify standards and working arrangements to avoid and/or limit construction disturbance, including for noise and air quality. The standards would be determined in liaison with The Highland Council's Environmental Health service. ES Table 20.1 mitigation item GR2 (CD005) requires the appointment of an ecological clerk of works to provide an independent inspection regime. TS has also appointed the scheme designer; Jacobs, to oversee the construction process. The ES (and all its mitigation proposals) would form part of any construction contract and would therefore be binding on the contractor who would be overseen by TS's appointed site supervisor and whose works would be inspected by the environmental clerk of works. These measures would hold the contractor to account.

4.20 Subject to our consideration of individual matters (below under separate headings) these objections do not suggest that we should recommend that Scottish Ministers modify the draft Orders or refuse not to confirm them.

Air quality

Objections

4.21 The parties listed below each object to/comment on the air quality impacts from the proposed scheme, including matters relating to the potential health impacts of this:

OBJ/003 Mr Richard Brady
OBJ/007 Smithton and Culloden Community Council
OBJ/027 Ms Faye Armitstead
OBJ/030 Mr Alan Armitstead
OBJ/031 Mrs Terri-Anne Sinclair
OBJ/032 Ms Penny Williamson
OBJ/033 Ms Linda Simpson
OBJ/034 Mrs Janferie Mackintosh
OBJ/035 Mr Andrew Kirkland
REP/044 Mrs Mary and Mr Eric Quemby
OBJ/053 Mr Ewen Macdonald
OBJ/054 Mr David Mitchell
OBJ/057 Mr Robert Cavaye (Snr)
OBJ/058 Mr John W Brown
OBJ/059 Mr Alexander and Mrs Marion Bennie
OBJ/061 Ms Ashley Sutherland

4.22 OBJ/003 Mr Richard Brady is concerned that the proposed scheme would be close to Culloden Academy and lead to adverse air quality impacts on the health of pupils.

4.23 OBJ/031 Mrs Terri-Anne Sinclair is concerned about the air quality and associated health impacts of the proposed scheme on her property and walking routes she uses.

4.24 OBJ/032 Ms Penny Williamson and OBJ/033 Ms Linda Simpson are each concerned about the potential air quality impacts of the proposed scheme on their respective properties.

4.25 OBJ/058 Mr John W Brown is concerned about the potential impact of air quality on the locality, particularly the local primary school (assumed to be Balloch Primary School).

4.26 OBJ/027 Ms Faye Armitstead and OBJ/030 Mr Alan Armitstead are concerned about potential air pollution from the proposed scheme and its link with cancer and Alzheimer's disease.

Transport Scotland's Response

4.27 TS argues that:

- the air quality assessment in [ES Chapter 7](#) (CD005) was undertaken in accordance with DMRB air quality guidance, which includes consideration of construction dust.
- the air quality assessment included receptors (buildings or dwellings) within Culloden and Balloch, which are near to either the existing A96 and/or the proposed scheme.
- receptors that were considered likely to experience the highest levels of air pollution or the greatest change in air pollution as a result of the proposed scheme being built were selected.
- the air quality assessment shows there to be no significant impacts on air quality.

4.28 TS states that air quality standards for annual mean concentrations of NO₂ are 40 µg/m³ and for particulate matter (PM₁₀ and PM_{2.5}) are 18 µg/m³ and 10 µg/m³ respectively.

4.29 TS argues that, in the opening year for the proposed scheme, background annual mean pollution concentrations in these locations are expected to be 5 to 6 µg/m³ for NO₂, 8 to 9 µg/m³ for PM₁₀, and 5 to 6 µg/m³ for PM_{2.5}. TS argues this means that:

- no exceedances of these standards have been predicted to occur as a result of the proposed scheme.
- overall, there is not expected to be a significant effect on air quality.
- the predicted worst case concentrations at properties within Culloden and Balloch are classed as being 'Well Below' (<75%) the respective air quality standards for these pollutants.

4.30 In response to objections by OBJ/027 Ms Faye Armitstead, OBJ/030 Mr Alan Armitstead, OBJ/058 Mr John W Brown and OBJ/057 Mr Robert Cavaye (Snr), TS acknowledges that general air pollution concentrations are higher in urban environments (such as Inverness town centre) than rural areas.

4.31 TS argues that, in accordance with DMRB guidance on air quality, properties within 200 metres of roads affected by the proposed scheme were assessed. For properties at a distance of more than 200 metres from the existing A96 (in the 'Do Minimum' scenario) or the proposed scheme (in the 'Do Something' scenario), TS argues that air pollution concentrations are not expected to materially change as a result of the proposed scheme. In response to specific matters raised by objectors TS argues that:

- OBJ/003 Mr Richard Brady - the existing A96 is approximately 970 metres from the nearest façade of Culloden Academy. The proposed dual carriageway alignment would be approximately 660 metres from the nearest façade of Culloden Academy.
- OBJ/031 Mrs Terri-Anne Sinclair - the existing A96 is approximately 675 metres from the nearest façade of her property. The proposed dual carriageway alignment (at its nearest point) would be approximately 475 metres from the nearest façade of her property. This would apply for most of the walking route to which Mrs Sinclair refers.
- OBJ/032 Ms Penny Williamson - the existing A96 is approximately 590 metres from the nearest façade of number 11 Fir Place. The carriageway of the proposed dual carriageway alignment (at its nearest point) would be approximately 380 metres from the nearest façade of the property.
- OBJ/033 Ms Linda Simpson - the existing A96 is approximately 530 metres from the nearest façade of the property at number 55 Blackthorn Road. The proposed dual carriageway alignment would be approximately 280 metres from the nearest façade of that property.

Findings of Fact

4.32 The evidence in [ES Chapter 7](#) (CD005) and [ES Appendices A7.1 to A7.3](#) (CD006) does not suggest that the air quality assessment was carried out incorrectly or that it reached erroneous conclusions. Whilst the concerns of the objectors are understandable their evidence does not refute the ES conclusions.

4.33 [ES Appendix A7.4](#) (CD006) and [ES Figure 7.2a, 7.3a and 7.4a](#) (CD007) show predicted increases in nitrogen dioxide (NO₂) and particulate matter (PM₁₀ and PM_{2.5}) concentrations as a result of the proposed scheme. However, the same evidence demonstrates that these concentrations would remain below the respective air quality standards for these pollutants; as identified in [ES Table 7.3](#) (CD005).

4.34 Based on evidence presented by TS at various Inquiry Sessions it is our understanding that the national air quality objectives in Scotland are more stringent than those elsewhere, such as England. Similarly it is our understanding from these same discussions that the objectives are strongly informed by the health implications of air quality. As such this suggests that, despite some increase in pollutant levels, the proposed scheme would be unlikely to lead to concentrations of NO₂ and/or particulates that would be high enough to adversely affect human health based on the standards identified in [ES Table 7.3](#) (CD005).

4.35 The evidence in [ES Tables 7.11 and 7.16](#) (CD005) and [ES Figures 7.2a, 7.3a and 7.4a](#) (CD007) persuades us that a similar or less significant impact would be apparent for those properties and localities which are further away (beyond 200 metres from the proposed scheme as identified in [DMRB HA207/07](#) paragraphs 3.9 (ii), 3.13 and D1.1 (CD049.14).

4.36 The exception to this is annual average NO₂ concentrations at receptor AQ_045 Milburn Crossing as noted in [ES paragraph 7.3.18](#) (CD005). However, [ES Table 7.11](#) (CD005) shows that this receptor already exceeds the NO₂ air quality standard at 48.5 µg/m³ at the base year (2014). [ES Table 7.16](#) (CD005) shows that in both the Do

Minimum and Do Something scenarios in 2021, NO₂ concentrations would continue to exceed the National Air Quality Objectives (40.2 µg/m³ for the Do Minimum and 42.1 µg/m³ for the Do Something) but at a reduced level. We find this to demonstrate that, although the proposed scheme is likely to lead to slightly higher annual average NO₂ concentrations at this receptor compared with the Do Minimum scenario, this would be an improvement over existing NO₂ concentrations.

4.37 As such, the evidence does not suggest that air quality standards would be unacceptably affected as a result of the impacts / effects of the proposed scheme.

Visual and landscape impacts

Objections

4.38 The parties below consider that the proposed scheme would have significant adverse visual and landscape or related community impacts on Smithton, Culloden, Balloch and their surroundings. Some consider that the proposed mitigation measures, including tree planting, would be deficient:

OBJ/003 Mr Richard Brady
OBJ/004 Mr David Gow
OBJ/034 Mrs Janferie Mackintosh
OBJ/035 Mr Andrew Kirkland
REP/044 Mrs Mary and Mr Eric Quemby
OBJ/047 Mr Hamish Johnston
OBJ/050 Balloch Community Council
OBJ/053 Mr Ewen Macdonald
OBJ/054 Mr David Mitchell
OBJ/055 Ms Anna Gow
OBJ/056 Mr Fraser Gow
OBJ/057 Mr Robert Cavaye (Snr)
OBJ/059 Mr Alexander and Mrs Marion Bennie
OBJ/061 Ms Ashley Sutherland

4.39 OBJ/035 Andrew Kirkland queries the impact of the proposed scheme on 'the line of mature trees' [assumed to be the mature trees along Stratton Lodge Road].

4.40 OBJ/047 Mr Hamish Johnston objects to the impact from lighting of the proposed scheme.

4.41 OBJ/053 Mr Ewen Macdonald objects because he feels the proposed dual carriageway would affect the rural setting of Balloch. OBJ/053 Mr Ewen Macdonald and OBJ/054 Mr David Mitchell favour alternative routes for the proposed scheme based on their concerns. Route selection objections are covered separately in Chapter 2: Matters of Principle.

4.42 OBJ/055 Ms Anna Gow and OBJ/056 Mr Fraser Gow argue that the visual impacts of the proposed scheme on the communities of Smithton, Culloden and Balloch were specifically identified as a disadvantage of Option 1C (preferred Option). Mr Gow reiterated these concerns at Inquiry Session 3.

4.43 OBJ/061 Ms Ashley Sutherland does not oppose the proposed scheme but is concerned that the proposed mitigation (including planting) would take some time to establish with resultant visual impacts in the meantime.

4.44 Several other parties have raised concerns about visual impacts with specific regard to the proposed Balloch junction. These matters are considered separately in this chapter at paragraphs 4.371 to 4.424 and under sections for specific objectors.

Transport Scotland's Response

4.45 TS argues:

- that some visual and landscape impacts were anticipated with the proposed scheme route at DMRB stage 2 and so these were considered during the DMRB stage 3 assessment as part of the EIA.
- a landscape and visual impact assessment (LVIA), including consideration of lighting, was undertaken and proposals were developed to mitigate the potential landscape and visual effects arising from elements of the proposed scheme.
- the approach to the assessment and development of mitigation proposals has been informed by TS's [Fitting Landscapes: Securing more Sustainable Landscapes \(2014\)](#) (CD093).
- the impact assessment reported on the winter of opening year and the summer, 15 years after opening, following the establishment of the mitigation planting.
- ES [Chapters 9 and 10](#) (CD005) detail the assessment of the effects and proposed mitigation measures.
- [ES Appendix A10.1 and 10.2](#) (CD006) provide detailed information on the application of the specific mitigation measures for built and outdoor receptors.
- [ES Figures 9.5b to 9.5d and Figures 9.6a to 9.6c](#) (CD007) show the landscape mitigation proposals in the vicinity of Balloch and Culloden, which include deciduous and mixed woodland planting, scrub and hedgerow planting, climbing plants and the retention of existing deciduous woodlands where possible to assist integration with new planting.

4.46 TS argues that the proposed scheme, including the landscape mitigation measures, has been developed through an iterative design process that:

- involved engineering, environmental and landscape specialists, in order to minimise landscape and visual impacts, integrate the road with the surrounding landscape, provide a pleasant experience for travellers and, where possible, provide enhancements to the existing landscape.
- where possible and reasonably practicable, potential adverse environmental impacts have been prevented through this iterative approach rather than relying on specific measures to mitigate the impacts.

4.47 TS argues that these measures are reflected in the proposed scheme and so not reported in the ES as mitigation. Where prevention was not feasible, TS argues that specific mitigation measures have been proposed to reduce potentially significant impacts through abatement measures either at source, at the site, or at the receptor.

4.48 TS argues that the principles applied to the mitigation proposals include:

- planting to enhance biodiversity through the use of predominately native species, providing new wildlife habitats and complementing existing adjacent habitats;
- planting proposals have been developed in consultation with ecology specialists;

- planting designed in association with the landform design to provide integration with the local landscape setting;
- planting mixes shall be designed to reflect locally prevalent assemblages of species; and,
- planting to provide screening to reduce visual impacts for the dual carriageway and lighting.

4.49 TS explains that the visual mitigation is proposed by landscaping arrangements, largely in the form of mixed woodland and hedgerows, to reduce visual impacts. It argues that a combination of existing intermittent vegetation, the retention and management of existing woodland areas adjacent to the proposed scheme and the proposed mitigation planting would assist to reduce significantly, potential adverse effects.

4.50 TS proposes to retain existing trees and vegetation wherever possible and to incorporate this with new planting as detailed in the Mitigation Principles in ES Chapter 9 (CD005).

4.51 TS explains that some mature trees would need to be removed where they are on land proposed for acquisition to construct the proposed scheme. It argues that this would be offset by the additional planting provided across the proposed scheme.

4.52 TS confirms that [ES Figures 9.5c to 9.5e](#) (CD007) detail proposed landscape mitigation including replanting in the Culloden and Balloch area. TS highlights the proposed retention of the mature beech avenue, which runs along the northern boundary of the proposed extension of Stratton Lodge Road and measures that it proposes to take to protect it during construction.

4.53 TS explains that the landscape mitigation measures associated with the proposed scheme in the vicinity of Culloden and Balloch include the following:

- scrub planting on the embankments and around underbridges at the proposed Balloch Junction to help assimilate them into the surrounding landscape and assist screening of views.
- riparian woodland planting along SuDS/detention basin/ponds and along realigned burns to aid integration with surroundings.
- hedgerow with standard tree planting along the main alignment to fit in landscape character and to assist in screening of views from properties located in Balloch.
- hedge planting to assist integration with the surrounding landscape character and assist in screening traffic movement and the carriageway, in view from properties in Balloch.
- climbing plants on the protected sides of the noise barriers to soften potential intrusive visual effects of the noise barrier on properties.

4.54 TS explains that proposals between ch3500 and ch4600 include planting a combination of hedgerows and hedgerows with trees along the southern boundary of the proposed dual carriageway, which would be running at grade (neither on embankment nor in cutting). It argues that these measures are designed to reflect the surrounding landscape character, enhance biodiversity, provide screening to properties affected (including headlight glare) and also to tie in with existing shelterbelts and adjoining woodland areas.

4.55 TS argues that typical species mixes for all proposed planting have been provided in the ES and include the species named in OBJ/050 Balloch Community Council's correspondence with the exception of the ash. TS argues that ash is currently excluded

due to discovery of Chalara dieback of ash in 2013 and subsequent legislation which prohibits the importation or movement of ash trees and seeds for planting within Great Britain.

4.56 With regard to incorporating additional 'larger trees'; in the proposed hedgerow planting, TS explains that the trees shown on Figure 9.5c (CD007) are illustrative and not a true reflection of the exact number of trees to be planted in that location. Similarly TS argues that, as explained in the ES, the landscape mitigation design included therein is not a fully detailed design.

4.57 TS explains that more detailed development of the landscape mitigation will be progressed and details incorporated within the construction contract documents, of which the ES would form a part. Although the design of landscape mitigation measures is primarily determined by the need to comply with relevant guidance and advice notes, TS explains that all suggestions received regarding the proposed planting will be taken into consideration during the detailed design development stage. TS explains that it will continue to engage with the local community as the scheme progresses towards construction, through the established community council forums.

4.58 TS argues that, based on the findings of the assessment, the inclusion of an earthwork bund is not considered necessary to mitigate landscape and visual impacts.

4.59 TS contends that the planting associated with the proposed scheme is likely to be well established after 15 years post opening. TS argues that [ES Figures 10.3a and 10.3b](#) (CD007) show that:

- within Smithton, Culloden and Balloch, views of the proposed scheme from properties would be largely restricted to locations on the edges of those communities, and to some properties on higher ground.
- effects for the majority of the receptors located on the north-western edge of Balloch would be likely to reduce to below 'significant' due to the establishment of mitigation planting and the continued screening provided by the intervening topography and existing foreground vegetation.
- visibility of the proposed scheme from properties located on the north-eastern edge of Balloch would be limited due to existing screening provided by intervening properties, the rolling topography and by existing woodland.
- generally, for properties which have been assessed as being significantly impacted by visibility of the proposed scheme, these impacts would reduce to below significant after 15 years, due to the continued screening by the existing intervening vegetation and the establishment of the mitigation planting.
- the most significant effects would be experienced by properties located at the northern edge of the Culloden and Balloch, which would gain direct or acute views of the proposed Balloch Junction and dual carriageway. The mitigation planting would provide partial screening; however, residual effects would be likely to remain significant for most of these receptors due to their close proximity to the proposed scheme.

4.60 TS also argues that the landscape mitigation has been designed to address impacts in summer 15 years after opening and beyond 25 years, with species selected to continue to mature and provide mitigation. It argues that the planting mixes are designed to include a range of understorey and edge species. These, it argues, are to ensure a balanced structure, and include long lived and native species which are expected to naturally regenerate, hence ensuring longevity of planting areas.

-OBJ/061 Ashley Sutherland's property

4.61 TS argues that ES Figures 9.5d and 9.6c (CD007) cover proposals in the vicinity of OBJ/061 Ashley Sutherland's property. It argues that the ES acknowledges the proposed scheme would have direct adverse visual impacts on this property. TS argues that ES Chapter 10 (CD005) shows that:

- while the property would gain views of the junction [assumed to be the proposed Balloch junction], the acute angle of the views and the partial screening by the intervening buildings would limit effects during the winter in the year of opening, resulting in 'Moderate' effects.
- by the summer after 15 years this would reduce to 'Slight/Moderate' as a result of the establishment of the proposed hedge and scrub woodland mitigation planting around the proposed junction and along the proposed dual carriageway.

Findings of Fact

4.62 A LVIA has been carried out and the landscape and visual impacts documented in ES Chapter 9 and 10 (CD005) respectively. This has included, amongst other things, the potential lighting impacts. The evidence does not suggest we should doubt the methods or findings of this exercise.

4.63 [ES Figures 9.5a to 9.5e](#) (CD007) show the whole section of the proposed scheme from Seafield to Newton of Petty. These show the proposed location of mitigation planting along the south side of the proposed scheme including mixed woodland, scrub planting and hedgerow planting. We also note the mention of existing planting, including the retention of mature beech trees along Stratton Lodge Road. Stratton Lodge Road is covered separately in Chapter 3: Stratton Lodge Road and Milton Road.

4.64 An iterative process has attempted to avoid or minimise visual and landscape impacts through the design of the proposed scheme. This is a logical approach where measures that limit or avoid potential impacts are designed into the proposed scheme and so, consequently, are not specifically identified as mitigation measures in the ES. This does not mean that there has been a failure to identify and remedy issues.

4.65 [DMRB Stage 3 Figure 3.1D](#) (CD009) shows the profile for the proposed Balloch junction. ES Figures 9.5a to 9.5e (CD007) contain several route cross-sections from A-A to F-F. The horizontal eastward looking visualisations of these cross-sections are contained in [ES Figures 9.6a to 9.6c](#) (CD007). We find that these illustrate the role of planting and topography in screening the proposed scheme at the respective cross-section points.

4.66 [ES Figures 9.7d to 9.7f](#) (CD007) provide photomontages of the anticipated views at the proposed Smithton Junction, the area south of Allanfean Farm and the proposed Balloch Junction, all looking northwards both without the proposed scheme and with the proposed scheme 15 years after opening.

4.67 Based on this evidence we find that the proposed scheme would be partially screened along the route so as to diminish its visual signature. However, it would not be totally hidden and so would be visible from some locations, such as the view shown in ES Figure 9.7d (CD007) 15 years after opening.

4.68 [ES Figures 10.3a to 10.3b](#) (CD007) show the most significant visual effects on built receptors. At inquiry session 3, TS's visual and landscape expert explained that the visual receptors in closest proximity to the proposed Balloch junction are receptors 43, 44, 45 and 46. These represent groups of properties as shown in ES Figure 10.3b (CD007). Similarly we note from ES Figure 10.3b (CD007) that a group of properties at receptors 20 and 21 are in similar close proximity. Receptor 33 (Allanfearn Farm buildings) and Receptor 45 (Upper Cullernie Farm buildings) are considered individually in the respective property-specific sections of this chapter (below).

4.69 ES Figure 10.3b (CD007) reflects TS's findings that receptors closest to the proposed scheme are those expected to experience the most significant visual effects. Both ES Figures 10.3a to 10.3b (CD007) show that between year of opening and 15 years after, the significance of visual effect is predicted to diminish as planting matures. This indicates a degree of successful screening. However, the visual impact on some of those receptors closest to the proposed scheme, on the edges of Balloch and Culloden, (ES Figure 10.3b –CD007) would remain Moderate/Substantial 15 years after opening.

4.70 [The Report on Landscape and Visual Issues](#) (TS212) paragraphs 6.2.8 to 6.2.10 describe the characteristics of Culloden Estate Farmlands LLCA, the Open Coastal Lowland LLCA and the Forest Edge Farmland LLCA respectively. Each is considered to have low to medium sensitivity.

4.71 TS212 paragraph 6.2.9 describes the Open Coastal Lowland as forming the majority of the study area with flat to gently rolling open landscape allowing frequent views. We saw this on our site inspection. We find that the mitigation would reduce the visual signature of the proposed scheme and blend it into the landscape. However, we also find that both the proposed scheme and the mitigation would form new features in this landscape; and, that they would change the currently open view. Thus some residual visual and landscape impacts / effects would remain.

4.72 We travelled the localities of Smithton, Culloden, Balloch and nearby on our site inspection. We accept that the edges of these localities, facing onto agricultural fields have a countryside feel. However, we find that these areas form suburban communities of Inverness. We agree that the proposed scheme may bring some change to the character of the area, as noted above. However, we do not find this change to be fundamental given that this is a suburban locality in close proximity to the countryside and the existing trunk road network.

4.73 We also note the recognition in TS212 paragraph 10.3 of proposed development East of Inverness in the [HWLDP](#) (CD061) and [IMFLDP](#) (CD062). We saw the early stages of construction work for this development during our site inspection. [The Inverness East Development Brief](#) (CD139) further persuades us of the likely suburban nature of these proposals. We agree with TS that as proposed development proceeds it will alter the landscape character of this LLCA in a way that reinforces the suburban character of this locality. We note that this proposed development is not part of the proposed scheme but is programmed in the adopted development plan.

4.74 We find that the proposed planting of hedgerows and other vegetation, particularly on junction slip roads (ES Figures 9.5a to 9.5d – CD007) would contribute to diminishing the impacts of glare etc. from vehicle headlights.

4.75 We also note the consideration of artificial lighting in [ES paragraphs 10.6.8 to 10.6.10](#) (CD005). Here, there has been a recognition of the importance of reducing the potential impact of lighting. This includes reflective road surfaces and signage. It also includes lighting controlled by motion sensors to reduce lighting levels at NMU underpasses.

4.76 [ES Figure 10.2a](#) (CD007) shows the proposed location of artificial lighting for the proposed dual carriageway. With the exception of the Smithton interchange area ES Figure 10.2 shows that the only artificial lighting is proposed at grade separated junctions. At various inquiry sessions TS confirmed that this would be dynamic lighting that dimmed or switched off when traffic is absent. ES Figures 9.5b, 9.5d and 9.6 cross sections A-A to E-E (CD007) show that proposed lighting on the north side of the Smithton and Balloch Junctions would be partially screened by the proposed junction itself and associated mitigation planting.

4.77 Lighting related mitigation is covered in [ES Table 20.5](#) mitigation item V2 (CD005) [The Reporters note that ES Table 20.5 (CD005) refers to two Mitigation Items each entitled V1. The Reporters consider this to be a typing error and that the second – referring to lighting – should be entitled V2 and, either way, corresponds with the remarks in ES paragraphs 10.6.8 to 10.6.10]. This mitigation item forms part of the environmental commitments and would form part of any contract of works, thus requiring the contractor to abide by its provisions.

4.78 Overall, we conclude that the proposed scheme would bring about visual and landscape impacts / effects that could be diminished through design and proposed mitigation. The nature of the landscape and scale of the proposal means that it would not be hidden totally and, even where it would be largely hidden, both the proposed scheme and mitigation would have a residual visual effect, as recognised in ES Figure 10.3 (CD007). However, we are not persuaded that the residual effects would override the public interest of providing the proposed scheme or be so fundamental to the locality that they would warrant modification of the draft Orders or a refusal to confirm them.

Noise and vibration Impacts

Objection

-Noise impacts – General

4.79 The parties below are concerned about noise impacts (including associated health and sleep related impacts) of the proposed scheme upon Smithton, Culloden and Balloch:

OBJ/003 Mr Richard Brady
OBJ/004 Mr David Gow
OBJ/007 Smithton and Culloden Community Council
OBJ/027 Ms Faye Armitstead
OBJ/030 Mr Alan Armitstead
OBJ/031 Mrs Terri-Anne Sinclair
OBJ/032 Ms Penny Williamson
OBJ/033 Ms Linda Simpson
OBJ/035 Mr Andrew Kirkland
REP/036 Mr Gordon Ross
OBJ/042 Mr N and Mrs E Green

REP/044 Mrs Mary and Mr Eric Quemby
OBJ/047 Mr Hamish Johnston
OBJ/050 Balloch Community Council
OBJ/052 Ms Sheena Fraser and Ms Ann Hulse
OBJ/053 Mr Ewen Macdonald
OBJ/054 Mr David Mitchell
OBJ/055 Mrs Anna Gow
OBJ/056 Mr Fraser Gow
OBJ/057 Mr Robert Cavaye (Snr)
OBJ/058 Mr John W Brown
OBJ/059 Mr Alexander and Mrs Marion Bennie
OBJ/060 Mr Allan and Mrs Lorna Robertson
OBJ/061 Ms Ashley Sutherland
OBJ/062 Mr Alex Shaw

4.80 OBJ/042 Mr N and Mrs E Green argue that TS has failed to honour adequately the commitments made in the SEA for the proposed scheme (quoted in [ES paragraph 8.2.27](#) – CD005) that:

- route choice to take account of proximity of operational road traffic effects on receptors in populated areas to reduce potential noise and other adverse amenity effects; and,
- use of noise barriers and other acoustic screening, as appropriate, to be considered in locations where road traffic could increase noise impacts at nearby properties.

4.81 In their closing statement OBJ/060 Mr and Mrs Robertson appear to support all of the noise objections presented by OBJ/042 Mr and Mrs Green.

4.82 Mr and Mrs Robertson are also concerned about the noise assessment process at Thornhill (NV006) arguing that there is a six foot wall between the property and the road; and, that this could have influenced the noise assessment. OBJ/056 Mr Fraser Gow reiterated this point at Inquiry Session 3.

-Noise Impacts – ES Tables 8.36, 8.38 and 8.41 (CD005)

4.83 OBJ/042 Mr N and Mrs E Green argue that the evaluation criteria between [ES Tables 8.36 and 8.38](#) (CD005) differ from one another and that [ES Table 8.41](#) (CD005) only provides predictions for 2036 and not for 2021. Therefore, they consider it reasonable to extrapolate the data in ES Table 8.41 resulting in approximately 2,000 households being impacted at night in 2021. Overall, therefore they argue that the noise impacts have been understated.

-Noise impacts - number of dwellings affected

4.84 OBJ/042 Mr N and Mrs E Green argue that [ES paragraphs 8.5.38 to 8.5.39 and 8.7.29 to 8.7.30](#) (CD005) present the impacts of the proposed scheme in terms of changes in noise nuisance levels for residents. They argue that the data presented shows that, of the 8,122 households considered in the assessment, 3,636 (45%) would be subject to more nuisance with the proposed scheme compared to without it. They contend that the ES plays this down by suggesting that the proposed scheme as a whole would provide an overall reduction in noise nuisance.

4.85 OBJ/060 Mr Allan and Mrs Lorna Robertson argue that the ES Non-technical summary (NTS) does not properly translate the ES into non-technical language. They

suggest that the ES NTS noise section implies that 2,826 houses becoming quieter would compensate for 2,522 houses (15 miles away) becoming much noisier.

4.86 OBJ/060 Mr Allan and Mrs Lorna Robertson argue that the cost benefit analysis did not include the drop in the value of homes affected by increased noise.

4.87 Based on data in [ES Tables 8.31 and 8.32](#) (CD005) OBJ/004 Mr David Gow, OBJ/055 Ms Anna Gow and OBJ/056 Mr Fraser Gow argue that the proposed scheme would result in:

- 873 households being 'seriously annoyed' by daytime noise levels after completion of the proposed scheme; and,
- 242 households would have night-time noise levels that cause 'adverse health effects due to sleep disturbance'.

4.88 OBJ/004 Mr David Gow argues that this is an unacceptable intrusion of locals' daily lives and a complete disregard for their health. OBJ/055 Ms Anna Gow and OBJ/056 Mr Fraser Gow argue that the noise and vibration impact on Smithton, Culloden and Balloch was specifically identified as a disadvantage of the preferred option. During Inquiry Session 3 OBJ/Mr Fraser Gow raised concerns relating to physical and mental health impacts from noise.

-Noise impacts related to traffic volume

4.89 OBJ/042 Mr N and Mrs E Green argue that summarised information on predicted daily vehicle movements in [ES Figures 2.1a and 2.2a](#) (CD007) suggests significant increased traffic levels at the proposed Balloch junction and consequently Culloden Road and Barn Church Road. They argue that increased traffic on Barn Church Road would be a direct consequence of the proposed dual carriageway but that this has been omitted from the noise impact assessment shown in [ES Figures 8.5 to 8.8](#) (CD007). They therefore argue that the noise model used for the assessment does not portray the full impact of noise from the proposed scheme on residents in this area.

-Traffic noise on Balloch junction slip roads

4.90 OBJ/042 Mr N and Mrs E Green argue that the noise from traffic accelerating up Balloch Junction slip roads is not discussed in the ES and that ES Figure 8.5c (CD007) does not provide confidence.

-Noise impacts on schools

4.91 OBJ/057 Mr Robert Cavaye Snr and OBJ/058 Mr John W Brown raise similar concerns regarding the noise impact from the proposed scheme's proximity to Balloch and 'the primary school'. OBJ/003 Mr Richard Brady is concerned about the potential impacts of noise and vibration on pupils studying at Culloden Academy.

4.92 During Inquiry Session 3 OBJ/056 Mr Fraser Gow also raised concerns about the proposed scheme's impact on primary and secondary schools, including Duncan Forbes Primary School and Culloden Academy; based on [ES Figure 8.12](#) (CD007). He argued that 'noise does not stop at the boundary of the calculation area'.

-Noise mitigation strategy thresholds for daytime absolute noise levels

4.93 OBJ/042 Mr N and Mrs E Green argue that [ES paragraph 8.2.29](#) (CD005) quotes noise levels exceeding L_{Aeq} 55 dB as a threshold above which 'the majority of people would be seriously annoyed' but that [WHO guidance \(CD090\)](#) suggests a lower level of L_{Aeq} 50 dB

'should be considered the maximum desirable sound level for new development' and also to 'protect the majority of people being moderately annoyed'. They contend that this shows TS to consider it acceptable that the majority of people would be 'moderately annoyed'. They therefore argue that TS has set the daytime noise mitigation threshold too high and that it should adopt the lower level quoted in the WHO guidance (CD090).

4.94 Mr and Mrs Green argue that TS has upwardly manipulated the daytime noise level threshold by an 'unsubstantiated claim' that the L_{Aeq} values quoted by WHO should be increased by 2 dB to compare with $L_{Aeq,18h}$ values used in the TS assessment ([ES Paragraph 8.2.30](#) – CD005). [The reporters assume the reference to $L_{Aeq,18h}$ to be an error by Mr and Mrs Green that should refer to $L_{A10,18h}$].

4.95 Mr and Mrs Green argue that this 'plus 2 dB assumption' is not appropriate for this particular scheme because the baseline noise survey results in [ES Table 8.9](#) (CD005) show that, for the 27 properties monitored, the difference between $L_{Aeq,16h}$ and $L_{Aeq,18h}$ range between +2.6 dB and -13.4 dB with an average of -0.63 dB. [The reporters assume the reference to $L_{Aeq,18h}$ to be an error by Mr and Mrs Green that should refer to $L_{A10,18h}$]. This, they argue, contradicts the claim that +2 dB is an appropriate conversion factor.

4.96 Mr and Mrs Green object to what they describe as 'another hike' of +2.5 dB in the mitigation threshold to translate into façade levels ([ES Paragraph 8.2.30](#) – CD005). They argue that the ES provides no explanation of what is meant by 'façade' levels, why these have been adopted for noise mitigation thresholds, and what justifies the +2.5 dB conversion factor used.

4.97 Mr and Mrs Green object to the mitigation threshold (following the conversions described above) of 59.5 dB $L_{Aeq,18h}$. [The reporters assume the reference to $L_{Aeq,18h}$ to be an error by Mr and Mrs Green that should refer to $L_{A10,18h}$]. Based on [ES Table 8.1](#) (CD005) they argue that this threshold is 4.5 dB above the noise levels at which communication becomes difficult (55 dB). They consider this unacceptable in what they term 'a quiet, semi-rural/suburban residential area'.

-Noise mitigation strategy thresholds for night time absolute noise levels

4.98 OBJ/042 Mr N and Mrs E Green argue that the ES misleadingly indicates that the night-time noise mitigation threshold of 55 dB $L_{night, outside}$ is consistent with the [WHO Night Noise Guidelines \(NNG\) \(CD091\)](#). They argue instead that 40 dB $L_{night, outside}$ quoted in [DMRB HD 213/11](#) Paragraph 2.29 (CD049.19) should be adopted.

4.99 They contend that the WHO guidance is based on health effects observed in the population at different night-time noise levels (WHO NNG for Europe 2009, executive summary, page 19 – CD091). They argue that this document explains that:

- even below 40 dB, a number of effects on sleep are observed and that up to 40 dB these effects are considered to be modest.
- between 40 dB and 55 dB, 'adverse health effects are observed among the exposed population. Many people have to adapt their lives to cope with the noise at night. Vulnerable groups are more severely affected.'
- above 55 dB, 'the situation is considered increasingly dangerous for public health. Adverse health effects occur frequently, a sizeable proportion of the population is highly annoyed and sleep-disturbed. There is evidence that the risk of cardio-vascular disease increases.'

4.100 Mr and Mrs Green present the following arguments to justify why they consider 55 dB should not be used:

- DMRB recommends that the 55 dB threshold should only be considered 'in the short term' or 'in exceptional local situations' ([Paragraph 2.29 – CD049.19](#)). Given that a dual carriageway is a permanent source of noise then 55 dB is not valid.
- its use is contrary to the fact that Member States are encouraged to reduce the proportion of the population exposed to night noise levels above 55 dB, not increase the proportion.
- there is nothing exceptional about the local situation of this proposed scheme that would justify deviation from the DMRB guidance.
- ES Table 8.1 (CD005) explains that 55 dB is a level where 'communication starts becoming difficult'. This would cause 'serious annoyance to the majority of people in daytime, let alone night-time'.

4.101 Mr and Mrs Green argue that:

- of the 27 residential locations used for gathering baseline monitoring data, there are two with night-time noise levels of 55 dB or more and both are very close to the existing A96. They consider it unreasonable that only noise levels of 55 dB or higher are deemed to warrant mitigation and, by implication, anything below is 'acceptable'.
- whilst closing bedroom windows at night may offset some of this noise impact, such measures should not be imposed on residents. This may conflict with [PAN 1/2011](#) paragraph 16 (CD065.3) that states 'It is preferable that satisfactory noise levels can be achieved within dwellings with the windows sufficiently open for ventilation'.

4.102 They argue that the ES does not justify the use of Method 3 for predicting future night-time noise but instead refers to a TRL report that provides a number of alternative methods. They argue that an evaluation of why Method 3 is the most appropriate should be provided.

-Noise mitigation strategy thresholds for changes in noise level

4.103 OBJ/042 Mr and Mrs Green argue that the mitigation threshold in [ES paragraph 8.2.31](#) (CD005) has been rejected by TS because it is too onerous and because there are low levels of road traffic noise in rural areas. They argue this has been rejected for dwellings that would be subjected to noise levels of up to 59.5 dB in daytime and up to 55 dB at night. These are, they argue, levels which are not 'quiet and rural', but which lead to adverse health impacts and many people to adapt their lives to cope (WHO 1999 – CD090).

4.104 Mr and Mrs Green contend that [ES Table 8.30](#) (CD005) considers 8,122 households of which 2,235 would be subject to slight/moderate noise impact, and should therefore require mitigation. However, they argue that, if so many households require mitigation that TS considers it 'too onerous' to provide, then it is a clear indication that the proposed scheme has been inappropriately designed.

4.105 Mr and Mrs Green argue that TS seeks to 'get around this fact' by claiming that only 30 of these households would also experience $L_{Aeq,18h}$ levels above 59.5 dB. [The reporters consider this to be an error and that Mr and Mrs Green are referring to $L_{A10,18h}$ rather than $L_{Aeq,18h}$]. They consider this threshold to be inappropriate for the reasons stated above and that it should not be used to undermine the full impact that the proposed scheme would have on a large proportion of the households assessed.

4.106 Mr and Mrs Green argue that the large number of households that should be provided with noise mitigation due to night-time noise impacts has been hidden by adoption of what they term 'an excessive' night-time noise level threshold of 55 dB $L_{\text{night, outside}}$.

-Effectiveness of noise mitigation

4.107 OBJ/042 Mr N and Mrs E Green compare data in [ES Tables 8.19, 8.21, 8.36 and 8.38](#) (CD005). They argue these data show that the mitigation provided is 'extremely limited' in nature as follows:

- in the short term (2021), mitigation reduces the number of households subject to moderate and major impact by less than 5%.
- in the long term, (2036) mitigation only reduces the number of minimally and moderately impacted households by less than 5%, and provides no reduction in the number of households suffering from major impact.

4.108 Mr and Mrs Green argue that if the ability to design or provide mitigation has proven to be so ineffective this highlights the fact that the route selection has given rise to an excessive level of noise impact. They also contend this does not follow the mitigation hierarchy in [ES Table 8.6](#) (CD005).

4.109 Mr and Mrs Green argue that, in the proposed scheme, the opportunity for prevention has been neglected by choosing to route the dual carriageway unnecessarily close to large numbers of households. They contend that it does not appear to be feasible to reduce the impacts through mitigation measures such as barriers.

4.110 Mr and Mrs Green contend that, based on [ES paragraph 8.2.31](#) (CD005), TS has considered it 'too onerous' to provide sufficient mitigation for all the households impacted. They therefore contend that rather than 2,500 households having to put up with the resultant noise impacts, the route selection in this area is wrong and should be revised. [Route selection has been covered separately in Chapter 2: Matters of Principle].

4.111 OBJ/042 Mr and Mrs Green note that six of the 27 NSRs identified as representative of their surrounding locale in [ES paragraph 8.3.2](#) (CD005) are within Culloden and Balloch. They argue that:

- [ES Table 8.13](#) (CD007) shows that without mitigation these are predicted to be subjected to increases in ground floor noise levels of between 2.2 dB and 8.9 dB for 2021 (2.7 dB – 9.6 dB for 2036).
- with mitigation the six NSRs would still be subject to noise increases at ground floor level of between 2.7 dB and 8.9 dB for 2021 (3.7 dB – 9.6 dB for 2036).
- it is difficult to visualise from the ES where bunds and barriers are proposed, but it appears that mitigation has been required for five of these six NSR sample points, and would be provided as very localised sections of barrier specifically targeting these properties.
- given that these six properties are 'representative of their locale' (ES paragraph 8.3.2 – CD005) and that five would require mitigation this suggests that the proposed scheme has an impact over the whole locale.

4.112 Mr and Mrs Green conclude that:

- the mitigation provided makes a negligible improvement for these six NSRs even though the proposed mitigation is directly localised to target them.

- more widespread sampling along this populated stretch of the new dual carriageway, coupled with more responsible thresholds for mitigation, would have strengthened the case for more comprehensive and effective noise mitigation along the whole section past Culloden and Balloch.
- alternatively, that the noise impacts of the proposed scheme require such extensive mitigation indicates that the route selection itself has not taken sufficient account of the impact on people. [Route selection has been covered separately in Chapter 2: Matters of Principle].

-Noise Mitigation Proposals

4.113 OBJ/050 Balloch Community Council proposes that the road should be screened to limit the impact of noise. OBJ/047 Mr Hamish Johnston suggests a forestry berm. OBJ/061 Ms Ashley Sutherland considers that the proposed screening trees will take years to grow. Ms Sutherland is also concerned about the proximity of noise impacts and how this could affect health and sleep.

4.114 OBJ/057 Mr Robert Cavaye (Snr) and OBJ/058 Mr John W Brown argue that the proposed mitigation, including noise screening is inadequate. Mr Brown considers that a wooden fence for noise mitigation would be inadequate as it could easily blow over and that a breezeblock wall would be better.

4.115 OBJ/042 Mr N and Mrs E Green argue that the benefits of low noise road surfacing (LNRS) ([ES paragraph 8.6.10](#) – CD005) have been overstated and that LNRS would reduce in effectiveness due to wear and tear. They also argue that this has led to the noise impact predictions in the ES being underestimated. OBJ/060 Mr and Mrs Robertson share this view. OBJ/042 Mr N and Mrs E Green also argue that the ES provides no information about the impacts without mitigation (Mitigation Item NV3 – [ES Chapter 20](#) - CD005) and therefore that the noise assessment is only relevant for optimum conditions.

4.116 REP/036 Mr Ross notes the proposed noise barrier at Allanfean Farm. He lives on the south side of the proposed dual carriageway and wishes to know what steps are being taken to mitigate the risk of noise pollution there.

-Noise impact relationship with local planning policy

4.117 OBJ/042 Mr N and Mrs E Green argue that TS has not acknowledged the full scale of noise impacts from the proposed scheme or provided thorough mitigation to minimise these impacts. For these reasons, they conclude that the proposed scheme is not consistent with [HWLDP](#) (2012) Policy 28: Sustainable Design (CD061).

-WHO Guidance 2018

4.118 OBJ/060 Mr and Mrs Robertson's closing statement covers matters relating to the recently published [WHO Guidance \(2018\)](#) (CD140). These matters are considered in our findings of fact section for noise and vibration (below).

Transport Scotland's Response

-Noise impacts – General

4.119 TS argues that the noise assessment in [ES Chapter 8](#) (CD005) was undertaken in accordance with DMRB guidance (CD049.19):

- traffic flows from the existing A96 are modelled as part of the Do Minimum scenario (without the proposed scheme)
- traffic flows from the proposed scheme and existing roads are modelled as part of the Do Something scenario (with the proposed scheme in place).
- road traffic noise levels have been predicted in accordance with the [CRTN](#) technical publication (CD084), which provides functions to account for the change in road traffic noise as a function of road traffic speed and the percentage of heavy vehicles.
- when assessing noise impacts and the potential for noise mitigation, road traffic speed changes are inherently incorporated into the methodology.

4.120 TS acknowledges that, in general, as road traffic speeds increase noise levels also increase. However, it argues that this is not always the case because the change in road traffic noise level as a function of speed is dependent upon the initial speed and the composition of the traffic flow.

4.121 TS acknowledges that noise levels at NSRs (dwellings, schools, hospitals etc.) may increase or decrease as a consequence of the proposed scheme. For NSRs exposed to higher road traffic noise levels as a consequence of the proposed scheme, when compared to without it, TS argues that careful consideration has been given to where mitigation should be offered, and what form it should take.

4.122 TS argues that the noise mitigation strategy for the proposed scheme has been developed and based on the [DMRB \(CD049.19\)](#) and WHO guidance ([CD090](#) and [CD091](#)) as explained in [ES paragraphs 8.2.24-8.2.34](#) (CD005). It argues that this strategy considers noise mitigation where the significance of impact at NSRs is predicted to be:

- Slight/Moderate adverse or worse, which for high noise sensitive receptors equates to at least a 1 dB noise level increase in the short term (year of opening), and/or at least a 3 dB in the long term (typically within 15 years of the scheme opening) and, in addition, the predicted ground floor façade noise level exceeds 59.5 dB $L_{A10,18h}$.
- Slight/Moderate adverse or worse, in the long-term with a predicted noise level that exceeds 55 dB $L_{night,outside}$.

4.123 TS argues that this noise mitigation strategy means that NSRs at the various settlements along the route of the proposed scheme would be provided with adequate noise mitigation, where required.

4.124 TS argues that the predicted noise levels in [ES Appendix A8.3](#) (CD006) for OBJ/061 Ashley Sutherland's property (NV2009) and OBJ/032 Penny Williamson's property (NV2327) remain below the 59.5 dB $L_{A10,18h}$ noise mitigation threshold. From consideration of the predicted levels, TS argues that impacts in general, and on sleep disturbance in particular, are not anticipated to arise at these properties as a result of traffic noise from the proposed scheme.

4.125 TS points out that OBJ/052 Sheena Fraser and Anne Hulse's property is located more than 600 metres from the proposed dual carriageway and/or affected routes (as defined in [DMRB HD213/11](#) – CD049.19). As such, it argues that it is sufficiently far away not to be specifically included in the noise assessment modelling. TS notes that [ES Figure 8.12b](#) (CD007), shows noise contours which indicate that the noise level change for a number of properties closer to the proposed scheme would be less than 3 dB in the long term. TS argues that this predicted long-term noise level change would be imperceptible.

4.126 TS accepts that elevated roads may result in increased noise levels at NSRs compared to roads at grade or in a cutting. However, it points out that the noise models, which form part of the noise assessment, take account of these features. As such, it contends that predicted noise levels include any increases in noise due to these features and, thus, require no further adjustment when considering where noise mitigation measures are necessary.

4.127 TS argues that OBJ/033 Ms Linda Simpson's property would experience a perceptible change in noise levels but that the absolute noise level would remain at least 4.5 dB below the mitigation threshold of 59.5 dB LA_{10,18h} ([TS033.02](#) Table 1). Therefore, it argues, no further noise mitigation is proposed.

4.128 TS argues that [ES Table 8.9](#) CD005) reports that the average measured LA_{10,18h} noise level, during the noise monitoring period, at OBJ/059 Mr and Mrs Bennie's property, was 56.5 dB. TS explains that:

- the LA_{10,18h} at Mr and Mrs Bennie's property is a free field noise level, whereas the noise levels reported in [TS059.02](#) Table 1 are façade noise levels.
- the free field noise level can be converted to an equivalent façade noise level by adding 2.5 dB to the free field noise level.
- accordingly, the equivalent façade noise level of the measured free field LA_{10,18h} is 59.0 dB, which is very similar to the predicted Baseline year Do-Minimum noise level of 58.7 dB LA_{10,18h}.
- in the proposed scheme's opening year there is predicted to be a 2.1 dB noise level increase when compared with the Do-Minimum (without the proposed scheme). This equates to a Slight/Moderate Adverse significance of impact.
- in addition, the noise mitigation threshold of 59.5 dB LA_{10,18h} would also be exceeded.

4.129 TS explains that, as a consequence of this predicted noise level change/significance of impact, an assessment of the noise mitigation requirements was undertaken. This was to mitigate noise such that the significance of impact would be no greater than Slight Adverse (less than 1 dB noise level change).

4.130 TS argues that this assessment indicated a requirement for a 99 metre long and 1.3 metre high barrier adjacent to Barn Church Road, in front of Mr and Mrs Bennie's and their neighbours' properties. TS argues that the penultimate row of [TS059.02](#) Table 1 shows that, with this noise mitigation in place, the predicted significance of impact would be reduced to Slight Adverse and would meet the noise mitigation strategy ([ES paragraphs 8.2.24 - 8.2.34](#) - CD005).

4.131 At Inquiry Session 3 TS's noise expert explained that noise measuring equipment is sited based on professional judgement to obtain readings that are representative of the area. TS refers us to [ES Appendix A8.2](#) (CD006), where this is documented. TS's noise expert explained that the noise readings show what the existing situation is like.

-Noise Impacts – ES Tables 8.36, 8.38 and 8.41 (CD005)

4.132 TS argues that [ES Table 8.41](#) (CD005) is consistent with DMRB HD 213/11 paragraph 3.38 (CD049.19), which states that only the long term night-time noise impacts should be reported. TS advises, for information, that the actual number impacted in the short term (2021) would be 2,293.

4.133 TS argues that only one dwelling has a noise level that exceeds 55 dB $L_{\text{night, outside}}$. It argues that mitigation was not offered for this dwelling because the change in noise level would be due to changes in traffic flows on local roads rather than traffic noise generated directly by the proposed dual carriageway alignment. It argues that a similar traffic noise level, resulting from changes in the flow on local roads, would occur even if the proposed scheme was not constructed (i.e. 54.9 dB $L_{\text{night, outside}}$ compared with 55.1 dB $L_{\text{night, outside}}$).

-Noise impacts - number of dwellings affected

4.134 In response to OBJ/042 Mr N and Mrs E Green and OBJ/056 Mr Fraser Gow, TS clarifies that the 'scheme corridor' is not 600 metres wide, rather that this refers to the determination of a Study Area and a Calculation Area, as described in [ES Paragraphs 8.2.1 – 8.2.3](#) (CD005), as required by DMRB HD213/11 paragraph A1.11 (CD049.19). In its closing statement paragraph 11.53 TS argues that this exceeds the 300 metres advised in CRTN (CD084) and equates to a reduction in noise level of 3 dB.

4.135 TS acknowledges that with the proposed scheme in place (and with the identified noise mitigation in place) 3,636 dwellings are predicted to experience an increase in noise nuisance in the higher-level bands (10% or greater increase in noise nuisance levels) that would not occur without the proposed scheme.

4.136 TS refers to [ES paragraph 8.7.29](#) (CD005) as stating that, '3,636 ... dwellings are predicted to experience an increase in noise nuisance in the higher level bands' [The Reporters consider this to be a referencing error by TS in [TS042.02](#) that should instead refer to [ES paragraph 8.7.30](#) (CD005)].

4.137 TS is content that the ES does not misrepresent the facts and that the numbers of properties that would experience positive and negative noise impacts are clearly identified.

4.138 TS argues that it is factually correct to say that the total number of dwellings experiencing an increase in noise nuisance is greater for the Do-Minimum scenario than the Do-Something scenario. It argues that this fact does not negate the negative impacts that would occur as a result of the proposed scheme. However, it contends that careful consideration has been given to these impacts and any proposed mitigation, as set out in [ES Chapter 8](#) (CD005).

4.139 TS argues that ES Chapter 8 does not suggest that predicted noise reduction in one area can be used to offset the predicted increases in noise impacts for other areas. It argues that noise mitigation has been considered for each dwelling separately and that no areas have been treated differently within the assessment process.

4.140 TS acknowledges that the proposed scheme passes through a semi-rural area and, as such, some dwellings would be adversely impacted. It argues that the noise mitigation strategy has been developed to mitigate noise impacts and the assessment outcomes are clearly documented in ES Chapter 8 (CD005).

4.141 TS argues that the summary tables of noise impacts are presented for the proposed scheme as a whole in accordance with the DMRB guidance, rather than sub-divided into smaller areas. It argues that this presentation does not affect the assessment process and that noise mitigation is considered for individual dwellings not agglomerations of dwellings.

4.142 TS disagrees with Mr and Mrs Green's contention that the 'scheme corridor is inappropriately designed' because of their contention that there is a 'large proportion of impacted households'. It argues that the proposed scheme design incorporates noise mitigation features, such as LNRS and earthworks that may provide acoustic screening for NSRs. This is supplemented, it argues, with receptor-specific mitigation where appropriate.

4.143 TS states that the main emphasis of the noise assessment has been to identify adverse noise impacts such that appropriate noise mitigation measures are determined and identified for the proposed scheme.

4.144 With regard to the 873 and 242 households referenced by OBJ/004 David Gow, OBJ/055 Anna Gow and OBJ/056 Fraser Gow, TS argues that:

- [ES Tables 8.31 and 8.32](#) (CD005) indicate that 873 residential buildings are predicted to meet with one of the two defined long term daytime mitigation triggers (the daytime absolute noise threshold) and 242 residential buildings meet one of the two defined long term night-time mitigation triggers (the night-time absolute threshold). However, when also taking into consideration the second trigger, namely, having a noise level change of at least 3 dB (which is a perceptible long term noise level change), there are only 33 buildings that require daytime mitigation and seven that require night-time mitigation.
- accordingly, for the daytime period, of the 873 properties that have an absolute noise level in excess of 59.5 dB $L_{A10,18h}$, 840 would be exposed to long-term noise level changes that, in accordance with DMRB (CD049.19), are imperceptible.
- for the night time period, of the 242 properties that have an absolute noise level in excess of 55 dB $L_{night,outside}$, 235 would be exposed to long-term noise level changes that, in accordance with DMRB (CD049.19), would be imperceptible.

4.145 TS also notes that when comparing the Do-Minimum (without the proposed scheme) in the year of opening with the Do-Minimum in the future year (15 years later), 979 and 344 residential buildings, respectively, meet the aforementioned day and night long-term noise thresholds levels, as a result of traffic growth. This, TS argues, is more properties in total than with the proposed scheme in place.

4.146 TS notes that the modelled results relate to the whole of the proposed scheme, which covers a 70.6 square kilometres Calculation Area and not just the Smithton, Culloden and Balloch areas. TS argues that, for example, of the 873 dwellings predicted to have an absolute daytime noise level in the long term that exceeds 59.5 dB (ES Table 8.31 – CD005), only 92 of these are located in the Smithton, Culloden and Balloch area. TS does not, therefore, agree with the commentary in OBJ/060 Mr and Mrs Robertson's objection linking reduction in house values in Smithton, Culloden and Balloch to the quoted 2,522 properties.

4.147 TS argues that it has carefully considered the need for mitigation for properties exposed to higher road traffic noise levels following the opening of the proposed scheme, when compared to without it.

-Noise impacts related to traffic volume

4.148 TS argues that [ES Figures 2.1a to 2.2b](#) (CD007) show that:

- the base year and future year annual average daily traffic (AADT) levels forecast using the transport models at key locations on the existing A96 and the proposed scheme.

- these AADT traffic levels are primarily intended to provide an overall indication of the traffic levels forecast for the Do-Minimum scenario compared with the Do-Something scenario.
- the AADT traffic levels shown on ES Figures 2.1a to 2.2b (CD007) are the 2-way total traffic flows.
- the traffic flows have been extracted for selected locations from the transport model and were never intended to be used to determine the increases in traffic levels at specific locations.

4.149 TS argues that this is particularly relevant when trying to determine the potential traffic increases on the approaches to and through junctions, as this requires the relevant traffic flow data on each approach road.

4.150 TS argues that it provides the relevant data in TS042.02 Table 1 of its letter to Mr and Mrs Green dated 31 July 2017. TS explains the following of TS042.02 Table 1:

- it summarises the relevant traffic flow data, rounded to the nearest 100 vehicles, on the approach roads to the Barn Church Road/Culloden Road junction, Balloch.
- it shows the levels of traffic forecast to use the roads passing through Balloch for the Do-Minimum (without proposed scheme) and the Do-Something (with proposed scheme) scenarios.
- it includes Base (2014) levels for completeness, but the impact of the proposed scheme is determined by comparing the change between the Do-Minimum and Do-Something scenarios.
- the increases in traffic levels that occur between the Base (2014) and the Do-Minimum (2021) are, therefore, not as a result of the proposed scheme.

4.151 TS makes the following observations from TS042.02 Table 1:

- on the section of Barn Church Road (East of the Culloden Road junction) accessing the Balloch Junction, in 2021 the 2-way AADT traffic flows would increase by 1,800 vehicles from 3,800 in the Do-Minimum to 5,600 in the Do-Something. In 2036 there would be an increase of 1,500 vehicles forecast, from 5,100 in the Do-Minimum to 6,600 in the Do-Something scenario.
- on Barn Church Road (West of the Culloden Road junction) there would be a reduction in traffic flows between the Do-Minimum and the Do-Something scenarios, with a reduction of 500 vehicles (2-way) forecast in 2021 and a reduction of 900 vehicles (2-way) forecast in 2036. This is predominantly as a result of the change that would occur in terms of the forecast numbers of vehicles turning left and right from Culloden Road on to Barn Church Road with the proposed scheme in place. This would be a decrease in the number of vehicles making a left turn from Culloden Road and an increase in the number of vehicles making a right turn.
- on Culloden Road there would be an increase of 500 vehicles (2-way) forecast between the Do-Minimum and the Do-Something scenario in 2021, and an increase of 400 vehicles (2-way) forecast between the Do-Minimum and the Do-Something in 2036.

4.152 In examining the forecast vehicle flows travelling through Balloch on Culloden Road and Barn Church Road (West of Culloden Road junction) identified in 2021, TS argues there would be no net increase in AADT traffic levels when comparing the sum of the 2-way flows on these two roads between the Do-Minimum and Do-Something. It argues that

in 2036, there would be a net decrease forecast when comparing the sum of the 2-way flows on these two roads between the Do-Minimum and the Do-Something.

4.153 TS states that these differences in traffic flows are at the AADT level, which represents traffic flow totals over a 24 hour period. It contends that, if the forecast traffic levels are considered at a peak hour level, then, for example during the PM peak hour in 2036 the 2-way traffic level on Culloden Road would increase by approximately 60 vehicles from 210 in the Do-Minimum to 270 in the Do-Something.

4.154 TS argues that, in summary, the 2-way flow on Barn Church Road (East of Culloden Road junction) is representative of the likely increase in traffic travelling to and from the Balloch Junction, where that is the existing junction in the Do-Minimum or the grade-separated junction in the Do Something (with the proposed scheme). It explains that forecast traffic between the Do-Minimum and the Do-Something in 2021 increases from 3,800 to 5,600, and in 2036 increases from 5,100 to 6,600. This, TS argues, represents a predicted increase by a factor of approximately 1.5 in 2021, and approximately 1.3 in 2036.

4.155 In terms of fully capturing the traffic levels, and hence potential impacts as a result of the proposed scheme, TS argues that, the datasets provided for the noise assessment were extracted for every modelled link present in the transport model, including Barn Church Road and Culloden Road. It confirms that this data was provided for use in the noise assessment for the 2014 base year, and the Do-Minimum and Do-Something scenarios for the forecast years of 2021 and 2036.

4.156 TS confirms that the traffic datasets that were provided include flow for the three modelled peak periods (AM peak, Inter-peak and PM peak) and at the Annual Average Weekday Traffic 18 hour level (06:00 to 00:00) required for the noise assessment. It states that this data allowed for the changes in traffic levels that would occur between the Do-Minimum and the Do-Something scenarios across the full transport model network to be taken into account in the noise assessment.

4.157 TS agrees that [ES Figure 8.5b](#) (CD007) shows that Barn Church Road, south west of Culloden Road would experience a reduction in road traffic noise. It argues this to be because there would be a reduction in road traffic flows for the Do-Something scenario when compared with the Do-Minimum scenario in the Year of Opening. It argues that, to the north west of Culloden Road for the Do-Something scenario road traffic would increase on Barn Church Road as explained above.

4.158 TS confirms that the noise modelling portrays the full impact of noise from the proposed scheme on NSRs such as residential dwellings.

-Traffic noise on Balloch junction slip roads

4.159 TS agrees that vehicles would accelerate on slip roads from the Balloch Junction roundabouts to the proposed dual carriageway.

4.160 TS contends that CRTN (CD084) advises that:

- roads should be segmented such that the change in noise level within each segment is no greater than two decibels e.g. these changes may arise due to changes in traffic speed, percentage of HGVs, and/or gradient.

- when considering traffic speeds to be applied to roads based on their classification 'slip roads' are to be estimated individually.

4.161 TS explains that rather than modelling the westbound merge slip road at Balloch junction as segments with average speeds (based on vehicles accelerating from low speed with each section varying by no greater than 2 dB) it used instead an average speed of 93kph (approximately 58mph) for the whole section. TS argues that using this average speed method resulted in a $LA_{10,18h}$ noise level of 66.5 dB for the entire segment.

4.162 TS argues that if, for example, the road was segmented with 20 mph (approximately 32kph), 40mph (65kph) and 56mph (approximately 90kph) segments the noise levels for each segment would be $LA_{10,18h}$ 62.3 dB, 64.2 dB and 66.2 dB, respectively. TS argues this to show that segmenting the slip road in this manner would result in noise levels lower than that from its assumption of an average speed of 93kph.

4.163 TS therefore argues that, any noise increase due to accelerating vehicles from lower speeds is likely to be offset by adopting a higher average speed for the entire slip road. This is because, for example, the predicted noise level of a 20mph segment is approximately 4 dB lower than that modelled. TS confirms that for the foregoing analysis all other noise variables, such as, percentage of heavy vehicles, road surface, gradient, etc., remain constant.

4.164 In its closing statement paragraph 11.35 TS refers to similar arguments at Auchnacloch Farm. There TS refers to [CRTN](#) paragraph 33, chart 4 (page 41) and Annex 16 (CD084) which, it argues justify its approach. TS's equivalent arguments relating to Auchnacloch are presented in Chapter 8: Nairn East to Hardmuir paragraphs 8.237 to 8.246).

-Noise impacts on schools

4.165 TS has assumed that OBJ/057 Robert Cavaye Snr's and OBJ/058 John W Brown's objections are referring to Balloch Primary School. TS argues that road traffic noise at the primary school is dominated by traffic using Barn Church Road rather than the A96.

4.166 At Inquiry Session 3 TS did not dispute OBJ/056 Mr Gow's point that 'noise does not stop at the boundary of the calculation area'. It explained that the calculation area boundary would normally only be 300 metres (CRTN CD084) but that [DMRB HD213/11](#) (CD049.19) extends it to 600 metres. In its [closing statement](#) paragraph 11.53, TS argues that this doubling of the distance from a free flow stream of road traffic equates to a reduction in noise level of 3 dB.

4.167 TS argues that, at the noisiest façade of the school, with the proposed scheme in place, there is only a 0.2 dB noise level increase over the existing situation in the short term (year of opening), and only 1 dB in the long term (15 years later). TS argues that noise mitigation is therefore not required for the primary school as a consequence of the proposed scheme.

4.168 TS points out that Culloden Academy is more than 600 metres from the proposed dual carriageway and/or affected routes (as defined in DMRB HD213/11 – CD049.19) and therefore beyond the Calculation Area of the noise and vibration assessment. However, it argues that [ES Figure 8.12b](#) (CD007) shows the noise level change would be imperceptible in the long term.

4.169 TS acknowledges that the short term noise level changes shown in [ES Figure 8.10b](#) (CD007) would be within the 1 dB to 3 dB noise band and so would be perceptible. However, TS explains that the absolute noise level would increase from approximately 48.2 dB $L_{A10,18h}$ to approximately 49.5 dB $L_{A10,18h}$. This, it argues, is unlikely to adversely affect students' concentration.

-Noise mitigation strategy thresholds for day time absolute noise levels

4.170 TS considers that the adoption of an absolute noise level threshold equivalent to the free field 55 dB $L_{Aeq,16h}$ noise level for consideration of mitigation is robust. This is on the basis that it would avoid 'serious community annoyance'. TS argues that this is based on advice contained within the [Technical Advice Note \(TAN\) \(CD089\)](#) to [PAN 1/2011 \(CD065.03\)](#), which states:

'Good acoustic design and a sensitive and pragmatic approach to the location of new development needs to be actively promoted to ensure that quality of life is not unreasonably affected and that new development continues to support sustainable economic growth in Scotland'.

4.171 TS notes that, at an international level, [WHO 1999 \(CD090\)](#) indicates that the lower outdoor sound level ($L_{Aeq,T}$ 50 dB) is desirable 'where it is practical and feasible', and hence the guidance has been considered in this context. [TS's closing statement](#) paragraph 11.26 argues that:

'Table 7 of the [2000/2001 National Noise Incidence Survey](#) (CD123) shows that the measured mean $L_{Aeq,24h}$ in Scotland was 54.0 dB +/- 0.6 dB. Given that this 24 hour $L_{Aeq,T}$ includes the hours from 2300 hours through to 0700 hours, typically, the quietest hours of the day, whereas the $L_{Aeq,16h}$ does not include these quieter hours, it is reasonable to assume that the $L_{Aeq,16h}$ will be greater than the $L_{Aeq,24h}$. Therefore, the noise incidence survey indicates that on average the existing $L_{Aeq,16h}$ in Scotland already exceeds the $L_{Aeq,16h}$ 50 dB noise level and, as such, it was deemed reasonable to adopt the WHO $L_{Aeq,16h}$ 55 dB noise level as the basis for the absolute mitigation noise level threshold and, thus, for the majority of individuals avoiding serious noise annoyance.'

4.172 TS agrees with Mr and Mrs Green that the conversion from the $L_{Aeq,16h}$ to $L_{A10,18h}$ is presented in [ES paragraph 8.2.30](#) (CD005), and that there is not a reference for the use of the +2 dB conversion. It contends that this conversion is a commonly used conversion factor when converting the $L_{A10,18h}$ noise level to $L_{Aeq,16h}$ noise metric when the $L_{A10,18h}$ is dominated by road traffic noise.

4.173 TS argues that [DfT's Transport Appraisal Guidance \(TAG\) Unit A3 Environmental Impact Appraisal](#) paragraph 2.2.13 (CD124) advises that the $L_{Aeq,16h}$ noise metric is to be converted to the $L_{A10,18h}$ using the following relationship:

$$L_{Aeq,16h} = L_{A10,18h} - 2 \text{ dB}$$

4.174 TS also agrees that the noise level difference between the measured $L_{A10,18h}$ and $L_{Aeq,16h}$ is not (approximately) +2 dB. However, it argues that, as stated in the previous paragraph, this relationship holds where the noise is dominated by road traffic noise, which is not the case for many of the measurement locations.

4.175 TS contends that [ES Appendix A8.1](#) (CD006) includes a glossary of noise and vibration terminology, which includes an entry for 'façade level', as follows:

'A façade level refers to noise levels at an assessment location between one and 3.5 metres from the façade of a building or other reflective structure. The difference between the façade and free field noise level depends on the distance from the reflecting surface, but is generally accepted to be 2.5 dB(A) at a distance of one metre.'

4.176 TS argues that 'free field' is used to define noise levels that have been measured or predicted in the absence of any influence of reflections from nearby surfaces, other than the ground. In practice, a noise level is considered to be free field if it is at a distance greater than 3.5 metres from any reflecting surfaces, other than the ground.

4.177 In addition, TS argues, CRTN (1988) (CD084) states: 'Façade Effect: To calculate noise one metre in front of a façade a correction of +2.5 dB(A) is to be made [to the free field level]'

4.178 TS argues that, although there is a 4.5 dB noise level difference between the free field $L_{Aeq,16h}$ 55 dB and the façade $L_{A10,18h}$ 59.5 dB noise metrics, they are equivalent in terms of the noise level that would be measured/predicted for a given road traffic noise source. TS liken this to using centimetres or inches to measure a length: the length remains the same, but the number of inches would be less than the number of centimetres.

4.179 TS explains that the absolute noise mitigation threshold is 59.5 dB $L_{A10,18h}$ not the 59.5 dB $L_{Aeq,18h}$ quoted in the section title of Mr and Mrs Green's objection. It argues that it is important when comparing noise levels to use comparable metrics.

4.180 TS explains that [ES Table 8.1](#) (CD005) provides an indication of the level of typical common sounds and how they relate to the dB(A) scale derived from [CIRIA C693 'Noise and Vibration from road and rail'](#), (Lawrence et al, 2011) Figure 2.1 (CD109). TS argues that:

- this provides an illustration of the relationship between the subjective evaluation of noise levels and objective measured levels on a logarithmic scale.
- these are examples based on A-weighted sound pressure levels, not $L_{A10,18h}$ noise levels.
- it is incorrect to equate the $L_{A10,18h}$ road traffic noise level with the sound pressure levels presented in ES Table 8.1 (CD005).

4.181 TS argues that, in this instance, the metrics and indices are different. As such it argues that it is incorrect to state that $L_{A10,18h}$ 59.5 dB is 4.5 dB above the level at which 'communication [starts to become] difficult'.

4.182 TS considers that the adoption of the absolute noise level threshold for consideration of mitigation ([ES paragraphs 8.2.24 to 8.2.34](#) – CD005) is robust, on the basis that it would avoid serious community annoyance.

-Noise mitigation strategy thresholds for night-time absolute noise levels

4.183 TS agrees with Mr and Mrs Green that ES paragraph 8.2.33 (CD005) states that a night-time noise level of 55 dB $L_{night,outside}$ has been adopted as the level above which mitigation would be considered. However, TS disagrees with Mr and Mrs Green's

interpretation of the [WHO night noise guidelines \(NNG\) \(CD091\)](#) and their assertion that the ES is misleading.

4.184 TS confirms that whilst the [DMRB HD 213/11](#) Paragraph 2.29 (CD049.19) references an aspirational target of 40 dB $L_{\text{night, outside}}$, it argues that it does not state that this 'should be adopted for a road project that involves introducing a new noise source into the area', as asserted by Mr and Mrs Green. TS contends that the relevant section of the DMRB HD 213/11 Paragraph 2.29 (CD049.19) is as follows:

'For a road project that involves introducing a new noise source into an area, a key consideration is the change in the level of night time noise'.

4.185 TS argues that:

- in WHO's NNG (page 8 CD091) a night noise guideline of 40 dB $L_{\text{night, outside}}$ is recommended.
- this noise level is considered by WHO to protect the public, including most of the vulnerable groups from the adverse health effects of night noise.
- WHO also recommends an interim target (IT) of 55 dB $L_{\text{night, outside}}$ for situations where the achievement of NNG is not feasible in the short-term.

4.186 TS argues that the guidance considers that this IT can be temporarily considered by policymakers for exceptional local situations. It argues that no timescale is recommended to achieve these noise levels, only that Member States are encouraged to 'gradually reduce the proportion of the population exposed to levels over the IT within the context of meeting wider sustainable development objectives'.

4.187 TS argues that the NNG of 40 dB $L_{\text{night, outside}}$ is intended to protect the most vulnerable groups, everywhere at any given time from any risk of sleep disturbance. It argues that this is an aspirational target for Member States, in the context 'of meeting wider sustainable development objectives'. TS argues that this 40 dB $L_{\text{night, outside}}$ threshold guidance is based on adopting a very precautionary approach based on the Lowest Observable Adverse Effect Level (LOAEL).

4.188 TS argues that the DMRB HD 213/11 paragraph 3.38 has been followed:

'...only those sensitive receptors predicted to be subject to a $L_{\text{night, outside}}$ exceeding of 55 dB should be considered. The $L_{\text{night, outside}}$ of 55 dB corresponds to the Interim Target level specified in the WHO Night Noise Guidelines for Europe'.

4.189 TS cites [ES Tables 8.18 and 8.24](#) (CD005). These, it argues, show the number of dwellings predicted to experience noise levels in excess of 55 dB $L_{\text{night, outside}}$ is greater without the proposed scheme than it would be with the proposed scheme. Therefore, it contends that with the proposed scheme in place, the proportion of the population exposed to night noise above 55 dB $L_{\text{night, outside}}$ would reduce. TS therefore argues that the noise and vibration assessment does not deviate from the DMRB HD213/11 (CD049.19).

4.190 TS argues that the WHO NNG document (page 16 - CD091) states that: 'One thing that stands out is the desire of a large part of the population to sleep with windows (slightly) open'. TS contends that, on this basis, WHO NNG (page 16 CD091) adopted a 'relatively low value of 21 dB' as 'an average [sound] insulation value' from outside to inside noise levels.

4.191 TS argues, therefore, that the WHO NNG recommendations already take into account the noise reduction offered by a façade with a partially open window and, therefore, the night time noise mitigation already takes into account that windows may be partially open for ventilation purposes.

4.192 TS argues that TRL's Method 3 for determining the $L_{\text{night, outside}}$ noise level was adopted because it has been assumed that the roads within the Calculation Area, on average, produce a reasonably consistent diurnal flow pattern.

-Noise mitigation strategy thresholds for changes in noise level

4.193 TS argues that [ES paragraph 8.2.31](#) (CD005) recognises that a Slight/Moderate mitigation threshold alone (below 1 dB in the short and/or 3 dB in the long term) would require noise levels to be reduced to below a 'just perceptible' noise level change.

4.194 TS considers this to be very onerous because, for example, in a very quiet rural area, the noise level may change from $L_{A10,18h}$ 35 dB to $L_{A10,18h}$ 38 dB. It argues that this equates to a very quiet noise level increasing to a slightly less very quiet noise level.

4.195 TS argues, therefore, that mitigation needs to be applied with caution in rural areas. It also argues that this puts into context why an absolute noise threshold is necessary to avoid recommending inappropriate/unnecessary noise mitigation measures.

4.196 TS argues that this approach is consistent with the Scottish Government Technical Advice Note (TAN) 'Assessment of Noise' (CD089). This, it argues, suggests that assessments should consider comparing absolute noise levels with recognised guideline target levels, rather than solely the change in noise levels.

4.197 TS argues that for these reasons, although 2,235 of the 8,122 households ([ES Table 8.30](#) – CD005) are predicted to be subject to slight/moderate significance of noise impacts or worse, it would be inappropriate to provide mitigation for all of these dwellings based on a noise level change criterion alone.

4.198 TS confirms that the reason for adopting the $L_{A10,18h}$ 59.5 dB noise threshold is presented in ES paragraphs 8.2.24 - 8.2.34 (CD005). It states that, as required by DMRB HD213/11 (CD049.19), the least beneficial noise impacts have been reported in the ES, irrespective of the absolute noise mitigation threshold. TS states that the night-time noise impacts have been reported in accordance with DMRB HD213/11 (CD049.19). As such, TS does not accept Mr and Mrs Green's criticism that an attempt has been made to 'hide' the night-time noise impacts of the proposed scheme.

-Effectiveness of noise mitigation

4.199 TS disagrees with OBJ/042 Mr N and Mrs E Green that [ES Tables 8.19, 8.21 and ES Tables 8.36 and 8.38](#) (CD005) give 'further evidence of the extremely limited nature of the mitigation provided'. TS argues that receptor-specific noise mitigation has been provided for those dwellings that meet the noise mitigation criteria (ES paragraphs 8.2.24 to 8.2.34 – CD005). TS also notes that, as a consequence of providing mitigation to dwellings that meet the noise mitigation criteria, other nearby properties may also experience noise reductions.

4.200 TS confirms that the noise levels reported in ES Tables 8.19 and 8.21, and ES Tables 8.36 and 8.38 (CD005) relate to the least beneficial impacts. It explains that the

noise mitigation strategy is not based on noise level change alone but also incorporates the absolute noise level threshold of $L_{A10,18h}$ 59.5 dB. Therefore, TS argues it would be incorrect to quote the percentage of dwellings with magnitude of impact changes, with and without mitigation, as being evidence that proposed noise mitigation is ineffective.

4.201 TS argues that this is because noise mitigation is targeted at those properties that meet the noise mitigation thresholds and, as such, is not designed to reduce the magnitude of impact at each and every property, irrespective of their predicted absolute noise levels.

-Noise mitigation proposals

4.202 TS argues that, where possible and reasonably practicable, potential adverse environmental impacts have been prevented through an iterative design process, rather than relying on specific measures to mitigate the impacts. It explains that these measures are reflected in the proposed scheme as described in [ES Chapter 4](#) (CD005) and, as such, they are not reported in the ES as mitigation.

4.203 Where prevention was not feasible, TS argues that specific mitigation measures have been proposed to reduce potentially significant impacts through abatement measures either at source, at the site, or at the receptor. Thus, TS argues that the proposed scheme's design already incorporates noise mitigation earthworks and LNRS and, where necessary, this has been supplemented with receptor-specific noise mitigation.

4.204 TS explains that a summary of the proposed noise mitigation measures is presented in [ES paragraphs 8.6.10 to 8.6.16](#) (CD005). It also explains that [ES Figures 8.11a and 8.11b](#) (CD007) identify three noise barriers located south of the proposed dual carriageway that would, in its view, provide the required level of noise mitigation for properties located in the Balloch/Culloden area. TS identifies these barriers as NVB2, NVB4 and NVB5, as detailed in ES Table 8.33 (CD005).

4.205 TS argues that when determining the noise mitigation requirements for the proposed scheme, proposed mitigation already designed into the proposed scheme was considered as part of the assessment.

4.206 TS acknowledges that OBJ/058 John W Brown is correct that one form of noise barrier is close-boarded timber fencing with a minimum mass per unit area of 15kg/m^2 . It contends that this type of barrier is commonly used throughout Scotland as a means of mitigating noise and is engineered to withstand wind loads in accordance with relevant standards. TS does not consider that a parabolic concrete wall is appropriate for the proposed scheme.

4.207 In response to OBJ/042 Mr and Mrs Green and OBJ/060 Mr and Mrs Robertson, TS explains that LNRS is only proposed on the dual carriageway and slip roads and that the noise modelling has taken this into account. TS confirms that the use of LNRS is incorporated into the overall design of the proposed scheme and as such, noise models include this noise mitigation measure from the outset. Noise impacts without LNRS have therefore not been assessed.

4.208 TS argues that with regard to the noise effectiveness of the LNRS over time, [DMRB HD 213/11](#) paragraph A4.26 (CD049.19) notes that a Future Year correction of -3.5 dB(A) should be applied for a low-noise surface which is expected to be in place on an existing road.

4.209 TS accepts Mr and Mrs Green's and Mr and Mrs Robertson's point that the road surface may deteriorate over time. However, with regard to noise, it argues that the road would be repaired and, as such, the predicted road traffic noise levels should remain consistent with the prediction methodology.

4.210 TS agrees with Mr and Mrs Green's assertion that it is incorrect to assume that in reality the LNRS road surface has a step change LNRS road surface correction at 75kph. However, TS argues that it should be appreciated, that this is simply a precautionary modelling assumption rather than a reflection of the physics. TS argues that DMRB HD 213/11 paragraph A4.27 (CD049.19) states:

'Where the mean traffic speed is <75 km/hr, a -1 dB(A) surface correction should be applied to a low noise surface Although it is likely that thin surfacing systems will provide more acoustic benefit at lower speeds, until further research is carried out to provide reliable estimates, it is advised that a qualitative statement highlighting the possible additional acoustic benefits is also included in the assessment.'

4.211 TS argues that, in accordance DMRB HD 213/11 paragraph A4.27 (CD049.19), it should be appreciated that this -1 dB surface correction is a conservative estimate of the sound reduction offered by a LNRS where average traffic speeds are less than 75 km/hr.

4.212 In its closing statement paragraph 11.46 TS refers to DMRB HD 213/11 paragraph A4.26 (CD049.19). This DMRB paragraph explains that a -3.5 dB(A) correction should be applied to LNRS for the future year assessment.

4.213 TS argues that the noise level increases for six properties in the Balloch area predicted to be between 2.2 dB and 8.9 dB in the year of opening ([ES Table 8.13](#) – CD005) and 2.7 dB to 9.6 dB for the Future Year ([ES Table 8.14](#) – CD005) relate to the least beneficial impacts. As such, it argues that, it is not possible to extrapolate from the data presented in ES Table 8.13 (CD005) whether individual sample properties require noise mitigation. TS argues that the noise mitigation strategy is not based on noise level change alone but also incorporates the absolute noise level threshold of 59.5 dB LA10,18h.

4.214 TS contends that it would be incorrect to extrapolate the impacts from the sample noise monitoring locations to that of the proposed scheme, or the wider locality, as a whole. It argues that these sample properties were chosen because they were likely to represent the extremes of the likely noise impacts.

4.215 TS argues that the predicted noise levels derived from the traffic models have been used to predict noise levels at each building within the Calculation Area. TS explains that whether a dwelling requires receptor-specific noise mitigation is determined from the predicted noise levels, not the measured noise levels. TS does not consider that further noise monitoring locations would have altered the determination of where noise mitigation is required for the proposed scheme. TS argues that the extent of the receptor-specific noise mitigation required to supplement the proposed scheme's inherent noise mitigation (LNRS and earthworks) is considered to be appropriate. TS is content that the potential noise impacts have been sufficiently taken into account.

4.216 In response to REP/036 Mr Ross, TS argues that:

- the provision of mitigation has been guided by the ES noise mitigation strategy ([ES paragraphs 8.2.24 to 8.2.34](#) – CD005). This is based on DMRB HD213/11 (CD049.19) and WHO guidance (CD090 and CD091).
- Taking into account this guidance, noise mitigation is considered where the significance of impact at noise sensitive receptors is predicted to be:
 - Slight/Moderate adverse or worse, which for high noise sensitive receptors equates to at least a 1 dB noise level increase in the short term, i.e., the year of opening, and/or at least a 3 dB in the long term, i.e., typically within 15 years of the scheme opening and, in addition, the predicted ground floor façade noise level exceeds 59.5 dB $L_{A10,18h}$.
 - Slight/Moderate adverse or worse, in the long-term with a predicted noise level that exceeds 55 dB $L_{night,outside}$.
- the most exposed properties to road traffic noise from the proposed scheme, on Hazel Avenue, are below the absolute threshold noise level of 59.5 dB $L_{A10,18h}$.

-Noise impact – Policy

4.217 TS did not specifically address [HWLDP Policy 28](#) (CD061) in its response to Mr and Mrs Green ([TS042.02](#)). However, during Inquiry Session 3, TS explained that the proposed scheme is considered under the [Roads \(Scotland\) Act 1984](#) (CD020) rather than the Town and Country Planning (Scotland) Act 1997. TS also addresses the specific matters of noise impact and noise mitigation, which Mr and Mrs Green raise. TS's responses to these are covered in each respective sub-headings for the noise section in this chapter (above).

Findings of Fact

-Noise impacts – General

4.218 [ES Chapter 8](#) (CD005) and ES Appendix A8.3 (CD006) show that noise levels would increase or decrease at various NSRs as a consequence of the proposed scheme. This does not appear to be disputed; rather, the matter of contention is the concern amongst objectors that the proposed scheme would lead to noise level changes that would adversely affect health, sleep patterns and quality of life.

4.219 [ES paragraphs 8.6.10 and 8.6.11](#) (CD005) explain that mitigation measures have been designed into the proposed scheme, including LNRS and earth bunds, as shown on [ES Figures 8.9a and 8.9c](#) (CD007). [ES Tables 8.30 to 8.33](#) (CD005) and [ES Appendix A8.3](#) (CD006) show that receptor-specific mitigation measures have also been considered based on the noise mitigation strategy set out in [ES paragraphs 8.2.24 to 8.2.34](#) (CD005).

4.220 We also note that the installation of earth bunds, for example, in response to noise issues predicted at one or more NSRs, may also benefit other NSRs where noise mitigation was not deemed necessary. We find this 'beneficial' impact / effect (our words) to be a natural and unavoidable outcome of providing the mitigation.

4.221 Objections to the mitigation strategy thresholds are considered separately in paragraphs 4.269 to 4.305 (below). Objections to noise impacts and reporting of these are considered below in paragraphs 4.222 to 4.268.

4.222 The summaries provided by TS for specific objector properties, also illustrate how noise impacts / effects have been considered and, where necessary, mitigation has been proposed. In these instances the subsequent reassessment shows that noise levels have

been within the mitigation strategy thresholds or exceed these only by a margin that is imperceptible. The evidence suggests that the proposed mitigation should satisfactorily limit the noise impacts of the proposed scheme on the identified NSRs.

4.223 ES Appendix A8.3 (CD006) shows that some NSRs already experience noise levels in excess of the noise level thresholds and that others would do so as a consequence of local traffic noise rather than the proposed scheme. We find that it would not be reasonable to expect a scheme promoter to resolve problems that are not a consequence of its scheme.

4.224 We note the commitments made in the proposed scheme SEA (quoted in ES paragraph 8.2.27 – CD005) referenced by OBJ/042 Mr N Green and Mrs E Green. Based on the evidence above, we find that the proposed scheme includes noise barriers and other acoustic screening, as appropriate, to be considered in locations where road traffic from the proposed scheme could increase noise impacts at nearby properties. The evidence does not suggest we should find to the contrary.

4.225 Matters relating the route selection and alternatives are covered separately in Chapter 2: Matters of Principle. There we have found that noise and vibration formed part of the consideration of the most appropriate route option. As already noted above, we find that the noise impacts of operational road traffic effects on receptors in populated areas close to the proposed scheme have been assessed and considered with a mind to reducing potential noise and other adverse amenity effects. We consider the detail of whether the proposed mitigation is appropriate in greater detail in paragraphs 4.306 to 4.325 below.

4.226 ES Chapter 8 (CD005) explains that there are two distinct aspects of the noise considerations carried out for the proposed scheme that should not be confused with one another. Prior to the noise assessment TS carried out a baseline monitoring exercise with representative NSRs. This measured actual noise levels to understand the noise environment prior to the proposed scheme. [ES paragraph 8.3.3](#) (CD005) makes clear that this exercise was used for verification.

4.227 [ES Appendix A8.2](#) (CD006) pages A8.2.12 and A8.2.13 detail the noise assessment surveys carried out for NV006 Thornhill. This was one of the representative NSRs identified in [ES Table 8.7](#) (CD005). The [addendum to TS's closing statement](#) (January 2019) paragraph 5.3 confirms that the freefield measured noise levels for NV006 did not result in changes to the predicted levels at noise receptors located one metre from the facades of the properties. We accept that predicted noise levels were derived from the noise modelling software and not from the sample noise measurement exercise.

4.228 ES Appendix A8.2 paragraph 2.39 (CD006) documents the dominant noise in Tables 11 and 12 (CD006). On our site inspection we noted a variety of different boundaries for properties in Balloch, including different heights of wall, fence, hedges and other vegetation. [ES Figure 8.2a](#) (CD007) shows that NV006 is separated from the proposed scheme by open fields and is adjacent to a number of other homes. We find that the presence of a six foot high boundary is not an unusual feature in gardens in this area and the evidence does not suggest noise monitoring at this location to have delivered unusual or unexpected results as a consequence of that boundary feature.

4.229 TS's closing statement addendum, paragraph 5.3 does not dispute Mr and Mrs Robertson's, or Mr Gow's, contention that the wall at Thornhill would have the potential to

screen the property from noise. Its role in screening traffic noise from the existing A96 and Barn Church Road has been recognised and this appears to be a logical assumption. The objectors appear to be concerned that the placement of noise monitoring equipment at NV006 would have resulted in inaccurate (lower) noise level readings due to the presence of the wall.

4.230 However, as noted above the baseline monitoring exercise is distinct and different from the noise assessment. TS's closing statement addendum paragraphs 5.3 explains that the noise assessment (with and without the proposed scheme) did not include assumptions for garden walls and other forms of boundary that could offer some form of noise screening. The evidence does not suggest we should doubt this explanation. We therefore agree with TS that the noise assessment would be a worst case scenario; since it would not account for the presence of the wall and any screening this could offer. This should provide some reassurance for the objectors.

4.231 TS closing statement addendum paragraph 5.4 also confirms that there would be a requirement for post-opening evaluation to take place. This would include a review to confirm whether the noise mitigation proposed in the ES has been implemented, whether it is in a satisfactory condition and to determine any additional mitigation that may be required. This should provide some further reassurance to the objectors since it would ensure that post construction issues could be identified and resolved.

-Noise Impacts – ES Tables 8.36, 8.38 and 8.41 (CD005)

4.232 [ES Figure 8.1a](#) (CD007) shows the calculation area and study area as described in [ES paragraphs 8.2.1 to 8.2.3](#) (CD005).

4.233 [DMRB HD213/11](#) Tables 3.1 and 3.2 (CD049.19) show the differences between noise level change that are categorised to be of minor, moderate and major impact in the short-term versus the long-term. This explains the categorisation differences in [ES Tables 8.37 and 8.38](#) (CD005) highlighted by OBJ/042 Mr and Mrs Green. ES Tables 8.37 and 8.38 (CD005) therefore reflect the guidance set out in DMRB HD213/11 Tables 3.1 and 3.2 (CD049.19). Consequently, these differences also present some challenges in directly comparing data under each category for the short-term versus long-term.

4.234 DMRB HD213/11 paragraph 3.38 (CD049.19) explains that, until further research is available, night-time noise impacts should only be considered in the long term. [ES Table 8.41](#) (CD005) reflects this by only providing night-time noise impacts for 2036.

4.235 OBJ/042 Mr and Mrs Green carried out an estimate of what the 2021 figure associated with ES Table 8.41 would be. This was in the region of 2,000 households being impacted at night in 2021. TS responded in [TS042.02](#) that the number affected would be 2,293. We have had regard to this short-term effect in reaching our conclusions. However, in accordance with DMRB HD213/11, TS was not obliged to assess the proposal on this basis and, in view of what that document says about short-term night-time noise impacts, we have given greater weight to the predictions for the year 2036.

-Noise impacts - number of dwellings affected

4.236 [ES paragraph 8.7.30](#) (CD005) accompanies [ES Table 8.44](#) (CD005). These describe the number of dwellings that would experience adverse, beneficial or no changes in traffic induced noise nuisance with receptor-specific mitigation in place. These compare the predicted changes from Do Minimum in 2021 with the proposed scheme (Do

Something) and without the proposed scheme (Do Minimum) fifteen years later for ground floor and first floor.

4.237 ES Table 8.44 (CD005) shows that fewer dwellings would experience an increase in noise induced traffic nuisance with the proposed scheme compared to without it. However, with the proposed scheme, there would be an increase in noise levels in excess of 10% for 3,636 dwellings. Under the proposed scheme, ES Table 8.44 shows that 1,058 dwellings are predicted to see a decrease in traffic induced noise nuisance compared with 384 without the proposed scheme. Neither ES Table 8.44 nor ES paragraph 8.7.30 express the numerical magnitude of change or the associated absolute noise levels.

4.238 Whilst OBJ/042 Mr and Mrs Green accurately identify the number 3,636, we do not find ES paragraph 8.7.30 (CD005) to misrepresent these findings. There is no suggestion from ES paragraph 8.7.30 (CD005) that any increase in noise nuisance from the proposed scheme is offset by noise reductions elsewhere. Rather, we find it to be accurate in its description of ES Table 8.44 (CD005). Similarly, in response to Mr and Mrs Robertson, we find that the noise and vibration section of the ES NTS does not give this impression either. Rather, it summarises the factual observations contained in [ES Chapter 8](#) (CD005).

4.239 We agree with TS that the results presented in [ES Tables 8.30, 8.31 and 8.32](#) (and others) (CD005) are for the whole scheme and do not relate just to the Smithton, Culloden and Balloch area. Therefore, the direct link that Mr and Mrs Robertson draw between these ES Tables and house prices in Smithton, Culloden and Balloch is dubious. Matters relating to house prices/values are considered separately in paragraphs 4.340 to 4.345 below.

4.240 That the proposed scheme passes through a semi-rural area and that some dwellings would be adversely affected by noise as a result is not disputed by any party. We note that the findings for NSRs have been expressed in ES Chapter 8 (CD005) and [ES Appendix A8.3](#) (CD006).

4.241 [ES Figures 8.9a and 8.9b](#) and [ES Figures 8.11a and 8.11b](#) (CD007) show that noise mitigation measures have been designed into the proposed scheme. ES Chapter 8 (CD005) shows that the noise impacts of the proposed scheme with these mitigation measures, LNRS and receptor-specific migration have also been considered in the noise assessment. Route options are considered separately in Chapter 2: Matters of Principle. However, based on our findings there and the numerous parameters covered by the route options assessment (DMRB Stage 2 – CD011, CD012 and CD013), we find that this does not suggest that the route has been ‘inappropriately designed’, as suggested by OBJ/042 Mr and Mrs Green.

4.242 TS has presented summary tables for the proposed scheme as a whole rather than subdivided it into smaller areas. We find this to be rational as DMRB HD 213/11 paragraph 7.9 bullet 4 (CD049.19) suggests that, where there are a large number of sensitive receptors it may be appropriate to include these in an annex. This is done in ES Appendix A8.3 (CD006).

4.243 DMRB HD 213/11 paragraph 3.43 (CD049.19) explains that for the prediction of road traffic noise the methodology given in [CRTN](#) (CD084) should be used. The evidence does not suggest any failure to do this.

4.244 The noise mitigation strategy (ES paragraphs 8.2.24 to 8.2.34 – CD005) proposes mitigation only where magnitude of noise level change is perceptible (short-term or long-term) and (our emphasis) also the absolute noise level exceeds the respective thresholds. Therefore, both the thresholds for magnitude of change and the absolute noise level must be exceeded to justify mitigation.

4.245 ES Tables 8.30 and 8.31 (CD005) describe short and long-term daytime $L_{A10,18h}$ predicted noise levels and noise level changes comparing the Do Minimum and Do Something Scenarios for the opening year and the future year. ES Table 8.32 (CD005) compares long-term night-time $L_{night, outside}$ predicted noise levels and noise level changes.

4.246 ES Tables 8.30, 8.31 and 8.32 show that numerous residential buildings would experience either a perceptible noise level change or would exceed the absolute noise level thresholds set by the mitigation strategy (ES paragraphs 8.2.24 to 8.2.34 – CD005). However, each table shows comparatively small numbers of residential buildings along the whole route would fulfil both criteria, as shown in the third column of each respective table.

4.247 We find that these respective third columns illustrate the number of properties that may qualify for property-specific mitigation. TS makes clear that mitigation is only offered where:

- these residential buildings were not already exposed to absolute noise levels above the respective thresholds.
- these residential buildings would not experience noise levels exceeding the respective threshold due to traffic noise increases on local roads that did not result from the proposed scheme.

4.248 At Inquiry Session 1, TS's noise expert confirmed that he had never been involved in a road scheme where the mitigation threshold was set lower than 59.5 dB $L_{A10,18h}$. He also could recall no example of greater protection being afforded to a particularly quiet locality. We find that it is desirable to adopt a consistent approach to the noise mitigation threshold. We also find that it is reasonable for mitigation not to be offered when the factors responsible for generating the noise change are not the consequence of the proposed scheme.

4.249 TS has presented evidence for the specific properties that were queried by objectors. This confirms that either: the distance of the respective property was outwith the calculation area; that despite a predicted increase in noise levels, the absolute noise level thresholds would not be exceeded; or, if the threshold(s) would be exceeded this would result from noise level changes that are not part of the proposed scheme.

-Noise impacts related to traffic volume

4.250 [ES Figure 2.1a](#) (CD007) compares traffic flow data for the base year of 2014 and then for the Do Minimum scenario (without the proposed scheme) for the opening year (2021) and future year (2036). [ES Figure 2.2a](#) (CD007) shows traffic flows for the Do Something scenario (with the proposed scheme) for the opening year (2021) and future year (2036).

4.251 The statistics quoted in [ES Figures 2.1 and 2.2](#) (CD007) are high level and refer to different segments of the proposed dual carriageway and existing A96, as indicated in the information boxes within those respective ES Figures. This information is not sufficiently fine grained to predict traffic flows on Barn Church Road (or indeed other local roads).

4.252 [DMRB Stage 3 Scheme Assessment Report](#) paragraph 5.1.7 (CD008) explains that the traffic flows generated in the Moray Firth Transport Model (MFTM) were used to predict traffic related noise impacts in the noise impact assessment. We find no reason to doubt the figures provided by TS in [TS042.02](#) Table 1. Having considered this information we find TS's summary to be accurate. We also find it to be logical, therefore, that [ES Figure 8.5b](#) (CD007) shows that Barn Church Road, south west of Culloden Road would experience a reduction in road traffic noise.

4.253 Therefore, ES Figures 2.1 and 2.2 (CD007) do not give any indication of predicted noise changes resultant from the proposed scheme. When the appropriate information is considered (TS042.02 Table 1) it shows some increases in traffic flows but a reduction on Barn Church Road south west of Culloden Road.

4.254 We also note the assertion by OBJ/042 Mr and Mrs Green that their case is reinforced by the results of [ES Tables 8.5 to 8.8](#) (CD005). The contents of these tables are considered in greater detail in responses to related issues in paragraphs 4.275 to 4.277 below. There we find that ES Tables 8.7 and 8.8 contain baseline noise assessment figures based on the existing situation and not the proposed scheme (including proposed mitigation). ES Tables 8.5 and 8.6 (CD005) also contain generic information about the significance of noise impacts and general aims for addressing potential noise impacts.

4.255 We find that none of these tables constitutes the noise predictions with the proposed scheme in place. Therefore, we find that the conclusions reached by Mr and Mrs Green cannot be reached using this information in combination with or separately to that provided in ES Figures 2.1a and 2.2a (CD005).

-Traffic noise on Balloch junction slip roads

4.256 OBJ/042 Mr and Mrs Green are not the only objectors to raise concerns about the noise impact resulting from vehicles accelerating on junction slip roads. This matter is also considered for Auchnacloch Farm in chapter 8: Nairn East to Hardmuir paragraphs 8.236 to 8.246.

4.257 We understand Mr and Mrs Green's concern that noise emissions attributable to a vehicle acceleration on slip road. However, we also accept TS's contention that tyre noise is an important contributor to vehicle noise emissions and that this is likely to increase with speed. We note the approach advocated by CRTN paragraph 11 (CD084) to divide slip roads into different vehicle speed segments to account for the different speeds at which vehicles are likely to be travelling at different points along the slip road.. However, we note that TS's approach to this has been to estimate an identical high speed for each segment, such that the entire slip road has a higher average speed (and hence noise) assumption than would have been the case with segmentation.

4.258 We note TS's explanation of this in TS042.02 and in [TS213](#) paragraphs 5.5.3 to 5.5.5. TS042.02 explains that TS's assumptions result in predicted LA_{10,18h} noise level of 66.5 dB for the entire slip road. Following the CRTN (CD084) approach prescriptively would result in varying modelled noise levels 4 dB lower for the 20mph segment and very similar but lower for the 56mph segment 66.2 dB.

4.259 We find no evidence to suggest that TS's assumptions underestimate slip road noise levels. We also find that ES Figure 8.5c considers these factors and provides confidence

that the noise assessment has appropriately covered the noise impacts arising from the proposed scheme slip roads.

4.260 TS closing statement paragraph 11.35 also covers CRTN paragraph 33, Chart 4 and Annex 16 (CD084) with reference to Auchnacloch Farm. We find that the proposed Balloch Junction is similar in design to the proposed Nairn East Junction, which is near Auchnacloch Farm. The dual carriageway is proposed to be on an overbridge with the local road beneath and slip roads serving dumbbell roundabouts. The parts of CRTN (CD084) referenced above have assisted in our understanding of slip road related matters and do not persuade us that we should reach an alternative conclusion to that in the paragraph above.

-Noise impacts on schools

4.261 We note that [DMRB HD 213/11](#) paragraph A1.11 defines the study area and calculation area 600 metres from the edge of the proposed carriageway. TS closing statement paragraph 11.53 explains that this is twice the distance advised in [CRTN](#) (CD084) and is therefore precautionary. We also agree with OBJ/056 Mr Fraser Gow that noise does not immediately stop at this boundary, but note that TS does not suggest it would. We consider these matters in more detail below in the context of the locality and evidence in the ES.

4.262 [ES Tables 8.25, 8.26 and 8.27](#) (CD005) consider the façade noise level changes (without mitigation) with and without the proposed scheme in the short-term (2021) and long-term (15 years later – 2036) for health and educational establishments that are within the calculation area. These tables show that, despite predicted noise level increases, the absolute noise levels at primary schools in Balloch and Smithton (that are within the calculation area) would not exceed the mitigation threshold of $LA_{10,18h}$ 59.5 dB. Therefore the noise levels associated with the proposed scheme are unlikely to affect these primary schools in the Smithton, Culloden and Balloch area to an unacceptable extent.

4.263 [ES Figure 8.1a](#) (CD007) shows that Duncan Forbes Primary School and Culloden Academy are just outside the calculation area and that the calculation area boundary is just north of each school.

4.264 [ES Figure 8.10b](#) (CD007) contains noise contours comparing Do Minimum (without the proposed scheme - 2021) with the Do Something (with the proposed scheme 2021) with mitigation in place. It shows localities immediately adjacent to Culloden Academy (north and west) that would experience noise level changes within the 1 dB to 3 dB range. It also shows locations immediately north of Duncan Forbes Primary School that would experience noise level changes below 1 dB and others that would experience changes of up to 3 dB. We agree with TS that short-term noise level changes above 1 dB would be perceptible.

4.265 [ES Figure 8.12b](#) (CD007) compares Do Minimum (2021) with Do Something (2036). The equivalent noise level change for the areas immediately north of both schools is under 3 dB. We find that this long-term noise level change would be imperceptible.

4.266 We also note the points made in [TS057.02](#) that the absolute noise level at Culloden Academy would increase from approximately 48.2 dB $LA_{10,18h}$ to approximately 49.5 dB $LA_{10,18h}$. The evidence does not suggest we should doubt these predictions. These show that the absolute noise level would be below the mitigation threshold of 59.5 dB $LA_{10,18h}$.

4.267 Similarly we note that properties on the north side of Keppoch Road, opposite north of Duncan Forbes Primary School, are within the calculation area and have been assessed in [ES Appendix A8.3](#) (CD006). These properties are closer to the proposed scheme than the school. This shows that, for ground floor and first floor, with mitigation in place the short and long-term absolute noise levels with and without the proposed scheme would be below the mitigation threshold of 59.5 dB $L_{A10,18h}$.

4.268 Despite predicted increases in noise levels, some of which may be perceptible, these are not such that they reach or exceed the absolute noise level threshold of 59.5 dB $L_{A10,18h}$ ([ES paragraphs 8.2.24 to 8.2.34](#)). Therefore, the predicted increases in noise are unlikely to be significant enough to require receptor-specific mitigation and are unlikely to result in the levels of disturbance that have concerned the objectors. We also note the noise level changes predicted for Barn Church Road set out in paragraphs 4.250 to 4.255 above and our conclusions there.

-Noise mitigation strategy thresholds for daytime absolute noise levels

4.269 The descriptions for levels of annoyance associated with different noise level thresholds in the [WHO Guidelines for Community Noise \(1999\) \(CD090\)](#) Table 1 and explanation on pages xv and xvi are as follows:

- to protect the majority of people from being seriously annoyed during the daytime, the outdoor sound level from steady, continuous noise should not exceed 55 dB L_{Aeq} on balconies, terraces and in outdoor living areas;
- to protect the majority of people from being moderately annoyed during the daytime, the outdoor sound level should not exceed 50 dB L_{Aeq}

ES paragraph 8.2.29 (CD005) adopts the higher level of 55 dB L_{Aeq} .

4.270 [The Noise and Vibration Report](#) paragraphs 5.7.8 to 5.7.12 (TS213) and TS Closing Statement paragraph 11.26 explain that, based on consideration of Table 7 in the [National Noise Incidence Survey 2000/02](#) (CD123) daytime noise levels in Scotland already exceed the 50 dB $L_{Aeq,16h}$ noise level. We accept the rationale that Table 7 (CD123) is 54 dB for Scotland and covers a 24 hour period which includes eight hours of night-time that would be, on average, quieter than the 16 hours of day time covered by the $L_{Aeq,16h}$.

4.271 Therefore it is reasonable for TS to have adopted the higher absolute noise level of 55 dB $L_{Aeq,16h}$ quoted in the WHO guidelines (CD090). Given these findings, the evidence does not suggest that TS has erroneously or unjustifiably chosen the higher of the two WHO absolute noise level thresholds.

4.272 ES paragraphs 8.2.24 to 8.2.34 (CD005) explain the absolute noise thresholds adopted by TS and the various metrics associated with these. ES paragraph 8.2.30 (CD005) explains that the WHO 55 dB L_{Aeq} absolute noise level is based on a metric of 16 hours of daytime ($L_{Aeq,16h}$). ES paragraph 8.2.33 (CD005) explains that TS adopted a daytime absolute noise threshold of 59.5 dB $L_{A10,18h}$. This is based on an 18 hour daytime period. ES paragraph 8.2.33 (CD005) explains that this is a façade level noise measurement; a term that is explained in [ES Appendix A8.1](#) (CD006).

4.273 ES paragraph 8.2.33 (CD005) explains that the $L_{A10,18h}$ is used for the absolute noise level threshold because it corresponds with the 18 hour daytime ($L_{A10,18h}$) metric used by CRTN (CD084). Similarly, TS213 paragraph 3.5 explains that this scale is commonly used as it has been shown to offer a reasonably good correlation with average community

annoyance, as set out in DMRB HD 213/11 paragraph A3.11 (CD049.19). On balance therefore we find it rational for TS to choose to represent absolute noise levels and related mitigation thresholds using the $L_{A10, 18h}$ metric.

4.274 Given the factors above, the methods used for carrying out the noise assessment require measurements based on an 18 hour daytime range but the WHO guidelines are based on a 16 hour daytime range, which excludes façade considerations. These are therefore different metrics for measuring absolute noise levels and therefore a conversion factor is needed.

4.275 OBJ/042 Mr and Mrs Green challenge the approach used by TS to convert $L_{Aeq, 16h}$ to $L_{A10, 18h}$ because the differences between these two metrics in [ES Table 8.9](#) (CD005) is different and varies considerably. TS does not dispute these differences and our consideration of this table does not suggest we should doubt the ranges of variance quoted by OBJ/042 Mr and Mrs Green.

4.276 TS213 paragraph 3.13 explains that an empirically derived relationship implies that a noise level that is dominated by free flowing road traffic noise will typically have an $L_{Aeq, 16h}$ noise level that is 2 dB lower than the same road traffic's $L_{A10, 18h}$ noise level. TS argues that many of the locations in [ES Table 8.9](#) (CD005) are not dominated by free flowing road traffic noise. The evidence does not suggest we should find to the contrary.

4.277 [ES paragraph 8.3.6](#) (CD005) explains that [ES Table 8.9](#) (CD005) summarises the respective average measured noise levels $L_{Aeq, 16h}$, $L_{A10, 18h}$, $L_{night, outside}$ for the receptors identified in [ES Tables 8.7 and 8.8](#) (CD005). We therefore find that [ES Table 8.9](#) (CD005) summarises results from the baseline measurement of the existing situation based on the existing A96 and not predicted noise levels for the proposed scheme (with or without any of the proposed mitigation). TS advises that the noise assessment is based on predicted noise and not the actual measurements. Therefore, we find that [ES Table 8.9](#) (CD005) does not demonstrate that the conversion factors used by TS are incorrect.

4.278 [ES paragraph 8.2.30](#) (CD005) explains that 2 dB must, therefore, be added to the $L_{Aeq, 16h}$ to account for the change from a 16 hour to an 18 hour daytime range. This conversion factor corresponds with that of DfT's [Transport Appraisal Guidance \(TAG\) Unit A3 Environmental Impact Appraisal](#) paragraph 2.2.13 (CD124).

4.279 [ES paragraph 8.2.30](#) (CD005) also explains that a further 2.5 dB must be added to account for façade noise reflection. This is consistent with that defined in CRTN paragraph 26.1 (CD084).

4.280 The evidence does not suggest we should find the conversion factors used by TS to be erroneous or that there are better alternatives. We therefore accept TS's reasons for choosing the $L_{A10, 18h}$ metric and that TS's conversion factors must be used in order to compare $L_{Aeq, 16h}$ with $L_{A10, 18h}$. Therefore, following TS's logic, the conversion of the WHO guideline figure of 55 dB L_{Aeq} to $L_{A10, 18h}$ would be as follows:

Conversion from 16 hour to 18 hour daytime range

$$55 \text{ dB } L_{Aeq} + 2 \text{ dB} = 57 \text{ dB } L_{A10, 18h}$$

Addition of the façade noise reflection

$$57 \text{ dB } L_{A10, 18h} + 2.5 \text{ dB (for façade)} = 59.5 \text{ dB } L_{A10, 18h}$$

4.281 We therefore find that:

- the absolute noise level threshold of 59.5 dB $L_{A10, 18h}$ (including façade) is equivalent to WHO guidelines level of 55 dB L_{Aeq} and accept the TS analogy of centimetres and inches, as an example to describe the differences between these two metrics.
- the $L_{A10, 18h}$ and L_{Aeq} are not directly comparable without the conversion calculation and should not be used interchangeably in analysis or in drawing conclusions.

4.282 TS has not ignored the WHO guidance on absolute noise thresholds rather it has carried out the appropriate conversion to enable the noise mitigation strategy to be based on the WHO guidance level but also to marry with the noise assessment in the ES and noise predictions from CRTN (CD084).

4.283 [ES paragraph 8.1.4](#) (CD005) explains that the values in ES Table 8.1 (CD005) are based on an A-rating and we understand that the typical noise levels quoted in [ES Table 8.1](#) are a subjective evaluation. TS has argued that this is a different metric to the $L_{A10, 18h}$ scale used on the noise assessment and for presenting the 59.5 dB noise mitigation threshold. Given our findings above, regarding the use of different metrics, we find this does not show that the noise level threshold (59.5 dB $L_{A10, 18h}$) to be 4.5 dB in excess of those quoted in Table 8.1 as 55 dB where 'communication starts to become difficult'.

4.284 Therefore the evidence does not suggest that TS has 'upwardly manipulated' any threshold levels. Rather, it has justifiably opted for the avoidance of serious annoyance based on [WHO \(1999\)](#) (CD090) levels of 55 dB $L_{Aeq, 16h}$ and followed the relevant, recognised conversions to $L_{A10, 18h}$ giving an equivalent noise mitigation threshold of 59.5 dB that has subsequently been incorporated into the noise mitigation strategy.

-Noise mitigation strategy thresholds for night time absolute noise levels

4.285 [ES paragraph 8.2.33](#) (CD005) explains that the night-time noise mitigation threshold is 55 dB $L_{night, outside}$. The parties dispute whether this reflects the [WHO Night Noise Guidance](#) (CD091). We find that the WHO NNG executive summary page 17 Table 3 (CD091) lists:

Night noise guideline (NNG) $L_{night, outside} = 40$ dB

Interim target (IT) $L_{night, outside} = 55$ dB

4.286 We agree with Mr and Mrs Green that TS has adopted the higher of these two values as its night-time noise mitigation threshold and we note the described effects of night-time noise level ranges in WHO NNG executive summary Table 3 page 17 (CD091).

4.287 [DMRB HD 213/11](#) paragraph 2.29 (CD049.19) references both the NNG and IT thresholds listed above. Mr and Mrs Green contend that the criteria for the IT have not been met because the situation in the locality is not 'exceptional'.

4.288 However, we find that this paragraph makes clear that there is some scope for adopting the Interim Target of 55 dB $L_{night, outside}$. DMRB HD213/11 paragraph 2.29 (CD049.19) makes clear that the guidance considers that this IT can be temporarily considered by policymakers for exceptional local situations. Similarly, it sets no timescale to achieve these noise levels, only that Member States are encouraged to gradually reduce the proportion of the population exposed to levels over the IT; within the context of meeting wider sustainable development objectives.

4.289 Given that TS proposes a night-time noise mitigation threshold of 55 dB $L_{\text{night, outside}}$ this makes clear that mitigation would be introduced above this level to comply with the intentions of paragraph 2.29 (CD049.19).

4.290 TS also argues that the 40 dB $L_{\text{night, outside}}$ is a target intended to protect the most vulnerable groups, everywhere at any given time from any risk of sleep disturbance; and, that this is a precautionary approach based on the lowest observable adverse effect level (LOAEL). The evidence does not suggest we should reach a different conclusion.

4.291 We also agree with TS that DMRB HD213/11 Paragraph 3.38 (CD049.19) urges caution in predicting night-time noise as traffic levels fall at night. It recommends, therefore, that only those NSRs predicted to be subject to a $L_{\text{night, outside}}$ exceeding of 55 dB should be considered. We find that this corresponds with the interim target (IT) in the WHO Night Noise Guidelines (CD091) and that quoted in ES paragraph 8.2.33 (CD005).

4.292 The first sentence of DMRB HD 213/11 paragraph 2.29 (CD049.19) advises that, for road projects that involve introducing a new noise source into an area, a key consideration is the change in the level of night-time noise. As with day time noise (above) this persuades us that the absolute noise threshold is not the only consideration.

4.293 We note the reference to 27 baseline-monitoring properties by Mr and Mrs Green. We have already found in paragraphs 4.226 to 4.230, 4.239 and 4.275 to 4.277 (above) that these were part of a baseline assessment of the existing situation and not a noise assessment of the proposed scheme (including or excluding any proposed mitigation).

4.294 [ES Tables 8.18 and 8.24](#) (CD005) show that with the proposed scheme in place, the proportion of the population exposed to night-time noise above $L_{\text{night, outside}}$ 55 dB would reduce compared to without the proposed scheme. We find this to broadly reflect the aims of WHO NNG page 17 (CD091) and DMRB HD 213/11 paragraph 2.29 (CD049.19).

4.295 We note Mr and Mrs Green's concern about possible conflicts with [PAN 1/2011](#) paragraph 16 (CD065.03) regarding open windows at night. The WHO NNG (CD091) considers outside to inside noise for open windows at night in section 1.3.5 (CD091); recognising that most residents want to keep their bedroom windows slightly open at night and that the reduction in sound level provided by a partly open window is in the order of 10 dB to 15 dB rather than 30 dB to 35 dB for a typical fully closed double glazed window. We are therefore satisfied that these factors form part of the assumptions made by WHO about night-time noise level thresholds presented in the NNG (CD091).

4.296 Therefore, we find that there is rationale and support in the guidance, including [WHO NNG](#) (CD091) and [DMRB HD213/11](#) (CD049.19), for using the interim target of 55 dB $L_{\text{night, outside}}$. This suggests that TS's adoption of this target is neither erroneous nor unreasonable.

4.297 DMRB HD 213/11 paragraph 3.26 explains that the [TRL report](#) (CD085) includes three methods and the most appropriate method depends on the detail of traffic information available. Method 1 uses hourly traffic flows and Method 2 uses flows for the night-time period. Method 3 uses daily flows. TS explains that it adopted TRL's Method 3 for determining the $L_{\text{night, outside}}$ noise level because it made assumptions that the roads within the Calculation Area, on average, produce a reasonably consistent diurnal flow pattern.

4.298 [DMRB Stage 3 Report](#) Section 5 (CD008) explains that the MFTM produces AADTs (Annual Average Daily Traffic levels) and includes components for AM peak, Inter-peak and PM peak that are explained in paragraph 5.2.5 of that report (CD008). We have found in Chapter 2: Matters of Principle that the MFTM was an appropriate and suitable tool for predicting how traffic flows would change in the future. These predicted traffic flows were then used in the noise modelling. TS's decision not to explain this to the satisfaction of objectors does not diminish the findings of the noise assessment. Given that the determination of which method to use is dependent on the information available, the evidence does not suggest that use of a different method would have given different or better results; rather, that using an alternative method would not have been possible. We find this to justify the use of Method 3.

-Noise mitigation strategy thresholds for changes in noise level

4.299 There is no dispute about the number of residential buildings quoted by Mr and Mrs Green in [ES Table 8.30](#) (CD005).

4.300 DMRB HD 213/11 paragraphs 3.37 (CD049.19) explains that short-term noise level changes below 1 dB and/or long-term noise level changes below 3 dB are not perceptible. The adoption of a threshold using these levels of noise change is therefore rational. It would be both onerous and illogical to implement noise mitigation beneath these levels because the change in noise level would not be perceptible.

4.301 [PAN 1/2011 Technical Advice Note](#) Appendix 2 (CD089) recognises the need to consider both the change in noise levels and the absolute noise levels. We also note TS's point that a perceptible change in noise levels may not result in significant disturbance because it could change a very quiet environment to a slightly less quiet environment. We find this to be a rational observation and the adoption of thresholds for both changes to noise levels and absolute noise levels to be consistent with recognised practice.

4.302 We have already concluded that the absolute noise mitigation thresholds in [ES paragraph 8.2.33](#) (CD005) are rational and based on justified evidence (see paragraphs 4.269 to 4.305 above). The evidence above does not persuade us that we should reach a different conclusion.

4.303 Therefore, we do not find [ES paragraph 8.2.31](#) (CD005) to be saying that mitigation should not be applied because it is 'too onerous'. Rather, it recognises that using only the magnitude of noise level change would require mitigation even where the consequent absolute noise level remained relatively low (and below the respective absolute noise level thresholds quoted in the ES noise mitigation strategy).

4.304 [ES Appendix A8.3](#) (CD006) shows the predicted absolute noise levels for the least beneficial façade comparing the Do Minimum and Do Something scenarios in 2021 (year of opening) and 15 years later (with and without mitigation). This provides an understanding for all residential buildings of both the magnitude of noise level change and the consequent absolute noise levels. These can be readily compared with the respective thresholds to determine if further receptor-specific mitigation is needed. This evidence does not suggest that TS has tried to hide any results or that it has chosen not to mitigate simply because doing so would be onerous.

4.305 The evidence therefore suggests that the noise assessment has been carried out appropriately. The objections by Mr and Mrs Green do not suggest we should find

differently or that TS's conclusions and proposed approach to mitigation are flawed. Nor do we find this to suggest that the proposed scheme has been inappropriately designed. Therefore, this evidence does not suggest there to be any need to modify the draft Orders or to refuse to confirm them.

-Effectiveness of noise mitigation

4.306 Whilst there is no dispute about the percentage figures presented by OBJ/042 Mr and Mrs Green, we find that these do not tell the whole story.

4.307 [ES Tables 8.19, 8.21, 8.36 and 8.38](#) (CD005) compare the magnitude of noise level change for Do Minimum 2021 versus Do Something 2021 and 2036 both with and without mitigation. The predicted noise level changes in these tables are classified into negligible, minor, moderate and major. The range of noise level changes which constitutes each classification differs for the short-term (2021) and long-term (2036) based on [DMRB HD213/11](#) paragraph 3.37 tables 3.1 and 3.2 (CD049.19). We find this distinction to be rational.

4.308 ES Tables 8.19, 8.21, 8.36 and 8.38 (CD005) show only the magnitude of change in predicted noise levels and not the absolute noise level change. Both factors are relevant in considering noise impact and ultimately whether mitigation would be provided under the mitigation strategy in [ES paragraphs 8.2.24 - 8.2.34](#) (CD005).

4.309 It is therefore plausible to suggest that some dwellings in each of the categories would experience changes from and to absolute noise levels that remain below the 59.5 dB LA_{10,18h} threshold. Similarly, others may already exceed the threshold without the proposed scheme and therefore any magnitude of noise level increase, however small, would not alter this situation.

4.310 The tables also do not explain where mitigation was and was not proposed. [ES Appendix A8.3](#) (CD006) shows that not every location requires noise mitigation, either because the magnitude of noise change would be imperceptible or because it would remain below the respective threshold (or both). Similarly, if mitigation is only proposed for certain locations then it follows that where it is not proposed there would be no change compared to the situation without mitigation.

4.311 We find that the factors described above provide some explanation for the observations made by Mr and Mrs Green. We therefore find that comparing the percentage change in the categories for these tables does not, on its own, provide a sound basis to draw conclusions about the effectiveness or otherwise of the proposed mitigation.

4.312 We do not find ES paragraph 8.2.31 (CD005) to be saying that mitigation should not be applied because it is 'too onerous'. As TS explains, applying only these criteria would require mitigation to reduce all noise level changes to levels that are imperceptible in the short-term and the long-term. We agree that this would be onerous for the reasons explained by TS that, a given change in noise level, however high, may not cause much in the way of disturbance and may not reach or exceed the respective mitigation thresholds for absolute noise levels.

4.313 We note that, as required by DMRB HD 213/11 paragraphs 3.37 (CD049.19), ES Appendix A8.3 considers the magnitude of noise level change. This evidence does not

suggest that TS has tried to hide any results or that it has chosen not to mitigate simply because it is onerous.

4.314 The evidence therefore suggests that the noise assessment has been carried out appropriately. The objections by Mr and Mrs Green do not suggest we should find differently or that TS's conclusions and proposed approach to mitigation are flawed. Therefore, the evidence does not suggest a need to modify the draft Orders or to refuse to confirm them.

4.315 The parties do not dispute the statistics quoted by Mr and Mrs Green from [ES Tables 8.13 and 8.14](#) (CD005). We have already found that these statistics measure only the magnitude of change and not whether this would breach the noise mitigation strategy (ES paragraphs 8.2.24 and 8.2.34 – CD005) for absolute noise levels. We have also found that these represent sample properties rather than the predicted noise levels for the proposed scheme. As such, we have found that it is not appropriate to extrapolate this information to draw the conclusions reached by Mr and Mrs Green.

-Noise mitigation proposals

4.316 We note the suggestions that the proposed mitigation is inadequate and alternatives that have been proposed. At several inquiry sessions, we have been advised by TS's noise expert that vegetation, including trees, would be ineffective as noise mitigation, unless it was extremely dense and deep. The evidence does not suggest we should find differently.

4.317 Although we accept the durability benefits of a block wall, OBJ/058 Mr John W Brown does not explain what noise impact would require a block wall or why this would be more effective in mitigating noise than the mitigation already proposed. The proposed wooden fence (and other mitigation) has also been considered as part of the wider visual and landscape assessments in ES [Chapters 9 and 10](#) (CD005), a block wall has not. The Scottish Ministers would have the responsibility to maintain the fence to ensure that it continued to perform its intended role.

4.318 [ES Chapter 8](#) (CD005) and [ES Appendix A8.3](#) (CD006) suggest that the proposed scheme (with mitigation) would result in absolute noise levels below the noise mitigation threshold or in noise level changes that would be imperceptible. This suggests that TS is justified in proposing no additional mitigation beyond that already proposed and forming part of the noise assessment.

4.319 We also note that the provision of additional mitigation in the form of new or larger bunding (such as that sought by Mr Gow at Inquiry Session 3) would require land, which does not currently form part of the [draft CPO](#) (CD001). The draft orders cannot be modified to include additional land only to remove it. Additional land would therefore require new orders with further design, assessment, engagement and inquiry time. We are not persuaded this would be necessary or justified given the conclusions we reach above.

4.320 The noise assessment recognises mitigation already designed-into the proposed scheme e.g. earth bunds (as shown in [ES Figures 8.9a and 8.9b](#) – CD007) and LNRS ([ES Chapter 20](#) Mitigation Item NV3 – CD005). The result is that in-built features, whether done initially or developed through an iterative process, are not specifically identified as or assessed as mitigation in the ES. Rather, they are assessed as part of the proposed scheme, as designed, alongside additional mitigation required to overcome the identified impacts / effects of the proposed scheme as designed.

4.321 We find that such an iterative approach and the inclusion of such features into the design to be logical and arguably a form of good practice. As such, this would also oblige any construction contractor to fulfil these requirements. It would be illogical to deliberately design to a less than optimal standard simply so that the ES could identify the need for mitigation that would otherwise have been designed-in and assessed on that basis. EIA is an iterative process ([ES paragraphs 8.6.10 and 8.6.11](#) - CD005) and given that good practice techniques have been developed to anticipate and overcome problems in advance, this approach is appropriate.

4.322 We agree with OBJ/042 Mr and Mrs Green and OBJ/060 Mr and Mrs Robertson that road surfaces, including LNRS, are likely to deteriorate over time. We find it is also logical to assume that any acoustic benefits associated with LNRS would similarly deteriorate over time. However, we note that TS has made assumptions for the ongoing operational effectiveness of LNRS based on [DMRB HD 213/11](#) paragraph A4.26 and A4.27 (CD049.19). It is reasonable to predict that the running surface of a trunk road would be maintained. This satisfies us that TS has made appropriate assumptions for speed related noise and for deterioration and subsequent maintenance and repair of LNRS. This evidence does not suggest that we should find the effectiveness of LNRS to have been overstated.

4.323 We therefore do not agree that the assessment is only relevant for optimal conditions. Instead we find that EIA is an iterative process designed to identify potential impacts / effects, consider mitigation and reassess them in order to bring about optimum conditions, in so far as is practicable. The evidence suggests this to have taken place and that the proposed design and additional proposed mitigation has been assessed as sufficient to respond to the identified noise impacts / effects.

4.324 We have found in paragraphs 4.269 to 4.305 above (and others) that the noise mitigation strategy in [ES paragraphs 8.2.24 to 8.2.34](#) (CD005) is appropriate. The specific mitigation proposed for the locality includes LNRS ([ES Chapter 20](#) Mitigation Item NV3 – CD005) and three earthwork bunds shown in [ES Figures 8.11a and 8.11b](#) (CD007) and [ES Table 8.33](#) (CD005). Therefore, we do not find Mr and Mrs Green's evidence to suggest that the proposed mitigation would be ineffective.

4.325 In response to REP/036 Mr Gordon Ross, [ES Figures 8.14b to 8.21b](#) (CD007) show that with the proposed scheme in place that NV005: 117 Hazel Avenue is the closest property on that street to the proposed scheme. The data shows that noise levels are predicted to increase with the proposed scheme in place but that the predicted absolute noise levels would not exceed the 59.5 dB $L_{A10,18h}$ threshold. Therefore there would be no need to provide additional noise mitigation beyond that already designed into the proposed scheme or mitigation already proposed and forming part of the noise assessment.

-Noise impact on local planning policy

4.326 This proposal is under the [Roads \(Scotland\) Act 1984](#) (CD020) and so it is not required to follow [HWLDP](#) Policy 28 (CD061). However, we find this policy relates closely to the intentions of the EIA process to identify and avoid or reduce the impacts / effects of the proposed scheme on residential amenity. The evidence and our findings in the noise section of this chapter do not suggest that the proposed scheme is contrary to the intentions of the policy because:

- the noise assessment was carried out appropriately and has not made erroneous conclusions.

- appropriately defined noise mitigation criteria have been adopted.
- appropriate mitigation has either been designed-in or added in response to findings of the noise assessment.
- legitimate circumstances exist where it is appropriate for TS not to offer noise mitigation.

4.327 This does not suggest that the draft Orders should be modified or that Scottish Ministers should refuse to confirm them.

-WHO Guidelines 2018

4.328 Immediately before the inquiry began at the end of October 2018 the WHO published new guidance on noise levels ([CD140](#)). This new guidance was presented by TS to the inquiry and we invited participants to consider this during the inquiry and to provide any written comments alongside closing statements if they wished.

4.329 OBJ/060 Mr and Mrs Robertson's closing statement argues that:

- the WHO guidelines are the authoritative guidance on noise regardless of their adoption by the Scottish Ministers.
- it is inappropriate for TS to argue that Scottish health guidance should be of a lower standard than elsewhere.
- by the time the A96 is built, the new WHO guidelines will be generally accepted as appropriate.

4.330 During Inquiry Session 3 TS explained what it considered the [WHO Guidelines 2018](#) (CD140) to mean and also how to convert between the metrics used for the ES ($L_{A10, 18hr}$ and $L_{night, outside}$) to those referenced in the WHO Guidelines 2018 (CD140) L_{den} .

4.331 In its closing statement, TS makes clear its view that the WHO Guidelines 2018 have been published but have not yet been adopted in Scotland. We agree that this is the case and it does not appear to be disputed by the objector. This being so, we accept that the adopted guidance available to TS when carrying out the noise assessment and also now (at the time of writing this report) is the [WHO 1999 guidance](#) (CD090) and the [WHO Night Noise Guidelines for Europe 2009](#) (CD091).

4.332 TS also directs us to WHO 2018 guidance section 1.2.1 page 3 (CD140). There it explains that the new guidance uses a noise metric L_{den} . This provides a single noise measurement for the whole day, evening and night. TS argues that this metric differs from both the L_{Aeq} and $L_{A10, 18h}$ metrics currently used by WHO 1999 (CD090) and the noise assessment for the proposed scheme, respectively. TS argues that the L_{den} metric quoted in the 2018 guidelines (CD140) also excludes façade effects. A difference in metrics and inclusion or exclusion of façade effects are important distinctions when considering noise measurements. We therefore agree with TS that this would be an important consideration when reading the proposed noise level thresholds in the new guidance (CD140) and comparing them with those of the WHO 1999 (CD090) and the WHO Night Noise Guidelines for Europe 2009 (CD091) and those used for the noise assessment in [ES Chapter 8](#) (CD005).

4.333 [TS's closing statement](#) also explains in paragraphs 4.8 to 4.12, regarding WHO Guidelines 2018 (CD140), that WHO acknowledges a 'knowledge gap' and a need for 'longitudinal studies on health impacts from exposure to environmental noise to inform future recommendations properly'. We find this to be recognised by the WHO

Guidelines 2018 (CD140) page 29 in the recommendations section which explains that the guidelines should:

‘...serve as the basis for a policy-making process in which policy options are quantified and discussed. It should be recognised that in that process additional considerations of costs, feasibility, values and preferences should also feature in decision-making when choosing reference values such as noise limits for a possible standard or legislation’.

4.334 In the WHO Guidelines 2018 section 5 implementation guidelines (CD140), Section 5.1 reinforces this position; recognising that the factors quoted above can ‘feature in and can influence the ultimate value chosen as a noise limit.’

4.335 We find this to demonstrate that the WHO Guidelines 2018 (CD140) are not necessarily expected to be adopted verbatim, rather that work is incomplete. We agree with the points in TS’s closing submission on WHO 2018 paragraph 4.13. This explains that the WHO Guidelines 2018 (CD140) do not have legislative force, but are aspirational. This suggests to us that any adopting process must further consider the matters identified, carry out additional research and assess the practicalities of these matters before adopting threshold values. We also find this to suggest that any threshold values that are ultimately adopted as a result of this additional work may differ from those currently presented in WHO Guidelines 2018 (CD140). Therefore, it is not appropriate or rational to expect the thresholds identified in CD140 to automatically become the thresholds ultimately adopted by Scottish Ministers, since the work to identify these has yet to take place and its conclusions cannot be known in advance.

4.336 Based on the above consideration we find that one cannot simply take the existing noise assessment and alter the absolute noise level thresholds to reflect those in the new WHO guidelines 2018 (CD140). Since this uses different metrics an entirely new noise assessment would be required. Furthermore, we have found that this new guidance (CD140) is not yet adopted and there is no current requirement for it to be followed. Similarly there is no guarantee what the respective noise thresholds would actually be. We also agree with TS’s point that following any such research and conclusions would follow consultation and engagement as part of the normal framework for adoption of policy and/or legislation. We see no basis to justify advising Scottish Ministers to instruct a new noise assessment since the basis for doing so and any new standards upon which it would be based are yet to be determined.

4.337 TS has identified the documentation which explains how to convert between the current metrics to those in the WHO Guidelines 2018 (CD140), should objectors wish to understand this. Whilst TS could have carried out these calculations, the matters above show that it would have been unintentionally misleading since the newly published WHO Guidelines 2018 (CD140) are neither law nor adopted policy. A process of further research and consideration will be required prior to any adoption, with no guarantee of what the actual thresholds would be.

4.338 We agree with Mr and Mrs Robertson that the WHO guidelines 2018 (CD140) may well have completed any adoption process by the time construction begins or ends on the proposed scheme; were it to be approved by Scottish Ministers. However, this would not place any additional requirements on the proposed scheme, were it to be approved, since, as explained above, it had been assessed in line with the adopted guidance of the day.

4.339 The proposed scheme has been subject to a noise assessment based on the appropriate adopted guidance. As such, we find no reason to recommend that Scottish Ministers seek a reassessment of the noise impacts or that TS be asked to provide conversion calculations to the L_{den} metric. Scottish Ministers may wish to take their own expert and / or legal advice on this matter.

Property values

Objections

4.340 OBJ/035 Mr Andrew Kirkland objects to what he anticipates to be a reduction in the value of his property as a result of the proposed scheme. Reference to the impact of the proposed scheme on property values is also made in objections by OBJ/060 Mr Allan and Mrs Lorna Robertson, OBJ/032 Ms Penny Williamson and OBJ/033 Ms Linda Simpson.

Transport Scotland's Response

4.341 TS argues that house prices are not a matter upon which it can offer advice and suggest objectors may wish to contact a solicitor or estate agent.

4.342 In response to OBJ/032 Ms Penny Williamson and OBJ/033 Ms Linda Simpson, TS argues that those who have not otherwise been compensated with regard to potential impact on property values, may be entitled to claim for compensation in terms of Part 1 of the [Land Compensation \(Scotland\) Act 1973](#) (CD086).

4.343 TS explains that under Part 1 of that Act there is a right to compensation in respect of any depreciation of more than £50 in the value of certain interests in land caused by the use of the new or altered roads resulting from specified physical factors (noise, vibration, smell, fumes, smoke and artificial lighting and the discharge onto the land in respect of which the claim is made of any solid or liquid substance).

4.344 TS further explains that compensation is assessed by reference to prices current at the date 12 months after the new or altered road was first open to public traffic. TS argues that the valuation of any such compensation will be assessed by the Valuation Office Agency and TS will advertise in the local press providing contact details at the appropriate time to make home owners aware that claims can be submitted.

Findings of Fact

4.345 Impacts on the value of property and consequent or related compensation are matters for the District Valuer and not for this inquiry.

Built and natural environment

Objections

-Impacts on communities and farmland

4.346 OBJ/027 Ms Faye Armitstead and OBJ/030 Mr Alan Armitstead are concerned about the impact of the proposed scheme on the surrounding communities.

4.347 OBJ/031 Terri-Anne Sinclair is concerned about the impact on surrounding farmland.

-Wildlife road casualties

4.348 OBJ/050 Balloch Community Council objects to the ecology methodology and suggests that measures should be put in place to mitigate wildlife road casualties.

-Cultural heritage

4.349 OBJ/064 Ms Norma Duncan considers that cultural heritage mitigation is insufficient. For example, she considers that Asset 85 (Isle View Ring Cairn) and four other high value assets have no mitigation during the construction phase. She argues that only Asset 163, is to be offered fencing. She questions why others do not have fencing or other mitigation proposed when the cost is so low.

Transport Scotland's Response

-Impacts on communities and farmland

4.350 TS argues that it has considered the impacts of the proposed scheme during the route selection process as detailed in DMRB stage 2 route options assessment described in [ES section 3.3](#) (CD005). This assessment has, it argues, considered the impacts on agricultural land and the communities of Culloden and Balloch.

-Wildlife road casualties

4.351 TS argues that the ecological surveys and impact assessment detailed in [ES Chapter 11](#) (CD005) have been undertaken by professionally qualified ecologists and in accordance with ecological best practice standards. TS argues that Scottish Natural Heritage (SNH) was also consulted regarding the scope and methods used to understand the nature conservation interest potentially affected by the proposed scheme.

4.352 TS argues that the proposed scheme includes provision of mammal-deterrent fencing along stretches of the route to prevent mammals accessing the dual carriageway. It argues that this fencing is designed to guide animals to safe crossing points including dry mammal underpasses and culverts. TS argues that these have been shown to be utilised by species such as badger, bats, red squirrel and pine marten. TS explains that the extent of mammal fencing and the locations of the dry mammal underpasses and culverts are illustrated in [ES Figure 9.5](#) (CD007).

-Cultural heritage

4.353 TS argues that the proposed scheme has been designed and positioned, in consultation with Historic Environment Scotland (HES) and The Highland Council's Historic Environment Team, to avoid any direct impacts on Scheduled Ancient Monuments (SAMs).

4.354 TS argues that [ES Chapter 14](#) (CD005) identifies that indirect impacts associated with the construction of the proposed scheme relate to temporary visual intrusion on the setting of the designated scheduled monuments from construction activities in the vicinity. They conclude that there are no direct impacts (loss of remains) associated with the construction activities on these assets.

4.355 TS argues that the majority of these assets are also positioned outside of the CPO boundary (CD001) for the proposed scheme, with distances ranging from approximately 55 to 120 meters.

4.356 TS argues that Asset No. 85 (Isle View Ring Cairn) is located over 100 metres from the CPO boundary line and the contractor would not have access to this area. Given the distances from the boundary, TS is satisfied that assets would not be impacted by construction activities such as from earth moving vehicles, digging up of land, or during future landscaping works. TS contends that this finding is reflected in the ES.

4.357 TS explains that prior to construction, the appointed contractor would evaluate all cultural heritage assets, including Scheduled Monuments, to determine a programme of agreed mitigation in consultation with the above bodies. TS argues that this programme of mitigation would be detailed within the CEMP and may include the demarcation of assets and the erection of fencing during the construction period.

Findings of Fact

-Impacts on communities and farmland

4.358 The proposed scheme would have some impact on agricultural land since it would pass directly through areas used for agriculture. The scale of farm land proposed for acquisition and the quality of land are covered in [ES Chapter 15](#) (CD005), [ES Appendices A15](#) (CD006) and [ES Figures 15.6 and 15.7](#) (CD007). The role of agricultural land in route selection is covered separately Chapter 2: Matters of Principle.

4.359 We note the consideration of the impacts / effects of the proposed scheme on communities in Balloch and Culloden in the ES. Noise, air quality, visual and landscape impacts / effects, NMU and traffic safety and the impact on 'the Hedges' are each considered separately in this Chapter of the report. There we have concluded that the proposed scheme would have some residual impacts but none that would warrant modifications to the draft Orders or a refusal to confirm them as proposed.

4.360 Similarly, ES Chapter 15 (CD005) does not suggest that the community and assets impacts or effects are substantial enough to warrant modifications to the draft Orders or a refusal to confirm them as proposed.

-Wildlife road casualties

4.361 We note the completion of ecological surveys in [ES Chapter 11](#) (CD005). This considers the needs of a variety of species along the route of the proposed scheme, including confidential findings for badgers. We attach weight to the fact that SNH has been involved in the design process and has raised no objections to the proposed scheme.

4.362 [ES Figure 9.5](#) (CD005) shows the proposed locations of wildlife interventions including underpasses, fencing, culverts and habitat creation. For Balloch and Culloden, [ES Figures 9.5b to 9.5d](#) (CD007) show mammal fencing and specific dry mammal underpasses proposed near to ch4400 and ch5400, the proposed NMU underpass (PS24) at the north end of Milton Road and also proposed culverts for water drainage close to ch2300, ch2500, ch3200 and ch4700. The objectors should, therefore, be able to take some reassurance that factors have been incorporated that would contribute to reducing the risk of wildlife road casualties from the proposed scheme.

-Cultural heritage

4.363 [ES Figure 14.1](#) (CD007) illustrates the locations of various scheduled ancient monuments as well as other designated and un-designated cultural heritage assets. [ES Figures 14.1a to 14.1b](#) (CD007) show the number and proximity of these to the proposed

route for the section from Seafield to Kerrowaird Farm Cottages. We note from DMRB stage 2 route selection (CD011 and CD013) that avoiding cultural heritage assets in this area presented challenges to the different route options.

4.364 Based on ES Figure 14.1 (CD007) we agree with TS that the majority of cultural heritage assets, particularly designated assets, are outside of the draft CPO boundary. ES Figure 14.1 (CD007) confirms the distances as ranging from approximately 55 to 120 meters.

4.365 OBJ/064 Mrs Duncan refers to four other Assets that are not afforded mitigation but does not name them. We assume these to be the others listed in [ES Table 14.9](#) (CD005) besides Assets 85 and 163. ES Figure 14.1b confirms that Asset 85 is over 100 metres from the proposed scheme.

4.366 [ES paragraph 14.8.3](#) and [ES Table 14.9](#) (CD005) indicate that no mitigation is proposed for Asset 85 or the others listed because the significance of impact is moderate and would be indirect and temporary. [ES paragraph 14.8.5](#) indicates that the residual impact on Asset 85 would remain moderate in magnitude and significance. Overall, we find that these assets are listed in ES Table 14.9 (CD005) and are not afforded mitigation because the evidence in the ES concludes that this is not necessary, with the exception of Asset 163, which requires fencing.

4.367 We note TS's argument that the appointed contractor would be required to evaluate all cultural heritage assets. This is confirmed in [ES Table 20.9](#) (CD005) under mitigation item CH1, which requires pre-construction consultation with The Highland Council and TS's archaeological advisors. Mitigation items CH1 and CH2 (ES Table 20.9 – CD005) also detail specific mitigation measures for Assets 163, 154, 473, 61 and 142. TS argues that this mitigation would also form part of the CEMP ([ES Table 20.1](#) mitigation item GR1). We accept that this is a mechanism for ensuring the appropriate measures and protections form part of the contract arrangements with the design and build contractor. It is also clear that these would be binding through the contract and that TS has appointed Jacobs as its site overseer to hold the contractor to account and part of the contract would require the contractor to employ an environmental clerk of works (ES Table 20.1 mitigation item GR2).

4.368 We also give weight to the fact that Historic Environment Scotland has not objected to the proposed scheme. REP/152 Historic Environment Scotland's (HES) is satisfied at the fencing proposed for Asset 163 in ES Table 20.9 Mitigation Item CH1 (third block) during the construction phase. We attach weight to the fact that HES does not seek fencing or additional treatment/mitigation for other assets, including Asset 85. We take this to mean that the proposed arrangements are acceptable in principle.

4.369 Overall therefore we conclude that the measures identified in the ES are satisfactory, that no modifications are necessary to the draft Orders and there are no reasons why Scottish Ministers should refuse to confirm the draft Orders.

Balloch Junction (including local roads and A96/B9039 junction)

Objections

-Transparency of process for revision of junction proposal

4.370 OBJ/060 Mr Allan and Mrs Lorna Robertson argue that the proposed Balloch Junction:

- was moved after DMRB Stage 2 to be 200 yards closer to Balloch.
- does not, as proposed, reflect any of the design options considered at DMRB stage 2.
- was not subject to a Stage 2 workshop.
- was subject to a process for that was not as open as it was for DMRB stage 2 and may not take account of updated information regarding changes in noise, cost, traffic disruption, safety and compensation.
- location would bring considerable disturbance.

-Modification of Balloch junction design and location

4.371 OBJ/004 Mr David Gow, OBJ/055 Ms Anna Gow and OBJ/056 Mr Fraser Gow consider that the moving of the proposed Balloch Junction closer to Balloch ignores local sensitivities.

4.372 They and REP/044 Mrs Mary and Mr Eric Quemby argue that the junction should be further away from Balloch. OBJ/058 Mr John W Brown suggests the proposed junction should be further north to reduce its noise impact. OBJ/052 Ms Sheena Fraser and Ms Ann Hulse propose moving the new Balloch junction further east to 'remove some of the noise from Balloch'.

4.373 Mr David Gow, Ms Anna Gow and Mr Fraser Gow suggest that if the proposed route is not changed then it [the junction and proposed dual carriageway] should be in a cutting with an embankment, of 'less than 5 metres', to the south to reduce the noise impact. [The Reporters note that these three objectors each use the mathematical symbol '<' in their objections and that this means 'less than'. However, given the nature of the objection and the points being raised the Reporters accept that this could be a typing error that intended to seek an embankment of 'greater than or equal to five metres' or of 'at least five metres'. Whilst this distinction is important in itself, we are satisfied that whatever the intention of using the symbol '<' it does not diminish or confuse the broader concerns raised by these objectors or their request for additional mitigation using a bund or embankment]. At Inquiry Session 3 Mr Fraser Gow explained that earth bunding has been proposed on the north side of the proposed scheme and that similar bunding should be placed on the south side, since what he described as 'token trees' would not suffice.

4.374 REP/147 Cllr Kate Stephen and OBJ/148 Cllr Trish Robertson suggest that the impacts of the proposed Balloch Junction would be lessened if the new A96 passed underneath and Barn Church Road passed over it.

4.375 Mr David Gow, Ms Anna Gow and Mr Fraser Gow, Ms Sheena Fraser and Ms Ann Hulse and Mrs Lorna and Mr Allan Robertson all argue that the existing A96/B9039 junction is unsafe and should be improved. Mr David Gow, Ms Anna Gow and Mr Fraser Gow and Mr and Mrs Robertson argue that the current junction between the existing A96 and the B9039 would still experience heavy traffic for golf, airport and Ardersier as well as tourist/military traffic for Fort George, were the proposed scheme to proceed.

4.376 OBJ/060 Mr and Mrs Robertson argue that:

- there would be an increase in traffic from the proposed Balloch Junction through the present A96-B9039 junction towards either Ardersier or Morayston.
- the draft Orders route has the present 'accident-ridden' A96-B9039 junction and that 'its blind approaches would remain part of what is the fastest route through the new Balloch Junction for traffic from the A9 and Inverness to the Airport [Inverness Airport]'.
- the Morayhill factory's growing imports of logs and exports of timber products would still cross the junction, as would the 'imminent increase in agricultural transport between farms, near and far, and the bio-fuel plants'.
- the retained A96-B9039 junction is distant enough from the new A96 Balloch Junction for vehicles from Morayston to be travelling at speed by the time they reach the 'blind westbound junction with its local and visitor traffic trying to join the A96'.

4.377 OBJ/060 Mr and Mrs Robertson argue that Barn Church Road currently serves a variety of vehicular and NMU users for accessing local homes, services and facilities, emergency services and as a relief road during blockages of the existing A96. They are concerned that disruption during the construction phase and additional land take for diversions would alter the cost-benefit of the proposed scheme.

4.378 Mr and Mrs Robertson propose that Newton Junction C's modern roundabouts would resolve these issues. They propose relocating the junction to where the proposed 'Newton C' junction option was at DMRB stage 2. This would, they argue, be further from Balloch and the archaeological remains at lower Cullernie. It would also, they argue, respond to anticipated traffic increases at the existing A96/B9039 junction. Proposals for the existing A96/B9039 junction are considered separately in paragraphs 4.406 to 4.424 of this chapter.

4.379 They also argue that the 'Newton Junction C' location would bring other benefits including, removing hazards from retained lengths of the existing A96. It would, they argue, be the lowest cost option and would avoid 'Cullernie archaeology' [assumed to refer to scheduled ancient monuments in the vicinity of the proposed Balloch junction]. They also argue that the design of 'Newton C' could be easily adjusted, as was done for the proposed junction.

4.380 At Inquiry Session 3 Mr Fraser Gow disagreed with TS's assertion that the modification proposed by Mr and Mrs Robertson (above) would lead to longer journeys and affect route choice. He argued that the provision of the Barn Church Road extension to reach the Newton Junction location and the extra 1.3 kilometres at 40mph and then 1.3 kilometres at 70mph would represent approximately two minutes travel.

4.381 OBJ/047 Mr Hamish Johnston recognises the role that scheduled ancient monuments have had on the route and location of the proposed Balloch junction. However, he considers that the amount of land shown in pink on the plan [assumed to be [ES NTS Figures](#) showing the extent of scheduled ancient monuments] is disproportionately large. He argues that moving the route and junction along the existing A96 and west of its current proposed location would be further away from housing and would avoid the scheduled ancient monument.

Transport Scotland's Response

-Transparency of process for revision of junction proposal

4.382 TS argues that:

- it undertook public exhibitions and other information events in November 2013, October 2014, August 2015, February 2016 and December 2016.
- the timing of these events coincided with key stages in the design development of the proposed scheme.
- the November 2013 exhibition was held during the DMRB Stage 2 route option assessment process, prior to selection of the preferred option.
- at each of these events, it welcomed feedback from local residents, landowners, property owners and other stakeholders such as The Highland Council, HES, SEPA and SNH.
- public feedback from these events has been taken into account throughout the development process.
- the public exhibitions and information events were advertised in local and regional newspapers, with information posters displayed at public buildings (including shops and other commercial premises) throughout the local area.
- invitations were sent to all local councillors, community councils and members of the public who had provided contact details whilst attending previous public engagement events.

-Modification of Balloch junction design and location

4.383 TS argues that the relocation of the proposed Balloch Junction to the existing A96/B9039 Newton – Castle Stuart – Ardersier Road junction [as proposed by the objectors] was considered during the design development process.

4.384 TS argues that:

- following the completion of the DMRB Stage 2 route option assessment and the selection of the preferred option, the location and layout of the proposed grade-separated junction at Balloch/Newton was given further consideration:
- an outline design of an option for locating the junction 1.3 kilometres further east at the junction for the B9039 was developed.
- for this option, the proposed dual carriageway passed Balloch generally at existing ground levels and severed the eastern end of Barn Church Road.
- a new road link was included to connect the eastern end of Barn Church Road to the proposed junction at Newton.
- this option was rejected since it would have had an adverse impact on journey time between Balloch and Inverness as road users would either have to travel an additional 2.6 kilometres or re-route along Barn Church Road through Culloden to Smithton Junction.
- the latter would increase traffic through Culloden and at Smithton Junction.
- the junction layout at Newton was also considered to have a greater impact on major utility diversions and on the tributary of Rough Burn.

4.385 TS argues that it has considered up to date information:

- the transport model used for the proposed scheme assessment takes account of those future infrastructure and land-use developments with sufficient commitments to be included in the defined Do-Minimum (without scheme), and hence the Do-Something (with scheme) scenarios.

- this has included taking account of planned developments through planning data provided by The Highland Council and based on the current LDPs, and also supplemented by additional information from, for example, planning applications that had been submitted at the time.
- the transport model has also taken account of multi-modal infrastructure such as the proposed new rail station at Dalcross and Inverness West Link Road.
- further details are provided in Section 5.5 of the [DMRB Stage 3 Scheme Assessment Report](#) (CD008).

4.386 TS argues that traffic flow data extracted from the transport model for this section of the existing A96 [assumed to be the location of the junction with the B9039] shows that traffic flows are forecast to reduce by over 50% from 25,900 vehicles per day (AADT) for the Do Minimum scenario, to 11,300 AADT for the Do Something scenario for the Future Year of 2036 (DMRB Stage 3 Scheme Assessment Report Figures 5.5 and 5.6 respectively – CD009).

4.387 TS argues that:

- at the DMRB Stage 3 design development process the Balloch Junction layout and the alignment of the proposed dual carriageway through it were further developed and refined from the DMRB Stage 2 preferred option.
- the purpose of this was to reduce the overall footprint of Balloch Junction and to reduce its impact on existing major utilities and a scheduled ancient monument (Lower Cullernie Ring Ditch) located in the corner of the field immediately to the north of the junction between the existing A96 and Barn Church Road (C1032).

4.388 TS explains that the proposed scheme would drain to outfalls at the Fiddlers Burn (approximate ch4750) and the tributary to the Rough Burn (approximate ch6300). It argues that the elevation of these watercourses acts as a vertical constraint that would limit how low the dual carriageway, slip roads or local roads could be whilst still draining by gravity through the proposed drainage network and SuDS ponds to these outfalls.

4.389 TS argues that the design for the proposed Balloch Junction was developed to take account of these constraints, with Barn Church Road (C1032) realigned and lowered below the proposed dual carriageway in a dumbbell junction arrangement offset to the south of the existing A96 and west of the existing Barn Church Road alignment. TS states that the proposed junction design provides connections to the existing A96, Barn Church Road (C1032) and the access for Balmachree. TS explains that the proposed dual carriageway would rise on embankment over the junction and that this provides a more compact junction layout, reducing the extent of land required compared to the Stage 2 preferred option.

4.390 TS argues that the 'developed junction arrangement' [design as proposed] would avoid direct impact on the scheduled ancient monument (Lower Cullernie Ring Ditch); would allow for a greater extent of offline construction, reducing the construction impact on existing roads; and, would reduce the length of diversion for major utilities.

4.391 TS argues that the geographic extent of the scheduled ancient monuments shown in the [ES Non-Technical Summary figures](#) (CD005) and in ES Figures (CD007) are taken directly from the map entries of the Schedule of Monuments held by HES. It argues that these entries have a statutory status and are managed by HES under the Ancient Monuments and Archaeological Areas Act 1979. TS also contends that, in some cases, the

designated areas of scheduled ancient monuments include areas of buried remains, which are not visible from above ground.

4.392 TS confirms that during construction, two-way traffic would be maintained on the existing A96 and Barn Church Road (C1032) to minimise disruption to road users and the local community.

4.393 TS states that it has carried out a noise assessment ([ES Chapter 8](#) – CD005), an air quality assessment ([ES Chapter 7](#) – CD005) and a landscape and visual assessment ([ES Chapter 9](#) and [Chapter 10](#) – CD005). TS's explanations of these and related mitigation, where proposed, are covered separately (above) in sections of this chapter covering noise, air quality and landscape and visual impacts.

4.394 TS argues that:

- the volume of traffic travelling along the existing A96 at the B9039 Newton – Castle Stuart – Ardersier Road junction is forecast to reduce by over 50% (as noted in paragraph 4.386 above), comparing the situation with the proposed scheme in place (in 2036) to that without the proposed scheme in place.
- the traffic travelling to and from the [Inverness] airport and surroundings would be directed along the proposed dual carriageway towards Mid Coul Junction, then along the Kerrowgair – Croy Road (C1017).

4.395 TS argues that observed accident data records for the period between January 2010 and December 2014 ([DMRB Stage 3 Scheme Assessment Report Figure 2.4](#) – CD009) show that no (zero) slight accidents, no (zero) serious accidents and no (zero) fatal accidents were recorded at the junction location during this period. TS reiterated these points at [Inquiry Session 3 in its Hearing Statement](#) Appendix 4 paragraph 1.2, which refers to [DMRB Stage 3 Report](#) Section 5.4 (CD008) and Figure 2.4a (CD009).

4.396 At Inquiry Session 3 TS's roads and visual/landscape witnesses considered the technical merits of Mr Fraser Gow's request for the proposed scheme to be in a cutting or for bunding. TS's roads expert argued that a lower road within a cutting would bring about the SuDS and drainage constraints (as identified above in paragraph 4.388). He also explained that a bund would involve balancing the EIA assessment of where mitigation is required. From a technical perspective both witnesses explained that a two metre high bund would require a 15 metre wide footprint dependent on the existing topography. As such a higher, five metre bund, would require a much wider and more significant agricultural land take.

4.397 TS's landscape and visual expert pointed out that the [Landscape and Visual Report](#) (TS212) Table 12.2 identifies visual mitigation for 216 individual residential properties. Of these 129 are the most sensitive with significant adverse effects predicted. This number falls to 33 by summer 15 years after opening, several of which are close to Balloch junction. This, she argued, would mean a five metre bund, proposed by Mr Gow, would only be for 33 properties. She argued that the proposed provision and replanting of hedgerows would play a helpful role in reducing the impact to below significant. She also noted a further opportunity to consider the species mix during the detailed design stage.

Findings of Fact

-Transparency of process for revision of junction proposal

4.398 That the location of the proposed Balloch junction has changed since DMRB stage 2 and moved further south is not in dispute. The nature of the location change is outlined in [Balloch Junction Design Development Report](#) (TS228) and in The [Scheme Design Development and Consideration of Alternatives Report](#) section 4.4 (TS209). TS228 pages 7 and 8 compare a variety of related factors including costs, to determine which of the options would best overcome the identified constraints. Document TS228 shows that following the reconsideration to avoid the constraints identified by TS (above), the proposed junction was moved south. We consider the rationale for this move in more detail below.

4.399 Whilst we agree that the proposed junction location and design have changed since DMRB stage 2 we do not find this to mean that there has been a lack of consideration or engagement on these matters. Rather, we find that TS has considered the constraints in more detail at DMRB Stage 3 and re-located and redesigned the proposed junction to avoid or minimise these.

4.400 TS228 shows that the DMRB Stage 2 preferred option design was at the north end of Barn Church Road. [TS233](#) Appendix C Exhibition Boards (from October 2014) and [TS235](#) Appendix B Exhibition Boards (from November 2016) each show the propose Balloch junction at the north end of Barn Church Road but having varied in location and layout following consideration of the matters described in TS228. The resultant design has been incorporated into the proposed scheme as set out in the [draft CPO](#) sheet 4 (CD001) and [draft SRO](#) Plan SR4 (CD003). As such, it has been subject to an EIA as set out in the ES (CD005, CD006 and CD007) and then the subsequent public engagement process from November 2016.

4.401 We note that design and location changes have also taken place at other junction locations during DMRB stage 3 to respond to constraints, e.g. Nairn East junction, as explained in TS209 section 4.8 and TS225.

4.402 We agree that having been devised at DMRB stage 3 this design was not subject to a DMRB stage 2 workshop. However, we find that the purpose of the DMRB Stage 2 workshops was to appraise and evaluate the various route options to understand which, if any, offered the optimum route when considering a variety of factors. We consider the workshops and route option selection in more detail in Chapter 2: Matters of Principle. There we have concluded that this process was sound.

4.403 We find that DMRB stage 3 is, by its nature, a stage where detailed refinements of the selected route takes place, potentially including junction relocation/redesign. Given the constraints identified in TS228 sections 5.2 and 6, had the proposed junction remained in its original location, it is likely that a redesign of some kind would have been needed to incorporate mitigation identified through the EIA or that a relocation would have been necessary to avoid these issues.

4.404 When the consultation on the draft Orders and accompanying ES took place in November 2016, it was on the basis of the revised location and design for the Balloch junction. [DMRB Stage 3 Figure 3.1](#) (CD009) shows the proposed junction design and profile. We find that the process has not resulted in any material changes that could be

considered out of the ordinary or to have been undertaken in a manner that is not transparent or that has prevented comment.

4.405 We note the concerns raised about levels of disturbance from the proposed junction location. Matters relating to air quality, noise, visual and landscape impacts and effects are considered separately (above) for the whole locality of Smithton, Culloeden and Balloch, including the proposed Balloch junction. There we have concluded that mitigation features designed into the proposed scheme and additional proposed mitigation would limit or remove adverse environmental impacts and that residual environmental effects would be insufficient to justify recommending that the draft Orders be modified or not confirmed.

-Modification of Balloch junction design and location

4.406 Several objectors would prefer the Balloch junction to move further north or east. We note that the objectors justify these locations, in some instances, based on arguments relating to air quality, noise and visual and landscape. We consider these impacts and effects separately elsewhere in this chapter. However, we have not found these matters to present issues so substantive that they would require the relocation and/or redesign of the proposed Balloch junction.

4.407 We note that proposals to move the proposed Balloch junction are also partly related to preferences for the proposed route to be moved further away from settlements. Even where this is not explicitly the case, that would be the outcome. Route selection is covered separately in Chapter 2: Matters of Principle. There we conclude that the consideration of route options was appropriately carried out and that the chosen route was justified.

4.408 Moving the proposed Balloch junction to any other location would involve the need to acquire additional land beyond that identified in the [draft CPO](#) (CD001). The draft CPO can only be modified to remove land, not to add it. As such, a new set of draft Orders would be required with the related new designs and EIA process, consultation for the respective landowners and interested members of the public. A public inquiry would then be likely. Such circumstances would delay the project. Risk of delay to the project is not in itself a reason to find an alternative is not favourable, however, it is a legitimate consideration when a proposed alternative is worse or at least no better than the proposed scheme.

4.409 The [Balloch Junction Design Development Report](#) Sections 5.2 and 6 (TS228) explain the rationale for relocating the proposed Balloch junction slightly further south and the associated re-design. The reasons include avoiding gas and fuel pipelines and a scheduled ancient monument and constraining the gravity fed operation of the proposed junction and road drainage for the proposed scheme.

4.410 Both diagrams in TS228 Appendix A show that the proposed junction design avoids the scheduled ancient monument (Lower Cullernie Ring Ditch) by shifting further south. This is made possible by a shorter section of Barn Church Road, which passes beneath the proposed dual carriageway instead of the lengthier section needed to cross over it. This allows the roundabout and connections into the existing A96 to avoid the scheduled ancient monument to the north.

4.411 Mr and Mrs Robertson contend that the sudden discovery of a scheduled ancient monument prompted a hasty redesign of the proposed Balloch Junction. As set out above we do not find this to be the case. The evidence does not suggest it was not known about. DMRB Stage 2 proposes and considers the merits of different route options against criteria

to produce an indicative preferred route. DMRB stage 3 allows the opportunity to consider detailed matters of the design and refine these where necessary. TS228 makes clear that a variety of factors collectively led to the refinement of design for the Balloch junction. This does not suggest the hasty and sudden process inferred by Mr and Mrs Robertson.

4.412 If the suggestions of either REP/147 Cllr Kate Stephen and OBJ/148 Cllr Trish Robertson or those of Mr David Gow, Ms Anna Gow and Mr Fraser Gow were to be followed, then Barn Church Road would need to cross the dual carriageway in a manner reflecting the original design from DMRB stage 2 in TS228 Appendix A drawing B2103500/HW/0100/SK/196. This would revert to a design, that would experience the constraints identified in TS228 and would require at least that level of land take. We find this would alter the junction profile to that shown in DMRB stage 3 Figure 3.1 (CD009) and would require additional land and the associated procedures as described in paragraph 4.408 (above).

4.413 During Inquiry Session 3 OBJ/056 Mr Fraser Gow accepted that an embankment would require additional land and recognised that hedgerows and trees could assist with landscape integration. However, he maintained his position.

4.414 The evidence does not suggest that it would be feasible to put the proposed scheme in a cutting north of Balloch without returning to the problems identified in TS228 that the proposed junction design seeks to resolve. The provision of a five metre high bund does not appear to be fully justified in terms of noise impact since we have found no requirement for additional receptor-specific mitigation beyond what is already proposed and covered by the noise assessment. Given our findings on the visual impact of mitigation measures (above), such an embankment would likely bring its own visual and landscape impacts and effects. It is plausible that this may therefore accentuate or at least fail to diminish the visual impact of the proposed scheme. We accept that there is some opportunity to consider the species mix and planting regime at the more detailed design stage within the context of the species mix allowed under the ES. Acquisition of additional land would require the associated procedures described in paragraph 4.408 (above).

4.415 In response to OBJ/047 Mr Hamish Johnston we saw many of the scheduled ancient monuments on our site inspections and noted that, some have been designated based on historic interest that is not visible or not easily identifiable. This does not diminish their status under the Ancient Monuments and Archaeological Areas Act 1979 and as such, TS is obliged to map and recognise these. We give weight to the fact that HES does not object to TS's use of this data in its map and find this to suggest that such use has been accurate.

4.416 We saw the A96/B9039 junction on our site inspections. We note the concerns about the continuation of the existing A96/B9039 junction and suggestions that relocating the Balloch junction to this location based on a redesigned 'Newton C junction' could resolve some of these concerns. One significant practicality of this would be that, as noted above, any other relocation would require additional land and the associated procedures as described in paragraph 4.408 (above).

4.417 We find that the proposed scheme itself is likely to reduce overall traffic flows on the existing A96. The evidence before us suggests no reason to doubt these traffic forecasts. The proposed scheme would also include a category 7A all-purpose dual carriageway with a number of grade-separated junctions enabling entry and exit for traffic-generating

locations such as Ardersier, Fort George, the Norboard factory and Inverness Airport. The evidence does not suggest a failure by TS to consider these matters.

4.418 We note the analysis by TS of accident data as outlined in [DMRB Stage 3 Scheme Assessment Report Figure 2.4a](#) (CD009) and the explanation in Section 5.4 (CD008). During Inquiry Session 3 Mr Gow noted that this data only covered a five year period but TS's roads witness explained that 3 to 5 years is a suitable duration to establish the accident performance of a junction. TS's witness argued that a longer period could have gone beyond the current road environment and therefore not been accurate. We find that the statistics show no slight, no serious and no fatal accidents for the period between January 2010 and December 2014, this being the relevant period reviewed as part of the scheme assessment process, as explained in [TS Inquiry Session 3 Hearing Statement Appendix 4](#) paragraph 1.2.

4.419 We acknowledge that, no road can be without risk. However, we find the combination of alternative routes via the proposed dual carriageway and the predicted significant reduction in traffic on the existing A96 would have strong potential to diminish the traffic safety risks associated with A96/B9039 junction.

4.420 We note from Inquiry Session 3 and [TS closing statement](#) paragraph 10.34 that TS reached these conclusions using the MFTM. In Chapter 2: Matters of Principle we conclude that this model has been used appropriately and has not reached erroneous conclusions. We also note that one of the practicalities associated with the objectors' proposal to relocate the junction to the 'Newton C' location is that it would require a 1.3 kilometre link road to Barn Church Road. Though Mr Fraser Gow considered it to be a minor detour (perhaps 2 minute), we agree with TS that this would require Inverness-bound traffic to travel an extra 2.6 kilometres to access the junction and then return to the severed north end of Barn Church Road. The evidence does not suggest we should doubt TS's contention that the likely outcome is that drivers would instead travel west along Barn Church Road through Culloden and join Smithton junction. Given the objections about noise, air quality and traffic safety raised by numerous objectors we conclude that they would not welcome such an outcome and that the proposed scheme design would avoid this.

4.421 TS explains its various considerations of alternative designs for this junction including two options at Newton in [TS209](#) section 4.4. It concludes in TS209 paragraph 4.4.4 that these options did not warrant further development as they offered no improvements on the key issues of land take, utility issues and drainage and were no better in this way than the DMRB Stage 2 preferred option layout. The proposed junction layout at DMRB stage 3 was arrived at based on the evidence in [TS228](#), which we have already considered above and which is also summarised in TS209 paragraph 4.4.6.

4.422 In their closing statement Mr and Mrs Robertson contend that the change in design of the Balloch junction would lead to 'doing away with the separation of construction traffic from public traffic during construction' because of the new 'in line' arrangement. TS disagrees and, in its closing statement paragraph 4.4, refers us to TS209 section 5.7.

4.423 TS209 paragraph 5.7.2 explains that the offline construction would minimise disturbance to local traffic. We find this to be a logical consequence of the offline design. The same paragraph confirms that where construction would affect existing local roads then traffic management would be implemented to ensure a safe area for both drivers and

construction workers. We find this to correspond with elements of [ES Chapter 20](#) (CD005) such as mitigation items CP-R1, CP-C1, CP-AG2, CP-AG3, which require access to be retained to homes, businesses and farmland affected by the proposed scheme during the construction phase.

4.424 These factors persuade us that the justification for the location and design of the proposed Balloch junction is sound. We find that the proposed alternatives do not offer the same advantages and/or would bring additional disadvantages that would not be found with the proposed scheme. Therefore the evidence does not suggest a need to modify or refuse to confirm the draft Orders and nor does it suggest any need to delay the project for a redesign and new Orders.

Traffic and NMU safety

Objections

-Improvements to Barn Church Road

4.425 OBJ/041 Mr Martin MacLeod argues that increased levels of traffic from the proposed scheme would result in increased risks to NMU safety on Barn Church Road. He proposes three measures that he considers would overcome this:

- a pedestrian crossing at Cherry Park Road/Barn Church Road for safety;
- traffic lights at Culloden Road/Barn Church Road to cope with extra traffic from Stratton New Town; and,
- a new NMU underpass at Smithton junction so that NMUs can access and use the old shore road to Inverness (covered below in paragraph 4.426).

-Smithton Junction

4.426 OBJ/041 Mr MacLeod proposes also improving the 'old road' along the foreshore as an NMU route from Milton of Culloden to the Longman Estate in Inverness. He believes this would involve challenges such as an underpass beneath the A9. However, he believes that this should connect to the Stratton Farm/Ashton Farm developments via an underpass at the Smithton Roundabout with an NMU path accessing the foreshore road via at the old Highland Council depot by the Brambles shown on TS maps.

-Crossing the existing A96

4.427 OBJ/064 Ms Norma Duncan considers that NMU provision is unacceptable, particularly for those who need to cross the existing A96 to get to work or school. She suggests it is currently difficult and there is no adequate provision in the ES. She considers that 'limiting' the number of proposed NMU underpasses to only grade separated junctions is unsatisfactory. She also notes difficulties crossing and a lack of facilities at the A9/A96 junction (Raigmore).

4.428 OBJ/050 Balloch Community Council argues that the new road [assumed to be the proposed dual carriageway] would need to have sufficient crossing points for NMUs to access the shore.

-Speed limits

4.429 OBJ/035 Mr Andrew Kirkland does not oppose the proposed dualling but queries whether there would be speed limits for the new A96 (proposed dual carriageway) whilst in proximity of residential areas.

-NMU shared use path

4.430 REP/144 The Highland Council (Development & Infrastructure Services) and REP/145 The Highland Council – Access Officer, Inverness, Nairn and East Lochaber welcome the proposed NMU route running parallel to proposed A96 dual carriageway. However, it suggests an alternative for the section between Balloch and Tornagraim following the north side of the A96 rather than the south side. This, it considers, would have greater community benefit and would tie in with aspirations for a coastal trail.

Transport Scotland's Response

-Improvements to Barn Church Road

4.431 TS argues that its modelling has assessed the likely changes in traffic flows as a result of the proposed scheme along Barn Church Road (C1032) and that it takes account of:

- future infrastructure and land-use developments that are sufficiently committed to be included in the defined Do-Minimum (without the proposed scheme) and hence the Do-Something (with the proposed scheme) scenarios.
- planned developments through planning data provided by The Highland Council and based on the current LDPs and therefore includes Stratton Farm and Ashton Farm developments.
- multi-modal infrastructure such as the proposed rail station at Dalcross and the Inverness West Link Road.

4.432 TS argues that relatively low levels of traffic flows have been forecast to pass through the junction between Culloden Road and Barn Church Road. It concludes that this is unlikely to result in any significant impact on the operational performance of the junction in its current form.

4.433 TS provides a table in its letter to OBJ/041 Mr MacLeod ([TS041.02](#)) that summarises the relevant two-way total traffic flow data extracted from the transport model for the AM Peak, Interpeak and PM Peak hours. TS explains that these statistics are rounded to the nearest 10 vehicles, on Barn Church Road and Culloden Road as they approach their connecting junction in Balloch.

4.434 TS explains that from a traffic perspective, the impact of the proposed scheme is determined by comparing the change between the Do-Minimum and Do-Something scenarios in the two future years of 2021 (year of opening for assessment purposes) and 2036 (the design year, defined in the DMRB as 15 years after year of opening).

4.435 TS argues that this information demonstrates that:

- in both 2021 and 2036, the level of traffic forecast on Barn Church Road (West of Junction) reduces in the Do-Something scenario when compared with the Do-Minimum scenario. This is predominantly as a result of the change that occurs in terms of the forecast numbers of vehicles turning left and right from Culloden Road on to Barn Church Road with the proposed scheme in place. There is a decrease in the number of vehicles making a left turn from Culloden Road and an increase in the number of vehicles making a right turn.
- on Barn Church Road (East of Junction) the table indicates an increase in traffic flows under the Do-Something scenario compared to the Do-Minimum, with the scale of

increase ranging from an additional 50 to an additional 160 vehicles per hour depending on the forecast year and the time period.

- on Culloden Road the table shows that generally, the traffic flows increase under the Do-Something scenario compared to the Do-Minimum, with the scale of increase ranging from an additional 20 to an additional 60 vehicles per hour depending on the forecast year and the time period.

-Smithton Junction

4.436 TS confirms that NMU access would be provided through Smithton junction adjacent to the local road, which would pass under the dual carriageway (on the line of Barn Church Road). This, it argues, would maintain NMU access to Old Shore Road, via Smithton Junction from the existing facilities on Barn Church Road (C1032).

-Speed limits

4.437 TS expects the speed limits on the proposed dual carriageway to be set at the national speed limit, i.e. 70mph for cars, with the exception of the section to the west of approximately ch2500, adjacent to Milton of Culloden. TS expects this section to be 50mph for cars. TS anticipates that the speed limits on the adjoining side roads would remain as per the existing speed limits. TS explains that the speed limits and signing strategy for the proposed scheme would be confirmed at the detailed design stage.

-Crossing the existing A96

4.438 TS points out that the existing A96 trunk road passing Balloch and Culloden between Seafield roundabout and the Balloch junction currently has no NMU grade-separated crossings. Under the proposed scheme, it confirms that, over the same length of proposed dual carriageway, there would be three.

4.439 TS argues that the proposed scheme includes provision for NMUs to cross under the proposed dual carriageway at Smithton Junction and Balloch Junction. TS explains that a third NMU underpass is also proposed at Milton of Culloden to allow cyclists and pedestrians to cross under the proposed dual carriageway between Milton Road (U1136) and the existing A96. TS argues that the proposed scheme incorporates 30 kilometres of new shared-use path including a new link between Seafield Roundabout and Nairn. TS explains that between Smithton Junction and Balloch junction, this shared-use path would be along the north side of the proposed dual carriageway connecting to the proposed NMU underpass at Milton of Culloden.

4.440 In deciding on the location and number of grade-separated NMU crossings to be provided, TS argues it gave careful consideration to existing NMU routes and demand, cost, environmental factors and the potential diversions for any severed routes. Based on all of these factors, TS considers the level of provision of grade-separated NMU crossings across the proposed scheme to be appropriate.

4.441 TS argues that its choice of route would bring safety benefits on the existing A96 for both motorised users and NMUs due to the reduction in traffic.

-NMU shared use path

4.442 In its response letter to REP/144 The Highland Council – Development and Infrastructure Services and to REP/145 The Highland Council – Access Officer, Inverness, Nairn and East Lochaber, each dated 31 July 2017 TS argues that the (NMU) Shared Use

Path between Balloch and Tornagrain would be on the south side of the proposed dual carriageway in order to:

- better serve the new development at Tornagrain;
- provide a better connection to Culloden Forest via Balmachree; and,
- provide a safer connection to National Cycle Network Route 1.

4.443 TS argues that placing the NMU route to the north of the proposed dual carriageway (as requested by REP/144 and REP/145 The Highland Council) would mean users connecting to the National Cycle Network would have two additional crossings of slip roads at Balloch Junction before joining the National Cycle Network.

4.444 TS argues that there is a possible opportunity at Morayston for The Highland Council to connect any planned coastal route, or link to Castle Stuart and Ardersier, to the proposed shared-use path. TS explains that an underpass (PS23 Morayston Farm Access Underpass) is proposed at Ch6740 as shown on ES Figure 4.1c (CD007). It argues that an accommodation works access track is proposed between this underpass and the existing farm access onto the existing A96 immediately to the east of Chestnut Cottage. TS states that it may be possible for the Council to integrate these into a future Core Path or as part a Green Network Route, along with a short connection along the existing A96 to link to the B9039.

4.445 TS is content that the proposed at-grade crossing of the eastbound merge slip road at Mid Coul Junction is suitable for this location because of the predicted low traffic volumes, and traffic speeds that are expected to be relatively low. TS argues that a signalised crossing could be incorporated at a later date should the need arise.

4.446 TS argues there to be practical restrictions on the inclusion of an underpass at this location because it would require the whole junction to be raised to accommodate the 2.7 metre height for a cycle underpass (not including structure). TS argues that additional land is likely to be required to provide the necessary gradients for ramps. Similarly, TS argues that an overbridge would require considerable additional earthworks, additional land take, and potentially impact on the adjacent Inverness Airport.

Findings of Fact

-Improvements to Barn Church Road

4.447 We have walked and driven along Barn Church Road during our site inspections. TS provides data from the MFTM on predicted traffic volumes along Barn Church Road and Culloden Road. We have considered traffic forecasting and the MFTM in Chapter 2: Matters of Principle. There we conclude that the traffic modelling process was sound.

4.448 We agree with TS that the predicted traffic flows are not only the result of the proposed scheme but include other, unrelated development proposed in the locality. We also note predicted reductions in traffic volumes in both 2021 and 2036 under the Do Something scenario versus the Do Minimum scenario for the respective years on Barn Church Road (west of Culloden Road Junction). On our site inspection, we saw road-upgrading works underway on the western section of Barn Church Road. We also noted that various crossing points already exist on Barn Church Road and that the existing junction with Culloden Road is traffic light controlled.

4.449 TS concludes that the volumes of predicted traffic growth do not warrant the actions sought by OBJ/041 Mr MacLeod. The evidence does not suggest we should conclude differently. Similarly, the predicted increases in traffic volumes on Barn Church Road (east of Culloden Road Junction) and on Culloden Road are, at least in part, the result of development which does not form part of the proposed scheme. It is not for a promoter to resolve issues that would not result from its proposal, however beneficial these may appear to be in general terms.

-Smithton Junction

4.450 ES Figure 4.1a (CD007) shows the proposed NMU shared-use path arrangements at the proposed Smithton junction. These include a NMU shared-use path running on the south side of the proposed dual carriageway between Seafield Roundabout and the proposed Smithton Junction. It further shows NMU shared-use paths either side of Barn Church Road as this passes beneath the proposed dual carriageway at the proposed Smithton Junction. On the north side, these link with the proposed shared-use path, which is proposed to run on the north side of the proposed dual carriageway to Balloch Junction (also on [ES Figure 4.1b](#) – CD007).

4.451 The NMU shared-use paths from the proposed Smithton Junction are proposed to lead northeast of the junction across the northern slip roads and via the existing A96 to The Brambles where access to the Old Shore Road could be achieved through a gated access path to the western side of the properties and east of the proposed SuDS pond. Alternatively, NMUs could use the proposed shared path on the north side of the proposed dual carriageway to travel north-eastwards to Milton or via the water treatment facility and then access the shore.

4.452 We therefore find that what OBJ/041 Mr MacLeod's seeks is already designed into the proposed scheme to some extent. We also find that the Old Shore Road does not form part of the proposed scheme and, as such, it is not for TS to improve this, however beneficial or advantageous this may appear to be in general terms.

-Speed limits

4.453 TS confirms that the dual carriageway would operate at the national speed limit of 70mph for cars. This is not unexpected given the proposed category of road. TS identifies exceptions to these proposed speed limits such as west of Milton where it is proposed to slow to 50mph for cars. On our site inspection, we saw that the dualled section between Raigmore and Seafield also currently operates at 50mph for cars. Speed limits on local roads are a matter for The Highland Council as the local roads authority. The evidence does not suggest that either of these proposed speed limits are unreasonable or that there is any need for further variation.

4.454 Our consideration of the noise, air quality and other impacts and effects from proposed dual carriageway traffic are covered separately in this chapter (above).

-Crossing the existing A96

4.455 [ES Figures 4.1a and 4.1b](#) (CD007) show the proposed NMU underpass arrangements for the proposed dual carriageway from Smithton to Balloch. These include the three NMU underpasses at Smithton junction, Milton Road and Balloch Junction. These also show the section of NMU shared-use path running along the northern side of the proposed dual carriageway between Smithton and Balloch junctions. We noted on our site inspections that no formal or equivalent NMU crossing arrangements are in place for the

existing A96. We agree with TS that the existing A96 is likely to see a reduction in traffic volumes were the proposed scheme to proceed and become operational.

4.456 Whilst the risk of accidents cannot be ruled out entirely, our observations above suggest that the proposed scheme would improve NMU access across the existing A96. We therefore find that the concerns raised by OBJ/050 Balloch Community Council and OBJ/064 Ms Norma Duncan are likely to be resolved or, at the least, lessened, by the proposed scheme design.

-NMU shared use path

4.457 Whilst we understand the logic of why The Highland Council seeks provision of the NMU shared-use path on the north side of the proposed scheme between Balloch and Mid Coul, TS is not obliged to do this just to meet this aspiration. We note from [ES Figures 4.1a to 4.1c](#) (CD007) that the NMU shared-use path is proposed on the south side of the dual carriageway between Balloch and Mid Coul junctions. TS appears to have given greater weight to the proposed location of the Tornagrain development and NCN access in its design and opted for a southern route. These are logical considerations and we accept TS's rationale for this.

4.458 We also note the complexities that TS identifies at Mid Coul junction (these are covered separately in Chapter 5: Newton of Petty to Gollanfield, with regard to altering the NMU route as suggested by The Highland Council). The evidence does not suggest we should doubt that the modifications proposed by the Council would require additional land. We find that the draft CPO (CD001) can only be modified to remove land, not to add it. Given that underpasses and other facilities at Mid Coul junction would require additional land, a new CPO would be needed. As such, this would require additional assessment, consultation, inquiry and confirmation with associated time delays.

4.459 We also note that TS identifies the PS23 Morayston Underpass as a possible structure to support a future link from the proposed NMU shared-use path to any proposed route by The Highland Council.

4.460 Overall therefore we find that there is not a compelling justification to modify the draft Orders and/or delay the proposed scheme for the preparation of new Orders just to move the NMU shared-use path north.

-Overall

4.461 Overall we find that there would be some residual impacts / effects resulting from the proposed scheme. However, the matters raised in objections would either not occur, or would be limited by the design of the proposed scheme or proposed mitigation. While there would be residual environmental impacts / effects, these would not require additional mitigation and would not compromise the public interest of the proposed scheme. Our findings on these matters do not suggest that we should recommend that Scottish Ministers modify the draft Orders or refuse to confirm them.

Access to and impact on ‘the Hedges’

Objectors

4.462 The parties listed below are from a mixture of community bodies and local residents from the Culloden, Balloch and Smithton area, who object or raise concerns about the severance of ‘the Hedges’ by the proposed scheme:

OBJ/003 Mr Richard Brady
OBJ/007 Smithton and Culloden Community Council
OBJ/029 Ms Helen Keltie
OBJ/033 Ms Linda Simpson
OBJ/034 Mrs Janferie Mackintosh
OBJ/035 Mr Andrew Kirkland
OBJ/038 Ms Liza Grant
OBJ/039 Mrs J Bradley and Mr C Cumming
OBJ/041 Mr Martin Macleod
REP/044 Mrs Mary and Mr Eric Quemby
OBJ/047 Mr Hamish Johnston
REP/048 Mr Douglas Lamont
REP/049 Ms Gillian Spalding
OBJ/050 Balloch Community Council
REP/051 Balloch Village Trust
OBJ/055 Mrs Anna Gow
OBJ/056 Mr Fraser Gow

-Impact on The Hedges

4.463 The parties listed above argue that severance of The Hedges by the proposed scheme would damage a ‘locally valued facility’, and would limit access to Alturlie Point and the Moray Firth coast on the opposite (northern) side of the proposed dual carriageway.

4.464 Some contend that this would have an adverse impact on NMUs using the Hedges. Others argue that it would detract from Scottish Government’s policy of encouraging exercise.

4.465 Several of the parties argue that the nearest NMU underpass would be the one proposed at the north end of Milton Road. They calculate that this would be a diversion of approximately 2.3 kilometres, which they consider to be too far.

4.466 Some of the objecting parties propose an underpass at the point where ‘the Hedges’ is proposed to be severed by the dual carriageway (around ch3600). Others note TS’s explanation for not placing an NMU underpass in the vicinity of ch3600 and argue that there are no drainage issues in this location that could not be overcome [presumably to allow such an underpass to be constructed].

4.467 REP/049 Ms Gillian Spalding, OBJ/050 Balloch Community Council and REP/051 Balloch Village Trust propose an additional length of shared-use path to the south of the dual carriageway from the proposed underpass at Milton of Culloden (ch2770) to the proposed connection between core paths IN08.15 and IN08.16 (ch3600) in order to resolve their concerns.

4.468 OBJ/056 Mr Fraser Gow reiterated many of these points at Inquiry Session 3.

-Culloden Academy

4.469 OBJ/035 Mr Andrew Kirkland raises concerns about what would happen in relation to the existing cross-country route taken by Culloden Academy. [The Reporters assume that this route currently uses The Hedges]

Transport Scotland's Response

4.470 TS argues that [ES Chapter 16](#) (CD005) assesses the potential impacts of the proposed scheme on travellers including pedestrians, cyclists and equestrians (collectively referred to as NMUs), and vehicle travellers.

4.471 It argues that:

- the needs of NMUs have been considered throughout the development of the proposed scheme, with various features incorporated into the design to maintain and improve routes utilised by NMUs.
- [ES Section 16.7](#) (CD005) describes the NMU proposals which include a new shared-use (pedestrian and cycle) path between Inverness and Nairn along the corridor of the proposed scheme.
- there would be no at-grade crossings of the dual carriageway.
- where required, crossings would be provided at grade-separated junctions or specific NMU underpasses.
- the total length of shared-use path that would be provided is approximately 30 kilometres.

4.472 TS accepts that:

- the scheme proposals would affect the path network in the Balloch and Culloden area
- the proposed dual carriageway would cross core path IN08.05 at Milton Road (U1136).
- it would also sever core paths IN08.15 and IN08.16, known as 'The Hedges' and IN08.21 in the vicinity of Allanfearn Farm.

4.473 TS argues that, in the proposed scheme design, the following facilities for NMUs would be provided in the Balloch and Culloden area:

- a new shared-use path 3.0 metres wide along the north side of the corridor of the proposed scheme between Smithton Junction and Balloch Junction with connections to existing footways and paths.
- each grade-separated junction would have shared-use paths around all sides of the junction with at-grade crossings of local roads and the ends of each slip road.
- the paths around Balloch Junction would connect the proposed Inverness to Nairn shared-use path to the local path along Cullernie Road, which would lead to the National Cycle Network Route 1 at the junction of Culloden Road and Cherry Park in Balloch.
- an NMU underpass is proposed at Milton Road (U1136) to maintain the route of core path IN08.05 and connect to the proposed Inverness to Nairn shared-use path. TS argues that this would maintain NMU access for residents of Milton towards Culloden and access for residents of Milton of Culloden Smallholdings to the bus stops on the existing A96.
- an alternative access for vehicles to Milton of Culloden Smallholdings would be provided by extending Stratton Lodge Road (U1058) to connect to the southern end of Milton

Road (U1136) (Stratton Lodge Road is considered separately in Chapter 3 of this report).

- there would be a path connection between core paths IN08.15 and IN08.16 on the south side of the proposed dual carriageway to maintain the existing path connection for circular walks taking in Culloden and Balloch.

4.474 TS argues that these proposed facilities do not include provision for a direct connection between core path IN08.21 and core paths IN08.15 and IN08.16 and would result in severance of the direct route from Balloch to the shore of the Moray Firth and Alturlie Point. TS states that ES Chapter 16 (CD005) concludes that the impacts to core paths IN08.15 and IN08.16 would be 'Substantial Adverse'.

4.475 TS confirms that a specific NMU crossing of the proposed dual carriageway at this location has not been proposed due to landscape and visual impacts and the additional cost that such a structure would present.

4.476 TS states that an NMU underpass below ground level is not feasible due to the difficulty of providing suitable drainage and due to the presence of major buried utilities on both sides of the dual carriageway. An underpass would, it argues, only be possible if the proposed dual carriageway level was raised resulting in further landscape and visual impact and additional cost.

4.477 TS argues that it also discounted a NMU bridge over the dual carriageway for similar reasons. Such a structure, TS argues, would need to provide clearance of 6.45 metres to the dual carriageway. In order to be fully accessible with a maximum gradient no greater than 5% (a slope of 1 in 20) and rest landings every 10 metres, TS states that the approach ramps would need to be approximately 160 metres on each side of the overbridge.

4.478 In considering this matter, TS calculates that the additional distance and journey time via alternative routes between Balloch and Culloden and the routes towards the shore at Allanfearn would be as follows:

- From the point of severance on IN08.16, south of the dual carriageway, to the start of IN08.21 on the north side of the dual carriageway, the additional length of route, along IN08.15, Milton Road and via the proposed underpass at Milton of Culloden would be approximately 2 kilometres. This would, TS argues, take approximately 30 minutes at a walking speed of 4 kilometres per hour.
- For journeys originating in Balloch, measured from the junction of Culloden Road with Cherry Park/Cullernie Road and via Cullernie Road, Balloch junction and the proposed shared-use path, to connect to the start of IN08.21 on the north side of the dual carriageway, the additional length of route would be approximately 800 metres, compared with the current route via the Hedges. This would, TS argues, take approximately 12 minutes more than the current route.
- For journeys originating in Culloden measured from the junction of Keppoch Road (U1185) with core path IN08.04 and via Milton Road and the proposed underpass at Milton of Culloden, the additional length of route would be approximately 900 metres. This would, TS argues, take approximately 13.5 minutes more than the current route.

4.479 TS recognise that there would be increased journey lengths associated with the alternative route diversions. However, TS considers that the alternative routes provided are reasonable and would provide safe access and continued connection for NMUs currently using 'The Hedges' route. TS also considers it worth noting that the existing at-grade crossing of the existing A96 would be improved as a result of the lower traffic volume using this section of road.

4.480 TS has considered whether the provision of an additional length of shared-use path to the south of the dual carriageway from the proposed underpass at Milton of Culloden (ch2770) to the proposed connection between core paths IN08.15 and IN08.16 (ch3600), would provide sufficient benefit to merit inclusion in the scheme proposals. It concludes that:

- this additional length of path would reduce the path distance between those two locations from 1.2 kilometres to 0.8 kilometres.
- this would, on average, reduce the walking time by 6 minutes at a walking speed of 4 kilometres per hour.

4.481 For journeys originating in Balloch heading towards the shore north of Allanfearn, TS states that the shortest route would be to travel via the Balloch Junction and to use the proposed shared-use path on the north side of the dual carriageway. It contends that an additional length of shared-use path on the south side of the dual carriageway, from ch2770 to ch3600 would provide very limited additional benefit. It therefore does not propose to include this additional length of shared-use path to the proposed scheme.

4.482 At Inquiry Session 3 TS reiterated many of the points above. In addition its witness referred to the proposed 30 kilometre shared use path running parallel to the proposed scheme. TS's witness explained that the shared use path between Smithton and Balloch would be three metres wide and that at junctions it would be between 2.5 metres and 3 metres wide with dropped curbs at crossing points.

-Culloden Academy

4.483 TS understands that the existing cross-country route is along 'The Hedges' which would be severed by the proposed scheme. TS therefore anticipates the route would continue along the existing local path network and would then be re-routed along the re-aligned and new facilities as described above. These new facilities would include a grade-separated crossing via an underpass at the north end of Milton Road, which would provide safe access to an NMU facility that runs parallel to the dual carriageway between Inverness and Nairn.

Findings of Fact

4.484 The proposed route of the dual carriageway would sever the core path network through the area known as 'The Hedges' in the vicinity of ch3600. On our site inspection, we walked the routes of 'The Hedges'. We acknowledge the value placed by users on this facility.

4.485 We note that OBJ/056 Mr Fraser Gow and OBJ/055 Mrs Anna Gow raised concerns about 'The Hedges' in their respective statements of case but that these had not featured in their original objections. Mr Gow raised these matters at Inquiry Session 3 and TS was content to discuss them since it had already made responses to those objectors who had raised these concerns. We consider these matters below.

4.486 We note that various NMU facilities form part of the proposed scheme as detailed in the letters sent to objectors by TS on 31 July 2017 (e.g. [TS007.05](#) letter pages 5 and 6). Amongst these facilities is a new NMU route re-linking core paths IN08.15 and IN08.16 in the vicinity of ch3600 south of Allanfearn. Other proposed NMU facilities at Milton Road north and at Balloch junction would enable NMUs to cross under the proposed dual carriageway and join the new shared use route on its northern side.

4.487 We accept that the proposed scheme (including the NMU facilities) is likely to increase journey times by foot and the evidence does not suggest we should doubt TS's calculations for these additional journey times. However, the NMU facilities would continue to enable rather than limit access to the remaining parts of 'the Hedges', other local NMU facilities and to the Moray Firth shore and Alturlie Point. For these reasons, we are also persuaded that the proposed scheme would not inhibit Scottish Government objectives for exercise and active lifestyles.

4.488 TS has considered alternative NMU facilities, including an underpass and overbridge west of Allanfearn Farm in the [Milton of Culloden South Access Design Development Report](#) (TS227) and an underpass around ch3600. It concludes that underpasses would require a higher embankment to provide the necessary clearance and avoid major utilities and drainage issues (and consequent landscape and visual impact implications). For a bridge, TS227 concludes that the necessary clearance and access arrangements would result in a specific type and size of structure that would also have additional landscape and visual implications. The evidence does not suggest we should doubt these conclusions.

4.489 The potential drainage issues with an underpass at Allanfearn Farm/ch3600 may not be insurmountable. However, the evidence does not suggest any alternative solution to this issue than raising of the dual carriageway embankment as described in the paragraph above.

4.490 A higher embankment for the underpass would require additional materials. The underpass or an overbridge would bring visual impacts that are additional to those currently assessed in the ES. Several of those supporting an underpass also object to the visual impacts of the proposed scheme. Further, we also note that the 160 metre long access ramps required for an overbridge would add at least 320 metres to any journey, plus the width of the dual carriageway crossing itself. On balance, therefore, we are not persuaded that either alternative is better than the proposed scheme.

4.491 An NMU route on the south side of the dual carriageway between Ch2770 and Ch3600 would directly link the point where the Core Path network would be severed with the proposed NMU underpass at the north end of Milton Road. TS calculate this would result in a six minute saving for a foot journey. The evidence does not suggest we should doubt this calculation. However, this time reduction assumes that Ch2770 and Ch3660 are the origin and destination points rather than within or near to e.g. Smithton, Culloden, Balloch or the coast. We therefore agree with TS that the additional cost of providing this NMU route would not necessarily deliver substantive additional benefits. The evidence does not suggest this proposal is better than the proposed scheme.

-Culloden Academy

4.492 Culloden Academy's cross-country route has not been provided, but TS understands it to pass through 'the Hedges'. It is therefore plausible that the proposed scheme could result in a need to change the current route. However, our conclusions above also apply in

this situation. Access to and through 'the Hedges' and beyond would be changed but not prevented. Any future route choice would be a matter for the school, but we are satisfied that the proposed scheme would not prevent the school devising a safe and suitable route in the future.

-Overall

4.493 Whilst the proposed scheme would sever the core path network forming part of the Hedges this would change rather than prevent access. The outcome would be less severe than alleged by objections and would be supplemented by measures to ameliorate access loss and improve access, including along and across the existing A96 and for crossing the proposed scheme. Whilst there would be some residual impacts / effects these would not require additional mitigation and not compromise the public interest value of the proposed scheme. The evidence does not suggest we should recommend that Scottish Ministers modify the draft Orders or refuse to confirm them.

Property specific objections

OBJ/107 Mr George D Strawson

Objector

4.494 OBJ/107 M George D Strawson objects on behalf of his business interests (Strawson's Property). He own plots 146 and 161 (draft CPO – CD001), which are located northwest of Smithton roundabout. These would be acquired by the proposed scheme for part of the Smithton Junction and associated local road improvements.

Objection

4.495 OBJ/107 Mr George D Strawson argues that the compulsory purchase of Plots 146 and 161 (CD001) would result in the loss of development potential and the loss of amenity value.

Transport Scotland's Response

4.496 TS understands that Plots 146 and 161 form an essential access to other property in Mr Strawson's ownership. In [TS107.02](#) it also understands that Strawson's Property offered to forward plans showing this other property, but these have not been yet received.

4.497 TS confirms that access to properties to the north east of the existing A96, in the vicinity of the existing Smithton Roundabout, would be maintained through provision of new side road number 3 and a new means of access number 335 shown on [draft SRO Plan SR1 \(CD003\)](#).

4.498 TS argues that these plots are required for essential landscape and visual mitigation measures. It states that mixed woodland would be required here to assist in screening views of traffic movement and the road corridor from properties located to the north of Smithton Junction (including Roseacre, The Brambles and Firth View), as shown in [ES Figure 9.5b and 9.6a](#) (CD007) and described in [ES Appendix A10.1 and A10.2](#) (Built and Outdoor Receptor Assessments) (CD006).

4.499 TS argues that, in addition to environmental mitigation, part of Plot 161 would be required for construction of a new side road to Seafield from Smithton Junction (number 3) on draft SRO Plan SR1 (CD003).

Findings of Fact

4.500 The current access road on the northwest side of Smithton roundabout provides access to a group of three properties that appear to be principally residential, along with a dog grooming business. The access road is a double track for several metres before opening out into a large turning area. Thereafter it doubles back eastwards at a higher level into a single-track lane which accesses the three properties and a gate to a field to the east of the properties.

4.501 On our site inspection, we saw that Plot 161 appears to include an existing area of grass verge and part of the current entry road off the existing Smithton Roundabout. Plot 146 appears to cover a small, informal parking area where the access track widens on its south side in front of the middle of three properties located on its north side. It also appears to cover some of the vegetation on the verge that fronts this area and bounds Smithton roundabout. There is no specific detail in the objection about what amenity impacts the objector considers would result from acquisition of Plots 146 and 161.

4.502 ES Figure 9.5b and 9.6a cross-section B-B (CD007) show that these plots are needed to provide landscape and visual mitigation to screen views of the proposed scheme from the three properties that currently overlook Smithton roundabout. [ES Appendix A10.1 \(CD006\)](#) and [ES Figure 10.3a \(CD007\)](#) show that at winter year of opening receptor 3 (the three properties of Firth View, Rose Acre and The Brambles) would be of 'High' sensitivity and would experience a 'High' impact of 'Substantial' significance. This ES Appendix and ES Figure show that existing vegetation and maturation of the proposed landscape and ecological mitigation would contribute to diminishing the visual impact to 'Medium' with a 'Moderate' significance by summer 15 years after opening. We therefore conclude that the proposed acquisition of land would provide both a side road modification to sustain access and mitigation to diminish the visual effects of the proposed scheme on the three properties that constitute receptor 3. As such, failure to acquire these plots would limit the mitigation measures proposed and worsen any amenity impacts resulting from the proposed scheme.

4.503 The objector does not explain how or where development potential would be lost. [ES Figure 15.4a \(CD007\)](#) shows that the long field running from the Brambles (the eastern most of the three properties on the north side of the Smithton roundabout) is covered by permission PA04 (Stratton Newtown). However, the area covered by this permission excludes both plots 146 and 161. It also excludes the area of road off the Smithton Roundabout that is proposed for modification in the draft SRO Plan SR1 (CD003).

4.504 TS301.02 Approved Site Plan appears to suggest that the long narrow field east of the Brambles (covered by PA04 – ES Figure 15.4a – CD007) would take access from the north side of this field rather than the single lane access to the three properties. However, this is a planning permission in principle (TS301.01) and no further detailed information is provided regarding access to this field. TS304, TS305 and TS306 confirm that only phase 1 (further south) is subject of detailed planning permission. We also note Condition 31 of this planning permission in principle (TS301.01), which safeguards the future improvement of the A96 trunk road (i.e. the proposed scheme).

4.505 Irrespective of the rationale for the proposed acquisition of Plots 146 and 161, this would not result in denial of access. [Draft SRO](#) Plan SR1 (CD003) shows that part of Plot 161 is needed for construction of the new side road (number 3). This is designed to ensure continued access to the properties and fields north of Smithton roundabout. Failure to acquire this plot would limit access to the three properties and respective fields. We therefore find that the proposed compulsory purchase of Plot 161 enables rather than limits access. Plot 146 and parts of Plot 161 would provide for landscape and ecological mitigation that would contribute to reducing the significance of visual effects on the three properties from 'Substantial' to 'Moderate' (see paragraphs above). Failure to acquire this land would therefore result in worse visual effects and subsequent amenity impacts for the respective three properties.

4.506 The evidence suggests that Plots 146 and 161 form a necessary part of the proposed scheme and therefore we find no reason to recommend that Scottish Ministers modify the draft Orders or refuse to confirm them.

OBJ/037 Mr Kenneth I Munro

Objector

4.507 OBJ/037 Mr Kenneth I Munro is the joint owner of Milton of Culloden Farm and Ashton Farm, parts of which are directly affected by the proposed scheme (Plots 111, 112, 301 and 302). Mr Munro is an occupier of other areas covered by Plots 108 and 109). Mr Munro withdrew elements of his original objection in his outline statement dated 24 May 2018. His remaining objections are considered below.

Objection

4.508 Mr Munro argues that:

- new means of access 330 on [draft SRO](#) Plan SR1 (CD003) would result in extended journeys.
- other parties would also use it and this would likely increase maintenance costs.
- the standard of any new access should be of equivalent standard to the current access.

Transport Scotland's Response

4.509 TS argues that any increase in journey times and inconvenience, and any increase in costs arising from changes in farm access arrangements, could form part of a claim for compensation, subject to District Valuer's assessment and as detailed in TS's [Guidance on the Compulsory Purchase Process and Compensation](#) (CD046).

4.510 TS states that it is intended that new means of access 330 (draft SRO Plan SR1 – CD003) would be owned by and maintained by Scottish Ministers in line with their obligations as landowner.

4.511 TS argues that:

- this access track has been designed in accordance with current design standards and guidelines.
- the junction of the farm access track with the Smithton Junction south roundabout has been designed in accordance with the [DMRB standard TD16/07](#) (CD049.10), 'Geometric Design of Roundabouts'.

- the proposed junction layout would be suitable for agricultural vehicles and would provide easy access to the existing A96, the proposed dual carriageway and Barn Church Road (C1032).
- the proposed farm access track would be 3.3 metres wide with 5.5 metre wide passing places.
- passing place spacing is proposed along the access track in line with The Highland Council's Road and Transport Guidelines for New Developments.
- all field access layouts have been designed to an appropriate standard for their proposed use.
- the surfacing specification for the track is still to be confirmed and would be subject to consultation with relevant property owners at the time of contract document preparation, but would be at least equivalent to the standard of surfacing on the existing access track.
- the design, which has been prepared to date, is an outline design, developed in sufficient detail for the purposes of preparing the ES and publishing the draft statutory orders.
- there would be further consultation prior to completion of the detailed design but this design would meet the standards described above as a minimum.

Findings of Fact

4.512 In his Outline Statement of 24 May 2018, Mr Munro accepts that the access would remain in the ownership of Scottish Ministers and that they would be responsible for maintenance in line with their obligations as a landowner. However, he remains unclear what these obligations are and seeks assurance that Scottish Ministers would have sole responsibility for maintenance of the new access and section of track, and would keep it in a good condition for agricultural and normal vehicles.

4.513 TS's letter dated 31 July 2017 ([TS037.02](#)) makes clear the dimensions of the road and that it would be designed with agricultural vehicles in mind. TS037.02 also explains that detailed features of design such as surfacing would form part of further discussions with respective landowners. Matters such as surfacing could logically influence any maintenance regime. Therefore, we find that it is sufficient at this point for TS to explain that as landowner, Scottish Ministers would have maintenance responsibility for the track. We note that this commitment is a matter of public record.

4.514 Any compensation payable to the objector, including for any increase in journey times would be a matter for the District Valuer. Compensation is not a matter for this inquiry.

4.515 The concerns raised by the objector would either not arise or would be resolved by the proposed arrangements. There is therefore no reason for us to recommend that Scottish Ministers modify the draft Orders or refuse to confirm them.

OBJ/039 Mrs J Bradley & Mr C Cumming and OBJ/040 Mr Brian Grant - Allanfearn Farm

Objectors

4.516 Allanfearn Farm is located just north of Balloch and Culloden on the south side of the existing A96. It is jointly owned by OBJ/039 Mrs J Bradley and Mr C Cumming. It is partly

operated by a tenant farmer OBJ/040 Mr Brian Grant. Mr Grant has other land holdings elsewhere that form part of his farming business.

4.517 The proposed scheme would run to the south side of the Allanfearn Farm steadings and buildings. Thereafter it would continue northeast to the proposed Balloch junction.

4.518 Mrs Bradley and Mr Cumming accept the need for the proposed scheme. However, they and Mr Brian Grant object to the proposed scheme because of the impacts they consider it would have on their respective interests at Allanfearn Farm.

Objection

Business Impact

-Agricultural assessment and business viability

4.519 OBJ/039 Mrs J Bradley and Mr C Cumming argue that TS's calculation of the effect the proposal would have on agriculture (stated as being 1% loss of agricultural land in [ES Appendix A15.7](#) page A15.7-5 (CD006)) unreasonably focusses on the farming activity of their tenant OBJ/040 Mr Brian Grant who also farms land elsewhere. They argue that the limited duration tenancy (LDT) on which Mr Grant occupies the land will end in 2024 and that the proposed 3.68 ha of land take actually represents 7% of the land at Allanfearn Farm, and that they would have to deal with the consequences of this land loss in the longer term. OBJ/040 Mr Brian Grant argues that the agricultural assessment methodology should only consider land within the same ownership.

4.520 Mrs Bradley and Mr Cumming argue that [DMRB Volume 11 Section 3, Part 6](#), Paragraph 10.6 (CD049.18), states that one of the objectives is to identify and assess the likely impacts on individual farm units (IFUs). They argue that the term IFU is not defined anywhere, but they believe Allanfearn Farm is, and has always been, a standalone IFU. They disagree with TS's use of the Goval Farm example to justify its assessment of Mr Grant's business ([TS215](#) paragraphs 4.1.5 to 4.1.7). Mrs Bradley and Mr Cumming contend that this is erroneous as Goval Farm is 15 times larger than Allanfearn Farm and is a beef operation that is all within the same ownership. Allanfearn Farm is mixed arable and livestock and should, they argue, be considered on its own merits.

4.521 OBJ/040 Mr Brian Grant argues that field severance/field access, the shrunken size of farming area and the impracticality of the resultant size and shape of the fields would affect his farm business viability. Mrs Bradley and Mr Cumming argue that the proposed scheme would affect their business by leaving four fields where:

- the first would be very small and become unworkable;
- the second and third would be greatly reduced and incur significant working costs; and,
- the fourth would be inaccessible to modern farm machinery.

4.522 Mrs Bradley and Mr Cumming argue that the area of land that would no longer be available for agriculture is prime quality (LCA classes 2 and 3.1). Whilst the physical land-take would amount to 7% of land at Allanfearn, they contend that, as prime quality land, the percentage loss in value would be greater.

4.523 They therefore contest TS's application of [ES Tables 15.7 and 15.8](#) (CD005) in the assessment. They contend that the 'Sensitivity of Impact' would be 'High' (prime land), and

that the 'Magnitude of Impact' would be 'Medium' (7% land loss), leading to an overall impact significance of 'Moderate / Substantial', as described in [ES Table 15.9](#) (CD005).

4.524 Mrs Bradley and Mr Cumming explain that they have no farming experience since one is a retired teacher and the other a construction engineer. As such, they argue it is unrealistic for TS to expect them to have the 'potential to adapt operations' as described under the term 'neutral impact' in [ES paragraphs 15.3.60 and 15.3.61](#) (CD005). They further argue that the unavoidable outcome would be a reduction in rental income from the limited duration tenancy.

4.525 Notwithstanding TS's definitions in ES paragraph 15.3.61 (CD005), Mrs Bradley and Mr Cumming argue the real terms impact at Allanfearn Farm would not be 'neutral'. However, at Inquiry Session 2 they accepted that the position at Allanfearn would not reflect the definition of 'Adverse' either.

4.526 Mrs Bradley and Mr Cumming argue that TS's methodology takes a short-term view and fails to recognise the long-term consequences for them with regard to the LDT with Mr Grant, which expires in 6 (now 5) years' time. Mrs Bradley and Mr Cumming confirm that a previous partnership between Mr Cumming and Mr Grant was dissolved in 2009. They also confirm that the tenancy is a fixed annual rent for use of Allanfearn Farm, which is not linked in any way to Mr Grant's overall farming activities, productivity, or profitability.

4.527 Therefore, they argue, that although Allanfearn Farm could continue to operate as a business if the proposed scheme went ahead, it would suffer an unavoidable on-going minimum loss of income of 7% per year.

4.528 Mrs Bradley and Mr Cumming argue that TS has not modelled/considered what the impact on Allanfearn Farm would be after the current LDT expires in 2024. They argue that the contents of TS215 paragraphs 3.8.6 and 3.8.7 indicate that the matters of 'likely significant impact' and 'impact on likely future farm viability' have been left open to interpretation. As such, they believe an opportunity may exist for some degree of discretion to be applied to TS's existing assessment of 'Neutral' impact at Allanfearn.

-Field access and severance

4.529 Mrs Bradley and Mr Cumming, and, Mr Grant raise concerns about field access and the proposed mitigation arrangements for new access. Both parties argue this would affect business viability. Mrs Bradley and Mr Cumming argue that the potential severance of the steading and surrounding land at Allanfearn Farm by the proposed acquisition of Plots 303, 304 and 305 would limit accessibility to other parts of the farm.

4.530 Mrs Bradley and Mr Cumming consider it unacceptable that the proposed access arrangements to field 411/1 would be developed through discussion at the preparation of contract, drawing and documentation stage. Mrs Bradley and Mr Cumming confirm they accept that TS now proposes revised access to the severed area of field 411/1 over a short length of culvert. They also accept that TS/Jacobs are currently investigating options for the possible amalgamation of the northern sections of fields 411/1 and 411/2.

4.531 Mrs Bradley and Mr Cumming, and, Mr Grant object to the proposed scheme severing field 411/2 and making it inaccessible. Mrs Bradley and Mr Cumming argue that it is not possible to access this field without using third party land. They later confirmed their acceptance that vehicular access to the southern part of field 411/2 cannot be provided, and that the proposed mitigation measures in ES Appendix 15.7 (CD006), TS215

paragraph 5.4.10 and [ES Table 15.23](#) Mitigation Items CP-AG7 and CP-AG8 (CD005) include the 'reinstatement of boundary features'.

4.532 However, Mrs Bradley and Mr Cumming note that the proposed mitigation does not mention gated-access to the severed area [understood to refer to the southern part of field 411/2]. They request the provision of an access gate, to farm specifications, in the eastern boundary fence between field 411/2 and the pedestrianised section of Caulfield Road to enable future maintenance to be carried out.

Water and drainage arrangements

4.533 Mrs Bradley and Mr Cumming, and, Mr Grant each raise concerns about the proposed drainage arrangements and mitigation measures. Both parties object to the appointed Design and Build contractor having responsibility for designing, locating and connecting drainage and that these details would be handled at the contract stage.

4.534 Mrs Bradley and Mr Cumming argue that the contractor must have experience and knowledge of dealing with agriculture and land drainage and they would expect to be able to comment on these matters.

4.535 They also explain that they wish for the field drains to continue operating effectively. They argue that, if construction works disrupt existing drains and/or any problems arise, it should be TS's responsibility to address these, as it would be unreasonable to expect the landowners to do this. They argue that as 'lay people' they should not be expected to liaise with the contractor regarding general drainage issues, and the inspection of repairs to severed drains and connections prior to ditches being backfilled. They seek reassurance that should these events arise, the recourse is via TS as the single point of contact for such matters.

Impacts on proposed development

-Principle of development

4.536 Mrs Bradley and Mr Cumming argue that [DMRB Volume 11, Section 3, Part 6](#) paragraph 5.1 (CD049.18) requires consideration to be given to the impacts of the proposed scheme's land take on the planning authority's land use planning designations as indicated in their LDP. They contend that the ES fails to include their proposals to develop land for housing at Allanfearn steadings.

4.537 Based on two pre-application inquiries and their respective responses from The Highland Council ([MBC19 to MBC21](#)) Mrs Bradley and Mr Cumming argue that:

- [HWLDP](#) (CD061) Policy 35: Housing in the Countryside (Hinterland Areas) bullet point 6 supports their proposal because it allows conversion or reuse of brownfield sites in the countryside.
- HWLDP (CD061) Policy 42 supports redevelopment of brownfield land.
- Issues identified in the pre-application responses (MBC20 and MBC21) are not insurmountable and therefore the pre-application inquiry confirms that the proposal is acceptable in principle, which gives it more strength.

4.538 At Inquiry Session 2, Mrs Bradley and Mr Cumming accepted that the responses to pre-application inquiries were not without certain qualifications and that there has been no public scrutiny of, or political support for, their proposals. However, they are confident that

any issues could be resolved. They also accepted that TS has considered, in broad terms, the likely effect of the proposed scheme on living conditions at Allanfearn Farm, despite not having assessed the proposed additional residential development they would like to build there.

-Visual impacts

4.539 Mrs Bradley and Mr Cumming raise concerns that the proximity of the proposed scheme to Allanfearn steadings would result in adverse visual impacts upon the amenity of their properties and for any proposal for development there.

4.540 At Inquiry Session 2 they accepted that raising the height of the proposed earth bund on the north side of the proposed dual carriageway would require additional land.

-Noise and vibration impacts

4.541 Mrs Bradley and Mr Cumming raise concerns that the proximity of the proposed scheme to Allanfearn steadings would result in adverse noise impacts upon the amenity of their properties and for any proposal for development there.

4.542 They accept the TS contention that planting is not an effective noise barrier, and seek boarded fencing as an addition to the proposed earth bund.

Utilities connections

4.543 Mrs Bradley and Mr Cumming are concerned that re-routing utilities and respective safety zones for the proposed scheme would affect their connections to these same utilities for future development at Allanfearn steadings.

-Water

4.544 Mrs Bradley and Mr Cumming explain there would be no immediate impact for water supplies from the proposed scheme as these are fed from the north. However, they argue the proposed scheme requires them to forward plan in a way they would not otherwise need to. They propose a duct under the proposed dual carriageway to carry water to Allanfearn steadings. Doing this during construction would, they argue, be cheaper and more practical than once the proposed scheme is built. They argue that, by consulting Scottish Water and agreeing any workmanship and material specifications, TS could overcome any technical concerns with providing a duct.

4.545 They explain that TS would not be expected to pay for a connection to any water mains and that this has never been asked for. They contend that who pays for this duct has never been raised but welcome any opportunity to discuss this with TS.

-Gas

4.546 Mrs Bradley and Mr Cumming confirm that there is currently no gas supply to any of the properties at Allanfearn. However, they argue that SGN confirmed that the existing Intermediate Pressure pipe layout would enable connections to be made in future.

4.547 They wish to maintain the ability to connect to this network, particularly in view of their ambitions for development at Allanfearn. They contend that this would remain the case were it not for the proposed scheme. Mrs Bradley and Mr Cumming explain that they would not expect TS to pay for a connection to the Intermediate Pressure Main. They believe that by working closely with SGN that TS could influence the direction and location of the pipeline location to meet their aims.

-Safety exclusion zones

4.548 Mrs Bradley and Mr Cumming understand that there are two gas pipelines and a fuel pipeline that would need to be diverted because of the proposed scheme. They are concerned that any future location of these pipelines and their safety exclusions zones could inhibit their ambitions for development at Allanfearn Steadings.

4.549 Mrs Bradley and Mr Cumming explain that they have had confirmation from SGN and CLH that their respective pipeline exclusion zones would not affect the steadings. However, they consider that it would be reasonable for TS to intervene to prevent any diversion works from being carried out that would be detrimental to their proposed development of Allanfearn steadings. As such, they ask TS to freeze the designs with SGN so that the diversion route would remain to the south, as currently proposed.

Transport Scotland's Response

Business Impact

-Agricultural assessment and business viability

4.550 TS explains that it assessed the impact of the proposed scheme on land at Allanfearn Farm in accordance with [DMRB Volume 11, Section 3, Part 6 Land Use](#) (CD049.18), as described in [ES paragraphs 15.3.52 to 15.3.63](#) (CD005).

4.551 TS explains that the assessment of impacts on agriculture, forestry and sporting interests is undertaken on the business occupying the land and the assessment includes all the land farmed by that business. It states that it is not uncommon for the ownership of a particular piece of land and of the farm business that is carried out there to be different. It argues that DMRB requires the impact on the viability of the farming activity to be assessed. Consequently, it argues, the impact of the proposed scheme has been assessed on the farming business of Mr Brian Grant (OBJ/040). TS argues that the purpose of the assessment is to determine whether, following construction of the proposed road, the land not needed for the proposed scheme could continue to be used for agriculture.

4.552 TS argues, in its [Agricultural Assessment Report](#) (TS215) paragraphs 4.1.5 to 4.1.7, that consideration of the impact on the farm business as a whole is consistent with other accepted agricultural assessments and the ESs of similar schemes.

4.553 TS cites the example of Goval Farm in the AWPR inquiry in paragraph 4.1.6 (TS215). TS explains that its approach was challenged on the basis that only the directly affected land holding (Goval Farm) should be assessed. However, it had argued that Goval Farm formed the hub of the objector's business rather than the wider agricultural business. TS argues that the reporters concluded that it was fair to look at the business as a whole rather than only part of it ([AWPR Report](#) Volume 1, Chapter 5 page 166 - CD128).

4.554 For contract farming, TS argues, the landowner is still making the decisions about land use, albeit via a contract, and so their business is assessed rather than that of the contractor. TS explains that a situation with OBJ/132 NB Holden and EJ Holden arose where the ES erroneously assessed the contract farmer rather than the landowner because of misinterpreting supplied information.

4.555 TS argues that DMRB and EIA does not ask it to look at commercial aspects of business but to comment on likely 'farm viability'. However, it argues that some

consideration is given to Mrs Bradley's and Mr Cumming's rental business in terms of mitigation such as drainage and restoring boundary features, gates and fences to allow the continued use of the land for farming.

4.556 TS explains that its assessment of Allanfean Farm ([ES Appendix A15.7](#) - CD006) concludes that the impact on the farming business at Allanfean is 'not significant (Slight/Moderate)'. TS explains that the impact on likely future farm business viability is 'Neutral'; defined in [ES paragraphs 15.3.61](#) (CD005) as:

Neutral Impact - the farm business is affected by the land-take or change in access requirements of the proposed Scheme, and this may result in a reduction or restructuring of its activities. However, this does not compromise the likely future viability of the farm business and it is likely to be able to continue trading, albeit after some restructuring of its operations.

4.557 TS disagrees with Mrs Bradley's and Mr Cumming's assertion that 'there are no provisions in the limited duration tenancy for a rent review', arguing that the tenancy allows the tenant to ask for this.

-Field Access and severance

4.558 TS explains that fields 411/1 and 411/2 would be severed by the proposed scheme, as shown in ES Appendix A15.7 page A15.7-5 (CD006) and [Figure 15.6a](#) (CD007). TS explains that these also show that the severed area of field 411/2 would become completely inaccessible.

4.559 TS explains that it considered options to provide access to this land. However, on balance, it concluded that the cost of providing such access would not be justified given the significant additional distance that would need to be travelled to take access to this piece of land.

4.560 TS confirmed by letter dated 31 July 2017 ([TS039.03](#)) that it was willing to consider voluntarily purchasing this land, subject to reaching a suitable agreement. It confirms that transfer of ownership would be timed to coincide with the date of entry to the land included within the CPO and would be subject to the proposed scheme going ahead.

4.561 TS explains (TS039.03) that should Mrs Bradley and Mr Cumming retain ownership of this land they would be entitled to claim compensation subject to District Valuer's assessment and as detailed in TS's [Guidance on the Compulsory Purchase Process and Compensation 2014](#) (CD046).

4.562 TS confirms by letter dated 31 July 2017 (TS039.03) that it has amended the proposed new access to the severed section of field 411/1. It explains that the revised access is via a culvert over a short section of the re-aligned ditch, immediately west of Allanfean Cottage, rather than directly from the existing A96 as previously proposed. TS confirms that the exact location and details of the culvert would be discussed with Mrs Bradley and Mr Cumming and would be developed during the preparation of the contract drawings and documentation. TS reconfirms its willingness to continue discussions about siting this access in its letter dated 19 July 2018 ([MBC9](#)).

4.563 TS039.03 explains that TS considered the possibility of amalgamating the two sections of fields 411/1 and 411/2 lying north of the proposed dual carriageway by piping of

the existing watercourse. However, it concluded this to be unfeasible given the size of pipes required to avoid increased flood risk and taking account of current policy and guidance. It reiterates this by letter dated 19 July 2018 (MBC9). However, TS confirms it has asked Jacobs to consider other options to allow the amalgamation of these fields.

4.564 TS explains that work would not be completed prior to the public inquiry ending but confirms that, should it be possible, then this would take place as accommodation works which it considers are not matters to be considered at the public inquiry.

4.565 TS explains that severance and access impacts resulting from the proposed scheme could form part of a claim for compensation, subject to District Valuer's assessment and as detailed in TS's Guidance on the Compulsory Purchase Process and Compensation 2014 (CD046).

Water and drainage arrangements

4.566 TS explains that [ES Appendix A15.7](#) on page A15.7-5 (CD006) identifies mitigation measures as being required for fields 411/1 and 411/2. TS explains that [ES Table 15.23](#) Mitigation Item CP-AG10 (CD005) specifically addresses impacts on drainage as follows:

'Particular care shall be taken to reduce damage or disturbance to field and forestry drainage systems. Laying of new drains would be undertaken to maintain drainage systems during construction. Repairing and reinstatement of field drains affected by construction shall be agreed with the landowner/occupier to ensure that land capability is maintained and flooding is not exacerbated. Where appropriate, the integrity of the drainage system would be secured in advance through the installation of header drains (cut off drains) to facilitate construction. All remaining remedial works shall be undertaken post-construction.'

4.567 TS confirms that:

- the contractor would be required to honour the contract, including any mitigation and accommodation works specified.
- there would also be on-site supervision of any works undertaken to ensure that the requirements of the contract were fulfilled.
- the construction contract would specify that where existing field drainage is likely to be affected by the proposed scheme, the contractor would have responsibility for locating and reconnecting the drainage as appropriate.
- it currently expects that the detailed design would be the responsibility of the Design and Build contractor.
- specimen designs were prepared for the purposes of the ES and draft Orders.
- these propose any affected field drains would be connected into new pre-earthworks ditches, which would outfall into existing watercourses.

4.568 TS clarifies the meaning of page 3 paragraph 1 of its letter dated 19 July 2018 ([TS039.07](#)) that:

- if drains are within the CPO area any damage becomes TS's responsibility.
- there is a mechanism to allow maintenance of drains that connect with TS's land.
- inspection of land is offered to all landowners but TS would supervise the works.

4.569 As such, TS confirms that it does not expect Mrs Bradley and Mr Cumming to access land owned by Scottish Ministers to carry out maintenance work. TS also explains that it

does not expect to need to access land beyond the CPO boundary but, if this were necessary, and caused damage to any drains, then TS would take responsibility for effecting the necessary repairs. TS agrees that it would be happy to provide photographs and other information to Mrs Bradley and Mr Cumming pre-works and post-works, as set out in TS039.07 section 1.3 bullet 2.

4.570 TS argues that:

- it should not be responsible for issues caused by the contractor, and it has appointed Jacobs to oversee the contractor.
- representatives from Jacobs will therefore be on site during construction.
- the first point of recourse is with the contractor who will have requirements placed on them through the contract.
- Jacobs's site staff can be approached where issues arise.

Impacts on proposed development

-Principle of development

4.571 TS does not dispute the wording of [DMRB](#) paragraph 5.1 (CD049.18) or [HWLDP](#) Policy 35 (CD061). TS argues that it carried out the assessment for development land and planning applications as described in [ES paragraphs 15.3.47 to 15.3.51](#) (CD005).

4.572 TS argues that there is no consented planning application for Allanfean steading and it is not identified as development land in the [IMFLDP](#) (CD062), therefore, it was not assessed as such by the ES.

4.573 TS accepts that Allanfean lies within the Settlement Development Area (SDA) and the proposal may include some brownfield land. However, it argues that a fair and reasonable assessment could not be carried out based on the council's pre-application advice. TS also argues that the Council's advice ([MBC19 to MBC21](#)) does not constitute a permission and that this advice identified issues for more detailed consideration such as flooding, drainage, transport, access and the setting of Allanfean Farm House; a listed building.

4.574 TS contends that HWLDP Policy 35 (CD061) does not apply because Allanfean Farm is within the SDA defined on the map on IMFLDP page 34 (CD062) and not the countryside. TS accepts that, being located in the SDA, there is high-level support for the development proposed by Mrs Bradley and Mr Cumming, but that this is not the same as a planning permission or development plan allocation. It adds that, to treat the potential development land at Allanfean differently to other unallocated brownfield land within the SDA, which might have similar development potential, would be unfair and inconsistent.

-Visual impact

4.575 TS argues, based on the matters set out above, that it was appropriate for visual impacts to be assessed at this location for the existing residential properties only (Receptor 33 in [ES Appendix A10.1](#) – CD006) and not any future development proposals. However, it adds that such an assessment also provides an indication of how any additional residential development might be affected. TS explains that the assessment concluded receptor 33 has a high sensitivity to change and that the proposed scheme would have a 'substantial adverse effect' at winter year of opening.

4.576 TS considers that the proposed mitigation (two-metre high earth bund with woodland planting and the proposed hedge along the NMU shared use path at the foot of the bund) would partially screen traffic from view. TS concludes this mitigation would help reduce residual effects in summer after 15 years, but it would remain 'significant' (Moderate/Substantial). TS contends that the close proximity of receptor 33 and generally open views to the proposed scheme would make it very difficult to reduce the impact below 'Moderate'.

4.577 TS confirms its willingness to explore the use of faster-growing tree and shrub species on the earth bund to accelerate the screening effect. It argues that suggestions of raising the proposed earth bund height above the intended two-metres would require additional land that is not covered by the draft CPO.

-Noise and vibration

4.578 TS explains that the noise impact assessment described in [ES Chapter 8](#) (CD005) includes the potential noise impacts for committed developments only and does not include development proposals at Allanfearn. However, it considers that the assessment of the noise impacts, in accordance with the [DMRB guidance HD213/11](#) (CD049.19), at the Farm Bungalow is also of relevance to any additional properties that might be constructed at the site in future by Mrs Bradley and Mr Cumming.

4.579 TS explains in its letter dated 31 July 2017 ([TS039.03](#)) that noise levels and changes have been predicted in accordance with DMRB methodology to determine the 'least beneficial' impacts (i.e. where the greatest adverse noise level change would be, around the outside of the dwelling). TS presents a summary of the DMRB assessment of noise levels and associated significance of impacts without mitigation in TS039.03 Table 1 (reproduced below).

4.580 It explains that TS039.03 Table 1 identifies that, based on the change in noise level, and the noise sensitivity of the receptor, 'Large/Very Large Adverse' noise impacts are predicted to occur at the dwelling in the Year of Opening, reducing to 'Moderate/Large Adverse' by the Future Year.

TS039.03 Table 1: Predicted DMRB Noise Levels and Significance of Impacts at the 'Least Beneficial' Receptor Point around the Farm Bungalow

Scenario	LA10,18hr DMB Noise Level (dB)	LA10,18hr Scenario Comparison Noise Level (dB)	Noise Level Difference (dB)	Significance of Impact
DMB vs DSB	41.6	48.0	6.4	Large/ Very Large Adverse
DMB vs DMF	42.2	43.4	1.2	Slight Adverse
DMB vs DSF	41.6	48.9	7.3	Moderate/ Large Adverse

Source: taken from TS039.03 Table 1

Note:

Baseline Year is the year of opening (for assessment purposes).

Future Year is fifteen years after the Baseline Year.

Do-Minimum describes the situation without the proposed scheme and Do-Something is with the proposed scheme in place.

Baseline Year Do-Minimum vs Baseline Do-Something (DMB vs DSB)

Baseline Year Do-Minimum vs Future Year Do-Minimum (DMB v DMF)

Baseline Year Do-Minimum vs Future Year Do Something (DMB v DSF)

4.581 TS explains that the noise mitigation strategy is based on the DMRB (CD049.19) and WHO guidance ([CD090](#) and [CD091](#)) as explained in [ES paragraphs 8.2.24 to 8.2.34](#) (CD005). It considers noise mitigation where the significance of impact at noise sensitive receptors is predicted to be above 'Slight/Moderate adverse', as well as the predicted level at the noisiest façade being above an absolute threshold. TS summarises this for day and night as:

- Slight/Moderate adverse or worse, which for high noise sensitive receptors equates to at least a 1 dB noise level increase in the short term (year of opening), and/or at least a 3 dB in the long term (typically within 15 years of the scheme opening) and, in addition, the predicted ground floor façade noise level exceeds 59.5 dB LA10,18h.
- Slight/Moderate adverse or worse, in the long-term with a predicted noise level that exceeds 55 dB Lnight, outside.

4.582 TS therefore argues that, in order to determine if noise mitigation is recommended for a dwelling, in addition to considering the significance of impact, it is also necessary to calculate the highest noise level around the outside of the dwelling (the 'noisiest point') to see if it exceeds the noise level threshold. TS explains that this 'noisiest point' around a dwelling may be in a different location to the 'least beneficial' receptor point around the dwelling.

4.583 Having reviewed absolute noise levels at the Farm Bungalow, unmitigated (TS039.03 Table 1 above), TS identified that the predicted absolute Do-Something noise levels for this property would exceed the WHO based noise level threshold (59.5 dB LA10,18h) and therefore would trigger the requirement for noise mitigation to be considered.

4.584 TS explains that this noise mitigation has been provided by an earth bund with an apex of two metres relative to the height of the proposed scheme carriageway, suitably landscaped for visual mitigation purposes. TS explains that initially a timber fence had been considered as noise mitigation. However, it contends that, during an iterative process of design review, it concluded that this would introduce undesirable visual impacts, and so a planted bund was chosen instead.

4.585 TS summarises the new predicted noise levels with the mitigation in place in TS039.03 Table 2 (reproduced below). It argues that with this mitigation in place, the predicted absolute noise levels at the 'noisiest' point around the Farm Bungalow (shown as a triangular point in Figure 1, of TS039.03) would no longer exceed the WHO based noise level threshold for the Do-Something scenarios (Baseline and Future years), because the absolute noise levels, would be below the noise mitigation threshold.

TS039.03 Table 2: Mitigated Noise Levels at the 'Noisiest' Receptor Point around the Farm Bungalow

Scenario	Noise Level LA10,18h dB
Baseline Year: Do Minimum (2021) [DMB]	49.4
Baseline Year: Do Something (2021) [DSB]	58.3
Future Year: Do Minimum (2036) [DMF]	48.7
Future Year: Do Something (2036) [DSF]	58.9

4.586 TS argues that, based on TS039.03 Table 2 (above) should Mrs Bradley and Mr Cumming propose development that is separated from the proposed dual carriageway by a greater distance than the Farm Bungalow (which is where development was proposed in the pre-application inquiries that they made to The Highland Council) then the predicted

post mitigation noise levels would also be likely to meet with WHO guideline noise levels (CD090 and CD091) for avoidance of serious annoyance.

Utility connections

-Water

4.587 TS argues that existing water supplies would be connected. However, it explains that the cost of any future new private connections to the water main and any necessary rights from third parties for their provision to enable future development are a matter for Mrs Bradley and Mr Cumming.

4.588 TS would prefer not to have a private water supply duct under the proposed dual carriageway. It explains that, were Scottish Water to need a duct then TS would provide it.

-Gas

4.589 TS explains ([Hearing Statement Appendix 5](#)) that it is working closely with SGN on the diversion of the gas pipelines. TS explains that the exact location and details, including defining safety buffer zones, will be confirmed by SGN as the specimen design develops. However, TS understands that the potential to connect Allanfean Farm to the gas main would be unaffected by the proposed scheme.

4.590 TS argues that, given the planning status of Mrs Bradley's and Mr Cumming's proposals, it is not willing to commit further in terms of restricting the design of the proposed diversions to facilitate any potential future connection. TS argues that the costs of any future connection to the gas main, and any related modifications to the main itself would be borne by the developer at the time when any future development occurs, as is normally the case.

4.591 In its [closing statement](#) paragraph 13.74 TS argues that it is not for the inquiry to consider whether it should act as some form of broker between SGN and the objectors.

-Safety exclusion zones

4.592 TS argues that the exact location and construction of the gas main diversion would be determined by SGN, who are responsible for maintaining supplies during their planned diversionary works and thereafter. It explains that SGN will consider the most cost-effective route for the diversion.

4.593 TS explains this process is iterative and that it holds workshops with utility providers. TS can ask SGN to amend its design or route in relation to environmental constraints, third parties or scheme-related issues.

4.594 In its letter dated 19 July 2018 ([MBC9](#)), TS explains that the High Pressure Main was proposed to be diverted to north of dual carriageway but it is now proposed to be diverted south and so is unlikely to affect Allanfean Farm. However, TS confirms it is unwilling to ask SGN to freeze its designs (which Mrs Bradley and Mr Cumming request) since it argues that this would limit the cost reduction opportunities available to SGN. TS also notes the planning status of development proposals at Allanfean Farm.

4.595 TS understands that the proposed development at Allanfean Farm would be outside the HSE consultation zone for high pressure pipelines (minimum distance 32 metres for buildings and 10 metres for trees and other vegetation). Were the pipeline to be any closer,

TS understands that it would be on Allanfearn land and as such would require a wayleave. TS argues that Allanfearn Farm could protect itself in this way. TS explains that, the fuel pipeline safety exclusion zone is three metres either side of the pipe. It does not expect this to affect proposed development at Allanfearn Farm.

Findings of Fact

Business Impact

-Agricultural assessment and business viability

4.596 The disagreement about the proportion of land take and its business impact relates to the identity of the IFU that is being assessed ([DMRB Volume 11, Section 3, Part 6](#), Paragraph 10.6 – CD049.18). Paragraph 6.3 (CD049.18) lists the four main effects on agricultural land that assessments need to cover. Paragraph 6.4 (CD049.18) explains that impacts on farmers as residents or business people, additional to the items in paragraph 6.3, should be assessed following the methods used to assess effects on other residents or businesses affected by a scheme. Paragraph 10.17 (CD049.18) talks about the likely future viability of affected agricultural units. We find this to mean that the assessment is focussed on farming rather than other interests and specifically whether farming remains a viable land use.

4.597 No parties dispute that Allanfearn Farm is a tenant farm operated by OBJ/040 Mr Brian Grant. We note OBJ/039 Mrs Bradley's and Mr Cumming's contention about contract farming. However, we find that the error in the ES, with regard to contract farming in the case of OBJ/132 Messrs Holden, is satisfactorily explained by [TS215](#) paragraphs 4.1.1 to 4.1.11. Based on this, we find that contract farmers are instructed under a contract to carry out farming works but the contract issuer remains the decision maker for land use and related matters. We find this situation to differ for tenant farms. We therefore find that the tenant, Mr Grant, controls the land use decisions and environmental practice at Allanfearn Farm.

4.598 We agree with Mrs Bradley and Mr Grant that Goval Farm ([CD128](#)) differs in scale and operation to Allanfearn. However, this is not the issue. We find the issue to be how farmland is treated. As such, we agree with the Reporters' findings for Goval Farm (CD128), that the entire operation of the farm business is considered rather than one individual part of it. Allanfearn Farm is a tenant farm, which is farmed as part of the larger operation of Mr Brian Grant. Therefore we find that TS's reference to Goval Farm is not erroneous and nor is its consideration of the whole of Mr Grant's farming operation.

4.599 Mrs Bradley and Mr Cumming confirm that they are not farmers. They also confirm they have no role in Mr Grant's business and that he is their tenant. We find that the tenancy arrangements at Allanfearn Farm make Mrs Bradley and Mr Cumming commercial landlords. As such, Allanfearn Farm is a business that trades in farmland as a rental commodity.

4.600 Therefore it is reasonable to assess the impacts of the proposed scheme on Allanfearn Farm against Mr Grant's whole farm business as the IFU (paragraph 10.6 – CD049.18). We find that assessing Allanfearn Farm on the basis of ownership would be inconsistent with the rest of TS's assessment approach. Therefore, we do not consider that, when assessing likely impact on agriculture, Allanfearn Farm should be assessed individually as a separate entity from Mr Grant's farming operations.

4.601 TS has assessed the impact on the farming business at Allanfearn Farm in [ES Appendix A15.7](#) (CD006) as part of the wider operations of Mr Grant. Since we have already concluded that this is reasonable, we find that TS has correctly identified the receptor sensitivity and the magnitude of impact using the approach set out in [ES Tables 15.7 and 15.8](#) (CD005). That this would affect some prime agricultural land is not in dispute, as confirmed by [ES Figures 15.5a and 15.6a](#) (CD007). However, this evidence shows that the proposed scheme would take land from fields 411/1 and 411/2 only, and that this is class 3.1 with no class 2. However, we agree with Mrs Bradley and Mr Cumming that this is still prime agricultural land.

4.602 The evidence does not suggest we should doubt either the calculations of TS or Mrs Bradley and Mr Cumming; that the proposed scheme would take 1% of the land farmed by Mr Grant or 7% of the land at Allanfearn. However, based on our findings above, we conclude that the figure relevant for the agricultural assessment, based on the IFU, is the 1% of the land farmed by Mr Grant.

4.603 We understand that some parties consider the term 'neutral' to represent the status quo. However, we find that [ES paragraph 15.3.61](#) (CD005) is clear that this is not its intended meaning. The definition provided in that paragraph makes clear that the term 'neutral' involves change and that this may result in a reduction or restructuring of activities. We also note the definitions of the terms 'beneficial' and 'adverse' in ES paragraph 15.3.61 (CD005). We find that the definition of 'neutral' accurately describes the anticipated impacts on Mr Grant's farming operations that would result from the proposed scheme at Allanfearn Farm and that the terms 'beneficial' and 'adverse' do not.

4.604 There appears to be no dispute between the parties that the land take of the proposed scheme would result in a fall of rental income at Allanfearn Farm for Mrs Bradley and Mr Cumming. For the reasons set out above this does not form part of the agricultural assessment.

4.605 We find that the agricultural assessment is not using the term 'viability' to describe how profitable or otherwise a business or individual field may be or may become. Instead, it is describing whether agriculture remains a viable land use. The evidence does not suggest that farming would cease to be possible at Allanfearn Farm and none of the parties appears to dispute this.

4.606 The shape, size and severance of the affected fields 411/1 and 411/2 are shown in ES Figure 15.6a (CD007). Whilst TS has assessed the impact on Mr Grant's business, the mitigation measures listed in ES Appendix 15.7 (CD006) are orientated towards sustaining farming as a viable land use. In this instance the mitigation would benefit the landlord (Mrs Bradley and Mr Cumming) since it would enable them to continue to rent the available land to the current party and/or to a future party for agriculture. Field access matters are considered in more detail below.

4.607 Whilst we agree that Mrs Bradley and Mr Cumming may see the rent fall on their land this may be something for which they choose to seek compensation via the District Valuer. This is a matter for them and not for this inquiry.

4.608 The length of the tenancy held by Mr Grant is also not disputed. We note that section 7.2 of the LDT ([MBC22 to MBC26](#)) explains that the rent can be reviewed within the

provisions of Section 9 of the Agricultural Holdings (Scotland) Act 2003. Rent arrangements are not for this inquiry.

4.609 We have already concluded that the agricultural assessment described in [ES Chapter 15](#) (CD005) assesses the impact of the proposed scheme on the correct farming entity (that of Mr Grant) and that this has been carried out appropriately. As such, we find that the conclusions reached in ES Appendix 15.7 (CD006) of 'neutral' impact on farm viability are appropriate and accurately described by ES paragraph 15.3.61 (CD005).

-Field access and severance

4.610 We note Mrs Bradley's and Mr Cumming's concerns about severance of the steadings and other buildings at Allanfearn Farm from the rest of the farm. The [draft CPO](#) (CD001) Sheet 3 of 20 and ES Figure 15.6a (CD007) show that acquisition of Plots 304 and 305 would sever only fields 411/1 and 411/2. ES Figure 15.6a (CD007) suggests that the fields surrounding 411/1 and 411/2 to the southeast and southwest belong to other parties.

4.611 The draft CPO (CD001) also shows that Plot 303 would not contribute to severance, as it is the proposed new means of access 345 shown on [draft SRO](#) Plan SR3 (CD003). However, TS's letter dated 17 July 2017 (TS039.03) proposes revised access via a culvert across the drainage channel in Plot 304 to link both sections of field 411/1. As such Plot 303 (CD001)/new access 345 (CD003) is no longer required and TS proposes its removal from the draft Orders. We therefore find that these proposed accommodation works would resolve issues of severance for the southern part of field 411/1.

4.612 Access arrangements for fields 411/1 and 411/2 form part of Mrs Bradley's and Mr Cumming's arguments regarding business viability. We have already found that the agricultural assessment has been carried out for the correct farming business. We have also found that the mitigation measures proposed in ES Appendix A15.7 (CD006) are to enable agriculture to continue as a viable land use. We find that the proposed mitigation would benefit both landlord and tenant, accepting that there would be a reduction in the amount of land at Allanfearn Farm.

4.613 The northern two sections of fields 411/1 and 411/2 would each continue to utilise the current access arrangements. We note that TS initially explored amalgamating these two fields but ruled this out as unfeasible. We now note that TS is exploring alternative options to amalgamate these two fields. Were this to proceed we understand that it would take place as accommodation works that would form part of any build contract. Were it to prove unfeasible to amalgamate the fields Mrs Bradley and Mr Cumming might choose to seek compensation via the District Valuer. Compensation is not a matter for this inquiry.

4.614 ES Figure 15.6a (CD007) shows that the southern part of field 411/2 would be severed by the proposed scheme and ES Appendix 15.7 (CD006) proposes no new access. ES Appendix 15.7 (CD006) therefore concludes that this field would become unusable for agricultural purposes. We agree that lack of an access may prevent its use for agriculture but we also note that this situation could be overcome in the future if circumstances arose where this field was purchased or tenanted by parties farming surrounding fields.

4.615 Although TS volunteered to buy the southern, severed part of field 411/2, Mrs Bradley and Mr Cumming chose to retain ownership. This is a matter for them. Mrs Bradley and Mr Cumming confirm they accept the severance of field 411/2 but seek a gate

from the field to the pedestrianised section of Caulfield Road. This is a matter for them to agree with TS and the parties responsible for Caulfield Road, although TS's position appears to be that the cost of providing such an access would not be justified. Ultimately, this is a question of potential accommodation works and is not a matter for this inquiry.

4.616 [TS215](#) paragraph 5.4.10 states that accommodation works would be agreed with the landowner and included in the construction contract document. We are therefore satisfied that if TS and the landowner agree on a specific set of accommodation works then they will be provided by the contracted builder. If no agreement is reached or if the works are not feasible and the works are therefore not undertaken this may form part of any compensation claim. Neither accommodation works nor compensation are matters for this inquiry.

Water and drainage arrangements

4.617 We understand the objectors' concerns and their wish to ensure the proposed scheme does not result in inadequate drainage or other problems arising. We also acknowledge their wish for a clear route of recourse in the event of problems. Other objectors elsewhere have raised similar issues.

4.618 We note that TS has included initial drainage designs for the purposes of the ES and the draft Orders. [ES Figure 13.1a](#) (CD007) identifies the watercourses near Allanfearn as SWF07. [ES Appendix A13.2: Flood Risk Assessment](#) (CD006) considers these individually and collectively. It does not suggest any substantive increase in flood risk as a result of the proposed scheme. We attach weight to the fact that SEPA has not raised objections to the proposed drainage arrangements. The evidence suggests that the proposed drainage arrangements are satisfactory in principle.

4.619 [TS039.07](#) section 1.3 explains the general terms for any contract of works and that bullet points one and three explain the requirements regarding existing land drains.

4.620 We accept TS's explanation that it (or its agent) would carry out inspection of drainage improvements and that Mrs Bradley or Mr Cumming would not be expected to do this. We also accept that should Mrs Bradley or Mr Cumming wish, they could inspect the drains and would be able to examine pre-works and post-works information, including photographs, as set out in TS039.07 page 2 bullets two and four. This appears reasonable.

4.621 We disagree with Mrs Bradley and Mr Cumming that TS should be directly responsible for all problems arising. Were this to be the case it would relieve the contractor of responsibility, placing the costs of resolution on the taxpayer via TS. This would be sub optimal unless TS were itself to become the contractor. We find that the proposed contracting regime would build-in, from the outset, any relevant requirements for mitigation from the ES and any agreed accommodation works. We find that this and TS's proposal to have an agent on site supervising works would provide a mechanism to hold the contractor to account.

4.622 We agree that the contractor would have some design 'freedom' (our word). However, this would remain within the requirements of the contract and the land acquired by CPO. In several of the inquiry sessions TS explained that all designs must be approved and would be considered against the ES. Were these considered to result in new or changed environmental impacts, they would be reassessed, including with any necessary

mitigation. We find that this provides an additional mechanism to ensure that design 'freedom' would not result in unintended environmental consequences that differ from those already foreseen by the ES (CD005, CD006 and CD007) and already built into the contract.

4.623 We understand the concerns of Mrs Bradley and Mr Cumming and of Mr Grant regarding any route for recourse in the event of unsatisfactory works. At Inquiry Session 2, TS confirmed the on-site staffing arrangements that would be in place during construction. These arrangements would allow concerned parties to approach the service provider (the contractor) and their independent overseer (in this case Jacobs).

Impacts on proposed development

-Principle of development

4.624 It is not the role of this inquiry to consider the merits of Mrs Bradley's and Mr Cumming's development proposal. Planning permission has not been granted for proposed development at Allanfearn Farm. We find that a positively worded pre-application response does not constitute a planning permission or a development plan allocation and note that Mrs Bradley and Mr Cumming accept that point.

4.625 [Inner Moray Firth Local Development Plan \(IMFLDP\)](#) page 34 map (CD062) shows that land at Allanfearn is not allocated for development. It also shows that Allanfearn is not within the countryside but is within the Settlement Development Area. This suggests that [HWLDP](#) Policy 35 (CD061) does not apply and that HWLDP Policy 34: Settlement Development Areas would apply instead.

4.626 Whilst HWLDP Policy 42 (CD061) would arguably apply, bullet 2 of this policy requires proposals to accord with other policies of the plan, including Policy 34. HWLDP Policy 34 (CD061) does not represent a presumption in favour of development within the settlement development area since it includes requirements to consider other policies of the development plan. We also note that the council's pre-application responses ([MBC20 and MBC21](#)) respectively identify issues that would need to be overcome. This suggests to us that the planning authority would need to consider a broad variety of matters that it has not yet formally considered, prior to any planning approval.

4.627 Given these findings, TS could not reasonably be expected to assess the impact of the proposed scheme upon a development that is neither permitted nor allocated in the development plan. We agree that it would be inappropriate for the potential development land at Allanfearn to be treated differently to other unallocated land within the SDA. We note that the ES has conducted a broader assessment of the environmental implications of the proposed scheme on the locality e.g. for noise and visual impacts / effects, which may also have relevance to any additional residential properties that were to be built at the farm. These are considered in more detail below.

-Visual impacts

4.628 [ES Figure 10.3a](#) (CD007) shows that the visual effects of the proposed scheme on the properties at Allanfearn have been assessed in the ES as a group (receptor 33).

4.629 [ES Figure 9.5a](#) (CD007) shows a cross section at point D-D that runs from Allanfearn cottages southwards across the proposed dual carriageway to the nearest (northeast) corner of Culloden. The ground level cross section for point D-D ([ES Figure 9.6b](#) - CD007) shows the proposed mitigation earth bund with planting and the proposed NMU shared path

with hedge planting between Allanfearn and the proposed dual carriageway. The photo montage in [ES Figure 9.7e](#) (CD007) shows the anticipated views from Culloden looking northwards, post mitigation when the planting has matured. We find these to suggest that the proposed mitigation would screen views of the proposed dual carriageway from Allanfearn and nearby.

4.630 The visual assessment in [ES Appendix A10.1](#) Table 2 (CD006) predicts the visual impacts and effects at receptor 33 would be 'Substantial Adverse' during winter year of opening. The effects would reduce to 'Moderate to Substantial Adverse' by summer 15 years after opening. The proposed earth bund is apparent in both instances and so we find the reduction in significance to be due to maturation of proposed planting.

4.631 TS explains that due to the open views in the area it would be very difficult to reduce the visual effects below 'Moderate'. We saw the open views in the area from Allanfearn, 'The Hedges' and Culloden during our site inspection. This suggests that the visual effects (ES Figure 10.3a – CD007) would be the result of both the proposed dual carriageway and its mitigation, and, that both have been assessed. The photomontage in ES Figure 9.7e (CD007) also shows some of the impact that the proposed planting would have on the currently open views. Therefore, we find the proposed mitigation would reduce the visual impacts and effects of the proposed dual carriageway but would, itself, become a landscape feature with some residual impact.

4.632 For these reasons, we find that increasing the height of the proposed earth bund, suggested by Mrs Bradley and Mr Cumming at Inquiry Session 2, may enhance screening but could add to, rather than diminish, the significance of visual impact / effects. We agree with TS that a higher bund would require more land but that the CPO can only be amended to remove land, not to add it. Mrs Bradley and Mr Cumming accept this.

4.633 TS has expressed a willingness to consider planting faster growing species on the bund in order to accelerate the maturation of screening. This could reduce the time taken to diminish the assessed effects to 'Moderate to Substantial Adverse'. However, the evidence does not suggest it would reduce the significance further.

4.634 Our findings above suggest it is unreasonable to expect the ES to consider visual impacts / effects upon development proposals that do not have planning permission and/or are not allocated in the development plan. However, the ES's consideration of Receptor 33 provides an assessment of the visual impacts / effects for the locality where Mrs Bradley and Mr Cumming may propose development in the future. The evidence suggests that the ES was conducted properly and there is no evidence of failure to consider [ES paragraph 9.3.3 bullet 4](#).

-Noise and vibration

4.635 On our site inspection, we saw that Allanfearn Farm buildings are currently located close to the existing A96 with a direct access from it. The proposed dual carriageway would be further south and the existing A96 is predicted to be used by less traffic.

4.636 TS's noise impact assessment identified the noisiest point and the least beneficial receptors for the group of properties at Allanfearn Farm. The noise assessment shows that without mitigation, noise levels at the noisiest receptor at Allanfearn Farm (the bungalow) would exceed the noise mitigation threshold of 59.5 dB $L_{A10\ 18hr}$. As such, mitigation would be required. This mitigation has been built into the proposed scheme as the proposed two-

metre high earth bund on the north side of the proposed dual carriageway, south of Allanfearn Farm, shown in [ES Figure 9.6b](#) (CD007).

4.637 We note TS's explanation that this earth bund was the outcome of an iterative process with visual, landscape and noise considerations in preparing the ES. We have already made findings on the visual implications of this earth bund above.

4.638 TS reassessed the noise impact with the proposed mitigation in place. This shows that, whilst noise levels would increase, they would do so to absolute noise levels below the noise mitigation threshold. Therefore the proposed mitigation would successfully reduce the noise impact to an acceptable level and no additional noise mitigation would be necessary. The evidence does not suggest we should find differently.

4.639 The noise impact assessment has excluded development without planning permission based on [DMRB HD213/11](#) at A1.21 (CD049.19). The evidence does not suggest we should find this to be unreasonable or the assessment to be incorrect or inadequate. However, we note TS's points that were development to be located at Allanfearn at a distance further from the dual carriageway than the farm bungalow, then it would experience a lower level of noise impact / effects than the building group that has been assessed (and found to be likely to experience predicted noise levels below the respective thresholds).

-WHO Guidelines 2018

4.640 Our consideration of matters relating to the recently published WHO guidance on noise (October 2018) is contained in Chapter 2: Matters of Principle.

Utility connections

4.641 We accept that utility providers are required to maintain supplies to their existing customers during and after construction of the proposed scheme. This does not appear to be in dispute. However, there is no such obligation in respect of utility supplies that do not currently exist. Whilst we understand why the objectors consider it logical to resolve utility connections prior to the proposed road being built, we find that TS should not be obliged make provision for utility connections (regardless of who would fund these) where none currently exists. To do so would invite equivalent and unreasonable requests from others.

-Water

4.642 Given our findings above it should not be incumbent on TS to provide a duct for private water supply connections to non-committed development. Were Scottish Water to request a duct then TS indicates it would provide one. The evidence does not suggest such a request has been made. Were a request to be made later it is plausible that TS could provide a duct if construction was not too far advanced to prevent it.

-Gas

4.643 Allanfearn Farm is currently not connected to the gas network and therefore any future connection is a matter for Mrs Bradley and Mr Cumming to resolve with the utility provider. The route of pipeline diversions and safety exclusion zones are covered separately below.

-Safety exclusion zones

4.644 Pipeline route determination is a matter for the respective pipeline operator. They will seek a diversion that fulfils the requisite standards and is most cost-effective. Mrs Bradley and Mr Cumming are correct that TS can influence the design process and the route. However, we find that this should be justified, based on environmental constraints and other practical matters including scheme-related implications. The iterative workshop process explained by TS provides a mechanism to consider such issues.

4.645 TS has explained that it understands the proposed diversions are unlikely to affect development proposals at Allanfearn Farm. The planning status of these proposals, does not suggest that TS should seek to influence the pipeline diversion. Such a precedent has the potential to invite a plethora of equivalent, and potentially incompatible, requests from other landowners. This would be impractical for TS and, no doubt, the utility providers involved.

4.646 We also note TS's point that were the utility provider to propose a diversion across Allanfearn land then this would require a wayleave. This would give Mrs Bradley and Mr Cumming some direct influence in the process of route choice over their land were it to be necessary.

Overall

4.647 The proposed scheme would result in some adverse impacts at Allanfearn Farm, which could be overcome or reduced by mitigation and/or accommodation works or compensation. Where these could not be overcome entirely, the residual effect would not require additional mitigation and would not compromise the public interest of the proposed scheme. This would not justify us recommending that Scottish Ministers modify the draft Orders or refuse to confirm them.

OBJ/062 Mr Alex Shaw

Objector

4.648 OBJ/062 Mr Alex Shaw is the owner of Upper Cullernie Farm, which is located on the northeast edge of Balloch just off Barn Church Road. Mr Shaw farms the land at Upper Cullernie Farm and several other locations.

Objection

-Land take

4.649 Mr Shaw objects to the proposed compulsory purchase of Plots 401, 403, 407 and 409, as well as Plots 411 and 412 because he considers there to be insufficient justification for the proposed route (and hence acquisition of his land). He favours an alternative route option further north. Route selection and alternatives are covered separately in Chapter 2: Matters of Principle.

-Business impact

4.650 Mr Shaw agrees that the impact on his farm is correctly judged in the ES to be 'significant'. However, although he accepts that the area of land to be acquired is relatively low when considered against all of the land he farms, he argues that Upper Cullernie is the

home unit and main location for his business. As such, he argues that the effect of acquiring four of his seven fields at Upper Cullernie would be amplified.

4.651 He also argues that the proximity of the proposed dual carriageway would prejudice enterprise choice and crop mix.

-Impacts of proposed Balloch junction

4.652 Mr Shaw argues that the scale and height of the proposed Balloch junction, in close proximity to his property, would have an adverse visual impact and result in loss of privacy. He also argues that it is impossible to assess the potential impact of the proposed scheme and form a considered opinion.

-Noise and vibration impacts at Upper Cullernie Farm

4.653 OBJ/062 Mr Alex Shaw argues that the impacts of noise and vibration at Upper Cullernie Farm would be exaggerated. This is because he considers that all traffic that previously used other junctions would now be focused at the new proposed grade-separated junction [assumed to mean the proposed new Balloch Junction]. He also considers that these must be properly evaluated and publicised before any approval.

-Air Quality (dust)

4.654 Mr Shaw also considers that increased traffic flow would lead to dust impacts and that these must be properly evaluated and publicised before any approval.

Transport Scotland's Response

-Land take

4.655 TS argues that it has appropriately justified its preferred route option, including the need to acquire Mr Shaw's land. The route selection process is covered separately in Chapter 2: Matters of Principle.

-Business impact

4.656 TS argues that [ES Appendix A15.7](#) (pages A15.7-7 and A15.7-8) (CD006) assesses the impact of the proposed scheme on Upper Cullernie Farm as significant (Moderate/Substantial).

4.657 TS contends that with the implementation of a range of agricultural mitigation measures to address the impacts relating to the loss of agricultural land and restoration of drainage and boundary features, the significance of residual impact on the business is assessed as Moderate.

4.658 TS argues that it is accepted practice that the assessment includes all the land farmed by the business and that the ES assessment methodology reflects this.

4.659 TS refers to its [Guidance on the Compulsory Purchase Process and Compensation](#) (CD046). This, TS explains, provides information on entitlements to compensation and how and when to make a claim for compensation. TS explains that all claims for compensation would be subject to the District Valuer's assessment.

-Impact of the proposed Balloch junction

4.660 TS argues that the proposed Balloch junction forms part of a Category 7A all-purpose dual carriageway, which is the highest category of road; providing a high quality

dual carriageway. It argues that grade-separated junctions provide safety benefits, including reducing conflict between local and strategic traffic and the removal of cross traffic manoeuvres.

4.661 TS explains that the layout of the proposed Balloch junction was amended as part of the DMRB Stage 3 design process. It argues that the revised design, as presented at the drop-in sessions in February 2016, was developed to reduce the extent of land required for the junction and to take account of a number of constraints at this location. It explains that these constraints include the presence of a high-pressure gas main and a fuel pipeline, the close proximity of Fiddler's Burn and a tributary to Rough Burn, Cullernie Ring Ditch Scheduled Monument and considerations to maintain traffic flows along the A96 corridor.

4.662 With regard to the proposed junction design, TS explains that:

- the proposed dual carriageway alignment is on an embankment as it passes over Barn Church Road (C1032) to assist drainage of the mainline.
- the A96 road surface is 31.59 metres AOD at its highest point, six metres above existing ground level.
- the junction roundabouts and link roads are in a cutting, up to three metres below existing ground level.
- a dumbbell junction arrangement has been selected as the most appropriate due to the number of links to local roads and accesses that converge at this point.

4.663 TS argues that during DMRB Stage 3, the EIA process has involved:

- identifying environmental factors which were then considered during the development of the preferred route option to determine the final proposed scheme layout;
- undertaking detailed assessments of the relevant environmental factors;
- describing the aspects of the environment likely to be significantly affected by the proposed scheme;
- reporting the likely significant impacts of the proposed scheme on the environment, including direct impacts and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, beneficial and adverse effects; and,
- describing the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.

4.664 TS argues that the assessment findings are reported in the published ES (CD005, CD006 and CD007), which it argues also reports the environmental impacts and describes mitigation measures where relevant, relating to the areas of Culloden and Balloch.

-Noise and vibration impact at Upper Cullernie Farm

4.665 TS argues that noise and vibration impacts associated with the proposed scheme have been fully assessed in accordance with the [DMRB HD213/11](#) (CD049.19) and reported in [ES Chapter 8](#) (CD005) and associated ES Appendices (CD006) and ES Figures (CD007). It argues that this assessment has taken full account of the proposed A96 dual carriageway alignment, including the proposed junctions, and forecasts of future traffic flows from the transport modelling undertaken for the proposed scheme.

4.666 TS confirms that [TS062.02](#) Table 1 (below) summarises predicted noise levels at Sky House at the most exposed façade of the dwelling to the proposed Scheme.

TS062.02 Table 1: Predicted Noise Levels at the most Exposed Facade of Sky House, Upper Cullernie Farm to Scheme Road Traffic Noise

Scenario	Noise Level $L_{A10,18h}$ dB
Baseline Year: Do Minimum (2021) [DMB]	52.6
Baseline Year: Do Something (2021) [DSB]	55.2
Future Year: Do Minimum (2036) [DMF]	52.3
Future Year: Do Something (2036) [DSF]	55.5
Baseline Year: Do Something (2021) Mitigated [DSBM]	55.2
Future Year: Do Something (2036) Mitigated [DSFM]	55.5

Scenario	Noise Level difference (dB)	Significance of Impact
DMB vs DMF	-0.3	Slight Beneficial
DMB vs DSB	2.6	Slight/ Moderate Adverse
DMB vs DSF	2.9	Slight Adverse
DMB vs DSBM	2.6	Slight/ Moderate Adverse
DMB vs DSFM	2.9	Slight Adverse

Note

The scenario comparisons are:

Baseline Year Do-Minimum vs Future Year Do-Minimum (DMB v DMF)

Baseline Year Do-Minimum vs Baseline Do-Something (DMB vs DSB)

Baseline Year Do-Minimum vs Future Year Do Something (DMB v DSF)

Baseline Year Do-Minimum vs Baseline Do-Something (mitigated) (DMB vs DSBM)

Baseline Year Do-Minimum vs Future Year Do-Something (mitigated) (DMB v DSFM)

Baseline Year, is the year of opening

Future Year, is fifteen years after the Baseline Year,

Do-Minimum describes the situation without the proposed scheme

Do-Something is with the proposed scheme in place.

'Mitigated' refers to the implementation of measures such as LNRS, described in ES Section 8.6.

4.667 TS argues it has carefully considered where mitigation should be offered, and the form that this should take. TS argues that a noise mitigation strategy has been developed based on the DMRB HD213/11 (CD049.19) and WHO guidance ([CD090](#) and [CD091](#)) (as set out in ES Paragraphs 8.2.24-8.2.34).

4.668 TS argues that the predicted Do-Something (with the proposed Scheme) noise levels are at least 4 dB below the mitigation threshold of $L_{A10,18h}$ 59.5 dB, which in turn is referenced to the equivalent WHO guideline level of $L_{Aeq,16h}$ 55 dB. Therefore, it concludes that the predicted noise levels at Sky House would not reach a level at which noise mitigation would be justified.

-Air quality (dust)

4.669 TS argues that a detailed air quality assessment has been undertaken in accordance with [DMRB air quality guidance](#) (CD049.14) and included the consideration of construction dust. It contends that the assessment showed there to be no significant impacts on air quality. TS also explains that [ES Chapter 7](#) (CD005) details the air quality assessment and specifies that a construction environmental management plan (CEMP) would be prepared for the construction stage of the proposed scheme and would be subject to approval by The Highland Council. This CEMP would, TS argues, implement appropriate methods, which adhere to best practices to control fugitive dust emissions during construction works.

Findings of Fact

-Land take

4.670 Based on the [draft CPO](#) sheet 4 (CD001), [draft SRO](#) plan SR04 (CD003) and ES Figure 15.6b (CD007) we find that plots 401,403, 407, 409, 411 and 412 are required for the proposed scheme, including construction and associated mitigation. Route selection and alternatives are covered separately in Chapter 2: Matters of Principle.

-Business impact

4.671 Mr Shaw does not appear to dispute the factual findings of the agricultural assessment contained in [ES Appendix A15.7](#) (CD006). There also does not appear to be any dispute about whether Mr Shaw uses Upper Cullernie Farm as the base for his wider farming business. We find that the assessment is consistent with the provisions of [DMRB Volume 11, Section 3, Part 6](#), Paragraphs 6.3, 6.4, 10.6 and 10.17 (CD049.18). These require the assessment to be of the impacts on the whole farming business rather than one specific part of it.

4.672 We note the impact on individual fields from [ES Figure 15.6b](#) (CD007) and the potential for the severed field sections to be merged along with other mitigation and accommodation works, as described in ES Appendix A15.7 (CD006). We agree that this may influence the choices available to Mr Shaw in how he chooses to farm. However, this would not prevent the use of the land for agriculture.

4.673 We find no reason to disagree with the conclusions in ES Appendix A15.7 (CD006). These impacts and mitigation measures reflect the description provided in [ES paragraph 15.3.61](#) (CD005) for the term 'neutral'. These impacts also do not reflect the definitions of the terms 'beneficial' and 'adverse' in ES paragraph 15.3.61 (CD005). Mr Shaw might choose to make a claim for compensation but this is a matter for him and for the District Valuer. It is not for this Inquiry.

-Impact of the proposed Balloch junction

4.674 The [Balloch Junction Design Development Report](#) (TS228) sets out the proposed junction layout, which is reflected in draft CPO, sheet 4 (CD001) and draft SRO Plan SR04 (CD003). These suggest no reason for us to doubt the descriptions of the proposed Balloch junction provided by TS in its response letter to Mr Shaw dated 31 July 2017 ([TS062.02](#)) or the advantages TS argues to be apparent from the Developed Junction Alignment as described in TS228 section 5.2 and section 6.

4.675 The cross-sections in TS228 Appendix A show that the Developed Junction Alignment would be higher than the alternative. However, this design allows for a shorter section of Barn Church Road to pass beneath the proposed dual carriageway, allowing the roundabout and connections into the existing A96 to avoid a scheduled ancient monument to the north.

4.676 We also note Mr Shaw's concerns about the visual impact of this proposed design and any consequent lack of privacy. [ES Figure 10.3b](#) (CD007) shows that the visual effects of the proposed scheme have been considered for the collection of buildings at Upper Cullernie Farm, including Sky House (Receptor 45). This concludes that the visual effects of the proposed scheme would be Substantial in winter year of opening and would diminish to Moderate/Substantial in summer 15 years after opening.

4.677 [ES Appendix A10.1](#) (CD006) describes the reduction in impact to be the result of existing trees and hedges and proposed scrub and hedge planting that would have established by 15 years after opening. A 1.3 metre high mitigation barrier would also contribute in both instances. [ES Figure 9.5d](#) (CD007) shows the location of proposed scrub, hedgerow and mixed woodland planting on the south side of the proposed junction to help to screen views. The photomontages in [ES Figure 9.7f](#) (CD007) provide some impression of the appearance of the junction with planting established 15 years after opening. Whilst parts of the junction would be visible, the impact would be softened.

4.678 ES Figure 9.7f (CD007) shows that the contrast between the existing view and the view with the junction in place 15 years after opening is because the junction is located on an embankment. We therefore find that whilst the proposed planting would likely diminish the visual impact and effect of the proposed scheme, the visual effects for receptor 45 would remain moderate/substantial because the junction being on an embankment changes the currently open views across the countryside to the coast. Such a change cannot be resolved with the current design. However, the evidence does not indicate that we should doubt the engineering rationale for this design, as set out in TS228.

4.679 ES Figure 10.3b (CD007) shows that Sky House is set back to the east of Barn Church Road and is shielded to the east and north east by farm buildings. The presence of proposed hedge, scrub and mixed woodland planting on the south side of the proposed junction suggests some screening, albeit that it would take time to establish (ES Figure 9.5d – CD007). The distance from Upper Cullernie Farm, the speed of traffic on the main carriageway (70mph for cars), the slowing from that speed on the slip roads as traffic enters the cutting, and, the presence of mitigation planting, suggest any glimpse of Upper Cullernie Farm would be momentary and sufficient only to recognise the presence of buildings. Whilst we understand Mr Shaw's concerns, the evidence does not suggest privacy would be adversely affected.

-Noise and vibration impact at Upper Cullernie Farm

4.680 Mr Shaw does not dispute the noise assessment or the mitigation strategy. [TS062.02](#) Table 1 (above) shows that the predicted noise levels with and without the proposed scheme would be below the 59.5 dB LA10, 18h threshold for noise mitigation. It also shows that the predicted change in noise levels with and without the proposed scheme would be less than 3 dB for the most exposed facade.

4.681 [DMRB HD213/11](#) paragraph 3.37 (CD049.19) indicates noise level changes above 1 dB are perceptible in the short-term but those below 3 dB are imperceptible in the long-term. We therefore find that the noise impacts that would be experienced at Upper Cullernie Farm would be initially perceptible but over the 15 years after opening would become imperceptible. In both instances, the predicted absolute noise levels would be below the respective thresholds for additional mitigation. This suggests that there is no need for additional, receptor-specific mitigation besides what has already been proposed and included in the noise assessment.

-Air quality (dust)

4.682 TS has carried out an assessment of air quality, including dust, that has been published as part of the ES and was subject of public consultation.

4.683 [ES paragraph 7.6.1](#) (CD005) explains that a CEMP would be implemented to prevent or reduce potential impacts associated with dust and air quality under Mitigation Items AQ1

and GR1. The CEMP would be subject to a separate approval by The Highland Council. [ES Chapter 7](#) (CD005) does not suggest that dust impacts from the proposed scheme would result in significant adverse impacts at Upper Cullernie Farm that could not otherwise be resolved by the measures proposed through the CEMP.

Overall

4.684 The proposed scheme would result in some adverse impacts at Upper Cullernie, which could be overcome or reduced by mitigation and/or accommodation works or compensation. Where these could not be overcome entirely, the residual effect would not require additional mitigation and would not compromise the public interest of the proposed scheme. This would not justify us recommending that Scottish Ministers modify the draft Orders or refuse to confirm them.

CHAPTER 5: NEWTON OF PETTY TO GOLLANFIELD

Introduction

5.1 This chapter considers objections and representations made to the proposed dualling of the A96 in the section between Newton of Petty and Gollanfield as shown in [ES Figure 4.1](#) (CD007). Newton of Petty is located just east of Balloch and Gollanfield is located just west of Nairn.

5.2 The proposed scheme would run east from Balloch junction past Newton of Petty on the south side of the existing A96. It is proposed to loop south of Morayston and the Norboard factory. Just to the east of the Norboard factory the proposed route would loop back towards the existing A96 and cross to the north side of it. This is shown on [draft SRO Plans SR5, SR6 and SR7](#) (CD003) and [draft CPO Sheets 5 and 6](#) (CD001).

5.3 The proposed route would then run north-easterly through Tornagrain Wood to the proposed new Mid Coul grade-separated junction. In doing so it would sever Dalcross Station Road (C1020). A new replacement section of the C1020 is proposed with an overbridge just east of the present location. The route is also proposed to sever access tracks at Points 280 and 281, Points 285 and 286, and, Points 287 and 288. This is shown on draft SRO Plan SR7 (CD003) and draft CPO Sheets 7 and 8 (CD001).

5.4 The proposed route would emerge from Tornagrain Wood to the south of Inverness Airport and meet the proposed Mid Coul grade-separated junction. This proposed new junction would be located south of Inverness Airport and the Aberdeen to Inverness Railway and to the north of the existing A96 and the existing Mid Coul roundabout. At this new junction, a new section of the C1017 is proposed to cross the dual carriageway on an overbridge with associated on and off slip roads and roundabouts.

5.5 The proposed dual carriageway is then proposed to run along the southern side of the railway and north of Culblair Farm. East of Culblair Farm buildings the proposed route would swing southwards to the existing A96 just south of Milton of Gollanfield Farm. From here it would run parallel to the existing A96 on its north side to the existing Brackley Junction. Along this section the route is proposed to sever the access points from the A96 to Milton of Breachlich Road (U1025) (Point 204) and the track to Polfalden Kennels (Points 293 and 294) as shown on draft SRO Plan SR8 (CD003) and draft CPO Sheet 10 (CD001).

5.6 A new grade separated junction is proposed at Brackley. Here the existing A96 would be severed and would instead feed on to a new section of the B9006 road (Point 39). This new section of the B9006 is proposed to cross the new dual carriageway via an overbridge at Brackley junction (Point 35) as shown on draft SRO Plan SR9 (CD003). The existing A96 is then proposed to re-join its present route via a new road off the B9006 at Point 42 (draft SRO Plan SR10 – CD003).

5.7 Draft SRO Plans SR9 and SR10 (CD003) show the proposed dual carriageway on and off slip roads at the proposed Brackley Junction. These would link to the B9006 and the existing A96 via the new roads described above.

5.8 Around the proposed Brackley junction a series of existing road, track and field accesses are also proposed to be severed by the proposed new dual carriageway and

junction. These features are shown on draft CPO Sheets 10 and 11 (CD001) and on draft SRO Plans SR9 and SR10 (CD003).

5.9 The proposed route would continue eastwards from the proposed Brackley junction on the south side of the existing A96. This section of the route ends at Gollanfield as shown on draft CPO Sheet 12 and draft SRO Plan SR11.

5.10 Objections and matters relating to the impacts of the proposed scheme on the existing C1013/A96 junction and east of this point are considered separately in Chapter 6: Gollanfield to River Nairn.

Parties making objections/representations

5.11 The parties below object to or raise concerns about the proposed scheme between Newton of Petty and Gollanfield:

OBJ/064 Ms Norma Duncan
OBJ/066 Mr James S Brennan
REP/067 Mr Wayne and Mrs Fiona Macdonald
REP/068 Mr Nigel and Mrs Julie Smith
OBJ/073 Mr David Macbean
OBJ/074 Mr Peter McGibbon
REP/075 Mr Graham & Mrs Elizabeth Rae
OBJ/076 Mr Tamer Tasasiz
OBJ/081 Mrs Elaine de Ste Croix
OBJ/082 Mr William Rose
REP/144 Highland Council (Development and Infrastructure Services)
OBJ/155 Stephanie Wood and A Gibson
OBJ/156 Mr Robert Deacon

5.12 These parties include local land owners and tenants (including farmers, business operators and local residents). Objections relating to property and localities are considered in broad geographical order running west to east, in so far as possible. Several objectors raise matters relating to the Milton of Breachlich Road (U1025) these are grouped together except for OBJ/073 Mr David Macbean, whose objections relating to the U1025 are considered together with his other objections.

OBJ/066 Mr James S Brennan

Objector

5.13 OBJ/066 Mr James S Brennan is a resident of Dalcross Station.

Objections

-Engagement

5.14 Mr James S Brennan expresses dissatisfaction with the public notices he encountered in the area near his home.

-Air Quality

5.15 Mr Brennan argues that there are 'no proposals to monitor particulates'.

-Noise and vibration

5.16 Mr Brennan considers that there is inadequate mitigation for noise and vibration at Number 1 Cottage, Dalcross Station which, he argues, would be 150 metres from the proposed scheme. In more recent correspondence ([TS066.05](#)) Mr Brennan is concerned at the impact that the proposed felling of trees south of the property may have and what he considers to be the absence of any kind of mitigation earth work.

-Access during construction

5.17 Mr Brennan is concerned about access arrangements and the impact of construction.

-New rail station and rail issues

5.18 Mr Brennan raises a series of matters which appear to relate to proposals for a new rail station at Inverness Airport/Dalcross and the proposed closure of a level crossing in the vicinity.

Transport Scotland's response

-Engagement

5.19 In an email exchange to Mr Brennan TS explains that the public notices he refers to:

- are not a full set of material for consultation.
- are specifically seeking to find the owner of a piece of land which TS proposes to compulsorily purchase

-Air quality

5.20 TS explains that [ES Chapter 7](#) (CD005) details the air quality assessment carried out as part of the EIA and [ES Appendix A7.1](#) (CD006) provides a glossary of air quality terminology.

5.21 TS confirms that its air quality assessment included the consideration of construction dust, and that it concluded that, with the implementation of best practise dust mitigation measures during the construction phase (through a construction environmental management plan (CEMP)), there would not be a significant effect. TS explains that these mitigation measures are included within the ES and would be developed further at the next stage.

5.22 TS argues that, with reference to changes in concentrations in particulate matter (PM₁₀ and PM_{2.5}), the air quality assessment shows that there would be no significant changes as a result of the proposed scheme at Lochside or Dalcross. TS argues that changes at these locations were shown to be not significant as a result of the proposed scheme, with concentrations being more than 75% and 40% respectively below the relevant air quality objectives. As a result, TS argues that there is no requirement to monitor for particulate matter concentrations in the operational phase.

-Noise and vibration

5.23 TS confirms that the proposed dual carriageway would be located approximately 250 metres south east of Number 1 Cottage Dalcross.

5.24 TS explains that:

- at this location the road would be constructed on an embankment, varying in height from approximately four metres to being at the level of the existing ground where it would cross Dalcross Station Road (C1020).
- the C1020 would be realigned on a new structure over the proposed dual carriageway.

5.25 TS argues that [TS066.04](#) Table 1 summarises the least beneficial predicted noise levels and significance of noise impacts at No 1 Cottage (reproduced below).

TS066.04 Table 1: Predicted DMRB Noise Levels and Significance of Impacts at No. 1 Cottage Dalcross Station

Scenario	LA _{10,18hr} DMB Noise Level (dB) (i.e. decibel)	LA _{10,18hr} Scenario Comparison Noise Level (dB)	Noise Level Difference (dB)	Significance of Impact
DMB vs DSB	56.5	56.7	0.2	Slight Adverse
DMB vs DMF	55.0	56.7	1.7	Slight Adverse
DMB vs DSF	56.5	57.6	1.1	Slight Adverse

Notes:

Baseline Year, is the assessed year of opening.

Future Year, is fifteen years after the Baseline Year.

Baseline Year Do-Minimum vs Baseline Do-Something (DMB vs DSB)

Baseline Year Do-Minimum vs Future Year Do-Minimum (DMB v DMF)

Baseline Year Do-Minimum vs Future Year Do Something (DMB v DSF)

5.26 TS argues that TS066.04 Table 1 (above) shows:

- the least beneficial magnitude of noise level change in the year of opening would be a 0.2 dB increase, which is below the level considered perceptible.
- if the proposed scheme were not constructed (DMB vs DMF), the least beneficial impacts would be worse than with the proposed scheme in place (DMB vs DSF).
- these noise level changes would be below the levels considered perceptible.

5.27 TS explains that its noise mitigation strategy ([ES paragraphs 8.2.24-8.2.34](#) – CD005) is based on the DMRB [HD213/11](#) (CD049.19) and WHO guidance ([CD090](#) and [CD091](#)). Under this strategy TS argues that noise mitigation is considered where the significance of impact at NSRs is predicted to be:

- Slight/Moderate adverse or worse, which for high noise sensitive receptors equates to at least a 1 dB (noise level increase in the short term (year of opening), and/or at least a 3 dB in the long term (typically within 15 years of opening) and, in addition, the predicted ground floor façade noise level exceeds 59.5 dB LA_{10,18h}.
- Slight/Moderate adverse or worse, in the long-term with a predicted noise level that exceeds 55 dB L_{night,outside}.

5.28 TS argues that mitigation was not recommended for the property because the absolute noise levels at the property would be below the threshold of 59.5 dB LA_{10,18h} and the significance of noise level change would be below what is defined as slight/moderate or worse.

5.29 In more recent correspondence ([TS066.06](#)) TS confirms that the design of the proposed scheme incorporates measures such as low noise road surfacing (LNRS) and earthworks but clarifies that no earth works are proposed close to No 1 Cottage Dalcross,

only LNRS. TS reiterates the points above that, with LNRS, a relatively minor increase in noise levels (TS066.04 Table 1 above) would be imperceptible.

-Access during construction

5.30 TS confirms that:

- access to properties would be maintained during the construction process and this would be a contractual requirement placed upon the contractor.
- specific access details would be developed by the contractor once appointed and would be communicated with those affected at the appropriate time.

-New rail station and rail issues

5.31 TS argues that it was aware of the proposed Inverness Airport (Dalcross) rail station proposals during DMRB Stage 2 and Stage 3 design development and that the proposed scheme design takes account of this. TS states that it (and its consultants) have met with HITRANS (the regional transport partnership for this area) on a number of occasions during the development of the proposed scheme.

5.32 TS argues that in January 2014 its design consultants obtained a Network Rail/URS drawing of the proposed station showing the location of the proposed car park and indicating access to both platforms from the north of the Aberdeen to Inverness Railway Line. TS understood that the existing masonry arch bridge (OB87) would be demolished down to springer level with a new bank seat and footbridge constructed to provide pedestrian access between the platforms.

Findings of Fact

-Engagement

5.33 [ES Chapter 6](#) (CD005) shows the programme of public engagement that has taken place for the proposed scheme. We find [TS066.02](#) to provide a satisfactory explanation for the matter.

-Air quality

5.34 The evidence in [ES Chapter 7](#) (CD005) and ES Appendices 7 (CD006) does not suggest that the air quality assessment was carried out incorrectly or that the conclusions reached were arrived at in a manner that would be inappropriate or erroneous.

5.35 [ES Appendix A7.4](#) (CD006) shows the air quality assessment for AQ_303 (No 1 Station Cottages, Dalcross Station Road, Dalcross, IV2 7JJ). It confirms that, despite a predicted increase in concentrations nitrogen dioxide (NO₂) and particulates (PM₁₀ and PM_{2.5}), these increases would remain below the respective national air quality objectives in [ES Table 7.3](#) (CD005). As such, the evidence does not suggest that air quality standards would be breached as a result of the proposed scheme or that there would be a need to introduce specific monitoring for particulates.

-Noise and vibration

5.36 We note that the parties disagree about the distance of Mr Brennan's property from the proposed scheme. [ES Figure 8.2b](#) (CD007) shows a distance of approximately 250 metres and there is no reason to doubt the accuracy of that measurement. The evidence also does not suggest we should doubt the methods used to conduct the noise assessment or that we should find its observations to be erroneous.

5.37 Similarly, there is no reason for us to doubt the data provided in TS066.04 Table 1. This shows predicted noise level changes, both with and without the proposed scheme, would be below 3 dB in the long-term (15 years after opening year). DMRB [HD 213/11](#) paragraph 3.37 (CD049.19) explains that such a magnitude of change would be imperceptible.

5.38 [TS066.04](#) Table 1 also shows that absolute noise levels are predicted to remain below the 59.5 dB $L_{A10,18h}$ threshold with and without the proposed scheme in place. Without the proposed scheme the magnitude of noise increase and the absolute noise level would be higher than if the proposed scheme were to proceed.

5.39 TS066.04 Table 1 also shows that predicted noise levels and changes in noise levels would not exceed the respective thresholds in the ES noise mitigation strategy ([ES paragraphs 8.2.24 to 8.2.34](#) – CD005). Therefore no additional mitigation would be needed besides that already incorporated into the proposed scheme design and covered by the noise assessment.

-Access during construction

5.40 Mr Brennan is not the only objector with concerns about how to access land and property during the construction phase. TS acknowledges the potential for disruption during the construction phase. [ES Table 20.10](#) Mitigation Item CP-R1 (CD005) commits to maintaining access and requires the appointed contractor to ensure this. We note that the contract documents would include the ES and any mitigation it identifies. As such these requirements would be binding on the contractor. This should provide some reassurance to Mr Brennan.

-New rail station and rail issues

5.41 [HiTRANS Regional Transport Strategy](#) (RTS) (2008) and its [delivery plan](#) (CD042.01 and CD042.03) identify a proposal for a new rail station at Inverness Airport (Dalcross) and the [Draft RTS 2017](#) (CD042.02) continues this. However, this does not form part of the proposed scheme.

5.42 We also note the Mid Coul junction design and station access points raised by TS. Whilst it is not for TS to resolve matters of station design it is clear that future access to the proposed station has been considered as part of the proposed scheme design, including the layout of the proposed Mid-Coul junction. We also attach weight to the fact that neither Network Rail nor HiTRANS has objected to the proposed scheme with regard to this matter. We consider this to mean there is sufficient compatibility between the proposed scheme and the separate proposals for the new rail station.

5.43 The anticipated impacts identified by Mr Brennan from railway proposals, including upon septic tanks and level crossings, are not part of the proposed scheme for dualling the A96. These matters are, therefore, not for this inquiry.

Overall

5.44 The objections and concerns raised by OBJ/066 Mr S Brennan would either be resolved or avoided by the proposed scheme. The evidence suggests that whilst there would be some residual impacts / effects these would not be sufficient to warrant additional mitigation beyond that already built into the proposed scheme and assessed in the ES. As such these would not override the public interest in providing the proposed scheme. We

therefore find no reason to recommend that Scottish Ministers modify the draft Orders or refuse to confirm them.

REP/067 Mr Wayne and Mrs Fiona Macdonald

Objector

5.45 Mr and Mrs Macdonald are residents at Woodend Cottage located on the north side of Tornagrain Wood, just north of the proposed scheme as it passes through the wood.

Objections

5.46 Mr and Mrs Macdonald are concerned about increased levels of noise and air pollution from the proposed scheme since, they argue, they already experience these from Inverness Airport, the railway line (assumed to be the Inverness to Aberdeen line) and the Norboard Factory. They also note proposals to improve the railway line.

Transport Scotland's Response

Noise and vibration

5.47 TS confirms that:

- a noise assessment has been undertaken for the proposed scheme ([ES Chapter 8 – CD005](#)) in accordance with DMRB guidance [HD213/11](#) (CD049.19).
- [ES paragraphs 8.6.10 and 8.6.11](#) (CD005) explain that:
 - the proposed scheme incorporates noise mitigation in the form of lower noise road surfacing (LNRS).
 - an iterative approach to the design of the proposed scheme has also allowed the opportunity to incorporate mitigation in the form of earthworks at some locations.
- based on the adopted noise mitigation strategy ([ES paragraphs 8.2.24 to 8.2.34 – CD005](#)) for the proposed scheme, additional, receptor-specific mitigation has been provided where appropriate.
- a 'receptor' is the term used to describe a property or residential dwelling.
- Receptor-specific noise mitigation is considered where the significance of impact at noise sensitive receptors is predicted to be:
 - Slight/Moderate adverse or worse, which for high noise sensitive receptors equates to at least a 1 dB noise level increase in the short term (the year of opening) and/or at least a 3 dB in the long term (typically within 15 years of the scheme opening), with a predicted ground floor façade noise level which exceeds 59.5 dB $L_{A10,18h}$.
 - Slight/Moderate adverse or worse, in the long-term with a predicted noise level that exceeds 55 dB $L_{night,outside}$.

5.48 TS confirms that:

- the predicted noise levels at Woodend Cottage were considered against the noise mitigation criteria (above).
- the predicted noise level increases at the property would be 2.6 dB in the year of opening, increasing to 3.5 dB in the long term; however, the predicted absolute noise levels at Woodend Cottage would remain at least 4.5 dB below the threshold of 59.5 dB $L_{A10,18h}$ at which additional receptor-specific noise mitigation is considered.

5.49 TS argues that site-specific noise mitigation is not required at the property, over and above that which is provided in the proposed scheme design which, as outlined above, includes LNRS and earthworks (e.g. cuts, bunds and false crests).

5.50 Given its conclusions above TS confirms that no additional noise screening is proposed at Woodend Cottage. It explains that the dual carriageway alignment would be in a slight cutting, which would provide some noise attenuation, and that this was taken into account in the noise assessment. The retention of existing woodland vegetation would also provide some visual screening of the proposed scheme.

5.51 With regards to vibration, TS states that there are two effects of traffic induced vibration: the effects on buildings, and, the disturbance caused to occupiers of properties.

5.52 TS argues that:

- Ground-borne vibration is much less likely to be the cause of disturbance to occupiers than air-borne vibration. DMRB (HD213/11 – CD049.19) states 'normal use of buildings such as closing of doors, walking on suspended wooden floors and operating domestic appliances can generate similar levels of vibration to that from traffic'. Also, ground-borne vibration should not be significant for residents located adjacent to smooth and well maintained road surfaces free of discontinuities and potholes.
- The Inverness to Aberdeen railway line (19 metres away from the property) is located between the proposed dual carriageway (approximately 280 metres away) and Mr and Mrs Macdonald's property. As such, vibration levels resulting from individual train pass-bys would be greater than that from motor vehicle pass-bys using the proposed dual carriageway. Given the relatively large separation between the proposed dual carriageway and the property (approximately 280 metres), road traffic induced ground-borne vibration is not considered to be an issue.
- With regard to traffic-induced airborne vibration, there is no evidence that this vibration can cause even minor damage to buildings. However, it can be a source of annoyance for properties up to a distance of 40 metres from the road. The separation between the property and the nearest proposed carriageway edge is approximately 280 metres; therefore, road traffic induced airborne vibration is not considered to be an issue.

Air quality

5.53 TS confirms that ES Chapter 7 (CD005) contains the air quality assessment for the proposed scheme. It argues that:

- The existing A96 is approximately 520 metres from Mr and Mrs Macdonald's property. The proposed dual carriageway would be approximately 280 metres from the property. In accordance with DMRB [HA207/07](#) (CD049.14) guidance on air quality, only properties within 200 metres of roads affected by the project need be considered within the air quality assessment model.
- Beyond 200 metres contributions from a road are expected to be negligible and background pollution concentrations (which come from far-away pollution sources) will dictate exposure. As the property is a distance of more than 200 metres from the existing A96 and more than 200 metres from the proposed dual carriageway, air

pollution concentrations are not expected to materially change as a result of the proposed scheme.

Findings of Fact

5.54 Some of the existing noise sources (airport, heliport, current railway and improved railway) and pollution sources (Norboard Factory) quoted by Mr and Mrs Macdonald do not form part of the proposed scheme.

5.55 The ES contains assessments of noise and air quality impacts and effects from the proposed scheme.

Noise and vibration

5.56 The evidence does not suggest that we should find the method or conclusions of the noise assessment to be deficient or erroneous. Mr and Mrs Macdonald do not dispute this.

5.57 [DMRB HD213/11](#) paragraphs 3.46, A1.35 bullet i) and A6.22 (CD049.19) are clear that airborne vibration is unlikely to cause serious annoyance over 40 metres from a property. [ES Figure 4.1d](#) (CD007) does not suggest we should doubt the distances quoted by TS. Therefore we are satisfied that the property would not be seriously affected by airborne vibration.

5.58 Similarly the distance of the proposed scheme from the property and the closer proximity and positioning of the existing railway line do not suggest that the proposed scheme would bring about additional vibration impacts.

5.59 We note that the property is covered in the noise assessment in [ES Appendix A8.3](#) (CD006) as receptor NV667. This confirms TS's conclusions that, despite a predicted increase in noise levels that would be perceptible in the short term (above 1 dB) and the long-term (above 3 dB); with the proposed scheme in place and with mitigation, the absolute noise levels would remain below the 59.5 dB $L_{A10,18h}$ threshold in the ES noise mitigation strategy ([ES paragraphs 8.2.24 to 8.2.34](#) – CD005). This does not suggest any need for additional mitigation besides that already designed into the proposed scheme and considered by the noise assessment.

5.60 We note that some screening would be proposed from a visual perspective and that the proposed scheme would be in slight cutting near to Mr and Mrs Macdonald's property as confirmed in [ES Figure 9.5g](#) (CD007).

Air quality

5.61 ES Figure 4.1d (CD007) does not suggest we should doubt the distances quoted by TS between the property and the existing A96 and proposed scheme. [DMRB HA207/07](#) paragraphs 3.13, 3.25, 3.29 1) and D1.1 (CD049.14) confirm that air quality does not need to be assessed beyond 200 metres of the proposed scheme.

5.62 [ES Figure 7.4](#) (CD005) identifies several receptors that are located nearby Woodend Cottage but closer to the proposed scheme (or elements of it). These include AQ_290 Culblair Farm Cottages, AQ_291 Mid Coul Cottages, AQ_292 Culblair Farm, and, AQ_303, AQ_304 and AQ_305 at Dalcross Station. ES Appendix A7.4 (CD007) shows that each is

predicted to experience an increase in the concentration of NO₂ and/or particulates (PM₁₀ and PM_{2.5}). However, the predicted increases in each instance would not exceed the respective air quality standards set out in [ES Figure 7.3](#) (CD007). This suggests that the predicted increase in pollutant concentrations in localities near to Woodend Cottage and closer to the proposed scheme would not be significant enough to compromise human health. This should provide some reassurance to Mr and Mrs Macdonald.

Overall

5.63 The concerns raised would either not form part of the proposed scheme, would not arise or would be avoided by the proposed scheme. The evidence suggests that whilst there would be some residual impacts / effects these would not require additional mitigation and would not override the public interest in providing the proposed scheme. Therefore, there is no reason for us to recommend that Scottish Ministers modify the draft Orders or refuse to confirm them.

REP/068 Mr Nigel and Mrs Julie Smith

Objector

5.64 Mr and Mrs Smith raised concerns about the impacts of the proposed scheme at Woodend House, located on the north side of Tornagrain Wood, just north of where the proposed scheme would pass through the wood. It is understood that they have since moved address and they may therefore have withdrawn. However, this remains unclear and if they have not withdrawn we set out below how we would have considered their comments.

Objections

5.65 Mr and Mrs Smith are concerned that the noise impacts of the proposed scheme would result in a loss of amenity including nuisance, health implications and loss of property value. They seek minimisation of these.

5.66 They also argue that screening of the airport road (assumed to be the C1017 Road), which they support, was promised in 2006 but has not been delivered.

5.67 Mr and Mrs Smith contend that their proximity to existing noise sources, such as the Aberdeen-Inverness rail line and Inverness Airport/Heliport, is relevant to the noise assessment and they query why no L_{Amax} measurements are reported. They cite a UK Noise Association 2009 report which, they contend, concluded that traffic noise impacts should be measured not just in terms of overall levels, but also peaks, as well as the noise frequency, or pitch. If the L_{Amax} measurements were recorded, Mr and Mrs Smith ask that they be shared.

5.68 Mr and Mrs Smith are unclear if and how the noise assessment considers the noise impacts of the proposed scheme and other nearby proposals such as Inverness Airport Business Park, Tornagrain, and Dalcross Rail Link. They are concerned that these have or are being considered in isolation and that this could lead to errors.

5.69 Mr and Mrs Smith state the predicted differences in noise at Woodend House as being:

- DMB vs DSB - increases of 6.4 dB for ground-floor and 5.9 dB for first-floor

- DMF vs DSF – increases of 5 dB for ground-floor and 5.5 dB for first-floor

5.70 Based on the above predicted noise level increases they argue that the noise impacts at Woodend House would vary from Large/Very Large in the short-term to Moderate/Large in the long-term based on ES Table 8.5, page 8-8 – CD005).

5.71 They seek reassurance that the mitigation measures, which they allege were identified to them at the Nairn public exhibition on 7 December 2016, would be provided:

- a low-noise road surface (LNRS);
- bunding on the dualled A96 past Woodend House and neighbouring properties; and,
- land is to be purchased beyond the width of the dual carriageway to enable additional screening to take place.

5.72 Mr and Mrs Smith ask what the maximum aggregate size to be used for LNRS would be and where this has been successfully used elsewhere in Scotland. They also seek confirmation that; since LNRS costs more than conventional surfaces, wears out more quickly and requires more maintenance in winter conditions; the proposed use of LNRS would not be reversed later in the light of expediency or budget-control.

5.73 Regarding bunding Mr and Mrs Smith seek details on where the proposed bunding would end, its proposed depth, whether it would amplify noise at either end, similar to a tunnel, what additional width of land would be purchased and what vegetation/screening is proposed. Mr and Mrs Smith understand that only very dense vegetation provides noise mitigation, though they recognise that the visual aesthetic would benefit from any planting.

Transport Scotland's Response

5.74 TS argues that:

- L_{Amax} noise levels are not reported in the noise survey summaries because each noise survey is based on unattended noise surveys and, as such, (unlike the noise metrics reported) it is not possible to distinguish individual vehicle pass-by L_{Amax} noise levels from those noise levels generated by extraneous noise sources.
- in accordance with DMRB HD213/11 (CD049.19) it is the $L_{A10,T}$ noise metric that correlates well with road traffic annoyance and this is the reasoning for using the $L_{A10,18h}$ values.
- the $L_{Aeq,T}$ and $L_{A90,T}$ are reported because, 1) there is empirical relationship between $L_{Aeq,T}$ and $L_{A10,T}$ at receptors dominated by road traffic noise and 2) the $L_{A90,T}$ is a common measure of the underlying background noise level.

5.75 With regard to the UK Noise Association's report (2009), TS assumes that the report referred to is: 'Speed and Road Traffic Noise'. TS agrees that that document states that:

'Sudden or sharp noise peaks can be as or more annoying than overall noise levels, especially at night when they disturb sleep. Therefore traffic noise impacts should be measured not just in terms of overall levels (dB(A) L_{eq}), but also peaks (dB(A) L_{max}). The frequency, or pitch, should also be measured.'

5.76 However, TS argues, 'peak' noise levels alone are not the only determining factor with regard to disturbed sleep. TS states that WHO's Night Noise Guidance (2009) (CD091), states

'that an increase in the number of such events [instantaneous] over the baseline may constitute a subclinical adverse health effect by itself leading to significant clinical health outcomes'.

5.77 TS argues that the WHO guidance (CD091) refers to 'instantaneous' over the 'baseline'. TS argues that, accordingly, it is not the 'peak' noise level alone that results in sleep disturbance but, an increase in the short-term rapid change in noise level above the baseline that creates the sleep disturbance.

5.78 TS argues that, accordingly, in relation to the proposed scheme, road traffic noise associated with an individual vehicle pass-by, even in the absence of other cars, is typically not an instantaneous event. This is, TS states, because the rise time for a car pass-by is relatively long when compared with an instantaneous event (for example, many seconds for a vehicle pass-by compared with fractions of a second for a bang or crash).

5.79 TS argues that, for the above reasons, the L_{Amax} noise levels are not relevant to the DMRB noise assessment, which is based on the nationally accepted prediction methodology detailed in the Calculation of Road Traffic Noise (CRTN – CD084) guidance which utilises the $L_{A10,18h}$ noise metric. TS argues that, on this basis, it would be inappropriate to provide the L_{Amax} noise levels.

5.80 TS confirms that if Mr and Mrs Smith still feel it would be useful, then it can share any recorded L_{Amax} levels but, TS explains, it would caution that these would be of little to no use in relation to determining the likelihood of traffic-related sleep disturbance.

5.81 TS argues that the baseline noise monitoring in no way affects the noise impact assessment, which is undertaken in accordance with DMRB HD213/11 (CD049.19) and CRTN guidance (CD084). It is, TS argues, the predicted noise levels based on road traffic data that is the preferred method for determining road traffic noise levels at receptor locations. TS states that the baseline noise monitoring survey is undertaken to provide information of existing noise levels, which is useful for assessing noise impacts and noise mitigation during the construction phase and can also be used to compare predicted noise levels with measured noise levels for the existing situation.

5.82 TS confirms that the traffic data extracted from the transport model and used to predict the $L_{A10,18h}$ noise levels comprises traffic flows, speeds and percentage of heavy vehicles. This, it argues, takes account of those future infrastructure and land-use developments which are sufficiently committed to be included in the transport modelling defined Do-Minimum (without scheme) and hence the Do-Something (with scheme) scenarios.

5.83 TS confirms that the transport model takes account of planned developments through planning data provided by The Highland Council and based on the current Local Development Plans, and therefore includes Tornagrain in terms of an employment site and housing development, and the Inverness Airport Business Park. TS confirms that the transport model has also taken account of multi-modal infrastructure such as the New Rail Station at Dalcross and the Inverness West Link Road.

5.84 TS explains that ES Chapter 19 (CD005) presents details of the cumulative impacts associated with the proposed scheme and traffic generation relating to the above developments.

5.85 TS confirms that the proposed scheme incorporates noise mitigation in the form of LNRS and, where necessary, receptor-specific noise mitigation (e.g. close boarded fencing). TS argues that careful consideration has been given to where additional receptor-specific mitigation should be offered, and the form that it should take.

5.86 TS confirms a noise mitigation strategy (ES paragraphs 8.2.24 to 8.2.34 – CD005) for the proposed scheme has been developed and based on the DMRB HD213/11 (CD049.19) and WHO guidance (CD090 and CD091). It confirms that, taking into account the above guidance, additional, receptor-specific noise mitigation is considered where the significance of impact at a receptor is predicted to be:

- Slight/Moderate adverse or worse, which for high noise sensitive receptors equates to at least a 1 dB noise level increase in the short term (the year of opening), and/or at least a 3 dB in the long term (typically within 15 years of the scheme opening) and, in addition, the predicted ground floor façade noise level exceeds 59.5 dB LA10,18h.
- Slight/Moderate adverse or worse, in the long-term with a predicted noise level that exceeds 55 dB Lnight,outside.

5.87 TS confirms that the predicted noise levels at Woodend House, in accordance with the DMRB guidance (CD049.19), are reported for noise levels and significance of noise impacts relating to the predicted ‘least beneficial’ impacts at the dwelling for each scenario comparison i.e., where the greatest adverse noise level change would occur. TS summarises these in REP/068 response dated 31 July 2017 Table 1 (reproduced below):

REP/068 response Table 1: Predicted DMRB Noise Levels and Significance of Impacts at Woodend House

Scenario	LA10,18hr DMB Noise Level (dB)	LA10,18hr Scenario Comparison Noise Level (dB)	Noise Level Difference (dB)	Significance of Impact
DMB vs DSB	41.6	48.0	6.4	Large/Very Large Adverse
DMB vs DMF	42.2	43.4	1.2	Slight Adverse
DMB vs DSF	41.6	48.9	7.3	Moderate/Large Adverse

Baseline Year is the year of opening (for assessment purposes).
 Future Year is fifteen years after the Baseline Year.
 Do-Minimum describes the situation without the proposed scheme.
 Do-Something is with the proposed scheme in place.

Baseline Year Do-Minimum vs Baseline Do-Something (DMB vs DSB)
 Baseline Year Do-Minimum vs Future Year Do-Minimum (DMB v DMF)
 Baseline Year Do-Minimum vs Future Year Do Something (DMB v DSF)

5.88 Based on REP/068 response Table 1 (above) TS argues that the Large/Very Large Adverse noise impacts are predicted to occur at the dwelling in the year of opening, reducing to Moderate/Large Adverse by the future year.

5.89 In order to determine if receptor-specific noise mitigation is recommended for a dwelling, TS confirms that it is also necessary to calculate the highest noise level around the outside of the dwelling (the ‘noisiest point’) to see if it exceeds the 59.5 dB LA10,18h noise level threshold. TS explains that this ‘noisiest point’ around a dwelling may be in a different location to the ‘least beneficial’ receptor point around the dwelling.

5.90 TS’s response to REP/068 (dated 31 July 2017) Figure 1 identifies the predicted noisiest point at the Woodend House using the triangular ‘point’ symbol. Based on noise levels for the Do-Something scenarios (Baseline and Future years), TS confirms that the

absolute noise levels would remain up to 4.9 dB below the noise mitigation threshold. TS shows this in its response to REP/068 Table 2 (reproduced below).

REP/068 response Table 2: Noise Levels and Significance of Impacts at the Noisiest Woodend House Receptor Point

Woodend House	
Scenario	Noise Level LA10,18h dB
Baseline Year: Do Minimum (2021) [DMB]	51.6
Baseline Year: Do Something (2021) [DSB]	53.8
Future Year: Do Minimum (2036) [DMF]	51.8
Future Year: Do Something (2036) [DSF]	54.6
Scenario	Noise Level difference (dB)
DMB vs DSB	2.2
DMB vs DMF	0.2
DMB vs DSF	3.0

5.91 TS concludes that, based on the noise mitigation strategy and the predicted noise levels at Woodend House, receptor-specific noise mitigation at this property would not be required over and above that which is incorporated in the design of the proposed scheme (which includes LNRS).

5.92 With regards to LNRS, TS states that, the actual surface type has not yet been specified and, as such, in accordance with DMRB the accepted surface correction of - 3.5 dB was adopted for the noise assessment. TS contends that, since the LNRS for the proposed scheme is yet to be specified it is not possible to say what the aggregate size would be. However, it explains, the noise reduction achieved in the final design, following the appointment of a contractor, would be required to comply with the -3.5dB road surface correction.

5.93 TS accepts that the road surface may deteriorate over time, with regard to noise. However, TS explains that the assumption is that the road would be repaired and therefore the predicted road traffic noise levels should remain consistent with the prediction methodology. TS also explains that future maintenance of the dual carriageway would be carried out by the trunk road Operating Company who would be appointed by TS to provide network management and maintenance activities on its behalf.

5.94 TS also confirms that Woodend House, even without LNRS, would experience predicted noise levels that would remain below the LA10,18h 59.5 dB noise mitigation threshold.

5.95 TS argues that acoustic screening benefits, across the proposed scheme, may also arise as a consequence of the natural landform through which the road passes, or as a consequence of screening that has been provided, for example, to mitigate visual impacts. In the vicinity of Woodend House, TS argues that the proposed scheme is not screened by cuttings, as a result of the natural landform, nor have bunds been provided for visual purposes. It confirms that bunding is not proposed adjacent to the road as it passes near to Woodend House.

5.96 TS confirms that:

- typically, only dense vegetation would provide a perceptible reduction in noise.
- land has only been proposed for purchase for the proposed scheme if it is deemed necessary for construction of the proposed scheme and essential environmental mitigation that has been identified in [ES Figure 9.5g \(CD007\)](#).

- the retention of existing woodland vegetation where the proposed scheme passes through Tornagrain Wood would provide some visual screening of the proposed scheme for Woodend House.

Findings of Fact

5.97 TS understands Mr and Mrs Smith to be no longer at the previous address but the evidence does not suggest their concerns to have been withdrawn.

5.98 Mr and Mrs Smith's contention appears to question the assumptions and reporting of the noise assessment. For clarity we note that two separate exercises were undertaken; firstly, the baseline monitoring exercise as noted in ES Section 8.3 (CD005). The baseline exercise helped TS understand the environment as it currently is. The subsequent DMRB noise assessment used computer modelled noise based on the calculation of road traffic noise (CRTN) (CD084).

5.99 The UK Noise Association Report (2009) is not before us, however, neither party disputes its contents or the quote provided. The issue appears to be whether it justifies Mr and Mrs Smith's contention that L_{Amax} noise levels need to be presented.

5.100 The quote also appears to reinforce TS's argument that peak noise is not the only factor when considering road traffic noise. Approaching vehicles can often be heard on approach and become more audible before passing and becoming less audible as they move further away. We therefore agree with TS that road traffic noise associated with passing vehicles is not instantaneous. This does not suggest a sudden or sharp peak, rather a more gradual increase to a peak followed by a subsequent decrease.

5.101 In any event, having considered WHO guidance (1999) (CD090) and WHO Night Noise Guidelines (2009) (CD091) we accept that it is not peak noise alone that would result in sleep disturbance and that a broader consideration of traffic noise would be necessary.

5.102 This suggests that the L_{Amax} value, at least on its own, would be of little relevance to the noise assessment since it measures peak noise, in particular from a sudden noise. The noise assessment has been based on the empirical evidence presented in CRTN (CD084), which uses the $L_{A10,18h}$ noise metric.

5.103 We recognise the importance of distinguishing between different metrics and not using them interchangeably or inappropriately. Doing so would be like interchangeably using inches and centimetres. We note that TS is willing to provide L_{Amax} information to Mr and Mrs Smith but we agree, based on the above factors, that it may not offer any helpful information for determining sleep disturbance, given the conclusions in WHO Night Noise Guidelines (2009) (CD091) quoted by TS.

5.104 The noise assessment has been informed by traffic volumes predicted by the Moray Firth Transport Model (MFTM). The MFTM has been constructed using various information including that of existing activity and committed development. We accept that TS has liaised with The Highland Council on this matter and that the noise assessment therefore considers noise from traffic associated with proposed and anticipated development including Tornagrain, Inverness Airport and Business Park, development planned in Nairn and Inverness and the proposed new train station at Inverness Airport, amongst other things.

5.105 For clarity rail improvements and activities at Inverness Airport do not form part of the proposed scheme and it is not the role of TS, as promoter, to resolve issues relating to those noise sources. Instead it recognises the associated, predicted traffic generation and predicts the noise impact of this on the proposed scheme using empirical assumptions about traffic volumes and flows. This does not appear to be deficient.

5.106 TS has presented the noise assessment for Woodend House in its response to REP/068 Tables 1 and 2 for the least beneficial and noisiest receptor points respectively. In both instances the short-term noise level change would be above 1 dB and so perceptible according to DMRB HD213/11 paragraph 3.37 (CD049.19). Long-term changes in predicted noise levels would be imperceptible for the noisiest receptor (REP/068 response Table 2) and above 3 dB (perceptible) for the least beneficial receptor (REP/068 response Table 1).

5.107 However, in both instances the absolute noise levels would remain below the 59.5 dB $L_{A10,18h}$ threshold. The ES mitigation strategy (ES paragraphs 8.2.24 to 8.2.34 – CD005) states that both the increase in noise level and the absolute noise level must exceed the respective thresholds for mitigation to be provided. This is not the case and the evidence does not suggest that unacceptable noise effects would arise or the need for receptor-specific mitigation, besides that already designed into the proposed scheme or proposed and covered by the noise assessment.

5.108 We note that LNRS would be incorporated into the proposed scheme and that appropriate correction factors have been assumed to reflect wear and tear, and, also that a maintenance regime would be in place. Such a regime would retain the noise suppression characteristics of the LNRS. Since this is a design feature covered in the ES its provision would form part of the construction contract and thus be binding on the contractor. An independent inspection regime would hold the contractor to account to ensure that the appropriate work has been carried out to the appropriate standards. We do not consider long-term issues of maintenance to be matters for this inquiry.

5.109 ES Figure 9.5g (CD007) and DMRB Stage 3 Scheme Assessment Report Figure 3.1g (CD009) confirms that the proposed scheme would be almost at grade as it passes Woodend House. ES Figure 9.5g (CD007) shows that a significant section of Tornagrain Wood and proposed planting along the north side of the proposed scheme would provide visual screening. However, we note that vegetation is only considered to have perceptible noise screening benefits if it is very dense and many metres deep. Whilst the depth and density of woodland here may offer some acoustic benefits the evidence does not allow us to quantify this and we defer to the findings of the noise assessment reported above, which excludes any considerations of vegetation in noise terms.

5.110 The evidence does not suggest that the noise assessment has been carried out incorrectly or that it has reached erroneous conclusions. It does not suggest that additional mitigation would be necessary.

Overall

5.111 The concerns raised would either not form part of the proposed scheme, would not arise or would be avoided by the proposed scheme. The evidence suggests that whilst there would be some residual impacts / effects these would not require additional mitigation and would not override the public interest in providing the proposed scheme. Therefore

there is no reason for us to recommend that Scottish Ministers modify the draft Orders or refuse to confirm them.

OBJ/064 Ms Norma Duncan

Objector

5.112 OBJ/064 Ms Norma Duncan is a resident of Culloden. Only the matters raised by Ms Duncan that relate to wildlife at Tornagrain Woods are considered below. Her objections relating to the locality of Culloden are considered separately in Chapter 4: Smithton, Culloden, Balloch, Allanfeearn and the Hedges.

Objection

5.113 Ms Duncan objects to the ecological impact of the proposed scheme on Tornagrain Wood. She considers that there is no mention of protection for red squirrels and no mention of how many bat boxes are proposed, given the loss of habitat through forest removal. She also argues that badgers are territorial and that they would not move but would instead die.

5.114 Ms Duncan argues that the proposed habitats, biodiversity and ecology mitigation at Tornagrain Woods is insufficient as the proposed route cuts through a mature woodland. Mature trees, she argues, would take a long time to grow. She also argues that fencing would not deter weasels like the pine marten and that deer would jump fences and would find breaks when it is not properly managed.

Transport Scotland's Response

5.115 TS does not accept that the mitigation provision is either minimalist or insufficient. It argues that:

- the ecological surveys and impact assessment have been undertaken by professionally qualified ecologists in accordance with ecological best practice standards as endorsed by the Chartered Institute of Ecology and Environmental Management and in-line with the [Town and Country Planning \(Environmental Impact Assessment\) \(Scotland\) Regulations 2011](#) (CD026).
- SNH was consulted regarding the scope and methods used to understand the nature conservation interests potentially affected by the proposed scheme.
- the approach to mitigation was also agreed through ongoing consultation with SNH.
- detailed survey data was used as the ecological baseline, providing an understanding of the ecological implications from the proposed scheme.
- this informed the design and, where woodland couldn't be avoided, enabled mitigation to be appropriately designed at Tornagrain Wood and other woodland areas.
- the proposed scheme's impacts were then re-assessed with the mitigation in place and any residual impacts reported in the [ES Chapter 11](#) (CD005).

5.116 As an example, TS argues that, new woodland planting to replace habitat that would be lost is proposed at a minimum of a 1:1 ratio. It also argues that the species mixes are proposed to reflect native woodland types, replacing non-native plantations.

5.117 TS recognises that mature woodland habitat takes time to develop and, as such, it notes this as a negative residual impact in the medium-term, due to potential habitat

severance. However, TS contends that, this would only be temporary since, once the cover is established, habitats and woodland corridors would connect currently fragmented woodlands. This, it argues, would mitigate any residual impact of the proposed scheme to 'Minor significance' as indicated in ES Chapter 11.

5.118 TS argues that woodland habitat across the whole proposed scheme was assessed for its importance to bats. TS argues that to mitigate for the loss of roost sites and the loss and fragmentation of commuting habitat, bat boxes have been provided, depending on the importance of the woodland being lost, at 17 sites. TS explains that the number and location of bat boxes proposed is identified in [ES Figure 9.5](#) (CD007).

5.119 TS also proposes the provision of mammal-deterrent fencing along the stretches of the proposed scheme within Tornagrain Wood to prevent mammals accessing the dual carriageway. The fencing, TS argues, is designed to guide animals to safe crossing points including dry mammal underpasses and culverts, which, TS states, have been shown to be utilised by badger, bats, red squirrel and pine marten. TS explains that the extent of mammal fencing is illustrated ES Figure 9.5 (CD007).

5.120 TS explains that surveys were carried out to understand the usage of the area by badgers and this data was used to determine the most suitable locations for mammal fencing and dry mammal underpasses. TS argues that the information was also utilised during the iterative design process and used to avoid important setts where possible, including one at Tornagrain Wood.

5.121 TS argues that, as indicated within [ES Chapter 20](#) 'Schedule of Environmental Commitments' (CD007), a full series of Species Protection Plans including, but not limited to, bats, otter, badger, pine marten and red squirrel would be produced as part of the construction environmental management plan (CEMP). These, it argues, would detail the environmental commitments identified within the ES where applicable and would be required to be adopted and delivered by the appointed contractor so that mitigation strategies necessary for safeguarding protected species are implemented. TS explains that the contractor would be informed by the information within the ES and by information collected before and during construction so that the information on a species' activity is as up to date as possible.

5.122 TS considers deer separately. It argues that an initial assessment did not indicate that the animals were a significant cause of road traffic accidents in the area. TS argues, however, that, as stated within ES Chapter 20 'Schedule of Environmental Commitments' (CD005), the appointed contractor 'shall be required to undertake a deer collision risk assessment', in compliance with TS's strategic deer management planning and the operating company deer management plan.

Findings of Fact

5.123 We find that the evidence does not suggest we should doubt the assessment process or conclusions set out in [ES chapter 11](#) (CD005) regarding the impacts or effects of the proposed scheme on habitats and biodiversity.

5.124 [ES Figures 9.5g and 9.5h](#) (CD007) show that the proposed scheme would pass through Tornagrain Wood. As a consequence we note that this would be likely to have some effect on habitats and the species that use them. We note that TS liaised with SNH,

both prior to, and during its investigation of potential effects and that SNH had the opportunity to comment on the draft Orders and ES. We attach weight to the fact that SNH has not objected (TS266).

5.125 ES Figures 9.5g and 9.5h (CD007) show proposed habitat planting and other measures, such as mammal deterrent fencing, dry mammal underpasses and culverts. We also note the proposed areas of mixed woodland planting in Tornagrain woods and the two proposed bat box locations in the wood, each for five bat boxes shown on ES Figure 9.5g (CD007). These features indicate that habitats and species (not only protected species) including bats and red squirrels have formed part of the consideration and design of the proposed scheme. This being so, a contractor would be obliged to provide these as part of the delivery of the proposed scheme.

5.126 ES Confidential Appendix A11.1 (CD006) covers badgers and otters. Whilst we are not permitted to express the details of locations from this confidential appendix, we note that mitigation measures have been considered and related appropriately to the confidential findings of Appendix A11.1 (CD006). This is expressed by [ES paragraph 11.7.4](#) (CD005).

5.127 [ES Chapter 20](#) (CD005) includes appropriate mitigation measures including:

- Mitigation Item E2 – Species Protection Plans, which also forms part of Mitigation Item GR1 for the CEMP.
- Mitigation Items L9 and L11, which require the planting of predominantly native and locally prevalent tree and plant species. These are listed in Item L17.
- Mitigation Item L23 specifically covers Tornagrain Woods LLCA and includes replacement of lost AWI woodland.
- Mitigation Item E1 requires the contractor to appoint an ecological clerk of works who is suitably qualified to supervise the construction works and undertake pre-construction surveys for protected species. It would also be their role to undertake auditing of contractual obligations with regard to ecological safeguarding and ecological mitigation requirements.
- Mitigation Item E3 requires Habitats Management Plans (HMPs) to be prepared as part of the CEMP and to include Mitigation Items E5 to E21, which cover a variety of matters relating to safeguarding and providing for flora and fauna such as those mitigation measures highlighted in [ES Figure 9.6g](#) (CD007) and referred to above.

5.128 We are persuaded that consideration of species and habitats has formed a significant part of the design of the proposed scheme and this is evident from ES Figure 9.5 (CD007) and ES Chapter 20 (CD005). The consideration and designing-in of these measures and specific identification of them as environmental commitments, obliges any contractor to deliver these as part of the proposed scheme. The CEMP and the ecological clerk of works provide for an independent inspection regime that would require the contractor to adhere to these requirements and to demonstrate that these, and matters arising, had been satisfactorily considered, prioritised and delivered.

5.129 We note the conclusions reached in [ES paragraphs 11.7.3 and 11.7.5](#) (CD005) that there are no significant long-term major or moderate negative residual impacts on features expected, following successful implementation of the proposed mitigation measures. We therefore find that the concerns raised by Ms Duncan would be considered and resolved, in so far as is possible, by the proposed scheme. We also note that the reintroduction of native species may also result in some additional biodiversity benefits that may not have been realised were the proposed scheme not to proceed.

5.130 We find that TS has considered the impact of deer from the perspective of Deer Vehicle Collisions (DVC) rather than any ecological status. This is explained in [ES paragraphs 11.2.7 bullet 10, 11.2.10, 11.2.17, 11.3.14 and 11.3.15](#) (CD005). [ES Table 11.11](#) (CD005) assesses the risk of deer collisions as negligible. As such, [ES Chapter 20](#) Mitigation Item E23 (CD005) requires the contractor to undertake a deer collision risk assessment and to implement any fencing identified as required. Mitigation Item E23 (CD005) also requires the contractor to repair or replace any deer fencing damaged or removed during construction. This persuades us that adequate consideration has been given to deer in view of the objections raised by Ms Duncan.

Overall

5.131 Overall, we find that the objections and concerns raised by OBJ/064 Ms Norma Duncan would not occur or would either be resolved or avoided by the proposed scheme. The evidence suggests that whilst there would be some residual impacts / effects these would not require additional mitigation and would not override the public interest in providing the proposed scheme. We therefore find no reason to recommend that Scottish Ministers modify the draft Orders or refuse to confirm them.

REP/144 Highland Council (Development and Infrastructure Services)

5.132 REP/144 Highland Council (Development and Infrastructure Services) does not object to the proposed scheme. However, it argues for a grade-separated access prioritising NMUs to promote access between Inverness Airport and Business Park, the proposed Inverness Airport Rail Station and Tornagrain village. This, it suggests, would best meet the provisions of Designing Streets (Scottish Government). Similar matters relating to NMU provision between Balloch and Mid Coul junction are covered separately in Chapter 4: Smithton, Culloden, Balloch, Allanfearn and the Hedges.

Transport Scotland's response

5.133 TS argues that the proposed scheme enables access to and between Inverness Airport and Business Park, the proposed Inverness Airport Rail Station and Tornagrain village for NMUs. It explains that:

- the proposed scheme includes a shared-use (pedestrian and cyclist) path between Mid Coul Junction North Roundabout and the existing Dalcross Road (U5409).
- this link would provide direct access to the future railway station for pedestrians and cyclists.
- the existing Dalcross Road is currently an adopted road, maintained by The Highland Council as local roads authority. A turning head has therefore been included within the design at the point where this road would be severed due to construction of the proposed scheme.
- this existing, adopted road currently provides vehicular access to both sides of the railway from the north side.
- this access route from the north would be unaffected by the proposed scheme.

5.134 TS is content that the proposed at-grade crossing of the eastbound merge slip road at Mid Coul Junction is suitable for this location because of the predicted low traffic volumes and traffic speeds. TS argues that a signalised crossing could be incorporated at a later date should the need arise.

5.135 TS argues there to be practical restrictions on the inclusion of an underpass at this location because it would require the whole junction to be raised to accommodate the 2.7 metre height for a cycle underpass (not including structure). TS argues that additional land is likely to be required to provide the necessary gradients for ramps. Similarly, TS argues that an overbridge would require considerable additional earthworks, additional land take, and potentially impact on the adjacent Inverness Airport.

Findings of Fact

5.136 Our consideration of TS's approach to the NMU shared-use path between Culloden and Mid Coul has been covered in Chapter 4 paragraphs 4.457 to 4.460 of this report. There we concluded that it was rational for TS to propose the shared-use path on the south side of the proposed dual carriageway.

5.137 It is not for TS to resolve the NMU access arrangements for Tornagrain new settlement. However, it is rational and appropriate for TS to design-in solutions to ensure that NMUs can cross the proposed scheme at Mid Coul to access the Inverness Airport and Business Park, the proposed new rail station, Tornagrain new settlement and the proposed NMU shared-use path.

5.138 With regard to accessing Inverness Airport, the proposed railway station and Tornagrain new settlement, [ES Figure 4.1d](#) (CD007) and [draft SRO](#) plan SR7 (CD003) show that NMU routes are proposed through the proposed Mid Coul junction north and south as well as east to west. These show that NMU shared-use path, in parallel with the proposed scheme, is grade-separated including through underpass PS26. The proposed crossing of the northern roundabout of the proposed Mid Coul junction is at grade.

5.139 We note the complexities TS identifies at Mid Coul junction with regard to altering the NMU route as suggested by The Highland Council. The evidence does not suggest we should doubt that this would require additional land. We find that the [draft CPO](#) (CD001) can only be modified to remove land, not to add it. Given that underpasses and other facilities at Mid Coul junction would require additional land a new CPO would be needed. As such, this would require additional assessment, consultation, inquiry and confirmation with associated time delays. The evidence does not suggest that it is essential since the proposed arrangement could deliver a safe and effective NMU network, as is sought by the council. There is no reason for us to doubt TS's suggestion that a signalised crossing could be introduced at a later date if necessary.

5.140 We find that the proposed Mid Coul junction would be permeable for NMUs and that this would enable and support access between Tornagrain new settlement, the proposed NMU shared use path on the south side of the proposed scheme and Inverness Airport, Inverness Airport Business Park and the location of the proposed new rail station. We note that other junctions on the proposed scheme include similar at-grade crossings. The provision of NMU routes outwith the proposed scheme is not a matter for TS or for this inquiry.

Overall

5.141 Overall, we find that REP/144 Highland Council (Development and Infrastructure Services) concerns would be avoided and/or overcome by the proposed scheme as designed. The evidence suggests that, whilst there would be some residual impacts /

effects these would not require additional mitigation and would not override the public interest in providing the proposed scheme. We therefore find no reason to recommend that Scottish Ministers modify the draft Orders or refuse to confirm them.

OBJ/082 Mr William Rose

Objector

5.142 OBJ/082 Mr William Rose runs an organic farm business called Mid Coul Farms based at Culblair Farm. According to [TS's Agricultural Assessment Report](#) (TS215) page 40, Mid Coul Farms is made up of three owned holdings (Gollanfield, Culblair Steading and part of Flemington Farm) and several rented holdings (part of Flemington Farm, Mid Coul, Castle Stuart, Balmachree, Morayhill, Newton of Petty and Wester Kerrowgair) totalling to 1,214 hectares of farmed land. The farm is organically run as an arable (vegetables, cereals, spring barley, spring oats and spring wheat) and livestock (wintering hogs, breeding ewes and store finished cattle) unit. Mid Coul Farms also owns two anaerobic digesters which generate 3 megawatts of energy and produce 60,000 cubic metres of digestate (used as fertiliser).

Objections

Business impact

-Agricultural assessment

5.143 Mr Rose argues that the proposed scheme cuts through the middle of his most important arable fields; used for a 'highly specialised' organic root vegetable business. He argues, this would render many of the remaining fields significantly less useful for cropping, particularly for vegetables, which he argues, require highly specialised machinery and larger areas to maximise economies of scale. At Inquiry Session 5 Mr Rose argued that, although he would lose 5% of the land, approximately 100 hectares would be lost or compromised which is, he argues, equivalent to 12% to 15%.

5.144 He argues that this would result in:

- reduced agricultural output.
- reductions in associated agricultural subsidies.
- reduced income base.
- increased cost base per remaining acre.
- added costs of travel, fencing and construction disruption.

5.145 He also contends that alternative organic certified land cannot be found in the area.

5.146 He argues that the assessment conclusion of 'neutral' appears to be based on land take but not that the impact would be on high-value crops, affecting other parts of the business. Mr Rose considers that these challenges and associated uncertainties make planning ahead difficult. As such, he argues that the assessment of 'neutral' impact on his business is misleading. He seeks a change in the agricultural assessment conclusion in the ES from 'neutral' to 'adverse'.

-Proposed acquisition of Plots 503 and 603

5.147 Mr Rose specifically objects to the proposed acquisition of Plots 503 and 603 ([draft CPO](#) Sheets 5 and 6 of 23 – CD001), which he considers to be excessive.

-Proposed acquisition of Plot 1207 for quarry access road

5.148 Mr Rose opposes the proposed acquisition of Plot 1207 (replacement quarry access) (draft CPO sheet 12 of 23 – CD001). He states that he currently controls the full length of the quarry access road and that the current quarry operator presently has no security of access and that at the end of the agreement the road would cease to be used for this purpose and would revert back to Mr Rose. He argues that he may choose at that point to reinstate the land and, without compulsory purchase, would have full control over any future decisions. As such he asks why this replacement track could not be built by agreement instead.

-Land severance and access

5.149 Mr Rose considers that there is insufficient information about:

- the proposed access mitigation for the severed area south of the proposed new dual carriageway at Morayston.
- access to land north of plot 907 (draft CPO sheet 9 of 23 – CD001).
- how severed land would be accessed during the construction phase since timing is critical to his organic vegetable crop business.

-Drainage and irrigation

5.150 Mr Rose objects to what he considers to be the absence of detail on how field drains on retained land would be tied-in where severed by the proposed scheme. Mr Rose argues that TS's delegating responsibility for detailed design of mitigation and accommodation works to an appointed contractor shows a lack of mechanism for control or recourse. As such he considers that this approach lacks an opportunity for objectors to influence or to appeal the design and quality of implementation.

Impacts on residential property interests

-Landscape and visual Impacts

5.151 Mr Rose argues that the proximity of the new dual carriageway to Culblair Farm would bring adverse landscape and visual impacts.

-Air quality

5.152 Mr Rose argues that the proximity of the new dual carriageway to Culblair Farm would bring adverse air quality impacts.

-Noise and vibration

5.153 Mr Rose argues that:

- the proximity of the new dual carriageway to Culblair Farm would bring adverse noise and vibration impacts.
- noise has been computer modelled and that there are no details on final design and the impact of its noise.
- excessively high thresholds have been set for considering mitigation.
- post-construction monitoring is required.

Transport Scotland's Response

Business impact

-Agricultural assessment

5.154 TS confirms that the proposed land take from land farmed by Mid Coul Farms is reported in [ES Appendix A15.7](#) (CD006) as 59.38 hectares (5% of the total farmed area), from within 20 fields and one parcel of scrubland. TS expects severance of six of the fields as detailed in ES Appendix A15.7 (CD006).

5.155 TS explains that:

- an agricultural assessment has been completed for the land farmed by Mr Rose in accordance with [DMRB Volume 11, Section 3, Part 6, Land Use](#) (CD049.18).
- the assessment (described in [ES paragraphs 15.3.59 to 15.3.63](#) - CD005) considers the impact of the proposed scheme on likely future farm business viability.
- the significance of impact is based on land-take, land quality (based on the Land Capability for Agriculture), severance and other criteria detailed in the methodology in [ES Tables 15.7, 15.8 and 15.9](#) (CD005).

5.156 TS confirms that [ES Appendix A15.6](#) (CD006) recognises the 'highly specialised organic business' as a land interest with a 'high sensitivity'. As such TS argues that the magnitude of impact pre-mitigation would be 'High'. Following implementation of proposed mitigation measures, including the PS23 (Morayston Farm Access Underpass) and vehicular crossing of the Rough Burn, TS contends that this would reduce to 'medium'. Overall, therefore TS argues that a 'Moderate/Substantial' residual significance of impact has been assessed for Mid Coul Farms Ltd.

5.157 TS confirms that the assessment of likely future farm business viability is assessed as 'Neutral' (not significant) in ES Appendix A15.7 (CD006) based on the assessment criteria described in the [ES paragraph 15.3.61](#) (CD005):

'Neutral Impact - the farm business is affected by the land-take or change in access requirements of the proposed scheme, and this may result in a reduction or restructuring of its activities. However, this does not compromise the likely future viability of the farm business and it is likely to be able to continue trading, albeit after some restructuring of its operations.'

5.158 TS confirms that the assessment of the impacts of the proposed scheme on the agricultural business includes mitigation to reduce the impacts on agricultural land and agricultural operations. It argues that the agriculture-related mitigation proposed is detailed in [ES paragraphs 15.6.15 to 15.6.19 and Table 15.23](#) (CD005).

-Proposed acquisition of Plots 503 and 603

5.159 TS confirms that land has only been included in the [draft CPO](#) (CD001) if it is deemed necessary for the construction, operation and maintenance of the proposed scheme.

5.160 TS argues that draft CPO Plot 503 (Sheet 5 of 23 CD001) is required for construction of the proposed scheme and essential environmental mitigation identified in [ES Figure 9.5e](#) (CD007), as follows:

- land for (SuDS) ponds - including sufficient land for construction of the ponds and the management of run off during construction, and mitigation planting to screen views, reflect landscape character as well as provide continuation of ecological habitats.
- planting of riparian woodland alongside Newton Burn and the proposed SuDS ponds to aid integration with surroundings and to provide habitat and promote biodiversity.
- the embankments within Plot 503 would be graded (to 1 in 4) to integrate them into the existing surrounding landform and to assist in reducing visual impacts on properties.

5.161 TS argues that draft CPO Plot 603 (Sheet 6 of 23 – CD001) is required for:

- construction of the proposed scheme, including NMU shared path, an alternative access to High Wood (new means of access 356 on draft SRO Plan SR6 - CD003) and SuDS ponds, including sufficient land to enable construction of the ponds.
- to provide environmental mitigation ([ES Figure 9.5f](#) – CD007) – including mitigation planting (hedges and mixed woodland) to screen views of the dual carriageway from Kerrowaird and Kerrowaird cottages and reflect landscape character, as well as to provide continuation of ecological habitats.
- scrub woodland to integrate the underbridge with the surrounding landscape and to soften the view of the embankments.

5.162 TS explains that if, following construction of the proposed scheme, any parts of Plots 503 or 603 are deemed surplus to requirements, then Scottish Ministers may offer to sell this land back to the landowner, Moray Estates Development Company Limited.

-Proposed acquisition of Plot 1207 for quarry access road

5.163 TS argues that compulsory purchase of plot 1207 is the only way to provide sufficient certainty that the replacement quarry access track can be built, and that current access rights for the occupier of the quarry are preserved following construction of the proposed scheme.

5.164 TS confirms that:

- this land would be offered back to Mr Rose following construction of the proposed scheme with suitable burdens in place to protect the access rights of the quarry occupier.
- this assumes that the quarry remains operational and there is still a need for the track when it comes to construction of the proposed scheme.

-Severance, access and boundary treatments

5.165 TS confirms that, with respect to fencing, ES Mitigation Item CP-AG7 (boundary features) has been incorporated into the assessment of impact ([ES Table 15.23](#) – CD005), which states:

‘Where boundary features (e.g. fences, walls and hedges) require temporary or permanent alteration to allow construction, these would be reinstated with appropriate materials to provide a secure field boundary, with opportunities explored in consultation with the landowner/occupier to merge severed field areas to improve field husbandry operations through the creation of more manageable field sizes and shapes.’

5.166 TS confirms that:

- boundary fencing could be installed, in agreement with Mr Rose.
- accommodation works would form part of the build contract.

- it would be owned and maintained by Mr Rose, as the landowner (or by the landowner for land where Mr Rose is the tenant).
- future costs of maintaining any new fences could form part of a claim for compensation subject to the District Valuer's assessment.
- TS's design consultant, Jacobs, would discuss Mr Rose's preferences in regard to fencing specifications during forthcoming accommodation works consultations.

5.167 TS argues that Mitigation Item CP-AG8 (ES Table 15.23 – CD005) would address access to severed land during construction and has been incorporated into the assessment. TS explains that CP-AG8 states:

'Where access points require temporary or permanent alteration as a result of construction, alternative access for stock and machinery shall be provided, as appropriate, in consultation with the landowners/occupier. If required, recessed access shall be provided from local roads.'

5.168 TS argues that this mitigation item has been identified as being required for Mid Coull Farms Ltd in [ES Appendix A15.7](#) (CD006).

5.169 TS confirms that the proposed scheme includes specific mitigation for Mid Coull Farms in recognition of the impacts of the proposed scheme on land farmed by the business. This includes provision of the PS23 Morayston Farm Access Underpass (Ch6750), providing north-south connectivity within the fields to the south of Newton of Petty, as shown on [ES Figure 4.1c](#) (CD007). TS also confirms that a culvert would be provided at Rough Burn (Ch7550), to allow east-west connectivity for vehicles within the fields to the south of the proposed scheme in the vicinity of Morayston House.

5.170 TS also identifies potential mitigation to reduce the impacts of the proposed scheme arising from awkward field shapes and sizes; including the opportunity to merge severed field areas with adjacent fields to create more manageable field sizes and shapes. TS identifies four such opportunities in ES Appendix A15.7 (pages A15.7- 10 to A15.7-14).

5.171 TS confirms that access to the parcel of land between plot 907 and the railway line at Culblair (Field 557/1 north – [ES Figure 15.6e](#) – CD007) would be provided for the landowner, Moray Estates Development Company, via a narrow strip that would run parallel to, and alongside, the railway line. TS explains that the landowner would access this land from the east, via their Milton of Gollanfield property, which Mr Rose does not currently tenant.

5.172 TS considers that Mr Rose may wish to negotiate use of this access with the landowner but recognises that, in the absence of such an agreement, this parcel of land may no longer be accessible by Mr Rose. TS contends that:

- any costs arising for Mr Rose as a result of this proposal could form part of a claim for compensation.
- this would be subject to the District Valuer's assessment, as detailed in Transport Scotland's [Guidance on the Compulsory Purchase Process and Compensation](#) (CD046).

5.173 With regard to the proposed accesses and access tracks that would be provided, TS confirms that:

- these have been designed to an appropriate standard for their proposed use and would be of at least the same standard as existing accesses and tracks.
- the designs prepared to date are outline designs, developed in sufficient detail for preparing the ES and publishing the draft orders.
- the final detailed design of all aspects of the proposed scheme, including farm and field accesses would be carried out closer to the time of construction.
- it is expected that this detailed design would be the responsibility of the design and build contractor.
- there would be further consultation with Mr Rose prior to completion of the detailed design.

5.174 TS notes Mr Rose's concern in relation to maintaining access along the farm track to Culblair Farm during and after construction, and across his farming operations in general.

TS confirms that:

- detailed proposals of the works required during the construction period would be identified by the appointed contractor.
- the appointed contractor would determine the road construction sequence.
- it would be a condition of the contract for the works that safe and appropriate access is maintained to property at all times.
- the existing track has been included within the [draft CPO](#) (Plot 906 shown on CPO sheet 9 of 23 – CD001), as it would be affected by the construction works required for the proposed Mid Coul Junction.
- an alternative permanent access to Culblair Farm would be provided via new means of access 365 ([draft SRO](#) Plan SR7 – CD003).
- as this track would also provide access to proposed SuDS ponds, it would remain in the ownership of the Scottish Ministers following completion of the proposed scheme.
- the Scottish Ministers would maintain these New Means of Access in line with their obligations as landowner.
- as the Trunk Road Authority, Scottish Ministers do not grant servitude rights of access across trunk road land. However, on behalf of the Scottish Ministers, TS confirms that Mr Rose, and other affected property owners, would be permitted to use this track in perpetuity, unless and until other arrangements are put in place through due process.

-Drainage and irrigation

5.175 TS confirms that [ES Table 15.23](#) (CD005) includes Mitigation Item CP-AG10 specifically to address impacts on field drainage for Mr Rose, which states:

'Particular care shall be taken to reduce damage or disturbance to field and forestry drainage systems. Laying of new drains would be undertaken to maintain drainage systems during construction. Repairing and reinstatement of field drains affected by construction shall be agreed with the landowner/occupier to ensure that land capability is maintained and flooding is not exacerbated. Where appropriate, the integrity of the drainage system would be secured in advance through the installation of header drains (cut off drains) to facilitate construction. All remaining remedial works shall be undertaken post-construction.'

5.176 TS currently expects that the detailed design of new/modified drainage arrangements would be the responsibility of the design and build contractor. However, TS anticipates that:

- the existing field drains within Mr Rose's land would be connected into new pre-earthworks ditches (PED).
- any existing land drainage within Gollanfield Farm (P0304) would be intercepted by a PED and conveyed to local watercourses.
- the outfall from the existing pond at Culblair Farm would be conveyed through a new culvert under the proposed dual carriageway.

5.177 With regard to accommodation works, TS confirms that:

- these would be determined in consultation with Mr Rose, and the landowner if they are different, during the preparation of the construction contract documents.
- this would take place following completion of the public local inquiry process, should the proposed scheme be approved.
- the construction contract documents would also specify that where existing field drainage is likely to be affected by the proposed scheme, the contractor would have responsibility for locating and reconnecting the drainage as appropriate.

Impacts on residential property interests

-Landscape and visual Impacts

5.178 TS acknowledges that the proposed scheme would have 'significant adverse' visual effects on properties at Culblair Farm (Receptors 78 and 79) as shown in [ES Figure 10.3c](#) (CD005). It explains that this would be due to the close proximity of the dual carriageway and the introduction of the proposed Mid Coul Junction and overbridge, with associated lighting and signage, which would be likely to cause changes to the existing views from properties around Culblair. TS contends that existing views from most of the properties are already adversely affected by the existing A96 and Inverness Airport during both day and night.

5.179 TS accepts that the proposed scheme effects for properties on the south-western part of Culblair Farm Cottages (Receptor 78 – ES Figure 10.3c - CD007) would be 'Substantial' during the winter in the year of opening due to:

- their close proximity to the proposed Mid Coul Junction; and,
- their generally open views to the proposed dual carriageway, which would be prominent in views towards the Black Isle.

5.180 TS argues that despite the close proximity of Culblair Farmhouse (Receptor 79) to the proposed scheme, the screening provided by the existing mature trees and farm buildings in the foreground would help to limit the initial effects on the properties to 'Moderate' during the winter year of opening.

5.181 TS proposes landscape mitigation measures to reduce both landscape and visual impacts whilst assisting integration with the local landscape character. It explains that [ES Appendices A10.1 and A10.2](#) (CD006) provide detailed information on the application of the specific mitigation measures. TS explains that the landscape and ecological mitigation measures associated with the proposed scheme in the vicinity of Culblair Farm ([ES Figures 9.5h to 9.5i and 9.6e](#) – CD007) would include the following:

- mixed woodland to screen traffic movement, the road corridor and SuDS/detention basin/ponds and to assist screening of Mid Coul Junction.

- riparian woodland around SuDS to aid integration with surroundings.
- in the detailed design stage, a more detailed development of the SuDS design would be progressed to look as natural as possible.
- hedgerow planting along the dual carriageway to reflect landscape character, assist integration and to soften views of the road corridor.

5.182 TS argues that the establishment of woodland mitigation planting by the summer after 15 years would help to reduce residual effects for:

- Culblair Farm Cottages (Receptor 78). However, it explains that the residual effects would be likely to remain 'significant' (Moderate) in summer after 15 years due to their close proximity to the proposed scheme.
- Culblair Farmhouse (Receptor 79) to below 'significant' (Slight/Moderate).

5.183 TS confirms that:

- the proposed dual carriageway would not be lit in the vicinity of Mr Rose's land, except at junctions.
- it is proposed to use low height lighting columns at Mid Coul Junction given its proximity to the airport (with column heights being comparable to those already located at the roundabout location).
- it is proposed to include a focused/directional light beam (no emission above the horizontal) that would be dynamically controlled and 'reactive' to traffic use (i.e. would dim/switch off when traffic is absent).

-Air quality

5.184 TS confirms that it carried out an air quality assessment ([ES Chapter 7](#) - CD005) in accordance with DMRB guidance on Air Quality ([HA 207/07](#) – CD049.14). This included properties within 200 metres of roads affected by the project. Beyond 200 metres, TS explains that a road is not expected to make a significant contribution to pollution at a receptor location and background pollution concentrations (which come from far-away pollution sources) will dictate exposure. TS confirms that the nearest point of the proposed scheme would be approximately 150 metres from the nearest façade of the properties at Culblair Farm.

5.185 TS explains that air quality standards for annual mean concentrations of nitrogen dioxide (NO₂) and particulate matter (PM₁₀ and PM_{2.5}) are 40, 18 and 10 µg/m³ respectively.

5.186 TS argues that the air quality assessment shows that in the opening year, annual mean pollution concentrations at the Culblair Farm properties are expected to be 7-8 µg/m³ for NO₂, 8-9 µg/m³ for PM₁₀, and 5-6 µg/m³ for PM_{2.5}. TS argues that these air pollutant concentrations at the properties at Culblair Farm are assessed to be 'Well Below' (defined as less than 75% of) the respective air quality standards. This, TS concludes, shows that air quality pollutant concentrations at the properties are not predicted to be significant as a result of the proposed scheme.

5.187 TS also confirms that the air quality assessment includes the consideration of construction dust. TS concludes that the implementation of best practice dust mitigation measures during the construction phase (through a construction environmental management plan (CEMP) that would be agreed with the Highland Council), would reduce the impact of dust on surrounding areas, and there would not be a significant effect. TS explains that these mitigation measures are included in [ES Section 7.6](#) and [ES Table 20.1](#) (CD005) and would be developed further at the next stage.

-Noise and vibration

5.188 TS confirms that it carried out a noise assessment in accordance with the DMRB guidance ([HD 213/11](#) – CD049.19), as detailed in [ES Chapter 8](#) (CD005). TS confirms that the southern carriageway of the proposed dual carriageway would be approximately 150 metres from the cottages adjacent to Culblair Farm (1, 2, 3, 4 Culblair Farm Cottages) and Culblair House.

5.189 For the noise assessment, TS confirms that:

- although 4 Culblair Cottage would be exposed to the highest façade noise level, each of the aforementioned dwellings would be exposed to similar noise impacts.
- reported noise levels and significance of noise impacts relate to the predicted ‘least beneficial’ impacts at the dwelling for each scenario comparison, i.e., where there is the greatest adverse noise level change.
- it determined this ‘least beneficial’ noise level change with modelled receptor points positioned within the computer model at 1 metre from every façade of the building.

5.190 In its letter dated 31 July 2017 ([TS082.02](#) Table 1) TS summarises the DMRB assessment noise levels and associated significance of impacts for 4 Culblair Cottage (the least beneficial receptor). This is reproduced below:

TS082.02 Table 1: Predicted DMRB Noise Levels and Significance of Impacts at 4 Culblair Cottage

Scenario	LA10,18hr DMB Noise Level (dB)	LA10,18hr Scenario Comparison Noise Level (dB)	Noise Level Difference (dB)	Significance of Impact
DMB vs DSB	38.7	55.8	17.1	Large/ Very Large Adverse
DMB vs DMF	41.5	42.1	0.6	Slight Adverse
DMB vs DSF	38.7	56.8	18.1	Large/ Very Large Adverse

Notes:

For assessment purposes, the following scenarios have been compared to identify the least beneficial changes with and without the proposed scheme in place:

- Baseline Year Do-Minimum vs Baseline Do-Something (DMB vs DSB)
- Baseline Year Do-Minimum vs Future Year Do-Minimum (DMB v DMF)
- Baseline Year Do-Minimum vs Future Year Do Something (DMB v DSF)

Baseline Year is the assumed year of opening
Future Year is fifteen years after the Baseline Year.

Do-Minimum describes the situation without the proposed scheme.
Do-Something is with the proposed scheme in place.

5.191 TS confirms that TS082.02 Table 1 (above) shows that, with the proposed scheme in place, the predicted change in noise level, and the noise sensitivity of the receptor the significance of the predicted noise impacts would be ‘Large/Very Large Adverse’.

5.192 TS argues that the noise mitigation strategy, outlined in [ES paragraphs 8.2.24 to 8.2.34](#) (CD005), is based guidance offered in the [DMRB HD213/11](#) (CD049.19) and by WHO ([CD090](#) and [CD091](#)). TS summarises the noise mitigation strategy as considering receptor-specific noise mitigation where the significance of impact at a receptor is predicted to be:

- Slight/Moderate adverse or worse, which for high noise sensitive receptors equates to at least a 1 dB noise level increase in the short term (year of opening), and/or at least

a 3 dB in the long term (typically within 15 years of the scheme opening) and, in addition, the predicted ground floor façade noise level exceeds 59.5 dB LA10,18h.

- Slight/Moderate adverse or worse, in the long-term with a predicted noise level that exceeds 55 dB Lnight,outside.

5.193 TS explains that, sometimes, the highest absolute noise level (noisiest point) is predicted at a different receptor point around the dwelling to the point where ‘least beneficial’ change (highest magnitude of noise level change) is measured. With regard to 4 Culblair Cottage, TS confirms that, the predicted noisiest receptor point at the Culblair Farm dwelling is indicated by the triangular ‘point’ shown in [TS082.02](#) Figure 1, based on noise levels for the Do-Something scenarios (Baseline and Future years). A summary of the noise levels and significance of noise impacts at this location is presented in TS082.02 Table 2 (reproduced below):

TS082.02 Table 2: Noise Levels and Significance of Impacts at the Noisiest Receptor Point – Number 4 Culblair Cottage

Scenario	Noise Level LA10,18h dB	
Baseline Year: Do Minimum (2021) [DMB]	47.5	
Baseline Year: Do Something (2021) [DSB]	57.2	
Future Year: Do Minimum (2036) [DMF]	47.8	
Future Year: Do Something (2036) [DSF]	58.2	
Scenario	Noise Level difference (dB)	Significance of Impact
DMB vs DSB	9.7	Large/ Very Large Adverse
DMB vs DMF	0.3	Slight Adverse
DMB vs DSF	10.7	Large/ Very Large Adverse

5.194 TS confirms that TS082.02 Table 2 (above) shows the maximum absolute noise level occurs in the Future Year Do-Something Scenario (i.e. with the proposed scheme in place 15 years after opening). However, TS argues that, this noise level is below the absolute noise mitigation threshold of 59.5 dB LA10,18h and, as such, does not meet the noise mitigation criteria. Therefore, TS does not recommend receptor-specific noise mitigation for this property.

5.195 Since this dwelling would be exposed to the highest predicted noise levels, TS argues that the other properties (2, 3, 4 Culblair Farm Cottages and Culblair House) also do not meet with the noise mitigation criteria. [The reporters assume there is a typographical error by TS in TS082.02 that ‘the other properties’ should refer to 1, 2 and 3 Culblair Farm Cottages since the noisiest point in TS082.02 Figure 1 is at number 4 Culblair Farm Cottages].

5.196 As such, TS argues that noise mitigation has also not been recommended for these dwellings, over and above that which is provided in the proposed scheme design, e.g. LNRS and earthworks such as cuts, bunds and false crests.

Findings of Fact

Business impact

-Agricultural assessment

5.197 [ES Figure 15.6](#) (CD007) shows the proposed route through lands farmed by Mr Rose denoted with the prefixes 558, 557 and 304. [ES Appendix A15.7](#) (CD006) explains that the proposed scheme would result in a loss of 59.38 hectares of land farmed by Mr Rose, equivalent to 5% of the total land he farms. We find no reason to dispute this proportion and find that DMRB Volume 11, Section 3, Part 6: Land Use, paragraph 10.19 (CD049.18) requires the farming impact on the individual farming unit to be considered and included in the ES.

5.198 [ES Figure 15.5](#) (CD007) and ES Appendix A15.7 (CD006) suggest that just over half of the 59.38 hectares of the lands farmed by Mr Rose that is proposed for acquisition in the draft CPO (CD001) is prime quality land. Mr Rose does not dispute this finding.

5.199 [ES Appendix A15.6](#) (CD006) acknowledges that this land is organically farmed and is therefore of 'high' sensitivity. Based on the qualifying criteria in [ES Table 15.7](#) (CD005) we find this to be accurate. Mr Rose does not dispute this.

5.200 At Inquiry session 5, Mr Rose contested the conclusion reached in the agricultural assessment that the impact of the proposed scheme upon farm viability would be 'neutral'. Mr Rose contended that land proposed for acquisition is some of his most productive and that the scale of land take and severance would change his business operations in a way that could not be described as 'neutral'. Although he acknowledges that the sensitivity assessment took account of the land's organic status, he is unsure whether this was properly accounted for in the assessment of the farm's ability to re-structure. He explained the high level of technology and automation involved in the business including the use of autonomously driven vehicles which require regularly shaped fields, and the need for five year organic crop rotation working, which can only use certain land within the holding. These, he argues, are further reasons why adapting to the loss of some of the farm's most valuable and centrally located land may be more difficult than has been assumed.

5.201 TS's agricultural expert explained how he had taken account of the specific characteristics of the land (including details provided by Mr Rose in a farm business questionnaire). He confirmed that the viability assessment was not an assessment of the financial effect on Mr Rose's business (which would be a matter for the District Valuer) but on the continuing ability of the land to support farming.

5.202 [DMRB Volume 11, Section 3, Part 6: Land Use](#) paragraph 6.3 (CD049.18) explains that agricultural assessments should focus on land-take, types of husbandry, severance and major accommodation works for access, water supply and drainage. ES Appendices A15.6 and A15.7 (CD006) do not suggest any failure to consider these matters.

5.203 DMRB paragraph 9.1 (CD049.18) elaborates on the points in paragraph 6.3 (CD049.18). Paragraph 9.1 bullet b) (CD049.18) explains that consideration of:

'Land-take will include land taken directly by a scheme and also land which will no longer be viable for agricultural use, for example, because severance (the splitting of

a holding into more than one part) makes it impossible to farm some land productively’.

5.204 We find that the term ‘viability’ is a reference to whether the land in question could be used for agriculture rather than any reference to profitability of the land within any particular farm business. Therefore, we acknowledge the business issues identified by Mr Rose during Inquiry Session 5. However, we are satisfied the assessment broadly recognises issues facing the agricultural business besides land but that its role is not to consider these in depth or to draw conclusions about cash flows and profitability of various business models.

5.205 DMRB Volume 11, Section 3, Part 6: Land Use paragraphs 10.16 and 10.17 (CD049.18) explain that farm viability as a result of the proposed scheme should be considered and presented in the ES. We find that it is presented in ES Appendix A15.7 (CD006).

5.206 ES Appendix A15.7 (CD006) details the impacts of the proposed scheme on various fields and identifies the total land loss that would arise for Mr Rose’s business. The evidence does not suggest we should doubt these conclusions. Based on this we find that Mr Rose’s business would experience a reduction in the scale of land available of 5%. Although covered in more detail below, we also find that accommodation works and mitigation would provide access to remedy severance and resolve drainage, field boundary and related impacts. We find that these actions would reduce the significance of impact compared with these measures not being discharged.

5.207 Given the observations above we agree with Mr Rose that it would be incorrect to say there would be no impact on his farm business from the proposed scheme. We note the issues with accreditation of organic land and the challenges that this could pose when taking on tenancies of land that is not currently certified for organic crops. We also note that the scale of land loss would effectively reduce the availability of land for crops reliant on those particular localities and that it may not be possible to plant these crops in other parts of the lands Mr Rose farms. Whilst this may have effects on income and business operation, we do not find this to mean that these lands could not be used for agriculture. Therefore we find that farming would remain a viable land use in the sense of the agricultural assessment.

5.208 Mr Rose is not the only objector to highlight concerns with the term ‘neutral’ and any influence that this could have on subsequent claim for compensation. We understand that some parties consider the term ‘neutral’ to represent the status quo. However, we find that [ES paragraph 15.3.61](#) (CD005) is clear that this is not its intended meaning. The definition provided in that paragraph makes clear that the term ‘neutral’ involves change and that this may result in a reduction or restructuring of activities. We also note the definitions of the terms ‘beneficial’ and ‘adverse’ in ES paragraph 15.3.61 (CD005). We find that the definition of ‘neutral’ accurately describes the anticipated impacts on Mr Rose’s farming operations that would result from the proposed scheme and that the terms ‘beneficial’ and ‘adverse’ do not.

5.209 At the Inquiry Mr Rose accepted that the agricultural assessment in [ES Chapter 15](#) (CD005) is an assessment of land use rather than a financial or economic assessment of the farm business.

5.210 During Inquiry Session 5, Mr Rose was concerned that the conclusion of 'neutral' would affect any claim for compensation that he may make. TS argued that the District Valuer would not assess any claim on the basis of the ES but would instead look at the claim itself. TS contended that if a loss was experienced by a business then this would be compensated for. During Inquiry Session 5, Mr Rose also sought early engagement with the District Valuer and TS and contended that TS's refusal to do so was contrary to the spirit of [Circular 6/2011](#) (OBJ/002-3.16).

5.211 However, we find that Circular 6/2011 paragraph 3 (OBJ/002-3.16) makes clear that this circular does not apply for compulsory purchase by Scottish Ministers, as is the case for the proposed scheme. We agree with TS that the proposed scheme is covered by Schedule 1 Part 1 of [The Acquisition of Land \(Authorisation Procedure\) \(Scotland\) Act 1947](#) (CD021).

5.212 Circular 6/2011 paragraph 3 (OBJ/002-3.16) refers to TS's [Guidance on the Compulsory Purchase Process and Compensation](#) (CD046). There paragraphs 3.31 and 3.32 (CD046) explain that advance compensation payments can be made to affected parties through a statutory process, provided that Scottish Ministers have taken ownership of the land. This suggests that TS's approach is logical and reflects the appropriate guidance. Matters of compensation are for the respective parties and the District Valuer. Compensation is not a matter for this inquiry.

-Proposed acquisition of Plots 503 and 603

5.213 [ES Figures 9.5e and 9.5f](#) (CD007), [draft CPO](#) sheets 5 and 6 of 23 (CD001) and [draft SRO](#) Plan SR6 (CD003) show that Plots 503 and 603 are each required for the provision of the proposed scheme including dual carriageway, SuDS ponds, mitigation planting and access tracks. Given the findings of the ES for visual and landscape assessments, amongst other things, we find these to be necessary components of the proposed scheme which justify the proposed acquisition of these plots. As such we do not consider these proposed acquisitions to be excessive.

-Proposed acquisition of Plot 1207 for quarry access road

5.214 At Inquiry Session 5 the purpose of the proposed acquisition of Plot 1207 was clarified. We find that Easter Glackton quarry currently uses an access track running from the quarry westwards on the south side of the existing A96. The track joins the existing C1013 Gollanfield Road linking the quarry to the road network. This access track crosses land owned by Easter Glackton Farm and then land owned by Mr Rose. It is our understanding that the quarry operator has an agreement with both parties to take access over the length of this track that crosses their respective land.

5.215 The proposed scheme would be built on the land currently occupied by the access track. This being so, a new access track is proposed to maintain access to the quarry and would require the acquisition of plot 1207 from Mr Rose and the corresponding plot 1218 from Easter Glackton Farm.

5.216 We find that it would be unreasonable for a currently operational quarry to be left without access to the road network as a result of the proposed scheme. We therefore find that it is reasonable and necessary for TS to put in place a replacement access track. We note Mr Rose's suggestion that he would be willing to provide a new track by agreement. However, while TS confirmed that it did not doubt the sincerity with which Mr Rose promised to reach an agreement with the quarry operator in respect of the new access

route, it confirmed that there has to be absolute certainty that the quarry operator would not be placed in a worse position as a result of the construction of the proposed road (and consequent loss of the existing access) and that this would require the new track to be acquired by Scottish Ministers with an appropriate right of access to the quarry owner. We agree that the proposed compulsory purchase of this plot is required in order to provide the requisite level of certainty and we find the proposed acquisition of this plot to be justified.

5.217 We also note that if the quarry ceased to operate prior to construction then there would be no need for the plot to be acquired. We find that this could be removed from the draft CPO without the need for new orders. Alternatively Scottish Ministers could sell the land back to the current owners following construction, with suitable burdens in place to guarantee quarry access. Neither outcome seems unreasonable.

-Land severance and access

5.218 [ES Appendix A15.7](#) (CD006) identifies the land farmed by Mr Rose as Mid Coul Farms (P0558, P0557 and P0304) on pages A15.7-10 to A15.7-14 (CD006). [ES Figures 15.6b, 15.6c, 15.6d, 15.6e and 15.6f](#) (CD007) show that the proposed scheme would sever various fields farmed by Mr Rose with the prefixes 558, 557 and 304 running west to east.

5.219 Based on ES Appendix A15.7 (CD007) we find that:

- the proposed PS23 Morayston Farm Access Underpass at ch6750 and a vehicular crossing of C09 Rough Burn Culvert (ch7525) would provide access to the southern severed sections of fields 558/9 and 558/7. Internal field gates would then allow access to the southern severed sections of fields 558/3, 558/4, 558/5, 558/11 and 558/10. Provision of a new vehicular crossing over C08 Newton Burn Culvert (ch6320) and a new inter-field access would connect fields 558/3 and 558/2.
- there are opportunities for field merger such as for the severed northern parts of fields 558/1 and 558/2 and a proposed new means of access 350 (draft SRO Plan SR4 – CD003) from the Balmachree Service Road on the western side of field 558/1.
- new means of access 356 and 354 (draft SRO Plan SR6 – CD003) would link the remaining southern section of field 558/12 with the existing A96.
- new means of access 379 and 380 (draft SRO Plan SR11 – CD003) for fields 304/1 and 304/2 respectively would provide access onto the C1013 Gollanfield Road.
- new means of access 382 (draft SRO Plan SR11 – CD003) would provide direct access to field 304/4 off the U1017 Wester Glackton-Balcroy-Kilravock-Cawdor Road.
- boundary and drainage reinstatements/improvements are identified for affected fields.

5.220 We find that these proposed mitigation and accommodation works would provide direct access from the public road network or from within the farm. We find that this would resolve matters of severance and disturbance to fields that would otherwise be apparent from the proposed scheme. We consider proposed drainage measures separately below. TS also confirms in [its closing statement](#) paragraphs 13.43 and 13.44 its willingness to consider further access improvements through accommodation works subject to discussions with the relevant parties.

5.221 Whilst the details of accommodation works are not for this inquiry we note that they are proposed and that, where agreed with Mr Rose, they would form part of the design and build contract. Mitigation items identified in the ES would also form part of the contract. As such the provision and satisfactory resolution of these matters and any other environmental

commitments would be incumbent on the contractor to deliver. We consider contract matters in more detail below.

5.222 We note Mr Rose's concern that field amalgamation may not fully resolve all issues and may result in awkward corners that pose issues for machinery. Were this to be the case then this could form part of any compensation claim for losses that Mr Rose chooses to make. As noted above, compensation is a matter for the District Valuer and not for this Inquiry.

5.223 We also note Mr Rose's concerns about how he would access a swathe of land north of Culblair Farm and north of the proposed scheme Plot 907 (draft CPO sheet 9 of 23 – CD001). We find this plot to be identified in ES Figure 15.6e (CD007) and ES Appendix A15.7 (CD006) as the northern, severed part of field 557/1. We understand Mr Rose's concern to be that he could not access this field without being required to cross land farmed by and/or owned by other parties. The land in question is owned by Moray Estates and tenanted by OBJ/073 Mr Macbean, who raises his own objections about this matter. We consider Mr Macbean's objection separately in paragraphs 5.368 to 5.370 below.

5.224 We note the proposed access track as described in ES Appendix A15.7 (CD006) and shown in ES Figure 15.6e and [ES Figure 4.1d](#) (CD007). In ES Appendix A15.7 (CD006) TS suggests this track and the northern part of field 557/1 would be accessed via development land to the west. However, in its letters dated 31 July 2017 ([TS082.02](#)) and 20 July 2018 ([TS082.03](#)) TS suggests crossing neighbouring farmland to the east which is not owned or farmed by Mr Rose (as noted in the paragraph above).

5.225 At Inquiry Session 5 TS and Mr Rose discussed the possibility of taking access from the proposed Mid Coul junction eastbound slip road. However, TS argued against this on safety and engineering grounds. It explained that new means of access 479 shown on draft SRO Plan SR26 (CD003) is for NMUs only. The evidence does not suggest TS is wrong to rule out access from that direction. However, ES Figure 4.1d (CD007) shows limited opportunities to access this field following construction of the proposed scheme. Similar considerations were also discussed at Inquiry Session 6B for the neighbouring tenant, Mr Macbean, across whose land access would be taken from the east.

5.226 We do not find that the northern part of field 557/1 would be rendered unusable for agriculture since the owner could re-tenant, sell or re-contract to Mr Rose or other operators with the appropriate access agreements over neighbouring land.

5.227 TS considers that Mr Rose is a tenant farmer of field 557/1 however Mr Rose appeared to suggest at Inquiry Session 5 that he was a contract farmer of this land. Whilst we recognise the distinction between these two descriptions it appears to us that Mr Rose's inability to access this land as a result of the proposed scheme would either result in him not being able to fully operate his tenancy or in him not being able to fulfil his obligations under a contract. Taking access to the east or west would require him to negotiate with his landlord/contract issuer and cross their land (where farmed by another tenant). Whilst there is nothing to suggest that this solution is impossible TS acknowledges that Mr Rose may choose to seek compensation. This would be a matter for the District Valuer and not for this Inquiry.

5.228 We note Mr Rose's concerns about access to fields during construction and, in particular, his concerns that this could affect cropping regimes and farm operations, which

can be extremely time-sensitive. TS explains that the timing of works and proposed access arrangements are matters for the contractor but that these must be put in place to guarantee access. We find that this is the case since [ES Table 15.23](#) (CD005) Mitigation Items CP-AG3, CP-AG5 and CP-AG8, in particular, require this and would become part of any contract. We have considered matters relating the contract and routes of recourse in the event of problems in more detail in paragraph 5.237 below. In TS082.03 TS explains that Mr Rose may wish to seek compensation for any losses incurred as a result of the construction phase. Matters of compensation are for the District Valuer and not for this inquiry.

-Drainage and irrigation

5.229 We understand Mr Rose's wish to ensure the proposed scheme does not result in inadequate drainage or other problems arising. We also acknowledge his wish for a clear route of recourse in the event of problems. Other objectors elsewhere have raised similar issues.

5.230 We note that TS has included initial drainage designs for the purposes of the ES and the draft Orders. [ES Figure 13.1a, 13.1b and 13.1c](#) (CD007) identify the surface water features covering the land farmed by Mr Rose. [ES Appendix A13.2: Flood Risk Assessment](#) (CD006) considers these individually and collectively. It does not suggest any substantive increase in flood risks resultant from the proposed scheme and we attach weight to the fact that SEPA has not raised objections to the proposed drainage arrangements. We find the proposed drainage arrangements are satisfactory in principle.

5.231 We find that TS's letter dated 20 July 2018 page 8 ([TS082.03](#)) reiterates the points in [TS082.02](#). TS082.02 states that field drains would normally be connected to 'pre-earthworks' ditches or drains that would generally run parallel to the edge of the proposed road earthworks. It explains the general terms for any contract of works and that bullet points one and three explain the requirements regarding existing land drains.

5.232 TS082.03 also confirms that the sections of existing land drains which lie within the land acquired by CPO would be owned by the Scottish Ministers. Maintenance of these sections of existing land drains would be carried out by the relevant road authority (TS or The Highland Council) where this is necessary to prevent flooding of the road.

5.233 TS082.03 also confirms that Mr Rose would be granted access to carry out necessary maintenance of these sections of drain, subject to approval of a permit in accordance with Section 56 of the [Roads \(Scotland\) Act 1984](#) (CD020).

5.234 We find that the proposed contracting regime would build-in from the outset any relevant requirements for mitigation from the ES and any agreed accommodation works. We find that this and the on-site presence of a TS representative (in the form of its appointed site overseer Jacobs) would provide a mechanism to hold the contractor to account.

5.235 We accept that the contractor would have some design 'freedom' (our word). However, this would remain within the requirements of the contract and the land acquired by CPO. During several of the Inquiry Sessions TS explained that all designs must be approved and would be considered against the ES. Where these were considered to result in new or changed environmental impacts, they would be reassessed, including with any necessary mitigation, as explained in [TS209](#) paragraph 4.2.54. We find that this provides

an additional mechanism to ensure that design ‘freedom’ would not result in unintended environmental consequences that differ from those already foreseen by the ES (CD005, CD006 and CD007) and already built into the contract.

5.236 We understand Mr Rose’s concerns regarding any route for recourse in the event of unsatisfactory works. At Inquiry Session 5 TS confirmed the on-site staffing arrangements that would be in place during construction. We find that these arrangements would allow concerned parties to approach the service provider (the contractor) and their independent overseer (in this case Jacobs).

5.237 Overall, we find the contracting approach provides for mitigation and accommodation works to be carried out to an appropriate standard within an independent inspection regime. We also find that the contractor has some design freedom but that this remains within the bounds of the contract and a regime for assessing any additional environmental impacts. We also find that affected parties would have a route of recourse to both the contractor and the contract overseer. The evidence does not suggest we should conclude this to be deficient.

5.238 With regards to irrigation Mr Rose raised concerns about the provision of irrigation pipes to supply farmland south of the proposed dual carriageway. TS confirmed at Inquiry Session 5 and in its letter dated 2 November 2018 ([TS082.08](#)) that it would be content to allow Mr Rose to use the PA23 Morayston Underpass near to Ch7500 for his irrigation system. This is further confirmed in [TS’s closing statement](#) paragraph 13.41. Mr Rose welcomed this as TS had previously considered alternative suggestions, for ducts beneath the proposed scheme, to be inappropriate.

5.239 We also noted at Inquiry Session 5 and in paragraph 13.42 of its [closing statement](#) that TS commits to the provision of drinking water for livestock in all severed fields under mitigation item CP-AG11 from [ES Table 20.10](#) (CD005).

Impacts on residential property interests

-Landscape and visual Impacts

5.240 We saw the locality of Culblair Farm buildings on our site inspections looking eastwards from roads north of the existing Mid Coul roundabout and C1017 road. There, we noted the route of the proposed scheme and the location of Culblair Farm buildings as identified in [ES Figure 10.3c](#) (CD007) as receptors 78 and 79. This is also shown in the proposed scheme aerial photography in [ES Figure 9.2d](#) (CD007).

5.241 Both ES Figures 9.2d and 10.3c (CD007) show that the collection of farm buildings that constitute receptor 79 include residential buildings and also buildings used for agriculture. We note the presence of the wooded area surrounding the residential buildings on the southern side of receptor 79. We also saw the large agricultural buildings on the northern side of receptor 79 during our site inspection. As such we accept the role that these would play in screening the visual impacts and effects of the proposed scheme on receptor 79 in particular, but also receptor 78, as acknowledged in [ES Appendix A10.1](#) (CD006).

5.242 ES Appendix A10.1 (CD006) explains that receptors 78 and 79 are of high sensitivity and it goes on to explain the impacts of mitigation at winter year of opening and summer 15 years later. [ES Figure 9.5h and Figure 9.6](#) cross section J-J (CD007) show the proposed

mitigation planting on the south side of the proposed scheme and the role that this would play at that point. Based on these and our site inspection, we see no reason to doubt TS's commentary in the [Report on Landscape and Visual Issues](#) section 12.6 (TS212) or in its letter to Mr Rose dated 31 July 2017 ([TS082.02](#)).

5.243 [ES Figure 9.7h](#) (CD007) provides a wireline view of the proposed Mid Coul junction looking westwards from Culblair. We note that this does not appear to include the proposed mitigation planting in [ES Figure 9.5h](#) (CD007) that would contribute to screening the proposed Mid Coul junction from Culblair Farm. Based on these and [ES Figure 10.2b](#) (CD007) we agree with TS that there would be no lighting columns close to Culblair Farm buildings or other land farmed by Mr Rose except at junctions. We also note the measures TS proposes for the lighting arrangements at Mid Coul junction to limit the impact on Inverness Airport in [TS082.02](#). We find that these same measures would contribute to reducing any impact from lighting experienced by Culblair Farm, though they may not remove it totally.

5.244 Similarly [ES Figure 9.5h](#) (CD007) also shows proposed hedgerow planting east of cross-section J-J. We find that both this and the deeper mixed woodland planting west of cross-section J-J would contribute to reducing the impact of vehicle headlights to the north of both receptors.

5.245 From [ES Appendix A10.1](#) (CD006) we note that receptor 78 would experience the more significant effects since, by summer 15 years after opening receptor 79 would experience residual adverse effects of slight to moderate significance. However, for receptor 78, the effects would change from 'substantial adverse' to 'moderate adverse'. We find that in both instances it is the maturing of proposed mitigation planting and its contribution to screening that would assist in diminishing the significance of impact and effect.

5.246 Whilst this visual effects may remain significant for receptor 78 we note that this is because of the impact of the proposed scheme on views across the landscape. From our site inspection we find that this locality is also dominated by Inverness Airport and its associated business park.

5.247 We also note that proposed development in the [IMFLDP](#) Map 5 and pages 53 to 55 (CD062) and [ES Figure 15.3b](#) (CD007) includes a new railway station, growth of the airport business park and the new town at Tornagrain – which we saw under construction during our site inspection. We find that these would result in a planned intensification of residential, airport and commercial land uses in this area with associated transport infrastructure. Therefore, from a landscape and visual perspective, whilst the mitigation in [ES Figure 9.5h](#) (CD007) would blend the proposed scheme into the landscape and screen parts of it, it would become part of a semi-urbanised environment and would not be out of place.

5.248 We find that the maturing of vegetation is the primary means of reducing the significance of effect from 'substantial adverse' for receptor 78 to 'moderate adverse'. That the proposed scheme could still be seen does not automatically mean it would diminish the amenity of Mr Rose's property. We find that the proposed scheme and its associated mitigation would become new features within the landscape that would change the currently open views across that landscape. We find this to account, at least in part, for the residual 'substantial adverse' visual effects for receptor 78 identified in [ES Figure 10.3c](#) (CD007).

5.249 As such we find that having residual visual effects is not necessarily the same as being able to see the proposed scheme itself – the residual effects might be due to views of the mitigation works alone. Similarly, the evidence does not suggest that provision of more mitigation would diminish the visual effects further since this would bring its own visual impacts, as already noted.

5.250 We also note Mr Rose's concerns that the contractor could raise the height of the proposed road embankment north east of Culblair. We note TS's response in TS082.03 which states that should the contractor wish to do this it would need to put forward proposals which satisfactorily demonstrate there would be no greater resultant impacts (including visual impacts) than those published in the ES. We find this to be an example of the need for design modifications to be reassessed as described above and as referenced in TS209 paragraph 4.2.54. Whilst this would not prevent such an eventuality it would require the appropriate reassessment and implementation of any requisite mitigation.

-Air quality

5.251 At Inquiry Session 5, TS asked to correct a typographical error in the [Air Quality Report](#) paragraph 4.4.3 (TS214). At the end of the third line and into the fourth line the reference to 'The Town and Country Planning (EIA) (Scotland) 2011' is incorrect and should be deleted. We accept this correction.

5.252 We note that the properties at Culblair Farm are within the 200 metres defined in DMRB ([HA 207/07](#) – CD049.14) and as such, the air quality assessment has considered the effects of the proposed scheme there. There is no evidence to suggest that we should find that the assessment has been carried out incorrectly or that its observations and findings are erroneous or unreasonable.

5.253 We note that construction dust has been considered and that mitigation items have been included in [ES Section 7.6](#) and [ES Table 20.1](#) (CD005). Similarly a CEMP is proposed and forms part of the mitigation proposals in [ES Chapter 20](#) (CD005). We find these proposed measures to be reasonable and note that the provisions of the CEMP would need to be agreed with The Highland Council. This provides external scrutiny of the proposed measures. The requirements for the mitigation measures and the CEMP to form part of the construction contract would bind a contractor to deliver these in the appropriate manner.

5.254 We note the air quality standards quoted by TS082.02. [ES Appendix A7.4](#) (CD006) shows concentrations of NO₂ and particulates at the baseline (2014) and in 2021 both with and without the proposed scheme for receptors AQ_290 (4 Culblair Farm Cottage) and AQ_292 (Culblair Farm). In each instance the increases in concentration of NO₂ and particulates would remain below the respective air quality standard identified in [ES Table 7.3](#) (CD005) for both receptors.

5.255 Therefore air quality changes during construction and operation of the proposed scheme are unlikely to adversely affect the residential amenity of Mr Rose's property. This also suggests that there is no reason for monitoring regimes to be established following construction.

-Noise and vibration

5.256 The evidence does not suggest we should find the noise assessment in [ES Chapter 8](#) (CD005) to have been carried out incorrectly or to have reached inappropriate or erroneous conclusions.

5.257 The noise mitigation strategy ([ES paragraphs 8.2.24 to 8.2.34](#) – CD005) and noise mitigation thresholds have been covered in Chapter 2: Matters of Principle and in Chapter 4: Smithton, Culloden, Balloch, Allanfearn and the Hedges. There we are satisfied that the noise mitigation strategy appropriately identifies noise mitigation thresholds for changes in noise levels and for absolute noise levels.

5.258 For noise level changes [DMRB HD213/11](#) paragraph 3.38 (CD049.19) identifies changes of 1 dB or less in the short term and 3 dB or less in the long term to be imperceptible. As such, it is reasonable that noise level changes above this threshold would be perceptible and that mitigation should be offered, provided that the appropriate absolute noise level threshold is also exceeded.

5.259 The ES mitigation strategy uses a threshold of 59.5 dB $L_{A10, 18h}$. Use of the $L_{A10, 18h}$ metric is reasonable because it is used in the [CRTN](#) (CD084) to predict traffic noise. It covers an 18 hour period whereas the L_{Aeq} defined by WHO is for a 16 hour period and free field. Free field means that it does not account for the reflective impacts of buildings ('façade effects'). The 59.5 dB $L_{A10, 18h}$ includes façade effects. We agree with TS that $L_{A10, 18h}$ and L_{Aeq} are therefore each different metrics for measuring absolute noise in the same way that centimetres and inches are different metrics for measuring distance.

5.260 Applying the appropriate conversion factor for L_{Aeq} to $L_{A10, 18h}$ and to account for façade noise means that $L_{A10, 18h}$ 59.5 dB and L_{Aeq} 55 dB are the same absolute noise level. Therefore we find that the absolute noise levels of the $L_{A10, 18h}$ 59.5 dB is based on the [WHO guidance 1999](#) (CD090) level of 55 dB L_{Aeq} but is a different metric.

5.261 The WHO 1999 (CD090) guidance quotes two thresholds for absolute noise levels. These are 50 dB L_{Aeq} and 55 dB L_{Aeq} . TS has adopted the higher of these. Based on the [National Noise Incidence Survey 2000-02](#) (CD123) we found that the daytime noise levels in Scotland already exceed the 50 dB L_{Aeq} levels and that it was therefore reasonable for to adopt the higher 55 dB L_{Aeq} (equivalent to $L_{A10, 18h}$ 59.5 dB).

5.262 The [WHO Night Noise guidance](#) (CD091) lists two possible thresholds; one of 40 dB and an Interim target (IT) $L_{night, outside}$ of 55 dB. TS has adopted the higher, interim target in [ES paragraph 8.2.33](#) (CD005). DMRB HD 213/11 paragraph 2.29 (CD049.19) confirms that 40 dB $L_{night, outside}$ is a target intended to protect the most vulnerable groups, everywhere at any given time from any risk of sleep disturbance based on the lowest observable adverse effect level (LOAEL). The evidence does not suggest we should reach a different conclusion. DMRB HD 213/11 paragraph 2.29 (CD049.19) explains that WHO NNG (CD091) also recommends the interim target of 55 dB where achievement of the NNG is not feasible in the short term, in order to respond to exceptional local situations.

5.263 DMRB HD213/11 Paragraph 3.38 (CD049.19) urges caution in predicting night-time noise as traffic levels fall at night. It recommends therefore that only those NSRs predicted to be subject to an $L_{night, outside}$ exceeding of 55 dB should be considered. This corresponds with the interim target (IT) in the WHO NNG (CD091) and that quoted in ES paragraph 8.2.33 (CD005).

5.264 Therefore we find no reason to conclude that TS's noise mitigation thresholds in ES paragraphs 8.2.24 to 8.2.34 (CD005) are set unreasonably high.

5.265 The evidence does not suggest we should doubt the data presented in [TS082.02 Tables 1 and 2](#) and [ES Appendix A8.3](#) (CD006). Based on this information we find that whilst the proposed scheme would bring perceptible changes in noise levels for both properties but would not exceed the respective absolute noise thresholds quoted in the ES mitigation strategy. Therefore, no additional receptor-specific noise mitigation would be required beyond that already forming part of the proposed scheme and covered by the noise assessment.

WHO Guidelines 2018

5.266 Immediately before the inquiry began at the end of October 2018, the WHO published new guidance on noise levels (CD140). This new guidance was presented to us by TS during the inquiry. We invited participants to consider this during the inquiry and provide written comments alongside any closing statements if they wished.

5.267 In his statement Mr Rose argues that:

- the [WHO guidelines 2018](#) (CD140) and [TS's supplementary precognition](#) imply that the WHO is recommending an enhancement of the previous noise impact limits based upon evidence of harmful impacts upon human health and wellbeing.
- the change in noise impact levels at the affected properties has already been identified as significant and adverse. The promoter considers that additional mitigation works are unjustified, but this is based upon the predicted modelling falling just short of the current WHO guidelines (CD090 and CD091).
- there is concern that a risk of impacts on the health and wellbeing of residents remains and TS has a duty to undertake a revised assessment and, if necessary, provide appropriate additional mitigation to prevent such adverse health impacts.
- should the revised WHO guidelines (CD140) be adopted by the relevant statutory authorities before the proposed scheme is built, it would be unjustified for TS to proceed without undertaking such further review.
- the dualling of the A96 is proceeding in sections. If the revised WHO guidelines (CD140) are adopted whilst other sections remain under design consideration, it is conceivable that later sections of the dualled A96 may be subject to a different noise impact assessment regime to that for this proposed scheme. This would be inequitable and unreasonable.
- the Reporters should recommend that an updated noise impact assessment is carried out in the event of the amended WHO guidance (CD140) being adopted before the whole A96 dualling (and not just this proposed scheme) is completed.

5.268 TS provided a supplementary precognition for the inquiry and this was discussed at Inquiry Session 5 with Mr Rose. There and in its [Closing Statement](#), TS makes clear its view that the WHO Guidelines 2018 have been published but have not yet been adopted in Scotland. We agree that this is the case and it does not appear to be disputed by Mr Rose who seems to accept this in his arguments. This being so, we accept that the adopted guidance available to TS when carrying out the noise assessment and also now (at the time of writing this report) is the WHO guidance (CD090 and CD091).

5.269 TS explains that the new guidance uses a noise metric L_{den} . This is a single noise metric for day, evening and night. TS argues that this metric differs from both the L_{Aeq} and

LA10, 18h metrics currently used by WHO (CD090) and the noise assessment for the proposed scheme respectively. TS also argues that the L_{den} metric quoted in the 2018 guidelines (CD140) also exclude façade noise. We have already found that a difference in metrics and inclusion or exclusion of façade effects are important distinctions when considering noise measurements. We therefore agree with TS that this would be an important consideration when reading the proposed noise level thresholds in the new guidance (CD140) and comparing them with those of the WHO 1999 (CD090) and those used for the noise assessment in ES Chapter 8 (CD005).

5.270 TS also explains in paragraphs 4.8 to 4.12 of its [closing statement](#) regarding WHO Guidelines 2018 (CD140) that WHO acknowledges a knowledge gap and a need for 'longitudinal studies on health impacts from exposure to environmental noise to inform future recommendations properly'. We find this to be further recognised by the WHO Guidelines 2018 (CD140) page 29 in the recommendations section, which explains that the guidelines should:

...serve as the basis for a policy-making process in which policy options are quantified and discussed. It should be recognised that in that process additional considerations of costs, feasibility, values and preferences should also feature in decision-making when choosing reference values such as noise limits for a possible standard or legislation.

In the WHO Guidelines 2018 (CD140) section 5 implementation guidelines paragraph 5.1 reinforces this position recognising that the factors quoted above can 'feature in and can influence the ultimate value chosen as a noise limit.'

5.271 We find this to demonstrate that the WHO Guidelines 2018 (CD140) are not necessarily expected to be adopted verbatim, rather that work is incomplete. We agree with the points in TS closing submission on WHO 2018 paragraph 4.13. This explains that the WHO Guidelines 2018 (CD140) do not have legislative force, but are aspirational. This suggests to us that any adopting process must consider the matters identified further, carry out additional research and assess the practicalities of these matters before adopting threshold values. We also find this to suggest that any threshold values that are ultimately adopted may differ from those currently presented in WHO Guidelines 2018 (CD140); as a result of this additional work. We therefore conclude that it is not appropriate or rational to simply expect that the thresholds identified in CD140 would be the thresholds ultimately adopted by Scottish Ministers. The work to determine this has yet to take place and its conclusions therefore cannot be known in advance.

5.272 Based on the above consideration, we find that one cannot simply take the existing noise assessment and alter the absolute noise level thresholds to reflect those in the new WHO guidelines 2018 (CD140). Since this uses different metrics an entirely new noise assessment would be required. Furthermore, we have found that this new guidance (CD140) is not yet adopted and there is no current requirement for it to be followed. Similarly there is no guarantee what the respective noise thresholds would actually be. We also agree with TS's point that following any such research and conclusions would follow consultation and engagement as part of the normal framework for adoption of policy and/or legislation. We see no basis to justify advising Scottish Ministers to instruct a new noise assessment since the basis for doing so and any new standards upon which it would be based are yet to be determined.

5.273 We agree with Mr Rose that it is plausible to suggest that were the WHO Guidelines 2018 (CD140) to be adopted over the coming years that later sections of the A96 dualling towards Aberdeen (and, by implication, other roads) may be subject to different noise thresholds compared with this proposed scheme. We also agree that this could mean the newest sections of the road having potentially different design standards to older sections of the road. However, we find this to be unavoidable in any field of development where standards of design change over time. Any proposal must be assessed against the requirements of the time. We find this to be the case here.

5.274 Mr Rose also makes reference to his arguments with regard to the current noise assessment conclusions. We have already considered and made findings on these above.

5.275 We therefore find that the newly published WHO Guidelines 2018 (CD140) are neither law nor adopted policy. A process of further research and consideration will be required prior to any adoption, with no guarantee of what the actual thresholds would be. The proposed scheme has been subject to a noise assessment based on the appropriate adopted guidance. We find no reason to recommend that Scottish Ministers seek a reassessment of the noise impacts.

Overall

5.276 The proposed scheme would result in some land loss and we find that the consequent impacts on Mr Rose's farm business would fall within the definition of 'neutral'. This is because he would be required to alter his business but the land could still be used for agriculture. There are no grounds to find that the proposed acquisition of Plots 503, 603 and 1207 is unnecessary. Resultant impacts on access, boundary treatment, severance, drainage and irrigation could all be resolved through mitigation and accommodation works. It is probable that the northern section of field 557/1 could not be accessed without agreement to cross land farmed/owned by other parties and no alternative access arrangements are proposed. The visual, air quality and noise impacts and effects are unlikely to require additional mitigation and are unlikely to adversely affect the amenity of Mr Rose's residential property or others in his ownership to an extent that would compromise the public interest of providing the proposed scheme. Business restructuring and the subsequent financial implications may be matters for potential compensation claims but these are matters for the District Valuer and not for this Inquiry. Overall therefore the evidence does not suggest we should recommend that Scottish Ministers modify the draft Orders or refuse to confirm them.

OBJ/073 Mr David Macbean

Objector

5.277 OBJ/073 Mr David Macbean is the tenant of Milton of Gollanfield Farm (also referred to as Milton of Braichlaich Farm). [ES Appendix A15.6](#) (CD006) defines Mr Macbean's business as mixed with both crops and livestock.

Objection

Business impacts

-Land take and severance

5.278 OBJ/073 Mr David Macbean argues that the proposed scheme would result in:

- the total land loss of 9% of the farm; including the best land.
- irregular field sizes and shapes, reducing their productivity.
- severance and reduced plot size, leading to a reduced income since livestock would need to be reduced, reduced farm subsidies, a reduced income base and increased costs of farming per remaining acre of land.
- increased travel costs due to land severance and costs for fencing.
- disruption from the construction phase.

5.279 Mr Macbean argues that:

- there is no indication of how he would access the severed land during the construction phase.
- he requires an acceptable solution to this in order to mitigate his losses during construction.

5.280 Mr Macbean argues that the currently proposed route to access severed land, via the B9006, would considerably increase cost and time – particularly for the supervision of livestock. Instead he seeks an underpass or bridge to connect severed land and the main farm.

-Plot 1001

5.281 Mr Macbean objects to the proposed acquisition of Plot 1001 (for landscape planting). He considers this unnecessary and that it would fail to achieve its objective. He suggests its removal from the proposed scheme.

-Access and fencing

5.282 Mr Macbean considers there to be no indication of how mitigation and reinstatement of fences and accesses are to be provided.

-Drainage and flooding

5.283 Mr Macbean considers there to be no indication of how mitigation and reinstatement of field drainage is to be provided.

5.284 He argues that the design fails to address how additional run-off from the new road would be adequately accommodated in conjunction with run-off from the existing A96 and existing drainage ditches. He further argues that this risks overflow and flooding where the burn (tributary of the Ardersier Burn) enters the existing culvert at Milton of Gollanfield.

5.285 Mr Macbean notes that there are no details about how the field drains on retained land would be tied-in where they are proposed to be severed by the proposed scheme.

5.286 He also suggests a redesign so that drainage from the existing A96 runs into the proposed SuDS ponds for the new A96.

-Water supply

5.287 Mr Macbean argues that the new road would cut across a water supply pipe to Cotter House and The Bungalow and he wishes to know how this would be resolved.

-Contracting arrangements

5.288 Mr Macbean objects to TS delegating responsibility for detailed design of mitigation and accommodation works to an appointed contractor. He considers that this lacks any mechanism for control or recourse. He also considers that this approach provides no opportunity for objectors to influence the process or to appeal the design and quality of implementation.

-Agricultural assessment

5.289 Mr Macbean argues that the agricultural assessment fails to take account of the factors above and incorrectly concludes that the impact on his business is 'neutral'.

-Culblair Farm Field 557/1 North access arrangements

5.290 Mr Macbean objects to the proposed access arrangements for Culblair Farm field 557/1 north. He argues this would result in access being taken across the land he farms and contends that this:

- would result in issues including crop interference, farm bio-security and further loss of land not taken into account in the ES.
- would not provide access to or serve Milton of Gollanfield Farm since Mr Macbean already has access to these fields.

5.291 He proposes alternative access via the airport access road.

Impacts on residential interests

-Noise and vibration

5.292 Mr Macbean considers that noise impacts have been computer modelled and that there are no details on the final design and the impact of its noise. He also argues that excessively high thresholds have been set for considering noise mitigation and he seeks post-construction monitoring of this. He also argues that no information has been provided on the mitigation measures for noise.

-Visual impacts

5.293 Mr Macbean argues that no information has been provided on the mitigation measures for light pollution and visual impacts.

-Air quality

5.294 Mr Macbean argues that no information has been provided on the mitigation measures for air quality.

-Plot 1005

5.295 Mr Macbean is unclear why Plot 1005 is needed for the proposed scheme. He argues that it is presently part of a garden. Mr Macbean considers its proposed acquisition to be excessive and that this would have a detrimental impact on the amenity of associated property. He suggests that Plot 1005 be removed entirely from the draft CPO or moved further down the road.

U1025 Milton of Breachlich Road

5.296 Mr Macbean considers the proposed new access arrangements via the B9006 and U1025 to be concerning. He considers the U1025 to be unsuitable for agricultural traffic and service vehicles; including articulated livestock floats. In particular he argues that there are too few passing places and that the existing road is too narrow along much of its route.

5.297 He argues that stopping up the access from the existing A96 would mean all traffic having to use this narrow road; including that for the residential properties, agricultural traffic and commercial traffic for Polfalden kennels. This, he argues would present passing difficulties and verge damage. He is also concerned about the risk of collapse of the road edge in some areas and consequent risk that vehicles may slip off the road.

Transport Scotland's response

-Land take and severance

5.298 TS confirms that:

- the land-take at Milton of Gollanfield Farm would be 13.42 hectares, equating to 9% of the total farmed area, as reported in the [ES Appendix A15.7](#) CD006).
- severance forms part of the assessment of the proposed scheme impacts on the operation of the farm business and forms part of the criteria for magnitude of impacts as detailed in the [ES Table 15.8](#) (CD005).
- the extent of severance, combined with the land-take and other operational impacts identified, post mitigation, would result in a medium magnitude of impact for Milton of Gollanfield Farm.
- when combined with the sensitivity (also medium) a 'Moderate' significance of impact was assessed.
- mitigation includes the opportunity to merge southern severed areas in two fields to improve field husbandry operations through creation of more manageable field sizes and shapes (ES Appendix A15.7 pages A15.7-14 to A15.7-17 – CD005).

5.299 TS does not consider there to be sufficient justification for an overbridge/underpass at this location. It argues that the embankment for the proposed dual carriageway would need to be raised significantly to accommodate an underpass or that substantial earthworks would be required to provide sufficient approach ramps to an overbridge. TS contends that both options would have an adverse cost and environmental impacts.

5.300 TS confirms that access to all land that is not subject to compulsory purchase would be maintained during construction, as set out in [ES Table 15.23](#) Mitigation Item CP-AG8:

'Where access points require temporary or permanent alteration as a result of construction, alternative access for stock and machinery shall be provided, as appropriate, in consultation with the landowners/occupier. If required, recessed access shall be provided from local roads.'

5.301 TS identifies this mitigation item for Milton of Gollanfield in Appendix A15.7 page A15.7-17 (CD006). TS confirms that detailed proposals of the works required during the construction period would be identified by TS's appointed contractor.

5.302 TS explains that any losses arising from the proposed scheme due to field size, shape and resultant productivity levels, journey times and costs arising from changes in

farm access arrangements could form part of a claim for compensation, subject to the District Valuer's assessment and as detailed in its [Guidance on the Compulsory Purchase Process and Compensation](#) (CD046).

-Plot 1001

5.303 TS argues that:

- Plot 1001 forms a small spur of land that is proposed for landscape mitigation to offset the landscape and visual impact of the proposed scheme for built and outdoor receptors.
- this mitigation is also proposed to assist with integration of the proposed scheme into the surrounding landscape.
- the existing landscape character is open and expansive, therefore, it would be inappropriate in this location to visually screen the carriageway by planting in parallel along the corridor, as it would be out of character, excessive and highlight the road corridor rather than integrate it.
- the mixed woodland block proposed within Plot 1001 (Ch12250) has been strategically positioned to screen views of the dual carriageway, as it travels on embankment to the east, from a number of properties located along Milton of Breachlich Road (U1025) including Milton of Gollanfield Farm buildings.
- the mixed and riparian woodland surrounding the proposed SuDS ponds would assist with screening the ponds and carriageway from the adjacent properties but the woodland grouping has been designed to reflect/integrate with the block of existing woodland directly to the south whilst also replacing woodland lost.
- as explained in [ES paragraph 9.6.9](#) (CD005), more detailed development of the landscape mitigation would be progressed and details incorporated within the contract documents of which the ES would form part.

-Access and fencing

5.304 TS explains that mitigation measures relating to the reinstatement of field drainage, accesses and fences have been identified in the ES Table 15.23 (CD005) under mitigation items CP-AG3, CP-AG6, CP-AG7, CP-AG8 and CP-AG10 in particular.

5.305 TS confirms that a series of further meetings would be arranged with affected landowners and tenants (as appropriate), as part of the design development process, to discuss accommodation works. It argues that:

- the information discussed at these meetings would supplement the information already gathered, to assist in the preparation of the contract drawings and documents in relation to accommodation works.
- these discussions would typically be focussed on but not limited to fencing, field drainage and access tracks and would take place following completion of the Public Local Inquiry process, should the proposed scheme be approved.

-Drainage and flooding

5.306 TS confirms that mitigation for reinstatement of field drainage has been identified as being required for Milton of Gollanfield in ES Appendix A15.7 page A15.7-17 (CD006) and is covered in ES Table 15.23 (CD005) Mitigation Item CP-AG10, which states:

'Particular care shall be taken to reduce damage or disturbance to field and forestry drainage systems. Laying of new drains would be undertaken to maintain drainage systems during construction. Repairing and reinstatement of field drains affected by construction shall be agreed with the landowner/occupier to ensure that land capability is maintained and flooding is not exacerbated. Where appropriate, the

integrity of the drainage system would be secured in advance through the installation of header drains (cut off drains) to facilitate construction. All remaining remedial works shall be undertaken post-construction.'

5.307 TS confirms that:

- detailed proposals of the works required during the construction period would be identified by the appointed contractor.
- where existing field drainage is likely to be affected by the proposed scheme, it would be specified within the contract documents that the contractor would have responsibility for locating and reconnecting the drainage as appropriate.
- the specimen design proposes that any field drains affected around Milton of Gollanfield Farm are connected into pre-earthworks ditches (PED) which connect into the burn, flowing past Milton of Gollanfield Farm.

5.308 TS proposes that the drainage run-off from the proposed scheme would outfall to the SuDS ponds located to the south of the farm steading and thereafter discharge into the burn that runs past Milton of Gollanfield Farm. TS explains that the purpose of the SuDS systems is to treat runoff from the road system and to attenuate flows to limit flood risk.

5.309 TS confirms that:

- Jacobs has undertaken an assessment of the impact of discharges from the SuDS ponds on the flows in this burn.
- during all events, including any more severe than the 50% Annual Exceedance Probability (AEP) (i.e. a 2 year return period) flood event, the flows at the discharge point would decrease.
- this is because part of the natural (pre-construction) catchment would become part of the road drainage network and subject to the attenuation in peak flows provided by the SuDS ponds. This would lower the peak flood flow in the burn.

5.310 TS has no plans at this stage to include runoff from the existing A96 into the proposed scheme drainage network. It argues that the proposed scheme design does not require this amendment to be made to the existing A96 drainage network.

-Water supply

5.311 TS confirms that water supplies would be maintained to the Cottar House and the Bungalow following construction of the proposed scheme. TS argues that:

- the design for mains water supply diversions would be provided by Scottish Water, as owner of the asset.
- its design consultant, Jacobs, has been consulting with Scottish Water throughout the design process to date.
- the design of utility diversion and protection works would be developed in more detail during the preparation of the contract drawings and documentation.
- Jacobs would be able to provide updates during future rounds of consultation, which would take place following completion of the likely Public Local Inquiry process, should the proposed scheme be approved.

-Contracting arrangements

5.312 In various parts of its responses above TS makes clear that the proposed scheme would be built under a design and build contract. It explains that this contract would incorporate mitigation identified in the ES and accommodation works agreed with landowners.

-Agricultural assessment

5.313 TS confirms that:

- it undertook an assessment of the likely future farm business viability in [ES Chapter 15](#) (CD005); as required by [DMRB Volume 11, Section 3, Part 6, Land Use](#) (CD049.18).
- the significance of impact is based on land-take, land quality (LCA Class), severance and other criteria detailed in the methodology in [ES Tables 15.7, 15.8 and 15.9](#) (CD005).
- a 'Moderate' residual significance of impact has been assessed for Milton of Gollanfield Farm.
- the assessment of likely future farm business viability is assessed as Neutral (not significant) as detailed in [ES Appendix A15.7](#) page A15.7-17 (CD006).
- the definition of this assessment is described in the [ES paragraph 15.3.61](#) as:

'Neutral Impact - the farm business is affected by the land-take or change in access requirements of the proposed Scheme, and this may result in a reduction or restructuring of its activities. However, this does not compromise the likely future viability of the farm business and it is likely to be able to continue trading, albeit after some restructuring of its operations.'

5.314 TS confirms that any business losses could form part of a claim for compensation, subject to District Valuer's assessment and as detailed in its Guidance on the Compulsory Purchase Process and Compensation (CD046).

-Culblair Farm Field 557/1 North access arrangements

5.315 TS argues that Mr Macbean's Statement of Case, under point one, paragraph two, third sentence, incorrectly quotes its letter of 31 August 2018 ([TS073.03](#)). TS argues that its letter refers to the track being for 'agricultural purposes' rather than being for 'agricultural production' as contended by Mr Macbean.

5.316 TS confirms that any land loss for tracks and accommodation works with regard to field 557/1 north, is not in the ES because it is not essential to deliver the proposed scheme. TS also confirms that the route for any access track has not yet been firmed up. TS contends that the addition of such a track would not increase the significance of impact in the ES.

5.317 TS explains that it considered alternative access proposals off the new airport access road as suggested by Mr Macbean but that this was not possible.

5.318 At Inquiry Session 6B TS's DMRB Stage 3 witness confirmed that alternative access from the north roundabout of the proposed Mid Coul junction was considered and that this was responded to in its letter to Moray Estates ([TS065.03](#) page 3 middle paragraph) regarding an issue then raised but later withdrawn, regarding access to the proposed rail station southern platform. He confirmed that the existing road bridge provides a constraint to visibility for the arms of that roundabout and that, although it appears a simple request, it is complex. TS notes in [its closing statement](#) paragraph 10.51 that this would also require reconsideration of NMU provision and concludes that using this stone bridge (OB87) would be a constraint to visibility and would not be preferable to the proposed scheme.

Residential impacts

-Noise and vibration

5.319 For noise mitigation TS confirms that:

- [ES paragraphs 8.6.10 to 8.6.16](#) (CD005) detail the incorporated and receptor-specific noise mitigation for the proposed scheme.
- [ES Chapter 8](#) (CD005) provides details on external references.
- [ES Appendix 8.1](#) (CD006) provides a glossary of noise terminology.
- recommended receptor-specific noise mitigation is based on the noise mitigation strategy presented in [ES paragraphs 8.2.24 - 8.2.34](#) (CD005).
- the noise mitigation strategy is based on guidance offered in [DMRB HD213/11](#) (CD049.19) and by WHO ([CD090](#) and [CD091](#)).
- taking into account the above guidance, TS explains that noise mitigation is considered where the significance of impact at a receptor is predicted to be:
 - Slight/Moderate adverse or worse, which for high noise sensitive receptors this equates to at least a 1 dB noise level increase in the short term, (year of opening), and/or at least a 3 dB in the long term, (typically within 15 years of the scheme opening) and, in addition, the predicted ground floor façade noise level exceeds 59.5 dB $L_{A10,18h}$.
 - Slight/Moderate adverse or worse, in the long-term with a predicted noise level that exceeds 55 dB $L_{night,outside}$.

5.320 [TS073.02](#) Table 1 (reproduced below) summarises predicted noise levels and associated significance of the predicted 'least beneficial' impacts for Cotter House (i.e. the greatest adverse noise level change. TS confirms that:

- this is the dwelling most exposed to road traffic noise at Milton of Gollanfield.
- a number of receptor points within the computer based noise model are positioned one metre from the façade of the dwelling as shown in TS073.02 Figure 1.
- TS073.02 Table 1 (below) shows, based on the predicted change in noise level, the noise sensitivity of the receptor, and the assessment year, that the significance of impact of would be Large/Very Large Adverse in the Year of Opening, reducing to Moderate/Large Adverse in the Future Year.

TS073.02 Table 1: Predicted DMRB Noise Levels and Significance of Impacts at 'Cotter House'

Scenario	$L_{A10,18hr}$ DMB Noise Level (dB) $L_{A10,18hr}$	Scenario Comparison Noise Level (dB)	Noise Level Difference (dB)	Significance of Impact
DMB vs DSB	45.0	50.0	5.0	Large/ Very Large Adverse
DMB vs DMF	53.0	53.1	0.1	Slight Adverse
DMB vs DSF	45.0	50.8	5.8	Moderate/ Large Adverse

For assessment purposes, the following scenarios have been compared to identify the least beneficial changes with and without the proposed scheme in place:

- Baseline Year Do-Minimum vs Baseline Do-Something (DMB vs DSB)
- Baseline Year Do-Minimum vs Future Year Do-Minimum (DMB v DMF)
- Baseline Year Do-Minimum vs Future Year Do Something (DMB v DSF)

Where Baseline Year is the year of opening (for assessment purposes);

Future Year is fifteen years after the Baseline Year.

Do-Minimum describes the situation without the proposed scheme

Do-Something is with the proposed scheme in place.

5.321 TS explains that sometimes the receptor with the highest absolute noise level can differ from the least beneficial receptor (above). TS073.02 Table 2 (reproduced below) summarises the noise levels for the highest absolute noise receptor point at Cotter House. This shows that absolute noise levels at this receptor would be below the noise mitigation threshold of 59.5 dB LA10,18h.

TS073.02 Table 2: Noise Levels and Significance of Impacts at the Noisiest ‘Cotter House’ Receptor Point

Cotter House Dwelling	Scenario Noise Level LA10,18h dB
Baseline Year: Do Minimum (2021) [DMB]	54.0
Baseline Year: Do Something (2021) [DSB]	55.9
Future Year: Do Minimum (2036) [DMF]	54.0
Future Year: Do Something (2036) [DSF]	56.6

5.322 TS therefore concludes that:

- noise mitigation is not required at the dwelling over and above that which is provided in the proposed scheme design, which includes LNRS and earthworks (e.g. cuts, bunds and false crests).
- in accordance with the noise mitigation strategy (ES paragraphs 8.2.24 to 8.2.34 – CD005), since this dwelling is the most exposed to road traffic noise at Milton of Gollanfield Farm, none of the other farm dwellings requires noise mitigation.

5.323 TS confirms that:

- for woodland to offer effective noise level mitigation it would need to be dense and many metres deep.
- the absolute Do-Something noise levels do not include for any potential noise reduction for any woodland that may remain following the opening of the proposed scheme and, as such, the absolute predicted noise levels are deemed to be worst case.

-Visual impacts

5.324 TS confirms that [ES Chapters 9 and 10](#) (CD005) and [ES Appendices A10.1 and A10.2](#) (CD006) contain the landscape and visual assessment, including proposed mitigation measures, which show that:

- there would be a significant adverse visual effect on properties located adjacent to the existing Milton of Breachlich Road (U1025) (Receptor 84) due to the proposed scheme ([ES Figure 10.3d](#) - CD005).
- the proposed scheme would have a ‘Substantial adverse’ effect on Mr Macbean’s properties during the winter in the year of opening due to the direct views to the proposed dual carriageway, the adjacent SuDS detention basin/pond, and the more distant views to the proposed Brackley Junction, overbridge and associated lighting and signage.
- whilst the establishment of the mitigation planting would help to provide partial screening, residual effects would be likely to reduce but remain significant (Moderate/Substantial) by the summer 15 years after opening due to the close proximity of the proposed scheme.

5.325 TS confirms that [ES Figures 9.5i to 9.5j and 9.6](#) (CD007) show the landscape and ecological mitigation proposals. It confirms that these proposals include riparian woodland, mixed woodland and hedge planting to reduce the adverse landscape and visual effects of the proposed scheme on the local landscape character and visual amenity, whilst assisting to integrate the proposed scheme into the surrounding landscape.

-Air quality

5.326 TS argues that:

- an air quality assessment was carried out in accordance with [DMRB HD207/07](#) (CD049.14) and is detailed in [ES Chapter 7](#) (CD005).
- [ES Appendix A7.1](#) (CD006) provides a glossary of air quality terminology.
- [ES Appendix A7.4](#) (CD006) shows that the modelled levels of NO₂, PM₁₀ and PM_{2.5} at Cottar House (receptor AQ294) are all well below the relevant air quality objectives for each pollutant.
- the air quality assessment included the consideration of construction dust, and concluded that the implementation of best practice dust mitigation measures during the construction phase (through a construction environmental management plan – (CEMP)), would reduce the impact of dust on surrounding areas, and that there would not be a significant effect.
- these mitigation measures are included within the ES, and would be included in contract documentation for the proposed scheme.

-Compulsory purchase of Plot 1005

5.327 TS confirms that Plot 1005 is included in the draft CPO to allow construction of a turning head for use by service vehicles immediately beyond the last residential property (Cottar House) on Milton of Breachlich Road (U1025).

5.328 TS argues in [TS073.02](#) that:

- this is required as a result of the existing road being severed by the proposed scheme and would reduce the likelihood of service vehicles attempting to turn within residential access points.
- the location of the turning head and new field access has been identified to avoid the need for any land take associated with Cottar House.
- TS confirms that the small triangular wedge at the south east corner of the property included within CPO Plot 1005 is not required for the works and that the CPO boundary would be amended for the Made Orders if published.
- the existing field access would be replaced as part of the works within this plot.

U1025 Milton of Breachlich Road

5.329 TS argues that:

- the existing U1025 is a local road adopted by The Highland Council providing access to Milton of Gollanfield Farm, a number of residential properties, Breachlich Chapel graveyard and agricultural land.
- it is a single track road which varies in width between 2.5 metres (8 feet 2 inches) and 3.2 metres (10 feet 6 inches).
- the section from the existing A96 to Milton of Gollanfield Farm has a similar minimum width to the section between Milton of Gollanfield Farm and the B9006 Gollanfield – Fort George Road.
- whilst the number of vehicles using the U1025 past Ballaggan would increase as a result of the proposed scheme, overall traffic volumes would remain relatively low, with vehicles from an additional seven properties being directed past Ballaggan, compared to the current situation.
- these properties comprise Milton of Gollanfield Farm, Polfalden kennels and five other residential properties, one of which is currently derelict.

5.330 TS argues that the proposed scheme design includes suitable improvements to the U1025 in order to provide for future traffic flows and take account of the change to the local road network as a result of the closure of the direct access to the A96 from U1025. The proposed improvements include:

- realignment of a 375 metres length of the U1025 from the B9006 heading westwards, passing to the south of Breachlich Chapel graveyard to connect to the existing road to the east of Ballaggan House;
- the new junction with the B9006 would provide better junction visibility than the existing junction and the standard provided would meet the required minimum junction visibility standards of at least 120 metres along the major road measured from a point 4.5 metres back from the edge of the major road;
- the realigned U1025 would be 5.5 metres wide for 75 metres from the B9006 providing a two-way section;
- from the end of the proposed two-way section the design published in November 2016 includes three additional passing places where the road would be widened to 5.5 metres wide.
- these are provided along the one kilometre length of road to Milton of Gollanfield Farm and would provide suitable opportunities for vehicles to pass safely. These would be at the following locations:
 - Breachlich Chapel; between The Bungalow and the new access for Polfalden; and
 - between the new access for Polfalden and Milton of Gollanfield Farm;
- there would also be an opportunity for vehicles to pass at the junction for the access to Polfalden;
- the provision of a turning area immediately south east of Cottar House; and,
- the provision of a turning head at the end of the U1025 where it would be stopped up at the proposed A96.

5.331 Taking account of comments received, TS confirms that provision of an additional passing place approximately 40 metres east of Ballaggan Steading is now being considered in consultation with The Highland Council. TS explains that it will continue to consult further with The Highland Council as the local roads authority in relation to these proposals and consider whether further measures are necessary to address the objector's concerns in relation to passing places and the width of the road.

Findings of Fact

Business impacts

-Land take and severance

5.332 The parties agree on the amount of land that is proposed for acquisition for the proposed scheme and that some of the land would be severed. These matters are confirmed in [ES Appendix A15.7](#) (CD006) and [ES Figures 15.6e](#) (CD007). We find that the farm would be severed and that Mr Macbean would be required to travel and to transport equipment and livestock between the parts of the farm that would be located north and south of the proposed scheme.

5.333 Mr Macbean provides a map showing existing farm tracks; this was accepted by us and considered at Inquiry Session 6B. TS's agriculture expert clarifies that severed fields south of the proposed scheme would be accessible via the existing A96. This reflects our understanding from [ES Figure 15.5e and 15.6e](#) (CD007) and [ES Appendix A15.7](#) (CD006). [ES Appendix A15.7](#) (CD006) explains that some severed fields south of the proposed dual

carriageway could be merged, with access taken via field 449/5 (ES Figure 15.6e – CD007).

5.334 Mr Macbean seeks the replacement of tracks on a like for like basis. We note that the existing track that runs south west from Milton of Gollanfield Farm would be severed near its south west end. However, it would continue to provide access/access opportunities to fields 449/2, 449/3 and 449/4 north of the proposed scheme. The exact route of any track through the northern part of field 449/2 into field 449/1 would be subject to further discussions between the parties, including whether any such track would/could pass through the southern end of Plot 1001 (proposed for mitigation planting).

5.335 The proposed mitigation outlined in ES Appendix A15.7 (CD006) may go some way to resolve issues of irregular field shape and size. ES Appendix A15.7 (CD006) also identifies the proposed reinstatement of boundary treatments (including fencing), accesses and drainage. These measures and related mitigation items in the ES would form part of any contract of works along with any agreed accommodation works.

5.336 The parties do not dispute that a reduction in the amount of land and additional transport costs from severance may result in some losses to Mr Macbean's business. TS has referred to its guidance on seeking compensation ([CD046](#)). The validity of any claim and amount of compensation awarded is a matter for the District Valuer and is not for this inquiry.

5.337 [DMRB Stage 3 Figure 3.1i and 3.1j](#) (CD009) show the profile of the proposed scheme along the section in the vicinity of Mr Macbean's farm. It shows the proposed embankment height of up to 5.5 metres above the current ground level from Ch11500 to Ch12280. Between Ch12280 and Ch13420 the proposed road would run almost at grade or within two metres of this. Based on this and [DMRB Volume 6, Section 1, Part 2, TD 27/05 Cross-sections and Headrooms](#) (CD049.08) we accept TS's contention that an underpass would require the proposed dual carriageway to be raised. We also agree that an overbridge would require additional land either side for access ramps.

5.338 For both an underpass and an overbridge, the proposed scheme would change sufficiently that it would alter the assessed environmental impacts and require reassessment, including the potential provision of additional mitigation and perhaps additional land. The draft CPO can only be modified to remove land not to add it. Therefore new draft Orders would be required with the relevant assessment, consultation and inquiry delays. As there is no evidence to suggest that, taking all matters into account, the resultant scheme would be better than what is currently proposed, we do not find such changes to be justified. Mr Macbean could choose to seek compensation for any losses he incurs to his business. However, this would be a matter for the District Valuer and not for this inquiry.

5.339 A proposed CEMP and mitigation items ([ES Chapter 20](#) – CD005) require farm access to remain during construction. This should provide Mr Macbean with some reassurance that access to farm land would be provided during construction and that such requirements would form part of the design and build contract.

-Plot 1001

5.340 [ES Figure 9.5i](#) (CD007) shows that Plot 1001 is proposed for mixed woodland planting to assist in screening views of the road corridor and embankment from Milton of Gollanfield.

5.341 [ES Figure 10.3d](#) (CD007) shows that the visual effects on Milton of Gollanfield Farm (Receptor 83) would fall from 'Moderate' at year of opening to 'Slight/Moderate' 15 years later. This would be, in part, the result of proposed planting at Plot 1001 and also from proposed planting around the SuDS ponds south of Milton of Gollanfield Farm. [TS073.03](#) explains that were Plot 1001 removed from the draft CPO then the visual effects would remain 'Moderate'.

5.342 Mr Macbean argues that he does not want planting on Plot 1001 since this would take up agricultural land and be inconvenient for field cultivation and turning areas. He also contends that the residential properties at Milton of Gollanfield Farm are already screened by existing trees and hedges. As such he considers that screening would not add any greater benefit.

5.343 TS argues that Plot 1001 presently forms part of mitigation identified in [ES Chapter 20](#) (CD005) under items L20 (landscaping) and E5 (replacement woodland). In [TS073.03](#) TS accepts that Mr Macbean does not want the planting on Plot 1001 and indicates its willingness to remove it subject to reconsideration of the impacts. This process would involve reassessment and, if necessary, consulting the necessary bodies. Should the assessment conclude removal to be possible, formal written acceptance of such would be required from Mr Macbean and his landlord, Moray Estates. This would include confirmation of their acceptance of the findings of the landscape and visual assessment on Milton of Gollanfield Farm (receptor 83); that the effects would remain moderate, and that mitigation would be limited to a hedge row at the edge of the dual carriageway embankment and grass seeding. TS confirms that this process would take place after the public inquiry.

5.344 We note that Mr Macbean wishes in principle to accept the visual impacts / effects and to remove Plot 1001 from the [draft CPO](#) (CD001). We accept that TS has set out a recognised process for this. This process of reassessment appears to us to be the same that has been identified for other design changes that take place. We give some recognition to Mr Macbean's request for plot 1001 in our consideration of visual impacts and effects below.

5.345 We also accept the point raised by TS's EIA expert at Inquiry Session 6B. He stated that part of any assessment would need to consider if woodland across the whole scheme would still be sufficient (without plot 1001) in providing replacement woodland habitat for that which would be lost to construction. We agree that this is not solely a matter of visual screening, albeit that Plot 1001 would fulfil that role.

5.346 However, since the outcome of the above is dependent on a future assessment that has yet to take place, we must consider these matters based on what is before us. Overall we accept that Plot 1001 is necessary to provide mitigation for the proposed scheme, as assessed and also replacement planting. We find this to justify its proposed acquisition and therefore we do not recommend modification of the draft Orders.

-Access and fencing

5.347 [ES Appendix A15.7](#) (CD006) identifies the reinstatement of boundary features including fencing, accesses and drainage as necessary mitigation. ES Appendix A15.7 also makes clear which fields these measures would apply to. TS has explained that more detailed design and consultation would take place at the next stage were the draft Orders to be confirmed. We find that sufficient detail and commitment has been made at this stage and that such matters would form part of the contract of works and would, as such, be a requirement upon the contractor.

-Drainage and flooding

5.348 We have considered the general matters relating to the provision/reinstatement of field drainage, including where this would be severed by the proposed scheme, in the paragraph above. TS073.02 considers this in detail including the provision of pre-earthworks ditches and connection of existing field drains.

5.349 TS and Mr Macbean disagree on the adequacy of how the proposed scheme would deal with additional run-off from the proposed dual carriageway. We find that the whole dual carriageway drainage system has been designed around a series of SuDS detention ponds that are located along the route of the proposed scheme as shown [in ES Figures 9.5](#) and [ES Figures 13.1](#) (CD007) and [DMRB Stage 3 Figure 4.2](#) (CD009). This is explained in the [Scheme Design Development and Consideration of Alternatives Report](#) section 5.4 (TS209).

5.350 The purpose of SuDS is to slow the outflow of water into nearby watercourses to reduce the risk of flooding. The SuDS ponds have been designed to cope with 1 in 200 year storm events with a further allowance of 20% increased rainfall for the effects of future climate change. We also note the SuDS are designed to filter suspended solids and heavy metals from the water to reduce water pollution.

5.351 We note that TS has carried out a flood risk assessment in [ES Appendix A13.2](#) (CD006). We give weight to the fact that SEPA has not objected to this or to the proposed scheme and consider this to mean that the proposed scheme drainage arrangements are acceptable in principle. In the absence of evidence to support a different conclusion, we find the proposed arrangements for SuDS near Milton of Gollanfield Farm and their proposed discharge into the nearby burn passing Milton of Gollanfield Farm to be appropriate.

5.352 TS and Mr Macbean also disagree about the drainage for the existing A96. The existing A96 drainage arrangements are not the proposed scheme. Even if it were desirable to tie the existing A96 into the SuDS network for the proposed scheme, this would bring its own practicalities. The proposed scheme has been designed specifically to drain into the SuDS ponds. The existing A96 was not designed in this way and so would require there to be sufficient capacity in the proposed scheme SuDS ponds. Additional or larger SuDS ponds, accommodating additional water would require changes to the assessed flood risk assumptions and may also require additional land for new ponds or larger capacity ponds.

5.353 The draft CPO can be modified to remove land but not to add it. The ES covers the proposed scheme as designed and so there has been no consideration of the additional environmental and engineering impacts of what Mr Macbean suggests.

5.354 In [TS073.03](#) TS acknowledges concerns raised by Mr Macbean at a meeting held with him on 26 June 2018 regarding visibility of the proposed SuDS ponds and their potential to attract pests and introduce an unpleasant odour. We note that these ponds empty over time and so there would be a flow of water rather than standing water. TS073.03 confirms that best practice guidance in the choice of SuDS techniques and design would be used to provide a balanced pond habitat to deter breeding of nuisance insects and avoid odours. This would include the proposed mitigation planting shown in [ES Figure 9.5i](#) (CD007). The evidence does not suggest we should find differently. We consider the visual impacts and effects associated with the SuDS ponds separately below.

-Water supply

5.355 We note that Mr Macbean uses the spelling Cottar House whereas TS uses the spelling Cotter House. We find that both appear to be referring to the same property and therefore accept either spelling. In our findings of fact we have used the spelling Cottar House.

5.356 TS confirms that water supply diversions would be provided and that this would be done by Scottish Water as the utility provider and asset owner. In TS073.03 and at Inquiry Session 6B, TS confirmed that a replacement water main would be provided on the north side of the proposed scheme and this would supply Cottar House. We find this commitment to respond to Mr Macbean's concerns.

-Contracting arrangements

5.357 The proposed contracting regime would build-in from the outset any relevant requirements for mitigation from the ES and any agreed accommodation works. This and the presence of on-site supervision by TS's agent would provide a mechanism to hold the contractor to account.

5.358 The contractor would have some design 'freedom' (our word). However, this would remain within the requirements of the contract and the land acquired by CPO. At Inquiry Session 6B, TS explained that all designs must be considered against the ES. Where these were considered to result in new or changed environmental impacts, they would be reassessed, including with any necessary mitigation. This provides an additional mechanism to ensure that design 'freedom' would not result in unintended environmental consequences that differ from those already foreseen by the ES (CD005, CD006 and CD007) and already built into the contract.

5.359 We understand the concerns of Mr Macbean regarding any route for recourse in the event of unsatisfactory works. TS confirmed the on-site staffing arrangements that would be in place during construction. These arrangements would allow concerned parties to approach the service provider (the contractor) and their independent overseer (in this case Jacobs).

5.360 Overall, we find the contracting approach provides for mitigation and accommodation works to be carried out to an appropriate standard within an independent inspection regime. The contractor would have some design freedom but this would remain within the bounds of the contract and a regime for assessing any additional environmental impacts. Affected parties would have a route of recourse to both the contractor and the contract overseer. The evidence does not suggest we should conclude this to be deficient.

-Agricultural assessment

5.361 There does not appear to be any disagreement about the anticipated scale of land take or the manner in which the agricultural assessment has been carried out.

5.362 Some parties appear to consider the term 'neutral' to represent the status quo. However, we find that [ES paragraph 15.3.61](#) (CD005) is clear that this is not its intended meaning. The definition provided in that paragraph makes clear that the term 'neutral' involves change and that this may necessitate a reduction or restructuring of activities. We also note the definitions of the terms 'beneficial' and 'adverse' in ES paragraph 15.3.61 (CD005). We find that the definition of 'neutral' accurately describes the anticipated impacts on Mr Macbean's farming operations that would result from the proposed scheme at Milton of Gollanfield Farm and that the terms 'beneficial' and 'adverse' do not.

-Culblair Farm Field 557/1 North access arrangements

5.363 [ES Figure 15.6e](#) (CD007) shows that were the proposed scheme to proceed it would sever field 557/1, which is farmed by OBJ/082 Mr Rose. The proposed scheme would be south of the field with the existing railway to the north. To its east would be the land farmed by Mr Macbean. To its west would be the proposed Mid Coul Junction with access roads and side roads. [ES Appendix A15.7](#) page A15.7-13 suggests access via development land to the west, though we note such an access could be constrained by the proposed Mid Coul Junction and Aberdeen to Inverness Railway. However, ES Figures 4.1d and 15.6e (CD007) shows a proposed access track to the eastern end of field 557/1 North via land farmed by Mr Macbean.

5.364 We find that such an access route (from the east) would involve use of the U1025 public road to Milton of Gollanfield Farm and then use of the existing farm track heading south-westwards. ES Figure 15.6e (CD007) shows this existing path passing south of field 449/2 and north of fields 449/3 and 449/4. ES Appendix A15.7 suggests that access to field 449/1 would be gained via an inter-field gate between this and field 449/2. As such we find TS to be suggesting that access to field 557/1 north would be via this route and would then require the further crossing of field 449/1 and, presumably, an inter-field access gate between the two. We therefore agree with Mr Macbean that accessing field 557/1 north from the east would, inevitably require the crossing of land he farms.

5.365 TS has confirmed that the proposed track would be accommodation works and so does not appear in the ES because it is not essential for the proposed scheme. We find no reason to doubt this.

5.366 We note Mr Macbean's concerns about bio-security and further loss of productive agricultural land. The concerns do not appear to be unjustified. We agree that there is an important distinction between the two terms 'agricultural purposes' and 'agricultural production'. We find that TS's letter of 31 August 2018 ([TS073.03](#)) refers to 'agricultural purposes' not 'production'. However, we agree with Mr Macbean that if access were to be taken across land that he farms then this could have an impact on the amount of land lost to production. We also find that any additional land loss would principally relate to field 449/1 since access to and across other fields would be needed to mitigate severance at Mr Macbean's farm in any case.

5.367 Essentially, we find this to be a matter of access to lands in the same ownership but different tenancies. Should the parties agree then the evidence does not suggest any physical impossibility.

5.368 Field 557/1 north is farmed by OBJ/082 Mr Rose and we have considered this matter separately from the perspective of Mr Rose's objections in paragraphs 5.223 to 5.227 (above). We find that parties whose land/business interests incur losses as a result of the proposed scheme may be able to claim compensation. The nature of any claim and what, if any, compensation would be awarded is a matter for the respective parties and the District Valuer. Compensation is not a matter for this inquiry.

5.369 We have already found that the owner/tenant of field 557/1 north may be entitled to claim compensation if they are denied access to this land. The evidence here does not suggest we should reach an alternative conclusion from the perspective of Mr Macbean's objections. Therefore if access were to be taken across the land he farms and he was to incur losses then this may form part of any compensation claim he chooses to make. Again this would be a matter for the respective parties and the District Valuer and not for this Inquiry.

5.370 During Inquiry Session 6B we heard discussion between Mr Macbean and TS about alternative access being taken from the west, as suggested in ES Appendix A15.7 page A15.7-13. At the inquiry session TS expressed concerns about use of the existing stone bridge for road safety and engineering reasons. This is reiterated in paragraph 10.51 of [TS's closing statement](#) where it notes that this would not be preferable to the proposed scheme. We find no compelling reasons to doubt these conclusions. TS did, however agree to consult with The Highland Council on whether it would be possible to use this stone bridge. In the absence of any further information we must recognise the safety and engineering concerns identified by TS and therefore we agree that this would not be preferable to the proposed scheme. As such this may be a matter for agreement between the respective parties and/or for the District Valuer to consider any claims for compensation.

Impacts on residential interests

-Noise and vibration

5.371 [ES Chapter 8](#) (CD005) confirms that two exercises took place. A baseline study of used 27 noise sensitive receptors to understand the existing noise climate. This was not the noise assessment. The noise assessment itself, used computer modelling, verified by the baseline study, to predict the noise impacts of the proposed scheme for all properties within the respective study area informed by predicted traffic volumes in the Moray Firth Transport Model (MFTM). The evidence does not suggest we should find the noise assessment to have been carried out incorrectly or to have reached inappropriate or erroneous conclusions.

5.372 The noise mitigation strategy ([ES paragraphs 8.2.24 to 8.2.34](#) – CD005) and noise mitigation thresholds have been covered in Chapter 2: Matters of Principle and Chapter 4: Smithton, Culloden, Balloch, Allanfearn and the Hedges paragraphs. There we confirmed that we are satisfied that the noise mitigation strategy appropriately identifies noise mitigation thresholds for changes in noise levels and for absolute noise levels.

5.373 For noise level changes [DMRB HD213/11](#) paragraph 3.38 (CD049.19) identifies changes of 1 dB or less in the short-term and 3 dB or less in the long-term to be imperceptible. As such, it is reasonable that noise level changes above this threshold would be perceptible and that mitigation should be offered, provided that the appropriate absolute noise level threshold is also exceeded.

5.374 The ES mitigation strategy uses a threshold of $L_{A10, 18h}$ 59.5 dB. Use of the $L_{A10, 18h}$ metric is reasonable because it is used in the [CRTN](#) (CD084) to predict traffic noise. It covers an 18 hour period whereas the L_{Aeq} defined by WHO is for a 16 hour period and free field. Free field means that it does not account for the reflective impacts of buildings ('façade effects'). The $L_{A10, 18h}$ 59.5 dB includes façade effects. We agree with TS that $L_{A10, 18h}$ and L_{Aeq} are therefore each different metrics for measuring absolute noise in the same way that centimetres and inches are different metrics for measuring distance.

5.375 Applying the appropriate conversion factor for L_{Aeq} to $L_{A10, 18h}$ and to account for façade noise means that $L_{A10, 18h}$ 59.5 dB and L_{Aeq} 55 dB are the same absolute noise level. Therefore we find that the absolute noise levels of the $L_{A10, 18h}$ 59.5 dB is based on the [WHO guidance 1999](#) (CD090) level of 55 dB L_{Aeq} but is a different metric.

5.376 The WHO guidance 1999 (CD090) quotes two thresholds for absolute noise levels. These are 50 dB L_{Aeq} and 55 dB L_{Aeq} . TS has adopted the higher of these. Based on the [National Noise Incidence Survey 2000-02](#) (CD123) we found that the daytime noise levels for Scotland already exceed the 50 dB L_{Aeq} levels and that it was therefore reasonable for to adopt the higher 55 dB L_{Aeq} (equivalent to $L_{A10, 18h}$ 59.5 dB).

5.377 The [WHO Night Noise guidance](#) (CD091) lists two possible thresholds; one of 40 dB and an Interim target (IT) $L_{night, outside}$ of 55 dB. TS has adopted the higher, interim target in [ES paragraph 8.2.33](#) (CD005). DMRB HD 213/11 paragraph 2.29 (CD049.19) confirms that 40 dB $L_{night, outside}$ is a target intended to protect the most vulnerable groups, everywhere at any given time from any risk of sleep disturbance based on the lowest observable adverse effect level (LOAEL). The evidence does not suggest we should reach a different conclusion. DMRB HD213/11 paragraph 2.29 (CD049.19) explains that WHO NNG (CD091) also recommends the interim target of 55 dB where achievement of the NNG is not feasible in the short-term, in order to respond to exceptional local situations.

5.378 DMRB HD213/11 Paragraph 3.38 (CD049.19) urges caution in predicting night-time noise, as traffic levels fall at night. It recommends therefore that only those NSRs predicted to be subject to an $L_{night, outside}$ exceeding of 55 dB should be considered. This corresponds with the interim target (IT) in the WHO Night Noise Guidelines (CD091) and that quoted in ES paragraph 8.2.33 (CD005).

5.379 Therefore we find no reason to conclude that TS's noise mitigation thresholds in [ES paragraphs 8.2.24 to 8.2.34](#) (CD005) are set unreasonably high.

5.380 In [TS073.03](#) TS outlines an approach to post-construction monitoring to ensure that the proposed noise mitigation is in place and is satisfactory. We find this to provide the mechanism to deal with the concerns that Mr Macbean raises.

5.381 Mr Macbean is correct that no property-specific mitigation measures have been proposed. [TS073.02](#) Tables 1 and 2 show that the predicted absolute noise levels with the proposed scheme in place would remain below the absolute noise threshold of 59.5 dB $L_{A10, 18h}$. Under the noise mitigation strategy (ES paragraphs 8.2.24 to 8.2.34 – CD005) no additional noise mitigation would be needed beyond the earthworks and low noise road surfacing (LNRS) already designed into the proposed scheme and covered by the noise assessment. We are satisfied that the predicted level of noise emissions at Mr Macbean's properties would not reach a level that would justify receptor-specific mitigation.

WHO Guidelines 2018

5.382 Immediately before the inquiry began at the end of October 2018 the WHO published new guidance on noise levels (CD140). This new guidance was presented to us by TS during the inquiry. We invited participants to consider this during the inquiry and provide any written comments alongside any closing statements if they wished. A general discussion of WHO Guidelines 2018 (CD140) may be found in Chapter 2: Matters of Principle. We consider Mr Macbean's concerns below.

5.383 OBJ/073/Mr Macbean argues that:

- the [WHO guidelines 2018](#) (CD140) and [TS supplementary precognition](#) imply that the WHO is recommending an enhancement of the previous noise impact limits based upon evidence of harmful impacts upon human health and wellbeing.
- the change in noise impact levels at the affected properties has already been identified as significant and adverse but the promoter considers that additional mitigation works are unjustified, but this is based upon the predicted modelling falling just short of the current WHO guidelines (CD090 and CD091).
- there is concern that a risk of impacts on the health and wellbeing of residents remains and TS has a duty to undertake a revised assessments and, if necessary, provide appropriate additional mitigation to prevent such adverse health impacts.
- should the revised WHO guidelines (CD140) be adopted by the relevant statutory authorities before the proposed scheme is built, it would be unjustified for TS to proceed without undertaking such further review.
- the dualling of the A96 is proceeding in sections. If the revised WHO guidelines are adopted whilst other sections remain under design consideration, it is conceivable that later sections of the dualled A96 may be subject to a different noise impact assessment regime to that for this proposed scheme. This would be inequitable and unreasonable.
- the Reporters should recommend that an updated noise impact assessment is carried out in the event of the amended WHO guidance (CD140) being adopted before the whole A96 dualling (and not just this proposed scheme) is completed.

5.384 TS provided a precognition for the inquiry and this was discussed at Inquiry Session 6B with Mr Macbean. There, and in [its Closing Statement](#), TS makes clear its view that the WHO Guidelines 2018 have been published but have not yet been adopted in Scotland. We agree that this is the case and it does not appear to be disputed by Mr Macbean who seems to accept this in his arguments. This being so, we accept that the adopted guidance available to TS when carrying out the noise assessment and also now (at the time of writing this report) is the WHO guidance (CD090 and CD091).

5.385 TS also directs us to WHO 2018 guidance (CD140) executive summary page xv. There it explains that the new guidance uses a noise metric L_{den} . This is a single noise metric for day, evening and night. TS argues that this metric differs from both the L_{Aeq} and $L_{A10, 18h}$ metrics currently used by WHO 1999 (CD090) and the noise assessment for the proposed scheme respectively. TS also argues that the L_{den} metric quoted in the 2018 guidelines (CD140) also exclude façade effects. We have already found that a difference in metrics and inclusion or exclusion of façade effects are important distinctions when considering noise measurements. We therefore agree with TS that this would be an important consideration when reading the proposed noise level thresholds in the new guidance (CD140) and comparing them with those of the WHO 1999 (CD090) and those used for the noise assessment in ES Chapter 8 (CD005).

5.386 TS also explains in paragraphs 4.8 to 4.12 of its closing statement regarding WHO Guidelines 2018 (CD140) that WHO acknowledges a knowledge gap and a need for 'longitudinal studies on health impacts from exposure to environmental noise to inform future recommendations properly'. We find this to be further recognised by the WHO Guidelines 2018 (CD140) page 29 in the recommendations section which explains that the guidelines should:

...serve as the basis for a policy-making process in which policy options are quantified and discussed. It should be recognised that in that process additional considerations of costs, feasibility, values and preferences should also feature in decision-making when choosing reference values such as noise limits for a possible standard or legislation.

In the WHO Guidelines 2018 (CD140) section 5 implementation guidelines Section 5.1 reinforces this position recognising that the factors quoted above can 'feature in and can influence the ultimate value chosen as a noise limit.'

5.387 We find this to demonstrate that the WHO Guidelines 2018 (CD140) are not necessarily expected to be adopted verbatim, rather that work is incomplete. We agree with the points in TS closing submission on WHO 2018 paragraph 4.13. This explains that the WHO Guidelines 2018 (CD140) do not have legislative force, but are aspirational. This suggests to us that any adopting process must consider the matters identified further, carry out additional research and assess the practicalities of these matters before adopting threshold values. We also find this to suggest that any threshold values that are ultimately adopted may differ from those currently presented in WHO Guidelines 2018 (CD140) as a result of this additional work. We therefore conclude that it is not appropriate or rational to simply expect that the thresholds identified in CD140 would be the thresholds ultimately adopted by Scottish Ministers since the work to determine this has yet to take place and its conclusions therefore cannot be known in advance.

5.388 Based on the above consideration we find that one cannot simply take the existing noise assessment and alter the absolute noise level thresholds to reflect those in the new WHO guidelines 2018 (CD140). Since this uses different metrics an entirely new noise assessment would be required. Furthermore, we have found that this new guidance (CD140) is not yet adopted and there is no current requirement for it to be followed. Similarly there is no guarantee what the respective noise thresholds would actually be. We also agree with TS's point that, following any such research and conclusions would follow consultation and engagement; as part of the normal framework for adoption of policy and/or legislation. We see no basis to justify advising Scottish Ministers to instruct a new noise assessment since the basis for doing so and any new standards upon which it would be based are yet to be determined.

5.389 We agree with Mr Macbean that it is plausible to suggest that were the WHO guidelines 2018 (CD140) to be adopted over the coming years, later sections of the A96 dualling towards Aberdeen (and other roads) may be subject to different noise mitigation thresholds compared with this proposed scheme. We also agree that this could mean the newest sections of the road having potentially different design standards to older sections of the road. However, we find this to be unavoidable in any field of development where standards of design change over time. Any proposal must be assessed against the requirements of the time. We find this to be the case here.

5.390 Mr Macbean also makes reference to his arguments with regard to the current noise assessment conclusions. We have already considered and made findings on these above.

5.391 We therefore find that the newly published WHO Guidelines 2018 (CD140) are neither law nor adopted policy. A process of further research and consideration will be required prior to any adoption, with no guarantee of what the actual thresholds would be. The proposed scheme has been subject to a noise assessment based on the appropriate adopted guidance. We find no reason to recommend that Scottish Ministers seek a reassessment of the noise impacts.

-Visual impacts

5.392 The evidence does not suggest we should doubt the methods of assessment or the conclusions reached for the landscape and visual impact assessment.

5.393 Mr Macbean disputes the acquisition of Plot 1001 for visual screening purposes. Proposed acquisition of this plot is covered separately above. [ES Figure 9.5i](#) (CD007) shows the proposed mitigation planting regime in the vicinity of Milton of Gollanfield Farm. We note its location relative to Milton of Gollanfield Farm (Receptor 83) and the Cottar House (Receptor 84). The proposed planting at Plot 1001 and hedgerow planting along the north side of the proposed dual carriageway would contribute to screening views of the proposed scheme and vehicle headlights, particularly for east-bound traffic.

5.394 We also note Mr Macbean's concerns about the impact of the proposed SuDS ponds to the south of receptors 83 and 84. The [Report on Landscape and Visual Issues](#) (TS212) section 12.5 concludes that the proposed planting north of the SuDS ponds would have matured by summer 15 years after opening but that the visual effects would remain 'moderate'.

5.395 [ES paragraph 9.6.19](#) (CD005) explains the approach to integrate SuDS and planting into the landscape and also the proposed smooth contours for the proposed SuDS ponds. The proposed planting is illustrated in [ES Figure 9.5i](#) (CD007). We find that there is some opportunity, by species selection, to influence the speed of growth of the vegetation. However, this would be dependent on the mix of appropriate native species identified in the ES. Similarly, whilst this might offer some opportunity for quicker growth, it is still reasonable to consider the impacts and effects at year of opening and fifteen years later. [ES Figure 10.3d](#) (CD007) suggests that the proposed planting would contribute to diminishing the visual effects of the proposed scheme, including the SuDS ponds. [ES Figure 10.3d](#) (CD007) refers to the collective effects of the proposed scheme in this locality and not the SuDS ponds alone.

5.396 Overall, however, TS212 section 12.5 suggests that the residual visual effects would remain moderate at summer 15 years after opening. This is, at least in part, due to the impact that the mitigation would have as a new landscape feature in a relatively open landscape. Whilst less landscaping (such as the removal of Plot 1001) may reduce the effects of new features it would also reduce screening of the proposed scheme bringing alternative visual effects that would otherwise have been screened. Similarly, more screening, such as around the proposed SuDS ponds may improve the ability hide the ponds from view but may not diminish the residual effects apparent from the additional mitigation.

-Air quality

5.397 The evidence does not suggest that the air quality assessment was carried out incorrectly or that we should doubt its conclusions.

5.398 [ES Appendix A7.4](#) (CD006) shows the predicted levels with the proposed scheme in place for NO₂ to be 5.7 µg/m³, PM₁₀ to be 10.1 µg/m³ and PM_{2.5} to be 5.8 µg/m³ for receptor AQ_294 (The Cottar House) close to Milton of Gollanfield Farm. This shows that, despite minor increases in the concentrations of NO₂, PM₁₀ and PM_{2.5} these would remain well below the respective air quality standards identified in [ES Table 7.3](#) (CD005). As such this does not suggest that air quality standards would be breached at Milton of Gollanfield Farm as a result of the proposed scheme.

-Plot 1005

5.399 Plot 1005 is included in the proposed scheme to provide a vehicle turning head for service vehicles as a result of the severance of current access roads by the proposed scheme. Initially, in [TS073.02](#) TS had committed to remove a triangular wedge to the south east corner of this area because it was not needed and there appeared to be no rationale for it to remain in the draft Orders. However, in its more recent letter dated 31 August 2018 ([TS073.03](#)), TS confirms that it now intends to remove the turning head entirely from the proposed scheme, subject to agreement with The Highland Council. TS notes that an alternative turning head would be available as per the published design further south at the point where the U1025 is severed. This is shown on [draft SRO](#) Plan SR8 at points 131 and 29 (CD003). The evidence does not suggest we should conclude differently. We find that such a modification would resolve Mr Macbean's concerns, subject to agreement by The Highland Council. As we regard the proposal to be acceptable either with or without the inclusion of Plot 1005, we see no reason to recommend its exclusion from the proposed scheme. However, if all the appropriate parties were content to omit it then TS should be permitted to do so.

U1025 Milton of Breachlich Road

5.400 Mr Macbean is not the only objector to raise concerns about the proposed modifications to the U1025 road, others are considered separately in paragraphs 5.417 to 5.438 (below). The U1025 is a single track road that currently runs from a junction with the B9006, past Milton of Gollanfield Farm, to the A96. Were the proposed scheme to proceed, several different access roads from the existing A96, including the U1025, to farms, fields, homes and a cemetery would be severed. The U1025 between the B9006 and Milton of Gollanfield Farm would become the only means of vehicular access for all of the properties that are served by it. As such, TS proposed to upgrade this single track road as shown in [draft SRO](#) Plans SR8 and SR9 (CD003).

5.401 Draft SRO Plan SR9 (CD003) shows proposed modifications to the U1025 including a new section of road linking the existing U1025 at Ballaggan Steadings and then running east to a new junction with the B9006 (Point 34). Where point 34 meets the existing U1025 this junction would be widened and the existing road improved (Point 136). A section of the current U1025 west of the existing junction with the B9006 would be stopped up (Point 205).

5.402 Draft SRO Plan SR8 shows proposed improvements to the existing U1025 with passing places (points 133 and 31 and points 32 and 135 respectively) located between Ballaggan Steadings and Milton of Gollanfield Farm. Improvements to the existing road and

a new means of access from it to Polfalden are also proposed (Points 134 and 372) with new field accesses at points 369, 370, 371 and 373.

5.403 TS has also committed to strengthen the soft embankment upon which the U1025 sits between Ballaggan and Milton of Gollanfield Farm. This should resolve concerns raised by Mr Macbean over vehicles falling from the road verges into his fields. We note that such works would need to be agreed by The Highland Council as the local roads authority.

5.404 There are two formal passing places proposed (points 31 and 32) between Milton of Gollanfield Farm and Ballaggan House. Proposed new means of access and road improvement (points 134 and 372) could also serve as an informal passing place. This would provide three locations where vehicles could pass within 350 metres of one another. There is also the widened junction proposed where point 34 meets point 136 just east of Ballaggan House. We note TS's comments about anticipated traffic volumes along this road. Based on at least eight residential properties, a farm complex and a kennels the proposed improvements to the U1025 would not seem insufficient.

5.405 Mr Macbean is concerned about the width of the road for large commercial and agricultural vehicles at the pinch point between Ballaggan House on the north side of the road and the scheduled ancient monument on the south side of the road. The presence of these two features limits the opportunity to widen the road at this location.

5.406 In correspondence and at Inquiry Session 6B Mr Macbean questioned the significance of this scheduled monument and whether it would be possible to excavate the verge to widen the road without affecting the monument. He contends that the presence of the scheduled monument does not preclude development, particularly where the impact on the scheduled monument is likely to be minimal.

5.407 TS's historic environment expert confirmed that the features in this scheduled ancient monument are not visible from the surface but are beneath the plough line. He confirmed that the monument includes field boundaries and is one of a group in the area although others are not designated. TS also confirmed that an invasive exploration in the form of a dig, such as that proposed by Mr Macbean in order to determine the extent and nature of the remains, would itself require consent and that even a geophysical survey would require consent. TS's view is that, as the scheduled monument area extends right to the edge of the road, one must assume that the features of interest within the site are similarly extensive.

5.408 Whilst this scheduled monument cannot be seen from the surface this does not diminish its significance. It is designated and as such has national importance and is protected by law (The Ancient Monuments and Archaeological Areas Act 1979). One must assume the historic features that have justified the scheduling of this monument cover the whole of the designated area, the evidence does not suggest we should find otherwise. We agree that a dig would be invasive and find the current proposal best reflects a precautionary approach of avoidance of damage ahead of all other outcomes. We also agree with the points made by TS's historic environment expert in Inquiry Session 6B, that given that there are alternatives that would avoid the Scheduled Ancient Monument, it is unlikely that HES would grant consent to any alternative proposal that would impact the monument.

5.409 TS considered an alternative replacement route for the U1025, earlier at DMRB stage 2. TS refers us to drawing B1557602/MLA/1309 and B1557601/MLA/1314 ([CD012](#)) [Reporters consider this to be a typing error that should refer to B1557601/MLA/1309]. Mr Macbean objected to this in TS073.04 on the grounds that it would 'take up unnecessary land'. OBJ/065 Moray Estates (TS065.04), the land owner, objected too; though it has now withdrawn all its objections. The corollary of both objections has resulted in the proposed arrangements as set out in draft SRO Plans SR8 and SR9 (CD003). The rationale for the proposed route versus the alternatives have been set out by TS and includes smaller land-take and lesser impacts on agricultural land. These are logical considerations and the evidence does not suggest these alternatives to be better than the proposed scheme.

5.410 At Inquiry Session 6B Mr Macbean contended that this shows a conflict in what constitutes a public interest between the loss of agricultural land and the loss of a scheduled ancient monument. [ES Figure 15.5e](#) (CD007) shows that the land take for the new section of the U1025 (Point 136 draft SRO Plan SR9 – CD003) crosses class 3.2 agricultural land. This is not prime agricultural land. We also note that protection of agricultural land is a policy protection where as that of scheduled ancient monuments is a legal protection. We agree with TS that the decision about route options and alternative routes for side roads was informed by a variety of considerations. As such we find that this is not a debate about which of two factors is more important but instead a wider consideration of a variety of factors with differing levels of significance.

5.411 In [TS073.03](#), TS confirms that the current width of road available for vehicles between Ballaggan House and the scheduled ancient monument is approximately 3.4 metres. TS also commits in TS073.03 to relocate existing telegraph poles at Ballaggan to increase the available width to approximately 3.6 metres. TS contends that many, but not necessarily all, agricultural vehicles and equipment are designed with transport mode widths of 3.5 metres or less. It argues that this is to avoid the need to notify Traffic Scotland and the local roads authority of the intention to move the vehicle along a public road, request an agricultural dispensation, or arrange for an attendant to accompany the equipment whilst on the public road network. The evidence does not suggest we should doubt this.

5.412 We therefore find that vehicles with widths of less than 3.6 metres should be able to pass along the U1025 at the constrained point adjacent to Ballaggan House if the telegraph poles are relocated. We note that TS does not have the measurements for the farm equipment used by Mr Macbean and therefore it cannot be said whether or not this would impact on his operations. It appears unlikely that the road could be widened further at this point.

5.413 In TS073.03, TS argues that it would be feasible for vehicles and equipment wider than 3.6 metres to access Mr Macbean's land from the U1025 by use of existing field accesses on the north and south sides of the road immediately north east of Ballaggan. [ES Figure 15.6e](#) (CD007) shows that this would require access across fields 448/1 or 448/2, neither of which forms part of Mr Macbean's tenancy but are instead farmed by other parties and owned by Moray Estates.

5.414 TS confirms that it would support Mr Macbean and Moray Estates in facilitating this arrangement should it be agreed by those parties. We find that this could form an additional solution to those already identified, were it agreed by the respective parties. The

provision of appropriate gates, access etc. would be accommodation works. Whilst we recognise their role, accommodation works themselves are not matters for this inquiry.

5.415 The measures proposed for the U1025 appear to resolve, avoid or limit the impacts that Mr Macbean is concerned about given the local situation. As designed it appears that it would be possible for access to be gained by larger vehicles with the potential for accommodation works to provide alternative means of access if necessary or possible. If Mr Macbean were to experience increased costs demonstrated to result from this restriction of access to larger vehicles and equipment then this could form part of a claim for compensation subject to the District Valuer's assessment. Matters of compensation are not for this inquiry.

Overall

5.416 The proposed scheme would result in some land loss and the consequent impacts on the Mr Macbean's farm business fall within the definition of 'neutral' in the ES. This is because he would be required to alter his business but the land could still be used for agriculture. There are no reasons to suggest that the proposed acquisition of Plot 1001 is unnecessary. Resultant impacts on access, boundary treatment, severance, drainage and water supply could all be resolved through mitigation and accommodation works. It is probable that the northern section of field 557/1 could not be accessed without agreement to cross land farmed/owned by other parties and no alternative access arrangements appear feasible. The visual, air quality and noise impacts / effects are unlikely to require additional mitigation and are unlikely to adversely affect the amenity of Mr Macbean's residential property or others nearby to an extent that would conflict with the public interest credentials of the proposed scheme. Overall, therefore, the evidence does not suggest we should recommend that Scottish Minister modify the draft Orders or refuse to confirm them. Based on the evidence before us it would be satisfactory to retain Plot 1005 for a turning head. Should TS, The Highland Council and Mr Macbean reach a subsequent arrangement that no longer requires Plot 1005 for the proposed scheme, we find no reason why it could not be retained by or returned to its present owner through the appropriate legal framework.

B9006 and Milton of Breachlich Road (U1025)

Objectors

5.417 OBJ/074 Mr Peter McGibbon, REP/075 Mr Graham and Mrs Elizabeth Rae, and, OBJ/155 Stephanie Wood and A Gibson are all residents of the locality close to the U1025.

Objections

5.418 Mr Peter McGibbon, Mr Graham and Mrs Elizabeth Rae, and, Stephanie Wood and A Gibson argue that the proposed stopping-up would require all local traffic, including agricultural traffic and commercial traffic for Polfalden Kennels, to use the U1025 via the B9006. They argue that this road is unsuitable for agricultural traffic because it is too narrow and has too few passing places.

5.419 Mr Graham and Mrs Elizabeth Rae are concerned that the driveway at Ballaggan House would get used as a passing place.

5.420 Mr Peter McGibbon argues that an increase in heavy vehicles would be a safety risk for children and adults walking to the school bus and riding bikes.

5.421 Stephanie Wood and A Gibson argue that:

- the livestock movements would prevent movement for residents.
- the road serves eight properties rather than seven because the derelict property referred to is being sold as two semi-detached properties, and so would result in more cars.
- the previous proposal, had two entrances and exits but is no longer being considered due to an objection from OBJ/065 Moray Estates etc. [The reporters note that OBJ/065 Moray Estates etc. objected but later withdrew all its objections].

Transport Scotland's Response

5.422 TS contends that the existing U1025:

- is a local road adopted by The Highland Council providing access to Milton of Gollanfield Farm, a number of residential properties, Breachlich Chapel graveyard and agricultural land.
- is currently a single track road which varies in width between 2.5 metres (8 feet 2 inches) and 3.2 metres (10 feet 6 inches).
- has a section from the existing A96 to Milton of Gollanfield (Braichlaich) Farm that has a similar minimum width as that between Milton of Gollanfield (Braichlaich) Farm and the B9006.

5.423 TS argues that the proposed scheme design includes suitable improvements to the U1025 in order to provide for future traffic flows and to take account of the change to the local road network as a result of the closure of the direct access to the existing A96 from the U1025 and Polfalden. It explains that the proposed improvements would include:

- realignment of the 375 metres length of the U1025 from the B9006 heading westwards passing to the south of Breachlich Chapel graveyard to connect to the existing road to the east of Ballaggan House;
- the new junction with the B9006 would provide better junction visibility than the existing junction and the standard provided would meet the required minimum junction visibility standards of at least 120 metres along the major road measured from a point 4.5 metres back from the edge of the major road;
- the realigned U1025 would be 5.5 metres wide for 75 metres from the B9006 providing a two-way section;
- from the end of the proposed two-way section the design published in November 2016 includes 3 additional passing places where the road would be widened to 5.5 metres wide. These would be provided along the one kilometre length of road to Milton of Gollanfield (Braichlaich) Farm and would provide suitable opportunities for vehicles to pass safely. These are at the following locations:
 - Breachlich Chapel; between The Bungalow and the new access for Polfalden; and
 - between the new access for Polfalden and Milton of Gollanfield Farm;
- there would also be an opportunity for vehicles to pass at the junction for the access to Polfalden;
- the provision of a turning area immediately south east of The Cottar House for use by service vehicles; and,
- the provision of a turning head at the end of U1025 where it would be stopped at the A96.

5.424 TS acknowledges that the number of vehicles using the U1025 between the farm and the B9006 would increase as a result of the proposed scheme. However, it contends that, overall traffic volumes would remain relatively low, with vehicles from only eight residential properties (one of which is currently derelict) and the two commercial properties, namely the Milton of Breachlich Farm and Polfalden Kennels. TS argues that these traffic volumes would be comparable to those on many other rural single track cul-de-sac roads of a similar nature.

5.425 TS confirms it will continue to consult further with The Highland Council to consider whether further measures are necessary to address concerns about passing places, road width, vehicle speed, large farm vehicles and NMU provision (including children walking to school transport pick-up/drop-off on the B9006).

5.426 TS confirms that, based on comments received, it is considering provision of an additional passing place approximately 40 metres east of Ballaggan Steading in consultation with The Highland Council (local roads authority). TS commits to continuing to work with The Highland Council to develop the design of these road improvements in more detail when the contract documents for the proposed scheme are prepared.

5.427 TS notes OBJ/155 Stephanie Wood and A Gibson's comment regarding the number of residential properties served by the road. TS refers to its letter to them dated 21 December 2017 ([TS155.03](#)) which states that seven residential properties would be directed past Ballaggan House under the new road layout. This figure, TS argues, refers to the number of residential properties lying to the south west of Ballaggan House that would, in future, be required to drive past Ballaggan House to gain access to the wider road network.

5.428 In response to Stephanie Wood and A Gibson TS confirms that a change to the proposed future road layout for the Milton of Gollanfield area, similar to that now incorporated in the proposed scheme, was suggested by Moray Estates (the owner of the affected land) following the announcement of the preferred option in 2014. This layout, TS argues, has been adopted on the basis that it would reduce farm severance, allow the removal of an existing sub-standard junction (the U1025 Milton of Breachlich Road junction with the B9006), and would be more cost effective.

Findings of Fact

5.429 We travelled the existing road on our site inspection. The U1025 is a single track road that currently runs from a junction with the B9006 via Milton of Gollanfield Farm to the A96. [ES Figure 4.1e](#) (CD007) shows that the proposed scheme would sever a number of existing access points directly onto the existing A96, including those for Milton of Gollanfield Farm and Polfalden Kennels. The U1025 would become the prime means of access.

5.430 We agree with the objectors that this could increase the amount of traffic using the U1025. However, we accept that farm traffic for Milton of Gollanfield Farm and other farm lands adjacent to the road currently can use this road and would continue to do so. Additional traffic, including to eight residential properties, is not considered to be significant since most already has access to this road.

5.431 We note the various concerns about multiple uses for the road including farm traffic, NMUs and livestock and that this is a single track road with a limited number of passing places.

5.432 [Draft SRO](#) Plan SR9 (CD003) shows proposed modifications to the U1025, including a new section of road linking the existing U1025 at Ballaggan Steadings running east to a new junction with the B9006 (Point 34). Where point 34 meets the existing U1025 this junction would be widened and the existing road improved (Point 136). A section of the current U1025 west of the existing junction with the B9006 would be stopped up (Point 205).

5.433 Draft SRO Plan SR8 shows proposed improvements to the existing U1025 with passing places (points 133 and 31 and points 32 and 135 respectively) located between Ballaggan Steadings and Milton of Gollanfield Farm. Improvements to the existing road and a new means of access from it to Polfalden is also proposed (Points 134 and 372) with new field accesses at points 369, 370, 371 and 373.

5.434 There are two formal passing places proposed (points 31 and 32) between Milton of Gollanfield Farm and Ballaggan House. The proposed new means of access and road improvement (points 134 and 372) could serve as an informal passing place. This provides three locations where vehicles could pass within 350 metres of one another. There is also the widened junction where point 34 meets point 136 just east of Ballaggan House. We note TS's comments about anticipated traffic volumes along this road. Based on at least eight residential properties, a farm complex and a kennels the proposed improvements to the U1025 would not seem deficient.

5.435 We note Mr and Mrs Rae's concerns that their driveway entrance could get used as a passing place. Neither we nor TS can rule out this possibility in totality. However, the proposed wider junction at point 136 (draft SRO Plan SR9 – CD003) and proposed passing places to the east of Ballaggan House should provide some opportunity for appropriate vehicle manoeuvres that avoid the driveway. We also noted good forward visibility along the U1025 from Ballaggan House towards Milton of Gollanfield, which would provide some opportunity to see oncoming vehicles and take appropriate action at the respective proposed passing place.

5.436 We note the dispute about the number of properties being eight rather than seven and TS's points about the location of these properties and the accuracy of their statement. We find that the objectors are recognising the total number of properties that would be accessed by the U1025. It is plausible if the renovation of the derelict building proceeds that there would be eight homes. However, the evidence does not suggest that the proposed road improvements would be incapable of handling the extra traffic associated with one additional home. On balance therefore we find that this would not, on its own, significantly affect the conclusions reached by TS or the proposed design set out in the draft SRO (CD003).

5.437 TS considered an alternative replacement route for the U1025, earlier at DMRB stage 2 and refers us to drawing B1557602/MLA/1309 and B1557601/MLA/1314 (CD012) [Reporters consider this to be a typing error that should refer to B1557601/MLA/1309]. OBJ/073 Mr Macbean objected to this in [TS073.04](#) on the grounds that it would 'take up unnecessary land'. Moray Estates ([TS065.04](#)) objected too. The corollary of both objections has resulted in the proposed arrangements as set out in draft SRO Plans SR8

and SR9. The rationale for the proposed route versus the alternatives have been set out by TS and include smaller land take and lesser impacts on agricultural land. It also avoids a scheduled ancient monument. We agree that these are logical considerations and the evidence does not suggest these alternatives to be better than the proposed scheme.

Overall

5.438 Overall, the objections and concerns raised by OBJ/074 Mr Peter McGibbon, REP/075 Mr Graham and Mrs Elizabeth Rae, and, OBJ/155 Stephanie Wood and A Gibson would be resolved or avoided by the proposed scheme design. Whilst there would be some residual impacts / effects these would not require additional mitigation and would not compromise the public interest of this proposal. We therefore find no reason to recommend that Scottish Ministers modify the draft Orders or refuse to confirm them.

OBJ/156 Mr Robert Deacon

Objector

5.439 OBJ/156 Mr Robert Deacon is a resident of Ballaggan near Gollanfield.

Objection

5.440 Mr Deacon completed a TS objection form on 17 August 2017 ([TS156.01](#)) stating that he objects to the proposed scheme.

Transport Scotland

5.441 In its letter dated 4 October 2017 ([TS156.02](#)) TS explains that it has no record of having received an objection to the proposed scheme from the objector during the statutory objection period which ran from 29 November 2016 to 31 January 2017. Should the objector wish to do so, TS confirmed in TS 156.02 that it would consider an objection if advised of the grounds for that objection, in writing, by 31st October 2017. Should grounds for an objection not have been received by that date, TS confirmed it would not consider the form that the objector returned as an objection to the proposed scheme.

Findings of Fact

5.442 TS156.01 is a form that is usually attached to the bottom of TS letters of response to objectors, such as those dated 31 July 2017 to various objectors e.g. TS008.02. TS156.01 is dated 17 August 2017; after the statutory period from 29 November 2016 to 31 January 2017. It contains no grounds for objection and no supporting evidence.

5.443 TS letter dated 4 October 2017 (TS156.02) gave Mr Deacon the opportunity to provide grounds for objection by a given date. No grounds were provided. It is not reasonable to expect a promoter of a scheme to respond to an objection which contains no grounds or evidence since the promoter has nothing to respond to. Similarly this makes it impossible for us to make any findings of fact or recommendations besides those already contained in this report. We therefore conclude that there are no grounds for this objection.

OBJ/076 Mr Tamer Tasasiz

Objectors

5.444 OBJ/076 Mr Tamer Tasasiz is the owner of the former Highland Food Stop, which is located south of the existing A96 and west of the B9090 at the current Brackley junction. Were the proposed scheme to proceed, Mr Tasasiz's land would sit between the proposed dual carriageway and the proposed west-bound entry ramp to the dual carriageway from the proposed new Brackley junction.

Objection

-Consultation

5.445 Mr Tasasiz argues that he was not served with a formal notice of the proposed works. He considers this to be because, either; he has been overlooked; or, TS has failed to meaningfully engage.

-Business impact

5.446 Mr Tasasiz argues that his land would be surrounded by roads during construction and operation of the proposed scheme. He considers that his land would be blighted resulting in what he terms 'substantial capital depreciation to the value of the land'. He also raises concerns that the construction phase would prejudice the operations of his tenant, Mr Ali's restaurant business (Ozzy's Restaurant).

Transport Scotland's response

-Consultation

5.447 TS explains that:

- during DMRB Stage 2, invitations for the public exhibitions (November 2013 and October 2014) were sent to Mr Tasasiz at the address identified through a title deed search.
- at the start of DMRB Stage 3, a notice, dated 29 July 2015, requesting access to carry out environmental surveys was also sent to that address.
- there was no return of these letters as undeliverable or any response at the time.
- attempts to obtain a telephone number for this address were also unsuccessful.

5.448 In the absence of any direct contact with Mr Tasasiz, TS states that attempts then turned to determine contact details for Mr Tasasiz through the current occupier. TS contends that:

- at a consultation on 9 October 2015 the occupier confirmed that he is a tenant and that Mr Tasasiz is the owner but was frequently overseas.
- the tenant was unable to provide contact details for Mr Tasasiz.
- the tenant was asked to relay the need for Mr Tasasiz to make contact as soon as possible, which was repeated at another consultation meeting with the tenant (Mr Ali) on 2 February 2016.
- an initial consultation was subsequently carried out with Mr Tasasiz's mother, as his representative on 31 March 2016, as Mr Tasasiz was overseas at the time.
- the consultation was achieved through the offices of a friend of Mrs Tasasiz who was aware of the scheme proposals.

- consultation meetings were then held with Mr Tasasiz on 5 May 2016 and 30 August 2016 during which he was given details of the scheme proposals and a business impact survey was completed.

5.449 TS argues that Mr Tasasiz was not served any formal notice of the proposed works because it does not need to compulsorily purchase land from him. As such, TS argues, there is no need to serve him with copies of the draft Orders.

-Business impact

5.450 TS argues that:

- the impacts of the proposed scheme on the business operated by the current tenant, Mr Ali, have been assessed in the [ES Chapter 15](#) (CD005).
- the impacts on vehicle access are described at [ES paragraph 15.5.31](#) and within [ES Table 15.24](#) (CD005).
- the likely future impacts on business viability are described in [ES paragraph 15.7.5](#) (CD005).
- the assessment concludes that disturbance would occur during construction and that this may affect customer numbers and customer experience, particularly for the restaurant element of the business and for passing trade of the takeaway business.
- the likely future impacts on business viability would be 'adverse' (significant) during the construction period and 'neutral' (not significant) following construction.
- the criteria for 'adverse' and 'neutral' impacts are described in [ES paragraphs 15.3.33](#) (CD005).

5.451 TS notes the suggestion by Mr Tasasiz that the proposed scheme would blight the property and cause substantial capital depreciation to the value of the land. TS argues that:

- as this land has been identified as development land (it has a consented planning application), the impacts of the proposed scheme have been assessed on the development potential of the site.
- the assessment is detailed in [ES paragraph 15.5.56](#) (CD005) and [ES Appendix A15.5: page A15.5-7](#) (CD006).
- 'adverse' impacts are assessed on the amenity of the site.
- beneficial impacts are assessed due to improved connections and safety arising from the construction of the Brackley Junction.
- overall the impact is assessed as 'mixed' due to the combination of 'beneficial' and 'adverse' impacts.

5.452 TS notes that Mr Tasasiz intends to submit a claim for compensation.

Findings of Fact

5.453 We saw Ozzy's restaurant from both the existing A96 and the B9006 during each of our site inspections. On each occasion there was no sign of operations and the car park was empty and sealed off from the road with bollards and a chain.

-Consultation

5.454 We note that Mr Tasasiz was not served with copies of the draft Orders because his land is not proposed for compulsory purchase. Consideration of the [draft CPO](#) (CD001) shows that none of the land proposed for purchase in the vicinity of Brackley junction is

owned by Mr Tasasiz. There was therefore no requirement for him to have been formally served with the draft Orders.

5.455 We also note that he was not contacted immediately by TS. We accept that when assembling land in different ownership and/or trying to contact landowners, such as happens for CPOs, it can be challenging to identify all parties since contact information may not be up to date. TS explains that it went through several different procedures when it became evident that it had not been able to contact Mr Tasasiz. We find no reason to doubt this explanation. It is also clear that TS was subsequently able to reach Mr Tasasiz via his tenant and a relative. It is clear from his objection that Mr Tasasiz has now had the opportunity to participate and raise issues of concern and that his property has been subject of consideration in the ES. As such we find nothing to suggest that TS has acted inappropriately.

-Business impact

5.456 We note that Mr Tasasiz is the owner of the property but as Mr Ali is operating the business from the site, we find that it was appropriate for TS's assessment to consider the effect on Mr Ali's business. In addition, it was appropriate to consider the potential effect on the site if it were redeveloped in accordance an approved permission identified as PA20 in [ES Appendix A15.5](#) (CD006).

5.457 [ES paragraph 15.3.33](#) (CD005) explains the criteria used for a qualitative assessment of the probable effects on the viability of individual commercial businesses post mitigation as set out in ES section 15.7 (CD005). ES paragraph 15.3.33 includes three descriptions of the probable effects – beneficial, neutral and adverse.

5.458 ES Appendix A15.5 page A15.5-7 (CD006) explains that the site has planning permission for a 56 bedroom hotel and associated site works. Based on ES Figure 15.4e (CD007) we see no reason to doubt the conclusions reached about access impacts being negligible in [ES paragraphs 15.5.31 and ES Table 15.24](#) (CD005). Similarly the recognition in [ES paragraph 15.5.56](#) (CD005) of the likely proximity impacts and access improvements and mixed impacts described in [ES paragraph 15.7.5, ES Table 15.26](#) (CD005) and ES Appendix A15.5 (CD006) appear plausible. We find no reason to dispute these findings.

5.459 [ES Appendix A8.5](#) (CD006) identifies the site by the reference number 18. ES Appendix A8.5 Table 2 (CD006) considers the noise impacts on committed developments over the long-term without the proposed scheme. It shows that all of the site would be subject to an increase in long-term noise of between zero and 3 dB. Based on [DMRB HD213/11](#) paragraph 3.37 (CD049.19) we conclude this increase would be imperceptible.

5.460 ES Appendix A8.5 Table 3 (CD006) considers the noise impacts on committed developments over the short-term with the proposed scheme. It shows that the vast majority of the site (98.6%) would be subject to a decrease in noise levels of between 1 dB and 3 dB. The remaining 1.4% of the site would be predicted to experience a decrease in noise levels of between 3 dB and 5 dB. Based on DMRB HD 213/11 paragraph 3.37 (CD049.19) we conclude both of these decreases would be perceptible in the short-term.

5.461 ES Appendix A8.5 Table 4 (CD006) considers the noise impacts on committed developments over the long-term with the proposed scheme. It shows that all of the site would experience a decrease in noise levels of between zero and 3 dB. Based on DMRB HD 213/11 paragraph 3.37 (CD049.19) we conclude this decrease would be imperceptible.

5.462 We therefore conclude that, with the proposed scheme, the site is likely to experience slightly lower noise predicted levels in both the short and long-term compared to if the scheme did not go ahead.

5.463 We note the identification in ES Table 15.24 (CD005) of mitigation item CP- C1. This is explained in [ES Chapter 20](#) (CD005). It requires the contractors to maintain access to industrial and commercial premises throughout the construction period and to ensure that local businesses are made aware in advance of any proposed diversions.

5.464 The evidence above does not suggest that the site would be made inaccessible or prevented from being developed, as permitted, because of noise level changes resulting from the proposed scheme. We therefore cannot find that the site would be blighted. Matters of compensation are for the District Valuer and not for this inquiry.

Overall

5.465 [The Development Land Report](#) Appendix A (TS211) concludes that there are no changes to the DMRB Stage 3 assessment from ES Appendix A15.5 (CD006) as detailed above. The objections and concerns raised by OBJ/076 Mr Tamer Tasasiz would either not occur or would be resolved/avoided by the proposed scheme. Any residual impacts / effects would not require additional mitigation or affect the public interest of the proposed scheme. We therefore find no reason to recommend that Scottish Ministers modify the draft Orders or refuse to confirm them.

OBJ/081 Mrs Elaine de Ste Croix

Objector

5.466 OBJ/081 Mrs Elaine de Ste Croix is a resident of Lochside on the north side of Loch Flemington and speaks on behalf of herself and her family. Her concerns about the proposed scheme and air quality, noise, visual impacts and NMUs are considered below. The rationale for the proposed scheme is considered separately in Chapter 2: Matters of Principle.

Objections

-Air quality

5.467 Mrs de Ste Croix considers that 'bigger roads' would lead to 'more cars and more pollution'.

-Noise and vibration

5.468 Mrs de Ste Croix objects to the increases in noise levels from the proposed scheme during construction and then in operation, particularly at evenings and weekends. She explains that the hamlet where she lives is in an area of special protection [assumed to be referring to the Loch Flemington SPA and/or the Kildrummie Kames SSSI].

-Visual and landscape impacts

5.469 Mrs de Ste Croix is concerned about the visual and landscape impacts of the proposed scheme and is not satisfied that TS's visualisation of the proposed scheme properly reflects the potential impacts.

-NMU provision and safety

5.470 Mrs de Ste Croix also objects on grounds of impacts on safety for NMUs. She argues that, during construction, traffic would use the single track roads through the hamlet to avoid road works at the junction. She also raises broader concerns about NMU safety and provision. In particular she argues that it would be many years before anyone would use the NMU provision and the money would be better spent on an NMU path along the length of the proposed scheme.

Transport Scotland's Response

-Air quality

5.471 TS's consideration of Mrs de Ste Croix's concerns about traffic growth and consequent pollution is covered separately as part of her concerns about the proposed route choice and scheme rationale in Chapter 2: Matters of Principle.

-Noise and vibration

5.472 TS argues that a comprehensive noise assessment has been undertaken to take account of future traffic noise from the operation of the proposed scheme in [ES Chapter 8](#) (CD005). It argues that [ES Figure 8.12g](#) (CD007) indicates the difference in traffic noise levels in the vicinity of Mrs de Ste Croix's property, 15 years after opening, would change by less than a 3 dB compared to without the proposed scheme. This change, it argues, is less than what would be perceptible.

5.473 TS acknowledges that some disruption is inevitable during the construction phase. However, it proposes measures to reduce disruption to those using the roads and living in the vicinity of areas under construction. TS explains that:

- disruption during construction is assessed in the relevant sections of [ES Chapters 7, 8, 10, 15 and 16](#) (CD005).
- mitigation measures are outlined in the Schedule of Environmental Commitments in [ES Chapter 20](#) (CD005).

5.474 TS explains that a construction environmental management plan (CEMP) would be prepared by the appointed contractor in consultation with the appropriate regulatory authorities. This would, it argues, be to mitigate any potential disruption and noise during construction. TS explains that the CEMP would:

- set out methods to manage potential environmental impacts from construction of the proposed scheme.
- include best practice measures to mitigate and manage construction noise impacts in compliance with requirements of BS 5228 Code of Practice for noise and vibration control of construction and open sites.
- include restricted construction working hours which would be set in consultation with The Highland Council.

5.475 TS recognises the sensitivity of Loch Flemington Road (U1351) through Lochside and proposes to ensure that the appointed contractor puts in place measures, through the CEMP, to discourage the use of this road during construction.

5.476 TS states that the overall construction period for the project is estimated to be three to four years. However, it argues that disruption at any one location on the route is likely to last for a considerably shorter period.

-Visual and landscape impacts

5.477 TS explains that the visualisation videos, presented at the public exhibitions and available to view online, were produced for illustrative purposes to show the proposed change to the landform once planting and seeding has become established. TS considers these to provide a good representation of the proposed scheme and that these are a useful tool for public consultation and engagement.

5.478 TS explains that the landscape and visual assessments of the proposed scheme are presented in [ES chapters 9 and 10](#) (CD005). It confirms that [ES Figure 10.3d](#) (CD007) presents the findings of the visual assessment on sample built receptors (e.g. houses) in the vicinity of Mrs de Ste Croix's property. This, TS argues, indicates that the receptors nearby would not experience visual effects of greater than 'slight' significance, in the summer of 15 years after the proposed scheme is opened.

-NMU provision and safety

5.479 TS argues that the existing A96 provides limited connectivity along its route for cyclists and pedestrians. It argues that the proposed scheme would provide significant benefits for NMUs and that these are integral features of the proposed scheme, including:

- provision of improved access and safer crossings for pedestrians, cyclists and equestrians.
- approximately 30 kilometres of new shared-use path (running parallel to the proposed dual carriageway) with various links and accesses being provided to facilitate movement.

5.480 TS explains that details of these proposals are included in [ES Chapter 16](#) (CD005) and associated ES Figures (CD007).

Findings of Fact

-Air quality

5.481 The evidence does not suggest that the air quality assessment detailed in [ES Chapter 7](#) (CD005) and [ES Appendices 7](#) (CD006) was carried out incorrectly or that the conclusions reached were arrived at in a manner that would be inappropriate or erroneous.

5.482 [ES Appendix A7.4](#) (CD006) shows predicted changes in concentrations of nitrogen dioxide (NO₂) and particulates (PM₁₀ and PM_{2.5}). This contains assessment information for AQ_262 Drummond Lodge, Loch Flemington Road, IV2 7QR. This property is near to the property that Mrs de Ste Croix is concerned about. It shows that, despite a slight increase in concentrations of some or all of these pollutants, with the proposed scheme in place these concentrations would remain below the respective national air quality objectives outline in [ES Table 7.3](#) (CD005).

5.483 [ES Figures 7.2a, 7.3a and 7.4a](#) (CD007) show predicted concentrations of NO₂ for 2014 baseline, 2021 without the proposed scheme and 2021 with it. In particular each highlights AQ_261 (The Cottage, Taste of Moray) which is located at Brackley junction, immediately adjacent the proposed scheme. In all three instances concentrations of NO₂ at this property would be within the 10-20 µg/m³ range. These levels remain below the air quality objectives set out in ES Table 7.3 (CD005). This further convinces us that air quality impacts on Lochside, slightly further south of the proposed scheme, would not be unacceptable.

5.484 The evidence does not suggest that air quality standards would be breached in this locality as a result of the proposed scheme. Matters relating to air quality and scheme rationale, and, route selection are covered separately in Chapter 2: Matters of Principle.

-Noise and vibration

5.485 The evidence does not suggest we should doubt the methods used to conduct the noise assessment or its conclusions.

5.486 [ES Appendix A8.3](#) (CD006) shows the noise assessment findings for receptor NV3043 (Keppel, Loch Flemington Link Road, Inverness, Highland, IV2 7QR). It shows that, with mitigation in place, ground floor and first floor noise levels would increase by 1 dB or less in the short-term and less than 3 dB in the long-term with the proposed scheme in place. [DMRB HD213/11](#) paragraph 3.37 (CD049.19) confirms that both magnitudes of change would be imperceptible in the short and long-term respectively. It also shows that absolute noise levels would remain below the noise mitigation threshold of 59.5 dB LA10, 18h with and without the proposed scheme. Based on the noise mitigation strategy ([ES paragraphs 8.2.24 to 8.2.34](#) (CD005)) there would be no need for additional mitigation besides that already designed into the proposed scheme and covered by the noise assessment.

5.487 ES Mitigation Item GR1 requires a CEMP to be prepared that would include the relevant noise standards for construction and working hours. This is a mechanism that would form part of the construction contract, thus obliging the contractor to operate within these guidelines and to ensure that the concerns Mrs de Ste Croix raises do not come about or are minimised to levels within the appropriate standards.

5.488 We note that Mrs de Ste Croix considers that her village is part of a designated area. We assume this to be a reference to either the Kildrummie Kames SSSI or the Loch Flemington SPA. However, [ES Figures 7.1b](#) and [11.1a](#) (CD007) show that the boundaries of the Kildrummie Kames SSSI and Loch Flemington SPA each cover Loch Flemington but not the settlement to its north. Both figures also show that the proposed scheme is outside of both designated areas. Although not specifically mentioned by Mrs de Ste Croix, we have considered the noise and vibration issues raised at Loch Flemington SPA for completeness (below).

5.489 TS considered the potential implications of the proposed scheme on Natura 2000 sites (including SACs and SPAs) at both DMRB stages 2 and 3. This is documented in the A96 [Habitats Regulations Appraisal \(HRA\)](#) (CD010). We find that it is for Scottish Ministers as the competent authority (decision maker) for this proposed scheme to carry out the appropriate assessment, should it be necessary. However, having considered the approach and information set out in TS's HRA at DMRB Stage 3 (CD010), we see no reason to suggest Scottish Ministers should not adopt these findings in their consideration of whether an appropriate assessment is needed and the conclusions they draw if an appropriate assessment is deemed necessary.

5.490 HRA section 7.3 (CD010) considers the impacts on Loch Flemington SPA specifically. This confirms that the proposed scheme is approximately 420 metres north of the Loch Flemington SPA and the tie-in to the B9006 is approximately 210 metres north. This section of the assessment concludes that there could be some risk to the Slavonian grebe (a species of bird) from construction traffic noise on the B9090 road during the construction phase. Whilst there are currently no Slavonian grebe breeding on Loch

Flemington the assessment considers that potential for this remains. HRA Table 7.11 (CD010) explains that this potential must be maintained to avoid significant disturbance to the qualifying species and to ensure integrity of the site. We find this to mean that the construction phase of the proposed scheme could have a significant effect on the qualifying interest of the Loch Flemington SPA.

5.491 HRA Table 7.11 (CD010) identifies avoidance and mitigation practices to avoid construction activities during the Slavonian grebe breeding season, which was agreed with SNH to be March to August (inclusive). This is suggested for inclusion in the CEMP, which would become a requirement on any contractor. The CEMP would be developed in consultation with relevant stakeholders including SNH. This matter is identified in [ES Table 20.1](#) (CD005) as Mitigation Item GR1. Mitigation Item GR1 (CD005) also refers to Mitigation Items E2 (species protection plans) and E3 (habitat management plans) and to the Mitigation Protocol in ES Appendix A11.3 (CD006). HRA Table 7.11 (CD010) concludes that with this avoidance technique in place there would then be no adverse impact on site integrity.

5.492 We therefore find that whilst the proposed scheme has the potential to have a significant effect on the qualifying interest of the Loch Flemington SPA, this could be avoided through timing of works. This avoidance technique would be incorporated into a CEMP, which would form part of any contract of works and would be a requirement upon the contractor. An ecological clerk of works (Mitigation Item E1 – CD005) would be appointed by the contractor and TS's site management contractor (Jacobs) would provide independent oversight of the contract.

5.493 REP/154 SNH confirms that it is content with the conclusions drawn by the HRA (CD010) and that, in its view:

- the proposed scheme is likely to have a significant effect on a number of qualifying interests.
- an appropriate assessment would be needed in view of the site's conservation objectives for its qualifying interests.
- based on the information provided (in CD010), the proposal would not adversely affect the integrity of the site.

5.494 We are therefore persuaded that the concerns about noise and vibration raised by Mrs de Ste Croix would either not arise or could be avoided. Scottish Ministers may wish to consider their own legal advice in their role as competent authority for any appropriate assessment that they deem necessary.

-Visual and landscape impacts

5.495 The evidence does not suggest we should doubt the method or findings of the landscape and visual impact assessment (LVIA).

5.496 [ES Figure 10.3d](#) (CD007) identifies two receptors; 93 and 94 that are located on the northern side of Lochside between Mrs de Ste Croix's property and the proposed scheme. This shows that the visual effects on these receptors would be 'slight/moderate' in winter year of opening and would diminish to 'slight', 15 years after opening.

5.497 [ES Figure 9.5k](#) (CD007) shows the proposed mitigation along the southern side of the proposed scheme, which includes earth works (with the proposed dual carriageway in cutting), planting of mixed woodland and scrub woodland. Whilst this would take time to

mature, ES Figure 10.3d suggests that the effects would not be substantial to begin with and would diminish as the vegetation matures.

5.498 Overall this does not suggest that the proposed scheme would have a significant adverse landscape or visual impact on Lochside or Mrs de Ste Croix's property.

5.499 Mrs de Ste Croix appears to make a broader reference that could include her concerns about the visual and landscape impacts of the whole proposed scheme. Some of these matters are considered as part of the route selection debate in Chapter 2: Matters of Principle. There we found that landscape and visual impacts were some of the numerous criteria used to determine the preferred route at DMRB Stage 2.

5.500 [ES Figures 10.3, 9.6 and 9.7](#) (CD007) show that the proposed scheme has been designed with mitigation, such as vegetation and bunds to blend it into the landscape. The evidence suggests this would be generally successful but that it would not be possible to hide the proposed scheme totally. That parts of it could be seen does not automatically mean it would have an adverse visual impact. We also note that, given the open countryside and rolling hills of much of the locality, any proposal such as this, even with mitigation planting and earthworks, would change the character of the landscape and alter open views. As such there would be instances along the proposed route where the visual effects would remain significant even if the mitigation successfully limits the impacts.

-NMU provision and safety

5.501 On our site inspection we travelled the length of the existing A96 between Inverness and Hardmuir. We noted few NMU facilities and no separate NMU route in parallel to the existing A96.

5.502 [ES Figure 16.1](#) (CD007) shows the route of the proposed NMU shared-use path and the arrangements for proposed junctions and bridges. This shared-use path is proposed to run the length of the proposed scheme between Inverness and Crook Farm, it then links into existing facilities south of Nairn. Existing routes would then be enhanced or maintained between Nairn and Auldearn and its surroundings. ES Figure 16.1 (CD007) also shows other links along the proposed NMU route into existing and proposed routes and switches between the north and south side of the proposed scheme.

5.503 We agree with Mrs de Ste Croix that provision for NMUs and NMU safety is important and ought to be considered as part of the proposed scheme. The evidence suggests that what Mrs de Ste Croix seeks is actually the case and that NMU facilities and safety form a component part of the proposed scheme. Since the provision of these facilities would be part of the proposed scheme it suggests that they would be available for use in a similar order of time to the proposed dual carriageway and side roads.

Overall

5.504 Overall, the objections and concerns raised by Mrs de Ste Croix would either not arise or would be resolved or avoided by the proposed scheme. The evidence suggests that whilst there would be some residual impacts / effects these would not require additional mitigation and would not override the public interest in providing the proposed scheme. We therefore find no reason to recommend that Scottish Ministers modify the draft Orders or refuse to confirm them.

CHAPTER 6: GOLLANFIELD TO RIVER NAIRN

Introduction

6.1 This chapter considers matters raised in connection with the proposed dualling of the A96 in the section between Gollanfield and Crook Farm on the eastern side of the River Nairn. Gollanfield is a village west of Nairn located just north of the Aberdeen to Inverness Railway and the existing A96/ Gollanfield Road (C1013) junction. Areas east of Crook Farm are covered in Chapter 7: River Nairn to Nairn East.

6.2 The proposed dual carriageway would run in a northeast direction from the vicinity of the existing A96/C1013 junction, with the existing A96 parallel on its southern side. It would sever some current accesses to the existing A96 and the existing A96/C1013 junction would be replaced by a new overbridge with no direct access to the proposed dual carriageway. This new arrangement would link the existing A96 east of Brackley junction with the C1013 and the Loch Flemington Road (U1351) / Cawdor Road (U1017). This can be seen on [draft CPO](#) sheets 12 and 13 (CD001) and [draft SRO](#) Plan SR11 (CD003).

6.3 The existing A96 is proposed to run east from the new Brackley junction to the C1013 overbridge (described above). East of the C1013 overbridge the existing A96 would be stopped-up due to the proposed demolition of the Gollanfield railway bridge. A new point of access (Point 450 on draft SRO Plan SR28 – CD003), located just north of the new C1013 overbridge, would enable access to this stopped-up section of the existing A96 for local access to fields off that section of road. On the eastern side of the railway the new means of access (Point 452 on draft SRO Plan SR28 – CD003) is proposed to join the existing A96 route at a new bend on the Tomhommie – Ballinreich – Balnagowan Road (U1029). The proposed dual carriageway would sever a series of access tracks including those at points 302, 303, 304, 305 and 306 on draft SRO Plan SR11 (CD003). This can all be seen on draft SRO Plans SR11, SR12 and SR28 (CD003).

6.4 A new access track for Easter Glackton Quarry (point 383 on draft SRO Plan SR11 - CD003) is proposed to run from Easter Glackton Farm westwards, parallel to the south side of the proposed dual carriageway to join the C1013 on the south side of the proposed new overbridge. The proposed compulsory purchase of land is shown on draft CPO Sheets 12 and 13 (CD001).

6.5 After crossing of the railway, the route of the proposed dual carriageway would continue north-eastwards to Blackcastle Quarry. This is the location of the proposed Nairn West grade-separated junction (draft CPO Sheet 14 of 23 – CD001 and draft SRO Plan SR13 – CD003). At this junction, an overbridge is proposed to cross the dual carriageway providing access to and from local roads either side via two roundabouts. The proposed spurs off the southern junction roundabout are proposed to link access tracks at Cockhill (west) and farmland south of Delnies Wood (Point 390 on draft SRO Plan SR13 – CD003) whose access would be severed by the proposed scheme at Points 309 and 310 on draft SRO Plan SR13 (CD003).

6.6 The dual carriageway is then proposed to run south of Nairn. There it would cross the Aberdeen to Inverness Railway south of Mosshall and sever the C1163 Delnies-Kildrummie-Howford Road. Further east it would also sever the access to Balnaspirach (U3226) and the Croy to Nairn Road (B9091).

6.7 A new route is proposed for the C1163 (point 60 on draft SRO Plan SR14 (CD003). This would pass to the east of Moss-Side with a new crossroads with the C1170. It would then continue south via a new railway overbridge PS12A and join the north side of the proposed dual carriageway, but run independently, at ch19700 with an NMU only underpass at approximate ch19750 ([ES Figure 4.1h](#) – CD007 and draft SRO Plan SR14 – CD003).

6.8 East of this location the new C1163 would run parallel to the north side of the proposed dual carriageway. A new means of access and entry road would replace the current U3226 entrance to Balnaspirach. Further east at approximate ch21300 the new C1163 would join the existing route of the B9091 (which would be severed by the proposed dual carriageway immediately south west of this point. Further east the B9091 would meet the modified section of the C1170, which itself would join a modified section of the B9090. This is shown on [ES Figures 4.1h and 4.1i](#) (CD007).

6.9 On the southern side of the dual carriageway, a new link of the B9091 would be constructed from approximate ch21100 to run on the south side of the dual carriageway. Further east it would join a modified section of the B9090. From here the dual carriageway would cross the B9090 via overbridge PS13. The modified B9090 running beneath it would link both the southern and northern sections of the B9091 described above. This can be seen on ES Figure 4.1h and 4.1i (CD007) and draft SRO Plans SR14, SR15 and SR16 (CD003).

6.10 The route of the proposed dual carriageway is then proposed to cross the River Nairn just south of Broadley (on the western side) and southwest of Crook (on the eastern side) via a new bridge PS14 (ES Figure 4.1i – CD007). The dual carriageway would sever fields south and west of Crook Farm as well as sections of Crook Wood. The C1175 road would travel beneath the proposed dual carriageway via underbridge PS15 (ES Figure 4.1i – CD007) and new means of access to severed and other affected land would be provided off this road as shown in draft SRO Plan SR17 (CD003) including a modified junction (Point 77) at Crook Farm.

6.11 Matters raised with regard to the proposed scheme East of Crook are considered in Chapter 7: River Nairn to Nairn East.

Objecting parties

6.12 The parties listed below raise objections or concerns in this vicinity. They are a mixture of local residents and/or farm owners/tenants, business operators and/or some with development interests in the locality:

OBJ/041 Mr Martin Macleod
OBJ/083 Mr Colin H Philip
OBJ/084 Mr John MacLennan
REP/085 Mrs Bridie Charteris
REP/086 Mr Gerry and Mrs Morven McMonagle
OBJ/087 Mr Oliver Mackintosh
OBJ/088 Ardersier Port Limited
OBJ/089 The Right Honourable Angelika Ilona Dowager Countess Cawdor
OBJ/090 Cawdor Maintenance Trust
OBJ/091 Mr Stewart and Mrs Verena MacKinnon
OBJ/092 Mr and Mrs Andrew MacDonald

OBJ/093 Mr John and Mrs Joanna Baird
OBJ/096 Mr Sean Gallagher
OBJ/097 Partners and Trustees of the Firm of JM & LM Forbes and Firm of JM & LM Forbes (Lochdu)
OBJ/098 Mr Charles William Hynman Allenby and Mr James David Carnegie-Arbuthnott (Executors of the Estate of Charles Hynman Allenby).
REP/099 Mr Jacob Christensen
OBJ/101 BDW North Scotland Limited (Barratt) and Robertson Homes Ltd

6.13 The objections are mostly property-specific and have been presented, in so far as is possible, running west to east along the route of the proposed scheme. Sometimes both the landowner and tenant object on the same grounds for the same property; where this is the case these have been grouped. However, for the most part, objections / representations are presented separately for each individual party.

REP/099 Jacob Christensen

Objector

6.14 Mr Christensen appears to support the proposed scheme and poses various questions about proposed timing including completion date and whether the Nairn bypass would be built first. Based on his questions Mr Christensen appears to seek speedy completion of the Nairn bypass. Mr Christensen also complements TS on the visual material, particularly the computer generated video of the proposed scheme.

Transport Scotland's Response

6.15 TS chose not to treat these comments as a formal objection and asked Mr Christensen to confirm if this was incorrect.

6.16 TS confirms that:

- the entire dualling programme for the A96 (Inverness to Aberdeen) is intended for completion by 2030, in line with Scottish Government's commitment.
- delivery of the proposed scheme can only commence when the scheme is approved under the statutory procedures and thereafter a timetable for construction can be set in line with available budgets.

Findings of Fact

6.17 The purpose of this inquiry is to consider objections and make any recommendations, as appropriate to Scottish Ministers. The evidence suggests that TS was correct not to treat Mr Christensen's comment as an objection. Had it been so, the objection would appear to be about timing and the order in which the proposed scheme is built.

6.18 TS is correct that the proposed scheme can only commence if the draft Orders are confirmed and the appropriate budget is in place. It is also our understanding that if the proposed scheme were to be approved by Scottish Ministers the construction timetable and sequencing of activity would be a matter for the respective design and build contractor.

OBJ/083 Mr Colin H Philip - Pool Town Farm

Objector

6.19 OBJ/083 Mr Colin H Philip owns Pool Town Farm, which is located north east of Gollanfield and the C1013 road to the north of the existing A96 and the proposed dual carriageway.

Objection

Access

6.20 Mr Philip considers that TS seeks access rights to the proposed drainage apparatus through Plot 1303. He seeks the same access that he currently has and also seeks clarity on whether formal rights would remain via proposed new means of access 452 ([draft SRO Plan SR28 – CD003](#)). He also seeks reassurance that the proposed changes to this access would not adversely affect the existing field drainage apparatus in this locality.

Drainage, flooding and SuDS

-Plot 1301

6.21 For Plot 1301 Mr Philip argues that the [draft CPO](#) (CD001) wording is ambiguous. He argues that the plot is identified on a plan (draft CPO sheet 13 of 23 – CD001) but the wording indicates that the line of the drainage apparatus 'shall be at the discretion of the acquiring authority'. He contends that it is therefore unclear whether the line is within the area of Plot 1301 or elsewhere at TS's discretion. He also seeks clarity regarding the specification of drainage to be installed to ensure satisfaction about any negative impact on the existing field drainage network.

-Increased burden on Balnagowan Burn (and SuDS pond outflow)

6.22 Mr Philip argues that the proposed drainage arrangements would place an increased burden on the Balnagowan Burn resulting from increased flow from the installation of drainage apparatus at Plot 1301. The Burn would, he argues, be put under increasing pressure from the farm and the road. He seeks reassurance that adequate arrangements would be in place to mitigate such an impact.

6.23 Mr Philip seeks clarity on where the outflow would be for the proposed SuDS ponds west of the proposed Nairn West Junction. He argues that these would place further pressure on the Balnagowan Burn and seeks reassurance that appropriate maintenance arrangements would be put in place.

-Plot 1302

6.24 Mr Philip contends that Plot 1302 would be for a proposed open drainage channel but does not include servitude either side for maintenance. It is therefore unclear to him whether TS intends to maintain the channel, which he argues presently provides drainage for his farm land. As such he seeks an undertaking regarding future maintenance by TS.

U1029 Tomhommie – Ballinreich – Balnagowan Road

6.25 Mr Philip argues that usage of the U1029 would increase in order to access the existing A96 etc. and Nairn West junction, following proposed closing off of the C1013

Gollanfield Road. He therefore argues for additional passing place(s) on the U1029 near Tomhommie and for resurfacing along the length of this road which, he considers, is currently in poor condition.

Transport Scotland's Response

Access

6.26 TS proposes to take access to Plot 1303 via the remains of the existing A96 (new means of access 452 in [draft SRO](#) Plan SR28 (CD003). TS confirms that:

- ownership and maintenance responsibilities for this would remain with the Scottish Ministers following completion of the proposed scheme.
- it would be content for Mr Philip to use this route following completion of the proposed scheme, in order to take access to the U1029.
- subject to Mr Philip's agreement, a gate would be installed in the boundary fence at the eastern end of Plot 1303 to facilitate future access.
- [ES Table 15.23](#) (CD005) under Mitigation Item CP-AG10 is identified specifically to address impacts on drainage.
- [ES Appendix A15.7](#) pages A15.7-21 and A15.7-22 (CD006) identifies this mitigation measure as being required for lands at Lochside (including Mr Philip's property at Pooltown).
- mitigation item CP-AG10 would ensure land capability is maintained and flooding is not exacerbated.
- detailed proposals of the works required during the construction period would be identified by TS's appointed contractor.
- Mitigation Item CP-AG10 states:

'Particular care shall be taken to reduce damage or disturbance to field and forestry drainage systems. Laying of new drains would be undertaken to maintain drainage systems during construction. Repairing and reinstatement of field drains affected by construction shall be agreed with the landowner/occupier to ensure that land capability is maintained and flooding is not exacerbated. Where appropriate, the integrity of the drainage system would be secured in advance through the installation of header drains (cut off drains) to facilitate construction. All remaining remedial works shall be undertaken post construction.'

Drainage, flooding and SuDS

-Plot 1301

6.27 TS argues that:

- a servitude right of access is required to allow the installation and maintenance of a new drainage pipeline.
- the servitude boundary has been proposed using information received from the objector as to the location of existing land drainage, with the main aim of minimising disruption to his farming activities.
- the wording in the draft CPO (CD001) reflects the unproven line of the existing drainage and the need for this information before the drainage design can be finalised.
- whilst the servitude area is fixed (as shown on draft CPO Sheet 13 of 23 – CD001), the line that the new drainage pipe would take within the servitude area would be at the Scottish Ministers' discretion.

-Increased burden on Balnagowan Burn (and SuDS pond outflow)

6.28 TS argues that:

- all new trunk road drainage outfalls being constructed as part of the proposed scheme would discharge into SuDS ponds prior to outfalling into existing watercourses or waterbodies.
- the purpose of the SuDS is to provide a level of treatment to runoff from the road system and to attenuate flows in order to limit flood risk.

6.29 TS explains that its design consultant, Jacobs, has assessed the impact of discharges from the SuDS ponds on the flows in the Balnagowan Burn. TS states that this concludes that, during the 0.5% Annual Exceedance Probability (AEP) (i.e. a 200 year return period) plus climate change rainfall event, there is predicted to be a decrease in the flow in Balnagowan Burn as a result of restricted discharges from the SuDS ponds. This, TS argues, is because part of the natural catchment would become part of the road drainage network and be subject to the attenuation in peak flows provided by the SuDS components. TS therefore argues that the SuDS components discharging into this burn would not increase flood risk to the area.

6.30 TS proposes that maintenance responsibility for all open channels and watercourses would remain with the objector following completion of construction work. Based on the predicted decreases in flow in Balnagowan Burn (above), as a result of the proposed scheme, TS does not anticipate that there would be an increased maintenance burden for the objector.

-Plot 1302

6.31 TS acknowledges the importance of the open channel for the drainage of Mr Philip's land. It argues that the westernmost section of Plot 1302 has been included in the draft CPO (CD001) for the purposes of installing and maintaining a road drainage outfall and associated headwall.

6.32 The remainder of the plot, TS argues, has been included in the draft CPO to ensure that any minor works necessary on the open channel as a result of installing this new outfall pipe could be carried out, and to protect TS's future interests in the channel. TS confirms it would be willing to sell back the length of open channel where it is not required for the road drainage outfall and associated headwall in the long-term. TS therefore proposes that, as soon as possible following completion of any work necessary within the plot, it could be sold back to Mr Philip with suitable burdens in place to protect TS's future interests.

U1029 Tomhommie – Ballinreich – Balnagowan Road

6.33 Whilst TS would be improving some local roads as part of the proposed scheme, these are, it argues, targeted improvements to maintain local access and local routes over the proposed dual carriageway.

6.34 TS confirms that between the Brackley and Nairn West junctions the existing A96 would be replaced by the proposed dual carriageway. TS accepts that there are a number of properties for which the U1029 has the potential to become a more attractive route for certain journeys following completion of the proposed scheme. However, TS does not consider the potential number of additional trips along this route sufficient to justify what it terms 'the considerable work that would be required to provide passing places along this route'.

6.35 TS argues that:

- provision of improved passing facilities on this road has the potential to further increase the number of trips along this route.
- it would not wish to encourage this, given other features of the road including the number of tight bends along it.
- other routes, of a higher standard, are available for all affected properties.
- the routine maintenance of the existing U1029, including the pavement surface, is the responsibility of The Highland Council as the local roads authority.

Findings of Fact

Access

6.36 [TS083.02](#) shows that TS is willing to grant Mr Philip the access he seeks to his fields via Plot 1303 and new means of access 452 on [draft SRO](#) Plan SR27 (CD003). [ES Table 20.10](#) Mitigation item CP-AG10 (CD005) shows that TS has considered and put in place measures to secure drainage and prevent flood risk as a pre-requisite for any contract and any subsequent works. This should provide some reassurance to Mr Philip.

Drainage, flooding and SuDS

-Plot 1301

6.37 TS083.02 clarifies matters with regard to the [draft CPO](#) (CD001) wording for the servitude right for Plot 1301. This explains that servitude right would be for Plot 1301 as identified in draft CPO Sheet 13 (CD001). However, there is some discretion as to the exact route of the pipe within this plot. This provides a satisfactory explanation of the text in the draft CPO, which reflects our understanding of that text. As such we consider there to be no need for modification.

6.38 Precise details of the drainage specification are not matters for this inquiry.

-Increased burden on Balnagowan Burn (and SuDS pond outflow)

6.39 The flood risk assessment contained in [ES Appendix A13.2](#) (CD006) suggests that TS has considered the whole Balnagowan Burn catchment, including the SuDS drainage channel across Plots 1301 and 1302 as well as those relating to proposed SuDS at Nairn West Junction. TS concludes that the SuDS arrangements incorporated into the proposed scheme would not overload the Balnagowan Burn system and the evidence does not suggest we should doubt this. We attach weight to the fact that SEPA has not objected to this. We consider this to mean that these proposed arrangements are acceptable in principle. We find that the circumstances that Mr Philip is concerned about are unlikely to arise.

-Plot 1302

6.40 Acquisition of Plot 1302 is necessary in order to carry out works, including connection of the proposed drainage infrastructure from Plot 1301; linking the proposed SuDS ponds north of the dual carriageway and south of the railway. These works would include the construction of a drainage outfall and associated headwall.

6.41 We note from Mr Philip's advisor's letter dated 23 May 2018 (further written representations) that, despite TS reassurances and confirmation of the proposed sell-back,

he does not accept that there would not be increased flow through the channel. He also remains concerned over Plot 1302's future maintenance responsibilities. We note that his experience with the construction of the Gollanfield flyover was that effects on groundwater conditions and flow did not become apparent for a number of years.

6.42 Whilst the objector's concerns are recognised, we do not accept that any problems that may have arisen as a result of a separate road proposal can be assumed to be a likely consequence of the proposed scheme. The evidence suggests that care has been taken (and would continue to be taken in the detailed drainage design) to ensure that there was no increase in flood risk. We attach weight to the fact that SEPA has not objected. Mr Philip would inherit the maintenance responsibilities for any parts of Plot 1302 that he agreed to re-purchase, but the evidence does not suggest that this should prove problematic. Matters relating to levels of flow etc. are considered above.

U1029 Tomhommie – Ballinreich – Balnagowan Road

6.43 Mr Philip seeks improvements to the U1029 to better accommodate traffic. These improvements do not form part of the proposed scheme. We acknowledge TS's point that to undertake works that would support the levels of traffic envisaged by Mr Philip would also have the effect of encouraging/facilitating these or higher traffic levels. We also note TS's points about existing road features such as sharp bends. On balance we agree that it is not desirable for TS to mount a wider programme of side road upgrades on roads belonging to The Highland Council, beyond those needed to enable access to the dual carriageway or to replace access where it would be lost as a result of the proposed scheme.

6.44 Based on draft CPO sheet 13 of 23 and its inset map (CD001) we agree with TS that there are a comparatively small number of properties along the U1029 and that these would have access to and from the dual carriageway via the new Brackley junction using the existing A96 via Gollanfield and also to/from other local roads. This suggests that upgrades to the U1029 would not be necessary, beyond those already forming part of the proposed scheme.

Overall

6.45 The proposed scheme would result in some changes to access and drainage arrangements. However, these are unlikely to result in impacts that could not be resolved through mitigation or accommodation works. The evidence suggests that whilst there would be some residual impacts / effects, these would not require additional mitigation and would not override the public interest in providing the proposed scheme. Therefore the evidence does not suggest we should recommend that Scottish Ministers modify the draft Orders or refuse to confirm them.

OBJ/084 Mr John MacLennan

Objectors

6.46 OBJ/084 Mr John MacLennan own Easter Glackton Farm which is located on the south side of the Aberdeen to Inverness Railway just east of where it is proposed to be crossed by the dual carriageway as shown on [draft CPO](#) Sheet 13 of 23 (CD001) and [draft SRO](#) Plans SR11 and SR28 (CD003).

Objections

Business impacts

-Land take and farm viability

6.47 Mr MacLennan argue that the impact of the proposed scheme would be 'significant' given the size of the farm. They argue they would lose 22 of the farm's 170 acres, along with severance impacts. Mr MacLennan argue that this would result in:

- reduced agricultural output;
- reduced subsidy receipts and a consequent overall reduced income base;
- increased cost base per remaining acre;
- added costs of travel;
- added fencing costs; and,
- disruption during construction.

6.48 Mr MacLennan argue that margins are already tight and that the factors listed above would potentially result in the business becoming unviable with alternative suitable land not being available in close proximity. As such they argue that the agricultural assessment is misleading and that its conclusion that the impact of the proposed scheme on their business would be 'neutral' is unrealistic.

6.49 They also argue that no details have been provided about field drainage or fencing.

-Severance

6.50 Mr MacLennan argue that the proposed scheme would result in a large area of severed land (south of Plot 1307) that is currently accessed from the existing A96. They contend that no indications have been provided as to how severed land would be accessed.

6.51 They argue that to reach the severed land opposite Blackcastle Farm would require a detour eastwards via Loch Flemington to the Brackley Junction, the proposed dual carriageway and the Nairn West Junction. They argue that this would be impractical and would increase costs.

6.52 They suggest an alternative of keeping the existing A96 for farm traffic from the proposed Gollanfield overbridge eastwards to the point of the existing access into these fields and thereafter via an underpass to give field access (and also for use by pedestrians to access the bus stop).

-Plot 1319

6.53 Mr MacLennan query why compulsory purchase of Plot 1319 is required. They explain that this plot is proposed to give access to severed land which forms part of Easter Glackton Farm. As such they argue that the access could be built by agreement instead. They consider that its proposed acquisition would result in an anomaly on the title to this part of the farm, with a consequent reduction in value of the remainder.

Access

-Quarry access

6.54 Mr MacLennan object to the proposed compulsory purchase of additional land to accommodate a replacement access road for Easter Glackton Quarry. They argue that the

quarry and much of the current road is owned by Easter Glackton Farm. Therefore at present Easter Glackton Farm has full control of these assets on its property.

6.55 They contend that the quarry has a limited potential life at the end of which time the road would cease to be necessary and would revert back to Easter Glackton Farm. This road could then be removed with the land reinstated under the control of the farm. They argue that the proposed compulsory purchase would remove this decision making ability.

6.56 Whilst Mr MacLennan welcome the proposed new track they are unclear clear why it could not be built by agreement instead of by compulsory purchase.

-Access during construction

6.57 Mr MacLennan argue that no indications have been provided as to how severed land would be accessed, including during the period of construction of the proposed dual carriageway.

-Pedestrian access to the eastbound bus stop

6.58 Mr MacLennan object to 'loss of pedestrian access to the east bound bus stop'. They argue that:

- this is currently accessed by crossing the existing A96, which would become impossible when it becomes a dual carriageway.
- the alternative route via the proposed Gollanfield overbridge would result in a significant distance to walk, which would to be impractical in poor weather or darkness.
- this could be resolved by a pedestrian underpass.

Residential property interests

-Visual impact and landscape and visual mitigation proposals

-Noise and vibration

-Air quality

6.59 Mr MacLennan object because they argue that the proposed scheme would result in major impacts on residential amenity and the environment. They argue that there is no indication of mitigation to resolve noise, visual and air quality impacts resulting from the proposed scheme with regard to Easter Glackton.

Transport Scotland's Response

Business impacts

-Land take and farm viability

6.60 TS argues that:

- an assessment of likely future farm business viability was carried out, as required by [DMRB Volume 11, Section 3, Part 6, Land Use](#) (CD049.18) and presented in the ES.
- the significance of impact is based on land-take, land quality (LCA Class), severance and other criteria detailed in [ES Tables 15.7, 15.8 and 15.9](#) (CD005).
- the proposed land take at Easter Glackton Farm is reported in [ES Appendix A15.7](#) pages A15.7-20 to A15.7-21 (CD006) as 8.22 hectares of non-prime agricultural land representing 12% of the total farmed area.
- after mitigation, the extent of the severance (including disruption to field access) and land-take in combination with other operational impacts, would result in a 'high' magnitude of impact.

- when combined with the sensitivity (medium), ES Appendix A15.7 pages A15.7- 20 to A15.7-21 (CD006) report a 'Moderate/Substantial' residual significance of impact for Easter Glackton Farm.
- ES Appendix A15.7 page A15.7-21 (CD006) concludes that the likely impact on future farm business viability would be 'Neutral' (not significant).
- [ES paragraphs 15.3.61](#) (CD005) describes the criteria for the term 'neutral' as:

'Neutral Impact - the farm business is affected by the land-take or change in access requirements of the proposed Scheme, and this may result in a reduction or restructuring of its activities. However, this does not compromise the likely future viability of the farm business and it is likely to be able to continue trading, albeit after some restructuring of its operations.'

6.61 TS confirms that accommodation works associated with the delivery of the proposed scheme would be determined in consultation with Mr MacLennan during the preparation of the construction contract documents.

6.62 TS explains that [ES Table 15.23](#) (CD005) Mitigation Item CP-AG10 has been devised specifically to address impacts on field drainage. TS confirms that this mitigation item has been identified for Easter Glackton Farm in ES Appendix A15.7 (CD006). Mitigation item CP-AG10 states:

'Particular care shall be taken to reduce damage or disturbance to field and forestry drainage systems. Laying of new drains would be undertaken to maintain drainage systems during construction. Repairing and reinstatement of field drains affected by construction shall be agreed with the landowner/occupier to ensure that land capability is maintained and flooding is not exacerbated. Where appropriate, the integrity of the drainage system would be secured in advance through the installation of header drains (cut off drains) to facilitate construction. All remaining remedial works shall be undertaken post-construction.'

6.63 TS confirms that it would be specified within the construction contract documents that where existing field drainage is likely to be affected by the proposed scheme, the contractor would have responsibility for locating and reconnecting the drainage as appropriate. TS expects that the detailed design would be the responsibility of the design and build contractor. However, TS anticipates that the existing field drains at Easter Glackton Farm would be connected into new pre-earthworks ditches (PED), which would connect into Balnagowan Burn to the north of the existing A96.

6.64 TS confirms that:

- the access tracks have been designed to an appropriate standard for their proposed use.
- the design prepared to date is an outline design, developed in sufficient detail for the purposes of the ES and the draft orders.
- the final detailed design of all aspects of the proposed scheme, including farm and field accesses would be carried out closer to the time of construction.
- this detailed design is expected to be the responsibility of the appointed design and build contractor.
- further consultation with Mr MacLennan would take place prior to completion of the detailed design.

- access track designs are expected to be of no less a standard than existing access tracks, where relevant.

6.65 TS explains that ES Table 15.23 (CD005) Mitigation Item CP-AG7 has been devised specifically to address impacts on fencing. TS confirms that this mitigation item has been identified for Easter Glackton Farm in ES Appendix A15.7 (CD006). Mitigation item CP-AG7 states:

‘Where boundary features (e.g. fences, walls and hedges) require temporary or permanent alteration to allow construction, these would be reinstated with appropriate materials to provide a secure field boundary, with opportunities explored in consultation with the landowner/occupier to merge severed field areas to improve field husbandry operations through the creation of more manageable field sizes and shapes.’

6.66 TS confirms that:

- this work could be carried out as accommodation works, subject to Mr MacLennan’s agreement.
- this fencing would be owned and maintained by Mr MacLennan, as the landowners.
- the future costs of maintaining any new fences could form part of a claim for compensation subject to the District Valuer’s assessment.
- its design consultant, Jacobs, will discuss Mr MacLennan’s preferences in regard to fencing specification during forthcoming accommodation works consultations.

-Severance

6.67 TS estimates the existing journey distance from Easter Glackton to the block of land north of the Aberdeen to Inverness Railway Line to be 2.9 kilometres. It estimates that the journey distance with the proposed scheme in place would be 8.8 kilometres, an increase in journey distance of 5.9 kilometres.

6.68 TS confirms that it has considered Mr MacLennan’s suggestion that the existing railway bridge at Gollanfield could be retained along with the section of existing A96 between Gollanfield overbridge and Easter Glackton that is currently proposed for closure. TS argues that the demolition of the existing railway bridge at Gollanfield is being proposed because it is not considered that the future maintenance costs involved in retaining this bridge can be justified given the very low volume of traffic that would use it. In addition, TS points out, Network Rail has an aspiration to twin-track the railway between Nairn and Inverness and the existing Gollanfield rail bridge acts as a constraint that would prevent future widening at this point. TS acknowledges the concerns regarding additional journey lengths, and the need for farm traffic to use the proposed dual carriageway, but does not propose to amend these aspects of the proposed scheme design.

-Plot 1319

6.69 TS explains that Plot 1319 (draft CPO sheet 13 of 23 – CD001) is required to allow construction of a new means of access 384 (draft SRO Plan SR12 – CD003) into Mr MacLennan’s land. TS acknowledges that Mr MacLennan have offered to allow construction of this access by agreement, but argues that it needs certainty that this essential access can be constructed. TS considers this can only be brought about through compulsory purchase of this plot.

6.70 TS confirms that if, following construction of the proposed scheme, part or all of the land purchased for the construction of this access is deemed surplus to requirements, then it may offer to sell this land back to Mr MacLennan in line with the Crichel Down Rules.

-Quarry access

6.71 TS notes Mr MacLennan's preference to construct the replacement quarry access track 'by agreement' rather than through compulsory purchase of the land required (draft CPO plots 1207 and 1218 – Sheet 12 of 23 – CD001).

6.72 TS argues that:

- it needs to ensure that the track can be built, and that current access rights for the occupier of the quarry are preserved following construction of the proposed scheme.
- it is only through compulsory purchase that it can obtain sufficient certainty that these rights would be preserved, and that the replacement track could be constructed.

6.73 TS confirms that the land on which this track is built would be offered back to Mr MacLennan following construction of the proposed scheme, subject to suitable burdens being put in place to protect the future access rights of the quarry occupier that may be necessary. TS also points out that this assumes that the quarry remains operational and there is still a need for the track when it comes to constructing the proposed scheme.

Access

-Access during construction

6.74 TS argues that:

- ES Table 15.23 (CD005) specifically identifies Mitigation Item CP-AG8 to address impacts on severed land, which covers access during construction.
- ES Appendix A15.7 at page A15.7-21 (CD006) identifies this mitigation measure as being required for Easter Glackton Farm.
- Mitigation Item CP-AG8 which states:

'Where access points require temporary or permanent alteration as a result of construction, alternative access for stock and machinery shall be provided, as appropriate, in consultation with the landowners/occupier. If required, recessed access shall be provided from local roads.'

- detailed proposals of the works required during the construction period would be identified by TS's appointed contractor.
- it would be a condition of the contract for the works that safe and appropriate access is maintained to property at all times.
- this includes provision of access to the parcel of land south of Plot 1307.
- any increase in journey times, inconvenience, loss of land and severance or any increase in maintenance costs arising from changes in farm access arrangements could form part of a claim for compensation.
- compensation is subject to the District Valuer's assessment as detailed in Transport Scotland's [Guidance on the Compulsory Purchase Process and Compensation](#) (CD046).

-Pedestrian access to eastbound bus stop

6.75 TS understands that the bus stop referred to by Mr MacLennan is located on the A96, in the vicinity of the railway level crossing, to the north of Easter Glackton Farm. TS argues that:

- the proposed scheme includes alternative bus stop provision in the form of specially constructed laybys on the eastbound and westbound carriageways of the proposed dual carriageway.
- these are proposed to be located:
 - east of the proposed PS21 Gollanfield Road overbridge ([ES Figure 4.1f](#) – CD007).
 - immediately east of the Nairn West Junction on the proposed new section of road linking the junction to the existing A96 trunk road ([ES Figure 16.4c](#) – CD007).
- the design standards set out in DMRB [the reporters note that [DMRB Volume 6, Section 2, Part 1 – TD22/06](#) Figure 2/9, paragraphs 4.34 to 4.38 and Figures 4/9 to 4/14 – CD049.09 covers these matters] require that, for rural all-purpose roads, the minimum weaving distance between the ends of successive merge and diverge slip roads, including lay-bys and bus stops, should be a minimum of one kilometre for reasons of road safety.
- the term ‘Weaving’ is used to refer to the movements vehicles make as they change lanes and leave or enter the dual carriageway at slip roads, or other locations such as lay-bys.
- the proposed scheme therefore only includes one pair of bus stops between Brackley Junction and Nairn West Junction to minimise the weaving issues that would result from additional bus stops.
- the bus stops have been located towards the communities of Gollanfield and Lochside, where, TS argues, there are a greater number of properties.
- a new NMU shared-use path to improve connectivity along the A96 corridor between Inverness and Nairn ([ES figures 4.1f and 4.1g](#) – CD007) is proposed.
- access to the eastbound and westbound bus stops at Gollanfield and Nairn West Junction would be via this new shared-use path, which runs parallel with, and to the south of the proposed scheme.
- the path would continue across the Gollanfield Road Overbridge, providing access to the relocated Gollanfield bus stop on the eastbound carriageway.
- the path would also extend through Nairn West Junction providing access to the proposed bus stops just east of Nairn West Junction.
- although the proposed scheme would increase the distance to the nearest bus stops, the NMU proposals would provide a safer access, with no need to cross a live carriageway.
- the feasibility of providing a pedestrian underpass under the proposed dual carriageway near Easter Glackton (as suggested by Mr MacLennan) has been considered.
- the construction cost and future maintenance costs of a pedestrian underpass would be high, relative to the likely usage in such a rural setting and, as such, provision of such an underpass is not justifiable.
- provision of additional bus stops on the proposed dual carriageway in the vicinity of such an underpass would present safety issues and alternative provision has therefore been made for access to bus services.

Residential property interests

6.76 TS notes that Mr MacLennan own two residential properties. It argues that, where possible and reasonably practicable, potential adverse environmental impacts of the

proposed scheme have been avoided through an iterative approach to the design process, including a thorough and robust route selection process. TS recognises that the proposed scheme would, however, still result in certain adverse environmental impacts.

-Visual impact and landscape and visual mitigation proposals

6.77 TS confirms that:

- the ES concludes there would be a significant adverse visual effect on properties at Easter Glackton (Receptor 101, [ES Figure 10.3e](#) – CD007) due to the proposed scheme.
- [ES Chapter 10](#) (CD005) and [ES Figure 9.5I](#) (CD007) show this to result from the proposed scheme being on an embankment in the vicinity of Easter Glackton Farm, combined with the introduction of the new structure (PS07 A96 Gollanfield Rail Bridge), and the proposed noise barrier.
- this would result in Moderate/Substantial effects during the winter in the year of opening.
- [ES Section 9.6](#) (CD005), [ES Appendices A10.1 and 10.2](#) (CD006) and [ES Figures 9.5 and 9.6](#) (CD007) identify mitigation proposals to overcome potential landscape and visual effects arising from elements of the proposed scheme.

6.78 TS explains that the proposed landscape mitigation measures associated with the proposed scheme in the vicinity of Easter Glackton include the following:

- hedgerow with trees alongside the new Easter Glackton Quarry Access Track to screen views from properties;
- hedgerow to assist screening views of the road corridor from Easter Glackton;
- scrub woodland to reflect existing landscape character, to screen views between the access track and the dual carriageway, to improve integration of the rail underbridge into its surroundings, and to soften views for properties south of the proposed dual carriageway, and;
- mixed woodland to screen views of the proposed scheme and noise barriers from local properties to the south of the proposed dual carriageway.

6.79 TS argues that, as a result of the establishment of the mitigation planting, residual effects would reduce to Slight/Moderate by the summer 15 years after opening.

-Noise and vibration

6.80 TS confirms that the noise mitigation strategy is based on the [DMRB HD213/11](#) (CD049.19) and WHO guidance ([CD090](#) and [CD091](#)). TS states that the noise mitigation strategy ([ES paragraphs 8.2.24 to 8.2.34](#) – CD005) considers additional, receptor-specific noise mitigation where the significance of impact at a receptor is predicted to be:

- Slight/Moderate adverse or worse, which for high noise sensitive receptors equates to at least a 1 dB noise level change in the short term (the year of opening), and/or at least a 3 dB in the long term (typically within 15 years of the scheme opening) and, in addition, the predicted ground floor façade noise level exceeds 59.5 dB LA10,18h.
- Slight/Moderate adverse or worse, in the long-term with a predicted noise level that exceeds 55 dB L_{night,outside}.

6.81 Based on this noise mitigation strategy, TS confirms that any recommendation for noise mitigation for a residential property is determined by meeting both the relevant magnitude of noise level change, and also identifying whether the highest absolute noise level at the dwelling would exceed the respective thresholds for mitigation.

6.82 In its letter dated 31 July 2017 ([TS084.02](#)) TS states that the dwelling at Easter Glackton (the main farmhouse) would be the most exposed to road traffic noise of the two dwellings. TS084.02 Table 1 (reproduced below) summarises the unmitigated (i.e. without acoustic barrier) predicted noise levels and associated significance of impacts for this dwelling. TS confirms that:

- reported noise levels and significance of noise impacts, presented in TS084.02 Table 1, relate to the predicted 'least beneficial' impacts at the dwelling for each scenario comparison (i.e. where there is the greatest adverse noise level change).
- the 'least beneficial' noise level change is determined using modelled receptor points within the computer model at one metre from the every façade of the building (shown in TS084.02 Figure 1).
- TS084.02 Figure 1 identifies the receptor with the highest predicted Do-Something noise levels (i.e. the noisiest point), denoted with a triangular receptor point.
- TS084.02 Table 1 (below), shows that there would be a Moderate/Large Adverse significance of impact in the Year of Opening, reducing to Slight/Moderate Adverse in the Future Year.

TS084.02 Table 1: Unmitigated Predicted DMRB Noise Levels and Significance of Impacts at Easter Glackton

Scenario	LA10,18hr DMB Noise Level (dB)	LA10,18hr Scenario Comparison Noise Level (dB)	Noise Level Difference (dB)	Significance of Impact
DMB vs DSB	57.8	60.8	3.0	Moderate/ Large Adverse
DMB vs DMF	57.8	58.0	0.2	Slight Adverse
DMB vs DSF	55.6	59.4	3.8	Slight/ Moderate Adverse

For assessment purposes, the following scenarios have been to be compared to identify the least beneficial changes with and without the proposed scheme in place:

Baseline Year Do-Minimum vs Baseline Do-Something (DMB vs DSB)

Baseline Year Do-Minimum vs Future Year Do-Minimum (DMB v DMF)

Baseline Year Do-Minimum vs Future Year Do Something (DMB v DSF)

Baseline Year is the assumed year of opening for assessment purposes;

Future Year is fifteen years after the Baseline Year.

Do-Minimum describes the situation without the proposed scheme

Do-Something is with the proposed scheme in place.

6.83 TS argues that:

- TS084.02 Table 2 (reproduced below) shows that the absolute noise level would exceed the threshold value.
- it is sometimes the case that the highest absolute noise level is predicted at a different receptor point around the dwelling than the point where 'least beneficial' change is measured.
- the predicted noisiest receptor point at Easter Glackton is indicated by the triangular 'point' shown in TS084.02 Figure 1.

Table 2: Unmitigated Noise Levels and Significance of Impacts at the Noisiest Easter Glackton Receptor Point

Scenario	Noise Level LA10,18h dB
Baseline Year: Do Minimum (2021) [DMB]	57.8
Baseline Year: Do Something (2021) [DSB]	60.7
Future Year: Do Minimum (2036) [DMF]	58.0
Future Year: Do Something (2036) [DSF]	61.5

Scenario	Noise Level difference (dB)	Significance of Impact
DMB vs DSB	2.9	Slight/ Moderate Adverse
DMB vs DMF	0.2	Slight Adverse
DMB vs DSF	3.7	Slight/ Moderate Adverse

6.84 TS argues that with the aforementioned acoustic barrier in place the noise levels would reduce such that the absolute noise level does not exceed the 59.5 dB $L_{A10,18h}$ mitigation thresholds. This is shown in TS084.02 Table 3 (reproduced below).

6.85 TS argues that mitigating a Slight/Moderate Adverse or worse significance of impact alone, which for a high noise sensitive receptor equates to mitigating increases in noise level to below 1 dB in the short term and/or 3 dB in the long term, would require noise levels to be reduced to below the ‘just perceptible’ noise level change.

TS084.02 Table 3: Mitigated Noise Levels and Significance of Impacts at the Noisiest Easter Glackton Receptor Point

Scenario	Noise Level $L_{A10,18h}$ dB	
Baseline Year: Do Minimum (2021) [DMB]	57.8	
Baseline Year: Do Something (2021) [DSB]	59.5	
Future Year: Do Minimum (2036) [DMF]	58.0	
Future Year: Do Something (2036) [DSF]	60.2	
Scenario	Noise Level difference (dB)	Significance of Impact
DMB vs DSB	1.7	Slight / Moderate Adverse
DMB vs DMF	0.2	Slight Adverse
DMB vs DSF	2.4	Slight Adverse

6.86 TS confirms that:

- [ES Figure 8.9](#) (CD007) shows an acoustic barrier ([ES Table 8.33](#) Mitigation Item ‘NVB6’ – CD005), proposed in the vicinity of the two dwellings at Easter Glackton Farm on the southern verge of the proposed dual carriageway (approximate start ch16300), running eastwards from the point where it crosses the Aberdeen to Inverness Railway.
- the barrier is proposed to be approximately 1.3 metres high and approximately 321 metres in length, or an equivalent that achieves the desired reduction in noise level. [The reporters note that in more recent correspondence [TS084.03](#) TS provides a diagram entitled ‘Cross section at Easter Glackton Farm’ drawing number 96PIN-JAC-HGN-PS07-SK-CI-0001 which shows a fence of 1.6 metres in height]
- this receptor-specific noise mitigation supplements the LNRS and the scheme design earthworks that form the base noise mitigation measures.

6.87 TS argues, in [TS084.02](#), that with the above mitigation in place, the predicted noise levels at these dwellings would be below the threshold levels in the ES mitigation strategy ([ES paragraphs 8.2.24 to 8.2.34](#) – CD005), as shown is TS084.02 Table 3 (above).

-Air quality

6.88 TS confirms that:

- [ES Chapter 7](#) (CD005) details the air quality assessment.
- the air quality standards for annual mean concentrations of nitrogen dioxide (NO₂) is 40 µg/m³ and for particulate matter (PM₁₀ and PM_{2.5}) are 18 and 10 µg/m³ respectively.

- in accordance with [DMRB guidance on Air Quality \(HA 207/07\)](#), only properties within 200 metres of roads affected by the project need be considered.
- beyond 200 metres, a road is not expected to make a significant contribution to pollution at a receptor location and background pollution concentrations (which come from far-away pollution sources) will dictate exposure.
- the existing A96 is approximately 210 metres from the nearest façade of the main farmhouse property at Easter Glackton.
- the proposed dual carriageway (at its nearest point) would be approximately 150 metres from the nearest façade of the property.

6.89 TS states that the air quality assessment concludes that in the opening year, annual mean pollution concentrations at the Easter Glackton property are expected to be 4-5 µg/m³ for NO₂, 8-9 µg/m³ for PM₁₀, and 5-6 µg/m³ for PM_{2.5}. Compared to respective air quality standards for these pollutants, concentrations at the property are assessed to be 'Well Below' (defined as less than 75% of) the respective air quality standards. TS states that:

- receptors experience reduced impacts the further away they are located from an emissions source, such as the proposed dual carriageway.
- regarding the elevated embankment, the assessment has shown that even within 200 metres of roads affected by the proposed scheme; modelled receptors are not anticipated to experience exceedances of air quality objectives.

6.90 TS confirms that the air quality assessment:

- includes the consideration of construction dust;
- concluded that the implementation of best practice dust mitigation measures during the construction phase through a construction environmental management plan (CEMP); and,
- the CEMP would reduce the impact of dust on surrounding areas, and that there would not be a significant effect.

6.91 TS confirms that mitigation measures included within the ES, would also be included in contract documentation for the proposed scheme.

Findings of Fact

Business impacts

-Land take and farm viability

6.92 [DMRB Volume 11, Section 3, Part 6: Land Use](#) paragraph 6.3 (CD049.18) explains that agricultural assessments should focus on land-take, types of husbandry, severance and major accommodation works for access, water supply and drainage. [ES Appendices A15.6 and A15.7](#) (CD006) do not suggest any failure to consider these matters.

6.93 DMRB paragraph 9.1 (CD049.18) elaborates on the points in paragraph 6.3 (CD049.18). Paragraph 9.1 bullet b) (CD049.18) explains that consideration of:

'Land-take will include land taken directly by a scheme and also land which will no longer be viable for agricultural use, for example, because severance (the splitting of a holding into more than one part) makes it impossible to farm some land productively'.

6.94 We therefore find that the term ‘viability’ is a reference to whether the land in question could be used for agriculture rather than any reference to profitability of the land within any particular farm business. Therefore, whilst the assessment broadly recognises the issues facing the agricultural business besides land, its role is not to consider these in depth or to draw conclusions about cash flows and profitability of various business models.

6.95 DMRB Volume 11, Section 3, Part 6: Land Use paragraphs 10.16 and 10.17 (CD049.18) explain that farm viability as a result of the proposed scheme should be considered and presented in the ES. We find it presented in ES Appendix A15.7 (CD006).

6.96 ES Appendix A15.7 (CD006) details the impacts of the proposed scheme on various fields and identifies the total land loss that would arise for Mr MacLennan’s business. The evidence does not suggest we should doubt these conclusions. We note that Mr MacLennan have identified the proposed land take at Easter Glackton Farm in acres and TS have done so in hectares. We note that either way both parties conclude a land loss in the region of 12%. Accepting rounding and approximations, this suggests no significant dispute about the scale of land proposed for compulsory acquisition.

6.97 In principle we accept that the outcomes, including reduced output and related impacts on subsidies, income and costs, could come about as a result. ES Appendix A15.7 (CD006) does not appear to dispute this.

6.98 ES Appendix A15.7 (CD006) identifies matters relating to field boundaries and drainage. In all cases it is proposed under the mitigation column that these are reinstated with an opportunity for Mr MacLennan to agree to these accommodation works in advance. We also note that these would go on to form part of any design and build contract making their delivery binding on the contractor.

6.99 We therefore find it unlikely that Mr MacLennan would be expected to meet the cost of these consequences of the proposed scheme. Fencing and drainage matters would be resolved along with matters relating to access. We consider access in greater detail below. This makes clear that the proposed scheme incorporates proposals that would be agreed, in time, with Mr MacLennan. These actions would reduce the significance of impact compared with these measures not being incorporated within the proposed scheme.

6.100 We note Mr MacLennan’s points that the severance of their land by the proposed scheme would require them to travel further to access some of their land. TS does not dispute this and calculates 5.9 kilometres in additional distance to travel to the severed land via new means of access 384 ([draft SRO Plan SR12 – CD003](#)). Whilst this may have effects on income and business operations we do not find this to mean that these lands could not be used for agriculture. Therefore, farming would remain a viable land use in the sense of the agricultural assessment. Matters of compensation for the effects of this additional travel distance would be for the District Valuer and are not for this inquiry.

6.101 Mr MacLennan are not the only objectors to highlight concerns with the term ‘neutral’ and any influence that this could have on subsequent claim for compensation. We understand that some parties consider the term ‘neutral’ to represent the status quo. However, we find that [ES paragraph 15.3.61](#) (CD005) is clear that this is not its intended meaning. The definition provided in that paragraph makes clear that the term ‘neutral’ involves change and that this may involve a reduction or restructuring of activities. We also note the definitions of the terms ‘beneficial’ and ‘adverse’ in ES paragraph 15.3.61 (CD005).

We find that the definition of 'neutral' accurately describes the anticipated impacts on Mr MacLennan's farming operations that would result from the proposed scheme and that the terms 'beneficial' and 'adverse' do not.

-Severance

6.102 The proposed scheme would result in Mr MacLennan needing to cross the Aberdeen to Inverness Railway to access severed land. Whilst provision has been made for this we agree with Mr MacLennan that they would face a detour via local roads, Brackley Junction, the proposed dual carriageway and then the Nairn West Junction and new access tracks. Whilst we have no accurate means of verifying the distances quoted in [TS084.02](#), TS does not dispute that additional distances would need to be travelled. We find that whilst Mr MacLennan would previously have needed to either cross their own land or use the public road network, the new access arrangements to the dual carriageway would require a detour of the nature they describe.

6.103 Retaining the Gollanfield Railway Bridge would enable Mr MacLennan to cross the dual carriageway at the C1013 Gollanfield overbridge rather than Brackley junction and then travel via the existing A96 to the Nairn West Junction. That this could reduce distance, time and cost is not disputed. However, we find that this is not the only factor for TS to consider.

6.104 The proposed scheme would provide a new dual carriageway crossing of the railway and would allow Mr MacLennan to continue to access their severed lands via the Nairn West junction. This suggests that retention of the existing A96 Gollanfield Railway Bridge is not essential even if it would shorten their additional journey.

6.105 The future maintenance cost of retaining the bridge would become the responsibility of The Highland Council as the local roads authority following the proposed detrunking of the existing A96. Any maintenance liabilities would also transfer and the cost of any repair would fall to them. Given that the likely level of use of this bridge would be low, this could pass on an unreasonable burden.

6.106 We also note TS's point that Network Rail has aspirations to twin the tracks between Nairn and Inverness (as confirmed in [TS253](#) Section 6) and that this bridge would provide some constraint to doing so. While there is no evidence to suggest that such works are imminent, the current A96 Bridge is clearly a constraint to track widening and electrification as evidenced in the [Gollanfield Rail Options Report](#) (TS223). Therefore, we accept that its removal, if not carried out now, would fall to Network Rail later. As we are satisfied that retention of the bridge would not be essential, this provides further justification for its removal as part of the proposed scheme.

6.107 TS points out that any losses experienced by Mr MacLennan as a result of the proposed scheme could form part of a compensation claim. This would be a matter for the parties concerned and the District Valuer. Compensation is not a matter for this inquiry.

-Plot 1319

6.108 Plot 1319 (draft CPO Sheet 13 of 23 - CD001) is required for the provision of new means of access 384 (draft SRO Plan SR12 - CD003) via the southern roundabout of the proposed new Nairn West Junction. Based on [ES Figure 15.6g](#) (CD007) we find this to be necessary to provide access to field 293/4, which would be severed by the proposed scheme. ES Appendix A15.7 also describes the provision of a vehicular crossing of the C23 Cranford Culvert (ch17150) at this location.

6.109 Mr MacLennan do not appear to dispute the rationale for this new means of access, but question why compulsory purchase is necessary when they have indicated their willingness to allow the works on their land.

6.110 Whilst we note their willingness to proceed by agreement and do not doubt their sincerity, we accept TS's explanation that it is essential for it to compulsorily purchase all land necessary for the proposed scheme in order to ensure certainty of delivery. We accept this since there are multiple land owners along the route of the proposed scheme. TS would be willing to sell the land back after construction were it deemed surplus to requirements. This does not appear unreasonable and, if Mr MacLennan chose to accept, would result in them regaining ownership of this part of the farm.

Access

-Quarry access

6.111 We note that OBJ/082 Mr Rose, who farms adjoining land, has also objected to the proposed quarry access with regard to his farming land interests. His objections are considered separately in Chapter 5: Newton of Petty to Gollanfield.

6.112 Easter Glackton quarry currently uses an access track running from the quarry westwards on the south side of the existing A96. The track joins the existing C1013 Gollanfield Road linking the quarry to the road network. This access track crosses land owned by Easter Glackton Farm and then land owned by OBJ/082 Mr Rose. It is our understanding that the quarry operator has an agreement with both parties to take access over the length of this track that crosses their respective land.

6.113 The proposed scheme would be built on the land currently occupied by the access track. This being so, a new access track is proposed to maintain access to the quarry and would require the acquisition of Plot 1218 from Easter Glackton Farm (and the corresponding plot 1207 from OBJ/082 Mr Rose).

6.114 We find that it would be unreasonable for a currently operational quarry to be left without access to the road network as a result of the proposed scheme. We therefore find that it is reasonable and necessary for TS to put in place a replacement access track. We note Mr MacLennan's suggestion that they would be willing to provide a new track by agreement. However, though we do not doubt the sincerity with which Mr MacLennan promise to reach an agreement with the quarry operator in respect of the new access route, we find that there has to be absolute certainty that the quarry operator would not be placed in a worse position as a result of the construction of the proposed road (and consequent loss of the existing access) and that this would require the new track to be acquired by Scottish Ministers with an appropriate right of access to the quarry owner. We agree that the proposed compulsory purchase of this plot is required in order to provide the requisite level of certainty and we find the proposed acquisition of this plot to be justified.

6.115 We also note that if the quarry ceased to operate prior to construction then there would be no need for that part of the plot to be acquired. We find that this could be removed from the draft CPO without the need for new orders. Alternatively Scottish Ministers could sell the land back to the current owners following construction, with suitable burdens in place to guarantee quarry access. Neither outcome seems unreasonable.

-Access during construction

6.116 Mr MacLennan are not the only objectors to raise concerns about access to their land during the construction phase or to raise concerns about the disruption to access that might take place. [ES Table 20.10](#) (CD005) lists mitigation items CP-AG1, CP-AG3 and CP-AG5 (amongst others). These mitigation items are identified specifically for Easter Glackton Farm in ES Appendix A15.7 page A15.7-20 (CD006), amongst others. Together these require prior notice of construction works to be given to landowners and occupiers and that access to agricultural land is maintained during and after construction. As environmental commitments these mitigation items would form part of any construction contract. These measures would guarantee that access would be retained by Mr MacLennan to their land during and after construction.

-Pedestrian access to the eastbound bus stop

6.117 [ES Figures 16.4b and 16.4c](#) (CD007) show the locations of existing and proposed bus stops in the vicinity of Easter Glackton Farm. We agree with Mr MacLennan that in future the presence of a dual carriageway would make it impossible for pedestrians to safely cross the carriageway in the manner that the existing A96 can currently be crossed.

6.118 ES Figure 16.4b and 16.4c (CD007) show that proposed new bus stops would be located on the east side of the Nairn West Junction north roundabout and to the east of the proposed C1013 Gollanfield Road overbridge. We note that this second bus stop is close to the location of the existing bus stop at Gollanfield layby shown on ES Figure 16.4b (CD007).

6.119 On balance this suggests that access to the proposed new bus stop near to the C1013 Gollanfield Road overbridge would be a not dissimilar distance on foot to the current bus stop at Gollanfield layby, just to the west. We also note from [ES Figures 4.1f and 4.1g](#) (CD007) that each would be accessible via the proposed NMU shared-use path. This persuades us that access via a dedicated NMU route would be safer and similarly as convenient compared with the current arrangements.

6.120 We agree with Mr MacLennan that the proposed new bus stop at the Nairn West Junction may be slightly further to travel, though we have no accurate measurement to determine its exact distance from their farm. However, ES Figure 4.1g (CD007) persuades us that access via a dedicated NMU route would be safer compared with the current arrangements.

6.121 We note TS's points regarding the positioning of bus stop laybys to avoid safety risks from weaving traffic. This appears consistent with [DMRB TD22/06](#) (CD049.09). The evidence does not suggest we should doubt TS's advice or that better alternatives exist. We also note that TS has been influenced by the proximity of concentrations of residential properties at Lochside and Gollanfield, which we find to be logical. In doing so we accept that this may not bring bus stops closer to other properties. This is unavoidable given the factors outlined in the paragraphs above. Overall the evidence does not suggest a better alternative location for these proposed new bus stops.

6.122 TS has considered a pedestrian underpass, as requested by Mr MacLennan. However, we also note TS's conclusion to rule this out on cost grounds and also because it deems a bus stop in this location to be unsafe. We have not been referred to any cost data by either party. However, we recognise on a practical level that, any underpass (pedestrian or otherwise) must be constructed and then maintained. Doing so brings a cost, whatever

that cost is. A judgement must therefore be made by a scheme promoter about whether the anticipated benefits justify the costs of provision and maintenance. The evidence does not suggest we should conclude differently to TS. Similarly with regard to locating a bus stop close to that suggested underpass we note TS's safety conclusions and find this to reflect our own findings on these matters (above).

Impact on residential property interests

-Visual impact and landscape and visual mitigation proposals

6.123 [ES Figure 10.3e](#) (CD007) receptor 101 includes a collection of buildings at Easter Glackton and Rowanhill. It shows that in winter year of opening the effects would be moderate/substantial. We agree with TS that contributing factors would include the proposed noise barrier, PS06 Gollanfield Railway Bridge and the proposed scheme being on an embankment. These would be closer to receptor 101 than the existing A96 and they would become new visual features in the landscape. [ES Figure 9.1o](#) (CD007) shows that receptor 101 forms part of the Open Coast and Lowland LLCA. We therefore find some inevitability that these new features would have visual impacts and effects.

6.124 We find that the proposed mitigation planting of trees and hedges in [ES Figure 9.5l](#) (CD007) would help to blend the proposed scheme into the landscape. However, whilst it may assist in screening views of the proposed scheme, the mitigation itself would also become a new visual feature in the landscape with its own visual impacts and effects.

6.125 Though we are referred to [ES Figure 9.6](#) (CD007) we note that cross section M-M is further east of the location where receptor 101 is located. However, we find that [ES Figure 9.5l](#) (CD007) is sufficiently clear to understand the mitigation proposals. We also find the diagram and cross section in [TS084.03](#) to present a topographic cross section at the appropriate location. [ES Figure 10.3e](#) (CD007) shows that the effects at receptor 101 would reduce to slight/moderate 15 years after opening. We find this change to be the consequence of the proposed mitigation planting regime shown on the south side of the proposed dual carriageway in [ES Figure 9.5l](#) (CD007).

6.126 As noted above the proposed mitigation would successfully reduce the visual and landscape impacts of the proposed scheme. However, both the proposed scheme and the mitigation itself would become new landscape features that would have ongoing residual effects. Therefore further planting would be unlikely to resolve this since it would contribute further to changing views.

6.127 Whilst it could be argued that these residual effects would have some impact on visual amenity we do not consider this sufficient to compromise the public interest value of the proposed scheme or to warrant recommending modifications to the draft Orders.

-Noise and vibration

6.128 The evidence does not suggest the noise assessment in [ES Chapter 8](#) (CD005) to have been carried out incorrectly or to have reached erroneous conclusions. [TS084.02](#) Tables 1 and 2 demonstrate a need for noise mitigation at Easter Glackton Farm arising from the proposed scheme. This is because they predict perceptible noise level increases in the short-term and long-term and absolute noise levels that exceed the 59.5 dB LA10, 18h threshold. Together these meet the requirements set out in the noise mitigation strategy ([ES paragraphs 8.2.24 to 8.2.34](#) – CD005).

6.129 [TS084.02](#) Table 3 indicates that, with mitigation in place under the Do Something Future scenario (2036) (with the proposed scheme in place), predicted absolute noise levels would reach 60.1 dB. This exceeds the 59.5 dB $LA_{10, 18h}$ mitigation threshold. However, TS084.02 Table 3 shows that the predicted increase in noise levels of 2.4 dB, from the DMB (2021) level of 57.8 dB. This noise level increase is within the 3 dB range of long-term change in noise levels that would be imperceptible, as described in [DMRB Volume 11, Section 3, Part 7 HD213/11](#), paragraph 3.37 (CD049.19).

6.130 Therefore, despite a predicted absolute noise level that would slightly exceed the 59.5 dB $LA_{10, 18h}$ the magnitude of noise level increase would be below the perceptible levels. Therefore, under the ES mitigation strategy (ES paragraphs 8.2.24 to 8.2.34 – CD005), there is no requirement for any further mitigation.

-Air quality

6.131 Easter Glackton Farm would be within 200 metres of the proposed new dual carriageway and has therefore been assessed from an air quality perspective. The evidence before us does not suggest we should conclude this assessment to have been carried out incorrectly or to have reached erroneous conclusions.

6.132 [ES Appendix A7.4](#) (CD006) shows that base year readings for NO₂, PM₁₀ and PM_{2.5} are predicted to increase, but to remain well below each of the respective air quality standards, as defined in [ES Table 7.3](#) (CD005).

6.133 Construction dust has been considered as part of the air quality assessment and a CEMP is proposed to form part of any construction contract. [ES Table 20.1](#) (CD005) identifies several of the requirements that would form part of the CEMP, including those relating to construction dust with the requisite standards to be defined in consultation with The Highland Council. This would provide a form of external scrutiny for the appropriate standards. Inclusion of these matters within a construction contract would bind the contractor to fulfil these obligations within an independent inspection regime. This is an appropriate response to ensure that any matters that could arise from construction dust are avoided or limited and appropriately regulated.

6.134 Changes in air quality during construction and operation of the proposed scheme are therefore unlikely to adversely affect the residential amenity of Mr MacLennan's property.

Overall

6.135 The proposed scheme would result in some land loss and we find that the consequent impacts on Mr MacLennan's farm business would fall within the definition of 'neutral'. This is because they would be required to alter their business but the land could still be used for agriculture. There are no grounds to find that the proposed acquisition of Plots 1309 or 1218 are unnecessary or could be better achieved through agreement. Resultant impacts on access, boundary treatment, severance and drainage could all be resolved through mitigation and accommodation works. The air quality and noise impacts are unlikely to require additional mitigation (beyond that proposed) and are unlikely to adversely affect the amenity of Mr MacLennan's residential properties. Whilst there may be a residual visual effects, it does not appear that further mitigation would resolve this or diminish it further. In our view, the residual visual and other impacts / effects would be acceptable, would not require additional mitigation beyond that proposed and would not compromise the public interest value of the proposed scheme. Therefore the evidence

does not suggest we should recommend that Scottish Ministers modify the draft Orders or refuse to confirm them.

OBJ/041 Mr Martin Macleod

Objector

6.136 OBJ/041 Mr Martin Macleod is a resident of Balloch. His objections to the proposed removal of the existing Gollanfield Railway Bridge are considered in this chapter below. His objections to matters relating to 'The Hedges' and other issues around Culloden/Balloch are considered separately in Chapter 4: Smithton, Culloden, Balloch, Allanfearn and the Hedges.

Objection

6.137 Mr Macleod argues that proposed removal of Gollanfield Railway Bridge is not necessary and would be expensive. He argues that:

- the maintenance costs would not be high
- its removal is not required for dual tracking the railway since this is not in Network Rail's next Control Period.
- its retention would provide an alternative if the dual carriageway became blocked and also for farmers and cyclists.

Transport Scotland's Response

6.138 TS confirms it has reviewed this issue again and confirms that it does not propose to amend this aspect of the scheme design. It argues that maintenance of structures is an ongoing burden on local authorities and, as structures age, their maintenance costs increase.

6.139 TS argues that the demolition of this structure would remove a constraint to the future widening of the railway at this point, thus removing the burden that would be placed on Network Rail for its removal. It also argues that NMU access across the railway line would be maintained via the proposed NMU shared-use path, which would run along the south side of the proposed dual carriageway at this point. TS states that farm traffic could use either the local road network or the proposed dual carriageway to cross the railway line.

Findings of Fact

6.140 [ES Figures 4.1g](#) and [17.2c](#) (CD007) show that the proposed scheme would include new crossing of the railway that would carry the dual carriageway and the NMU shared path (on its south side) as a replacement for the existing Gollanfield Railway Bridge that would be demolished. [Draft SRO Plan SR11](#) (CD003) shows that the existing A96 would be stopped up at either side of the railway and would serve as local access to fields and for drainage maintenance. An alternative crossing point for local traffic including, farm vehicles, would be the existing C1013 bridge at Gollanfield House, approximately 800 metres to the west. This suggests that there is no specific need to retain the current Gollanfield Bridge since vehicles and NMUs could cross the railway with the proposed scheme in place.

6.141 We note the objector's argument that the future maintenance cost would not be high. However, he provides no evidence to substantiate this assertion. Were the bridge to be retained it would become the responsibility of The Highland Council as the local roads authority. Any maintenance liabilities would also transfer and the cost of any repair would fall to them. Given that there does not appear to be a specific need to keep the bridge this could pass on an unreasonable burden.

6.142 There is some contention between the two parties about the timing of the proposed widening of the Aberdeen to Inverness railway to two tracks. While there is no evidence to suggest that such works are imminent, the current A96 Bridge is clearly a constraint to track widening and electrification as evidenced in the [Gollanfield Rail Options Report](#) (TS223). Therefore, we accept that its removal, if not carried out now, would fall to Network Rail later. We also accept that Network Rail does have aspirations to double track on the section of line beneath the current bridge, as confirmed in The [Aberdeen to Inverness GRIP 3 Executive Summary Section 6](#) (TS253). As we are satisfied that retention of the bridge would not be essential, this provides further justification for its removal as part of the proposed scheme.

6.143 The residual impacts and effects would therefore not be sufficient to override the public interest in providing the proposed scheme. We therefore find no reason to recommend that Scottish Ministers should modify the draft Orders or refuse to confirm them.

REP/085 Mrs Bridie Charteris

Objectors

6.144 REP/085 Mrs Bridie Charteris has business interests close to proposed new means of access points 385 and 386 ([draft SRO](#) Plan SR12 – CD003).

Objection

6.145 Mrs Charteris argues that:

- new means of access 385 (draft SRO plan SR12 – CD003) would be better as just a gate positioned directly or thereabouts opposite new means of access 386. If this is not considered appropriate she argues that new means of access 385 should be moved further towards new means of access 384.
- new means of access 386 would be better placed for all concerned at point 307 in order to eliminate 'masses of tractor dirt and noise' next to her business premises. Where it is currently proposed, she argues, the farmer would still need to travel further up than necessary, which would be an eyesore and disruptive. She also contends that 'all the telephone connections' are located at this proposed junction.

Transport Scotland's Response

6.146 TS confirms that it has considered the suggestions for adjusting these field accesses for the agricultural land owned by OBJ/090 Cawdor Maintenance Trust. TS argues that new means of access numbers 385 and 386 on draft SRO Plan SR12 (CD003) have been designed to maximise the usability of the remaining agricultural land, in consultation with the land owner and tenant. To facilitate livestock collection and movement they have been

positioned in the corners of each field accordingly. TS therefore believes that these accesses are appropriately located in these circumstances.

6.147 TS also confirms that its design consultants are aware of utility services in the vicinity and are in ongoing discussion with service providers to ensure continued provision of services. TS confirms that diversions would be carried out as required.

Findings of Fact

6.148 We note the concerns raised about the positioning of new means of access 385 and 386. However, the purpose of any new means of access in these circumstances is to enable farm operations to continue with the least possible disruption. We note the rationale for locating these in the field corners regarding livestock operations. We give weight to the lack of objection to these matters from the owner or the tenant of Blackcastle Farm. This suggests that the requirements stated by TS are satisfactory to those parties. While we note the concerns raised by Mrs Charteris, on balance the evidence does not suggest that these proposed field accesses are poorly located or that the suggested alternative locations would be better for this purpose. Whilst these changes may have some lasting environmental effects we do not find these to be sufficient to compromise the public interest in providing the proposed scheme.

6.149 We therefore find no reason to recommend that Scottish Ministers modify the draft Orders or refuse to confirm them.

REP/086 Mr Gerry and Mrs Morven McMonagle

Objectors

6.150 REP/086 Mr Gerry and Mrs Morven McMonagle are tenants of Blackcastle Cottage, which is owned by OBJ/090 Cawdor Maintenance Trust. Mr and Mrs McMonagle also have shared maintenance responsibility for the access road leading from the existing A96 to the driveway of the property.

Objection

Use of private road

6.151 Mr and Mrs McMonagle note the proposed stopping-up of the private road currently providing access to Cockhill (Points 307 and 308 on [draft SRO](#) Plan SR12 – CD003). They are concerned that the width of the road and verge in that area could potentially attract parking/camping/mobile homes. They propose a gate to prevent this.

Visual impacts

6.152 Mr and Mrs McMonagle oppose what they consider to be nuisance and visual impacts resultant from the proposed scheme. In particular they highlight the absence of screening to the south of Blackcastle Cottage in the vicinity of ch17500.

Transport Scotland's Response

Use of private road

6.153 TS confirms that:

- the private road, would be stopped up to the south of Blackcastle Cottage and that this road would remain in the ownership of OBJ/090 Cawdor Maintenance Trust.
- it will consult with Cawdor Maintenance Trust regarding accommodation works to be provided under the construction contract.
- as part of this consultation, the provision of a gate or other measures to prevent or restrict vehicular access to the remaining section of this access road will be discussed and may be included in the design subject to Cawdor Maintenance Trust's agreement.

Visual impacts

6.154 TS confirms that:

- the area south of Blackcastle Cottage between ch17420 and ch17540 has not been identified for landscape planting for screening purposes in the ES.
- the proposed dual carriageway at this location would be in a cutting of approximately seven metres deep with earth slopes running down towards the proposed carriageway.
- along the length of the cutting, the earth slopes would be planted with native scrub woodland and standard tree groups.
- the combination of the proposed cutting and proposed planting on the cutting slopes means that there would be no visibility of the road and traffic from Blackcastle Cottage or for road users towards it.
- riparian woodland planting proposed to the south west would also assist in screening potential distant views of the proposed scheme.
- none of the proposed planting would have an effect on the amount of natural light the property and its surroundings currently experience.

Findings of Fact

Use of private road

6.155 [Draft SRO Plan](#) SR12 (CD003) shows the proposed stopping up of the private road at points 307 and 308. TS does not appear unwilling to provide a gate, as requested by the McMonagles. However, we note that it will be undertaking discussions with the owner (OBJ/090 Cawdor Maintenance Trust) regarding all accommodation works.

6.156 We find it reasonable that TS would approach the matter of accommodation works in this manner since it would be the landowner, in this instance, who would need to agree. The detail of accommodation works are not a matter for this inquiry. We consider the objections made by OBJ/090 Cawdor Maintenance Trust separately in this chapter of the report.

Visual impacts

6.157 [ES Figure 9.5I](#) (CD007) shows that no planting is proposed south of Blackcastle Cottage and that the proposed dual carriageway would be in a cutting at this location (ch17420 to ch17540). This confirms the position described by TS above and we find no reason to reach alternative conclusions. However, ES Figure 9.5I also shows that the

proposed embankments would be planted with scrub woodland and that woodland planting would be proposed along the northern edge of the proposed dual carriageway to the southwest of Blackcastle Cottage. [ES Figure 10.3e](#) (CD007) shows that the visual effects at year of opening would be 'slight moderate' and that this would diminish to 'slight' 15 years later. This does not suggest particularly significant visual effects to begin with and these would diminish as the respective vegetation matures. Therefore whilst we acknowledge Mr and Mrs McMonagle's concerns we find that these would be overcome by the proposed design as set out.

Overall

6.158 The evidence suggests that the concerns raised would either be avoided/limited or not come about. Whilst there would be some residual impacts / effects these would not require additional mitigation and would not override the public interest in providing the proposed scheme. We therefore find no reason to recommend that Scottish Ministers modify the draft Orders or refuse to confirm them.

Blackcastle Farm - OBJ/087 Mr Oliver Mackintosh and OBJ/090 Cawdor Maintenance Trust

Objectors

6.159 OBJ/090 Cawdor Maintenance Trust is the owner of Blackcastle Farm. OBJ/087 Mr Oliver Mackintosh is the tenant farmer at Blackcastle Farm. Both object to the proposed scheme on the basis of its impacts upon Blackcastle Farm.

6.160 Objections by Cawdor Maintenance Trust regarding other locations and matters are considered separately in this chapter of the report.

6.161 In his Outline Statement (18 May 2018) Mr Mackintosh withdrew his original objections to land take at CPO Plots 1313, 1317, 1403, 1404, 1406 and 1407 and those relating to SuDS and drainage. He maintained his objections to the impacts of the proposed scheme on the farm house and business and those relating to the proposed stopping up of the existing A96 west of the U1029 Tomhommie-Ballinreich Road. We consider only these remaining objections and the matters raised through his subsequent discussions with TS ([TS087.03 to TS087.06](#)) and Mr Mackintosh's email dated 19 October 2018 (all of which are before us).

Objections

Business impacts

6.162 Mr Mackintosh and Cawdor Maintenance Trust each object to the proposed scheme arguing that it would adversely affect Mr Mackintosh's farm business. Both seek mitigation and implementation of the proposed scheme in a manner that minimises any impacts on Blackcastle Farm.

6.163 Cawdor Maintenance Trust is concerned at the proposed loss of 12% of the land at Blackcastle Farm to the proposed scheme and the subsequent impacts of severance and field size reduction.

6.164 Mr Mackintosh objects to the loss of prime agricultural land that would result from the proposed scheme.

6.165 Mr Mackintosh argues that trees proposed on Plot 1315 would reduce the heat and light received by the field and farm buildings, particularly during winter months, and also increase humidity, thereby increasing the risk of livestock pneumonia. To substantiate this Mr Mackintosh submitted TS's shading study, which is before us.

6.166 He also considers the field, where the tree planting is proposed, to be his best lambing field. He explains that he also uses this as an isolation field for new livestock as part of the farm's bio-security system. Therefore he argues that the loss of this field would increase the risk of disease and would reduce agricultural productivity. As such he proposes that this field should not be compulsorily purchased.

Impacts on the farm house

6.167 Mr Mackintosh objects to the impact of the proposed scheme on the farm house at Blackcastle Farm. He argues that the proposed tree planting on Plot 1315 would block heat and light, which the south facing house relies on to maintain its temperature.

6.168 Mr Mackintosh also argues that the proposed riparian woodland (proposed for Plot 1315) should not be considered as essential infrastructure. He contends that it is directly opposite Blackcastle Farm and would not screen views of the proposed SuDS ponds as intended. As such he considers it to be excessive for this requirement. This proposed planting would, he argues, also shade the existing A96 increasing the risk of icing in winter and thereby increasing the chance of accidents.

Stopping up of the existing A96 west of the U1029 Tomhommie – Ballinreich Road

6.169 Mr Mackintosh argues that no further information has been provided on the proposed stopping up of the existing A96 west of Tomhommie. He seeks reassurance of how the existing A96/U1029 stopping up would take place and over use of this by illegal occupiers and fly tippers.

Transport Scotland's Response

Business impacts

6.170 TS states that proposed tree planting in Plot 1315 would be distant (over 40 metres) from the cattle accommodation at Blackcastle Farm. TS considers that this would not materially change the ambient conditions within the cattle shed. TS quotes Mr Mackintosh's objection ([TS087.02](#)) Appendix 3 at bullet point 6, 'dry, draught free, comfortable and well ventilated housing is important in reducing respiratory disease'. TS contends that the proposed scheme would not increase the risk of pneumonia and disease within the shed.

6.171 TS explains that in the event that Mr Mackintosh remains of the opinion that there would be an increased pneumonia or disease risk, he may wish this to form part of any claim for compensation, which would be subject to District Valuer's assessment as detailed in Transport Scotland's [Guidance on the Compulsory Purchase Process and Compensation \(CD046\)](#).

6.172 TS confirms that the proposed scheme would result in the partial loss of Mr Mackintosh's lambing field (assumed to be Field 444/2 - [ES Figure 15.6g](#) – CD005). TS states that this may result in a change of its use by Mr Mackintosh, if necessary.

6.173 TS contends that there is an onus upon affected parties to mitigate their losses in these circumstances. As such it argues that this may require Mr Mackintosh to change current practices. TS contends that this could involve reorganisation of the farming system during lambing (e.g. use of another field north of the proposed scheme for lambing) and identification of other areas on the farm as isolation fields (for example the remaining area of field 444/2 to the south of the proposed scheme). TS confirms that any necessary disturbance or injurious affection impacts could form part of a claim for compensation, subject to District Valuer's assessment.

6.174 TS confirms that:

- it undertook an assessment of the likely future farm business viability and reported its findings in the ES including a qualitative assessment of likely future farm business viability, as required by [DMRB Volume 11, Section 3, Part 6, Land Use](#) (CD049.18)
- the methodology used is detailed in [ES paragraphs 15.3.59 to 15.3.63](#) (CD005) and the significance of impact is based on land-take, land quality (LCA Class), severance and other criteria detailed in [ES Tables 15.7, 15.8 and 15.9](#) (CD005).
- a Moderate/Substantial significance of impact has been assessed for Blackcastle Farm.
- [ES Appendix A15.7](#) at page A15.7-23 (CD006) assesses the impact on likely future farm business viability as 'Neutral' (not significant) based on criteria in [ES paragraphs 15.3.61](#) as:

Neutral Impact - the farm business is affected by the land-take or change in access requirements of the proposed scheme, and this may result in a reduction or restructuring of its activities. However, this does not compromise the likely future viability of the farm business and it is likely to be able to continue trading, albeit after some restructuring of its operations.

6.175 TS considers that Mr Mackintosh has quoted an extract from Scottish Planning Policy (CD045) referring to development on prime quality agricultural land. TS states that, whilst the proposed scheme would result in the loss of 6.85 hectares of land from Blackcastle farm, none of this is prime agricultural land (ES Appendix A15.7 at page A15.7- 23 – CD006).

Impacts on the farm house

6.176 TS states that the proposed landscape mitigation measures to the south of Mr Mackintosh's property have been designed to reduce the adverse landscape and visual effects of the proposed scheme on local landscape character and visual amenity, whilst assisting to integrate the proposed scheme into the surrounding landscape. TS explains that:

- the design of the SuDS detention basin and ponds would be developed further, including reviewing the shaping, earthworks and planting associated with the SuDS within Plot 1315.
- during this process Mr Mackintosh's concerns would be taken into consideration with specific attention to the extent and nature of the mitigation planting required directly opposite Blackcastle Farm.

- the current SuDS proposals to the south west of the property are in cutting which would require the partial removal of the existing roadside scrub vegetation and earthworks slope.
- the SuDS ponds would be approximately 11 metres deeper than the existing ground level with the proposed riparian woodland planted on the cutting slopes, sloping down and away from the existing A96 and away from Mr Mackintosh's property.
- the riparian woodland along the top of the road cutting for the proposed new dual carriageway to the south west of Blackcastle Farm is proposed to screen views of the SuDS from neighbouring properties located to the east / north east and to aid integration with surroundings.
- the distance between the proposed riparian woodland adjacent to the dual carriageway and Mr Mackintosh's property would range between 50 and 65 metres, therefore the proposed planting is not expected to adversely affect the amount of natural light experienced by the property.
- along the proposed dual carriageway alignment the depth of cutting would range from between five and a half and seven and a half metres.
- scrub woodland planting and trees are proposed on the cutting slope which would slope away from Mr Mackintosh's property and therefore would not affect the extent of the natural light currently experienced from the farm.

6.177 In view of the SuDS and planting mitigation proposals detailed above TS anticipates that shading on the existing A96 would not increase, therefore not increasing the risk of road ice in the winter, as suggested by Mr Mackintosh.

Blocking of Old A96 to West of the Tomhommie – Ballinreich Road

6.178 TS confirms that access along the stopped-up section of the existing A96 would be retained to allow future access by maintenance vehicles. TS argues that, typically, on schemes such as this, maintenance accesses are gated to prevent unauthorised access. It confirms that the exact layout of any gates or bollards at this location would be subject to further design development in advance of the procurement of the proposed scheme for construction. However, TS confirms its intention that these would be suitable to prevent unauthorised access.

Findings of Fact

Business impacts

6.179 [ES Appendix A15.6](#), page A15.6-3 (CD006) explains that Blackcastle Farm is a medium sized holding of 56 hectares based around sheep and cattle grazing/breeding and silage. It is defined in ES Appendix A15.6 (CD006) as having 'medium' sensitivity.

6.180 The proposed scheme would result in loss of approximately 115 hectares of prime agricultural land along its route (see Chapter 2: Matters of Principle paragraph 2.61). However, ES Appendix A15.6 (CD006) and [ES Figure 15.5g](#) (CD007) confirm that none of the land proposed for acquisition at Blackcastle Farm is prime agricultural land.

6.181 [DMRB Volume 11, Section 3, Part 6: Land Use](#) paragraph 6.3 (CD049.18) explains that agricultural assessments should focus on land-take, types of husbandry, severance and major accommodation works for access, water supply and drainage. [ES Appendices A15.6 and A15.7](#) (CD006) do not suggest any failure to consider these matters.

6.182 DMRB paragraph 9.1 (CD049.18) elaborates on the points in paragraph 6.3 (CD049.18). Paragraph 9.1 bullet b) (CD049.18) explains that consideration of:

‘Land-take will include land taken directly by a scheme and also land which will no longer be viable for agricultural use, for example, because severance (the splitting of a holding into more than one part) makes it impossible to farm some land productively’.

6.183 We therefore find that the term ‘viability’ is a reference to whether the land in question could be used for agriculture rather than any reference to profitability of the land within any particular farm business. We are therefore satisfied that whilst the assessment broadly recognises the issues facing the agricultural business besides land, its role is not to consider these in depth or to draw conclusions about cash flows and profitability of various business models.

6.184 DMRB Volume 11, Section 3, Part 6: Land Use paragraphs 10.16 and 10.17 (CD049.18) explain that farm viability as a result of the proposed scheme should be considered and presented in the ES. We find it presented in ES Appendix A15.7 (CD006).

6.185 ES Appendix A15.7 (CD006) details the impacts of the proposed scheme on various fields and identifies the total land loss that would arise for Blackcastle Farm. There is no evidence to cast doubt upon these conclusions. ES Appendix A15.7 (CD006) and ES Figure 15.6g (CD007) show that the proposed scheme would take land from fields 444/1, 444/2, 444/3 and 444/4. Of these fields 444/2 and 444/3 would be severed by the proposed scheme. Access to the southern, severed, parts of these fields (on the south side of the proposed scheme) would be taken via new means of access 384, 385 and 386 ([draft SRO Plan SR12 – CD003](#)) via local roads and the proposed Nairn West Junction. We therefore find the matter of severance would be resolved by provision of these access arrangements. We note from his outline statement and email of 19 October 2018 that Mr Mackintosh appears to be satisfied with these explanations.

6.186 We also note that any costs associated with extra travel or other resultant losses, may form part of any compensation claim by Mr Mackintosh. However, this would be a matter for him and the District Valuer since compensation is not a matter for this inquiry.

6.187 We also note the identification of mitigation and proposed accommodation works for these fields, including reinstatement of boundary treatments and drainage, as set out in ES Appendix A15.7 (CD006). This suggests that the likely implications of the proposed scheme have been foreseen and proposals to resolve this identified. The detail of accommodation works is a matter for TS and the respective parties but we note that these would form part of any contract and be binding on the respective contractor.

6.188 Both Cawdor Maintenance Trust and TS appear to agree that the land take by the proposed scheme would represent 12% of the farm. We find no reason to reach a different conclusion.

6.189 On the matter of shading and potential implications for livestock operations we note that there has been a chain of correspondence between Mr Mackintosh and TS. TS087.03 to TS087.06 are a series of emails and letters between the two parties dating from June to September 2018. In this correspondence TS provides more detailed designs for the

proposed SuDS pond arrangements, including proposed layout and cross-sections. TS considers these to take account of Mr Mackintosh's concerns about shading.

6.190 In his email dated 19 October 2018 Mr Mackintosh sets out his position on these matters and encloses copies of the Blackcastle Farm Shadowing Study by TS (these are before us). Mr Mackintosh explains in this email that he is grateful that many of the trees previously proposed would be removed or repositioned and that none of the shadowing would reach the house or farm buildings. We also note TS's original contention that the risk of icing on the A96 would not increase as a result of the original planting proposal. The design sketch in [TS087.05](#) and shadowing study do not suggest we should reach alternative conclusions to TS on these matters.

6.191 We do not doubt Mr Mackintosh's concerns about bio-security but we note TS's suggestion that he could use other fields and reorganise his operations. We accept that this may cause Mr Mackintosh some inconvenience but the evidence does not suggest such actions would be impossible. Should Mr Mackintosh conclude that he would incur losses as a result, then this may form part of any claim he makes for compensation. Compensation claims are a matter for the respective parties and the District Valuer and are not for this inquiry.

6.192 In his email of 19 October 2018, Mr Mackintosh explains that he would prefer no trees were planted in this vicinity. He also contends that the proposed hedgerow and trees to screen Blackcastle Cottage are unnecessary as the cottage has its own screening from a wooden-panel fence blocking views. We noted the presence of fencing at the property on our site inspection, however, we also noted the undulating topography west of the cottage and south of Blackcastle Farm.

6.193 The cross section diagrams and sketch proposal (TS087.05) illustrate the potential for this proposed mitigation to screen out views to the west of the proposed dual carriageway as well as the proposed SuDS. Similarly we note from [ES Chapter 9](#) (CD005) that planting is not solely for screening but also to help blend the proposed scheme into its surroundings and that it provides hibernacula locations ([ES Figure 9.5i](#) – CD007) and tree replacement ([ES Table 20.4](#) – Mitigation Items L4 and L6 to L13 amongst other – CD005). Overall therefore we do not find Mr Mackintosh's preference for no planting to provide compelling justification for the removal of all proposed mitigation planting from this location.

6.194 On balance, we therefore find that Mr Mackintosh's concerns regarding shading of his livestock and their accommodation do not present a justifiable reason to recommend that Ministers decline to confirm the Orders as drafted.

6.195 In his email of 19 October 2018, Mr Mackintosh also continues to have concerns about fencing and why fencing arrangements cannot be confirmed at this stage. Whilst it could possibly be agreed at this stage where replacement and reinstatement of fencing would need to be, we find this, including any fencing around the proposed SuDS ponds, is a matter to be agreed between TS and Mr Mackintosh under accommodation works in the event that the Orders are confirmed. Accommodation works are not a matter for this inquiry.

6.196 In his email of 19 October 2018, Mr Mackintosh also appears to take no reassurance from TS that land within Plot 1315 would be sold back if found to be surplus to requirements. We find that any judgements about whether land is surplus to requirements

can only be properly taken once the proposed scheme is constructed and operational. To do so in advance could limit the effective operation of the proposed scheme and arguably result in unnecessary land purchase. TS has confirmed that it considers all land within the draft CPO to be necessary for the construction and/or operation of the proposed scheme and we are content that Plot 1315 is necessary for the proposed scheme.

6.197 Should Mr Mackintosh conclude that he would incur losses as a result then this may form part of any claim he makes for compensation. Compensation claims are a matter for the respective parties and the District Valuer and are not for this inquiry.

Impacts on the Farm House

6.198 Based on the correspondence between TS and Mr Mackintosh detailed in paragraphs above we also find that the issues of shading at the farm house to be resolved.

6.199 We noted on our site inspection that the Blackcastle Farm house and Blackcastle Cottage are located north and east, respectively, of the proposed SuDS ponds. The SuDS feature immediately to the south of Blackcastle Farm appears to be a marshy depression planted with a rich grassland mix (ES Figure 9.5I – CD007). As such we find this would take the appearance of grassland rather than a pond, for at least some of the time when not containing water. The design sketch and cross-sections in TS087.05 do not suggest we should find otherwise or that this purpose has altered since ES Figure 9.5I (CD007) was published.

6.200 TS's cross-sections (TS087.05) of the westernmost SuDS feature show that it would sit in a depression with mounds north and south between the existing A96 and the proposed dual carriageway. This suggests that its visibility would be limited and its appearance muted by its functional planting. We do not find the evidence to suggest that this would have an adverse impact on visual amenity. In reaching this conclusion we must acknowledge that the visual effects identified in [ES Figure 10.3e](#) (CD007) would be 'moderate' in winter year of opening reducing to 'slight' by summer fifteen years later, based on the planting regime set out with a riparian woodland planting screen.

6.201 We also acknowledge Mr Mackintosh's suggestion that the SuDS could be relocated further west since the design has not been finalised. We agree that the design may not have been finalised yet, accepting the more detailed sketch in TS087.05. However, there is no evidence before us to indicate the impact of topography and related engineering works, the impact on water flow rates and flood risk or the necessity for mitigation (e.g. planting) that would arise from Mr Mackintosh's suggestion. We therefore find no evidence to support such a course of action or to demonstrate that it would result in the outcomes that Mr Mackintosh appears to seek, or improve on those he perceives would result from the proposed design.

6.202 We further note that Mr Mackintosh's 19 October 2018 email raises concerns about the water table in the area given that he hopes the design team now takes into account the old well (assumed to be as designed in TS087.05). He seeks reassurance and information that TS's contention that, the water table would not be affected, would hold true. We note that [ES Appendix A13.2](#) (CD006) contains the flood risk assessment for the proposed scheme. The evidence there does not suggest we should conclude that the proposed scheme would substantively increase flood risk. We attach weight to the fact that SEPA has not objected to these proposals. We are also satisfied that detailed designs at the next

stage would need to give due consideration to these matters as indicated in [ES Table 20.1](#) (CD005) Mitigation Items GR3, GR4 and GR5 that cover the design of SuDS. .

Blocking of the existing A96 west of Tomhommie – Ballinreich Road (U1029)

6.203 Based on his email of 19 October 2018 Mr Mackintosh's objection appears to hinge on the lack of detail for the provision and design of a security gate to prevent illegal parking and fly tipping. We note from its earlier correspondence [TS087.02](#) that TS intends to provide some form of barrier (a gate or bollards). We therefore find this matter to be about how, rather than if, such a barrier is provided.

6.204 That the design of this has yet to be finalised does not appear to be unreasonable at this stage. This is because it is sensible for any promoter to wait until it has certainty that the proposed scheme would proceed before entering into the detailed design and commitment, with numerous objectors, to specific and detailed accommodation works. As such, we do not consider this to be unfair, since the respective parties would have some involvement in agreeing the nature of accommodation works and the issue is instead about timing and the nature of provision.

6.205 On its own, the design or method of gating this location is not vital to whether the proposed scheme proceeds since it would be part of accommodation works. Even were this not the case, the provision of a gate across land owned by TS at that time, or indeed by a party agreeable to its provision, would not require modifications to the draft Orders. The specific details are matters for agreement between TS and the respective parties as part of any accommodation works. As such these details are not a matter for this inquiry.

Overall

6.206 The concerns raised by the objector would either not arise or would be avoided/limited by the design of the proposed scheme and/or proposed mitigation / accommodation works. Whilst the proposed scheme would have some residual impacts / effects these would not require additional mitigation or compromise the public interest of providing it. Therefore there is no reason for us to recommend that Scottish Ministers modify the draft Orders or refuse to confirm them.

OBJ/088 Ardersier Port Ltd

Objectors

6.207 OBJ/088 Ardersier Port Limited owns land with development interests north of the proposed Nairn West Junction as well as Plots 1407 and 1409 ([draft CPO](#) - CD001).

Objection

CPO notice

6.208 OBJ/088 Ardersier Port Limited argues that the original notice for CPO was served on the wrong company.

Sourcing aggregates

6.209 Ardersier Port Limited argues that the deficit of materials identified in [ES Chapter 17](#) (CD005) could be resolved by using material removed as part of the proposed dredge operations at Ardersier Port.

Nairn West Junction design

6.210 Ardersier Port Limited argues that the design of the proposed Nairn West Junction must:

- take into account projected traffic flows from new development permitted at Ardersier Port - 05/01294/OUTIN (residential and leisure) and 13/01689/PIP (port facilities).
- be suitable for port related HGVs, including use by long load trailers, for example those used for transporting wind turbine blades.

Plots 1407 and 1409

6.211 Ardersier Port Limited argues that the proposed compulsory purchase of Plots 1407 and 1409 for the new junction would have a material impact on Ardersier Port and its ability to deliver consented development in the future.

Transport Scotland's Response

CPO notice

6.212 TS acknowledges the request to amend the land ownership details included in the draft CPO. It argues that, as part of the work required to publish the CPO, TS's solicitors carried out extensive title searches and the draft CPO was produced using the information available at the time from the Registers of Scotland. However, TS confirms that, if the objector can forward a copy of the revised title deeds, the records could be updated where appropriate. TS argues that the Order is currently in draft format and revised land ownership details would be reflected in the Made CPO subject to completion of the necessary statutory process.

Sourcing aggregates

6.213 TS confirms that:

- it is aware of the potential source of material arising from proposed dredging operations at the port and of the discussions between the objector and TS's consultant, Jacobs.
- as confirmed by Jacobs in a telephone call on 24 January 2017, TS is not in the position to enter into any formal agreement to reserve this dredged material, nor would it wish to restrict the tendering contractors from identifying or using other materials sources.
- it is the responsibility of the tendering contractors to identify suitable earthworks material sources and negotiate for its supply and use.
- however TS is happy to continue discussions concerning the use of dredged material and to provide information which may assist with appropriate decision making, within the contractual bounds noted above.

Nairn West Junction design

6.214 TS argues that it is aware of the benefits that future development at the Ardersier Port site could bring to the local economy. TS does not consider the A96 dualling to have a

material impact on Ardersier Port, or the objector's ability to deliver the development permitted there in the future. TS explains that it would continue to work to address any specific issues the objector may have in the future.

6.215 With regard to traffic modelling TS argues that:

- detailed planning data was provided directly by The Highland Council, including from the [HWLDP](#) (CD061) and the [IMFLDP](#) (CD062) and other planning information.
- these data were used as the basis for the derivation of the future year traffic forecasts in the updated MFTM.
- the resultant future year traffic flows obtained from the updated MFTM were then used in the DMRB Stage 3 Scheme Assessment.
- the modelling assessments confirm that the design of the Nairn West Junction has sufficient operational performance to accommodate the likely forecast growth in traffic levels anticipated along the corridor, including the two separate planning applications at Ardersier Port.

–geometry and design

6.216 TS notes the objector's points relating to the suitability of design of the Nairn West Junction for heavy loads in relation to port facilities and for its geometry to accommodate the use of trailers with long loads, such as wind turbine blades. TS confirms that:

- the junction has been designed in accordance with the DMRB and not specifically to accommodate abnormal loads or the specialist vehicles of the sort that transport wind turbine components.
- however Jacobs has carried out preliminary swept path analysis (using an abnormal load vehicle with overall length of 50 metres with a rear bogie with independent steering).
- this indicates the proposed design of the Nairn West Junction would not constrain an abnormal load any more than other locations on the road network.
- Jacobs will continue consultations with the objector and will carry out additional swept path analysis during the development of the specimen design, and as the objector works towards finalising their development proposals and better understands the specific abnormal load vehicle types they intend to use.
- if abnormal loads or longer vehicles are required to enter or exit the port facility, TS will consider altering aspects of the design, where reasonable and feasible to do so. For example, through altering street furniture locations, specifying use of demountable traffic signs, adoption of wider areas of hardstanding, etc.
- the proposed new bridge structures are designed to meet DMRB standards, with new structures for the A96 scheme designed up to SV196, which equates to an axle loading up to 16.5 tonnes, depending on the axle configuration.

Plots 1407 and 1409

6.217 TS does not specifically respond to these matters in [TS088.02](#).
Findings of Fact

CPO notice

6.218 The evidence suggests that TS has attempted to identify all land owners but it is possible that some information may not have been or is not now correct. The formal consultation on the draft Orders is a mechanism that allows such matters to be clarified. The evidence does not suggest that the objectors have been prejudiced by these

circumstances. Whilst the title information can be amended for the Made Orders there does not appear to be a need to modify the land proposed for compulsory purchase. As such only the title information would need to be modified in the draft Orders were it to be inaccurate. Whilst this information has not been provided to us, we consider that this would be an administrative correction based on the relevant title deeds, which are themselves legal documents. As there is no evidence to suggest any party has been disadvantaged, we do not consider that this issue is one for Ministers to take into account in deciding whether to confirm the Orders.

Sourcing aggregates

6.219 [ES Chapter 17](#) (CD005) does not appear to be in dispute, rather the objector is identifying a potential source of aggregates that could be purchased and used to build the proposed scheme. We also note the objector's further correspondence on this matter as set out in their letters [TS088.03](#) and [TS088.04](#). We find that whilst these resources may be capable of meeting the requirements for constructing the proposed scheme, any decisions about sourcing aggregates would be for the chosen contractor. This is not a matter for this inquiry.

Nairn West Junction design

6.220 [ES Chapter 15](#) (CD005) shows that TS has considered the implications of proposed development, including that which has been permitted or is identified in development plans. The evidence presented in [TS088.05](#) does not suggest we should doubt this. Such information has informed the MFTM that has been used to understand the anticipated scale of additional traffic resulting from new development. We have considered the MFTM in Chapter 2: Matters of Principle. There we conclude that the evidence suggests the model to be sound and its use to inform the design of the proposed scheme to have been appropriate. We therefore find no reason to suggest that the proposed Nairn West Junction would be incapable of handling the anticipated growth in traffic resulting from proposed development at Ardersier Port (or other locations) or that the proposed scheme would materially inhibit planned development at the port.

6.221 We note TS's assertion that Nairn West Junction has been designed to DMRB standards rather than with special loads in mind (e.g. wind turbine blades). TS's consultant Jacobs carried out analysis for abnormal vehicle loads of 50 metres as described in [TS088.02](#). This showed that the junction design and potential placement of road furniture would not inhibit passage of 50 metre length vehicles. We are therefore satisfied that there is sufficient scope within the proposed land take and design opportunity to accommodate abnormal loads to the extent that is reasonable.

6.222 In various correspondence ([TS088.03](#), [TS088.04](#), [TS088.05](#), [TS088.06](#) and [TS088.07](#)) the parties discussed whether 80 metre vehicles could be accommodated by the proposed junction. TS's concludes that this would not be possible but that the junction could accommodate vehicles up to 50 metres (as covered above). Ardersier Ports Limited accepts this, explaining that it would transport 80 metre wind turbine parts on 50 metre long vehicles. Both parties agree that this can be facilitated by the design and location of street furniture such as signs and agree to continue their discussions to inform these matters.

6.223 We find this to show that vehicles up to 50 metres in length could operate on the proposed junction and that there is some design flexibility within the provisions of the draft

CPO to accommodate this. We find it significant that the proposed scheme would not introduce a greater constraint upon the movement of abnormal loads than is found within the existing road network.

Plots 1407 and 1409

6.224 Plots 1407 and 1409 form part of a proposed new junction and road alignment between the U2218 McDermott's Road and the north roundabout of the proposed new Nairn West grade-separated junction ([draft SRO Plan SR13 - CD003](#)).

6.225 ES Figure 15.4g (CD007) shows planning applications affected by the proposed scheme including one referenced as PA31. PA31 is shown covering the U2218 McDermott Road running directly north from Nairn West Junction. [ES Tables 15.16 and 15.19](#) show that PA31 relates to the Former Ardersier Fabrication Yard. [ES Appendix A15.5](#) (CD006) and the updated situation in [Development Land Report](#) Appendix A (TS211) confirm that the proposed scheme is not expected to adversely affect either site amenity or capacity of PA31.

6.226 [DMRB Stage 3 Report](#) (CD008) paragraph 2.2.13 recognises the role of this facility within the National Renewables Infrastructure Plan (NRIP). Report paragraph 7.2.7 (CD008) also recognises the important role that Nairn West Junction would play in providing access to support regional growth opportunities at the Whitesands and the Former Ardersier Fabrication Yard. [TS209](#) paragraph 3.2.15 explains that the selection of the preferred route was chosen in part because the Nairn West Junction would maintain direct access to the Port of Ardersier.

6.227 Therefore we find that TS has considered development proposals on the Ardersier peninsular and that the proposed new road arrangement would directly connect destinations along the U2218 (including the Former Ardersier Fabrication Yard) with the proposed dual carriageway via Nairn West Junction. Therefore, whilst the proposed acquisition of Plots 1407 and 1409 may have some material impact on extant planning permissions the evidence does not suggest this would be to the detriment of their delivery.

Overall

6.228 The objections raised would either be avoided/limited by proposed mitigation / accommodation works or would not come about. The evidence suggests that whilst there would be some residual impacts / effects these would not require additional mitigation and would not override the public interest in providing the proposed scheme. Therefore, the evidence does not suggest we should recommend that Scottish Ministers modify the draft Orders or refuse to confirm them.

OBJ/089 The Right Honourable Angelika Ilona Dowager Countess Cawdor

Objectors

6.229 OBJ/089 The Right Honourable Angelika Ilona Dowager Countess Cawdor is the owner of Plots 1501, 1502, 1503 and 1504. She also has an interest in Cawdor Maintenance Trust (OBJ/090) whose objections are considered separately in this chapter of the report (above).

Objection

Plots 1501 to 1504

6.230 The Right Honourable Angelika Ilona Dowager Countess Cawdor objects to the proposed compulsory purchase of Plots 1501, 1502, 1503 and 1504. She argues that:

- Plot 1501 may already be with TS because it was part of an earlier conveyance of land which has not yet been completed (at the time of objecting).
- acquisition of Plot 1502 may have implications for woodland management in this area, in particular the proposed creation of a drainage infiltration trench and associated excavations. This would potentially destabilise other trees and she therefore seeks reassurances.
- the requirement for environmental mitigation is accepted (Plot 1503 - bat boxes and Plot 1504 - access thereto) but this acquisition would potentially pose significant woodland management constraints. The proposed acquisition of Plot 1503 may also inhibit quarrying operations at Blackcastle Quarry or future uses as this plot lies immediately adjacent to the access track.
- the proposed lease back of Plot 1503 does not address potential adverse impact on future woodland management.

6.231 The Right Honourable Angelika Ilona Dowager Countess Cawdor suggests an alternative location for the bat boxes and alternative arrangement to compulsory purchase such as leasing.

Transport Scotland's Response

Plots 1501, 1502, 1503 and 1504

6.232 TS is aware of currently being engaged in the conveyance of land at the junction of the existing A96 trunk road and the Delnies – Kildrummie – Howford Road (C1163) – shown on [draft CPO](#) Sheet 15 of 23 (CD001) as Plot 1501. TS confirms it will review the status of the negotiations prior to the Making of the CPO and, if appropriate, amend or remove this plot from the Made Order.

6.233 TS argues that Plot 1502 is required for drainage purposes and specifically the construction of an infiltration trench which would receive runoff from the C1163 road. TS argues this to be an effective solution in this location due to the lack of an appropriate nearby watercourse for use as an outfall. TS explains that:

- an infiltration trench is an underground gravel filled trench designed to infiltrate runoff into the surrounding ground.
- infiltration trenches are essentially rectangular soakaways where run-off is stored in the voids between the gravel allowing it to slowly infiltrate through the bottom into the soil matrix.
- the required trench depth would be approximately 1.5 metres and a working width would be provided around the excavation works.
- no future planting would be permitted within this zone.
- root barriers may be used to mitigate potential ingress into the operational zone.

6.234 TS argues that:

- the impacts of the proposed scheme on woodland in general and the woodland parcel covered by Plot 1502, referred to as 215/2W ([ES Figure 15.6h](#) – CD007) are assessed in the ES.
- [ES Appendix A15.7](#) on pages A15.7-54 and A15.7-55 (CD006) details the impact and identifies mitigation, including the carrying out of an arboricultural assessment, including tree protection plan and method statement to inform retention of trees ([ES Table 15.23](#) Mitigation Item No. CP-F3 - CD005).
- the results of this assessment can be shared with the objector.

6.235 TS argues that the acquisition of Plot 1503 (bat boxes) and Plot 1504 (access thereto) is necessary to mitigate for the loss and fragmentation of commuting habitats for bats, a European protected species. TS argues that:

- it is necessary to provide bat boxes in close proximity to these lost habitats where an impact from the proposed scheme has been identified.
- the bat box mitigation needs to be set back from the main construction works area so that the boxes would not be compromised during construction, but close enough so that they can effectively mitigate for the loss and fragmentation of commuting habitats, by providing additional shelter.
- Plot 1503 was chosen as a suitable location for bat boxes due to the presence of suitable mature trees in the area, its location in proximity to the proposed scheme and its accessibility for maintenance and monitoring of the boxes.

6.236 TS confirms that:

- it is necessary to acquire Plot 1503 to allow the installation of the bat boxes and ensure the alternative bat habitat is protected and can be appropriately maintained and monitored by TS during the establishment period.
- following installation of the bat boxes, it would be willing to lease back this land plot to the objector for a period sufficient to allow bats to establish, up to a maximum of ten years.
- the lease would include restrictions with regard to the use of the land to ensure establishment of the replacement habitat was not impeded.
- the lease would include a provision which would give the objector a right to purchase back this land following establishment of the bat population, or the end date of the lease, whichever came sooner.

6.237 TS argues that it is necessary to acquire Plot 1504 to secure a servitude right of access along the existing access track to safeguard future access to the bat boxes within Plot 1503. TS confirms that it is unable to offer an alternative legal mechanism that would safeguard its future access requirements.

Findings of Fact

Plots 1501, 1502, 1503 and 1504

6.238 We note that conveyancing procedures appear to be underway for TS already to acquire Plot 1501. However, we agree with TS that this acquisition remains necessary and that continued inclusion of Plot 1501 in the draft CPO would guarantee the acquisition of the site were the current conveyancing not to have concluded in time.

6.239 We note the concerns regarding drainage of this locality. The proposed acquisition of Plot 1502 is to accommodate a drainage infiltration trench adjacent to the C1163 road near to its junction with the existing A96. [ES Appendix A15.7](#) pages A15.7-54 and A15.7- 55 (CD006) make clear that Plot 1502 is 0.11 hectares which represents 2% of parcel area 215/2W. This would result in the loss of boundary features and disruption to drainage. The mitigation requirement is for reinstatement of boundary features and to tie in existing woodland drainage with road drainage and to provide new as required. The evidence does not suggest we should conclude that there is no need for such a drainage trench.

6.240 Mitigation Item CP-F3 ([ES Table 15.23](#) – CD005) explains that:

Where individual stands of trees and woodland compartments would be affected, an appropriate arboricultural assessment (including tree protection plan and method statement) and/or windthrow assessment (using an appropriate assessment tool such as ForestGALES) would be undertaken pre-construction and appropriate mitigation employed to address safety risk to land within the proposed scheme. Any felling to create a windfirm edge would take account of ecological, landscape and visual effects and designed where feasible to maximise ecological, landscape and visual opportunities.

6.241 This provides a clear mechanism to ensure that woodland management matters are properly considered prior to construction works and are addressed as part of a broader scheme of identified mitigation. This does not suggest that the draft Orders should be modified to remove Plot 1502.

6.242 We note that the objector is supportive in general of the need for bat mitigation measures and that the objection appears to be the chosen location for this and the consequent acquisition of land for this purpose. We also note TS's point that bats are a protected species. As such there is no reason for us to doubt the need for the mitigation.

6.243 We accept that the acquisition of Plot 1503 would restrict the woodland management activities that could take place on that plot, both because it would be in the ownership of TS and also because it would have within it a habitat for a protected species. This is necessary to allow the mitigation to succeed. We agree with TS that ownership, potentially with a form of lease back with restrictions is the best means to achieve this. We are not convinced that the desired and necessary level of protection could be achieved otherwise. Such circumstances would arise irrespective of where this mitigation is sited.

6.244 TS explains its rationale for choosing Plot 1503 (above) in [TS089.02](#). We accept the need to provide a suitable habitat for displaced protected species in locations sufficiently close to existing habitats but not too close to the source of disturbance (in this instance the proposed scheme). We note that Plot 1503 is located off a quiet lane on the south side of woodland parcel 215/2W. This is away from both the existing A96 and the C1163. The evidence therefore does not suggest Plot 1503 to have been an unreasonable choice or that a better alternative exists.

6.245 The draft Orders can only be modified by removing land and not by adding or replacing land. Doing so would require new Orders that would need an EIA and the subsequent consultation, public inquiry and reporting to Scottish Ministers along with any associated time delay to the proposed scheme.

6.246 In [TS089.03](#) TS makes clear that the presence of ecological mitigation within Plot 1503 would not lead to restrictions on the management of the wider woodland, including thinning and felling elsewhere, subject to the relevant licenses and approvals. We find no evidence to suggest we should conclude differently.

6.247 [ES Figure 15.4g](#) (CD007) shows that Blackcastle Quarry is subject of an extant minerals permission but [ES Figure 15.3c](#) (CD007) does not show another proposal. We find that future uses for that land, post-quarrying, would be a matter for consideration through any relevant planning application and not this proposed scheme. We agree with TS's points in TS089.03 that any future use for Blackcastle Quarry would need to consider the relevant wildlife and nature conservation legislation.

6.248 We find it is necessary for TS to have a servitude right allowing it to legally cross Plot 1504 to gain access to Plot 1503. This would not change the ownership of Plot 1504 and we agree with TS that no better alternative to a servitude right has been proposed. Therefore the evidence does not suggest a need to modify the draft Orders to remove the servitude right proposed for Plot 1504.

Overall

6.249 The matters raised by these objections would be resolved by proposed mitigation or accommodation works identified by TS. Alternatively the matters are not for this inquiry. Whilst there would be some residual impacts / effects these would require additional mitigation and would not override the public interest in providing the proposed scheme. We find no reason to recommend that Scottish Ministers should modify the draft Orders or refuse to confirm them.

OBJ/090 Cawdor Maintenance Trust

Objector

6.250 OBJ/090 Cawdor Maintenance Trust is a local land owner with assets including Blackcastle Quarry, Kildrummie Old Smithy in Moss-Side and Blackcastle Farm. Matters relating to Blackcastle Farm are considered separately under a dedicated heading to that property in this chapter of the report (above). All other matters raised by the Trust are covered below.

Objections

Extent of Land to be acquired

6.251 Cawdor Maintenance Trust argues that the proposed compulsory purchase of Plot 1401 is excessive because it considers the north west and south west corners of the plot are not needed for road construction.

6.252 It also queries why a proposed embankment along the northern side of the eastbound slip road is proposed to be located some distance from the carriageway.

Blackcastle Quarry restoration

6.253 Cawdor Maintenance Trust argues that some of the land proposed for compulsory purchase at Blackcastle Quarry is scheduled for restoration. As such the Trust is unclear whether there would be any point in restoring these parts of the quarry if they were to be used for the junction.

Access to Blackcastle Quarry from Nairn West roundabout

6.254 Cawdor Maintenance Trust argues that the design of the proposed Nairn West Junction should include a direct access to the operational part of Blackcastle Quarry. It argues this because there is currently direct access to the existing A96 and it has aspirations to convert the land to commercial business uses once quarrying has ceased.

New means of access

6.255 Cawdor Maintenance Trust argues that:

- it is unclear why the proposed new field accesses need to be compulsorily purchased and why these protrude so far into the field [assumed to be all of those proposed since no specific new means of access is identified in [TS090.01](#)].
- new means of access and field access maintenance arrangements are unclear, especially where these are shared with other users.

Drainage

-Plot 1502

6.256 Cawdor Maintenance Trust objects to the proposed drainage arrangements near Plot 1502. It argues that the works proposed are in an area where drainage pipes are already located. It therefore seeks discussions to ensure appropriate mitigation measures are put in place.

-Plot 1311

6.257 In its Outline Statement (24 May 2018) Cawdor Maintenance Trust objects to a proposed infiltration trench at Plot 1311. It argues that this lies within an area of existing poor drainage and seeks confirmation that the installation would not exacerbate these problems.

Kildrummie Old Smithy

6.258 Cawdor Maintenance Trust objects on the grounds of access concerns for a severed plot at the south end of Plot 1611 following realignment of C1163. It argues that this is currently leased to a tenant and the consequent impact of severance is that this area would become 'uneconomic and unviable'.

Transport Scotland's Response

Extent of land to be acquired -Plot 1401

6.259 TS argues that [ES chapters 9](#) and [10](#) (CD005) identify the need for landscape mitigation measures to prevent, reduce and/or offset potential adverse visual and landscape

impacts. It argues that [ES Figure 9.5m](#) (CD007) shows the provision of this mitigation on parts of Plot 1401. TS argues that:

- the area of woodland along the southern edge of the existing A96 has been identified as essential to mitigate potential landscape, visual and ecological impacts ([ES Chapter 11](#) – CD005).
- it is proposed the woodland is retained and managed to enhance its sustainability, assist integration with new planting and protect the existing screen where possible.
- connecting mixed woodland and scrub planting has been proposed to the north and south of the retained woodland to assist in reducing fragmentation and disturbance of ecological habitats, to create connectivity between existing woodland areas and offset habitat loss for protected species, particularly red squirrels.
- this area has therefore been included in the [draft CPO](#) (CD001) to ensure the existing woodland is retained and the associated enhancement work can be carried out by TS.

6.260 TS confirms that there is no proposed embankment along the northern side of the eastbound slip road. TS considers that this is a reference to the eastbound diverge slip road at the proposed Nairn West Junction. TS argues that:

- this slip road is shown to be in cutting at this location.
- the offset of the back of verge from the edge of the carriageway is dictated by the requirement to provide forward visibility in accordance with current design standards.
- this does result in greater land take than would be required for the road carriageway cross section alone.

Blackcastle Quarry restoration

6.261 TS understands that the restoration works at Blackcastle Quarry form part of the extant planning permission for the mineral extraction. It argues that:

- any deviation from this would need to be discussed and agreed with The Highland Council, as planning authority.
- the overall timetable for the A96 dualling programme is set by the Scottish Government's commitment to complete the dualling of the A96 between Inverness and Aberdeen by 2030.

6.262 In TS090.02, TS argues that:

- it published the draft Orders and ES for the proposed scheme on 29 November 2016 for formal public comment and feedback.
- progress on the delivery of the scheme would depend on any Public Local Inquiry to consider objections made and not withdrawn.
- construction of the proposed scheme could only commence if it is approved under the relevant statutory procedures and thereafter a timetable for its progress can be set.
- effective engagement with affected parties is a key part of the statutory process, and TS would be happy to discuss this with the objector.

Access to Blackcastle Quarry from Nairn West roundabout

6.263 TS confirms that the proposed scheme includes improvements to the existing quarry access junction with the Delnies–Kildrummie–Howford Road (C1163) (point 394 [draft SRO](#) Plan SR14 - CD003). TS considers this appropriate to maintain access into the quarry.

6.264 In principle, TS confirms it would be providing 'new means of access' to plots of land severed as a result of the proposed scheme. TS argues that it is not its usual policy to provide direct accesses for future development land from a trunk road junction and as such no further access is proposed at this location.

New means of access

6.265 With regard to ownership and maintenance of new field accesses TS confirms that:

- the land required to construct the proposed new means of access is included in the draft CPO (CD001), and that it would be owned and maintained by the Scottish Ministers following completion of the proposed scheme.
- if, following construction of the proposed scheme, part or all of the land purchased for the construction of the new means of access is deemed surplus to requirements, the Scottish Ministers may offer to sell this land (including sections of the new means of access where relevant) back to the objector in line with the Crichel Down Rules.
- resale would be subject to suitable burdens being put in place to protect the future access rights of other users where relevant.

6.266 With regard to the proposed land take for new field accesses TS argues that:

- a number of the proposed new field accesses require a longer length of access and 'protrude' into the working field due to the level differences between the connecting side road and field.
- the field accesses have been located taking into account landowners' requirements, road safety, accessibility and to minimise land purchase.
- in some cases, it has been necessary to locate an access away from level ground in order to provide a safely accessible location.
- in these instances, where the field and adjacent side road are at different levels, it has been necessary to purchase sufficient land to construct a track at a suitable gradient to connect the two.
- if, following construction of the proposed scheme, part or all of the land purchased for the construction of these accesses is deemed surplus to requirements, TS may offer to sell this land back to the objector.

Drainage

-Plot 1502

6.267 TS argues that:

- the impact assessment on this land considered the existing drainage.
- [ES Table 15.23](#) under Mitigation Item Number CP-AG10 (CD005) specifically addresses impacts on field drainage and [ES Appendix A15.7](#) (CD006) identifies this for this field at Drumdivan (field 550/1 - [ES Figure 15.6h](#) – CD007).
- any construction contract would specify that where existing field drainage is likely to be affected by the proposed scheme, the contractor would have responsibility for locating and reconnecting the drainage, as appropriate.
- the contractor is expected to be responsible for the detailed design.
- a specimen design was prepared for the ES and draft Orders, which proposes that the existing field drains at Drumdivan would be connected directly to the proposed new road drainage on the C1163.

- under the specimen design, this road would be positively drained i.e. all surface water from the road would be collected in a filter drain and connected to the infiltration trench in Plot 1502.
- this may provide betterment on the current situation where surface water runs over the edge of the existing C1163 without a positive drainage system.

-Plot 1311

6.268 TS states that ground investigations were carried out in 2017, which confirmed that this location would have limited infiltration capacity. TS contends that the outline drainage design has been reviewed in light of this information and amended to take account of the low infiltration rate. This, TS argues, would still require an infiltration trench within Plot 1311 to take the drainage from a small area of the diverted U1029. TS confirms that:

- Plot 1311 is still, therefore, required for constructing an infiltration trench.
- if, following construction, any remaining part of Plot 1311 is deemed surplus to requirements, it may offer to sell this back in line with the Crichel Down Rules.

Kildrummie Old Smithy

6.269 TS confirms that land severed by Plot 1611 would be accessed via new means of access 399 in draft SRO Plan SR14 CD003).

6.270 If the objector is of the opinion that this becomes an uneconomic and unviable area for lease as agricultural land, TS's [Guidance on the Compulsory Purchase Process and Compensation](#) (CD046) provides information on objector entitlements to compensation and how to make a claim for compensation subject to the District Valuer's assessment.

Findings of Fact

Extent of land to be acquired – Plot 1401

6.271 Draft CPO sheet 14 of 23 (CD001) shows that Plot 1401 is a comparatively large plot to the west of Blackcastle Quarry. [ES Figure 4.1g](#) (CD007) and draft SRO Plan SR13 (CD003) show this to be the location of the proposed Nairn West grade-separated junction.

6.272 [ES Figure 9.5m](#) (CD007) shows that Plot 1401 also includes proposed slip roads for the junction and access roads to nearby property (also shown on draft SRO Plan SR13 – CD003) and ecological and landscape mitigation (shown in ES Figure 9.5m). The evidence does not suggest we should find that this proposed mitigation is unnecessary. As such we find that the scale of proposed land take at Plot 1401 is necessary for delivery of the proposed scheme and is not excessive.

6.273 The parties disagree about land at the eastbound slip road on the northern side of the proposed junction. DMRB Stage 3 Figure 3.3l Junction Plans and Profile (CD009) confirms that this slip road would curve from the roundabout embankment downwards into a cutting which would then pass beneath the proposed junction overbridge. This shows various cuttings and embankments that have been designed to accommodate the different levels of the proposed junction. We therefore accept TS's explanation of the matter.

Blackcastle Quarry restoration

6.274 [ES Table 15.19](#) (CD005) and [ES Figure 15.4](#) (CD007) confirm that Blackcastle Quarry is covered by a planning permission (ES reference PA30). Neither party disputes this. We find that issues relating to the carrying out of conditions for an extant planning permission or their alteration should be resolved between the objector and the planning authority. These are not matters for this inquiry.

Access to Blackcastle Quarry from Nairn West roundabout

6.275 OBJ/090 Cawdor Maintenance Trust appears to argue that it should be entitled to take direct access to its land from the proposed Nairn West junction on the basis that it currently has direct access to the existing A96. We find that this is not a like for like request. Accepting this argument would mean that all others with access to the existing A96 could make similar arguments that would result in impractical, potentially unsafe and expensive solutions that are contrary to the principle of a Category 7A road (see Chapter 2: Matters of Principle paragraphs 2.28 to 2.107 for a discussion of the design attributes of a Category 7A road). We find that the issue at stake is whether Blackcastle Quarry continues to have appropriate access to the local and trunk road network.

6.276 The proposed improvements to the C1163 road and new means of access 394 (draft SRO Plan SR14 - CD003) for Blackcastle Quarry respectively, would provide enhanced access to the existing A96 thus not denying the quarry access to the local road network or indeed the road to which it currently enjoys access). This is in close proximity to the proposed Nairn West Junction and the proposed future trunk road network. As such we find that these arrangements would not prejudice the interests of the objector.

New means of access

6.277 Draft SRO Plans SR13 and SR14 (CD003) show that there are numerous proposed new means of access to fields off the C1163 and that some may affect land within the ownership of Cawdor Maintenance Trust. On our site inspection we travelled local roads in this area, including the C1163. We noted the variation in heights between the roads and some of the fields adjacent. Given these circumstances the reasons identified by TS appear both logical and practical in order to provide the necessary safe and effective access. We note that TS may be prepared to sell back the land were it to be deemed surplus to requirements. We find no reasons to suggest this would be unreasonable. There are established rules governing that process, which are not matters for this inquiry.

Drainage

-Plot 1502

6.278 The proposed acquisition of Plot 1502 is to accommodate a drainage infiltration trench adjacent to the C1163 near to its junction with the existing A96. [ES Appendix A15.7](#) pages 15.7.26 to 15.7.27 (CD006) make clear that drainage for field 550/1 would be disrupted and that the existing field and road drainage would be tied in. We find this to suggest that a wider set of drainage works would be carried out in this locality and Plot 1502 would play an integral role in this.

6.279 Whilst we note that pipes may currently be present in this locality this would be a matter for TS and its contractor to resolve in order to deliver an effective drainage system for the locality as outlined in ES Appendix A15.7 (CD006).

-Plot 1311

6.280 Based on draft CPO Sheet 13 of 23 (CD001) we find Plot 1311 to be an L-shaped plot on the western side of the U1029 road where it meets the existing A96.

6.281 TS has explained why it is necessary to acquire Plot 1311, given the limited infiltration capacity in that locality and the need to accommodate drainage for a small area of the diverted U1029. Based on draft SRO Plan SR12 (CD003) and draft CPO Sheet 13 of 23 (CD001) we see no reason to doubt its necessity to the proposed scheme. From these draft Orders we also note that the existing A96 would be severed by the proposed removal of the existing Gollanfield Railway Bridge and that a new junction is proposed between the remainder of that road in the vicinity of Blackcastle Farm and the U1029. None of this suggests that Plot 1311 would not be needed. We note, however TS's preparedness to sell back any of this plot were it to be deemed surplus to requirements but, we find such a decision could not be properly made until the proposed scheme is constructed and becomes operational.

Kildrummie Old Smithy

6.282 The acquisition of Plot 1611 would sever the land in question but this would be resolved via new means of access 399 (draft SRO Plan SR14 - CD003). If the objector considers that it is likely to incur losses as a result, it may choose to seek compensation. Compensation is a matter for the respective parties and District Valuer. It is not a matter for this inquiry.

Overall

6.283 The matters raised by these objections would be resolved by proposed by mitigation or accommodation works identified by TS. Alternatively the matters are not for this inquiry. Whilst there would be some residual impacts / effects these would require additional mitigation and would override the public interest in providing the proposed scheme. We find no reason to recommend that Scottish Ministers should modify the draft Orders or refuse to confirm them.

OBJ/091 Mr Stewart and Mrs Verena MacKinnon

Objector

6.284 OBJ/091 Mr Stewart and Mrs Verena MacKinnon are the owners of North Kildrummie Farm. They have owned this land since the year 2000 and, in 2010/11 built a home on the property. The MacKinnons own part of the access track that serves the property. This access track runs west from Moss-Side over the land of various parties including that of Mr and Mrs MacKinnon. The westernmost parties have access rights over the land of the parties to their east. The proposed scheme would sever this access track and a replacement is proposed directly off the southern roundabout of the proposed Nairn West Junction to the west of Mr and Mrs MacKinnon's property.

Objection

Exclusion/Inclusion of land from early work and discussions with TS

6.285 Mr and Mrs MacKinnon argue that:

- the exclusion of their property at North Kildrummie Farm from the original scoping works for the proposed scheme has set the tone of how TS treats parties.
- they hope that lessons will be learned by TS to avoid a repeat of what they term ‘such poor project management’ on future infrastructure projects in Scotland.
- TS and its consultant’s actions fail in terms of natural justice in regard to due process.
- following a further information request it is clear that the level of dialog between TS and OBJ/090 Cawdor Maintenance Trust (seven recorded events between May 2016 and July 2017) is more significant than that afforded to North Kildrummie Farm.
- these discussions call into question the integrity of those involved, who are public officials.
- the timeline for correspondence is contained in ‘Timeline’ (an excel spreadsheet) which accompanies the closing statement and is before us.

CPO for the proposed access track

6.286 Mr and Mrs MacKinnon argue that:

- the proposed acquisition of the access track is unnecessary in the context of the access requirements of this project.
- an alternative option would allow for a similar standard of track to be provided within the current CPO area as set out in [VSM001](#) – Appendix – Alternative Proposal.
- this would reduce the cost to the public purse.

Rights across the access track and future use of land

6.287 Mr and Mrs MacKinnon challenge TS’s assertion that the severed lands east and north of North Kildrummie Farm would have value with regard to agricultural output. They contend that:

- the land owner to the east (OBJ/093 Mr and Mrs Baird) has stated this.
- the TS assertion that the land is suitable for tree planting is also incorrect.

6.288 Mr and Mrs MacKinnon argue that, from an economic viability perspective, the only real option for these two pockets of land, post the proposed scheme, would be for a change of use from agricultural to, potentially, residential, but more likely light commercial/industrial. This being the case, they argue, the impact on North Kildrummie Farm would be dramatically negative. They accept that there would be ‘hurdles to be crossed’ by the current owners of the two pockets of land [assumed to refer to planning permission and any other licences/permissions/consents]. The MacKinnons consider there would appear to be no other alternative land use that could economically or environmentally fit the small severed land enclosures.

6.289 Mr and Mrs MacKinnon consider TS’s willingness to sell back the land acquired by CPO post-project to have little substance because, they argue, TS would be unable to sell back the land with the same rights and privileges enjoyed under the current ownership.

6.290 Mr and Mrs MacKinnon argue that they have taken all steps possible to meet with the agent for OBJ/090 Cawdor Maintenance Trust to resolve the issues. However, they

argue that no commitment has been forthcoming to meet to discuss a way that might have led to a solution satisfactory to all parties.

6.291 Mr and Mrs MacKinnon argue that one of the principal reasons for purchasing North Kildrummie Farm was the long-term potential for the creation of additional dwellings for family members on the land. They consider that the most significant factor in regard to this potential is access. Should the proposed CPO go ahead, they argue there to be no assurance of access in regard to future potential development of the land.

Transport Scotland's Response

Exclusion/Inclusion of land from early work and discussions with TS

6.292 TS argues that:

- the existence of Mr and Mrs MacKinnon's property was established in early 2013 following site visits in the area as part of DMRB stage 2.
- the property was not on OS maps used for the public exhibition (at that time the latest available) as it had only recently been built.
- the same maps also predated the construction of Sainsbury's supermarket on the east side of Nairn.
- more up to date OS maps were available digitally and these were used in the development of the project.
- the property was considered as part of the assessment process as indicated by correspondence dated 14 November 2017 ([TS091.07](#)) and as part of a meeting on 1 September 2017 ([TS091.05](#)).
- detailed matters regarding a proposed underpass were also considered as part of the assessment process ([TS091.05](#), [TS091.07](#), [TS091.09](#), [TS091.11](#) and [TS091.21](#)).
- adequate consultation has therefore taken place.

CPO for the proposed access track

6.293 TS argues that compulsory purchase of the relevant section of the track (Plots 1417 and 1420 in the [draft CPO](#) - CD001), is the only mechanism which gives sufficient certainty that the adjacent landowners would obtain suitable access rights, and that any necessary improvement works to the track could be carried out.

6.294 TS argues that:

- it agreed in its letter dated 28 February 2017 (TS091.09) that the proposed access rights over the track would be reversed in direction.
- the volumes of traffic anticipated across this land are expected to be limited to agricultural traffic for access to OBJ/090 Cawdor Maintenance Trust land north of North Kildrummie Farm and OBJ/093 Mr and Mrs Baird's land east of North Kildrummie Farm (shown in [ES Figure 15.6g](#) (CD007) as fields 213/2 and 278/1 respectively).
- TS091.09 also confirms access for the Gallaghers to their house and small holding.
- the access track would be owned and maintained by the Scottish Ministers following completion of the proposed scheme.
- if the land is deemed surplus following construction then the access track could be sold back to Mr and Mrs MacKinnon in accordance with the Crichton Down Rules.

- resale would allow the MacKinnons to take back control of any future changes in access rights along the track but it would be subject to the retention of access rights for OBJ/090 The Cawdor Maintenance Trust and OBJ/093 Mr and Mrs Baird.
- any access rights for these two parties could be restricted to the lengths of track necessary for their continued access and therefore OBJ/090 Cawdor Maintenance Trust would not be able to drive past Mr and Mrs Mackinnon's property.
- Any increase in traffic would therefore be minimised.

6.295 TS states that:

- should Mr and Mrs MacKinnon be able to demonstrate that adequate rights of access had been granted to both Mr and Mrs Baird and Cawdor Maintenance Trust and recorded in the relevant title deeds, then it would not need to acquire the land forming the access track in order to ensure the necessary access rights are protected.
- if such rights were in place in advance of the Orders being made the relevant plots of land could be excluded from the CPO.
- at present it is necessary for it to acquire this land since adequate rights are not in place.

6.296 With regard to Mr and Mrs MacKinnon's underpass proposals, TS argues that:

- at a meeting with Jacobs on 24 February 2016, Mr Mackinnon raised concern about the potential, at that time, to provide access to North Kildrummie Farm by means of an underpass to the east of the property.
- this underpass would have allowed access along the line of the existing track and under the proposed dual carriageway.
- Mr MacKinnon was concerned about the potential for this underpass to flood and expressed a preference for access to the property to be from Cockhill [the west].
- the design was subsequently amended to provide access from Nairn West Junction, in line with Mr MacKinnon's stated preference at the time.
- in light of discussions at a meeting on 26 January 2018, the project team have considered the option of providing an alternative access to the severed fields which would avoid the need to compulsorily purchase land from Mr and Mrs MacKinnon.

6.297 TS argues that; given the factors above, including the additional costs, land-take and environmental impacts that would result from construction of an alternative access route to these severed fields; the current proposal to provide access along the existing track is reasonable and that the proposed compulsory purchase can be justified.

6.298 With regard to Mr and Mrs MacKinnon's proposed alternative access arrangements in VSM001 TS argues that:

- the proposal of an alternative access route through OBJ/090 Cawdor Maintenance Trust land does not offer sufficient benefits to justify being taken forward.
- the CPO is only wide enough for the proposed embankment, maintenance, planting etc. so there is no allowance for an additional width for an access track.
- VSM001 is a line on a map which excludes verges and earth works.
- VSM001 would require additional land for an extra 600 metres of track along with additional cost and environmental impact.
- land on the south side of the proposed dual carriageway, where VSM001 is proposed, is to be used as shown on [ES Figure 9.5m](#) (CD007) for coniferous planting, and replacement habitats for red squirrels, replacement pond habitat for amphibians and mixed woodland replacement habitats for bats.
- at ch18800 a dry mammal underpass is proposed.

- these measures are listed in [ES Chapter 20](#) (CD005) mitigation items L24, E5 and E8.

6.299 TS prefers the scheme as proposed to alternative VSM001 as it makes use of the existing track.

Rights across access track and future uses

6.300 TS argues that:

- field 278/1 ([ES Figure 15.6g and 15.6h](#) – CD007) is shown on aerial photographs in TS215 on page 116.
- it is outside of Nairn and there is currently no extant planning permission or allocated use in the current LDP.
- the planning authority would be required to consider a variety of issues including access.
- it is unclear that the proposed access arrangements would be suitable for light industrial or commercial uses.
- continuation of agriculture on these lands would be viable.
- Mr and Mrs Baird's land (class 3.2, 4.1 and 4.2) is currently used for livestock and, notwithstanding the additional journeys, this could continue.
- alternatively woodland planting could also be viable as grants are available.
- neither the OBJ/093 Mr and Mrs Baird nor OBJ/090 Cawdor Maintenance Trust has expressed a preference not to use their land, fields 278/1 and 213/2 (ES Figures 15.6g and 15.6h – CD007) respectively, for agriculture.

Effects on the objectors

6.301 TS argues that the objectors have raised concerns over effects on their living conditions (and those of any additional homes that they might, in future, wish to build on their land) from potential changes in how the access track would be used. TS considers these to cover amenity and health and safety issues. TS contends that levels of traffic are unlikely to change materially. It therefore argues that the access rights that would be granted over the track would be to two relatively small fields (2.4 and 5.2 hectares). It also argues that usage is likely to be limited to farm vehicles and that only one of those fields would require vehicles to pass the objectors' house. In addition, TS notes that one property that currently has the right to use the access would lose that ability due to severance by the proposed road. TS confirms that it would consider providing fencing along the track as it passes the objectors' house if that would address their concerns.

Findings of Fact

Exclusion/Inclusion of land from early work and discussions with TS

6.302 We accept that the objectors' house at North Kildrummie Farm may not have appeared on a paper copy of the OS map that was used in the 2013 exhibition ([TS231](#) Appendix A). However, we also accept that OS may update its paper maps less frequently than it does its digital products and that the digital mapping that TS used in designing the scheme did identify that property. The property does appear on [TS233](#) Appendix B, from the October 2014 exhibition.

6.303 TS091.14 is an email dated 31 January 2014 when Mr and Mrs MacKinnon first raised this matter with TS. [TS091.15](#) is a further email correspondence from Mr MacKinnon where he informs TS that he will attend a forthcoming consultation event in June 2014 to

discuss the matters relating to route options. TS argues it was aware of the property from site inspections in early 2013 and there is no evidence to suggest we should doubt this.

6.304 Consultations at early stages are designed to flush out matters such as this to ensure that all matters are considered in forthcoming assessment work. Even were one not to accept the TS contention with regard to OS map updates, it is reasonable to consider TS as having been informed of this matter by January 2014.

6.305 As such we agree with TS that the date of [TS091.14](#) is prior to the route options selection (DMRB Stage 2) being published in October 2014. Assuming the worst case; that TS had not been aware of this matter prior to 31 January 2014, it is clear that the route selection (DMRB Stage 2), the subsequent assessment through DMRB stage 3 and the subsequent ES and draft Orders have been undertaken with knowledge of the property's existence.

6.306 We note correspondence in [TS091.16](#), an email, from Mr MacKinnon in which he considers that a new link road from the new Nairn West Junction would be favourable and probably more cost effective for TS than the original proposed underpass. [TS091.20](#) includes map drawings of the original proposed underpass and then a remodelled Nairn West Junction with new access to North Kildrummie Farm from the west. [TS091.21](#) appears to suggest that Mr and Mrs MacKinnon welcome the proposed access from the west. This suggests a series of events during which time Mr and Mrs MacKinnon sought and were granted a revision to the original proposals. This evidence does not suggest that Mr and Mrs MacKinnon have been unjustly treated by TS or that the engagement process has failed due to their property not being known about or indeed any other reason.

6.307 We note the submission of a time line in Mr and Mrs MacKinnon's closing statement. This details their view of the sequence of events between 2016 and 2018, including matters relating to OBJ/090 Cawdor Maintenance Trust. Objections made by the Trust are considered separately in this chapter of the report (above).

6.308 It is normal during any consultation, such as this, that discussions take place between the promoter and the various objectors and land owners. The nature of these discussions will be determined by the issues that arise from how the proposed scheme affects the respective land or locality. We note that TS/Jacobs met and corresponded with Mr and Mrs MacKinnon on numerous occasions. We also note that the same was true of OBJ/090 Cawdor Maintenance Trust, albeit that the number of instances may differ. It does not follow that a failure of due process has occurred just because these discussions took place or because the matters discussed are not supported by another party.

6.309 We note that the objectors have obtained assistance in their discussions with TS from their constituency MSP Mr Fergus Ewing.

6.310 Overall this evidence does not suggest an absence of natural justice from the process.

CPO for proposed access track

6.311 The evidence suggests that it is necessary to compulsorily purchase Plots 1417 and 1420 (CD001) in order to connect the public road network at Nairn West Junction to the lands at North Kildrummie Farm and those owned by other parties. It would also enable improvements to this track to take place.

6.312 As described above, we note that this proposed means of accessing the land was the consequence of discussions between TS and Mr and Mrs MacKinnon. These discussions (TS091.16, TS091.20 and TS091.21) show that the proposed access track from the west was the consequence of suggestions by the MacKinnons due to issues they considered would arise from the originally proposed underpass to the east. This is summarised in TS letter [TS091.09](#) and the detailed consideration of junction options is set out in the Nairn West Junction Alternate Arrangement Report ([TS224](#)).

6.313 TS091.09 explains that TS is prepared to remove this land from the draft CPO if the access rights described for the respective parties' land can be guaranteed by Mr and Mrs MacKinnon. However, we note that Mr and Mrs MacKinnon have attempted, unsuccessfully, to bring this about.

6.314 We agree with TS that the proposed alternative route suggested by the objectors ([VSM001](#)) excludes important details such as verges and drainage, and passes through land required for replacement habitat planting for protected species that is defined in [ES Chapter 20](#) (CD005) and [ES Figure 9.5m](#) (CD007). There does not appear to be any indication of how this could be ameliorated or what, if any, additional mitigation would be needed. The evidence does not suggest we should doubt TS's assertion that VSM001 would require an extra 600 metres of track compared with the proposed scheme and that the existing CPO boundary could not accommodate an access track in the position proposed by Mr and Mrs MacKinnon. We therefore agree with TS that the CPO does not contain sufficient land to accommodate VSM001.

6.315 Whichever way one considers this matter it would either require the mitigation planting to move south to accommodate VSM001 or VSM001 itself to be further south to avoid the mitigation planting. Either would require land which is not currently within the draft CPO. The draft CPO can only be modified to remove land, not to add it. Instead new/replacement Orders would be needed with the additional need for EIA, consultations, public inquiry and consideration of the matters raised. Alongside any additional costs of the additional length of road and land acquisition costs would be those associated with the procedural requirements outlined above and any associated delay to the project. These factors collectively persuade us that VSM001 is not better than the proposed scheme.

Rights across the access track and future uses

6.316 [ES Figure 15.6g](#) (CD007) suggests that only vehicles travelling to field 278/1 would pass Mr and Mrs MacKinnon's house. The proposed access for field 213/2 would cross Mr and Mrs MacKinnon's land further west and use Point 391 on [draft SRO](#) Plan SR13 (CD003). This was accepted by both parties at Inquiry Session 7. The evidence does not suggest significant traffic would be generated by the current land uses. Mr and Mrs MacKinnon confirm that they are content for this but that their principal concern relates to access for future uses on field 278/1.

6.317 We agree with TS that field 278/1 is outside of Nairn. We also agree with TS that the evidence does not suggest there to be extant planning permission or allocated use for this land in the current LDP. Whilst we understand Mr and Mrs MacKinnon's concerns over what might happen in the future, the future use of land that is not part of the proposed scheme and so is not within the remit of the inquiry.

6.318 There is, some contention over the viability of field 278/1 for agriculture. We note the flood risk on part of field 278/1 from [ES Figure 13.1c](#) (CD007) and the aerial photos submitted by Mr and Mrs MacKinnon (KILDRUMMIE, KILDRUMMIE2 and KILDRUMMIE3) which are before us and were seen previously by TS. The evidence does not suggest either way what the costs of drainage would be to retain or support agricultural use. Mr and Mrs MacKinnon argue that the costs of this would limit viable use for agriculture but could be addressed if the site were redeveloped for residential or commercial/light industrial uses. However, the evidence suggests that the field is currently used for agriculture whilst the flood risk remains.

6.319 We also note the MacKinnons' contention that severance of this site may present some additional challenges for the current operator. We accept that this could result in the land owner exploring alternative land uses. However, this does not guarantee an alternative land use since that is not part of the proposed scheme and would be a separate decision for the planning authority. Any planning authority decision would be based on the proposal before it and a variety of considerations, including the suitability of access arrangements and flood risk issues.

6.320 This appears to be part of a broader point regarding use of the term 'viability' of agricultural land. [DMRB Volume 11, Section 3, Part 6: Land Use](#) paragraph 6.3 (CD049.18) explains that agricultural assessments should focus on land-take, types of husbandry, severance and major accommodation works for access, water supply and drainage. [ES Appendices A15.6 and A15.7](#) (CD006) do not suggest any failure to consider these matters.

6.321 DMRB paragraph 9.1 (CD049.18) elaborates on the points in paragraph 6.3 (CD049.18). Paragraph 9.1 bullet b) (CD049.18) explains that consideration of:

'Land-take will include land taken directly by a scheme and also land which will no longer be viable for agricultural use, for example, because severance (the splitting of a holding into more than one part) makes it impossible to farm some land productively'.

6.322 We therefore find that the term 'viability' is a reference to whether the land in question could be used for agriculture rather than any reference to profitability of the land within any particular farm business. We are therefore satisfied that whilst the assessment broadly recognises the issues facing the agricultural business besides land, its role is not to consider these in depth or to draw conclusions about cash flows and profitability of various business models.

6.323 We find that the land could continue to be used for agriculture or indeed forestry as suggested by TS. Whilst this may not meet the desire or wishes of an individual farm business it does not prevent this land use taking place and the proposed scheme does not render the field unusable for agriculture. We also note that OBJ/093 Mr and Mrs Baird (TS093.01) make no reference to any intention to relinquish farming of this land. Instead they raise concerns about the future costs of farming field 278/1 given the additional transport costs. Whilst we consider Mr and Mrs Baird's objections separately below; we note in doing so that additional transport costs could form part of any claim for compensation they may choose to make.

6.324 With regard to the anecdotal suggestion of blight by another party made by Mr and Mrs MacKinnon's representative at the Inquiry. The evidence does not suggest that a blight

notice has been issued by Mr and Mrs Baird or any other party. Ministers may wish to take their own legal advice should these circumstances arise.

6.325 Whilst we understand that Mr and Mrs MacKinnon may have their own ambitions for their land the evidence does not suggest that planning permission or local plan allocations exist for this at present. As noted above, the planning authority would need to consider a variety of matters of which access would be one. We agree with TS's predictions over the likely insignificant change in the level and nature of traffic using the access track and the consequent insignificant change to residential amenity in the vicinity of the objector's home. The proposed scheme has sought to guarantee access to land in the ownership of various parties based on the current use of the land. The proposed CPO achieves this and the evidence does not suggest that better alternatives are available.

Overall

6.326 The evidence suggests that the concerns and objections raised would either be avoided/limited or not come about. Alternatively the concerns would be subject of other legal processes that are not for this inquiry. Whilst there would be some residual impacts / effects these, and the other matters of concern, would not require additional mitigation and would not override the public interest in providing the proposed scheme. We find no reason to recommend that Scottish Ministers should modify the draft Orders or refuse to confirm them.

OBJ/092 Mr and Mrs Andrew MacDonald

Objectors

6.327 OBJ/092 Mr and Mrs Andrew MacDonald own Kildruim, a property in the hamlet at Moss-Side. This is located south of Delnies Wood and South West of Nairn. The proposed dual carriageway would pass south west of Moss-Side. A new route is proposed from the C1163 Delnies – Kildrummie – Howford Road just east of its current route through Moss-Side (point 60 [draft SRO Plan SR14 – CD003](#)) with a new crossing of the railway to the south of Moss-Side (point M draft SRO Plan SR14 – CD003).

Objection

Drainage

6.328 Mr and Mrs MacDonald argue that there is a high water table south of Kildruim and that Kildruim's septic tank soakaway discharges into the area which is the proposed location of the dual carriageway. They contend that there has been no consultation with regard to the impact of the proposed road on the septic tank soakaway.

Undue hardship and excessive impact on residential property

6.329 Mr and Mrs MacDonald argue that there is a major residential impact from the proximity of the proposed dual carriageway on an embankment from the perspective of air quality, noise and property values.

Transport Scotland's Response

Drainage

6.330 TS argues that:

- the septic tank and soakaway location are considered in [ES Chapter 12](#) (CD005) and identified as potential contamination sources GE315 and GE220 within [ES Appendix 12.1](#) (CD006) and located on [ES Figure 12.1e](#) (CD007).
- the impact assessment determined that there was no predicted direct disturbance ([ES paragraph 12.4.42 and ES Table 12.17](#) – CD005) nor indirect interaction ([ES paragraph 12.4.43 and ES Table 12.18](#) – CD005) which would impact these items from an earthworks and groundwater regime perspective.
- should this assessment change during the detailed design stage then mitigation measures would be undertaken to protect or replace the affected infrastructure.
- [ES Table 15.23](#) (CD005) identifies Mitigation Item CP-AG10 to address impacts on field drainage and [ES Appendix A15.7](#) page A15.7-28 (CD006) identifies this mitigation measure as being required for field 278/1, which is the field to the south of Kildruim ([ES Figure 15.6h](#) – CD007).
- the construction contract documents would specify that where existing field drainage is likely to be affected by the proposed scheme, the contractor would have responsibility for locating and reconnecting the drainage as appropriate.
- the specimen design prepared for the ES and draft Orders proposes that any affected field drains within this field would be maintained along existing alignments by new pipes laid under the proposed dual carriageway.
- the design and build contractor is currently expected to have responsibility for the detailed design.
- consultation meetings were held between Jacobs and Mr and Mrs MacDonald on 17 August 2015 and 10 August 2016 and the presence of this septic tank was discussed during the course of the first of these two meetings.

Undue hardship and excessive impact on residential property

-Noise and vibration

6.331 TS summarises the predicted levels and significance of noise impacts at New House, Kildruim in [TS092.02](#) Table 1 (reproduced below). TS argues that:

- in accordance with the [DMRB HD213/11](#) (CD049.19), the reported noise levels and significance of noise impacts relate to the predicted least beneficial impacts for each scenario comparison i.e., the least beneficial noise level change.
- [ES Chapter 8](#) (CD005) provides details of the external references made in this response and [ES Appendix A8.1](#) (CD006) provides a glossary of noise terminology.

TS092.02 Table 1: Predicted DMRB Noise Levels and Significance of Impacts at New House, Kildruim

Scenario	LA10,18hr DMB Noise Level (dB)	LA10,18hr Scenario Comparison Noise Level (dB)	Noise Level Difference (dB)	Significance of Impact
DMB vs DSB	37.3	58.2	20.9	Large/ Very Large Adverse
DMB vs DMF	44.9	45.2	0.3	Slight Adverse
DMB vs DSF	37.3	59.3	22.0	Large/ Very Large Adverse

These scenario comparisons are:

Baseline Year Do-Minimum vs Baseline Do-Something (DMB vs DSB)

Baseline Year Do-Minimum vs Future Year Do-Minimum (DMB v DMF)

Baseline Year Do-Minimum vs Future Year Do Something (DMB v DSF)

Baseline Year, is the assessed year of opening.

Future Year, is fifteen years after the Baseline Year.

6.332 TS states that, based on the DMRB HD213/11 (CD049.19) and WHO guidance ([CD090](#) and [CD091](#)), a noise mitigation strategy ([ES Paragraphs 8.2.24-8.2.34](#) - CD005) considers noise mitigation where the significance of impact at noise sensitive receptors is predicted to be:

- Slight/Moderate adverse or worse, which for high noise sensitive receptors equates to at least a 1 dB noise level increase in the short term (year of opening), and/or at least a 3 dB in the long term (typically within 15 years of the scheme opening) and, in addition, the predicted ground floor façade noise level exceeds 59.5 dB LA_{10,18h}.
- Slight/Moderate adverse or worse, in the long-term with a predicted noise level that exceeds 55 dB L_{night,outside}

6.333 TS acknowledges that the noise impact assessment in TS092.02 Table 1 (above) predicts changes in noise level that are Large/Very large Adverse at New House, Kildrum in both the Year of Opening and the Future Year. However, TS also notes that the maximum predicted absolute Do-Something noise level would remain less than LA_{10,18h} 59.5 dB for both the Year of Opening and Future Year. As such TS argues that receptor-specific mitigation has not been recommended.

-Dust, fumes and smells

6.334 TS argues that:

- the air quality assessment ([ES Chapter 7](#) – CD005) includes consideration of construction dust, and concluded that the implementation of best practice dust mitigation measures during the construction phase through a construction environmental management plan (CEMP) agreed with the Highland Council, would reduce the impact of dust on surrounding areas.
- these mitigation measures were included within the ES, and will be developed further at the next stage.
- the conclusion of the air quality assessment was that, overall, there is not expected to be a significant effect at this property.

-Effect on property value

6.335 TS contends that:

- those who have not otherwise been compensated may be entitled to claim for compensation in terms of Part 1 of the [Land Compensation \(Scotland\) Act 1973](#).
- under Part 1 there is a right to compensation in respect of any depreciation of more than £50 in the value of certain interests in land caused by the use of the new or altered roads resulting from specified physical factors (noise, vibration, smell, fumes, smoke and artificial lighting and the discharge onto the land in respect of which the claim is made of any solid or liquid substance).
- compensation is assessed by reference to prices current at the date 12 months after the new or altered road was first open to public traffic. The valuation of any such compensation will be assessed by the Valuation Office Agency and TS will advertise in local press providing contact details at the appropriate time to make home owners aware that claims can be submitted.

Findings of Fact

Drainage

6.336 There does not appear to be any dispute between the parties regarding the water table or Kildruim's septic tank soakaway. We note the location of field 278/1 in [ES Figure 15.6h](#) (CD007) and the proposed mitigation in [ES Appendix A15.7](#) at page A15.7-28 (CD006) to tie in existing field drainage. However, this does not specifically refer to the septic tank soakaway. TS does, however, acknowledge its awareness of this. [ES Appendix A12.1](#) (CD006) directly references the septic tank and septic tank effluent (GE315 and GE220) based on SEPA CAR licence and landowner consultation. These are excluded from [ES Tables 12.17 and 12.18](#) (CD005), which list only those features with direct disturbance and indirect interaction respectively. As such we find that the septic tank and soakaway have been considered and found to have no impacts from an earthworks and groundwater regime perspective.

6.337 As noted in ES Appendix 12.1 (CD006) under item GE315 this indicates 'landowner consultation' as the source origin and provides Mr MacDonald's name. This suggests to us that there has been some interaction between the parties since the comment section recognises that the new septic tank and soakaway were 'put in recently, next to [the] house'. TS also lists dates when its consultant, Jacobs, met with Mr and Mrs MacDonald. This suggest to us that consultation has taken place.

Undue hardship and excessive impact on residential property

-Noise and vibration

6.338 We note the noise level changes and absolute noise levels predicted in [TS092.02 Table 1](#). The evidence does not suggest we should find this assessment to have been carried out incorrectly or that its findings are inappropriate or erroneous. Neither party appears to suggest the contrary.

6.339 TS092.02 Table 1 shows that noise levels are predicted to increase as a result of the proposed scheme in the short-term and the long-term. In both instances the magnitude of noise level change would be perceptible and would be Large/Very large Adverse. However, TS092.02 Table 1 also shows that whilst there would be an increase in predicted noise levels it would remain below the absolute noise levels threshold of 59.5 dB LA10, 18h. Therefore, while we note that there would be a clearly noticeable increase in noise levels at this property, the resultant level of noise would not reach an unacceptable level and, based on the mitigation strategy in [ES paragraphs 8.2.24 to 8.2.34](#) (CD005), we agree with TS that no receptor-specific mitigation is necessary, besides that already forming part of the proposed scheme and included in the noise assessment.

6.340 Mr and Mrs MacDonald's property provides one of the clearest examples of a situation where existing very quiet living conditions would be made significantly more noisy, while still remaining below the level at which it is typically considered necessary to provide property-specific mitigation. We accept that this would introduce a significant change to the noise environment around their property. However, we also understand the need for a consistent approach to be taken to mitigation, and recognise that an objective assessment of the predicted noise level at this property would not find this to be inconsistent with the reasonable residential enjoyment of that property.

-Air quality

6.341 We note that an air quality assessment has been prepared as set out in [ES Chapter 7](#) (CD005) and that this includes consideration of construction dust. The evidence does not suggest we should find this assessment to have been carried out incorrectly or that its findings are inappropriate or erroneous. Neither party appears to suggest this.

6.342 [ES Appendix A7.4](#) shows the concentrations of NO₂ and particulates (PM₁₀ and PM_{2.5}) for 2014 and then for 2021 with and without the proposed scheme in place. Mr and Mrs MacDonald's property is identified as AQ_274. [ES Table 7.3](#) (CD005) explains that the national air quality standards as follows NO₂ (40 µg/m³), PM₁₀ (18 µg/m³) PM_{2.5} (10 µg/m³). [ES Appendix A7.4](#) shows for AQ_274 that these would remain below each respective standard at NO₂ (4.6 µg/m³), PM₁₀ (9.5 µg/m³) and PM_{2.5} (5.7 µg/m³) with the proposed scheme in place. We therefore find that although there may be some increase in the concentration of each pollutant, none would exceed the relevant air quality standard.

6.343 The air quality assessment has also considered the impact of construction dust. TS proposes that a construction environmental management plan (CEMP) would be put in place with the relevant standards to be agreed with The Highland Council. The requirement to prepare and implement a CEMP is established in [ES Table 20.1](#) Mitigation Item GR1 (CD005). As such this would be a requirement of any construction contract and would bind the contractor to the terms agreed with The Highland Council. We find this to provide an in-built requirement to consider and tackle this issue as part of the contract and that it also provides external scrutiny in the form of The Highland Council agreeing the requisite standards.

6.344 Overall we find that air quality matters do not pose a significant risk to human health or residential amenity and where construction dust may occur, satisfactory and binding measures would be in place to overcome this.

-Property values

6.345 We note that this is a concern for the objectors. TS has outlined the appropriate mechanisms for compensation to be claimed, should there be an entitlement. This is a matter for the respective parties and the District Valuer. It is not a matter for this inquiry.

Overall

6.346 The objections raised would either be avoided/limited or not come about. The evidence suggests that whilst there would be some residual impacts / effects these would require additional mitigation and would not override the public interest in providing the proposed scheme. We find no reason to recommend that Scottish Minister should modify the draft Orders or refuse to confirm them.

OBJ/093 Mr John and Mrs Joanna Baird

Objectors

6.347 OBJ/093 Mr John and Mrs Joanna Baird are the owners of Easter Lochend and Meikle Kildrummie Farm.

Objections

Ecological impacts

–Birds

6.348 Mr and Mrs Baird argue that some of the land they farm near to Loch Flemington SPA would be lost when the proposed scheme is built and this would adversely affect bird populations; including nesting snipe, plovers and curlew.

6.349 They disagree with TS's conclusions [assumed to be [HRA conclusions – CD010](#) and [ES Chapter 11](#) – CD005] and argue that they have seen nesting Snipe and Curlew in close proximity to proposed road in recent weeks (as of May 2018).

–Mammals

6.350 Mr and Mrs Baird question the effectiveness of proposed mammal underpasses.

Business impacts

-Agricultural assessment

6.351 Mr and Mrs Baird argue that the agricultural assessment should not have grouped their land at Easter Lochend and Meikle Kildrummie Farm with land at Little Kildrummie Farm. However, they accept that both were farmed by the same business at the time of the agricultural assessment. Mr and Mrs Baird argue that the assessment should only consider land in the same ownership.

-Severance

6.352 Mr and Mrs Baird argue that:

- when land lost and severed is accounted for, this would represent approximately 10.5% of their land holding on some of their most productive land.
- the proposed scheme would sever and split Easter Lochend and Meikle Kildrummie Farm in two.
- the proposed scheme would render the holding unviable because it is used for livestock.
- additional costs would have to be borne because of the proposed stopping-up of the C1163 road and diversion.
- this would be exacerbated because it is a livestock farm requiring regular feeding and checking.
- the extra journey incurred would be 5.85 kilometres via the proposed PS13 B9090 overbridge to plot A ([TS093.01](#)) and 9 kilometres via Brackley junction, Nairn west junction and North Kildrummie Farm to plot B ([TS093.01](#)).
- the same journey via B9090 overbridge would be 9.1 kilometres.
- DMRB Stage 3 refers to additional journeys for residents but not business operators.
- these factors would render these areas unviable for continued agricultural use as part of the wider holding at Easter Lochend and Meikle Kildrummie, particularly for livestock keeping.

6.353 Although they note the proposed NMU underpass, Mr and Mrs Baird argue that this is not for vehicular access. As such Mr and Mrs Baird seek the provision of a vehicle underpass.

-Maintenance of new access

6.354 Mr and Mrs Baird note that the new means of access in [draft SRO Plan SR13 \(CD003\)](#) is proposed for use by several parties. They argue that the proposed maintenance arrangements are unclear and that, were it to be for joint maintenance, this would significantly increase costs.

-Drainage

6.355 Mr and Mrs Baird state that the Kildrummie area has poor natural drainage. They are concerned at the 'proposed re-routing of the Alton Burn' because their field drainage systems empty into this water course.

6.356 They argue that land severance from the proposed scheme would disrupt drainage systems and that there are no details of the proposed mitigation to resolve this.

6.357 They also object to the responsibility for locating and connecting the drainage being with the appointed contractor and the detail being dealt with by a design and build contract. They argue that this is not acceptable as they would not be able to comment prior to the inquiry.

Transport Scotland's Response

Ecological impacts

-Birds

6.358 TS argues that the ecological surveys and impact assessment have been undertaken:

- by professionally qualified ecologists.
- in accordance with ecological best practice standards as endorsed by CIEEMA and in-line with the [Town and Country Planning \(EIA\) \(Scotland\) Regulations 2011](#) (CD026).
- in consultation with SNH regarding the scope and methods used to understand the nature conservation interests potentially affected by the proposed scheme, and the approach to the mitigation was also agreed through ongoing consultation with SNH.

6.359 Regarding the Loch Flemington SPA and HRA process TS argues that:

- the land subject to CPO lies approximately 3.7 kilometres from Loch Flemington SPA, which is designated as important for breeding Slavonian grebe.
- SNH has agreed with the assessment of the construction and operation of the proposed scheme, including in the vicinity of Mr and Mrs Baird's land, in the [DMRB Stage 3 HRA](#) (CD010).
- wintering bird surveys were carried out in 2014 and 2015 to inform the HRA, which is required to be undertaken and produced in addition to the ES, to specifically consider effects on European/International sites, including SPAs.
- the HRA scope and approach was discussed and agreed with SNH.

6.360 Based on its assessment conclusions TS argues that:

- [ES Table 11.10](#) (CD005) shows there would be no operational impact on wintering birds as a result of habitat loss, as there is a significant area of suitable habitat available outside the influence of the proposed scheme.
- SNH has agreed with the same conclusion presented in the HRA.
- in the area of the land plot subject to CPO, no breeding wading-birds, such as snipe, lapwing (or golden plover) and curlew, were recorded during the breeding bird surveys.

- one nesting oystercatcher was recorded in the field to the south of the Aberdeen to Inverness railway line approximately 240 metres south of the proposed scheme.
- the wider area was found to be utilised for breeding mainly by songbird species; such as chaffinch, coal tit, willow warbler, wren and yellowhammer; as shown in [ES Figure 11.2](#) (CD007) and [ES Appendix A11.2](#) (CD006).
- across all the breeding bird surveys, breeding curlew and lapwing were recorded only once and breeding snipe were not recorded at all.
- snipe prefer to breed in wet flushes and damp grassland, generally within areas of tall tussocky vegetation.
- no large areas of this preferred habitat are at risk from the proposed scheme.
- lapwing and curlew utilise farmland and grassland of different types for breeding.
- the HRA, undertaken to assess the risk to wintering geese and wader populations, highlighted the widespread areas of grassland and arable land available to these species between Inverness, Nairn and Auldearn.
- in addition, the loss of farmland habitat under the footprint of the proposed scheme was identified as being small in comparison to the total resource available to lapwing and curling. [The reporters consider the reference to 'curling' by TS in TS093.02 to be a typing error that should refer to 'curlew'.]

6.361 TS contends that the risk to breeding waders from disturbance is complex, as birds can become habituated to noise and movement, although this depends on background levels, sources and other factors such as risk of predation. In general, TS argues, birds (not just waders) are sensitive to the movement of people but less sensitive to other sources of disturbance such as vehicle movement and noise. Due to the availability of suitable habitat across the area and the tendency for agricultural usage to change from year to year, TS argues that disturbance was not considered to be a significant risk for bird species.

6.362 TS argues that the assessment indicated that, with mitigation, the residual impact due to the loss and severance of habitats and from disturbance would be negligible.

-Mammals

6.363 TS argues that:

- dry mammal underpasses have been found to be effective for mitigating the effects of habitat severance and road mortality on mammal populations.
- dry mammal underpasses have been shown to be utilised by small and medium sized mammals including badger, otter and pine marten.
- many of the culverts and other underpasses integrated as part of the design would also be suitable for passage by these mammals as well as bat species.

Business impacts

-Agricultural assessment

6.364 TS argues that:

- the agricultural assessment considers the impacts on the farm business occupying the land under [DMRB Volume 11, Section 3, Part 6 Land Use](#) (CD049.18).
- at the time the draft Orders were published Mr and Mrs Baird's land was occupied under an agricultural tenancy by Mr Stephen Forbes.
- consequently the impact of the proposed scheme has been assessed on Mr Forbes' farming business.

6.365 With regard to the agricultural assessment conclusions TS argues that:

- the impacts on Mr and Mrs Baird's land within field 278/1 'areas A and B' ([TS093.01](#)) and field 278/2 ([ES Figure 15.6h](#) – CD007) are specifically detailed in [ES Appendix A15.7](#), page A15.7-28 (CD006).
- the severed areas would continue to be available for agricultural use.
- the agricultural land lost within the two aforementioned fields would be 4.53 hectares and the land subject to CPO is for 4.54 hectares.
- The land subject to CPO is estimated to represent 4% of Mr and Mrs Baird's land holding, which totals 103.6 hectares.

-Severance

6.366 With regard to a proposed underpass, TS argues that it considered several options to maintain access along the existing C1163, including an agricultural underpass for vehicles but that various constraints at this location make providing one impractical. TS identifies these constraints as:

- the close proximity of the existing C1163 relative to the Aberdeen to Inverness railway line, the alignment of the Alton Burn and the line and level of the proposed dual carriageway area are all significant constraints to provide the necessary headroom clearance for a structure at this location.
- the ability to raise or lower the proposed dual carriageway is restricted due to the need to have a low point in the vertical alignment to provide an outfall for surface water run-off into the Alton Burn and a high point to ensure there is sufficient headroom clearance over the Aberdeen – Inverness railway line.

6.367 Regarding additional travel distance between areas marked 'A' and 'B' (TS093.01) [Field 278/1] TS argues that:

- 'Area A' is approximately 1.4 hectares and 'Area B' approximately 5.2 hectares.
- the estimated distance from Easter Lochend to the existing field access on the C1163 to the north of the Aberdeen to Inverness Railway is 2.6 kilometres.
- access to both areas (A and B) with the proposed scheme in place would involve utilising the local road network including realignments.
- access to 'area B' would also involve negotiation of the PS10 Nairn West Junction Overbridge and shared access with North Kildrummie Farm.
- using these routes the journey distance from Easter Lochend to access 'area A' would be 7.2 kilometres and 10.2 kilometres to access 'area B'.
- consequently, the additional journey distances are expected to be approximately 4.5 kilometres for 'area A' and 7.5 kilometres for 'area B'.
- these additional journey distances are less than those identified by Mr and Mrs Baird in TS093.01.
- given that access is provided as part of the proposed scheme and the remaining areas of 'areas A and B' would be of workable field size, both 'area A' and 'area B' would remain viable for continued agricultural use, including for livestock.

6.368 TS accepts that the additional journey distance to these areas would require some adjustment to the agricultural operations. TS argues that:

- since this land is tenanted by Mr Stephen Forbes [based on [TS093.02](#) in July 2017], the assessment of the impact of the proposed scheme has been undertaken on the business farmed by him.
- this assessment takes into account severance as detailed in [ES Section 15.3 and ES Table 15.8](#) (CD005).

- the assessment concluded that the impact on that farm business was Moderate.

-Maintenance of new access

6.369 For new means of access 390 ([draft SRO Plan SR13 - CD003](#)) TS confirms that:

- it would be a shared access and, as such, would be owned and maintained by the Scottish Ministers following completion of the proposed scheme.
- the standard of access to be provided and the surfacing specification for the track is still to be confirmed and would be subject to consultation with relevant property owners at the time of contract document preparation.
- any improvement works necessary to reflect the change in its pattern of use would be carried out as part of the construction of the proposed scheme.

-Drainage

6.370 TS confirms that the proposed scheme does not include a diversion of the Alton Burn.

6.371 TS argues that [ES Table 15.23](#) (CD005) Mitigation Item CP-AG10 has been identified specifically to address impacts on field drainage and formed part of the agricultural assessment for Mr and Mrs Baird's fields. TS confirms that this mitigation measure has been identified as being required for fields 278/1 and 278/2 in ES, Appendix A15.7 on page A15.7-28 (CD006) and ES Figure 15.6h (CD007). CP-AG10 states:

'Particular care shall be taken to reduce damage or disturbance to field and forestry drainage systems. Laying of new drains would be undertaken to maintain drainage systems during construction. Repairing and reinstatement of field drains affected by construction shall be agreed with the landowner/occupier to ensure that land capability is maintained and flooding is not exacerbated. Where appropriate, the integrity of the drainage system would be secured in advance through the installation of header drains (cut off drains) to facilitate construction. All remaining remedial works shall be undertaken post-construction.'

6.372 With regard to the construction contract, TS confirms that:

- the construction contract would specify that where existing field drainage is likely to be affected by the proposed scheme, the contractor would have responsibility for locating and reconnecting the drainage, as appropriate.
- the detailed design is currently expected to be the responsibility of the contractor.
- the specimen design prepared for the ES and draft Orders proposes that any affected field drains would be maintained along existing alignments by new pipes laid under the proposed dual carriageway.

Findings of Fact

Ecological impacts

-Birds

6.373 We note that Mr and Mrs Baird consider their farm land to be part of or close to the Loch Flemington SPA. However, [ES Figure 11.1a](#) (CD007) shows that Loch Flemington SPA covers only the loch itself and does not cover any of the area shown as Easter Lochend and Meikle Kildrummie Farm in TS093.01. Easter Lochend and Meikle of Kildrummie Farm is partly covered by the Kildrummie Kames SSSI, however, this is not a

Natura 2000 designation and so is not required to be subject of a Habitats Regulations Appraisal (HRA) or an Appropriate Assessment.

6.374 Mr and Mrs Baird contend that the land take from their farm (parts of fields 278/1 and 278/2 – ES Figure 15.6h – CD007) would affect the Loch Flemington SPA. This is not the case since none of the land for the proposed scheme involving these two fields covers any part of the Loch Flemington SPA and is at least two kilometres away. We also disagree with the Baird's contention that the proposed scheme would take land from the SPA. We agree with TS that the nearest part of the proposed scheme is north of Lochside and several hundred metres away from the SPA.

6.375 TS considered the potential implications of the proposed scheme on Natura 2000 sites (including SACs and SPAs) at both DMRB stages 2 and 3. This is documented in the A96 [HRA](#) (CD010). We find that it is for Scottish Ministers as the competent authority (decision maker) for this proposed scheme to carry out the appropriate assessment if they consider that significant effects on the SPA are likely. Having considered the approach and information set out in TS's HRA at DMRB Stage 3 (CD010), we see no reason to suggest Scottish Ministers should not adopt these findings in their consideration of whether an appropriate assessment is needed and in the conclusions they draw if an appropriate assessment is deemed necessary.

6.376 The HRA section 7.3 (CD010) considers the impacts on Loch Flemington SPA specifically. This confirms that the proposed scheme is approximately 420 metres north of the Loch Flemington SPA and the tie-in to the B9006 is approximately 210 metres north. This section of the assessment concludes that there could be some risk to the Slavonian grebe from construction traffic noise on the B9090 road during the construction phase. Whilst there are currently no Slavonian grebe breeding on Loch Flemington the assessment considers that potential for this remains. HRA Table 7.11 (CD010) explains that this potential must be maintained to avoid significant disturbance to the qualifying species and to ensure integrity of the site. We find this to mean that the construction phase of the proposed scheme could have a significant effect on the qualifying interest of the Loch Flemington SPA. The HRA (paragraph 7.36) concluded that disturbance as a result of operation (rather than construction) of the proposed scheme was not considered to be a risk due to the separation of the main alignment from the SPA.

6.377 HRA Table 7.11 (CD010) identifies avoidance and mitigation practices to avoid construction activities during the Slavonian grebe breeding season, which was agreed with SNH to be March to August (inclusive). This is suggested for inclusion in the CEMP which would become a requirement on any contractor. The CEMP would be developed in consultation with relevant stakeholders including SNH. This matter is identified in [ES Table 20.1](#) (CD005) as Mitigation Item GR1. Mitigation Item GR1 (CD005) also refers to Mitigation Items E2 (species protection plans) and E3 (habitat management plans) and to the Mitigation Protocol in ES Appendix A11.3 (CD006). HRA Table 7.11 (CD010) concludes that, with this avoidance technique in place, there would then be no adverse impact on site integrity.

6.378 We therefore find that whilst the proposed scheme has the potential to have a significant effect on the qualifying interest of the Loch Flemington SPA, this could be avoided through timing of works. This avoidance technique would be incorporated into a CEMP, which would form part of any contract of works and would be a requirement upon the contractor. An ecological clerk of works (Mitigation Item E1 – CD005) would be

appointed by the contractor and TS's site manager (Jacobs) would provide independent oversight of this.

6.379 REP/154 SNH (TS266) confirms that it is content with the conclusions drawn by the HRA (CD010) and that, in its view:

- the proposed scheme is likely to have a significant effect on a number of qualifying interests.
- an appropriate assessment would be needed in view of the site's conservation objectives for its qualifying interests.
- based on the information provided, the proposal would not adversely affect the integrity of the site.

6.380 We therefore find no evidence to suggest that the potentially significant effects of the proposed scheme on Loch Flemington SPA during the construction of the proposed scheme could not be overcome. Scottish Ministers may wish to consider their own legal advice in their role as competent authority for any appropriate assessment that they deem necessary.

6.381 We note that Mr and Mrs Baird identify several bird species that they contend have been seen in their locality. We note that TS has considered the impact of the proposed scheme on birds in general and that these particular species do not form part of the qualifying interests of Loch Flemington SPA, as shown in HRA Table 4.1 (CD010). This does not mean that these species are not important; rather, that any proposed scheme impacts upon these species do not need to be considered for whether an appropriate assessment is required with regard to Loch Flemington SPA.

6.382 Whilst we do not doubt that these bird species have been sighted by Mr and Mrs Baird, we also note the findings of the [ES Chapter 11](#) (CD005) and TS's conclusions about the impacts of the proposed scheme on birds as summarised in its letter TS093.02. Taking all of the evidence into account, we are satisfied that bird species in general would not be significantly disturbed by the proposed scheme.

6.383 We find that there would continue to be farm land, including wetlands between Loch Flemington and around various nearby parts of the proposed scheme. ES Appendix A15.7 (CD006) shows that the proposed scheme would take a total of 4.53 hectares collectively from fields 278/1 and 278/2 leaving 19.31 hectares in both fields. Whilst we have no way to fully quantify the scale of remaining land beyond we are satisfied that it remains comparatively substantial from consideration of [ES Figure 11.1a](#) (CD007). Therefore we find no reason to dispute TS's conclusions, recognising the role of appropriately qualified ecological professionals, including SNH, in preparing and drawing conclusions from that work.

–Mammals

6.384 [ES Figure 10.3](#) (CD007) shows that ecological mitigation includes several dry mammal underpasses and culverts along the length of the proposed scheme. We also note the provision of mammal fencing to guide mammals to the respective underpasses and culverts.

6.385 We find that the positioning of these facilities has been informed by detailed work on species as detailed in ES Chapter 11 (CD005) and confidential [ES Appendix A11.1](#) covering badger and otter.

6.386 Mr and Mrs Baird dispute the effectiveness of these underpasses but do not provide any compelling evidence for their removal or suggest any alternative. The evidence before us suggests that such facilities have been successful elsewhere and that, were they to be removed from the proposed scheme, this would likely result in increased mammal fatalities that could otherwise be avoided.

6.387 We find that provision of these facilities in the first instance is derived from detailed ecological assessments and as such we find no reason to justify their removal from the proposed scheme or their replacement with an unspecified alternative.

Business impacts

-Agricultural assessment

6.388 We find that the disagreement about the proportion of land take and its business impact relates to the identity of the individual farming unit (IFU) that is being assessed ([DMRB Volume 11, Section 3, Part 6](#), Paragraph 10.6 – CD049.18). Paragraph 6.3 (CD049.18) lists the four main effects on agricultural land that assessments need to cover. Paragraph 6.4 (CD049.18) explains that impacts on farmers as residents or business people, additional to the items in paragraph 6.3, should be assessed following the methods used to assess effects on other residents or businesses affected by a scheme. Paragraph 10.17 (CD049.18) talks about the likely future viability of affected agricultural units. We find this to mean that the assessment is focussed on farming rather than other interests and specifically on whether farming remains a viable land use.

6.389 No parties appear to dispute that Easter Lochend and Meikle Kildrummie Farm was a tenant farm operated by OBJ/095 Mr Stephen Forbes at the time when the ES and draft Orders were published in November 2016. We note that OBJ/095 Mr Stephen Forbes withdrew his objections in December 2018. We therefore find that the tenant, Mr Forbes, controlled the land use decisions and environmental practice at Easter Lochend and Meikle Kildrummie Farm at that time. Mr and Mrs Baird contend that Mr Forbes' tenancy was scheduled to end in 2017. There is no reason to doubt this but we acknowledge there is also no evidence to indicate whether the tenancy was renewed or who, if anyone, now farms this land.

6.390 We find that the tenancy arrangements at Easter Lochend and Meikle Kildrummie Farm at that time made Mr and Mrs Baird commercial landlords. As such, theirs is a business that trades in farmland at Easter Lochend and Meikle Kildrummie Farm as a rental commodity. There is no evidence before us to suggest that this has changed since publication of the ES and draft Orders.

6.391 We therefore find that it was reasonable to assess the impacts of the proposed scheme on Easter Lochend and Meikle Kildrummie Farm against Mr Forbes' whole farm business as the IFU (paragraph 10.6 – CD049.18). We find that assessing Easter Lochend and Meikle Kildrummie Farm on the basis of ownership would be inconsistent with the rest of TS's assessment approach and that outlined in [DMRB Volume 11, Section 3, Part 6](#) (CD049.18). Therefore, we do not consider that, when assessing likely impact on agriculture, Easter Lochend and Meikle Kildrummie Farm should have been assessed individually as a separate entity from Mr Forbes' wider farming operations.

6.392 TS has assessed the impact on the farming business at Easter Lochend and Meikle Kildrummie Farm in ES Appendix A15.7 (CD006) as part of the wider operations of Mr

Forbes. Since we have already concluded that this is reasonable, we find that TS has correctly identified the receptor sensitivity and the magnitude of impact using the approach set out in [ES Tables 15.7 and 15.8](#) (CD005).

6.393 [ES Figure 15.6h](#) (CD007) shows that the proposed scheme would acquire from Mr and Mrs Baird land from fields 278/1 and 278/2 only. We note Mr and Mrs Baird's point that this is some of the best quality land. [ES Figure 15.5h](#) (CD007) shows that fields 278/1 and 278/2 contain a mix of class 3.2, 4.2 and 5.3 with no prime agricultural land. We note that land further south that does not form part of either of these fields but is part of Easter Lochend and Meikle Kildrummie Farm ([TS093.01](#)), is class 3.1 prime agricultural land. On balance however, we do not dispute Mr and Mrs Baird's contention that some of the land in fields 278/1 and 278/2 is amongst their best from a quality perspective.

6.394 [ES Appendix A15.7](#) (CD006) shows that the total land loss for Easter Lochend and Meikle Kildrummie only (fields 278/1 and 278/2) would equate to 4.53 hectares. This differs slightly from the 4.69 hectares quoted by Mr and Mrs Baird in TS093.01. TS093.02 suggests that Easter Lochend and Meikle Kildrummie Farms total 103.6 hectares. Mr and Mrs Baird have not disputed this. If this is the case then neither 4.53 hectares, nor indeed the 4.69 hectares referred to by Mr and Mrs Baird, would equate to around 10% of the farm. Nevertheless, from page A15.7-29 in Appendix A15.7, we conclude that the relevant figure for the agricultural assessment is the one based on the individual farming unit, which comprises Little Kildrummie Farm, Easter Lochend and Meikle Kildrummie Farm. A total of 18 hectares of land would be lost from the 322 hectares of land farmed by Mr Forbes at the time the ES and draft Orders were published. ES Appendix A15.7 confirms that would represent a 6% loss of land from that IFU.

6.395 ES Appendix A15.7 (CD006) concludes that the impact of the proposed scheme on likely future viability of the IFU would be 'neutral'. We understand that some parties consider the term 'neutral' to represent the status quo. However, we find that [ES paragraph 15.3.61](#) (CD005) is clear that this is not its intended meaning. The definition provided in that paragraph makes clear that the term 'neutral' involves change and that this may result in a reduction or restructuring of activities. We also note the definitions of the terms 'beneficial' and 'adverse' in ES paragraph 15.3.61 (CD005). We find that the definition of 'neutral' accurately describes the anticipated impacts on Mr Forbes' farming operations that would result from the proposed scheme and that the terms 'beneficial' and 'adverse' do not.

6.396 We find that the agricultural assessment is not using the term 'viability' to describe how profitable or otherwise a business or individual field might be or might become. Instead, it is describing whether agriculture would remain a viable land use. The evidence does not suggest that farming would cease to be possible at Easter Lochend and Meikle Kildrummie Farm.

6.397 The shape, size and severance of the affected fields 278/1 and 278/2 are shown in Figure 15.6h (CD007). Whilst TS has assessed the impact on Mr Forbes' business, we find that the mitigation measures listed in ES Appendix A15.7 (CD006) for these fields are orientated towards sustaining farming as a viable land use. In this instance, the mitigation would benefit the landlord (Mr and Mrs Baird) since it would enable them to continue to rent the available land to the current party, and/or to a future party, for agriculture. Severance, field access and drainage matters are considered in more detail below.

6.398 We accept that Mr and Mrs Baird would see a loss of some land and the associated productive capacity. This could affect any rent they receive from future tenants or affect any farming operations they chose to carry out on their remaining land. As such they may choose to seek compensation for any losses they consider they have or would incur. This is a matter for them, TS and the District Valuer. Compensation is not a matter for this inquiry.

–*Severance*

6.399 ES Figure 15.6h (CD007) shows that only fields 278/1 and 278/2 would be affected by the proposed scheme. Field 278/1 is north of the Aberdeen to Inverness railway and accessed via the existing C1163. Field 278/2 is south of the railway along with the rest of Easter Lochend and Meikle Kildrummie Farm. It is also accessible from the existing C1163.

6.400 We find that from field 278/2, only 0.24 hectares of land in the northeast corner would be acquired for the proposed scheme and that the remainder would continue to be adjacent to the rest of Easter Lochend and Meikle Kildrummie Farm. We therefore find that field 278/2 would not be affected by severance.

6.401 ES Figure 15.6h (CD007) shows that the smaller, northern part of field 278/1 close to Moss-Side would remain accessible off the existing C1163 via new means of access 401 shown on draft SRO Plan SR14 (CD003). However, we find that the larger western section of field 278/1 would be severed in a manner requiring it to take access from the proposed Nairn West junction, as set out by TS. Mr and Mrs Baird distinguish between these two sections of field 278/1 as area A and area B on the map they provide in TS093.01.

6.402 [Draft SRO](#) Plan SR14 (CD003) shows the proposed realignment of the C1163 and the proposed stopping-up with an NMU-only underpass. This would deny vehicle access and require an otherwise longer route to be taken to access either part of field 278/1. No parties dispute these consequences of the proposed scheme. TS estimates different lengths of journey to access each part of field 278/1 from Easter Lochend than Mr and Mrs Baird. However, we find that the issue is not the length of journey but instead the difference in present and future lengths of journey from an identical point of origin. This is because some amount of travel, however small, would be necessary to access field 278/1 from the farm complex or operations base, even without the proposed scheme. Based on the evidence before us we find no reason to doubt the actual and additional distances quoted by TS in [TS093.02](#).

6.403 We note Mr and Mrs Baird's request for an agricultural underpass however, we also accept TS's explanation that there are several constraining factors in this location. We saw the proximity of the railway and local roads on our site inspection and note from the proposed scheme design the importance of gravity-led drainage amongst other factors. We therefore conclude that these factors would limit the height of the dual carriageway affecting provision of the requisite headroom for any underpass.

6.404 We have also had regard to [TS226 Moss-side Railway Crossing Alternative Arrangements Report](#). We note that this considers options for the C1163 to bypass Moss-side and that the various options considered there would not affect our conclusions above, with regard to the agricultural underpass sought by the objectors.

6.405 However, following consideration of these matters in [TS209](#) section 6.6 TS confirms that it is able to make some amendments to the NMU underpass design. These

amendments would enable headroom clearance of 3.7 metres and a width of four metres. TS209 paragraph 6.6.2 argues that this could accommodate a medium sized tractor such as a John Deere 6R series which, it states, has a specified height of 3026 millimetres (3.026 metres) and a width of 2550 millimetres (2.550 metres). This is reiterated in [TS closing statement](#) paragraph 10.65. This may offer greater flexibility to Mr and Mrs Baird (or their tenant(s)), than would otherwise have been the case. However, it would not be suitable for larger vehicle movements should these be necessary and it is also unclear whether it would be permissible to move livestock through this facility.

6.406 We note the size of fields that would remain following the proposed scheme and the mitigation proposed in [ES Appendix A15.7](#) (CD006). Whilst we accept that severance would require changes to farming practice it does not suggest that it would prevent use of the land for agriculture. We therefore find that agriculture would remain viable as a land use. We have also considered this matter in relation to field 278/1 and objections by OBJ/091 Mr and Mrs MacKinnon separately in this chapter of the report (above).

6.407 Should Mr and Mrs Baird (or Mr Forbes if he remains the tenant) or their tenant(s) consider that they have or would incur losses as a result of the identified severance then they may choose to seek compensation. This is a matter for the respective parties and the District Valuer. Compensation is not a matter for this inquiry.

-Maintenance of new access

6.408 New means of access 390 (draft SRO Plan SR13 - CD003) would be required for use by multiple parties and, in these circumstances, it would be reasonable for TS to retain ownership and maintenance responsibilities. As such we note that no such costs would fall upon the respective parties and we find this to mean that there would be no expectation for them to enter into complex joint maintenance agreements. We find this to resolve the concerns regarding these matters.

6.409 We also note that the specific details of surfacing and standard of access would be determined in consultation with the respective property owners. We find this to offer an opportunity to them to have some say in what is provided. We also note that once agreed, this would form part of the construction contract for the proposed scheme. We find nothing unreasonable in this and it further confirms to us that no additional costs would be likely to fall upon the users of the proposed access.

6.410 We have considered separate objections to new means of access 390 (draft SRO Plan SR13 – CD003) in response to OBJ/091 Mr and Mrs MacKinnon in this chapter of the report (above).

-Drainage

6.411 We understand the objectors' concerns and their wish to ensure the proposed scheme does not result in inadequate drainage or other problems arising. We also acknowledge their wish for a clear route of recourse in the event of problems. Other objectors elsewhere have raised similar issues.

6.412 We note that TS has included initial drainage designs for the purposes of the ES and the draft Orders. [ES Figure 13.1o](#) (CD007) identifies two watercourses near Easter Lochend and Meikle Kildrummie Farm as SWF21 and SWF22. [ES Appendix A13.2: Flood Risk Assessment](#) (CD006) considers these individually and collectively. ES Appendix A13.2 paragraph 4.67 on page A13.2.H-22 indicates that changes in the floodplain water

level would result in a 'negligible' magnitude of impact of 'neutral' significance. We find this to mean that the proposed scheme would not bring any substantive increase in flood risk and we attach weight to the fact that SEPA has not raised objections to the proposed drainage arrangements. We find that the proposed drainage arrangements are satisfactory in principle.

6.413 The proposed contracting regime would build-in from the outset any relevant requirements for mitigation from the ES and any agreed accommodation works. This and the supervisory presence of a representative of TS during the construction process would provide a mechanism to hold the contractor to account.

6.414 The contractor would have some design 'freedom' (our word). However, this would remain within the requirements of the contract and the land acquired by CPO. At several of the inquiry sessions TS explained that all designs would be considered against the ES. Were these considered to result in new or changed environmental impacts, they would be reassessed, including with any necessary mitigation. We find that this provides an additional mechanism to ensure that design 'freedom' would not result in unintended environmental consequences that differ from those already foreseen by the ES (CD005, CD006 and CD007) and already built into the contract.

6.415 We understand the concerns of Mr and Mrs Baird regarding any route for recourse in the event of unsatisfactory works. In response to other objections TS has confirmed the on-site staffing arrangements that would be in place during construction. We find that these arrangements would allow concerned parties to approach the service provider (the contractor) and /or their independent overseer (in this case Jacobs, who would be appointed to oversee operations on site on behalf of TS).

6.416 Overall, we find the contracting approach provides for mitigation and accommodation works to be carried out to an appropriate standard within an independent inspection regime. We also find that the contractor has some design freedom but this remains within the bounds of the contract and a regime for assessing any additional environmental impacts. We also find that affected parties would have a route of recourse to both the contractor and the contract overseer. The evidence does not suggest we should conclude this to be deficient.

Overall

6.417 The evidence suggests that the objections raised would either be avoided/limited due to proposed mitigation and/or accommodation works, or would not come about. Whilst there would be some residual impacts / effects these would not require additional mitigation and would not override the public interest in providing the proposed scheme. We find no reason to recommend that Scottish Ministers should modify the draft Orders or refuse to confirm them.

OBJ/096 Mr Sean Gallagher

Objectors

6.418 OBJ/096 Mr Sean Gallagher lives at Balnaspirach House south of Nairn.

Objections

Access to Balnaspirach House

6.419 Mr Gallagher explains that the current access to Balnaspirach House is capable of handling articulated HGVs following widening in the past. He seeks continuation of this.

Plot 1706

6.420 Mr Gallagher argues that he was granted planning permission on 30 March 2003 for a 400 square metre building for an agricultural enterprise on land that is covered by Plot 1706 (draft CPO Sheet 17 of 23 – CD001). He argues that this is situated directly under the proposed route of the dual carriageway and that, as an agricultural permission, this does not expire.

6.421 Mr Gallagher argues that he agreed to purchase 10 acres of land from another party (Plot 1706) for the above mentioned agricultural enterprise.

Transport Scotland's Response

Access to Balnaspirach House

6.422 TS notes that the access to Balnaspirach House has been widened to accommodate articulated vehicles in the past. It confirms that:

- the existing access track serving Balnaspirach House would not be affected by the proposed scheme.
- the existing public road serving the property, the Balnaspirach – Nairn - Moss Lands Road (U3226), would be diverted as part of the proposed scheme with a new link provided between the diverted U3226 and the existing section of public road running past the entrance to the property.
- both the new link, and the existing section of public road at the entrance to the property would become/remain public roads following construction of the proposed scheme.
- these sections of road would be suitable to facilitate the continued use of this access road for articulated vehicles.

Plot 1706

6.423 TS argues that:

- only consented planning applications in the period June 2013 to June 2016 ([ES paragraph 15.3.14](#) - CD005) were considered in the assessment of proposed scheme impacts on extant planning applications. ES paragraph 15.3.14 (CD005) also sets out other exclusions.
- Mr Gallagher's application was not identified as an extant planning application for the purposes of this assessment.
- Jacobs (TS's agent) undertook a search of The Highland Council's planning portal and liaised directly with the Council's planning department to look into the background and confirm the status of the planning application referred to in Mr Gallagher's email of 29 January 2017 ([TS096.01](#)).
- Jacobs has taken all reasonable steps to investigate Mr Gallagher's claim.

- rather than having an extant planning permission for an Agricultural Enterprise, Mr Gallagher has rights afforded through permitted development rights to carry out construction.
- Jacobs has been provided with a copy of ‘The Highland Council, Town and Country Planning (General Permitted Development)(Scotland) Order 1992, Schedule 1, Class 18, 22 & 70’ certificate issued to Mr Gallagher on 13 February 2004 by The Highland Council ([TS311](#)).
- this certificate was issued in response to Mr Gallagher’s ‘Prior Notification’ submitted on 29 January 2004.
- the certificate confirms The Highland Council’s determination that prior approval would be required for the development; however, the certificate requests further details to be issued in relation to the agricultural building and its intended use.
- Jacobs has been unable to locate any evidence of the submission of detailed information associated with the development or the subsequent approval by The Highland Council of such a submission.

6.424 TS argues ([TS096.02](#)) that it asked Mr Gallagher if he would provide evidence to confirm if approval was granted. TS also notes that under Class 18 (4) (a) (v) the development shall be carried out within a period of 5 years from the date upon which approval was given. TS confirms that if Mr Gallagher is able to provide such evidence, it will review the findings of the assessment accordingly.

6.425 TS explains that prior to publication of the draft CPO, it undertook a title deed search to confirm the names of all land owners and occupiers with an interest in land to be included in the CPO. This search did not identify Mr Gallagher as holding any formal rights, recorded by the Land Register of Scotland, over the land affected by the draft CPO (CD001).

6.426 TS confirms that, if Mr Gallagher does have any documentary evidence of rights that he holds over land affected by the draft CPO, it would welcome this being provided for its consideration. Should he be unable to prove that he holds formal rights over this land, TS confirms that he would not be entitled to claim compensation in relation to the purchase of the land proposed for his agricultural enterprise.

6.427 However, TS also confirms that, 12 months after the opening of a new road, those who have not otherwise been compensated and who consider that their property has reduced in value by virtue of the operation of the new or altered road may be entitled to claim for compensation in that regard within the terms of Part I of the [Land Compensation \(Scotland\) Act 1973](#). TS explains that Mr Gallagher may be able to claim such compensation, the valuation of which would be assessed by the District Valuer.

Findings of Fact

Access to Balnaspirach House

6.428 The proposed scheme would result in the closing of the current public right of way (U3226) between Balnaspirach House and the B9091 (point 1 on [draft EPW](#) – CD004 and points 158,159, 160, 228, 229 and 230 on [draft SRO](#) Plan SR15 (CD003). A new right of way would connect Balnaspirach House with the proposed new section of the C1163 road. We also note that the proposed scheme would not affect the existing widened access point to Balnaspirach House from the U3226.

6.429 Mr Gallagher's principal concern appears to be to retain the possibility of HGV access which he argues to be currently present. TS confirms this would be retained. We have not been referred to any specific evidence which demonstrates that the design capability of this proposed junction would or would not support articulated HGVs. However, we note from draft SRO Plan SR15 (CD003) the retention of the widened access point off the U3226 leading to Balnaspirach House. We also note from Plan SR15 (CD003) the proposed provision of improved road adjacent to that access at Point 159 and the turning bay at Point 69. This does not suggest we should doubt TS's assertion or its reassurances to Mr Gallagher.

Plot 1706

6.430 [ES Chapter 15](#) (CD005) does not include reference to any extant planning permission at Balnaspirach House/Plot 1706 for the farming enterprise identified by Mr Gallagher. [ES Figure 15.4h](#) (CD007) refers to two planning permissions at Balnaspirach House (PA33 and PA34). [ES Appendix A15.5](#) (CD006) identifies each as being for the erection of a house. In each instance it concludes the impact of the proposed scheme to be 'neutral'. Neither of these relates to the agricultural enterprise referenced by Mr Gallagher in [TS096.01](#).

6.431 We note the searches carried out by TS's consultant Jacobs and the conclusions reached ([TS096.02](#)). The evidence in [TS311](#) does not suggest we should doubt this since TS also needed this information for its traffic modelling exercise (see Chapter 2: Matters of Principle). We did not see a building of the description given by Mr Gallagher on our site inspection and no indication of this appears on TS's aerial photo montage of the proposed scheme in [ES Figure 9.2f](#) (CD007).

6.432 TS concludes that the enterprise in question does not have planning permission but could benefit from permitted development rights subject to prior approval were Mr Gallagher to have provided information sought by the council in TS311. There is no evidence before us of Mr Gallagher having provided this information to the Council or to TS and none that prior approval has been granted. We must therefore find that the building in question does not have planning permission and that prior approval of details that would allow it to be constructed under permitted development rights has not taken place.

6.433 Mr Gallagher argues that he agreed to purchase Plot 1706 from another party and to establish the agricultural enterprise covered above. We note that TS has sought information from the Land Register of Scotland to compile land owners and affected parties in the [draft CPO](#) (CD001). We also note some instances where TS had identified the incorrect land owner and has then explained its willingness to amend the draft CPO accordingly. We agree in principle that doing so is acceptable since the consultation on draft Orders provides an opportunity to clarify ownership, where the records used by TS were not up to date.

6.434 In this instance TS sought confirmation from Mr Gallagher that he is now the owner. The evidence before us suggests that no such information was provided. We therefore cannot find him to be the owner, though we accept this may simply mean that Mr Gallagher has failed to confirm this.

6.435 We note that TS explains a compensation process for parties whose assets depreciate in value as a result of the proposed scheme. Mr Gallagher may therefore

choose to submit claims for compensation to the District Valuer at the appropriate time. Compensation is not a matter for this inquiry.

6.436 Mr Gallagher may also subsequently submit to TS proof of ownership for part or all of Plot 1706. In these circumstances TS could amend the details in the draft CPO accordingly. This would be an administrative modification to the draft CPO and would not require a formal recommendation from us.

Overall

6.437 The evidence suggests that the objections raised would either be avoided/limited by the design of the proposed scheme and or proposed mitigation/accommodation works; or, would not come about. Whilst there would be some residual impacts / effects these would not require additional mitigation and would not override the public interest in providing the proposed scheme. We find no reason to recommend that Scottish Minister should modify the draft Orders or refuse to confirm them.

Broadley Farm and Lochdu Farm:

**OBJ/097 Partners and Trustees of the Firm of JM & LM Forbes and Firm of JM & LM Forbes (Lochdu) and
OBJ/101 BDW North Scotland Limited (Barratt) & Robertson Homes Ltd**

Objectors

6.438 OBJ/097 Partners and Trustees of the Firm of JM & LM Forbes and Firm of JM & LM Forbes (Lochdu) are the owners of Broadley Farm and Lochdu Farm. The locations of each are identified coloured blue and green on the map supplied in [TS097.01](#) and are partly affected by the proposed scheme. TS097.01 also shows this party to own land at Woodlands and Tomlinquhart but these would not be affected by the proposed scheme.

6.439 Broadley Farm and Lochdu Farm are located south of Nairn, west of the River Nairn and north of the proposed scheme. OBJ/097 Partners and Trustees of the Firm of JM & LM Forbes and Firm of JM & LM Forbes (Lochdu) object individually to matters regarding business viability, land ownership and drainage. These matters are considered in this chapter below.

6.440 The area of Broadley Farm and Lochdu Farm is also an area of interest for OBJ/101 BDW North Scotland Limited (Barratt) & Robertson Homes Ltd for house building.

6.441 Both OBJ/097 Partners and Trustees of the Firm of JM & LM Forbes and Firm of JM & LM Forbes (Lochdu) and OBJ/101 BDW North Scotland Limited (Barratt) & Robertson Homes Ltd object because they consider the proposed scheme would adversely affect their development interests at Broadley Farm and Lochdu Farm.

6.442 Some of the arguments raised relate to route selection issues. These are covered separately in Chapter 2: Matters of Principle. The remaining concerns are discussed below.

Objections

Ownership

6.443 OBJ/097 Partners and Trustees of the Firm of JM & LM Forbes and Firm of JM & LM Forbes (Lochdu) argue that the draft CPO incorrectly references their name.

Business viability

-Severance

6.444 OBJ/097 Partners and Trustees of the Firm of JM & LM Forbes and Firm of JM & LM Forbes (Lochdu) argue that the proposed route would sever their agricultural land leading to a reduction in productivity and thereby adversely affecting the farm's viability. They argue that, as a result, the farm would lose value and no longer be desirable. As such the partners and trustees argue that the losses to them have not been properly quantified and taken into account in identifying a cost/benefit analysis.

-Proposed underpass

6.445 OBJ/097 Partners and Trustees of the Firm of JM & LM Forbes and Firm of JM & LM Forbes (Lochdu) are concerned about the extent of severance resulting from the proposed scheme and that no underpass is proposed to offset this.

-Drainage

6.446 OBJ/097 Partners and Trustees of the Firm of JM & LM Forbes and Firm of JM & LM Forbes (Lochdu) raise concerns about increased volume of water from the proposed dual carriageway that they consider would feed into the Alton Burn. This, they argue, would adversely affect the drainage system at Lochdu Farm. As such, they request confirmation of the proposals to accommodate and maintain drainage requirements.

Development south of Nairn

6.447 OBJ/097 Partners and Trustees of the Firm of JM & LM Forbes and Firm of JM & LM Forbes (Lochdu) and OBJ/101 BDW North Scotland Limited (Barratt) & Robertson Homes Ltd both argue that the [IMFLDP](#) (CD062) and the [A96 Growth Corridor Development Framework](#) (CD056) support the proposed Nairn bypass and the expansion of Nairn, including the allocation of land south of Nairn for mixed housing and commercial purposes.

6.448 OBJ/097 Partners and Trustees of the Firm of JM & LM Forbes and Firm of JM & LM Forbes (Lochdu) argue that the proposed route would prevent this development taking place because it would cross through this land. This, they argue, means that the proposed scheme does not support the growth of Nairn.

6.449 Both parties argue that they have concluded missives for this land for 520 houses. OBJ/101 BDW North Scotland Limited (Barratt) & Robertson Homes Ltd consider that greater weight should be given to what they term 'the strategic importance of these proposals'.

6.450 The Partners and Trustees of the Firm of JM & LM Forbes and Firm of JM & LM Forbes (Lochdu) (OBJ/097) argue that the calculation of the resultant loss [assumed to be that in the ES] does not adequately recognise the impact of the proposals on them and

OBJ/101 from this proposal. As such it argues that compensation should be in the region of £5 million.

Engagement

6.451 OBJ/097 Partners and Trustees of the Firm of JM & LM Forbes and Firm of JM & LM Forbes (Lochdu) argue that there has been a lack of engagement / consultation. They argue this to mean that strategic housing considerations have been overlooked / jeopardised. They consider this to show a lack of coordination between strategic growth and the road system.

Transport Scotland's Response

Ownership

6.452 TS notes that the land shaded blue on the plan attached to [TS101.01](#) [Lochdu Farm] is owned by OBJ/097 Partners and Trustees of the Firm of JM & LM Forbes and Firm of JM & LM Forbes (Lochdu). It explains that the plots within the area in the [draft CPO](#) (CD001) - Plots 1701, 1703, 1705 and 1706 - were incorrectly recorded as being owned by the 'Firm of JM and LM Forbes' rather than the 'Firm of JM and LM Forbes (Lochdu)'. TS confirms that the Order is currently in draft format and that errors regarding ownership details would be corrected in the Made CPO following completion of the necessary statutory process.

Business viability

-Severance

6.453 TS argues that:

- the impacts of the proposed scheme on land at Lochdu Farm are detailed in [ES Appendix A15.7](#) pages A15.7-29 to A15.7-33 (CD006) for the affected fields (prefixed by 217 and 219) and comprising fields 217/1 and 219/1W to 219/16 in [ES Figure 15.6h](#) [ES Figure 15.6i](#) (CD007).
- the area of land to be acquired would be 24.77 hectares.
- ES Appendix A15.7 identifies the opportunity to merge severed areas within fields 219/4, 219/5 and 219/11 to improve field husbandry through the creation of more manageable field sizes and shapes.

6.454 TS confirms that:

- should the objectors feel they have a valid claim for compensation, including any increase in journey times and costs arising from changes in farm access arrangements, this could form part of a claim for compensation as detailed in TS's [Guidance on the Compulsory Purchase Process and Compensation](#) (CD046).
- all claims for compensation would be subject to the District Valuer's assessment.

-Proposed underpass

6.455 TS does not consider there is sufficient justification for the inclusion of an underpass at this location. It considers that provision of the B9090 Overbridge (PS13) along with the proposed alterations to the B9091 and the B9090 local roads would provide appropriate access to all of the objector's farmland.

-Drainage

6.456 TS states that the drainage proposals for the proposed scheme have been designed to incorporate SuDS measures, including ponds, on road drainage outfalls. TS argues that:

- the ponds form part of the overall SuDS design and would convey and control surface water to improve water quality and control flow rates and volumes, before discharging into existing surface water features.
- the ponds are explicitly designed to attenuate the flows during flood events.
- because part of the existing natural (i.e. pre-development) catchment for Alton Burn would form part of the road drainage network under the proposed scheme, surface water run-off would be subject to attenuation in the SuDS pond at Alton Burn, discharge into the burn would be very slightly lower than the existing situation.

Development south of Nairn

6.457 TS argues that:

- it has considered the impacts of the proposed scheme on future development land in [ES Chapter 5](#) (CD005) [the Reporters consider this to be a typing error that should refer to ES Chapter 15].
- [ES Figure 15.3c](#) (CD007) shows areas of land included for assessment.
- With respect to Nairn South, the area assessed relates to the boundaries of site NA8 shown in the [IMFLDP](#) (CD062).
- No land take or potential impacts are identified as a result of the proposed scheme in [ES Appendix A15.5](#) (CD006) under reference LA15.
- [TS097.01](#) paragraph 1.6 and [TS101.01](#) page 3 refer to IMFLDP Section 4.39 (CD062) and state that the IMFLDP requires liaison between developers, TS and The Highland Council to achieve optimal design of roads and housing. However, the guidance in the IMFLDP requires agreement of suitable improvements to the 'local road network', which TS understands to be a reference to the need for improvement to local roads adopted by The Highland Council.
- it has liaised closely with The Highland Council during the design development to agree improvements to the local road network taking account of the IMFLDP.
- TS097.01 paragraphs 2.1 to 2.5 and TS101.01 pages 3 and 4 base their assertion that the route is not supportive of long term growth of Nairn on the [A96 Growth Corridor Development Framework](#) (CD056) to justify their suggestion that the proposed scheme would limit the long term growth options proposed in this document.
- the A96 Growth Corridor Development Framework (CD056) is non-statutory supplementary guidance.
- it is stated on The Highland Council website that its content is largely superseded by the provisions of the [HWLDP](#) (CD061) and IMFLDP (CD062).
- the IMFLDP (CD062) contains the current site allocations for the plan area, including allocation NA8 at Nairn South.
- the proposed scheme does not affect future development of this allocation.
- it is aware that the A96 Growth Corridor Development Framework (2007) (CD056) included proposals for a larger area of residential growth to the South of Nairn.
- the land beyond site NA8 does not have any status as development land as it is not identified in the development plan.
- the route shown in the A96 Growth Corridor Development Framework (CD056) relates to previous aspirations for a bypass around Nairn that were not connected to the wider commitment by the Scottish Government to upgrading the A96 between Inverness and Aberdeen to dual carriageway by 2030.

- the proposal for a bypass around Nairn was identified in the [STPR](#) (CD036) as a targeted improvement and this has been incorporated into the proposed scheme, but its alignment must reflect the wider aims and objectives for the A96.
- the A96 Growth Corridor Development Framework (CD056) states that the route alignment shown for a bypass around Nairn is indicative, and would require further assessment.
- this is shown in the document only to provide an indication of Nairn's long term potential.
- the Framework was published in 2007 and prior to the commencement of design and assessment of the route options at DMRB Stage 2.
- due consideration has been given to the potential impacts of the proposed scheme on future development land, as approved and allocated by The Highland Council.
- further agricultural land south of the existing land allocation in the IMFLDP (CD062) has no development status at this time.
- it would not be appropriate for future development aspirations, which are not contained in an adopted or draft LDP, to be assessed for the proposed scheme as there is no certainty that they will occur.
- the area shown in green on the plan respectively attached to each party's objection letter (TS097.01 and TS101.01) is not designated development land as it is not allocated in the adopted LDP, nor is it proposed in any emerging LDP.

Engagement

6.458 TS disagrees with OBJ/097 Partners and Trustees of the Firm of JM & LM Forbes and Firm of JM & LM Forbes (Lochdu); arguing that appropriate and relevant consultation has taken place throughout the design development process. TS argues that:

- it has undertaken a number of public engagement events; including public exhibitions in November 2013, October 2014, August 2015, February 2016 and December 2016.
- the timing of these events coincided with key stages in the design development of the proposed scheme.
- at each of these events TS states that it welcomed feedback from local residents, landowners, property owners and other stakeholders.
- feedback from these events has been taken into account throughout the design development process.
- the public exhibitions in November 2013 and October 2014 were held to present the route options being considered at DMRB Stage 2 and to seek feedback on the emerging preferred option.
- on both occasions, OBJ/097 Partners and Trustees of the Firm of JM & LM Forbes and Firm of JM & LM Forbes (Lochdu) submitted feedback which was fully considered with a response issued.

Findings of Fact

Ownership

6.459 TS accepts that there is an error in identifying the objector properly in the draft CPO and that this could be modified. We find that the consultation on the draft Orders is an opportunity to identify such errors and resolve them. TS appears to have now recognised the correct name for the landowner and we find this to be acceptable. We consider that this correcting can be made by TS as an administrative matter without the need for Ministers' intervention.

Business Viability

-Severance

6.460 [ES Appendix A15.6](#) (CD006) confirms that Lochdu Farm and Broadley Farm are mixed operations with livestock including cattle and sheep along with cropping and some non-commercial woodland. We therefore find it reasonable to consider the individual farming unit to be made up of both farms. No parties dispute this.

6.461 [ES Figures 15.6h and 15.6i](#) (CD007) shows the proposed route through lands farmed by the Partners and Trustees of the Firm of JM & LM Forbes and Firm of JM & LM Forbes (Lochdu) denoted with the prefixes 217 and 219. [ES Appendix A15.7](#) (CD006) explains that the proposed scheme would result in a loss of 24.77 hectares of land, equivalent to 8% of the total land farmed. We find no reason to dispute this proportion and find that DMRB Volume 11, Section 3, Part 6: Land Use, paragraph 10.19 (CD049.18) requires the farming impact on the individual farming unit to be considered and included in the ES.

6.462 [DMRB Volume 11, Section 3, Part 6: Land Use](#) paragraph 6.3 (CD049.18) explains that agricultural assessments should focus on land-take, types of husbandry, severance and major accommodation works for access, water supply and drainage. ES Appendices A15.6 and A15.7 (CD006) do not suggest any failure to consider these matters.

6.463 DMRB paragraph 9.1 (CD049.18) elaborates on the points in paragraph 6.3 (CD049.18). Paragraph 9.1 bullet b) (CD049.18) explains that consideration of:

‘Land-take will include land taken directly by a scheme and also land which will no longer be viable for agricultural use, for example, because severance (the splitting of a holding into more than one part) makes it impossible to farm some land productively’.

6.464 We therefore find that the term ‘viability’ is a reference to whether the land in question could be used for agriculture rather than any reference to profitability of the land within any particular farm business. DMRB Volume 11, Section 3, Part 6: Land Use paragraphs 10.16 and 10.17 (CD049.18) explain that farm viability, as a result of the proposed scheme, should be considered and presented in the ES. We find that it is presented in ES Appendix A15.7 (CD006).

6.465 ES Appendix A15.7 (CD006) details the impacts of the proposed scheme on various fields and identifies the total land loss that would arise. There is no evidence to undermine these conclusions. Based on this, we find that that the business would experience a reduction in the scale of land available of 8%. Although covered in more detail below, we also find that accommodation works and mitigation would provide access to remedy severance, drainage, field boundary treatments and related impacts. We find that these actions would reduce the significance of impact compared with these measures not being undertaken. We also find that the evidence before us does not suggest the residual land would no longer be viable for farming as a land use.

6.466 ES Appendix A15.7 (CD006) concludes that the impact of the proposed scheme on the business would be ‘neutral’. OBJ/097 Partners and Trustees of the Firm of JM & LM Forbes and Firm of JM & LM Forbes (Lochdu) does not appear to dispute this. We understand that some parties consider the term ‘neutral’ to represent the status quo.

However, we find that [ES paragraph 15.3.61](#) (CD005) is clear that this is not its intended meaning. The definition provided in that paragraph makes clear that the term 'neutral' involves change and that this may result in a reduction or restructuring of activities. We also note the definitions of the terms 'beneficial' and 'adverse' in ES paragraph 15.3.61 (CD005). We find that the definition of 'neutral' accurately describes the anticipated impacts on the Partners and Trustees of the Firm of JM & LM Forbes and Firm of JM & LM Forbes (Lochdu)'s farming operations that would result from the proposed scheme and that the terms 'beneficial' and 'adverse' do not.

-Proposed underpass

6.467 ES Appendix A15.7 (CD006) and ES Figure 15.6h and 15.6i (CD007) illustrate the impacts on the objector's farm business identified through the agricultural assessment. These show that the proposed scheme would sever the southern sections of several fields and result in land being taken from several other fields.

6.468 We note from ES Figure 15.6h and 15.6i (CD007) that listed fields to the south of the proposed dual carriageway 219/3W, 219/4 southern part, 219/5 southern part, 219/9W, 219/11 southern part, 219/13 and 219/16 would be/continue to be accessible via the public road network (modified B9091) as shown in [draft SRO Plans SR15 and SR16](#) (CD003). Similarly ES Figure 15.6h and 15.6i (CD007) also show that fields 217/1, 219/1W, 219/2, 219/4 northern section, 219/5 northern section, 219/6W, 219/7, and fields 219/10W, 219/11 northern part and 219/12 would be/continue to be accessed directly or indirectly via the (modified) C1163, B9091, B9090 or C1170. This is also illustrated in draft SRO Plans SR15 and SR16 (CD003) with various new means of access provided where necessary. We also note the opportunities identified to merge several fields including, for example, the southern severed sections of fields 219/4 and 219/5.

6.469 This does not suggest to us that any field would be left inaccessible or that an underpass would be required since all fields could be accessed via the C1163 or B9091, and then via the C1170 and the B9090 proposed overbridge (PS13). We therefore agree with TS that there is no justification for an underpass.

-Drainage

6.470 [ES Figures 9.5o to 9.5q](#) (CD007) show the locations of proposed SuDS features in the vicinity of Lochdu and Broadley Farms. [ES Appendix A13.2](#) (CD006) contains the flood risk assessment based on the proposed scheme, with the Alton Burn defined as SWF22.

6.471 ES Appendix A13.2 paragraph 4.54, page A13.2.H-18 (CD006) shows that the Alton Burn flows west of the proposed SuDS pond at ch19800. ES Figures 9.5o and 9.5q (CD007) show the Alton Burn to run north east from here through land covered by Lochdu Farm (as shown in [TS097.01](#)) and then north through Nairn.

6.472 ES Appendix A13.2 paragraph 5.5 page A13.2.H-25 (CD006) concludes that there would be some increase in peak water level but that this would be unlikely to impact on the base of the agricultural land and that no further mitigation measures are proposed.

6.473 We attach weight to the fact that SEPA has not objected and find this to mean that the proposed SuDS arrangements are acceptable in principle. We are also therefore satisfied that appropriate procedures are in place for the future consideration of the design and detailed aspects of this, such as the potential impact on flood risk.

Development South of Nairn

6.474 It is important to consider the chronology of the A96 and proposals for development in the Inverness to Nairn corridor. The summary section of the [A96 Growth Corridor Development Framework 2007](#) (CD056) explains that it was prepared following broad strategic thinking about the growth of Inverness and the A96 corridor. This had already begun with the Inverness Local Plan 2006 (CD059) and related plans.

6.475 [Figure 2: The Green Framework](#) (CD056) contains a map showing the proposed A96 improvements from Inverness to Nairn including the Nairn Bypass. In the legend for that map appear the words 'A96 Dualling (precise route to be determined)'. We find this to be a recognition that no fixed route had been determined at that stage and therefore the maps within the document contain indicative routes (including a preferred route for the Nairn Bypass in Figure 3 (CD056)).

6.476 When the A96 Growth Corridor Development Framework (CD056) was published in 2007, it predated national level documents including the [STPR](#) (2009) (CD036) and two Infrastructure Investment Plans ([CD037.1](#) and [CD037.2](#)). This chronology and the history of the A96 proposal are described in [ES section 1.2](#) (CD005). Over the period since 2007 thinking evolved and the nature of the A96 improvements changed from partial to full dualling that forms the proposed scheme that is before us.

6.477 The [HWLDP](#) (CD061) and the [IMFLDP](#) (CD062) each form the development plan along with retained policies from the Inverness Local Plan (2006) (CD059) and the Nairn Local Plan (2000) (CD060) for the vast majority of the area covered by the proposed scheme. Both the HWLDP and the IMFLDP were able to benefit from the evolution in thinking that took place in the years before and, notably, since 2007, referred to above.

6.478 Paragraph two of the Foreword in the A96 Growth Corridor Development Framework 2007 (CD056) explains that the council 'will take the provisions set out in that document through the local development plan process in order to give it formal planning status'. It confirms that in the meantime the document forms supplementary planning guidance to the development plan for the area. This clarifies that the document never had the status of a development plan and was never intended to do so. We find this to be emphasised in HWLDP (2012) paragraph 10.2 (CD061).

6.479 The A96 Growth Corridor Development Framework 2007 Figure 3 (CD056) (also reproduced in objector letters TS097.01 and TS101.01) includes areas for housing. Figure 3 (CD056) represents these in three ways:

- those described in the key as 'housing allocations' are coloured yellow.
- a block coloured golden yellow which the key describes as a 'district centre (including housing)';
- those described in the key as 'housing' (are coloured pale orange/pink).

6.480 We have compared the land identified in the A96 Growth Corridor Development Framework 2007 Figure 3 (CD056) with the land identified for housing on page 52, Map 9: Nairn of the HWLDP (2012) (CD061) and on page 65 of the IMFLDP 2015 (CD062).

6.481 Map 9, page 52 of the HWLDP (CD061) identifies only some of the land indicated for development south of Nairn in the A96 Growth Corridor Development Framework 2007 Figure 3 (CD056). This land is identified as Nairn South in the HWLDP (CD061) and

contains a northern section identified as '2/3' and a southern section identified as '3/4'. The plan indicates that the northern section is proposed for delivery between 2011 and 2021, and, 2021 and 2032. It indicates that the southern section is proposed for development from 2021 to 2031 to post 2031. Paragraph 14.2 on page 51 of the HWLDP (CD061) makes clear that development of the longer term phases of Nairn South would be subject to transport infrastructure improvements in that locality.

6.482 The northern section of the site (CD061) corresponds with land identified on Figure 3 of the A96 Growth Corridor Development Framework 2007 (CD056) for commercial development and a district centre including housing. The southern section extends south as far as the C1170 and corresponds with land identified on Figure 3 (CD056) for housing. Overall this suggests that the HWLDP has considered all land in the locality and reached a conclusion to identify only some of it and then, only in timed phases dependent on supporting infrastructure. This indicates an immediate term future for Nairn South northern section and a longer term and less certain, infrastructure-constrained future for Nairn South southern section.

6.483 The map on IMFLDP page 65 (CD062) shows land allocations for Nairn. This includes allocated site NA8 Nairn South. This corresponds with the northern section of Nairn South on Map 9 of the HWLDP (CD061) (identified '2/3') and the golden area in the A96 Growth Corridor Development Framework 2007 Figure 3 (CD056) entitled 'District Centre (including housing)'. No other allocations of housing land for this area are made on page 65 of the IMFLDP (CD062).

6.484 We conclude that the A96 Growth Corridor Development Framework (CD056) and any land identified within it, has been superseded by the more recent thinking and status of the HWLDP (CD061) and the IMFLDP (CD062). We note from the introduction to the IMFLDP (on page 2 of CD062) that the IMFLDP joins the HWLDP and Supplementary Guidance as part of the Development Plan but that 'Any allocation and/or text in the HWLDP that relates to sites within this Plan [the IMFLDP] will be updated by this Plan's [the IMFLDP's] content'. We find this to mean that the Nairn South housing land allocation is as defined in site allocation NA8 in the IMFLDP and that no other land is allocated in the development plan nearby.

6.485 Land identified in [ES Figure 15.3o](#) (CD007) as site LA15 corresponds with IMFLDP (CD062) land allocation NA8. [ES Appendix A15.5](#) on page A15.5-3 (CD006) confirms that LA15 (site NA8) is identified as '25.9 hectare mixed use site including 520 homes, business and community'. This corresponds with the 520 homes referenced in the descriptive section for NA8 Nairn South on IMFLDP page 67 (CD062). The updated position in Development Land Report Appendix A (TS211) confirms no changes since the DMRB stage 3 assessment in ES Appendix A15.5 (CD006). This continues to conclude that the small amount of land acquisition proposed for side road improvements would not adversely affect site capacity.

6.486 In [TS097.01](#) and [TS101.01](#) each objecting party refers to paragraphs 3.3, 3.5, 4.34 and 4.39 of the IMFLDP (CD062). We have considered each of these individually and as part of the wider plan below.

6.487 IMFLDP paragraph 3.3 (CD062) refers to road improvements including the A96 and the Nairn Bypass. These each form part of the proposed scheme.

6.488 IMFLDP paragraph 3.5 (CD062) refers to the allocation of land for new development in the right places and for the right uses. One could debate at length what is meant by 'right' in each context, however, it would be illogical to conclude that the plan would regard its own allocations as anything other than the right development in the right place.

6.489 IMFLDP paragraph 3.5 (CD062) bullet two refers to allocation of land for new houses in an attractive environment close to existing facilities. It refers specifically to the west, south and east flanks of Nairn. This accurately describes the housing allocations made on IMFLDP page 65 map (CD062) shown to the east, south and west of Nairn.

6.490 IMFLDP paragraph 4.34 (CD062) contains several bullet points relating to Nairn. In particular we note those referring to the A96, the Nairn bypass and allocations with the capacity for around 1,900 new homes. It is clear to us that the development plan sees improvements in transport infrastructure and new homes as component parts of the growth of Nairn. We take those references to the A96 and the Nairn bypass to refer to what is now the proposed scheme.

6.491 It is not our role to determine whether the council has or has not identified enough effective land for 1,900 homes since this does not form part of the proposed scheme. Even were a shortfall to exist, the evidence does not suggest that we or indeed anybody else, including TS, should have assumed that the land referenced by the objectors (be it Nairn South southern section or other land south of Nairn) would automatically fulfil this role.

6.492 IMFLDP paragraph 4.39 (CD062) recognises the limited capacity of transport infrastructure south of Nairn and identifies the need for local improvements prior to development of land in that locality besides Nairn South (NA8). This continues to reflect the original provisions of the HWLDP (CD061) referenced above.

6.493 We further note from page 67 (IMFLDP – CD062) that site NA8 will be subject of a masterplan that will consider a variety of physical matters; including transport infrastructure amongst other things. This appears to focus specifically on matters that could arise from development of the site and makes no reference to the proposed scheme.

6.494 ES Appendix A15.5 (CD006) identifies no impact category, land take or potential impacts for site LA15 (site NA8 – CD062). We find this to be because only the southernmost section of NA8 falls within the 500 metre study area on the north side of the proposed scheme (shown in ES Figure 15.3o – CD007). ES Figure 15.3o (CD007) shows that neither the proposed dual carriageway nor any of the proposed side road improvements would result in land take or amenity impacts for site LA15 (site NA8) and this is confirmed in ES Appendix A15.5 (CD006) and [Development Land Report](#) Appendix A (TS211). As already noted above these two documents also confirm no likely impact on the capacity of the site. We find no evidence to reach a different conclusion. We therefore find no reason to suggest that the proposed scheme would blight the proposed development of 520 homes (and other uses) on allocated site NA8 – Nairn South (CD062).

6.495 [ES Figures 15.4h and 15.4i](#) (CD007) show extant planning permissions granted between June 2013 and June 2016, as described in ES paragraphs 15.3.13 (CD005). These show no planning permissions for housing development have been granted on land south of Nairn outside of site NA8, with the exception of small scale proposals near Balnaspirach House, which does not form part of Nairn South (northern or southern sections as identified in HWLDP – CD061).

6.496 TS's Development Land Report Appendix A page 15 (TS211) makes reference to assessment of Nairn South (LA15). It also refers to Nairn South Long-term (LA25 – from DMRB stage 2). This identifies a direct land take of 0.8 hectares. This table makes clear that no assessment was carried out for this land at DMRB stage 3 because the land in question was not allocated in the IMFLDP (CD062). This is consistent with our conclusions (above) from the IMFLDP that the Nairn South allocation was modified in that plan to exclude land covered by LA25 and, as such, we find no irregularity with regard to this.

6.497 Overall, therefore, we find no evidence that the proposed scheme would affect the allocated area of NA8 (for 520 homes), as suggested by the objectors. The southern section of Nairn South in HWLDP page 52 (CD061) was identified as a longer term proposal subject to transport infrastructure considerations. However, this was not allocated in the IMFLDP (CD062). The southern, eastern and western boundaries of this southern area would see side road improvements under the proposed scheme but these would not substantively alter its area (ostensibly Plot 1710 – CD001). Therefore, should the planning authority extend the Nairn South allocation into that land in a subsequent LDP, we see no reason why the proposed scheme would substantively affect that. We find that locations outside of site NA8 (LA15), that were shown in the A96 Growth Corridor Development Framework 2007 (CD056) as potential future development areas, have no development status as they have no extant planning permissions and are not allocated in the adopted LDP. Similarly, no evidence has been provided to suggest this land is proposed for allocation in an emerging LDP.

6.498 We further find the 520 homes for site NA8 (CD062) corresponds to references in both TS097.01 and TS101.01 to this number of homes and the conclusion of missives. We find this to suggest that reference is being made in the objections to site NA8 and not to other land such as Nairn South southern section, or at least that the references to each are being used interchangeably. If 520 homes on site NA8 represents the objectors' total interests then it appears this would be unaffected, and not blighted, by the proposed scheme. We also find that, for the reasons stated above, if the reference to the proposed scheme's effects relates to land other than that site (NA8), such land does not have the status of a development plan allocation.

6.499 Whilst we note that OBJ/097 refers to compensation claims for £5 million this appears to refer to the 520 homes described above on site NA8. Compensation is a matter for the respective parties and the District Valuer. Compensation is not a matter for this inquiry.

6.500 Overall we find no evidence to suggest we should conclude that the proposed scheme is unsupportive of the long term growth of Nairn.

Engagement

6.501 We note the disagreement between TS and OBJ/097 Partners and Trustees of the Firm of JM & LM Forbes and Firm of JM & LM Forbes (Lochdu) as to the adequacy of the engagement process. However, [ES section 6.2](#) (CD005) shows that TS has used a range of engagement techniques at different stages of the process. Display and related material from the various engagement events is presented in TS231 to TS236. There is no evidence to suggest we should doubt that these activities took place and the objector does not argue this. OBJ/097 Partners and Trustees of the Firm of JM & LM Forbes and Firm of JM & LM Forbes (Lochdu) also do not appear to dispute TS's contention that they provided

feedback to TS in at least one of the engagement exercises. This does not suggest we should find the engagement process to be deficient.

Overall

6.502 These factors persuade us the TS has considered the appropriate matters of route selection (See Chapter 2: Matters of Principle) and the appropriate development issues in this locality. The evidence before us does not suggest we should conclude differently. We therefore find that there has been no lack of engagement and that strategic housing considerations have been taken into account, rather than overlooked. There is no suggestion from the evidence before us that there has been any lack of coordination between strategic growth and the road system. Indeed the preferred route has been clear since 2014. The evidence suggests that the objections raised would either be avoided/limited by proposed mitigation/accommodation works; or, would not come about. Whilst there would be some residual impacts / effects these would not require additional mitigation and would not override the public interest in providing the proposed scheme. These matters do not suggest we should recommend that Scottish Ministers modify the draft Orders or refuse to confirm them.

OBJ/098 Mr Charles William Hynman Allenby and Mr James David Carnegie-Arbuthnott (Executors of the Estate of Charles Hynman Allenby)

6.503 OBJ/098 Mr Charles William Hynman Allenby and Mr James David Carnegie-Arbuthnott (Executors of the Estate of Charles Hynman Allenby), referred to in full or shortened to the 'The Estate', own land at Balblair Farm (P0220) on the west side of the River Nairn. The Estate also owns Crook Cottage and Crook Farm (P0191) and Crook Wood (P0190) on the east side of the River Nairn.

[[ES Appendix A15.6](#) page A15.6-5 makes reference to 'Balbair Farm P0220' the reporters consider this to be a typing error that should refer to Balblair Farm P0220].

Objections

Title

6.504 The Estate argues that the [draft CPO](#) (CD001) incorrectly refers to 'Allanby' rather than 'Allenby'.

Environmental and amenity impacts

-Noise and vibration

6.505 The Estate disagrees with the assessment in the ES with regard to noise impacts and argues that:

- the proximity of the proposed scheme to Balblair House, Crook Cottage and Crook Farm House would bring adverse noise impacts and impacts on amenity.
- the absolute noise levels at Crook Farm dwelling appear to exceed the 55 dB noise threshold.
- more information is needed as to how LNRS would be installed and enforced by TS.
- no account has been taken of construction noise.

-Air quality

6.506 The Estate argues that the proximity of the proposed scheme to Balblair House, Crook Cottage and Crook Farm House would bring adverse air quality impacts and impacts on amenity.

-Visual effects and light pollution

6.507 The Estate disagrees with the assessment in the ES with regard to visual impacts and argues that the proximity of the proposed scheme to Balblair House, Crook Cottage and Crook Farm House would bring adverse visual and light impacts and impacts on amenity. It also seeks clarity about how the proposed scheme would be lit and how the proposed dynamically controlled lighting would operate.

-Ecology

6.508 The Estate disagrees with the assessment in the ES with regard to ecological impacts and argues that the impact on red squirrels, water voles and other habitats at and around Crook Wood is unacceptable and is inadequately assessed.

Business impacts

-Proposed land take at Balblair Farm (Plot 1708)

6.509 The Estate objects to the proposed compulsory purchase of Plot 1708 arguing that:

- acquisition of Plot 1708 would deprive it of productive arable/grass production and woodland, when alternative, less productive land is available on the south side of the B9091.
- acquisition of this plot would land lock The Estate's field to its north.
- a new access is required at the northeast side of Plot 1708 opposite the junction of the B9091/C1170 and heritable and irredeemable rights of access over Plot 1708 at field access 407 ([draft SRO plan SR16 – CD003](#)) for access by people and heavy agricultural machinery via a 30 foot-wide gate to cater for agricultural machinery.

-Proposed land take at Crook Cottage and Crook Farm (Plots 1715, 1716, 1801, 1802, 1803 and Plots 1804, 1805, 1806, 1808, 1835 and 1836).

6.510 The Estate objects to the proposed compulsory purchase of the plots listed above at Crook Cottage and Crook Farm. The Estate argues that:

- it is unclear if Plot 1801 is for the siting of a bat box.
- TS must set out the specifics of the proposed rerouting of foot and cycle routes proposed for Plots 1715, 1716, 1802, 1803 and 1804 and the engineering requirements for Plot 1804.
- acquisition of Plots 1805 and 1806 would result in loss of production and land lock the remaining land.
- mitigation must be provided at no cost to The Estate for the drainage impacts, the removal of stock proof and other fencing and the relocation of water troughs.
- details of the proposed soakaway at Plot 1808 are required along with confirmation that it would not impact on The Estate's adjoining arable land.
- it requires heritable and irredeemable access rights for people and heavy agricultural machinery over Plots 1805 and 1806 (accesses 410 and 413 on draft SRO Plan SR17 - CD003) and Plots 1835 and 1836 at no cost to The Estate.
- if the proposed new means of access are for the sole use of The Estate then this provides a compelling case for transfer of ownership to The Estate following completion of the road without reference to the Crichel Down Rules.

-Proposed land take at Crook Wood (Plots 1811, 1812, 1813, 1816, 1817, 1839 and 1840)

6.511 The Estate objects to the proposed compulsory purchase of the above listed plots at Crook Wood. The Estate argues that:

- acquisition of these plots would result in loss of productive commercial woodland and that felling is expected to commence shortly on Plots 1811, 1813, 1839 and 1840.
- acquisition of Plot 1813 is not justified and would not be sustainable given that it is surrounded by commercial woodland to be felled in the near future.
- the proposed felling in the vicinity of Plot 1813 may not have been factored into the decision to place bat boxes.
- confirmation is required that a felling licence would not be dismissed by various agencies because of proposed bat mitigation on Plot 1813.
- if the Scots Pine on Plots 1816 and 1817 and trees on other land, including Plot 1839, are felled this would risk the rest of the commercial timber due to wind blow/windthrow.
- TS's acknowledgement of the impact on commercial woodland due to wind blow and the requirement for the contractor to develop and apply appropriate mitigation are too vague and more detail is required of what this mitigation would be.
- reliable evidence must be provided that the remaining land would not flood due to the SuDS ponds at/close to Plots 1816 and 1817.
- the exact nature of rights to be acquired on Plot 1839 and what this would mean for The Estate's rights must be clarified.
- heritable and irredeemable rights of access are required for people and heavy agricultural machinery over Plots 1816, 1817 and 1839 at no cost to The Estate.
- it requires new stock proof fencing at no cost to the Estate due to presence of Roe Deer near to Plots 1816 and 1817.

-Reasons for land acquisition

6.512 The Estate argues that the draft CPO does not explain why each plot listed is proposed to be acquired. The Estate contends that this fails to demonstrate that the draft CPO would be in the public interest. As such it argues the draft Orders are contrary to the European Convention on Human Rights, as applied by the Human Rights Act 1998, including Article 1 of the first protocol: Protection of property.

6.513 The Estate goes on to seek clarity for each plot listed above for why compulsory purchase is proposed.

-Drainage

6.514 The Estate disagrees with the assessment in the ES with regard to drainage. It raises some specific matters with regard to individual Plots above.

-Access

6.515 The Estate disagrees with the assessment in the ES with regard to access. It considers that it is not acceptable to carry out detailed design works for proposed access after the inquiry. It also raises specific access concerns with regard to various plots as set out above.

-Fencing

6.516 The Estate argues there to be a need to provide sufficient stock-proof fencing during construction.

-Mitigation and accommodation works

6.517 The Estate argues that:

- the mitigation measures do not specifically address the measures to be implemented or how these are to be enforced.
- TS has not set out how mitigation measures would be delivered.
- mitigation must include specific measures that are binding and enforceable against Scottish Ministers and their contractors.

6.518 The Estate wishes to agree a package of accommodation works and queries whether these would cover the costs of professional fees.

-Business viability

6.519 The Estate disagrees with the assessment in the ES with regard to viability.

Development south of Nairn

6.520 The Estate objects to the proposed scheme because it does not include a junction south of Nairn. The Estate appears to seek this to improve its chances of gaining planning permission for development in that locality. It notes that it was refused planning permission for housing development at appeal (DPEA reference PPA-270-2097).

6.521 Some aspects of this objection argue that an alternative route should be chosen for the proposed scheme and that a junction should be provided. These arguments are considered as part of the route selection debate in Chapter 2: Matters of Principle.

Transport Scotland's Response

Title

6.522 TS advises that the spelling 'Allanby' was taken from the Title Deeds for both Balblair and Crook Farms. TS confirms that:

- it has passed this matter to its solicitors who will confirm if it is possible to make the requested amendment.
- any changes confirmed by its solicitors would be reflected in the Made CPO.

Environmental and amenity impacts

-Noise and vibration

6.523 TS argues that it has considered whether noise mitigation should be offered based on the noise mitigation strategy ([ES paragraphs 8.2.24 to 8.2.34](#) – CD005). TS argues that this is based on [DMRB HD213/11](#) (CD049.19) and WHO guidance ([CD090](#) and [CD091](#)). TS confirms that noise mitigation would be considered where the noise impact is assessed as:

- Slight/Moderate adverse or worse – equivalent to at least a 1 dB noise level change in the short term (at year of opening) and/or at least a 3 dB in the long term (typically within 15 years later) and, also where the predicted ground floor façade noise level exceeds 59.5 dB $L_{A10,18h}$.
- Slight/Moderate adverse or worse, in the long-term with a predicted noise level that exceeds 55 dB $L_{night,outside}$.

6.524 TS argues that, of all the high noise sensitive properties owned by The Estate in the vicinity of the proposed scheme, the dwelling at Crook Farm would be the property with the highest noise level exposure, with the proposed scheme in place. TS explains that the reported noise levels and significance of noise impacts presented in the ES relate to the predicted least beneficial impacts at the dwelling for each scenario comparison (where there would be the greatest adverse noise level change), in accordance with the approach contained within DMRB HD213/11 (CD049.19).

6.525 TS explains that to determine this 'least beneficial' noise level change, modelled receptor points are positioned within the computer model at one metre from every façade of the building as shown in [TS098.02](#) Figure 1. The receptor with the highest predicted noise level at the dwelling is the triangular 'point' shown in TS098.02 Figure 1.

6.526 TS confirms that for noise mitigation to be recommended at a residential property, the predicted change in noise level and the predicted absolute noise level must both exceed the thresholds in the noise mitigation strategy. TS also confirms that assessment of both is carried out for DMRB HD213/11 (CD049.19) and the noise levels associated with the least beneficial noise level changes are reported.

6.527 TS summarises the noise levels and significance of noise impacts at the receptor with the highest predicted noise level in TS098.02 Table 1 (reproduced below).

TS098.02 Table 1: Noise Levels and Significance of Impacts at the Noisiest Crook Farm Receptor Point - Crook Farm Dwelling

Scenario	Noise Level L _{A10,18h} dB	
Baseline Year: Do Minimum (2021) [DMB]	40.4	
Baseline Year: Do Something (2021) [DSB]	56.0	
Future Year: Do Minimum (2036) [DMF]	42.1	
Future Year: Do Something (2036) [DSF]	57.0	
Scenario	Noise Level difference (dB)	Significance of Impact
DMB vs DSB	15.6	Large/ Very Large Adverse
DMB vs DMF	1.7	Slight Adverse
DMB vs DSF	16.6	Large/ Very Large Adverse

Note:

Baseline Year is the assumed year of opening for assessment purposes.

Future Year is fifteen years after the Baseline Year.

Do-Minimum describes the situation without the proposed scheme.

Do-Something is with the proposed scheme in place.

6.528 TS argues that:

- the noise analysis (TS098.02 Table 1 above) shows that, based on noise levels for the Do-Something scenarios (Baseline and Future years), the absolute noise levels at this receptor remain at least 2.5 dB below the absolute noise level mitigation threshold.
- Receptor-specific noise mitigation is not recommended for this dwelling.
- since mitigation is not required for this dwelling, as it is predicted to be the dwelling exposed to the highest level of road traffic noise from the proposed dual carriageway, neither would mitigation be required at Crook Cottage.
- low noise road surfacing (LNRS) is proposed for the new dual carriageway.

6.529 In [TS098.03](#), TS argues that the 55 dB threshold, quoted by The Estate as having been exceeded, is the night time noise threshold and that the figures quoted in TS098.02

Table 1 (above) are day time figures to be considered against the 59.5 dB LA10,18h noise threshold.

6.530 TS argues that the night time noise level ($L_{\text{night,outside}}$) is an A-weighted, free field, continuous equivalent noise level ($L_{\text{Aeq,T}}$), one metre from a façade, for the time period (T) 2300 – 0700, which can be derived from the predicted LA10,18h noise level using guidance contained in the [Transport Research Laboratory \(TRL\) report: Converting the UK Traffic Noise Index LA10,18h to EU Noise Indices for Noise Mapping \(TRL 2002\)](#) (CD085). TS quotes Equation 4.11 (Page 29 of TRL 2002 – CD085) as follows:

$$L_{\text{night,outside}} = 0.90 \times L_{\text{A10,18h}} - 3.77 \text{ dB}$$

6.531 TS therefore concludes that, although the predicted daytime Do-Something noise levels exceed 55 dB LA10,18h by 1 dB and 2 dB, for the Do-Something Baseline Year and Future Year, respectively, the corresponding predicted $L_{\text{night,outside}}$ noise levels would be 46.6 dB and 47.3 dB, respectively. It argues that both of these $L_{\text{night,outside}}$ noise levels are at least 7.5 dB below the night time absolute noise mitigation threshold. For these reasons TS concludes that the noise mitigation thresholds would not be met or exceeded for day or night time noise at Crook Farm.

6.532 TS does not appear to have responded to the objector directly regarding construction noise. However, we note that this would be covered by a CEMP, as outlined in [ES Table 20.01](#) (CD005) under Mitigation Item GR1.

6.533 TS confirms that low noise road surfacing would be included as a requirement in the construction contract.

6.534 TS confirms that [ES chapter 8](#) (CD005) reports on the vibration assessment. It explains that, with regards to operational vibration, there are two effects of traffic induced vibration:

- the effects on buildings; and,
- the disturbance caused to occupiers of properties.

6.535 TS states that:

- ground-borne vibration was not considered in the assessment as evidence indicates that it is much less likely to be the cause of disturbance to property occupiers or result in effects on buildings.
- there is no evidence that traffic induced air-borne vibration can cause even minor damage to buildings. However, it can be a source of annoyance to local people, causing vibrations of flexible elements within the building, such as doors, windows and, on occasion, floors of properties close to the carriageway.
- accordingly, the issue of DMRB defined nuisance at properties caused by road traffic induced vibration was evaluated.

6.536 However, TS argues that, given the separation between the proposed scheme and the Estate's property, vibration annoyance was not assessed. This, TS argues, is because, in accordance with DMRB, the vibration-bothered relationship is relevant up to a distance of 40 metres from the carriageway, and the Estate's property is approximately 150 metres from the nearest proposed carriageway.

6.537 TS therefore concludes that, given the relatively large separation between the proposed scheme and the Estate's property, road traffic induced airborne vibration is not considered to be an issue at the property.

-Air quality

6.538 TS confirms that [ES Chapter 7](#) (CD005) reports on the air quality assessment for the proposed scheme and that it did consider construction dust. TS argues that the assessment concluded that the implementation of best practice dust mitigation measures during the construction phase (through a construction environmental management plan (CEMP) to be approved with The Highland Council), would reduce the impact of dust on surrounding areas, and that there would not be a significant effect.

-Visual impacts and light pollution

6.539 TS confirms that [ES Chapter 10](#) (CD005) reports on the visual assessment of the proposed scheme with a linked landscape assessment reported in [ES Chapter 9](#) (CD005).

6.540 TS argues that the mitigation of adverse visual and landscape effects is closely related and inter-dependent. It therefore states that mitigation of visual effects is incorporated in the landscape mitigation measures described in [ES Section 9.6](#) (CD005) and illustrated in [ES Figure 9.5](#) (CD007).

6.541 TS confirms that the assessment of visual effects identified Crook Farmhouse and Crook Cottage as visual receptors to the proposed scheme (receptors 125 and 124 respectively, as shown on [ES Figure 10.3g](#) – CD007).

6.542 For Balblair House TS argues that:

- the potential visual effects to Balblair House were considered to be negligible as it would have no visibility of the proposed dual carriageway due to the screening provided by the existing intervening vegetation, buildings and the carriageway being in a cutting.
- views towards the widened B9091 would also be restricted due to the angle of view and screening provided by vegetation surrounding the property.

6.543 For Crook Farmhouse (receptor 125) TS argues that:

- the assessment identified that the visual effects on Crook Farmhouse at winter in the year of opening would be significantly adverse (Moderate/Substantial) due to the loss of woodland surrounding the property allowing visibility of the realigned Househill-Raitloan-Howford Road (C1175).
- by the summer 15 years after opening, visual effects would reduce below significant to Slight/Moderate following the establishment of proposed mitigation woodland.

6.544 For Crook Cottage (receptor 124) TS argues that:

- the assessment identified that the visual effects on Crook Cottage would be limited to Negligible/ Slight during the winter in the year of opening,
- by summer 15 years after opening, visual effects would reduce to Negligible due to the screening provided by the existing mature woodland around the property, which would screen views of the proposed dual carriageway, with the realignment of the adjacent local road likely to be the only element visible.

6.545 TS confirms that:

- the assessment included the effects of vehicle headlights and road lighting in [ES paragraphs 10.5.1 and, 10.7.6](#) (CD005).

- the six main grade-separated junctions on the proposed dual carriageway would be lit using focused/directional light beam (no emission above the horizontal) dynamically controlled lighting that dims or goes off when traffic is absent.
- no grade-separated junctions are proposed in the vicinity of Balblair Farm, Crook Farm, Crook Cottage or Crook Woods.
- the realigned C1175 and proposed dual carriageway at this location would not be lit.
- the PS15 C1175 Underbridge ([ES Figure 9.5g](#) - CD007) would be lit, but the effects of the lighting would not be visible from Balblair House, Crook Farmhouse and Crook Cottage.

-Ecology

6.546 With regards to assessment TS argues that:

- impacts on red squirrels, water voles and 'other habitats' were fully assessed.
- the ecological surveys and impact assessment were undertaken by professionally qualified ecologists and in accordance with ecological best practice standards as endorsed by the Chartered Institute of Ecology and Environmental Management and in line with international conventions and directives and national legislation.
- SNH was consulted about the scope and methods used to understand the nature conservation interest potentially affected by the proposed scheme.
- the approach to the mitigation was agreed in ongoing consultation with SNH.

6.547 TS argues that potential impacts to red squirrel were identified in the vicinity of Crook Wood in [ES Table 11.10](#) (CD005) and that proposed mitigation includes:

- pre-construction surveys and a red squirrel species protection plan;
- control of working areas;
- provision of a dry mammal underpass and culvert with provision for mammal crossing; and,
- new woodland planting and enhancement of the woodland to be retained.

6.548 TS argues that the above mitigation should mean that:

- in the long-term, there would be minor residual impacts to this species ([ES Table 11.11](#) - CD005).
- a medium-term negative residual impact was predicted during the take-up phase of the proposed planting and habitat creation ([ES paragraph 11.7.3](#) - CD005).

6.549 TS confirms that landowner consultation (with OBJ/098 The Estate) on 30 September 2015, indicated water vole presence in the vicinity of Crook Wood. However, TS argues that desk-based research, including data searches covering the area and targeted field surveys by experienced ecologists, could not detect the presence of the species in the area. As a result TS predicts no likely impacts to water vole at this location.

6.550 TS confirms that impacts to woodlands were identified in the vicinity of Crook Wood. However, it argues, these would be mitigated through new woodland planting reflecting native woodland mixes, supporting local and regional Biodiversity Action Plan objectives, and delivered via a woodland habitat management plan ([ES Table 11.11](#) – CD005). TS also considers this to cover the objections relating to bat habitats and tree felling.

Business impact

-Proposed land take at Balblair Farm (Plot 1708)

6.551 TS argues that:

- the assessment in [ES Appendix A15.7](#) (CD006) recognises that woodland and arable/grass production are the current uses Balblair Farm fields 220/1W and 220/2 ([ES Figure 15.6h](#) - CD007), which cover Plot 1708.
- Plot 1708 is required for the widening of the existing B9091 Croy–Clephanton–Kildrummie–Nairn Road, and this requires land north and south of the road, including Plot 1708 and Plot 1709 in order to avoid potential impacts on a major utility pipeline, its wayleave and exclusion zone that run parallel to the south of Plot 1709.
- the existing field access within Field 220/2 opposite the C1170 would be replaced by new means of access 407 ([draft SRO Plan SR16](#) - CD003) because the existing location, on the inside of a curve, does not comply with design standards and guidelines mainly due to junction visibility/sightlines (i.e. a vehicle exiting the field would block the visibility of vehicles on the B9091).
- as part of the proposed improvement works on this road, it is necessary to relocate this access to a location which complies with current standards.
- the proposed new field access has been located in the corner of the field, to the south west of its existing location and positioned at a suitable distance from other nearby field accesses in accordance with The Highland Council’s road guidelines.
- the proposed field access would be large enough to accommodate gated access to a maximum of 30 feet (9 metres) in width.
- it may be possible to offer part of the land required for construction back to The Estate under the Crichel Down Rules.

-Proposed land take at Crook Cottage and Crook Farm (Plots 1715, 1716, 1801, 1802, 1803 and Plots 1804, 1805, 1806, 1808, 1835 and 1836).

6.552 TS argues that:

- Plots 1716 and 1801 are required for bat boxes (ES Figure 9.5q - CD007) to mitigate bat roosting habitat that would be lost near Crook (Farm) and Crook Cottage.
- Plots 1715, 1802 and 1803 are required for servitude rights to secure access to Plots 1716 and 1801 for installation and future monitoring and maintenance of the bat boxes.
- these plots have been identified as suitable locations for bat boxes, due to the presence of suitable mature trees in an area frequented by bats.
- these boxes would be put up prior to construction and would be inspected for activity during and after the construction.
- these locations would allow access on foot for monitoring and maintenance from the adjacent path.

6.553 In TS098.02 TS confirms it would be willing to lease back Plots 1716 and 1801 to The Estate with restrictions. However, in [TS098.04](#) TS acknowledges that The Estate no longer wishes this.

6.554 TS states that Plot 1804 would be needed for the PS14 River Nairn Underbridge, realignment of paths on the east bank of the River Nairn, associated earthwork gradients and landscape and ecological mitigation planting (deciduous woodland in ES Figure 9.5q – CD007). In TS098.04, TS provides [DMRB stage 3 Sheet 16 of 22 Figure 3.1p](#) (CD009) which show the proposals for Plot 1804 including site profiles and gradients.

6.555 TS states that Plot 1805 is required for the dual carriageway, NMU shared use paths, realignment of the C1175 ([ES Figure 4.1i](#) - CD007) and essential environmental mitigation identified in ES Figure 9.5q (CD007).

6.556 TS confirms that ES Appendix A15.7 pages A15.7-34 to A15.7-37(CD006) identifies:

- Crook Farm fields 191/3, 191/4 and 191/5 that are currently used for arable and grass production as being affected by acquisition of Plot 1805 ([ES Figure 15.6i](#) - CD007 and draft CPO sheet 18 of 23 – CD001).
- severance impacts and proposed mitigation for the three affected agricultural fields with two new means of access (410 and 413 in [draft SRO](#) Plan SR17 - CD003) from the C1175 road into the fields lying to the north and south of the proposed dual carriageway.
- mitigation including the opportunity to restructure field boundaries and merge fields to create more manageable field sizes and shapes.

6.557 TS confirms that:

- the proposed new means of access have been designed to an appropriate standard for their proposed use.
- the design prepared to date is an outline design, developed in sufficient detail for the purposes of preparing the ES and publishing the draft Orders.
- the final detailed design of all aspects of the proposed scheme, including farm and field accesses would be carried out closer to the time of construction and would be the responsibility of the Design & Build contractor.
- there would be further consultation with The Estate prior to completion of the detailed design, however these accesses would be suitable to allow access and egress by pedestrians and heavy agricultural machinery.
- that environmental mitigation deemed necessary for the proposed scheme would be delivered at a cost to the scheme and not to the Estate.
- if, following construction of the proposed scheme, part or all of the land purchased for the construction of the new accesses were deemed surplus to requirements, the Scottish Ministers may offer to sell this land back to The Estate in line with the Crichel Down Rules.
- TS confirms that mitigation measures in relation to drainage, fencing and relocation of water troughs are covered for all The Estate's property as a whole rather than just Plot 1805.

6.558 TS states that Plot 1806 is required for the new dual carriageway, new shared use NMU paths (which would be in cutting at this location), the realignment of the C1175 and essential environmental mitigation identified in the [ES Figure 9.5q](#) (CD007). TS states that realignment of the C1175 requires:

- the road to be vertically realigned into a cutting so it could pass under the proposed dual carriageway ([ES Figure 4.1i](#) -CD007) with sufficient vehicle clearance to meet The Highland Council guidelines.
- straightening of the bend between Crook Farm and Crook Cottage to improve sightlines and the safety of road users and property accesses in this area, and additional passing places would be provided.

6.559 TS notes that acquisition of Plots 1805 and 1806 would result in other fields being 'land-locked'. TS confirms that access to the area west of Plot 1806 would be maintained via a new means of access 410 (draft SRO Plan SR17 - CD003) at no cost to The Estate.

6.560 TS states that Plot 1808 is required for widening and improving the existing C1175, improvements to the existing access to Crook Farm (ES Figure 4.1i - CD006) and construction of a soakaway in the field north of the Crook Farm access to treat and attenuate surface water run-off as part of the C1175 improvement works.

6.561 TS states that the ES Figure 15.6i (CD007) and ES Appendix A15.7, page A15.7-34 to A15.7-37 (CD006) identify Plot 1808 as affecting land interests at Crook Farm field 191/1 which is presently used for arable/grass production.

6.562 For the proposed soakaway at Plot 1808 TS argues that:

- soakaways are the preferred method of managing surface water from roads located away from a public sewer or water course
- soakaways are designed to attenuate the initial first flush of surface water and enable effective pollutant removal and controlled percolation into the ground.
- a specimen design for the ES and draft Orders was prepared following best practice guidance to release water at an efficient rate to then allow sufficient storage volume for the next rainfall event.
- the infiltration rate would be obtained from a site investigation that also considered soil properties and hydrogeology observations at the proposed location.
- the proposed design uses a trench method with a closed network of perforated pipes laid through granular filter material with inspection chambers for maintenance and monitoring.
- in extreme rainfall events the exceedance flow-path would follow the natural topography, flowing in a south-easterly direction to a low point within woodland.
- together with proposed local landscaping, this vegetation would provide additional uptake and transpiration benefits.
- based on this assessment, there would be no risk to farming activities within the adjoining arable land.
- the design and build contractor would prepare a detailed design of the road drainage system, however the same criteria and standards would apply as has been the case for the specimen design.

6.563 TS argues that Plots 1835 and 1836 are required to allow the existing access to Crook Farm to be reconstructed as a result of the realignment of the C1175 (ES Figure 4.1i - CD007).

-Proposed land take at Crook Wood (Plots 1811, 1812, 1813, 1816, 1817, 1839 and 1840)

6.564 TS states that:

- Plot 1812 is required for a servitude right for Scottish Ministers to have a legal right of access to bat boxes proposed for Plot 1813 (these are proposed mitigation of bat roosting habitat that would be lost near Crook (Farm), Crook Cottage and along the River Nairn).
- Plots 1811, 1839 and 1840 are required for realignment of the C1175, including a new passing place and construction of new means of access 412 (draft SRO Plan SR17 - CD003).
- Plot 1839 is the location of a current access track and Scottish Water air valve. The existing track would need to be realigned vertically in order to meet The Highland Council safety standards as a result of the C1175 realignment
- TS confirms that the construction of the necessary earthwork slopes for the replacement access track at Plot 1839 would require a small area of existing woodland within the

adjacent Plots 1840 and 1811 to be felled. However, as much of this woodland as possible would be retained.

- ES Appendix A15.7, page A15.7-55 (CD006) and ES Figure 15.6i (CD007) identify land at Crook Wood field 190/1W as being affected by proposed land-take which is currently commercial woodland.
- a windthrow assessment would be carried out by TS's appointed contractor.
- if, following construction of the proposed scheme, part or all of the land purchased for the construction of this new means of access is deemed surplus to requirements, the Scottish Ministers may offer to sell this land back to The Estate.

6.565 TS argues that Plot 1813 was chosen as a suitable location for bat mitigation given proposed works at Crook (Farm), Crook Cottage and at the River Nairn due to the presence of suitable mature trees in an area which is in close proximity to the habitat which is expected to be lost, as well as its accessibility for placement, maintenance and monitoring of bat boxes.

6.566 In TS098.02 TS confirms its willingness to lease back to The Estate Plot 1813 with limitations on usage. However, in TS098.04, TS notes The Estate's proposals to fell trees shortly on plots 1811, 1812, 1813 and 1840. For Plot 1813 TS confirms that if felling had already taken place then it could erect telegraph-style poles for bat boxes or, alternatively, it would be willing to discuss relocation to another suitable location within this woodland area which meets the requirements. TS confirms that any discussions would take place following the public inquiry. TS also confirms that subject to a suitable agreement being reached, involving the voluntary acquisition of an alternative plot and servitude rights of access to this, then Plots 1813 and 1812 could be removed from the CPO before it is made.

6.567 TS does not consider that the proposed ecological mitigation within Plot 1813 would lead to restrictions on the management of the wider woodland beyond with respect to forestry operations and the presence of bats. It confirms that:

- all thinning and felling operations in the remainder of the woodland would be able to go ahead with no additional restrictions, as the size of Plot 1813 (approximately 0.2 hectares) should prevent any compromise of the mitigation by such activities.
- neither it nor Scottish Ministers would therefore object to the granting of a felling licence due to the presence of the bat boxes.

6.568 For plots 1816 and 1817 TS argues that:

- a windblow/windthrow risk assessment has been undertaken and reported in ES Appendix A15.7, page A15.7-55 (CD006).
- the windthrow risk has been assessed as moderate to high within the woodland (Scot's pine and small amounts of Norway spruce, beech and larch).
- felling would be undertaken within the CPO boundary to provide land for the proposed dual carriageway and SuDS.
- where possible, woodland would be retained within the CPO with replanting of coniferous woodland, hedging and riparian woodland to screen views, promote biodiversity and provide habitat for protected species (see ES Figure 9.5q CD007).
- [ES Table 15.23](#) (CD005) identifies Mitigation Item CP-F3 specifically as mitigation for windthrow and ES Appendix A15.7, page A15.7-55 and ES Figure 15.6i (CD007) identify this mitigation measure as being required for woodland parcel 190/1W due to the expected moderate to high windthrow risk.
- Mitigation Item CP-F3 states that:

'Where individual stands of trees and woodland compartments would be affected, an appropriate arboricultural assessment (including tree protection plan and method statement) and/or wind throw assessment (using an appropriate assessment tool such as ForestGALES) would be undertaken preconstruction and appropriate mitigation employed to address safety risk to land within the proposed Scheme. Any felling to create a windfirm edge would take account of ecological, landscape and visual effects and designed where feasible to maximise ecological, landscape and visual opportunities.'

6.569 TS states that:

- construction works required would be informed by the windthrow and arboricultural assessment completed at that time.
- the contractor would be required to develop and employ appropriate mitigation.
- any work outwith the CPO boundary identified at that time as necessary to protect the proposed scheme would be carried out subject to The Estate's agreement.
- it would carry out work to protect existing trees outwith the CPO boundary if these trees present a safety risk to land within the CPO boundary.
- any further work considered necessary by the Estate to protect existing trees outwith the CPO boundary would need to be arranged by the Estate itself.
- compensation for such work might be available subject to the agreement of the District Valuer.

6.570 Regarding SuDS and flood risk TS argues that:

- the SuDS ponds are designed to retain and treat surface water (and any sediments/oil or heavy metal contaminants) running off the new dual carriageway, prior to outfalling to existing watercourses.
- the dual carriageway drainage is designed to be gravity-fed and the ponds therefore need to lie at natural low points along the dual carriageway, and in close proximity to existing watercourses.
- the proposed design has identified the need for SuDS ponds at this location, noting that the design would be developed further to confirm the exact shape of these ponds, alongside development of the earthworks and landscaping proposals to ensure these ponds fit within their surroundings.
- the ponds would not affect the natural flows in the burn at low or normal flow conditions.
- in addition to the treatment function of the SuDS ponds they are explicitly designed to attenuate the flows during flood events.
- because part of the natural (pre-construction) catchment for the existing burn in this plot would form part of the catchment for the road drainage network under the proposed scheme, the downstream flood flows for flood events rarer than 1 in 10 years would be very slightly lower than the existing situation.

-reasons for land acquisition

6.571 TS argues that the draft CPO would not breach the European Convention on Human Rights. It argues that compulsory purchase falls within the convention which permits the interference with such rights where 'it is authorised by law, is proportionate and where it can be demonstrated to be in the public interest'.

6.572 TS contends that this is recognised in Scottish Government's [Planning Circular 6/2011 - Compulsory Purchase Orders](#) (OBJ002-3.16) which states that:

'This reinforces the requirement that the authority should use compulsory purchase only where it is a proportionate response in the circumstances and there is a strong enough case for this in the public interest. The authority should therefore properly assess the public benefit in what it proposes against the impact on the people likely to be affected. It should also properly assess any reasonable alternative ways that it might realise its aims.'

6.573 TS argues that the requirements of being authorised by law, being proportionate and being in the public interest have been met in relation to all of the proposed scheme draft Orders.

6.574 TS argues that:

- the national and local context for the proposed scheme is described in [ES Chapter 2](#) (CD005) and is identified as an important national infrastructure scheme in several national strategies and policy frameworks listed therein.
- the [A96 Dualling Inverness to Aberdeen Strategic Business Case \(2014\)](#) (CD015) undertook an appraisal of the Inverness to Aberdeen strategic transport corridor focusing on the performance of the trunk road and rail network between both cities.
- a number of options were assessed against transport planning objectives, implementability (feasibility, affordability and public acceptability) and the STAG criteria relating to the environment, economy, safety, integration and accessibility and social inclusion.
- this assessment concluded that the proposal to dual the A96 is the best way to meet the future needs of those living, working and travelling along the A96 corridor, meet transport planning objectives and deliver significant wider economic and accessibility benefits.

6.575 TS argues that:

- the proposed scheme is specifically recommended in the [STPR](#) (CD036),
- there is further support for the dualling of the entire length of the A96 between Inverness and Aberdeen in the Infrastructure Investment Plans ([CD037.01](#) and [CD037.02](#)), the National Transport Strategy ([NTS](#)) (CD041) and the third National Planning Framework [NPF3](#) (CD044.02)
- this is confirmed as the preferred option to improve the performance of the Inverness to Aberdeen strategic transport corridor within the Strategic Business Case (CD015).
- it also supports the overall objectives of the Scottish Government in contributing towards the provision of an efficient, safe and integrated transport system which would act as a key enabler for sustainable economic growth.
- the proposed scheme would reduce accident rates, along with improving journey time and reliability, tackling congestion and improving connectivity between Inverness and Aberdeen.
- the section of the proposed scheme that bypasses Nairn would also reduce conflict between local and strategic traffic and provide congestion and environmental relief to the town.

6.576 TS confirms that:

- land has only been included in the draft CPO if it is deemed necessary for construction, maintenance and operation of the proposed scheme and essential environmental mitigation, identified in [ES Figure 9.5](#) (CD007).
- if following construction of the proposed scheme, any parts of the CPO Plots were deemed surplus to requirements, they may be offered back to the former owners in accordance with the Crichel Down Rules.

-Drainage

6.577 TS explains that [ES Table 15.23](#) (CD005) contains Mitigation Item CP-AG10 specifically to address impacts on field drainage and that this has been incorporated into the assessment of impact of the proposed scheme on The Estate's business. Mitigation Item CP-AG10 states:

'Particular care shall be taken to reduce damage or disturbance to field and forestry drainage systems. Laying of new drains would be undertaken to maintain drainage systems during construction. Repairing and reinstatement of field drains affected by construction shall be agreed with the landowner/occupier to ensure that land capability is maintained and flooding is not exacerbated. Where appropriate, the integrity of the drainage system would be secured in advance through the installation of header drains (cut off drains) to facilitate construction. All remaining remedial works shall be undertaken post-construction.'

6.578 TS confirms that:

- the construction contract documents would specify that where existing field drainage is likely to be affected by the proposed scheme, the contractor would have responsibility for locating and reconnecting the drainage as appropriate.
- it currently expects that the detailed design would be the responsibility of the contractor.

6.579 TS considers the matter of water troughs (raised with specific regard to Plot 1805) to be wider than any single plot. TS explains that [ES Table 15.23](#) (CD005) contains Mitigation Item No. CP-AG11, which states:

'Water supplies for livestock are to be protected at all times and alternative supplies provided where access is compromised by any works, unless agreed with the landowner'.

6.580 TS confirms that this work could be carried out as accommodation works, subject to landowner agreement.

-Access

6.581 TS argues that access rights proposed to be acquired on Plots 1802, 1803, 1715 and 1812 have been explained (these are contained for each plot under the respective plot heading above).

6.582 TS argues that details of the servitude right of access proposed to be acquired are provided in the schedule attached to the [draft CPO](#) (CD001) and that a full copy of this was issued to the Estate on 28 November 2016.

-Fencing

6.583 TS notes the preference for stock-proof fencing. TS explains that ES Table 15.23 (CD005) contains Mitigation Item CP-AG7 (boundary features) and this has been incorporated into the assessment of impact of the proposed scheme on the Estate's business. Mitigation Item CP-AG7 states:

'Where boundary features (e.g. fences, walls and hedges) require temporary or permanent alteration to allow construction, these would be reinstated with appropriate materials to provide a secure field boundary, with opportunities explored in consultation with the landowner/occupier to merge severed field areas to improve field husbandry operations through the creation of more manageable field sizes and shapes.'

6.584 TS confirms that:

- boundary fencing could be installed, in agreement and discussion with landowners, as part of agreed accommodation works under the construction contract.
- this fencing would be owned and maintained by the landowner.
- the future costs of maintaining any new fences could form part of a claim for compensation subject to the District Valuer's assessment.
- its design consultant, Jacobs, would discuss fencing specification preferences during forthcoming accommodation works consultations.

-Mitigation and accommodation works

6.585 TS argues that:

- [ES Section 4.2](#) (CD005) confirms that, under the expected procurement process for the proposed scheme, the outline (specimen) design produced and assessed would be refined with a detailed design produced by TS's appointed contractor.
- the contractor would be required to produce the detailed design in accordance with the provisions of the contract.
- the contract would include the ES and its detailed Schedule of Environmental Commitments ([ES Chapter 20](#) – CD005), which includes chainage references for the location of proposed mitigation where relevant.
- the locations of proposed noise mitigation and proposed ecological and landscape mitigation are covered in ES Volume 3 (CD007) including [ES Figures 8.9](#) and [9.5](#) (CD007).
- under the contract TS's consultant Jacobs would provide a site supervision team.
- part of the responsibilities for site supervision, whether by an Ecological Clerk of Works, which the CEMP would require to be employed by the contractor or by TS's agent, would be to ensure the scheduled environmental mitigation measures and commitments were adhered to.

6.586 TS notes the request for more detail and reassurances with regards to accommodation works associated with the delivery of the proposed scheme. TS confirms that these measures would be determined in consultation with The Estate during the preparation of the construction contract documents. TS also confirms that The Estate may choose to make a claim for compensation to cover professional fees, subject to the District Valuer's consideration.

-Business viability

6.587 TS confirms that:

- the ES includes an assessment of likely impacts of the proposed scheme on agricultural viability.
- the assessment forms part of the assessment of the potential impacts of the proposed scheme on Agricultural, Forestry and Sporting Land Interests described in the [ES Chapter 15](#) (CD005).
- the Estate's land holdings have been assessed as land interests at Balblair, Crook Farm and Crook Wood.
- potential impacts, proposed mitigation, comment on likely future viability and significance of residual impact are detailed in full in the [ES Appendix A15.7](#), pages A15.7-33 to A15.7-37 (Balblair and Crook Farm) and page A15.7-55 (Crook Wood) (CD006).
- full details of the mitigation items specified in ES Appendix A15.7 (CD006) for each field and parcel of forestry affected are in [ES Table 15.23](#) (CD005).
- residual significance of impacts are assessed for Balblair as 'Slight' (not significant),
- residual significance of impacts are assessed for Crook Farm as 'Slight/Moderate' (not significant)
- residual significance of impacts are assessed for Crook Wood as 'Moderate/Substantial' (significant).

6.588 TS argues that, with respect to agricultural viability, it is assessed that the impact of the proposed scheme on likely future viability of Balblair and Crook farms would be Neutral - defined in ES paragraph [15.3.61](#) (CD005) as:

Neutral Impact - the farm business is affected by the land-take or change in access requirements of the proposed Scheme, and this may result in a reduction or restructuring of its activities. However, this does not compromise the likely future viability of the farm business and it is likely to be able to continue trading, albeit after some restructuring of its operations.

Development south of Nairn

6.589 TS notes the reference made to the previous refusal of planning permission for development on part of the Nairn South development allocation.

6.590 TS argues that the appeal decision letter (DPEA reference PPA-270-2097) sets out various reasons for dismissal relating to the mix of uses proposed, the assessment of impacts on the local road network, and the lack of provision of a distributor road between Balblair Road and Cawdor Road. TS also argues that the [IMFLDP](#) paragraph 4.39 (CD062) states that:

'The delivery of the A96(T) bypass will address many of the current concerns regarding the capacity of the road network to accommodate all the development opportunities identified in the Plan... Longer term development options at Nairn South are largely dependent on developers agreeing and delivering suitable improvements to the local road network.'

6.591 TS argues that:

- the proposed scheme would accord with the aims of the IMFLDP (CD062) by alleviating many current constraints on the local road network, potentially assisting in the delivery of allocated development land.
- junction locations have been determined by examining the secondary road network and considering the traffic volumes predicted to use each possible junction location.
- junctions are proposed at locations where there is sufficient traffic demand or where they are considered to provide a suitable connection to the secondary road network.
- it is appropriate to provide new grade-separated junctions for Nairn to the east and west of the town.
- additional junctions around Nairn are not proposed since the A96 dual carriageway has a strategic function and is not intended to act as a local distributor road around Nairn.
- the B9090 and B9091 are less suitable radial routes into Nairn due to the constraint at the existing railway bridge in Nairn.
- as part of the proposed scheme, the side road network would be improved between Nairn West junction and the B9091 to improve access into the south side of Nairn.
- there is sufficient space to accommodate a junction, to the south of Nairn, if deemed necessary at some point in the future.

Findings of Fact

Title

6.592 We find that the draft Orders stage provides an opportunity to identify and correct errors such as land ownership and contact details. We find that if potential errors become apparent they can be investigated and, where necessary (and possible), corrected prior to the Orders being made. As it has been suggested by TS that the recorded title has a typographical error and that this may affect TS's ability to address this in the draft Orders, we do not think it would be appropriate to recommend that the Orders be amended. We consider that this correcting of title can be made by TS as an administrative matter prior to the confirming of any orders without the need for Ministers' intervention.

Environmental and amenity impacts

-Noise and vibration

6.593 The evidence before us does not suggest any reason to conclude that the noise assessment reported in [ES Chapter 8](#) (CD005) has been conducted incorrectly or that it has reached erroneous conclusions.

6.594 As would be the case with a number of properties across the route of the proposed scheme, construction of the proposed road would be likely to introduce a noticeable increase in traffic noise to what is at present a particularly quiet environment. We find [TS098.02](#) Table 1 to show that predicted noise levels would increase quite significantly with the proposed scheme in place (year of opening and 15 years later). However, we also find that predicted absolute noise levels with the proposed scheme in place would remain below the 59.5 dB $L_{A10, 18h}$ threshold. Therefore, in accordance with the noise mitigation strategy ([ES paragraphs 8.2.24 to 8.2.34](#) – CD005), this would not trigger a requirement for additional receptor-specific noise mitigation, beyond that already designed into the proposed scheme and covered by the noise assessment.

6.595 We understand why the occupiers of properties that currently experience particularly low levels of noise might wish to have the noise impacts of the proposed scheme mitigated, despite the absolute threshold not being reached. However, as the 59.5 dB $L_{A10, 18h}$ threshold represents an objective and consistent threshold to be applied across the proposed scheme (and one that is applied consistently elsewhere) we do not find that an exception should be made for these or other properties in particularly quiet locations, as the resultant noise level would remain at a reasonable level (albeit noticeably higher than at present).

6.596 We agree that TS098.02 Table 1 considers the least beneficial receptor at the property belonging to the Estate that would be exposed to the highest noise levels. We therefore agree with TS that the conclusions reached for this property would be worse than the equivalent predictions for other properties in the vicinity that are also owned by The Estate.

6.597 We find that reference to the 55 dB threshold by the objector relates to the night-time noise threshold in the noise mitigation strategy (ES paragraphs 8.2.24 to 8.2.34 – CD005) and not the daytime predicted noise levels outlined in TS098.02 Table 1. TS explains the scientific principles of the night-time noise threshold and we find no reason to doubt this. As such we find it to be a different metric to the daytime noise threshold.

6.598 TS explains the conversion equation for night-time noise and presents the predicted night-time noise level equivalents for the daytime values presented in TS098.02 Table 1. The evidence does not suggest we should doubt these. We find that these would be below the 55 dB $L_{night, outside}$ threshold set out in ES paragraphs 8.2.24 to 8.2.34 (CD005). As such, this confirms that no receptor-specific noise mitigation would be necessary.

6.599 TS has committed to incorporate LNRS as a requirement of the construction contract. We agree that doing so would bind any contractor to deliver LNRS as part of the contract.

6.600 We find that construction noise would be covered by a CEMP, as outlined in [ES Table 20.01](#) (CD005) under Mitigation Item GR1. Again, this would be a requirement upon any contractor because it would form part of the contract. We note that specific noise requirements would form part of the CEMP and that these would need to be agreed by The Highland Council. We are therefore satisfied that construction noise has been considered.

6.601 We find that the vibration assessment has been reported in ES Chapter 8 (CD005). We note the omission of ground-based traffic vibration impacts on buildings and people and airborne vibration on buildings from the assessment and the reasons stated for this in [ES paragraphs 8.1.10 and 8.1.11](#) (CD005). The evidence before us does not provide any reason to conclude this to be incorrect or that the assessment has reached erroneous or incomplete conclusions as a consequence.

6.602 [ES paragraph 8.2.35](#) explains that only properties within 40 metres of the centre line of the proposed scheme with predicted or measured road traffic noise levels exceeding 58 dB $L_{A10, 18h}$ are included in the assessment for airborne vibration. We find this to reflect [DMRB Volume 11, Section 3, Part 7, HD213/11](#), paragraph 3.46 (CD049.19).

6.603 Based on [ES Figure 4.1i](#) (CD007) we find no reason to dispute TS's assertion that Balblair Farm, Crook Farm or Crook Cottage are each beyond 40 metres from the proposed

dual carriageway. We therefore find that it was not necessary for TS to assess these properties for vibration impacts.

-Air quality

6.604 The evidence before us does not suggest we should find the air quality assessment reported in [ES Chapter 7](#) (CD005) to have been carried out incorrectly or to have reached erroneous conclusions. We also find in ES paragraph 7.2.4 (CD005) that the assessment has considered construction dust.

6.605 [DMRB Volume 11, Section 3, Part 1 HA207/07](#) Paragraph 3.13 (CD049.14) indicates that only properties within 200 metres of roads affected by the proposed scheme need to be considered by the air quality assessment. We find that Balblair Farm is over 200 metres from the nearest section of the proposed scheme based on [ES Figure 4.1h](#) (CD007).

6.606 [ES Figure 4.1i](#) (CD007) shows that Crook Cottage and Crook Farm would be within 200 metres of the proposed scheme. Crook Farm House has been identified as a receptor (AQ_232) in [ES Figures 7.2, 7.3, 7.4 and 7.5](#) (CD007) and [ES Appendix 7.4](#) (CD006). We find no reason why this could not serve as a reasonable proxy for both properties given their relatively close proximity to each other.

6.607 ES Appendix A7.4 (CD006) shows that receptor AQ_232 would experience some increase in levels of NO₂, PM₁₀ and PM_{2.5}. However, we find that these levels would remain below the national air quality standards for NO₂, PM₁₀ and PM_{2.5} quoted in [ES Table 7.3](#) (CD005). As such we are also content that Crook Cottage, slightly further from the proposed scheme, would be unlikely to experience significantly greater changes in air quality than receptor AQ_232.

6.608 We find that the assessment has considered construction dust and that there is some potential for both Crook Farm and Crook Cottage to experience this given their proximity to proposed construction works on the C1175 and the proposed dual carriageway. It is possible that the presence of dense woodland close to these properties could have a positive screening effect for some dust, dependent on source location and wind direction.

6.609 We also find that all mitigation items identified in the ES would form part of the construction contract and, as such, would be binding on the contractor. We find this to mean that these actions must be taken. We note that the CEMP would be agreed with The Highland Council. This would provide a degree of external scrutiny with regard to the identification and meeting of any standards that form part of the CEMP under Mitigation Item GR1, including control of fugitive construction dust.

6.610 We also note that Jacobs has been appointed by TS as site supervisor. We find this to mean that the contractor would be supervised by the site overseer (Jacobs). This would provide a regime within which the contractor's works could be set out, agreed, carried out and quality checked. This would also provide a route of recourse for any party concerned about breaches of the contractor's obligations.

-Visual effects and light pollution

6.611 [ES Chapter 10](#) (CD005) reports on the visual assessment and [ES Chapter 9](#) (CD005) reports on the related landscape assessment. The evidence before us does not suggest that any of these assessments have been carried out incorrectly or that any has reached erroneous conclusions.

6.612 [ES Figure 10.3g](#) (CD007) shows receptors 124 (Crook Cottage) and 125 (Crook Farm). The results correspond with those set out in [TS098.02](#) showing that:

- the visual effects at Crook Cottage (receptor 124) would change from 'slight/negligible' at winter year of opening to 'negligible' 15 years later.
- the anticipated visual effects would be more apparent from Crook Farm Buildings (receptor 125) being 'moderate/substantial' at winter year of opening changing to 'slight/moderate' 15 years later.

6.613 [ES Figure 9.5g](#) (CD007) shows locations of proposed landscape and ecological mitigation. It shows the retention of woodland around both receptors as well as proposed coniferous woodland planting on the north side of the proposed dual carriageway between ch22900 and ch23300. We also note the proposed planting of mixed woodland along either side of the modified C1175 in the vicinity of both receptors. We find that the maturation of this planting would contribute to the predicted reduction in visual impacts and effects. We also recognise that this mitigation would form additional landscape features that would bring their own visual impacts and have thus influenced the residual visual effects reported in [ES Figure 10.3g](#) (CD007).

6.614 [TS098.02](#) confirms that the proposed scheme would not be lit except at junction locations, where the lighting regime would be traffic-responsive. This is confirmed by [ES Figures 10.2c and 10.2d](#) (CD007), which show these receptors as over two kilometres from the proposed Nairn East junction and over four kilometres from the proposed Nairn West junction, with various woodland and landscape features in between.

6.615 Given the screening provided by existing and proposed vegetation ([ES Figure 9.5q](#) – CD007) there is no evidence before us to suggest that the artificial lighting proposed at the PS15 C1175 underbridge or indeed vehicle headlights on either the proposed dual carriageway or the C1175 would result in any substantive impact that has not already been considered in the ES.

6.616 We note that Balblair Farm is not identified as a visual receptor on [ES Figure 10.3f](#) (CD007). On our site inspection we noted the presence of existing tree belts, shown on [ES Figure 10.3f](#) (CD007) between Balblair Farm and the proposed scheme. We also note that the proposed scheme is intended to be in a cutting from ch21400 to ch22100 as shown in the [DMRB Stage 3 Figure 3.1](#) Sheet 15 of 22 (CD009). The evidence before us does not suggest we should conclude there to be a notable visual impact / effect on Balblair Farm.

6.617 We are therefore not persuaded that the proposed scheme would result in unacceptable visual impacts / effects (including from lighting) or subsequent related amenity impacts / effects on either Balblair Farm, Crook Farm or Crook Cottage.

-Ecology

6.618 [ES section 11.2](#) (CD005) explains the methodology for carrying out the ecological assessment. [ES paragraph 11.2.7 and ES Table 11.1](#) (CD005) confirm that this considered various habitats and species (including red squirrels, bats and water voles) based on a variety of information sources. [ES paragraphs 11.2.32 and 11.2.33](#) (CD005) and [ES Chapter 6](#) (CD005) confirm that SNH formed part of the ES Environmental Steering Group and [ES Table 6.5](#) (CD005) confirms that it played a role in [ES Chapter 11: Habitats and Biodiversity](#) (CD005). We give weight to the fact that SNH has not raised objections to this aspect of the proposed scheme. We find no evidence to suggest that the ecological assessment has been incorrectly carried out or that it has reached erroneous conclusions.

6.619 [ES Figures 9.5p and 9.5q](#) (CD007) each identify proposed landscape and ecological mitigation measures that affect the land interests of OBJ/098 The Estate.

6.620 ES Figure 9.5q (CD007) identifies proposed mitigation planting along the edges of existing woodland adjacent to the proposed dual carriageway and the modified C1175 in the vicinity of Crook Cottage and Crook Farm. This planting is proposed for ecological and landscape purposes. We further note the proposed location of a dry mammal underpass at ch23150. We also note the proposed siting of five bat boxes on the northern edge of the woods east of Crook Farm and north of ch23200, five south of ch23000, five on the east bank of the River Nairn north of ch22500 and five south of there. These factors persuade us that the proposed scheme has considered habitats in general and those of red squirrels and bats in particular. The evidence before us does not suggest we should find otherwise.

6.621 We also find that despite the matter being raised and investigations taking place, no evidence of water voles was found. Whilst the parties appear to disagree, there is no evidence before us to suggest we should reach a different conclusion to TS.

Business impacts

-Proposed land take Balblair Farm (Plot 1708)

6.622 We find that Plot 1708 is required for part of the proposed widening of the B9091. [Draft CPO](#) sheet 17 (CD001) and [draft SRO](#) Plan SR16 (CD003) indicate that land is required on both sides of the existing B9091. This appears reasonable given TS's recognition that widening the B9091 further south would compromise a major utility pipeline, its wayleave and exclusion zone.

6.623 The objector's proposal to move the road widening further south could also need additional land. We find that the draft Orders can only be modified to remove land not to add it. This would require new technical work including EIA, public consultation and a public inquiry and the associated delay.

6.624 We find that Plot 1708 covers fields 220/1W (woodland) and 220/2 (arable farming/grassland). We saw each on our site inspection. The evidence does not suggest that [ES Appendix A15.7](#) (CD006) has failed to recognise these current field uses. TS confirms that proposed new means of access 407 (draft SRO Plan SR16 – CD003) could include a 30 foot-wide gate, as sought by the objector. Therefore, the evidence does not suggest we should conclude that the access would be unsuitable for large agricultural machinery. TS also does not oppose the objector using this access to cross Plot 1708 to access field 220/2. We find this access to have been proposed precisely for the objector to gain access to its land.

6.625 We note the objector's preferred location for the new means of access opposite the B9091/C1170 junction. However, we accept that TS has had to consider a variety of matters including safety standards. We find that new field accesses should not be provided in locations that would compromise road safety. The evidence suggests that the location proposed by the objector may have been unsafe.

6.626 Should the objector find it has or would incur losses as a result of the proposed scheme it may choose to make a claim for compensation. This is a matter for the respective parties and the District Valuer. Compensation is not a matter for this inquiry.

-Proposed land take at Crook Cottage and Crook Farm (Plots 1715, 1716, 1801, 1802, 1803 and Plots 1804, 1805, 1806, 1808, 1835 and 1836).

6.627 We find that Plots 1715, 1802 and 1803 are required for servitude access rights to legally enable TS (or its contractors) to cross these plots for the installation, monitoring and maintenance of the bat boxes on Plots 1716 and 1801. As such we find all five plots to be integral to the ecological mitigation proposals set out in ES Figure 9.5q - CD007).

6.628 At the objector's request, TS initially agreed to lease back Plots 1716 and 1801 subject to conditions ([TS098.02](#)). However, TS acknowledges the objector's subsequent decision not to proceed ([TS098.04](#)). This is a matter for TS and The Estate.

6.629 We find that Plot 1804 is needed for construction of the PS14 River Nairn Underbridge and realignment of existing paths on the east side of the River Nairn as shown on [DMRB Stage 3 Sheet 17 of 22 Figure 3.1p](#) (CD009). We find that this footpath would connect with the proposed NMU path which would run along the north side of the proposed dual carriageway at this location, including on the River Nairn Underbridge (PS14) (as shown in [ES Figure 16.2i](#)). We also find that Plot 1804 would be needed for deciduous woodland planting identified in ES Figure 9.5q (CD007).

6.630 We find that Plot 1805 would be needed for construction of the proposed scheme and essential environmental mitigation shown in [ES Figure 9.5g](#) (CD007). TS also confirms that the proposed environmental mitigation would form part of the proposed scheme costs and not be passed on to the objector.

6.631 [Draft CPO](#) sheet 18 (CD001) and [ES Figure 15.6i](#) (CD007) show that acquisition of Plot 1805 would sever fields 191/3 and 191/4 and remove the north eastern edge of field 191/5. We find that new means of access 410 and 413, off the modified C1175 ([draft SRO](#) Plan SR17 - CD003) and field mergers referenced in [ES Appendix A15.7](#) (CD006) would resolve severance issues. These new means of access are proposed specifically to enable the objector to access its land and so we find no reason to suggest it would not be able to do so. The evidence also does not suggest the new means of access would be unsuitable for pedestrians and heavy agricultural machinery, though the precise specifications may need to be discussed further between the respective parties.

6.632 We have considered matters relating to water troughs as a general issue rather than specific only to this plot (see paragraph 6.686 below).

6.633 We accept that Plot 1805 would remove some land that is currently used for arable farming/grass production but the evidence does not suggest the impact would be unacceptable. The above paragraphs identify appropriate mitigation / accommodation works that could overcome access matters. We note TS's willingness to sell back any land deemed surplus to requirements under the Crichel Down Rules. We also find that should the objector consider that they have experienced losses as a result of the proposed scheme they could choose to make a compensation claim. This would be a matter for the respective parties and the District Valuer. Compensation is not a matter for this inquiry.

6.634 We find that Plot 1806 is required for the proposed dual carriageway, NMU shared-use path, modification of the C1175 and essential environmental mitigation as shown on ES Figures 9.5q and 16.2i (CD007). ES Figure 15.6i (CD007) shows that acquisition of Plot 1806 would remove part of field 191/2W (currently woodland) that presently fronts the C1175. ES Appendix A15.7 (CD007) confirms that field 191/2W would therefore lose

boundary features and experience disruption to drainage. Each is proposed to be reinstated.

6.635 ES Appendix A15.7 (CD006) does not specifically mention that acquisition of Plot 1806 would prevent access to field 191/2W. However, we find that new means of access 410 (draft SRO Plan SR17 – CD003) from the modified C1175 would pass through Plot 1806 to allow access to the northern part of fields 191/3 and 191/4. We note that the western end of new access 410, proposed at the eastern end of field 191/3, is adjacent to the nearest (southeast) point of field 191/2W.

6.636 TS confirms that new means of access 410 (CD003) could accommodate pedestrians and heavy agricultural vehicles. We find TS's proposed provision of new means of access 410 (CD003), to enable the objector to access severed fields, is a clear indication of TS's intention to allow the objector to cross Plot 1806 to access those fields.

6.637 TS confirms that mitigation and/or agreed accommodation works, including new means of access, would be provided at no cost to the objector. The exact details of accommodation works would be for the respective parties to agree and are not for this inquiry.

6.638 The objector appears to suggest that new means of access to its fields should be transferred to its ownership without the need to apply the Crichel Down Rules. It is unclear whether the objector wishes to have this land transferred back to its ownership cost free following compulsory purchase or whether it would intend to buy back the land. Either way this is not a matter for this inquiry.

6.639 Plot 1808 (draft CPO sheet 18 of 23 – CD001) is a narrow strip of land on the north side of the C1175 just north of the Crook junction. We find that Plot 1808 is required for widening of the C1175 and improved access to Crook Farm as shown on [ES Figure 4.1i](#) (CD007). We also find it is required for construction of a proposed soakaway.

6.640 We find that acquisition of Plot 1808 would remove the southwest boundary of field 191/1 (ES Figure 15.6i – CD007) that is currently used for arable/grassland farming. ES Appendix A15.7 (CD006) explains that this would result in loss of boundary features, access and disruption to drainage systems but that these features would be reinstated. Draft SRO Plan SR17 (CD003) does not propose a new means of access. On our site inspection we noted that field access is taken directly from the C1175 via a field gate at a break in the fence. This is located diagonally opposite (northeast) Crook Cottage and near to the western edge of Plot 1808. Were this access to form part of Plot 1808, we find that provision of an equivalent access could be resolved through accommodation works if this current access were to be lost. Accommodation works are not a matter for this inquiry.

6.641 ES Appendix A15.7 (CD006) confirms that the acquisition of Plot 1808 would take 0.05 hectares (1%) of field 191/1. Whilst this is a comparatively small proportion we find that it would represent a loss of at least some productive capacity. The objectors may choose to seek compensation for any losses it considers to result from the proposed scheme. This would be a matter for the respective parties and the District Valuer. Compensation is not a matter for this inquiry.

6.642 Plots 1835 and 1836 are located west of Crook Farm buildings at the junction with the C1175. We find that these plots are required for construction of an improved access to

Crook Farm as shown on ES Figure 4.1i (CD007); as a result of the proposed widening of the C1175. Since this is proposed as a replacement access to the farm we find no reason why the objector would not be able to cross these plots to go to and from Crook Farm. There is also no reason to suggest it would be unsuitable for pedestrians, vehicles and heavy agricultural equipment. These are detailed matters for the respective parties and not for this inquiry.

-Proposed land take at Crook Wood (Plots 1811, 1812, 1813, 1816, 1817, 1839 and 1840)
6.643 Plots 1811, 1812, 1839 and 1840 are located on the east side of the C1175 south of the proposed scheme on the western edge of Crook Wood. Plot 1813 is located within Crook Wood, east of the above referenced plots and north of the current access track. Plots 1816 and 1817 are located along the northern edge of Crook Wood. ES Figure 15.6i (CD007) shows that these plots cover parts of field 190/1W. ES Appendix A15.7 (CD006) confirms that field 190/1W is part of Crook Wood.

6.644 We find that Plots 1811, 1839 and 1840 are required for realignment of the C1175 including new passing places and also for new means of access 412 (Draft SRO Plan SR17 - CD003) and mitigation planting (ES Figure 9.5q – CD007). We find that Plot 1812 is required for a servitude right to grant TS legal access to install, monitor and maintain the five bat boxes at Plot 1813 (ES Figure 9.5q - CD007 and draft CPO Sheet 18 of 23 – CD001). We find no reason to conclude that this would limit the objector's use of the track, including Plot 1812. We find that Plots 1816 and 1817 are also required for construction of the proposed dual carriageway, part of the SuDS proposals and associated landscape and ecological mitigation either side between approximately ch23100 and ch23400.

6.645 Since Plot 1839 would be acquired to provide new means of access 412 (draft SRO Plan SR17 – CD003) for the objector, we see no reason to find that the objector would be denied access rights across it.

6.646 ES Appendix A15.7 (CD006) confirms that Crook Wood is commercial woodland. We agree that compulsory acquisition of these plots would remove some land that is currently commercial woodland to accommodate the proposed works. ES Appendix A15.7 (CD006) considers this to equate to 2.63 hectares (7% of the wood – including all plots listed at Crook Wood). No parties dispute these figures.

6.647 The objector appears to be concerned about windthrow/windblow risks from proposed felling on the plots above. We note that ES Appendix A15.7 (CD007) identifies the use of a windthrow assessment tool (such as ForestGALES) to confirm the level of risk. We also note that Mitigation Items CP-F3 and CP-F4 ([ES Table 15.23](#) – CD005) have been identified for field 190/1W (Crook Wood) in ES Appendix A15.7 (CD006). We find that CP-F3 covers the windthrow assessment (such as ForestGALES) as set out above. We find that CP-F4 requires the minimisation of felling even where no windthrow risk is identified. These factors persuade us that TS is aware of the windthrow risk and has committed to investigate this.

6.648 ES Figure 9.5q (CD007) shows that following widening of the C1175 proposed ecological and landscape mitigation planting of mixed woodland would take place on Plot 1811. We also note the objector's specific concerns about risks from windthrow to Scots Pine on sites 1816 and 1817. ES Appendix A15.7 (CD006) sets out requirements for an arboricultural assessment, including a tree protection plan and method statement to inform retention of trees. We note that ES Appendix A15.7 (CD006) identifies Mitigation

Item CP-F5, which limits felling in woodland identified for landscape and visual purposes. This persuades us that felling would be minimised in Plots 1811, 1816, 1817, 1839 and 1840.

6.649 We also note that Mitigation Item CP-F1 seeks to maintain access during construction and that CP-F2 seeks to reinstate boundary features where these are altered to allow construction. These factors persuade us that the construction operations would limit impacts on the commercial woodland and enable it to continue to function during construction.

6.650 We find that Mitigation Items CP-F1 to CP-F7 are all identified in ES Appendix A15.7 (CD006) for field 191/1W (Crook Wood) and are all listed in [ES Table 20.10](#) (CD005). Their inclusion in the ES, and in ES Table 20.10 (CD005) in particular, makes clear that these form environmental commitments. We find that these and any agreed accommodation works would form part of the construction contract. These would be binding on the contractor and TS's site representative (Jacobs) would oversee that contract and provide scrutiny of it.

6.651 The Estate considers these assurances and mitigation proposals to be too vague. We find that it is difficult for TS to be clearer since detailed aspects of design have yet to take place and it is arguably these that would determine the specifics of mitigation and/or accommodation works necessary. We note the commitments set out above by TS and these appear reasonable. We also note that in [TS098.04](#) TS commits to protect trees that are outwith the CPO but would present a safety risk to land that has been compulsorily acquired. On balance this has a strong probability of affecting those trees on the boundary which may also be those which have an increased susceptibility to windthrow or other risks which appear to concern the objector. We find it reasonable that other tree protection arrangements outwith the CPO areas are handled by the objector as landowner.

6.652 We note that the proposed bat boxes in Plot 1813 are south of the proposed scheme and ch22900 to ch23000 (ES Figure 9.5q – CD007) and within field 190/1W (ES Figure 15.6i – CD007). We find that TS has accurately described the rationale for siting of the proposed bat boxes and that the evidence before us does not present any ecological justification for an alternative location or why these bat boxes should not be sited at all. However, we note that TS may need to find an alternative appropriate location if felling of trees on Plot 1813 has taken place by the time of acquisition.

6.653 It was not possible to see Plot 1813 from the C1175 on our site inspections in order to verify whether the felling had taken place. TS's approach to mount bat boxes on telegraph-style posts within Plot 1813 or to agree with The Estate alternative, suitable locations within Crook Wood appear reasonable methods to ensure delivery of the mitigation. TS also confirms it would not object to a felling licence being granted for parts of the wood surrounding Plot 1813. We find this to suggest that the acquisition of and bat mitigation within Plot 1813 would not inhibit The Estate's wider commercial woodland operations at Crook Wood.

6.654 The objectors may choose to seek compensation for any losses they consider to result from the proposed scheme. Compensation would be a matter for the respective parties and the District Valuer. Compensation is not a matter for this inquiry.

6.655 The objector also seeks stock proof fencing at no cost due to the presence of Roe Deer. TS does not dispute this request. We note that ES Appendix A15.7 (CD006) identifies mitigation measures including the reinstatement of boundary treatments (including fencing). Mitigation Item CP-F2 is also quoted, which commits to the reinstatement of boundary fencing altered as part of the proposed scheme. The specific details of these, including any accommodation works, are matters for TS and the objector and not for this inquiry. However, we find that agreed accommodation works and mitigation identified in the ES (e.g. CP-F2 in ES Table 20.10 – CD005) would form part of any construction contract. As such their provision would be binding on the contractor.

6.656 We assume the objector's concern relating to flood risk from the SuDS ponds refers to the proposed SuDS ponds on the north side of the proposed scheme between ch23300 and ch23600 (partly covering Plots 1816 and 1817). We note that these ponds would also cover land that is not within the ownership of the objector, though this does not affect our consideration of these matters.

6.657 We find that TS has considered flood risk in [ES Chapter 13](#) (CD005) and [ES Appendix A13.2 – Flood Risk Assessment](#) (CD006). ES Appendix A13.2 Table 2 (CD006) confirms a history of boggy land within Crook Woods. ES Appendix A13.2, Diagram 29 shows that the water course originating within Crook Wood contains two tributaries and flows north before following the boundary of Househill Woods to eventually meet the River Nairn west of Househill. ES Appendix A13.2 Diagram 29 also identifies a history of ground water flooding at woodland south of Crook Farm.

6.658 ES Appendix A13.2 Map 3 on page A13.2-55 (CD006) shows there to be some flood risk within the south and east parts of Crook Woods to the southwest of Knocknagillan Farm complex.

6.659 We find that it is not the role of the proposed scheme to solve existing flood risk problems but it is necessary for the proposed scheme to avoid worsening these. We accept that, occasionally, works for a proposed scheme could, inadvertently, resolve/improve flood risk issues, though this would be a bonus rather than a required outcome.

6.660 We find that Crook Wood is upstream of the proposed SuDS ponds and the proposed scheme itself. We therefore find no reason to disagree with TS's contention that the existing drainage features would become part of the SuDS scheme. ES Appendix A13.2 Diagram 31 (CD006) shows that with the proposed scheme in place there would be minimal change to the depth of water courses on the north side of the proposed scheme (downstream and north of Crook Woods). This suggests to us that the proposed SuDS would have little if any impact on downstream water levels and could marginally improve, or at least not worsen, the situation upstream. There is no evidence before us to contradict these findings and we find this to confirm TS's assertions in [TS098.02](#). We also find that this does not mean boggy ground or flood risk would cease at Crook Woods, rather that flood risk would not increase there as a result of the proposed scheme.

-Reasons for land acquisition

6.661 We accept that the European Convention on Human Rights protects property but we also find that it does not do so to the exclusion of all other considerations. We find that it is lawful, in principle, for compulsory purchase to take place under the circumstances outlined by TS in [TS098.02](#).

6.662 We are satisfied that the plots identified above and in the [draft CPO](#) (CD001) are necessary for the proposed scheme. We note that the draft CPO (CD001) does not explain, on a plot by plot basis, the reasoning why CPO is justified in respect of each affected plot. However, we find there is no expectation in [Planning Circular 6/2011 - Compulsory Purchase Orders](#) (OBJ002-3.16) for the public interest justification to be set out in that way. In its assessment of the entire scheme and in its consideration of all the objections and representations thereto, we are satisfied that TS has properly assessed the public benefit in what it proposes against the impact on the people likely to be affected and has properly assessed any reasonable alternative ways that it might realise its aims.

6.663 We find that all of the plots listed above as being within the ownership of the objector are necessary for the construction, operation or maintenance of the proposed scheme. We note that TS could sell these back under the Crichel Down Rules. We are therefore satisfied that the rationale for compulsory acquisition is sound and in the public interest, since without these the proposed scheme could not proceed and because the adverse consequences of the chosen course of action have been properly taken into account.

6.664 We also note TS's explanation of the rationale for the proposed scheme, including its justification in national policy. We have already considered the rationale for the proposed scheme in Chapter 2: Matters of Principle. To be clear, we accept that The Estate is not challenging the rationale for the proposed scheme, rather it is objecting to aspects of it.

-Drainage

6.665 We note that OBJ/098 The Estate disagrees with the assessment in the ES with regard to drainage. We consider this to refer to [ES Chapter 13](#) which covers road drainage and the water environment and the flood risk assessment ([ES Appendix A13.2](#) – CD006). We have considered these matters above with regard to individual plots/groups of plots and also with regard to the proposed SuDS. There is no evidence before us to suggest we should find this assessment work to have been carried out incorrectly or to have reached erroneous conclusions. We attach weight to the fact that SEPA has not objected and we conclude that the proposals set out are acceptable in principle.

6.666 We note that the proposed drainage designs were carried out for the purposes of preparing the ES and publishing the draft Orders. As such we recognise that TS's design and build contractor would design the drainage arrangements (in accordance with the outline proposals that have been presented by TS) and that these would be subject to approval. We find that this would provide scrutiny by SEPA of the relevant drainage issues and effects on surface water features (See [ES paragraph 10.2.4](#) – CD005). As such we find those with concerns about such matters can take comfort from this additional oversight.

6.667 [ES Appendix A15.7](#) (CD006) identifies the potential impacts resulting from the proposed scheme on fields listed therein and shown on ES Figures 15.6h and 15.6i (CD007). These show proposed land take from the southeast of fields 220/1W and 220/2 and various parts of fields 190/1W, 191/1, 191/2W, 191/3, 191/4 and 191/5. In all instances ES Appendix A15.7 (CD006) proposes tie in of existing field drainage with road drainage and provision of new drainage as required, where there is a risk of disturbing current drainage arrangements. We find this to be a recognition that where field drainage could be disturbed as a result of the proposed scheme it would be rectified.

6.668 We note that these drainage works would, if agreed, be carried out at no expense to the landowner. Although there are existing plans, the detail of these matters would be

designed further if the draft Orders are confirmed. We also note that the reinstatement and provision of such drainage is identified in [ES Table 15.23](#) as Mitigation Item CP-AG10. (CD005). As such we find that this would form part of any construction contract and it would be binding on the contractor to deliver this to the relevant standards, along with any agreed accommodation works.

-Access

6.669 ES Appendix A15.7 (CD006) explains the proposed access arrangements for affected fields 220/1W and 220/2 at Balblair Farm and fields 190/1W, 191/3, 191/4 and 191/5. We find these on [draft SRO](#) Plans SR16 and SR17 (CD003). This suggests that TS has considered locations where new access would be needed and has designed these with a recognition of the potential farming needs, matters of road safety and other appropriate considerations. We find no evidence to suggest that the agricultural assessment has inadequately considered access matters or has reached erroneous conclusions.

6.670 We consider specific access matters regarding individual plots under the respective headings (above). There we find that by proposing new means of access specifically to address severance and/or land locking TS is setting out its intention to allow the objector to cross land that would become owned by Scottish Ministers in order to facilitate access for the objector.

6.671 The detailed specification of access arrangements and any related accommodation works are not matters for this inquiry. However, we find that their identification by TS recognises and resolves the concerns of the objector.

6.672 We also find that TS proposes a CEMP under [ES Table 20.1](#) (CD005) Mitigation Item GR1 to manage potential disturbance during construction. We also find that other mitigation items include CP-AG1, CP-AG3 and CP-AG5 and CP-F1. Together these require access to be maintained during construction and that the respective occupiers are informed in advance of changing access requirements during the construction phase.

-Fencing

6.673 TS does not dispute the need to provide sufficient stock-proof fencing during construction. We note that ES Table 15.23 contains mitigation Item CP-AG6, CP-AG7 and CP-F2 and that these relate to fencing. We also note its inclusion for Crook Wood, Balblair Farm and Crook Farm in ES Appendix A15.7 (CD006), where boundary treatments are identified for each affected field. We find this to suggest that TS has recognised the need to provide for this and that it would be provided at no cost to the objector.

6.674 TS does not specifically respond to the issue of Roe Deer that concerns the objector. However, we note that the issue of deer is considered in ES Chapter 11 (CD005). We find that TS has considered the impact of deer from the perspective of Deer Vehicle Collisions (DVC) rather than any ecological status or any particular land owner interest. This does not appear deficient since deer already roam the locality and would not do so as a direct consequence of the proposed scheme – accepting the role of fencing.

6.675 TS's approach is explained in [ES paragraphs 11.2.7 bullet 10, 11.2.10 and ES paragraphs 11.2.17, 11.3.14 and 11.3.15](#) (CD005). [ES Table 11.11](#) (CD005) assesses the risk of deer collisions as negligible. As such, [ES Chapter 20](#) Mitigation Item E23 (CD005) requires the contractor to undertake a deer collision risk assessment and to implement any

fencing identified as required. Mitigation Item E23 (CD005) also requires the contractor to repair or replace any deer fencing damaged or removed during construction.

6.676 This persuades us that adequate consideration has been given to deer in particular with regard to impacts on the proposed scheme. We are also persuaded that the provision or replacement of fencing under CP-AG7 and/or CP-F2 would resolve the concerns associated with deer accessing the objector's land as a result of fencing being removed during construction of the proposed scheme.

6.677 We also note that as part of a mitigation item and, if agreed as accommodation works with the landowner, any works associated with Mitigation Items CP-AG7 and CP-F2 would form part of the construction contract. As such provision would be binding on the contractor

6.678 None of the evidence before us suggests that we should consider TS's approach to boundary reinstatement to be inadequate. The detail of accommodation works are for agreement between the respective parties and not matters for this inquiry.

-Mitigation and accommodation works

6.679 We find that essential landscape and ecological mitigation would form part of the proposed scheme as detailed in [ES Figure 9.5g](#) (CD007). We also find that [ES Appendix A15.7](#) (CD006) identifies mitigation measures to overcome the impacts of the draft Orders. We note that all mitigation items and related actions contained in the ES and all accommodation works subsequently agreed with respective parties would form part of any construction contract. This would oblige the contractor to provide the mitigation / accommodation works.

6.680 We have considered detailed aspects of mitigation and accommodation works with respect to individual plots and fields (above).

6.681 Parties that experience losses as a result of the proposed scheme (even with mitigation and/or accommodation works) may choose to make a claim for compensation. Compensation claims would be determined by the District Valuer. Both compensation claims and accommodation works are not matters for this inquiry.

6.682 We note that OBJ/098 The Estate wishes to enter into agreement regarding accommodation works and that TS has expressed its willingness to do so. We find to be a matter for the respective parties and not for this inquiry.

6.683 We note that The Estate has queried whether professional fees could form part of accommodation works. TS advises that this may form part of any compensation claim dependent on the District Valuer's assessment. Compensation claims are not matters for this inquiry.

-Agricultural viability

6.684 [DMRB Volume 11, Section 3, Part 6: Land Use](#), paragraph 10.19 (CD049.18) requires the farming impact on the individual farming unit (IFU) to be considered and included in the ES. [ES Appendix A15.6](#) (CD006) confirms that Balblair Farm and Crook Farm are each mixed operations with livestock and cropping with some non-commercial woodland. It also confirms that Crook Wood is commercial woodland. These appear to be separate individual farm units. No parties dispute this.

6.685 [ES Figure 15.6](#) (CD007) shows the proposed route through lands owned by the Estate denoted with the prefixes 190, 191 and 220. ES Appendix A15.7 (CD006) explains that the proposed scheme would result in a loss of 2.63 hectares (7%) of Crook Wood, 0.67 hectares (1%) of Balblair Farm and 4.43 hectares of land (6%) of Crook Farm. No parties dispute these figures.

6.686 DMRB Volume 11, Section 3, Part 6: Land Use paragraph 6.3 (CD049.18) explains that agricultural assessments should focus on land-take, types of husbandry, severance and major accommodation works for access, water supply and drainage. ES Appendices A15.6 and A15.7 (CD006) do not suggest any failure to consider these matters.

6.687 DMRB paragraph 9.1 (CD049.18) elaborates on the points in paragraph 6.3 (CD049.18), explaining that consideration of:

‘Land-take will include land taken directly by a scheme and also land which will no longer be viable for agricultural use, for example, because severance (the splitting of a holding into more than one part) makes it impossible to farm some land productively’.

6.688 We therefore find that the term ‘viability’ is a reference to whether the land in question could be used for agriculture rather than any reference to profitability of the land within any particular farm business. DMRB Volume 11, Section 3, Part 6: Land Use paragraphs 10.16 and 10.17 (CD049.18) explain that farm viability as a result of the proposed scheme should be considered and presented in the ES. We find that it is presented in ES Appendix A15.7 (CD006).

6.689 ES Appendix A15.7 (CD006) details the impacts of the proposed scheme on various fields and identifies the total land loss that would arise (see above). There is no evidence to undermine these conclusions. Although covered in more detail above, we also find that accommodation works and mitigation would remedy severance, drainage, field boundary treatments and related impacts. We find that these actions would reduce the significance of impact compared with these measures not being discharged. We also find that the evidence before us does not suggest the residual land would no longer be viable for farming or commercial woodland as a land use.

6.690 ES Appendix A15.7 (CD006) concludes that the impact of the proposed scheme on the business would be ‘neutral’. We understand that some parties consider the term ‘neutral’ to represent the status quo, though the objector does not appear to argue this. However, we find that [ES paragraph 15.3.61](#) (CD005) is clear that this is not its intended meaning. The definition provided in that paragraph makes clear that the term ‘neutral’ involves change and that this may result from a reduction or restructuring of activities. We also note the definitions of the terms ‘beneficial’ and ‘adverse’ in ES paragraph 15.3.61 (CD005). We find that the definition of ‘neutral’ accurately describes the anticipated impacts on the Estate’s farming operations that would result from the proposed scheme and that the terms ‘beneficial’ and ‘adverse’ do not.

6.691 ES Appendix A15.7 (CD006) concludes that the residual impact for Crook Wood would be Moderate/Substantial. The evidence there does not suggest that TS has incorrectly identified the sensitivity (medium), the magnitude of impact (high) or the significance (Moderate/substantial) based on the criteria in ES Tables 15.7, 15.8 and 15.9 (CD005). These conclusions appear to recognise the likely loss of some commercial woodland that would result from the proposed scheme.

6.692 Parties that experience losses as a result of the proposed scheme (even with mitigation and/or accommodation works) could choose to make a claim for compensation. Compensation claims would be determined by the District Valuer. Both compensation claims and accommodation works are not matters for this inquiry.

Development south of Nairn

6.693 We note that planning application was refused on appeal (PPA-270-2097) for proposals on land south of Nairn on the west side of the River Nairn. For clarity our role is to consider the draft Orders for the proposed scheme, it is not to determine new or older planning proposals (including appeals) or indeed to bring about circumstances which may allow development to subsequently take place.

6.694 We note that the objector seeks an additional junction on the south side of the proposed scheme close to the location of the refused planning appeal (TS098.02 Appendix 3) and also seeks an alternative route for the proposed scheme further south. We consider route selection, including alternative routes, in Chapter 2: Matters of Principle.

6.695 We agree with TS that the role of the proposed scheme is as strategic infrastructure and that its role is not to improve local roads to standards capable of supporting new development. As such it is not for the proposed scheme to resolve matters relating to development south of Nairn where the local road network acts as a constraint. We find that [IMFLDP](#) paragraph 4.39 (CD062) is clear on these matters and concurs with our conclusions.

6.696 In our consideration of alternative routes (Chapter 2: Matters of Principle) we found no justification that the alternative route proposed by the objector (and also by OBJ/097 and OBJ/101) was better than that of the proposed scheme. We note TS's assertion in TS098.02 that the local road network would not be sufficient to act as a distributor and find no evidence to refute this. We also note that the draft CPO cannot be altered to add land (such as that required for a new/additional junction) it can only be altered to remove land. We are not persuaded that issues with the local road network capacity to support development south of Nairn are matters for TS to resolve through the proposed scheme. We therefore find no adequate justification for provision of an extra junction south of Nairn.

Overall

6.697 We have found that the proposed scheme would acquire some land in the ownership of OBJ/098 Mr Charles William Hynman Allenby and Mr James David Carnegie-Arbuthnott (Executors of the Estate of Charles Hynman Allenby) and that this could affect agricultural and forestry production. We have also found that the resultant impacts on agricultural and forestry operations could be resolved during construction and subsequent operation by identified mitigation and accommodation works (once agreed) that would form part of the construction contract. Whilst the proposed scheme would not be without impact we have also concluded that noise, vibration, dust/air quality and visual/landscape impacts / effects would not be sufficient to require additional mitigation, to significantly affect amenity or to compromise the public interest value of the proposed scheme. We also find no reason to conclude that protected species would not be catered for. As such this suggests to us that the ES has adequately considered the appropriate matters and reached reasonable conclusions. Overall therefore the evidence does not suggest we should recommend that Scottish Ministers modify the draft Orders or refuse to confirm them.

CHAPTER 7: RIVER NAIRN TO PROPOSED NAIRN EAST JUNCTION

Introduction

7.1 This chapter of the report considers objections raised in connection with the proposed dualling of the A96 in the section between the River Nairn area from east of Crook to the proposed Nairn East Junction. This forms part of the section referred to as the Nairn Bypass.

7.2 The route is proposed to continue eastwards from the crossing of the River Nairn and Crook on its eastern side. It would cross fields north of Knocknagillan / Skene Park Farm before then passing beneath the PS16 A939 Overbridge. This is shown on [draft CPO Sheet 18 of 23](#) (CD001) and [draft SRO Plans SR17 and SR18](#) (CD003). Laybys are proposed on the north and south sides of the proposed dual carriageway just west of PS16 with proposed SuDS ponds to their north.

7.3 The A939 would be severed by the proposed dual carriageway and so it is proposed to be realigned. The existing A939 would be stopped up at points 237 and 238 shown in draft SRO Plan SR18 (CD003) and a new section would bypass Skene Park Cottage and cross over the dual carriageway (Point 81 draft SRO Plan SR18 – CD003) via new bridge PS16. This new section would be built through the western most section of Bognafuaran Wood. The remaining section of the A939 on the north side of the proposed dual carriageway would form local access (point 82 draft SRO Plan SR18 – CD003) to Skene Park Cottage with new means of access for nearby agricultural fields.

7.4 East of the A939 Overbridge PS16, the proposed scheme would curve north-eastwards through land south of Blackpark Farm and north of the main section of Bognafuaran Wood. It would then pass through the north-eastern (long narrow) section of Bognafuaran Wood, severing Granny Barbour Road (U3010) as shown on [draft SRO Plan SR19](#) (CD003) with alternative access via the B9101, A939, B9111 and existing A96.

7.5 [Draft CPO Sheets 18 and 19](#) (CD001) show the proposed scheme passing northeast through Russell's Wood (on the north side of the U3010) and across open farmland of Kinnudie Farm before reaching the southern side of the B9111 Auchnacloch to Auldearn Road. This would be the south side of the proposed new Nairn East Junction.

7.6 Matters relating to the proposed Nairn East Junction itself and the proposed dual carriageway and side roads east of there are considered in this report at Chapter 8: Nairn East to Hardmuir.

Objecting parties

7.7 The objectors listed below are land owners/tenants with woodland, agricultural and / or residential interests in the area:

- OBJ/102 Mr John Graham
- OBJ/103 Mr David Philip and Mr Daniel Philip
- OBJ/105 Mr John R MacKintosh and Company
- OBJ/106 Mr Ronald D Gordon, Mr P Scott Gordon and Mrs Mhari Blanchfield (Kinstearry Woodland Estate)
- OBJ/110 Mr James A Philip
- OBJ/130 Nairnshire Farming Society

7.8 The majority of objections relate to specific properties. Where a landowner and tenant or other party objects to the same matters covering the same land these have been grouped. In so far as is possible, the objections are presented in geographic order from west to east.

OBJ/102 Mr John Graham

Objector

7.9 OBJ/102 Mr John Graham is the owner of [draft CPO Plots 1810, 1814 and 1815](#) (CD001), which cover parts of Househill Woods. He objects to the proposed acquisition of these plots and related impacts he considers would result from this and the proposed scheme in this locality.

Objections

General Impacts and mitigation

-General

7.10 Mr Graham argues that the ES concludes residual impacts of moderate/substantial significance on his land, including loss of boundary features and disruption to drainage. Mr Graham considers that there would be significant impacts as a result of noise and vibration, visual, air quality and ecological and hydrological impacts, and disturbance from increased recreational use of nearby woodland (currently used for recreation, birdwatching, rough shooting and commercial logging). [The reporters note that Mr Graham elaborates on several of these matters in his specific objections below].

-Noise and vibration

7.11 Mr Graham objects to the noise and vibration impacts that he considers would affect his home at Househill. He considers that these objections would be abated by satisfactory steps to reduce noise such as:

- a 40 miles per hour speed limit;
- noise reduction road surfacing;
- noise barriers; and,
- walls and contoured noise embankments.

7.12 Mr Graham reserves the right to serve a blight notice in terms of section 101 of the Town and Country Planning Scotland Act 1997.

-Windblow/windthrow

7.13 Mr Graham argues that the siting of the road would compromise the existing firm edge of the wood and result in windblow from the new edge.

-Access to Crook Road

7.14 Mr Graham welcomes new access points proposed from the woods onto Crook Road. He argues that these would need to be constructed and maintained to be suitable for HGVs; including large logging vehicles, and include appropriate turning space and visibility.

-Bat boxes

7.15 Mr Graham supports protecting bats but seeks an alternative legally-binding method other than compulsory purchase. Doing so would, he argues, remove need for a servitude right on Plot 1814 to access Plot 1815 for the siting of bat boxes.

Plot 1810

-Access track north of Plot 1810

7.16 Mr Graham argues that:

- Househill Woods currently operates as commercial woodland.
- logging vehicles use a strip of land north of/ or within but on the north side of Plot 1810 to cross between two areas of woodland to the east and north of this point respectively.
- these commercial operations have been ongoing for at least a year since his letter dated 25 January 2017 (TS102.01).
- the proposed location of SuDS ponds within Plot 1810 (the eastern-most pond in particular) would narrow the strip of land used by logging vehicles to twelve metres at a low lying boggy location, making the crossing of the burn difficult [assumed to be Househill Burn].

-SuDS Ponds on Plot 1810

7.17 Mr Graham objects to the location and design of the proposed SuDS ponds on Plot 1810, arguing that:

- the proposed acquisition of land for SuDS is excessive because only 0.4 hectares of the 1.3 hectares proposed for acquisition would be required for the SuDS.
- construction of the ponds would have a high ecological price because it would necessitate the felling of mature hardwood trees.
- the proposed SuDS ponds would impact on wildlife amenity by reducing water flow into a nearby lochan on Househill land.
- the proposed SuDS ponds would produce a chemical change due to leakage and, thus, contaminate the watercourse downstream.
- the ES fails to adequately assess this impact and the mitigation.

-Layby on Plot 1810

7.18 Mr Graham objects to the proposed location of a layby at Plot 1810 [assumed to be the northernmost layby on the east bound carriageway] because he argues it would provide for:

- 'human encroachment' into his woodland and their 'disturbing of wildlife/alarming woodland users such as walkers'.
- the public to park to access the woods giving rise to safety issues and preventing use of the layby by others.
- increased risk of fly tipping close to his home.
- increased risk of odour and health issues from people/pets toileting there.
- easy access to his land for poachers, wild bird egg collectors and those threatening wildlife, such as red squirrels and badgers.

7.19 He also argues that the ES fails to adequately assess the wildlife impacts above.

Transport Scotland's response

General Impacts and mitigation

-General

7.20 TS argues that [ES Appendix A15.7, page A15.7-56](#) (CD006) assesses the value of Househill Woodlands within the local landscape as Moderate/Substantial.

7.21 TS notes Mr Graham's concerns regarding the impact of the proposed scheme on the remaining woodland and that the woodland's existing recreational and commercial use would be impaired. TS refers Mr Graham to its [Guidance on the Compulsory Purchase Process and Compensation](#) (CD046). It argues that this provides information on how he may be able to make a claim for compensation subject to the District Valuer's assessment.

-Noise and vibration

7.22 TS argues that Mr Graham's property is understood to be woodland, and receptor-specific noise mitigation is not provided for this land use category. It confirms that [ES Table 8.2](#) (CD005) provides details of the criteria used to define noise sensitive receptors.

-Wind blow/windthrow

7.23 TS argues that:

- the woodland plots affected by the proposed scheme have been identified as 189/1W and 189/2W in [ES Figure 15.6i](#) (CD007).
- [ES Table 15.23](#) (CD005) identifies mitigation item CP-F3 specifically to address impacts on wind blow/windthrow) and that this formed part of the assessment.
- [ES Appendix A15.7](#) (CD006) identifies this mitigation measure as being required for woodland parcel 189/1W due to the expected moderate to high windthrow risk.

Mitigation Item CP-F3 states:

'Where individual stands of trees and woodland compartments would be affected, an appropriate arboricultural assessment (including tree protection plan and method statement) and/or wind throw assessment (using an appropriate assessment tool such as ForestGALES) would be undertaken pre-construction and appropriate mitigation employed to address safety risk to land within the proposed Scheme. Any felling to create a windfirm edge would take account of ecological, landscape and visual effects and designed where feasible to maximise ecological, landscape and visual opportunities.'

- detailed proposals of the pre-construction works required would be informed by the windthrow and arboricultural assessment completed at that time.
- its appointed contractor would be required to develop and employ appropriate mitigation.
- should any work outwith the CPO boundary be identified at that time as necessary to protect the proposed scheme this would be carried out subject to Mr Graham's agreement.
- it would carry out work to protect existing trees outwith the CPO boundary if these trees present a safety risk to land within the CPO boundary.
- any further work Mr Graham considered necessary to protect existing trees outwith the CPO boundary would need to be arranged by him.
- compensation for such work may be available subject to the agreement of the District Valuer.

-Access to Crook Road

7.24 TS confirms that:

- alternative access to Mr Graham's property would be provided as part of the proposed scheme via Househill–Raitloan-Howford Road (C1175) shown as new means of access 411 and 462 on [draft SRO Plans SR17 and SR31](#) (CD003).
- these two new means of access would be designed to accommodate large logging vehicles in accordance with the standards set out in The Highland Council's Technical Advice Note, Forestry Extraction.
- as the land required to construct these new means of access is included in the CPO, it would be owned and maintained by the Scottish Ministers following completion of the proposed scheme.
- if, following construction of the proposed scheme, part or all of the land purchased for the construction of these new means of access is deemed surplus to requirements, the Scottish Ministers may offer to sell this land (including the new means of access, where relevant) back to Mr Graham in line with the Crichton Down Rules.

-Bat Boxes

7.25 TS confirms that Plot 1814 has been included in the [draft CPO](#) (CD001) to secure a servitude right of access along the existing access track to safeguard future access to the bat boxes proposed within Plot 1815. TS argues that:

- bat boxes are proposed to mitigate the loss and fragmentation of commuting habitats for bats, a European protected species.
- it is necessary to provide bat boxes in close proximity to these lost habitats where an impact from the proposed scheme has been identified.
- the bat box locations have been selected so that they would not be compromised during construction works, but close enough so that they could effectively mitigate for the loss and fragmentation of commuting habitats, by providing additional shelter.
- Plot 1815 was chosen as a suitable location for bat boxes, for the mitigation of bat roosting habitat being lost near Crook (Farm) and Crook Cottage due to the presence of suitable mature trees in an area frequented by bats.
- the location of Plot 1815 allows for access on foot for maintenance and monitoring of the boxes from the adjacent proposed trunk road boundary.

7.26 TS notes that Mr Graham is in favour of protecting bats, but that he would prefer the bat boxes to be put in place without the necessary land being compulsorily purchased. TS considers it necessary to acquire Plot 1815 to allow the installation of the bat boxes and ensure the alternative bat habitat is protected and can be appropriately maintained and monitored by TS during the establishment period. However, in light of Mr Graham's request TS confirms that:

- its willingness, following installation of the bat boxes, to lease back this plot to Mr Graham for a period sufficient to allow bats to establish, up to a maximum of 10 years.
- the lease would include restrictions with regard to the use of the land to ensure establishment of the replacement habitat is not impeded.
- the lease would include a provision which would give Mr Graham a right to purchase back this land following establishment of the bat population, or the end date of the lease, whichever came sooner.
- it is unable to offer an alternative legal mechanism which would safeguard its future access requirements over Plot 1814.

Plot 1810

-Access track north of Plot 1810

7.27 TS confirms that:

- it proposes to provide Mr Graham with alternative access to cross the burn, which would lie within Plot 1810, close to its northern boundary.
- this access would be constructed as part of the main works contract.
- its design consultants, Jacobs would develop the outline design for this crossing as part of the preparation of the construction contract documents, and carry out further consultation with Mr Graham at that time.

-SuDS ponds on Plot 1810

7.28 TS confirms that Plot 1810 extends to 37,059 square metres and argues that this plot:

- is required for construction of the proposed scheme and essential environmental mitigation as identified in [ES Figure 9.5q](#) (CD007).
- includes land for the permanent SuDS ponds, including sufficient working space to enable construction, and also for landscaping to screen views, offset habitat loss and promote biodiversity and habitat for protected species.

7.29 TS argues that this required landscaping includes the planting of new coniferous and riparian woodland, as well as the safeguarding and management of the existing wooded areas for landscaping and ecological purposes.

7.30 TS argues that:

- the purpose of the SuDS ponds is to retain and treat surface water (and any sediments/oil or heavy metal contaminants) running off the new A96 carriageway, prior to outfalling to existing water courses.
- the dual carriageway drainage is gravity fed and the ponds therefore need to lie at natural low points along the dual carriageway alignment, and in close proximity to existing water courses.
- the outline design has identified the need for SuDS ponds at this location, although there would be more detailed design carried out at the next stage to confirm the exact size and layout of these ponds.
- if, following construction of the proposed scheme, any part of Plot 1810 is deemed surplus to the mitigation requirements described above, the Scottish Ministers may offer to sell this land back to Mr Graham in line with the Crichton Down Rules.

7.31 TS notes Mr Graham's concerns in relation to the SuDS ponds reducing flows in the burn located along the edge of the field, and for the potential of chemical contamination of this burn. TS argues that:

- the SuDS ponds form part of the overall sustainable drainage systems design and would be used to convey and control surface water to improve water quality and control flow rates and volumes, before discharging into existing surface water features.
- the ponds would not affect the natural flows in the burn at low or normal flow conditions.
- in periods of heavy rain the ponds would slightly increase the flows to the burn, although the ponds are sized to attenuate much of the flow and release it gradually.
- its design consultant, Jacobs, has evaluated the potential for flood risk downstream of the proposed scheme and concluded that there are no receptors at an increased risk of flooding between the proposed scheme and the River Nairn floodplain.

- the surface water run-off from the carriageway and earthworks slopes would be conveyed to the ponds via a network of filter drains.
- the combination of the filter drains and ponds would ensure that two levels of pollution treatment are provided in the scheme drainage design to satisfy SEPA requirements.
- [ES Table 20.1](#) (CD005) Mitigation Items GR1 to GR4, and [ES Table 20.8](#) (CD005) set out further commitments to avoid, reduce or control pollution

7.32 In relation to the mature hardwood trees, TS refers to [ES Table 20.1](#) (CD005) Mitigation Item GR5 (bullet point 5), which states that TS ‘...will aim to retain existing trees and vegetation wherever possible...’.

7.33 TS confirms that retained woodland in this location has also been identified in the ES landscape mitigation measures for management to enhance sustainability, assist integration with new planting and protect existing screening where possible. TS is therefore satisfied that a full assessment of habitats and biodiversity has been undertaken and is reported in the ES.

-Laybys on Plot 1810

7.34 TS argues that:

- the proposed laybys are positioned in accordance with the [DMRB, Technical Document TD 69/07](#) (CD049.32) ‘The Location and layout of lay-bys and rest areas’.
- in accordance with this standard, it has an objective of providing laybys every two to three kilometres along the proposed scheme, where possible.
- achievement of this objective is constrained by features such as junctions, structures, and horizontal alignment curvature which restrict the number of locations where lay-bys could be provided.
- in the vicinity of Househill Woodlands, the only alternative suitable location would be further east, within the open farmland between Househill Woodlands and the A939 Tomintoul–Grantown on Spey–Nairn Road.
- similar concerns to those raised by Mr Graham would apply at any location chosen for a lay-by and, in this case, the location within the woodland has been chosen as the most suitable because it is further from the residential properties at Skene Park.

7.35 TS confirms that:

- boundary fencing could be installed for Mr Graham as part of the construction contract, with his agreement, to address some of his concerns.
- this fencing would be owned and maintained by Mr Graham, as landowner.
- its design consultant, Jacobs would discuss Mr Graham’s preferences for fencing specifications during forthcoming accommodation works negotiations.
- should rubbish bins be provided at the layby, collection would be carried out by The Highland Council.
- The Highland Council would be the relevant authority with respect to litter picking along the roadside verge.

Findings of Fact

General impacts and mitigation

-General

7.36 We find that Mr Graham's objections relating to ecology and hydrology, noise and vibration, wildlife and disturbance to recreational use of nearby woodland are each covered specifically within his more detailed objections. We therefore consider only air quality and visual impacts under this heading.

7.37 [ES Figure 15.6i](#) (CD007) shows that the parts of Househill Woods affected by the proposed scheme are fields 189/1W and 189/2W. [ES Figure 10.3g](#) (CD007) shows the built receptors between approximate ch22800 and 23800, which are broadly the locations of fields 189/1W and 189/2W. These are listed in [ES Appendix A10.1](#) (CD006) as:

- Receptor 124: Crook Cottage
- Receptor 125: Crook Farm House
- Receptor 126: Woodlea and Skenepark Cottages
- Receptor 132: Skenepark Farm

7.38 We note that these receptors are owned by other objectors and not Mr Graham. The evidence does not suggest to us that Mr Graham owns or rents any of these properties and we note that his objection carries an Oxfordshire address. We therefore find that any visual impacts and effects from the proposed scheme in this locality would be unlikely to affect residential property owned/rented by him. We have also considered elsewhere in this report the visual impacts and effects at those receptors listed above.

7.39 We note proposed mitigation planting on the north side of the proposed dual carriageway in the vicinity of fields 189/1W and 189/2W ([ES Figures 9.5q and 9.5r](#) – CD007). We also note that the existing woodland that forms Househill Woods also forms some landscaping and visual screening from properties/receptors north of that point.

7.40 This does not suggest to us that Mr Graham or his property at Househill Woods would be adversely affected by the visual impacts / effects of the proposed scheme. We consider in greater detail the visual impacts / effect of the proposed scheme on receptors 124 and 125 (see Chapter 6 paragraphs 6.611 to 6.617) and receptors 127 and 132 (below).

7.41 [ES Figure 10.3g](#) (CD007) also identifies three receptors further north in the residential part of Nairn known as Househill to the northeast and northwest of Househill woods. These receptors are listed as 127, 128 and 129. The evidence does not indicate whether these are owned or rented by Mr Graham. However, were either the case, we note that the most severe of the effects identified at these properties would be 'moderate' in winter year of opening. Fifteen years after opening the worst effects would fall to 'slight/moderate'.

7.42 Irrespective of our conclusions for the receptors above the evidence does not suggest to us that residential property owned/rented by Mr Graham would be affected by any initial or residual effects of the proposed scheme; to an extent that compromise the public interest value of the proposed scheme or that would justify modification to the draft Orders or refusal to confirm them.

7.43 The evidence before us does not suggest we should conclude the ES air quality assessment to have been carried out incorrectly or to have reached erroneous conclusions.

7.44 We find that [ES Appendix A7.4](#) (CD006) lists the predicted changes in concentrations of NO₂, PM₁₀ and PM_{2.5} at two air quality assessment receptors between ch22800 and ch23800. These are AQ_232 Crook Farmhouse and AQ_233 Skene Park Farm House. We find each to be the closest to the proposed scheme of the properties visible on [ES Figure 15.6i](#) (CD007) and that each is close to Househill Woods, and specifically fields 189/1W and 189/2W.

7.45 [ES Appendix A7.4](#) (CD006) predicts increases in concentrations of NO₂, PM₁₀ and PM_{2.5} for each of the two receptors. However, we find that neither predicted increase would result in concentrations that would exceed the national air quality standards for NO₂, PM₁₀ or PM_{2.5} identified in [ES Table 7.3](#) (CD005).

7.46 [DMRB Volume 11, Section 3, Part 1, HA207/07 paragraph D1.1](#) (CD049.14) suggests that properties outside of 200 metres from the proposed scheme do not need to be assessed. We are therefore satisfied that were there to be a residential property at Househill Woods, or nearby, owned/rented by Mr Graham, it would be unlikely to experience unacceptably high air quality impacts that would breach national air quality standards.

-Noise and vibration

7.47 We find [ES Appendices A15.6 and A15.7](#) (CD006) to confirm that Househill Woods, fields 189/1W and 189/2W are commercial woodland. [ES Figure 15.6i](#) (CD007) does not suggest that Mr Graham owns any high sensitivity noise receptor within these plots, as described by [ES Table 8.2](#) (CD005). We find that woodland is not a high sensitivity receptor. As such this does not suggest justification for noise barriers (including walls/contoured embankments).

7.48 We find that [ES paragraph 8.2.16 bullet 6](#) (CD005) confirms that the proposed scheme is already proposed to be constructed from low noise road surfacing (LNRS) as sought by Mr Graham. We find that the requested 40mph speed limit would be incompatible with the design ethos of the proposed scheme. The evidence considered below does not indicate any noise related impact that would justify such action or indicate what impact such a measure would have on ameliorating the factors which lead to such concerns.

7.49 We note that there are noise sensitive receptors (residential properties) in the vicinity of Househill Woods, in particular Crook Farmhouse, Skene Park Cottage and Skene Park Farm House. We have considered the noise impacts and effects of the proposed scheme for these receptors in Chapter 6 paragraphs 6.593 to 6.603 and in paragraphs 7.177 to 7.179 below. There we concluded that, despite predicted increases in noise levels that would be perceptible in the short-term (above 1 dB) and long-term (above 3 dB), the predicted absolute noise level threshold of 59.5 dB LA10, 18h stated in the noise mitigation strategy ([ES paragraphs 8.2.24 to 8.2.34](#) – CD005) would not be breached. As such, we find that properties in question would not require additional receptor-specific noise mitigation beyond that already forming part of the proposed scheme.

7.50 We find no evidence to suggest that Mr Graham owns/rents properties that would fall within the high sensitivity receptor category in this vicinity. However, were he to do so, the

proximity of the receptors considered above to the proposed scheme and our findings there persuade us that this would be unlikely to meet the criteria for receptor-specific noise mitigation.

7.51 We also note that Mr Graham objected on the grounds of vibration impact. We find that the vibration assessment has been reported in [ES Chapter 8](#) (CD005). We note the omission of ground-based traffic vibration impacts on buildings and people and airborne vibration on buildings from the assessment and the reasons stated for this in [ES paragraphs 8.1.10 and 8.1.11](#) (CD005). The evidence before us does not provide any compelling reason to conclude this to be incorrect or that the assessment has reached erroneous conclusions as a consequence.

7.52 [ES paragraph 8.2.35](#) explains that only properties within 40 metres of the centre line of the proposed scheme with predicted or measured road traffic noise levels exceeding 58 dB $L_{A10, 18h}$ are included in the assessment for airborne vibration. We find this to reflect [DMRB Volume 11, Section 3, Part 7, HD213/11, paragraph 3.46](#) (CD049.19).

7.53 We find that only Mr Graham's woodland would be located within 40 metres of the proposed scheme and that with the proposed scheme in place, at least some of this woodland (or replacement/mitigation woodland) would be in the ownership of the Scottish Ministers. Based on [ES Figure 4.1j](#) (CD007) we find no reason to suggest that there are any residential properties within 40 metres of the proposed dual carriageway between ch22800 and ch25500. We therefore find no evidence to suggest that vibration impacts would adversely affect any of Mr Graham's property within 40 metres of the proposed scheme.

-windblow/windthrow

7.54 [ES Appendix A15.6](#) (CD006) concludes that Househill Woodlands contains a mixture of commercial and non-commercial woodland. [ES Appendix A15.7](#) (CD006) concludes that only field 189/1W would require a ForestGALES windthrow assessment to confirm the level of windthrow risk.

7.55 We note from [ES Figures 9.5q and 9.5r](#) (CD007) that mitigation planting is proposed on the southern sides of both fields 189/1W and 189/2W. We also note that ES Appendix A15.7 (CD006) that mitigation items CP-F1 to CP-F7 ([ES Table 15.23](#) –CD005) are required. This suggests to us that potential risks from tree felling, including windthrow have been considered and identified with appropriate measures in place, including the ForestGALES assessment and the minimisation of tree felling. TS also outlines its approach to windthrow within the CPO area and we find this to be rational and complementary to our findings above.

7.56 This persuades us that TS is proposing a managed approach to tree felling/retention in the area. However, we accept that this may not eliminate the potential for windthrow/windblow. Should Mr Graham consider that he would incur losses then this could form part of any claim for compensation. Compensation would be a matter for the District Valuer and is not for this inquiry to determine.

-Access to Crook Road

7.57 We note that Mr Graham welcomes the proposed provision of new means of access 411 and 462 on [draft SRO Plans SR17 and SR31](#) (CD003). TS confirms that these would each be capable of handling HGVs such as logging vehicles and we find this to

reflect Mr Graham's wishes. The detailed design specifications would be a matter for the relevant parties. We also note that it is possible that these could be sold back to Mr Graham under the Crichel Down Rules. We find this to be a matter from him and not for this inquiry.

-Bat Boxes

7.58 We find that Plot 1815 is required for the provision of five bat boxes (ES Figure 9.5q – CD007) and that Plot 1814 would be required to guarantee legal access to Plot 1815 for TS.

7.59 We note that Mr Graham does not appear to object in principle to bat mitigation but would prefer an alternative location or for it to be achieved in a way that did not require land to be acquired. However, we accept the need for bat mitigation since TS has identified an impact to the habitats of that protected species from the proposed scheme and that replacement habitat should be located as close as possible to that which would be lost. The evidence in [ES Chapter 11](#) (CD005) suggest that TS has assessed the impacts of the proposed scheme on a variety of species including bats in an appropriate manner with the close involvement of SNH. We give weight to the fact that SNH has not objected to this aspect of the proposed scheme.

7.60 We find that such a replacement habitat must be located so as to minimise disturbance during the construction and operational phase and so must be sufficient distance from each. We see no reason to disagree with the mitigation location criteria stated by TS in [TS102.02](#) and note that consideration of these matters has resulted in Plot 1815. The evidence presented by Mr Graham does not suggest we should doubt TS's conclusions or that a better alternative exists.

7.61 We note that TS is prepared to lease back Plot 1815 with specific conditions limiting activities. This would seem reasonable from the perspective of bat mitigation but whether it proceeds is a matter for Mr Graham and TS. We note TS's suggestion that it would not be possible to have a similar arrangement for Plot 1814 since this is a servitude access right. We find no reason to reach a different conclusion.

Plot 1810

-Access track north of Plot 1810

7.62 We note Mr Graham's concerns but that TS proposes an alternative access track within the northern part of Plot 1810. We find this to be an assurance/ commitment to carry out works to that effect since this proposed track does not appear otherwise in [draft SRO Plans SR17, SR18 or SR31](#) (CD003) or in ES Figure 4.1 (CD007). We note that TS proposes to consult with Mr Graham on this matter and to include the agreed designs in the construction contract documents. We find that this would commit the contractor to deliver the track and that it could, if provided to the appropriate standard, resolve Mr Graham's concerns.

-SuDS Ponds on Plot 1810

7.63 We find that all of the land covered by Plot 1810 is required for construction, operation and maintenance of the SuDS ponds, the proposed dual carriageway and provision of the necessary ecological and landscape mitigation as identified in ES Figures 9.5q and 9.5r (CD007). The evidence does not suggest that this land would not be required but TS has confirmed that, were any of it to be deemed surplus to requirements, it

could be sold back under the [Crichel Down Rules](#). We also note one of the reasons for concern related to the access issues discussed above, which we find could be resolved by provision of an access track within Plot 1810.

7.64 We agree with TS about the purpose of SuDS ponds being for attenuation and filtration of water. We therefore find that this would contribute to reducing the risk of pollution to the Househill Burn and River Nairn from what may, otherwise, have arisen from the proposed scheme. We also note ES Mitigation Items GR1 to GR5 ([ES Table 20.1](#) – CD007) and all items within [ES Table 20.8](#) (CD005). These persuade us that the appropriate consideration has been given to circumstances that could arise from SuDS ponds and that identified mitigation would be included within any construction contract and be binding on the contractor.

7.65 [ES Chapter 11](#) (CD005) does not suggest we should conclude that the impacts on habitats and biodiversity in the vicinity of Plot 1810 would differ from what TS contends. Similarly the flood risk assessment in [ES Appendix A13.2](#) (CD006) shows that the proposed scheme (including SuDS on Plot 1810) would not increase flood risk of the Househill Burn or River Nairn. We attach weight to the fact that SEPA has not objected to these proposals. The evidence provided by Mr Graham does not suggest we should reach a different conclusion.

7.66 We therefore find that the proposed SuDS ponds are necessary as part of Plot 1810 and that the risks of Mr Graham's concerns occurring would either not arise or would be suitably diminished by the proposed design and/or mitigation.

-Layby on Plot 1810

7.67 ES Figure 4.1i (CD007) shows a layby proposed between approximate ch23200 and ch23300 on the north side of the proposed dual carriageway adjacent to field 189/1W (ES Figure 15.6i – CD007). We note that this proposed layby would also provide access to the proposed SuDS maintenance track.

7.68 Mr Graham's main concerns appear to relate to misuse of the layby. We find that TS's fencing proposals could have some impact on Mr Graham's concerns that relate to access to the woodland from the layby by 'unwelcome parties'. We note that such fencing would be provided as accommodation works, subject to the landowner's agreement. Whilst the detailed specifications of accommodation works are not for this inquiry we find that their proposed provision would form part of the construction contract, making their provision binding on the contractor.

7.69 We also note that refuse bins could be provided and that these would be emptied by The Highland Council. This could diminish the impact from litter. We find, however that the other concerns could remain. However, we agree with TS that these and the access related concerns could be apparent at any layby, irrespective of its location. This suggests to us that reasonable measures are proposed in response to Mr Graham's concerns.

7.70 We note TS's proposed strategy of providing laybys every two to three kilometres except where restricted from doing so by structures, junctions or horizontal alignment. [DMRB TD69/07](#) (CD049.32) paragraphs 3.4 to 3.8 are mandatory. [DMRB TD69/07](#) paragraph 3.6 makes clear that laybys are to be considered as junctions and that the requirements of [DMRB TD9/93](#) Highway Link Design (CD049.07) apply. [DMRB TD69/07](#) paragraph 3.7 makes clear that for a grade separated junction, the minimum separation for

a layby is one kilometre (as stated in [DMRB Volume 6, Section 2, Part 1 – TD22/06](#) (CD049.09)).

7.71 DMRB TD9/93 Highway Link Design (CD049.07) covers obstructions to sight distance and suggests that, wherever possible, laybys should be sited on straights or outside curves. DMRB TD22/06 Figure 2/9, paragraphs 4.34 to 4.38 and Figures 4/9 to 4/14 (CD049.09) are mandatory and confirm that the minimum weaving length between a grade separated junction and a layby for a rural all-purpose road must be one kilometre.

7.72 [ES Figure 4.1j](#) (CD007) shows these laybys each to be in excess of one kilometre from the nearest point of the respective Nairn East junction slip roads and from proposed laybys further west. We find no reason to suggest that TS has failed to appropriately consider the appropriate design matters such as weaving distance.

Overall

7.73 The evidence suggests that the objections raised would either be avoided/limited due to proposed mitigation/accommodation works; or, would not come about. These works, if and where agreed, would form part of the construction contract, thus binding the contractor to deliver them to the appropriate standard. Whilst there would be some residual impacts / effects these would not require additional mitigation and would not override the public interest in providing the proposed scheme. Overall therefore the evidence does not suggest we should recommend that Scottish Ministers modify the draft Orders or refuse to confirm them.

Skene Park Farm and Kinnudie Farm -OBJ/103 Mr Daniel Philip and Mr David Philip -OBJ/110 Mr James A Philip

Objectors

7.74 OBJ/103 Mr David Philip and Mr Daniel Philip are the owners of Skene Park Farm; the name given to the combined farms of Knocknagillan Farm and Bognafuaran Farm. References to Skene Park Farmhouse and the Prefab refer to buildings located at Skene Park Farm buildings complex, to the south of the proposed dual carriageway. The prefab is a residential property that is let on a residential tenancy. Bognafuaran Farm buildings are located to the north of the proposed dual carriageway.

7.75 Skene Park Farm is tenanted to a family member, OBJ/110 Mr James A Philip, who is also the owner of Kinnudie Farm. OBJ/110 Mr James A Philip's farm business therefore occupies both Skene Park Farm (Bognafuaran and Knocknagillan farms) and Kinnudie Farm.

7.76 In this chapter we consider objections made by OBJ/103 Mr David Philip and Mr Daniel Philip and OBJ/110 Mr James A Philip with regard to Skene Park Farm, Kinnudie Farm and the objectors' respective concerns about these and residential property issues there. OBJ/110 Mr James A Philip's objections relating to the Nairn Show are considered separately below in paragraphs 7.330 to 7.341.

7.77 OBJ/110 Mr James A Philip also raises objections relating to route selection and alternatives. These matters are considered separately in detail in Chapter 2: Matters of Principle from paragraph 2.137 onwards.

[The Reporters note that both the objectors and TS have used alternate spellings for 'Skenepark' and 'Skene Park'. Where these are used alternately or interchangeably by each or both parties we accept these to be referring to the same place.]

Objections

Skenepark-Blackpark-Russell's Wood Realignment

7.78 Mr Philip argues that following the DMRB Stage 2 consultation, the preferred route option in the vicinity of Blackpark Farm and Skene Park Farm was changed significantly. This change, he argues, was a major and material alteration to the preferred option and was done with limited, if any, public consultation.

7.79 Mr Philip contests the basis of the alignment change arguing that amendments should be because they improve the road design and not due to pressure from individuals or groups of interested parties. He argues the realignment to be so significant that it ought to have been subject to DMRB Stage 2 rather than Stage 3.

7.80 Mr Philip does not consider that adequate consideration was given to retaining the original route and if necessary the demolition and replacement of Blackpark Farmhouse to facilitate this. Having regard to the additional construction and land acquisition costs, additional fuel and travel costs (see below) Mr Philip argues that replacement of Blackpark Farmhouse and retaining the original proposed route of September 2014 would have been 'a cheaper and significantly more viable option'.

7.81 In his Statement of Case Mr Philip provides calculations for the additional length of carriageway which he considers to be between 150 metres and 160 metres. He contends that, based on TS's published figures of 15,000 vehicle journeys per day, this additional distance would result in an extra 525,000 additional miles travelled per year, 13,000 gallons of extra fuel (assuming 40 miles to the gallon) and 10,000 extra hours per year (assuming 50 miles per hour) and the associated increase in CO₂ (carbon dioxide) emissions. He contends that whilst 150 metres may seem like a short distance it would have a significant impact on travelling vehicles and he argues this has not been sufficiently considered or justified technically.

7.82 Mr Philip considers that the proposed re-routing would result in field severance and injurious affection, by creating small land parcels that would not otherwise have been the case.

7.83 Mr Philip also argues that the route realignment would move the proposed scheme towards the edge of Russell's Wood resulting in a more visible carriageway from both his property at Kinnudie Farm and Auldearn as well. He also contends that this would result in fewer trees and so less screening and noise abatement than if the alignment had been further west. He considers the noise, visual and severance impacts from the proposed scheme for his property and Auldearn would be greatly increased by the realignment and that TS has not given sufficient consideration to this.

Business impacts

-Agricultural assessment

7.84 OBJ/103 Mr David Philip and Mr Daniel Philip object to the agricultural methodology because, although Skene Park Farm and Kinnudie Farm are farmed together, they are not in the same ownership. They argue that the assessment should only consider land in the same ownership, and, because it does not do this, they contend that the ES is misleading.

-Severance

7.85 OBJ/110 Mr James A Philip argues that the severance resulting from the proposed scheme would create a smaller area of arable land that would be more expensive and inefficient to farm using modern machinery and farming practices. He objects to the resultant severing of Plots 1818 and 2001 by the proposed scheme.

-Proposed access arrangements

7.86 OBJ/110 Mr James A Philip objects to the proposed rerouting of the A939 along the eastern edge of Skene Park Farm. He argues that this would result in stopping up of a section of the road so it would no longer be possible for vehicles to travel direct to the severed field from remainder of the farm. As such he contends that this would require a detour via Househill and then back along the existing A939.

7.87 OBJ/103 Mr David Philip and Mr Daniel Philip and OBJ/110 Mr James A Philip each object to the proposed access to severed fields near PS16 A939 overbridge via the proposed hammerhead south of Skene Park Cottages on the remains of the existing A939. Here they argue that the field would become difficult to farm because of the proposed access protruding 10 metres wide between the access and Skene Park Cottage. OBJ/110 Mr James A Philip requests the proposed hammerhead be moved north to be closer to Skene Park cottages to reduce what he terms 'the area of potentially sterilised land'.

-Drainage

7.88 OBJ/103 Mr David Philip and Mr Daniel Philip note that detailed designs for drainage would be carried out by a design and build contractor. They wish to have an opportunity to comment on this and emphasise the importance of the existing drainage ditch running west of Plot 1818 which, they argue, is vital to the wider drainage network for Skene Park Farm.

7.89 OBJ/110 Mr James A Philip argues that there would be a significant impact on field drainage systems, which may also make his land more difficult to adequately drain and manage as arable land. He considers that this is not adequately addressed and seeks detailed plans of the proposed mitigation measures.

Residential property impacts

-Noise and vibration

7.90 OBJ/103 Mr David Philip and Mr Daniel Philip and OBJ/110 Mr James A Philip each argue that there would be disturbance from vehicle noise for livestock and their respective residential properties, including those they rent. OBJ/103 Mr David Philip and Mr Daniel Philip object to the noise impact from the proximity of the proposed scheme to Skene Park Farmhouse (they argue this to be approximately 80 metres) and 'The Prefab'.

-Visual impact, light pollution and security

7.91 OBJ/103 Mr David Philip and Mr Daniel Philip and OBJ/110 Mr James A Philip each argue that there would be a security impact on their lands due to proximity of the proposed scheme and that there would be sight lines and disturbance from vehicle lights for livestock.

7.92 OBJ/103 Mr David Philip and Mr Daniel Philip object to the visual impact from the proximity of the proposed scheme to Skene Park Farmhouse (they argue this to be approximately 80 metres) and 'The Prefab'. This is particularly, they argue, for the visual impact from PS16 A939 Overbridge which, they contend, would be seven metres high. They seek assurance that mitigation measures in the vicinity of Skene Park Farm, such as bunding, tree planting etc., would minimise impact on their property.

7.93 OBJ/110 Mr James A Philip argues that the height and prominence of the proposed dual carriageway would significantly impact on the amenity and outlook from his property. He also considers that this would result in significant loss of privacy.

Transport Scotland's Response

Skenepark-Blackpark-Russell's Wood Realignment

7.94 Regarding the change of the alignment of the proposed dual carriageway following the announcement of the DMRB Stage 2 preferred option, TS argues that:

- as stated at the preferred route option exhibitions in October 2014, the preferred option would be subject to further design development during DMRB Stage 3.
- along the length of the proposed scheme, the dual carriageway, and side road alignments and junction layouts were developed following further consultation with landowners, and in relation to environmental constraints and utility providers.
- following the announcement of the preferred option, feedback was received from directly affected landowners with regard to the resulting severance, the negative impact on farm operations and local access issues in this location.
- a preference was expressed by these landowners for an alternative alignment to be considered to the south of the farm buildings at Blackpark and around the edge of Russell's Wood.
- alternative options were therefore assessed with a view to reducing the effects of severance, by more closely following field boundaries, and to examine if an alternative alignment in this location would give a better overall balanced scheme assessment outcome.
- options both to the north and south of the Stage 2 preferred option were considered and assessed under the same headings as the DMRB Stage 2 report.
- the result of the assessment was that a dual carriageway alignment to the south gave a better overall balanced scheme assessment outcome through the Skene Park – Blackpark – Russell's Wood section of the scheme.
- this Developed Preferred Option was presented at the February 2016 public drop-in events, with the alignment subsequently modified twice (April and May 2016) following feedback received during consultations with directly affected landowners, including your client.

7.95 Transport Scotland acknowledges that the alignment is not OBJ/110 Mr James A Philip's preferred location but considers the proposed alignment achieves a balance between the impacts to his property with those of his neighbours.

Business impacts

-Agricultural assessment

7.96 TS argues that:

- the agricultural assessment was completed in accordance with [DMRB Volume 11, Section 3, Part 6: Land Use](#) (CD049.18) as described in [ES Paragraphs 15.3.1, 15.3.15 to 15.3.18 and 15.3.52 to 15.3.63](#) (CD005);
- DMRB Part 6 (Land Use) (CD049.18) requires an assessment to be undertaken that includes an agricultural assessment of land use, severance, boundary impacts and likely future viability of individual farms;
- it is accepted practice that the assessment undertaken reflects the current tenure of the land affected by the proposed scheme as identified in the [draft CPO](#) (CD001) which identifies OBJ/103 Mr David Philip and Mr Daniel Philip as the landowner and OBJ/110 Mr James A Philip as the tenant;
- consequently the [ES Appendix A15.7](#) (CD006) correctly reports the impacts of the proposed scheme on the business of OBJ/110 Mr James A Philip as Skene Park Farm, Kinnudie Farm and Bognafuaran Farm (field references 143/1 to 143/3, and 609/1 to 609/2 shown on [ES Figures 15.6i and 15.6j](#) (CD007).
[The Reporters note that Bognafuaran Farm is one part of Skene Park Farm as stated by the objectors].

-severance

7.97 TS argues that:

- an assessment has been carried out of OBJ/110 Mr James A Philip's farming business in [ES Appendices A15.6 and A15.7](#) (CD006) as described above;
- this would result in land take of 9.05 hectares and severance of some fields;
- ES Appendix A15.7 (CD006) has assessed this and concluded the requirement for Mitigation Item CP-AG7 (amongst others) specifically to reduce the impacts of the proposed scheme arising from awkward field shapes, as set out in [ES Table 15.23](#) (CD005). CP-AG7 states:

'Where boundary features (e.g. fences, walls and hedges) require temporary or permanent alteration to allow construction, these would be reinstated with appropriate materials to provide a secure field boundary, with opportunities explored in consultation with the landowner/occupier to merge severed field areas to improve field husbandry operations through the creation of more manageable field sizes and shapes.'

- ES Appendix A15.7 (CD006) proposes that the southern severed part of field 143/1 be merged with the adjacent field 143/2 to mitigate the impact on agricultural land and farming practices, including field sizes and shapes;
- this could be carried out as accommodation works, subject to agreement;
- any impact of the proposed scheme arising on farming operations as a result of severance, including increased journey times, inconvenience, or any increase in maintenance costs arising from changes in farm access arrangements, could form part of a claim for compensation; and,
- compensation is subject to the District Valuer's assessment, as detailed in TS's Guidance on the Compulsory Purchase Process and Compensation (CD046).

-Proposed access arrangements

7.98 TS confirms that the access into the field north of Plot 1818 (field 609/2 north) would change as a result of the realigned A939. TS argues that:

- new means of access 419 ([draft SRO Plan SR18](#) – CD003) and the adjacent turning head would be positioned to avoid impact on an overhead power line pole;
- the access has been designed to an appropriate standard for its proposed use, and developed in sufficient detail for the purposes of preparing the ES and publishing the draft Orders;
- the final detailed design of all aspects of the proposed scheme, including farm and field accesses, would be carried out closer to the time of construction;
- the design and build contractor would be expected to have responsibility for this detailed design;
- as part of the detailed design, it may be possible to slightly reduce the length of the access;
- if, following construction of the proposed scheme, part or all of the land purchased for the construction of this access is deemed surplus to requirements, TS may offer to sell this land back in line with the [Crichel Down Rules](#);
- any reduction in the value of the surrounding land as a result of the construction of this access could form part of a claim for compensation;
- compensation is subject to the District Valuer's assessment as detailed in TS's [Guidance on the Compulsory Purchase Process and Compensation](#) (CD046).

-Drainage

7.99 TS argues that:

- ES Table 15.23 (CD005) Mitigation Item CP-AG10 identifies mitigation measures specifically to address impacts on field drainage. It states:

'Particular care shall be taken to reduce damage or disturbance to field and forestry drainage systems. Laying of new drains would be undertaken to maintain drainage systems during construction. Repairing and reinstatement of field drains affected by construction shall be agreed with the landowner/occupier to ensure that land capability is maintained and flooding is not exacerbated. Where appropriate, the integrity of the drainage system would be secured in advance through the installation of header drains (cut off drains) to facilitate construction. All remaining remedial works shall be undertaken post-construction.'

- the construction contract documents would specify that where existing field drainage is likely to be affected by the proposed scheme, the contractor would have responsibility for locating and reconnecting the drainage as appropriate;
- the design and build contractor would be expected to be responsible for the detailed design; and,
- the outline design prepared for publication of the ES and draft Orders proposes that any field drains encountered at Skene Park Farm and Kinnudie Farm would be connected into new pre-earthworks ditches, which would connect into tributaries of the River Nairn and the Auldearn Burn respectively.

Residential property impacts

-Noise and vibration

7.100 TS argues that, in accordance with DMRB:

- a noise assessment has been carried out for the properties identified by the objectors in [ES Appendix A8.3](#) (CD006);

- these are summarised in [TS103.02](#) Tables 1 and 2 and in [TS110.02](#) Tables 1 to 4 (all reproduced below);
- these reported noise levels and significance of noise impacts relate to the predicted 'least beneficial' impacts at the dwelling for each scenario comparison i.e., where there is the greatest adverse noise level change;
- in order to determine this, a number of receptor points within the computer based model are positioned one metre from the façade of each the dwellings;
- the least beneficial noise impacts are reported for each property, along with the identified 'significance' rating;
- the main emphasis of the noise assessment has been to identify adverse noise impacts that trigger the need for noise mitigation measures, taking into account the absolute noise level as well as the change in noise;
- the design of the proposed scheme incorporates noise mitigation in the form of earthworks and low noise road surfacing;
- where necessary, this has been supplemented with receptor-specific noise mitigation, which may, for example, take the form of close boarded fencing.

7.101 TS argues that it has therefore considered [DMRB HD 213/11](#) (CD049.19) and WHO guidance ([CD090](#) and [CD091](#)) and prepared a noise mitigation strategy set out in [ES paragraphs 8.2.24 to 8.2.34](#) (CD005). It argues that this strategy considers where the significance of impact at noise sensitive receptors is predicted to be:

- Slight/Moderate adverse or worse - which for high noise sensitive receptors equates to at least a 1 dB noise level increase in the short term (year of opening) and/or at least a 3 dB increase in the long term (typically within 15 years of the scheme opening) and, in addition, the predicted ground floor façade noise level exceeds 59.5 dB LA10,18h;
- Slight/Moderate adverse or worse, in the long-term with a predicted noise level that exceeds 55 dB Lnight,outside.

TS103.02 Table 1: Predicted Least Beneficial Noise Levels and Significance of Impacts at Skene Park Farmhouse

Scenario	LA10,18hr DMB Noise Level (dB)	LA10,18hr Scenario Comparison Noise Level (dB)	Noise Level Difference (dB)	Significance of Impact
DMB vs DSB	39.5	57.1	17.6	Large/ Very Large Adverse
DMB vs DMF	35.2	37.1	1.9	Slight Adverse
DMB vs DSF	39.0	57.7	18.7	Large/ Very Large Adverse

TS103.02 Table 2: Predicted Least Beneficial Noise Levels and Significance of Impacts at 'the Prefab'

Scenario	LA10,18hr DMB Noise Level (dB)	LA10,18hr Scenario Comparison Noise Level (dB)	Noise Level Difference (dB)	Significance of Impact
DMB vs DSB	33.4	53.0	19.6	Large/ Very Large Adverse
DMB vs DMF	34.1	35.8	1.7	Slight Adverse
DMB vs DSF	33.4	54.1	20.7	Large/ Very Large Adverse

TS110.02 Table 1: Predicted DMRB Noise Levels and Significance of Impacts at 'Cottage 2'

Scenario	LA10,18hr DMB Noise Level (dB)	LA10,18hr Scenario Comparison Noise Level (dB)	Noise Level Difference (dB)	Significance of Impact
DMB vs DSB	50.9	51.1	0.2	Slight Adverse
DMB vs DMF	63.9	66.2	2.3	Slight Adverse
DMB vs DSF	50.9	49.5	-1.4	Slight/ Moderate Beneficial

TS110.02 Table 2: Predicted DMRB Noise Levels and Significance of Impacts at ‘Cottage 1’

Scenario	LA _{10,18hr} DMB Noise Level (dB)	LA _{10,18hr} Scenario Comparison Noise Level (dB)	Noise Level Difference (dB)	Significance of Impact
DMB vs DSB	42.2	44.9	2.7	Slight/ Moderate Adverse
DMB vs DMF	40.9	42.4	1.5	Slight Adverse
DMB vs DSF	42.2	45.9	3.7	Slight/ Moderate Adverse

TS110.02 Table 3: Predicted DMRB Noise Levels and Significance of Impacts at ‘Kinnudie Farmhouse’

Scenario	LA _{10,18hr} DMB Noise Level (dB)	LA _{10,18hr} Scenario Comparison Noise Level (dB)	Noise Level Difference (dB)	Significance of Impact
DMB vs DSB	38.6	43.0	4.4	Moderate/ Large Adverse
DMB vs DMF	38.8	40.2	1.4	Slight Adverse
DMB vs DSF	38.6	44.0	5.4	Moderate/ Large Adverse

TS110.02 Table 4: Predicted DMRB Noise Levels and Significance of Impacts at ‘Orchard House’

Scenario	LA _{10,18hr} DMB Noise Level (dB)	LA _{10,18hr} Scenario Comparison Noise Level (dB)	Noise Level Difference (dB)	Significance of Impact
DMB vs DSB	44.1	46.2	2.1	Slight/ Moderate Adverse
DMB vs DMF	43.4	44.9	1.5	Slight Adverse
DMB vs DSF	44.1	47.2	3.1	Slight/ Moderate Adverse

Notes:

These scenario comparisons are:

Baseline Year Do-Minimum vs Baseline Year Do-Something (DMB vs DSB)

Baseline Year Do-Minimum vs Future Year Do-Minimum (DMB v DMF)

Baseline Year Do-Minimum vs Future Year Do Something (DMB v DSF)

Baseline Year is the assumed year of opening for assessment purposes.

Future Year is fifteen years after the Baseline Year.

Do-Minimum describes the situation without the proposed scheme.

Do-Something is with the proposed scheme in place.

7.102 For Skene Park and the Prefab (TS103.02 Tables 1 and 2), TS argues that:

- in line with the noise mitigation strategy, a 2.2 metre high earthworks noise bund is included in the design, to the south side of the proposed scheme between it and the dwellings of Skene Park Farmhouse and ‘the Prefab’;
- this noise bund was included in the noise modelling results reported in TS103.02 Tables 1 and 2 (above);
- taking the proposed noise bund into account gives predicted absolute Do-Something noise levels, which are below the proposed noise mitigation threshold of 59.5 dB LA_{10,18hr}.

7.103 For properties at Kinnudie Farm (TS110.02 Tables 1 to 4) TS argues that:

- the changes in noise source between the Do Minimum and Do Something scenarios can result in different receptor points being compared in Tables 1 to 4;
- this is why the Do Minimum noise levels appear to be different i.e. there are different receptor points experiencing the greatest adverse noise level change for the Do Minimum and Do Something scenarios;
- the noise impact assessment for Cottage 2, which is in direct proximity to the B9111, indicates that with the proposed scheme in place, the significance of impact is below Slight/Moderate adverse or worse for the Do-Something scenarios;
- with regard to the noise mitigation criteria, the requirement for receptor-specific noise mitigation is therefore not triggered;

- for TS110.02 Tables 2 to 4, the noise impact assessment shows a significance of impact of Slight/Moderate or worse for the Do-Something scenarios for the three remaining dwellings at Kinnudie Farm;
- at the other Kinnudie Farm dwellings, all of the predicted Do-Something absolute noise levels are:
 - lower than that at Cottage 2; and
 - below the absolute noise level threshold for mitigation;
- in accordance with the noise mitigation strategy, none of the other Kinnudie Farm dwellings therefore triggers the requirement for receptor specific noise mitigation.

-Visual impact, light pollution and security

7.104 Regarding security at Skene Park, TS argues that:

- at this location, a combination of the dual carriageway being in cutting, coupled with boundary fencing, noise bund earthworks and woodland landscaping at the crest of the cut slopes should assist in screening the properties at Skene Park from the view of those using the proposed dual carriageway and in discouraging access;
- it is unable to prevent illegal activity by future road users, and references Police Scotland's 'A Guide to Security in the Rural Environment' that it considers provides useful guidance on farm security.

7.105 With regard to Skene Park Farm (Skene Park Farmhouse and 'The Prefab'), TS argues that:

- the proposed scheme would have a direct adverse visual impact on the properties that would be 'Substantial' during winter year of opening;
- landscape mitigation proposed in [ES Figures 9.5q and 9.5r](#) (CD007) and [ES Figure 9.6i](#) (CD007) relates specifically to proposals in the vicinity of Skene Park Farm;
- this mitigation measures would assist in reducing these impacts by the summer, 15 years after opening, however residual effects are likely to remain significant (Moderate/Substantial) due to the properties' close proximity to the proposed dual carriageway.

7.106 TS confirms that proposed landscape and ecological mitigation associated with the dual carriageway and the proposed PS16 A939 Overbridge would include:

- planting a mixed woodland shelterbelt to screen views of the dual carriageway from the properties at Skene Park Farm;
- a block of mixed woodland on the west facing embankment of the overbridge, to soften the intrusive visual effects of the proposed noise mitigation and overbridge earthworks, while assisting to integrate them into the surroundings; and,
- mixed woodland, which requires the inclusion of both broad-leaved and coniferous woodland for visual screening purposes and would comprise plants that range in size from feathered trees to whips and transplants.

7.107 TS argues that this planting would:

- create multi-layered woodland with a balanced mix of native deciduous and coniferous trees, including a native green understorey;
- balance between deciduous and evergreen species that would be varied to achieve year-round screening and reflect existing woodland local to the section of the road; and,
- provide a typical woodland mix including species such as Oak, Alder, Scots Pine and Rowan.

7.108 TS argues that:

- to the east of the River Nairn the proposed scheme would run through Crook Wood on embankment and then move into cutting across farmland to the north of Skene Park;
- the depth of cutting would range between two and a half and four and a half metres, which would assist to partially screen views of the dual carriageway and the traffic;
- the mixed woodland shelterbelt would be slightly elevated by noise mitigation earthworks/bunding, assisting to enhance the effect of the screening vegetation whilst integrating with the surrounding local landscape.

7.109 With regard to properties at Kinnudie Farm, TS argues that:

- the ES acknowledges that there would be a significant adverse visual effect from the proposed scheme on the outlying properties at Kinnudie Farm and Orchard House (receptor 139 as shown on [ES Figure 10.3g](#) – CD007);
- these would experience the most significant adverse effects due to their closer proximity than the other properties within Auldearn;
- from this location, visibility of the proposed scheme and changes in the available views would be more apparent, particularly in regard to the formation of proposed Nairn East Junction, which would increase the visibility of traffic as a result of introducing large scale earthworks, bridges, lighting and signage to views, coupled with the partial loss of woodland within Russell's Wood;
- this would result in Moderate/Substantial effects for receptor 139 during the winter year of opening; and,
- landscape and ecological mitigation are proposed there as shown in [ES Figures 9.5r, 9.5s and 9.6j](#) (CD007).

7.110 TS argues that the principles applied to the mitigation planting proposals include:

- planting designed in association with the landform design to provide integration with the local landscape setting;
- planting mixes designed to reflect locally prevalent assemblages of species;
- planting at junctions and bridges to help assimilate their landform and structures into the surrounding landscape; and,
- planting to provide screening to reduce visual impacts for the dual carriageway and lighting.

7.111 TS argues that the landscape and ecological mitigation measures:

- associated with the dual carriageway, on the approach to the proposed Nairn East Junction, include mixed woodland to screen views, including headlight glare from Kinnudie and to integrate with adjoining Russell's Wood;
- associated with the proposed Nairn East Junction itself are presented in [ES Figure 9.5s](#) (CD007);
- include mixed woodland along slip roads to assist in screening views, lighting and headlight glare to properties, and scrub woodland with standard trees to soften views of the embankment and to soften views from properties, as well as to enhance the approach to Nairn and create a sense of place; and,
- hedgerow planting along the proposed B9111 Auchnacloch – Auldearn Road would also assist screening of views, including headlight glare from properties.

7.112 TS argues that during the process of detailed design, further development of the landscape mitigation proposals would be progressed; including the development of the planting design at the proposed junction.

7.113 TS explains that, whilst the establishment of the mitigation planting and the partial screening by the existing trees around properties and rolling topography would help to reduce impacts arising from the proposed scheme, residual effects would remain significant (Moderate) by the summer after 15 years.

7.114 TS argues that the mainline dual carriageway would only be lit at the six grade separated junctions with proposed focused/directional light beam (no emission above the horizontal) that would be dynamically controlled and 'reactive' to traffic use (i.e. would dim/switch off when traffic is absent). TS does not anticipate that lighting would give rise to any significant impact on livestock.

7.115 TS confirms that from a security perspective, it is unable prevent illegal activity by future road users. However, it refers OBJ/110 Mr James A Philip to Police Scotland's 'A Guide to Security in the Rural Environment' provides useful guidance on farm security.

Findings of Fact

Skenepark-Blackpark-Russell's Wood Realignment

7.116 OBJ/110 Mr James A Philip is correct that the proposed scheme alignment from Skenepark via Blackpark to Russell's Wood was altered at DMRB Stage 3. No parties dispute this or that it is documented in [TS220: Skenepark-Blackpark-Russell's Wood Alternative Alignment Report](#).

7.117 TS220 Figure 1.1 shows that the DMRB Stage 2 preferred route (October 2014) passed north of Blackpark Farm buildings severing the northern fields. However, TS220 Section 1 explains that directly affected landowners were concerned about the resultant severance and negative impact on farm access and operations.

7.118 In his written evidence and at Inquiry Session 1 Mr Philip's representative contended that the assessment of alternatives had been prompted by individuals rather than sound consideration of the best road design. However, at Inquiry Session 1 he agreed under cross examination from TS that TS had considered the alignment change as detailed in TS220 and that this covered a variety of factors.

7.119 TS220 shows that TS began to explore alternative alignments to understand whether it was possible to resolve the concerns raised by landowners and improve the design of the road. TS220 sets out these considerations in Sections 5 and 6. Therefore, whilst the feedback from individual landowners may have prompted the reconsideration of alignment, TS220 Sections 5 and 6 shows that a range of factors were considered and compared.

7.120 The factors covered in TS220 Sections 5 and 6 relate to proximity of properties, various environmental impacts, construction practicalities and materials quantities, considerations of hydrology and structures and also cost, amongst others. This suggests a considered and scientific process to understand and compare the advantages and disadvantages of different options with each other and the DMRB Stage 2 preferred option. Similar exercises with similar considerations have also been carried out at DMRB Stage 3 for other parts of the proposed scheme as covered in documents TS221 to TS229. This demonstrates there to have been a consistent approach taken to all such potential alterations and options at DMRB Stage 3.

7.121 TS220 explains that TS initially explored two alternative alignment options, one north and one south of the DMRB Stage 2 preferred route. It notes that interested parties took differing views of these. In particular Blackpark Farm welcomed the southern route since it resolved or improved issues there.

7.122 [TS209 Scheme Design Report Section 4.7](#) and TS220 Section 5 explain that the southern alignment alternative was better in relation to severance impacts than the DMRB Stage 2 preferred option or the northern alignment alternative. It also brought a positive change to proximity for two residential receptors and improved noise and landscape and visual assessment for these receptors. It also provided a minor improvement in earthworks balance. It was marginally more expensive than the DMRB Stage 2 preferred route but cheaper than the northern alignment. None of the evidence persuades us to reach an alternative conclusion.

7.123 TS209 paragraph 4.7.4 explains that consultation was undertaken with landowners including Mr Philip at Kinnudie Farm. [TS235 drawing B2103500/HW/0100/SK/079 and the exhibition panel titled 'Skene Park to Nairn East Junction'](#) appear to show this work during February 2016. At inquiry session 1 Mr Philip's representative agreed that consultation had taken place and confirmed that his client's principal concerns were the rationale for the proposed route change and the manner in which it was gone about. We have considered the rationale and manner in which the exercise was undertaken above. The evidence there does not suggest this to have been deficient.

7.124 TS220 Section 6 explains that further refinement of the southern alternative alignment was carried out given the concerns of Mr Philip, amongst others, that it would bring the proposed scheme closer to his property with the associated impacts. As before (above) this appears to be an example where TS has engaged with affected parties and acted upon their feedback. This does not suggest any unequal treatment of parties and their respective views.

7.125 In considering route alternative alignments (TS220 Section 5) and any subsequent refinement (TS220 Section 6) any promoter would need to strike a balance between the advantages achieved for one party or locality and the disadvantages caused to those same and other parties and localities. It would be all too easy to see this exercise as one which shifts the road closer to one party in order to move it further from another. We would accept that, on one level, this could be the outcome. However, as noted above, the approach in TS220 shows these considerations to have been far more scientific, rational and consistent than simply accommodating individual landowner wishes.

7.126 TS220 Section 6.4 concludes that, on balance, the refined southern route provides many of the same benefits in principle as the alternative southern alignment whilst improving the balance of assessment impacts for the main receptors (Skene Park Cottages, Skene Park, Blackpark and Kinnudie Farms). This conclusion reflects our reading of the various considerations outlined in TS220. We also note that it could achieve this far more cheaply than either the preferred option (October 2014) as favoured by Mr Philip, or the southern alignment that Mr Philip raised concerns about.

7.127 Whilst we accept that Mr Philip's concerns remain, we note that the ES has been carried out for the proposed scheme, including its proposed alignment from Skenepark-Blackpark-Russell's Wood based on the refined southern alignment in TS220 Section 6. It

has considered agricultural impacts such as severance and field sizes, noise implications and visual and landscape impacts.

7.128 Following discussion at Inquiry Session 1, between Mr Philip's representative and TS's EIA expert, we accept that vegetation is not considered to be an effective noise screen and is not covered by the noise assessment. As such we agree with TS that the removal of trees would not be considered to have any substantive effect on noise impact. TS220 Section 6 concludes that the refined southern alignment would result in some negative noise impact change compared with the DMRB Stage 2 preferred route for Kinnudie Farm buildings and Skene Park Farm buildings. TS220 Table 6.1 shows that Kinnudie Farm would be three metres closer to the proposed scheme and that Skene Park Farm would be 22 metres closer.

7.129 Our consideration of the noise impacts from the proposed scheme (including the refined southern alignment) is covered separately below in paragraphs 7.177 to 7.179. There we conclude that there is no additional need for mitigation beyond that already designed into the proposed scheme or identified in the ES. Therefore despite a slightly more negative noise impact from the refined southern alignment it would not have a substantive effect on exceeding the thresholds in the ES noise mitigation strategy.

7.130 At Inquiry Session 1 TS's EIA expert explained that the proposed visual and landscape mitigation is outlined in ES Figures 9.5r and 9.5s (CD007). TS220 Section 6 considers the visual and landscape impacts would be the same or similar for Skene Park Farm buildings and Kinnudie Farm buildings and would reduce (improve) at Blackpark Farm buildings and Skene Park Cottages for the refined southern alignment versus the preferred DMRB Stage 2 route option. This therefore suggests that Mr Philip would not experience any greater visual or landscape impact disadvantage as a result of the refined southern alignment than would have been the case for the DMRB Stage 2 preferred option. We agree with his representative's point at Inquiry Session 1 that the mitigation would take time to establish, however, these matters have been considered in the ES. Our consideration of the visual and landscape impacts is covered separately below in paragraphs 7.180 to 7.182.

7.131 The agricultural assessment ([ES Appendix A15.6 and A15.7](#) (CD006) and [ES Figure 15.6i and 15.6j](#) (CD007)) has considered the impacts of the proposed scheme as designed. We have considered these matters separately below in paragraphs 7.154 to 7.159.

7.132 Mr Philip also questioned the consideration of windthrow/windblow for trees at Russell's Wood (assumed to be those on the southern side closest to his property). At Inquiry Session 1 TS's EIA expert argued that this would be a matter of woodland viability. We note that such matters are covered in ES Appendix A15.7 (CD006). For Russell's Wood it identifies the need for a ForestGALES assessment to confirm the level of risk and [ES Table 15.22](#) (CD005) confirms the risk to be moderate to high. ES Appendix A15.7 (CD006) identified Mitigations Items CP-F1 to CP-F7 as being required for Russell's Wood.

7.133 These mitigation items are covered in [ES Table 15.23](#) (CD005). In particular CP-F3 covers the ForestGALES assessment and explains that appropriate mitigation would be employed to address safety risk to land within the proposed scheme. It also confirms that any felling to create a windfirm edge would take account of ecological, landscape and visual effects and be designed, where feasible, to maximise ecological, landscape and visual

opportunities. This persuades us that such matters have been considered and form part of a broader approach to resolve windthrow/windblow risks should they occur. These mitigation items are part of the ES and would therefore form part of any construction contract, thus binding the contractor to deliver them within an independent inspection regime.

7.134 At Inquiry Session 1 TS confirmed that it had not considered the demolition and replacement of Blackpark Farm house as suggested by Mr Philip's representative. TS stated that it has tried to avoid residential property in so far as possible during the design of the proposed scheme. This is confirmed by [ES Figure 17.2](#) (CD007). TS220 Section 6 concludes that the refined southern alignment would be cheaper than the DMRB Stage 2 preferred option. We therefore find Mr Philip's suggestion that it would be cheaper and more viable to demolish and replace Blackpark Farm house to be inaccurate. TS220 also demonstrates that it is possible to achieve the advantages sought, deliver the proposed scheme without demolition of residential property at Blackpark Farm and do so at less cost than the DMRB Stage 2 preferred option. This does not suggest it would be necessary to demolish and replace residential property at Blackpark Farm.

7.135 At Inquiry Session 1 no parties disputed Mr Philip's calculations for additional fuel consumption and distance travelled that he quoted in his Statement of Case. We accept these based on the 155 metres of additional carriageway identified with this alignment in TS220. At Inquiry Session 1 Mr Philip's representative contended that TS had not properly considered the significance of these calculations in its consideration of the options. However, TS's transport and economic modelling expert confirmed that the MFTM and related work that informed TS220 was a scheme-wide assessment for the whole 31 kilometres. Mr Philip's representative argued that this illustrated a failure to consider the significance of this specific part of the proposed scheme.

7.136 TS's transport and economic modelling expert explained that the DMRB Stage 2 and Stage 3 assessments in the MFTM were based on the options provided for evaluation and that these were considered against the Do Minimum (without the proposed scheme) for the respective opening and design years. He also explained that the opening and design years differed for each stage since time had moved on, as had costs. We have considered the MFTM in Chapter 2: Matters of Principle paragraphs 2.85 to 2.100. There we conclude that the modelling process and conclusions drawn are sound.

7.137 At Inquiry Session 1 Mr Philip's representative accepted that 155 metres may not form a significant share of the whole route but argued that it is major. TS's transport and economic modelling expert confirmed that TS was not suggesting there to be no impact. He confirmed that the modelling process used TUBA (Transport User Benefits Appraisal), which included fuel and vehicle operating costs. He also confirmed that this was not the only issue to consider and that the engineering team had considered a variety of engineering issues such as topography and property. This reflects our understanding of both the transport and economic modelling work (Chapter 2: Matters of Principle paragraphs 2.80 onwards) and our reading of TS220.

7.138 Here the issue is whether Mr Philip's calculations mean that the impact of the proposed scheme, or indeed this realignment, are significant. We do not dispute Mr Philip's calculations or that the numbers they show are individually large. However, these figures cover a piece of road that is 155 metres in length. We must therefore accept that identical figures (based on identical assumptions) would apply to every other 155 metres section of

dual carriageway in the proposed scheme. The proposed scheme consists of over 31 kilometres of carriageway. Using a simple calculation (31,000 metres of carriageway divided by 155 metres) shows that there would be 200 sections of road in the proposed scheme each with a length of 155 metres. In other words this section of road represents one in 200 (0.5% of the proposed scheme). This is not significant, even if the individual and collective figures for annual fuel consumption etc. would be large for the 155 metres that Mr Philip is concerned with.

7.139 TS's engineering expert explained at Inquiry Session 1 that it would take approximately seven seconds to drive 155 metres at 50 miles per hour. Travelling at the national speed limit for cars on a dual carriageway of 70 miles per hour would mean transitioning 155 metres in even less time. This further convinces us that 155 metres is not significant. We therefore see no reason to conclude differently from TS220 Section 6.

7.140 At Inquiry Session 1 Mr Philip's representative reiterated the view that the realignment would be significant and that it ought to have been considered at DMRB Stage 2 again rather than DMRB Stage 3. He explained his clients concerns that, having gone through DMRB stage 2 a new route alignment was being proposed with limited opportunity to comment at DMRB Stage 3. Whilst we would accept that the opportunity to influence route choice is for DMRB Stage 2 the evidence above does not suggest the engagement opportunities or influence of party's comments at DMRB Stage 3 to have been deficient.

7.141 TS's engineering expert confirmed that the route realignment was the most significant of those carried out at DMRB Stage 3, though he explained that those at Courage and the Nairn East Junction were vertically as significant. No parties disputed this.

7.142 We agree that once a route has been selected at DMRB Stage 2 it is then the design development phase of the preferred option at DMRB Stage 3. [ES Figure 3.1](#) (CD007) shows that none of the individual route alternatives proposed at DMRB stage 2 reflects the nuances of the refined southern alignment considered in TS220. Therefore the route was not, at this stage, open to reconsideration for any of the previously considered alternatives. Since a route option had already been selected, it was instead a situation of developing the design to overcome issues that had been identified. Such activity falls within the remit of DMRB Stage 3, as set out in [DMRB Volume 5, Section 1, Part 2, TD 37/93 Scheme Assessment Reporting paragraph 2.4](#) (CD049.04) and [TS209 paragraph 2.1.5](#).

7.143 We agree with TS's engineering expert at Inquiry Session 1, who remarked that the effects were most keenly felt by landowners, that they were all aware of the design development underway and that the refined southern alignment would emerge from Russell's Wood in a similar place to the other options considered in TS220.

7.144 Therefore, whilst we accept that there is little option to change the route at DMRB Stage 3 compared with Stage 2, it is plain from TS220 that this was an exercise that involved landowners, including Mr Philip, and gave them direct influence in shaping a solution, based on technical considerations. This does not suggest that having considered this through DMRB Stage 3 led to deficiencies in public involvement or that Mr Philip and others would have experienced a different level of engagement had DMRB Stage 2 been used.

7.145 Therefore we do not accept that this was a new route option requiring DMRB Stage 2 or that engagement failed to take place as a consequence.

7.146 We find that it is possible for something to be the most significant, amongst a group of changes, without being so significant that an alternative process would be required for consideration. We find this to be the case here. Above we have concluded that sufficient engagement took place. We have concluded that the motivation for the alternative alignment originated with landowners but the rationale for the design and final decision was based on a variety of consistent technical assessments in the consideration of alternatives. We have further concluded that the scale of additional impact on the economic performance of the proposed scheme would be negligible.

7.147 These factors further persuade us that the realignment is not significant enough to constitute an entirely different route option. Even had this been considered at DMRB Stage 2 it would still have needed to progress through a design development stage (DMRB Stage 3). TS's approach does not suggest any deficiency or prejudice to the interests of the parties concerned.

7.148 At Inquiry Session 1 Mr Philip's representative argued that TS failing to do the optimum for all would be morally wrong. This is assumed to be a remark that suggests the refined alignment would not be optimal for his client. Being optimal for all parties suggests some degree of comparative thinking and trading off of advantages or disadvantage since some solutions may better favour one party than another. In such circumstances an overall optimum has to be reached which, in so far as possible, limits the impacts on individual parties to a reasonable level in the collective interest to reach an optimum. We have found TS to have fully considered the issues before it in a proportionate way and to have found a solution (the refined southern alignment) which brings as much mutual advantage as possible to the affected parties, whilst recognising and limiting to reasonable levels any residual disadvantage. The evidence does not persuade us to reach a different conclusion.

7.149 Mr Philip's representative in Inquiry Session 1, Mr Atholl Newlands, presented a plan showing four different alignments for the route between the River Nairn and Russell's Wood. This is appended as map [JP PLAN 001](#) to his precognition. This shows a route running to the north of Blackpark Farm steading and therefore further away from Skene Park steading dated September 2014. A revised route dated January 2016 moved the route to the south of Blackpark Farm steading and therefore closer to Skene Park steading. Two further route variations are also shown on this drawing – March 2016, which was still to the south of Blackpark Farm steading but closer to that property (and further away from Skene Park steading) than the January 2016 option, and May 2016 which was slightly further away from Blackpark but not as far as the January 2016 option and a similar distance from Skene Park as the March 2016 option.

7.150 Mr Philip contends that the January 2016 route revision, in which the route was moved from the north to the south of Blackpark Farm steading, was due to pressure from an affected landowner. He accepts that the March 2016 route realignment followed his own objections to the January 2016 alignment. He believes that the subsequent (May 2016) change was due to further objections from the affected neighbouring landowner. Mr Philip contends that route selection should be based upon proper assessment of all relevant factors in accordance with DMRB and that route changes should not be made solely to alleviate the concerns of individual parties.

7.151 While it appears that the views of affected parties (including Mr Philip) were taken into account by TS when finalising the precise alignment of this section of the route, it is clear from the evidence given by TS orally to the inquiry and set out in, for example, the Scheme Design Development and Consideration of Alternatives Report (TS209) and [ES section 3.4](#) (CD005), that the development of the design of the preferred route option followed a thorough and comprehensive assessment of all relevant considerations.

7.152 [ES Paragraphs 3.4.6 to 3.4.8](#) (CD005) describe the post-Stage 2 design changes that were made to the Skene Park - Blackpark – Russell’s Wood section and the process that informed them. It is clear that landowner feedback was an important influence on the design changes, but it is clear that the aim was to achieve a balance between the proximity to each residential receptor while also taking proper account of other considerations such as cost, the earthworks balance and the severance of agricultural fields.

7.153 We find no evidence to suggest that TS gave undue weight to the views of landowners when finalising the alignment of this section. We also find no evidence of TS having favoured one landowner’s interests over those of another.

Business impacts

-Agricultural assessment

7.154 We find that the business impact relates to the identity of the individual farming unit (IFU) that is being assessed ([DMRB Volume 11, Section 3, Part 6, Paragraph 10.6 – CD049.18](#)). Paragraph 6.3 (CD049.18) lists the four main effects on agricultural land that assessments need to cover. Paragraph 6.4 (CD049.18) explains that impacts on farmers as residents or business people, additional to the items in paragraph 6.3, should be assessed following the methods used to assess effects on other residents or businesses affected by a scheme. Paragraph 10.17 (CD049.18) talks about the likely future viability of affected agricultural units. We find this to mean that the assessment is focussed on the farming activity rather than other interests and specifically whether farming remains a viable land use.

7.155 No parties dispute that Skene Park Farm is a tenant farm operated by OBJ/110 Mr James A Philip or that he owns Kinnudie Farm. We therefore find that the tenant, Mr James A Philip, controls the land use decisions and environmental practice at Skene Park Farm and at Kinnudie Farm. We find that the tenancy arrangements at Skene Park Farm make OBJ/103 Mr David Philip and Mr Daniel Philip commercial landlords. As such, OBJ/103 Mr David Philip and Mr Daniel Philip’s business at Skene Park Farm trades in farmland as a rental commodity, but does not directly control the land use decisions and environmental practice there.

7.156 We therefore find that it is reasonable to assess the impacts of the proposed scheme on Skene Park Farm against OBJ/110 Mr James A Philip’s whole farm business as the IFU (paragraph 10.6 – CD049.18). We find that assessing Skene Park Farm (and Kinnudie Farm) on the basis of ownership would be inconsistent with the rest of TS’s assessment approach and DMRB (CD049.18). Therefore, we do not consider that, when assessing likely impact on agriculture, Skene Park Farm should be assessed individually as a separate entity from the remainder of Mr James A Philip’s farming operations.

7.157 TS has assessed the impact on the farming business at Skene Park Farm in ES Appendix A15.7 (CD006) as part of the wider operations of Mr James A Philip. We have

already concluded that this is reasonable. We find that TS has correctly identified the receptor sensitivity and the magnitude of impact using the approach set out in [ES Tables 15.7 and 15.8](#) (CD005). We also find no reason to question TS's conclusion that the proposed scheme would result in proposed land take representing 4% of Mr James A Philip's business. We note that no party disputes these matters.

7.158 We understand that some parties consider the term 'neutral' to represent the status quo. However, we find that [ES paragraph 15.3.61](#) (CD005) is clear that this is not its intended meaning. The definition provided in that paragraph makes clear that the term 'neutral' involves change and that this may result from a reduction or restructuring of activities. We also note the definitions of the terms 'beneficial' and 'adverse' in [ES paragraph 15.3.61](#) (CD005). We find that the definition of 'neutral' accurately describes the anticipated impacts on Mr James A Philip's farming operations that would result from the proposed scheme at Skene Park Farm and Kinnudie Farm, and that the terms 'beneficial' and 'adverse' do not.

7.159 We find that the agricultural assessment is not using the term 'viability' to describe how profitable or otherwise a business or individual field may be or may become. Instead, it is describing whether agriculture remains a viable land use. The evidence does not suggest that farming would cease to be possible at Skene Park Farm or at Kinnudie Farm and none of the parties appears to dispute this.

-severance

7.160 We agree with all of the parties that the proposed scheme would result in severance of fields by the proposed acquisition of Plots 1818 and 2001. [ES Figure 15.6i and 15.6j](#) (CD007) suggests that fields 609/1, 609/2 and 143/1 would be severed.

7.161 Based on [draft CPO Sheets 18 and 20 of 23](#) (CD001) and [ES Figure 4.1i and 4.1j](#) (CD007) we find that:

- Plot 1818 would be needed for construction of the proposed dual carriageway and SuDS ponds on its north side;
- Plot 2001 would be needed for construction and operation of the proposed dual carriageway including slip roads for the proposed Nairn East Junction and the western side of PS22 B9111 underbridge.

7.162 [ES Appendix A15.7](#) (CD006) identifies field 609/1 as rough grassland with trees. We were not able to see this land easily from the existing A939 on our site inspection. However, [ES Figure 9.2g](#) (CD007) contains aerial photographs which appear to verify this. We note that none of the objecting parties dispute this.

7.163 [ES Figure 9.2g](#) (CD007) shows a distinct vegetation difference between the 'organised' arable field 609/2 and the rough grassland/trees of field 609/1. We find this to explain why no suggestion has been made to merge the respective remaining parts of fields 609/1 and 609/2 that would be north and south of the proposed dual carriageway. No party appears to dispute this.

7.164 We note the proposed reinstatement of fencing and drainage in [ES Appendix A15.7](#) (CD007). We consider drainage in greater detail below. However, the identification of these proposed measures and other mitigation identified in [ES Appendix A15.7](#) (CD006) would form part of any construction contract and would, as a result, be binding on the contractor.

7.165 We find that severance from Plot 2001 would result in a comparatively small southern section of field 143/1 and a larger section of field 143/1 to the north. ES Appendix A15.7 (CD006) confirms this and proposes merging the southern section of field 143/1 with the adjacent field to the south (field 143/2) with reinstatement of boundary features and drainage tie in. We also note that a new means of access is proposed for field 143/2 that would enable access to the southern part of field 143/1. This access is shown on [ES Figure 15.6j](#) (CD007) at the field boundary between fields 143/2 and 143/3 and also shown as new means of access 427 of the modified B9111 on [draft SRO Plan SR20](#) (CD003).

7.166 We note that no new means of access is proposed for the northern severed part of field 143/1. However, we saw two current field access points on our site inspection. Each had double gates, with one located opposite the Auchnacloch underpass of the existing A96 and one further southeast. Draft SRO Plan SR20 (CD003) shows the modified B9111 at point 177 and this suggests that the south-easternmost access would be removed. However, we are satisfied that at least the existing double gated access to the northwest corner of field 143/1 opposite Auchnacloch underpass would remain.

7.167 We find that whilst the proposed scheme would sever these fields it would not prevent access to them and would not prevent their use for agriculture.

-Proposed access arrangements

7.168 We find that the objections to proposed access ostensibly relate to the changes that would result from the proposed realignment of the A939. ES Figure 4.1i (CD007) shows that this new alignment would be necessary to accommodate the proposed PS16 A939 overbridge and its respective access ramps. This shows that north of the proposed dual carriageway the realigned A939 would deviate east of the current route through woodland east of Skene Park Cottages before re-joining the existing route of the A939 just north of that location.

7.169 Access to Skene Park Cottages and nearby fields would be achieved via the remains of the existing A939 from the north via a new junction at points 82 and 172 in [draft SRO Plan SR18](#) (CD003). The southern part of the existing A939 would be severed by the proposed dual carriage way and closed at point 238 (draft SRO Plan SR18 – CD003).

7.170 Just south of Skene Park Cottages a new means of access would be provided to fields 609/2 (north) and 141/1W, as shown on ES Figure 15.6j (CD007) and draft SRO Plan SR18 (CD003) at points 173, 83, 84, 418 and 419.

7.171 The objectors' concerns appear to relate to the proposed new means of access south of Skene Park Cottages and the proposed change of alignment of the A939 resulting in a single route in and out to join the realigned A939. We find that the realigned A939 north of the proposed dual carriageway would run on an embankment that would be expected to reach ground level north east of Skene Park Cottages. For these reasons we find it would be impractical to have the junction with the realigned A939 any further south.

7.172 We also note that currently, access and egress from Skene Park Cottages and nearby fields is directly onto the A939. We find that the retention of this part of the A939 would provide access for Skene Park Cottage and the nearby fields and properties to the realigned A939 and, as now, the occupiers/tenants would be able to turn left or right at the new junction. We find this to be little different in an operational sense from the current situation.

7.173 We note the objector's concerns about the size and implications of the 'hammerhead' new field access (point 419 – draft SRO Plan SR18 – CD003). We note OBJ/110 Mr James A Philip's request for new field access (point 419 – CD003) to be relocated slightly further north towards Skene Park Cottages. Whilst we understand the reasoning for this we note that this would require land just north of Plot 1821 (draft CPO sheet 18 of 23 – CD001). We find that land can only be removed from the draft CPO, not added.

7.174 TS has offered to try to reduce the length of this new means of access, though it has not specified by how much. TS has also proposed to sell back the access under the [Crichel Down Rules](#), should it be found surplus to requirements. We find that TS must provide access to the respective field, as it has done, but that the details would be matters for the respective parties and not for this inquiry. TS has suggested that should the parties consider that losses would be incurred as a result of the new means of access then it could form part of any claim for compensation. We find this to be a matter for the parties and the District Valuer. Compensation is not a matter for this inquiry.

-Drainage

7.175 [ES Appendix A15.7](#) (CD006) identifies that the proposed scheme could potentially impact on drainage arrangements for fields 609/1, 609/2, 143/1, 143/2 and 143/3. In each instance it sets out mitigation, including the tie in of existing field drainage with road drainage and/or provision of new as required and identifies mitigation item CP-AG10 ([ES Table 15.23](#) – CD005) as being required for these fields.

7.176 We find that identification of these matters demonstrates that drainage has been considered and identified as an issue in sufficient detail to draw these conclusions and design an appropriate arrangement for the purposes of assessment and the draft Orders. We also find that such identification in the ES, including mitigation item CP-AG10, would mean these measures form part of any construction contract and would be binding on the contractor. We find that the detailed design stage offers some opportunity to consider various practicalities in liaison with the objectors. This does not suggest to us that this process or its conclusions are deficient.

Residential property impacts

-Noise and vibration

7.177 The evidence does not suggest that the noise assessment has been carried out incorrectly or that it has reached erroneous conclusions. None of the parties appear to dispute this.

7.178 We note that [TS103.02 Tables 1 and 2](#) and [TS110.02 Tables 1 to 4](#) consider the noise impacts of the proposed scheme with mitigation in place. We find this to include low noise road surfacing and other design features such as the proposed earth bund on the south side of the proposed dual carriageway near Skene Park Farm (approximate ch23300 and ch23800) shown on [ES Figures 9.5q and 9.5r](#) (CD007) and [DMRB Stage 3 Figure 3.1 sheets 16 and 17 of 22](#) (CD009).

7.179 We find that in the case of all six properties (four at Kinnudie Farm and two at Skene Park Farm) there would be a predicted increase in noise levels but these would not reach or exceed the 59.5 dB LA10, 18h threshold in the noise mitigation strategy ([ES paragraphs 8.2.24 to 8.2.34](#) – CD005). We therefore find that no additional receptor-specific noise mitigation would be required besides that already identified.

-Visual impact, light pollution and security

7.180 [ES Appendix 10.1](#) (CD006) and [ES Figure 10.3g](#) (CD007) confirm that:

- Skene Park Farm (Receptor 132) would experience a visual effects of 'substantial' at winter year of opening and reducing to 'moderate/substantial' 15 years later. At Skene Park we find that a noise bund would offer some screening and would be planted along with other landscape and ecological mitigation proposed on the south side of the dual carriageway ([ES Figures 9.5r](#) - CD007).
- Kinnudie Farm and Orchard House (Receptor 139) would experience visual effects of 'moderate/substantial' at winter year of opening and reducing to 'moderate' 15 years later. At receptor 139 we find that the proposed scheme would run through part of Russell's wood providing some screening with additional mitigation planting ([ES Figure 9.5s](#) – CD007) along the slip roads and surroundings south of Nairn East Junction.
- in both instances we find that mixed woodland and hedgerows (ES figure 9.5r and 9.5s – CD007), the Skene Park noise bund and the proposed dual carriageway being in cutting (approximate ch22900 to ch25200) ([ES Figure 4.1i and 4.1j](#) (CD007) and DMRB Stage 3 Figure 3.1 Sheets 16 to 18 of 22 (CD009)) would screen and/or diminish the impacts of road/traffic visibility and headlight disturbance, along, for example, the realigned B9111.
- we also note that the proposed scheme would only be lit at the grade-separated junctions, as confirmed by [ES Figure 10.2](#) (CD007) and that this lighting would be traffic responsive and focussed to avoid lighting above the horizontal. This suggests that a lighting impact may only be apparent at receptor 139 as recognised in ES Appendix A10.1 (CD006).

7.181 We find that the mitigation measures designed into the proposed scheme would, together, contribute to limiting the impacts of vehicle headlights, road lighting and the visibility of traffic and the road for properties at Skene Park Farm and Kinnudie Farm. These factors would also contribute to blending the proposed scheme into the landscape. We also find that the maturing of planting in both instances would be largely responsible for the reduction in impact over the first 15 years of the proposed scheme.

7.182 However, we find that these measures would not render the proposed scheme invisible and would themselves have some residual impacts and effects as new landscape features that would alter the current view of, and across, the landscape. Whilst we accept that views from either receptor would change we do not find this to automatically result in a loss of residential amenity. Whilst not specifically sought by the objectors we also recognise that the addition of more landscape mitigation for example, were this possible, may not reduce the identified visual impact further (ES Figure 10.3g – CD007) since it could add more features to the landscape which further change the view.

Overall

7.183 The evidence suggests that the issues raised would either be resolved by mitigation / accommodation works or would result in some residual impacts that would be unlikely to compromise residential amenity or make agriculture unviable as a land use. Whilst there may be some residual impacts / effects these would not require additional mitigation and would not compromise the public interest value of the proposed scheme. Therefore the evidence does not suggest we should recommend that Scottish Ministers modify the draft Orders or refuse to confirm them.

OBJ/105 Mr John R MacKintosh and Company

Objector

7.184 OBJ/105 Mr John R MacKintosh and Company owns Blackpark Farm. [ES Appendix A15.6](#) (CD006) confirms that the objector also farms land at Foynesfield, Meadowfield and Newtonpark, the latter of which is rented.

7.185 In his statement of case (13 September 2018) Mr MacKintosh confirms withdrawal of objections relating to connection to the public water main, water supplies to severed land and impact on his septic tank soakaway. He does so on the basis of commitments made by TS to resolve these matters. In so doing TS commits to remove from draft CPO Plot 1828 the area of the septic tank soakaway and its access track from Blackpark Farm steading. This is set out in Section 13 of [Craig Cameron's Precognition for TS for Inquiry Session 1](#) and [TS Closing Statement Appendix B](#) along with other similar modifications agreed following engagement with the respective objectors.

Objections

Business impacts

-Agricultural assessment

7.186 OBJ/105 Mr John R MacKintosh and Company argues that:

- the agricultural assessment takes no account of the quality of the land that would be lost to the proposed scheme since Plots 1822 and 1901 cut through the middle of the farm taking the best of the land.
- using the poorer quality land to the south for the proposed scheme would be preferable.
- the proposed scheme would reduce the holding by 21% and not 7% as suggested in the assessment. This is because the farming of other land that is not contiguous with Blackpark Farm should be considered in isolation.
- the loss of land from proposed compulsory purchase would result in:
 - livestock having to be reduced;
 - agricultural subsidy receipts reducing;
 - a consequent reduced income base;
 - increased cost base per remaining acre; and,
 - increased costs of travel, fencing and disruption during the construction period.
- existing margins are already very tight and the impact of all of the above would potentially result in the business becoming unviable.
- it would be almost impossible to mitigate effectively against this, as it is highly likely that alternative suitable land would not be available in such close proximity.
- the proposed amalgamation of four severed fields south of the proposed dual carriageway is disingenuous with a severe impact on productivity because it would result in a long narrow field, which would be incompatible with efficient farming and cultivation methods.
- the assessment of the impact and its conclusion that the impact of the scheme would be 'neutral' are misleading.

-Plots 1822 and 2206

7.187 Mr MacKintosh argues that the proposed acquisition of Plot 1822 is excessive and that the triangle for realignment of the A939 should be left in their ownership. He also proposes a servitude right for Plot 2206 instead of compulsory purchase.

-Drainage and flooding

7.188 Mr MacKintosh argues for more detailed proposals of how disruptions to field drainage would be reinstated, including clarity on how field drains on retained land would be tied in where severed by the proposed scheme.

7.189 He argues that Plots 2206 and 2205 (Meadowfield) were not discussed with them at the consultation stage. He argues that the proposals for drainage from the new road into an existing ditch would result in flooding on the small burn that runs through Meadowfield [assumed to be tributary 1 of the Auldearn Burn]. This burn is, he argues, already under some stress and would not, in their view, accept additional water so would then flood their land.

7.190 He also questions the validity of the modelling, arguing that this burn is identified as a watercourse at risk of flooding ([ES Figure 13.1d](#) – CD007) but appears to be omitted from the modelling of Auldearn burn.

-Access and the proposed stopping up of the U3010 (Granny Barbour's Road)

7.191 Mr MacKintosh argues that severance from the new A939 would cause inconvenience. He argues that, although new access ramps are provided from fields onto the A939, a new permanent access track is required from the steading along the field margin to this point.

7.192 He argues that no indication has been provided of how they would access the land severed by the proposed scheme during the construction phase.

7.193 He also argues that stopping up of Granny Barbour's Road (U3010) would:

- result in increased journey times to other property holdings at Auldearn.
- require agricultural machinery to take access through Nairn, which is currently not the case.
- limit or stop articulated lorries accessing Blackpark Farm because they believe such vehicles would not be able to turn into the farm if travelling from Nairn. This is because they consider that the proposed turning area at point 85 on [draft SRO Plan SR19](#) (CD003) is not large enough to allow articulated lorries to turn.
- result in additional traffic from new development proposed in the vicinity including housing and the graveyard.

7.194 Instead, he proposes an underpass/overpass to cope with traffic from the industrial estate, grave yard and proposed new housing development.

Contracting

7.195 Mr MacKintosh objects to TS delegating responsibility for the detailed design of mitigation and accommodation works to an appointed contractor. He argues that:

- this represents a lack of mechanism for control or recourse.
- this approach lacks opportunity for objectors to influence or to appeal the design and quality of implementation.

7.196 At Inquiry Session 8 Mr MacKintosh explained that he was also concerned that the hard ground in the area may persuade the contractor to modify the proposed cutting thus removing any of the advantages this is currently expected to bring.

Residential property impacts

- Route alignment
- Noise and Vibration
- Visual Impact
- Air Quality

7.197 Mr MacKintosh argues that the proposed realignment of the A939 would be closer to residential property at Blackpark Farm bringing the associated noise and light pollution. He also argues that the proposed dual carriageway would be 175 metres from the same residential property. These factors would, in their view, affect their health and quality of life.

7.198 He argues that current development standards and planning guidelines say that trunk roads of dual carriageway or motorway standard need to be located at least 200 metres from a residential property.

7.199 He further argues that no details of potential mitigation to reduce impacts of new roads on residential amenity, noise, light, dust and visual impact have been provided.

7.200 He also argues that noise has been computer modelled and no details are available on the final design and the impact of its noise. He also contends that excessively high thresholds have been set for considering noise mitigation. Further he argues that post construction monitoring is required.

Transport Scotland's Response

Business impacts

-Agricultural assessment

7.201 TS confirms that the proposed scheme is routed through Blackpark Farm to the south of the farm steading.

7.202 With regard to the agricultural assessment and its conclusions TS argues that:

- the agricultural assessment includes a qualitative assessment of likely future farm business viability, as required by [DMRB Volume 11, Section 3, Part 6, Land Use](#) (CD049.18), as explained in [ES paragraphs 15.3.59 to 15.3.63](#) (CD005);
- the assessment of significance of impact and of likely future farm business viability is based on the total area of land farmed by the business;
- to assess impacts on only part of the business, would not reflect the overall impacts;
- this is a commonly accepted approach and used on other similar schemes for the assessment of significance of impacts;
- a Farm Business Survey was undertaken on 22nd March 2016 to collect baseline information on the farm business. This confirmed that Blackpark Farm extended to 90 acres and that the total land farmed by the business extended to 260 acres (105 hectares) with land at Foynesfield, Meadowfield and Newtonpark also owned or rented ([ES Appendix A15.6](#) – CD006);
- the total land-take from the business would be 7.61 hectares representing 21% of the Blackpark farm area but 7% of all owned and tenanted land within the business;
- of this, 7.60 hectares is LCA Class 3.2, with the remaining land either woodland or other land;

- the LCA Class of the land affected by the proposed scheme has been confirmed through on-site surveys, the results of which are provided in [ES Appendix A15.1](#) (CD006) and [ES Figure 15.5i](#) (CD007);
- the significance of impact is based on land-take, land quality (LCA Class), severance and other criteria detailed in the methodology in [ES Tables 15.7, 15.8: and 15.9](#) (CD005);
- there would be a moderate impact from severance at Blackpark Farm;
- the proposed mitigation includes reference to an opportunity to merge severed fields, particularly those severed areas to the south of the proposed scheme, subject to the objector's agreement;
- the land-take impacts, combined with severance and disturbance have been assessed and the significance of impact has been assessed as Moderate; and,
- the assessment of likely future farm business viability is correctly assessed as 'Neutral' (not significant) in [ES Appendix A15.7](#) (CD006) as set out in the criteria for this assessment in [ES paragraph 15.3.61](#) (CD005):

Neutral Impact - the farm business is affected by the land-take or change in access requirements of the proposed scheme, and this may result in a reduction or restructuring of its activities. However, this does not compromise the likely future viability of the farm business and it is likely to be able to continue trading, albeit after some restructuring of its operations.

7.203 TS argues that any impact of the proposed scheme on the productive potential of the severed areas and/or business losses could form part of a claim for compensation, subject to District Valuer's assessment and as detailed in Transport Scotland's [Guidance on the Compulsory Purchase Process and Compensation](#) (CD046).

7.204 With respect to fencing TS argues that:

- [ES Table 18.23](#) (CD005) includes Mitigation Item CP-AG7 (boundary features) and this has been incorporated into the assessment of Blackpark Farm. It states:

'Where boundary features (e.g. fences, walls and hedges) require temporary or permanent alteration to allow construction, these would be reinstated with appropriate materials to provide a secure field boundary, with opportunities explored in consultation with the landowner/occupier to merge severed field areas to improve field husbandry operations through the creation of more manageable field sizes and shapes.'

- boundary fencing could be installed as accommodation works forming part of the construction contract, in agreement with the objector;
- fencing would be owned and maintained by the objector as the landowner;
- future costs of maintaining any additional lengths of fencing could form part of a claim for compensation subject to the District Valuer's assessment; and,
- TS's design consultant, Jacobs, would discuss the objector's preferences for fencing specifications during forthcoming accommodation works negotiations.

-Plots 1822 and 2206

7.205 TS argues that Plot 1822 is required for construction of the realigned A939 and essential environmental mitigation identified in [ES Figure 9.5r](#) (CD007); including embankment earthworks for the re-aligned A939 and landscape mitigation (mixed woodland planted on this embankment) to screen views from Blackpark Farm and to offset habitat loss for protected species.

7.206 TS argues that Plot 2206:

- is required to construct and maintain a headwall that forms an integral part of the road drainage outfall;
- needs to be purchased to protect the Scottish Ministers' future interest in this piece of land;
- may be sold back to the objector following completion of construction, subject to suitable burdens being put in place to protect TS's future interests. .

-Drainage and flooding

7.207 With regard to groundwater levels/field drainage TS argues that:

- [ES Table 15.23](#) (CD005) includes Mitigation Item CP-AG10, a mitigation measure specifically to address impacts on field drainage, which states:

'Particular care shall be taken to reduce damage or disturbance to field and forestry drainage systems. Laying of new drains would be undertaken to maintain drainage systems during construction. Repairing and reinstatement of field drains affected by construction shall be agreed with the landowner/occupier to ensure that land capability is maintained and flooding is not exacerbated. Where appropriate, the integrity of the drainage system would be secured in advance through the installation of header drains (cut off drains) to facilitate construction. All remaining remedial works shall be undertaken post-construction.'

- the construction contract documents would specify that where existing field drainage is likely to be affected by the proposed scheme, the contractor would be responsible for locating and reconnecting the drainage as appropriate;
- the design and build contractor is currently expected to be responsible for detailed design.

7.208 TS states that it understands, following consultation with the objector, that the fields are 'free-draining' and field drainage is absent. In [TS105.03](#) TS asks if this is not the case, for the objector to contact Jacobs, to update their records or, alternatively, to raise this during future consultations.

7.209 Regarding flooding/drainage at Meadowfield TS argues that:

- the proposed servitude right of access to Plots 2204 and 2205 and acquisition of Plot 2206 were discussed with the objector on 16 August 2016;
- Plot 2206 is required in order to construct and maintain a headwall that forms an integral part of the road drainage outfall and needs to be purchased to protect the Scottish Ministers' future interest in this piece of land;
- it may sell this plot back to the objector following completion of construction, subject to suitable burdens being put in place to protect TS's future interests;
- prior to discharge into the burn, it is proposed that the road drainage would pass through a series of SuDS ponds, to be constructed to the north of the existing A96, outwith the objector's land;
- the purpose of the SuDS ponds would be to manage potential water quality issues associated with road runoff and to attenuate flows to manage the potential for flooding;
- the ponds would be sized to store the road runoff and release it into the watercourse in a controlled manner;

- in this instance the proposed discharge rate from the SuDS ponds would only increase the predicted flows during a 1 in 200 year storm event (including climate change factor) by 0.53%, which TS considers to be acceptable;
- this area of the Auldearn Burn is well removed from the proposed scheme crossing location and the modelling undertaken at that point shows that the impacts on levels are very localised; and,
- given the very limited change in flows described above, there are no predicted changes in the flood extents in this area.

-Access and the proposed stopping up of the U3010 (Granny Barbour's Road)

7.210 For access of the A939 in TS105.03 TS argues that:

- because there is no existing access track leading from the farm steading to the existing access onto the A939, a replacement track has not been included within the proposed scheme;
- an access track between the steading and new means of access 417 ([draft SRO Plan SR18](#) – CD003) could be provided as accommodation works, which would be carried out on the objector's behalf as part of the contract;
- new means of access 417 (draft SRO Plan SR18 – CD003) from the realigned A939 would be altered within the draft CPO boundary to accommodate articulated HGVs of up to 16.5 metres in length; and,
- Jacobs would discuss this with the objectors during forthcoming accommodation works consultations.

7.211 TS argues that, the current design proposes no changes to the two existing Blackpark Farm accesses from the U3010, where the proposed turning head would accommodate HGVs up to 8 metres in length. In later correspondence TS altered the proposals and these matters are detailed in paragraphs 7.252 to 7.256 below.

7.212 With regard to disruption during construction TS argues that:

- the contractor appointed to build the proposed scheme would determine the road construction sequence; and,
- it would be a condition of the contract for the works that safe and appropriate access is maintained to property at all times.

7.213 Regarding the proposed stopping up of Granny Barbour Road (U3010) TS argues that:

- this need not involve access through Nairn, as vehicles could use the A939 and the B9101; and,
- any increase in journey times and inconvenience, and any increase in maintenance costs arising from changes in farm access arrangements could form part of a claim for compensation, subject to District Valuer's assessment and as detailed in Transport Scotland's [Guidance on the Compulsory Purchase](#) (CD046).

7.214 With regard to provision of an overbridge/underpass TS argues that:

- the majority of access to the existing facilities on Granny Barbour's Road, including Grigorhill Industrial Estate is from the A939; and,
- the relative proximity of alternative routes, for those wishing to access this area from the south, does not justify the cost of providing a vehicular overbridge/underbridge at this location.

7.215 With regard to proposed development in the locality and subsequent traffic impacts on the proposed stopping up of the U3010, TS argues that:

- extant planning applications were considered in [ES Chapter 15](#) (CD005) but it is not aware of any consented planning applications for the area in question;
- there was a change in land use from agriculture to cemetery ([IMFLDP allocation NA9 – CD062](#)) - assessed as site PA37 in ES Chapter 15 (CD005) and [ES Appendix A15.5](#) (CD006). The impact was assessed as 'Neutral' since, despite the U3010 being stopped-up, access would still be permitted to the site and no impact on the amenity would occur to the site;
- the only extant planning application in the last three years is for the erection of a new farmhouse, agricultural building and associated works at Land 210 metres South of Tulloch Timber Ltd, Grigorhill Industrial Estate, Nairn (PA40) in ES Chapter 15 (PA40) (CD005) with a 'Neutral' impact as this would not interfere with its proposed use;
- major approved developments identified on the edge of Nairn, such as Land to the south of West Kingsteps, Kingsteps, Lochloy Road, Nairn (3/03759/FUL) would utilise the proposed Nairn East Junction; and,
- IMFLDP paragraph 4.9 (CD062) notes that whilst the proposed scheme would address many current road capacity concerns to accommodate development in the plan, longer term development options at Nairn South are largely dependent on developers agreeing and delivering suitable improvements to the local road network.

Contracting

7.216 In correspondence with various objectors and at Inquiry Session 8 (and other sessions) TS confirmed that:

- various detailed design aspects of the proposed scheme would take place at the next stage were the proposed scheme to proceed;
- the construction contract would include design and mitigation/agreed accommodation works and it would be binding on the contractor to deliver these (including all environmental commitments identified in [ES Chapter 20](#) (CD005));
- the contractor would be overseen by a site management company (Jacobs) who would provide an independent inspection regime to ensure that all works were carried out to the appropriate standards;
- affected parties could approach the contractor directly, in the first instance, or its overseer, both of whom would have on site staff;
- the appointed contractor would provide a detailed design that must meet the identified environmental standards set out in the ES;
- were the design to differ from the ES, then TS must decide whether the significance of environmental effects would change and prepare an addendum to the ES; and,
- the EIA Regulations are clear on this matter and the subsequent addendum would be in the public domain for consideration.

Residential property impacts

-Route realignment

7.217 TS argues that:

- in designing the route, considerable effort has been made to limit the environmental impacts of the proposed scheme, and in particular to residential properties in close proximity to the proposed route;

- the revised alignment in the vicinity of Blackpark Farm (as compared to the October 2014 Preferred Option) has been developed with the intention of reducing the overall level of severance for agricultural properties (including Blackpark Farm) and to minimise the severance of Russell's Wood including the amenity footpath network through the wood;
- the alignment at this location was amended in keeping with the objector's consultation response prior to the February 2016 public drop-in sessions and has been further amended since then, following feedback at the drop-in sessions and landowner consultations, with the aim of achieving these objectives;
- the alignment may not be the objector's preferred location but it considers the proposed alignment achieves a balance between the impacts to their property with those of their neighbours.

7.218 With regard to proximity to residential property TS argues that:

- the design of the proposed scheme has been undertaken in accordance with DMRB, which sets out the requirements and guidance for designing a new trunk road, such as the proposed scheme;
- the DMRB makes no reference to a minimum distance between the trunk road and an existing residential property;
- every effort has been made to avoid residential properties wherever possible, in addition to a number of other constraints during the design of the proposed scheme.

-Noise and Vibration

7.219 TS argues that:

- a noise assessment has been carried out in accordance with [DMRB HD 213/11](#) (CD049.19) which takes into account the proposed dual carriageway, re-alignment of the A939 and future traffic flows on these roads;
- a noise mitigation strategy ([ES paragraphs 8.2.24 to 8.2.34](#) – CD005) for the proposed scheme has been developed, based on DMRB HD 213/11 (CD049.19) and WHO ([CD090](#) and [CD091](#)) guidance;
- noise mitigation is considered where the significance of impact at noise sensitive receptors is predicted to be:
 - Slight/Moderate adverse or worse, which for high noise sensitive receptors equates to at least a 1 dB noise level increase in the short term (year of opening), and/or at least a 3 dB in the long term (typically within 15 years of the scheme opening) and, in addition, the predicted ground floor façade noise level exceeds 59.5 dB $L_{A10,18h}$;
 - Slight/Moderate adverse or worse, in the long-term with a predicted noise level that exceeds 55 dB $L_{night,outside}$
- for Blackpark Farm, [TS105.03](#) Table 1 (reproduced below) summarises the predicted noise levels and associated significance of impacts for the farm dwelling;
- the reported noise levels and significance of noise impacts presented in TS105.03 Table 1 relate to the predicted 'least beneficial' impacts at the dwelling for each scenario comparison, i.e., where there is the greatest adverse noise level change;
- in order to determine this 'least beneficial' noise level change, modelled receptor points are positioned within the computer model at one metre from every façade of the building, as shown in TS105.03 Figure 1.

TS105.03 Table 1: Predicted DMRB Noise Levels and Significance of Impacts at Blackpark Farm Dwelling

Scenario	LA10,18hr DMB Noise Level (dB)	LA10,18hr Scenario Comparison Noise Level (dB)	Noise Level Difference (dB)	Significance of Impact
DMB vs DSB	35.8	44.8	9.0	Large/ Very Large Adverse
DMB vs DMF	40.3	41.9	1.6	Slight Adverse
DMB vs DSF	35.8	45.9	10.1	Moderate/ Large Adverse

Baseline Year Do-Minimum vs Baseline Do-Something (DMB vs DSB)
 Baseline Year Do-Minimum vs Future Year Do-Minimum (DMB v DMF)
 Baseline Year Do-Minimum vs Future Year Do Something (DMB v DSF)

Baseline Year is the assumed year of opening for assessment purposes.
 Future Year is fifteen years after the Baseline Year.

Do-Minimum describes the situation without the proposed scheme.
 Do-Something is with the proposed scheme in place.

7.220 TS argues that:

- TS105.03 Table 1 (above) shows that the predicted significance of impact would be Large/Very Large Adverse in the Year of Opening and Moderate/Large Adverse in the Future Year;
- although the change in noise level would result in impacts described as having adverse significance, the predicted absolute noise levels at the receptor locations shown, would remain relatively low (approximately 45 – 46 dB LA10,18h), when compared to the WHO guidance (CD090);
- to determine if noise mitigation should be provided it is also necessary to determine whether predicted absolute noise levels would exceed the thresholds;
- sometimes the highest absolute noise level is predicted at a different receptor point around the dwelling than the point where ‘least beneficial’ change is measured;
- the predicted noisiest receptor point at the Blackpark Farm dwelling is indicated by the triangular ‘point’ shown in TS105.03 Figure 1;
- based on noise levels for the Do-Something scenarios (Baseline and Future years), the absolute noise levels at this receptor remain 9 dB below the noise mitigation threshold as summarised in TS105.03 Table 2 (reproduced below);
- given the predicted absolute noise levels at the farm dwelling, and based on the noise mitigation strategy ([ES paragraphs 8.2.24 to 8.2.34](#) – CD005), mitigation is not required for this dwelling.

TS105.03 Table 2: Noise Levels and Significance of Impacts at the Noisiest Blackpark Farm Receptor Point Blackpark Farm Dwelling

Scenario	Noise Level LA10,18h dB	
Baseline Year: Do Minimum (2021) [DMB]	44.2	
Baseline Year: Do Something (2021) [DSB]	49.4	
Future Year: Do Minimum (2036) [DMF]	45.0	
Future Year: Do Something (2036) [DSF]	50.5	
Scenario	Noise Level difference (dB)	Significance of Impact
DMB vs DSB	5.2	Large/ Very Large Adverse
DMB vs DMF	0.8	Slight Adverse
DMB vs DSF	6.3	Large/ Very Large Adverse

-Visual impacts

7.221 With regard to light pollution TS argues that:

- the proposed scheme would not be lit, except at the six grade separated junctions and no lighting is proposed for the A939 realignment works;
- lighting for grade separated junctions is proposed to include a focused/directional light beam (no emission above the horizontal) and these would dim/switch off when traffic is absent;
- [ES paragraph 10.7.5](#) (CD005) explains that the impact of road lighting and headlights has been taken into account when assessing magnitude and sensitivity as part of the visual assessment, so that the level of impact determined encompasses all elements of the proposed scheme; and,
- Blackpark Farm has been identified as a visual receptor and so the landscape mitigation measures within its vicinity have been developed having considered screening requirements both during the day and at night.

7.222 With regard to the effects on landscape character TS argues that:

- the ES confirms that the proposed scheme would have a direct adverse impact on the Auldearn Forested Rolling Farmland LLCA, in which Blackpark Farm is located;
- the landscape impact assessment found the significance of residual effect upon the LLCA would be 'Moderate to Substantial adverse', during winter in the year of opening due to the loss of farmland and plantation woodland, severance of fields, introduction of structures, and the loss of tranquillity by the introduction of increased traffic noise and movement;
- by the summer 15 years after opening, the assessment concluded the residual effects would be likely to reduce to 'Moderate'; and,
- although still significant, the reduction would result from the establishment of mitigation planting to integrate the proposed scheme and screen its visibility from local properties, while reinforcing existing landscape character and repairing severance of existing field boundaries.

7.223 Regarding visual impacts on Blackpark Farm and landscape and visual impacts, TS argues that:

- the ES acknowledges that the introduction of the proposed scheme, to the rural landscape south of Nairn, would have a significant adverse effect on views from Blackpark Farm;
- this would likely incur 'Substantial effects' during the winter year of opening due to its close proximity and open views towards the proposed scheme, as it severs fields and cuts through nearby woodland;
- the proposed dual carriageway would be in a six to nine and a half metre deep cutting to the south of Blackpark Farm;
- by summer 15 years after opening, proposed hedgerow mitigation planting along the top of the cutting would assist to reduce residual effects to 'Moderate/ Substantial' as it establishes to further integrate the proposed scheme into the landscape and provide additional screening;
- landscape mitigation measures have been applied to reduce both landscape and visual impacts whilst assisting integration with the local landscape character as described in [ES Chapter 9](#) (CD005), [ES Appendices A10.1 and A10.2](#) (CD006) and [ES Figures 9.5r and 9.6j](#) (CD007);
- for the realignment of the A939 (including PS16 Overbridge) this includes mixed woodland planting on the embankments of the realigned road to assist with screening

potential views from the surrounding properties, whilst integrating the road and overbridge into the existing landscape;

- mixed woodland requires the inclusion of both broad-leaved and coniferous woodland for visual screening purposes and plants which range in size from feathered trees to whips and transplants;
- this would aim to create multi-layered woodland with a balanced mix of native deciduous and coniferous trees, including to achieve year-round screening and reflect existing woodland local to the various sections of the road;
- the woodland mix would include typical species such as, Oak, Alder, Scots Pine and Rowan;
- mitigation proposals would also include the retention and management of the existing coniferous woodland where possible to assist with screening potential views of the proposed scheme;
- more detailed development of the landscape mitigation would be progressed and details incorporated within the contract documents of which the ES will form a part.

-Air quality

7.224 TS argues that the results of the air quality assessment in [ES Appendix A7.4](#) (CD006) show that the modelled levels of NO₂, PM₁₀ and PM_{2.5} at Blackpark Farm (receptor AQ400) are defined as 'all well below' the relevant air quality objectives for each pollutant.

7.225 TS also confirms that the air quality assessment considered construction dust. It concluded that the implementation of best practice dust mitigation measures during the construction phase (through a CEMP, which would be approved with The Highland Council), would reduce the impact of dust on surrounding areas, and that there would not be a significant effect. TS confirms that these mitigation measures are included within the ES, and would be developed further at the next stage of contract documentation preparation.

Findings of Fact

Business Impacts

-Agricultural assessment

7.226 The disagreement about the proportion of land take and its business impact relates to the identity of the IFU that is being assessed ([DMRB Volume 11, Section 3, Part 6, Paragraph 10.6](#) – CD049.18). Paragraph 6.3 (CD49.18) lists the four main effects on agricultural land that assessments need to cover. Paragraph 6.4 (CD49.18) explains that impacts on farmers as residents or business people, additional to the items in paragraph 6.3, should be assessed following the methods used to assess effects on other residents or businesses affected by a scheme. Paragraph 10.17 (CD49.18) talks about the likely future viability of affected agricultural units. We find this to mean that the assessment is focussed on farming rather than other interests and specifically whether farming remains a viable land use.

7.227 We therefore find that it is reasonable to assess the impacts of the proposed scheme on all of the land farmed by OBJ/105 John R MacKintosh and Company as the IFU (paragraph 10.6 - CD49.18). We find that assessing Blackpark Farm only would be inconsistent with the rest of TS's assessment approach. Therefore, we do not consider that, when assessing likely impact on agriculture, Blackpark Farm should be assessed

individually as a separate entity from the rest of OBJ/105 John R MacKintosh and Company's farming operations.

7.228 TS has assessed the impact on the farming business at Blackpark Farm in [ES Appendix A15.7](#) (CD006) as part of the wider operations of OBJ/105 John R MacKintosh and Company. Since we have already concluded that this is reasonable, we find that TS has correctly identified the receptor sensitivity and the magnitude of impact using the approach set out in [ES Tables 15.7 and 15.8](#) (CD005). We find that land quality has formed part of the assessment, as required by DMRB Volume 11, Section 3, Part 6, Paragraph 6.3 – CD049.18).

7.229 [ES Figure 15.5i](#) (CD007) and ES Appendix A15.7 (CD006) conclude that all land at Blackpark Farm, and its immediate surroundings is class 3.2. These also indicate that the land at Plot 2206 is currently woodland on class 4.1 agricultural land. Neither of these represents prime quality land. Whilst we accept that Mr MacKintosh will have detailed knowledge of which parts of his land are most productive, the evidence does not suggest any part of Blackpark Farm or its immediate surroundings is of significantly better quality than any other part. Similarly, ES Figure 15.5i (CD007) shows that poorer quality land to the south is approximately 500 metres south of the proposed scheme. This land is not within the draft CPO and so would require full assessment and related processes for a new alignment and, in any event, would not avoid all of the class 3.2 land south of Blackpark Farm. We therefore find no justification to recommend modifications to the draft Orders on this basis.

7.230 The parties do not appear to dispute the alternative land-take calculations, rather they dispute which figure should be used. We accept that the proposed scheme would require a land take equivalent to 21% of the land at Blackpark Farm but that this would represent 7% of all of the land farmed by OBJ/105 John R MacKintosh and Company. However, based on our findings above, we conclude that the figure relevant for the agricultural assessment, based on the IFU, is the 7% of all land farmed by OBJ/105 John R MacKintosh and Company.

7.231 ES Appendix A15.7 (CD006) identifies the need to reinstate fencing. We note from the chain of correspondence between Mr MacKintosh and TS ([TS105.01 to TS105.08](#)) that Mr MacKintosh wishes this to be provided and has views on the types of fencing. In this correspondence, TS has clarified that these could be provided and that the specifications could be agreed with Mr MacKintosh prior to construction. We find that the requirement for reinstatement of boundary treatments (including fencing) is identified in [ES Table 15.23](#) (CD005) under Mitigation Item CP-AG7, which ES Appendix A15.7 (CD006) identifies as being necessary for Blackpark Farm and other land farmed by Mr MacKintosh and Company. We therefore find that these measures would be included in any construction contract and their delivery would be binding on the contractor.

7.232 We find that the agricultural assessment is not using the term 'viability' to describe how profitable or otherwise a business or individual field may be or may become. Instead, it is describing whether agriculture remains a viable land use. The evidence does not suggest that farming would cease to be possible at Blackpark Farm or on any of its land severed by the proposed scheme.

7.233 We understand that some parties consider the term 'neutral' to represent the status quo. However, we find that [ES paragraph 15.3.61](#) (CD005) is clear that this is not its

intended meaning. The definition provided in that paragraph makes clear that the term 'neutral' involves change and that this may result in a reduction or restructuring of activities. We also note the definitions of the terms 'beneficial' and 'adverse' in ES paragraph 15.3.61 (CD005). We find that the definition of 'neutral' accurately describes the anticipated impacts on John R MacKintosh and Company's farming operations that result from the proposed scheme and that the terms 'beneficial' and 'adverse' do not.

7.234 There appears to be no dispute between the parties that the land take of the proposed scheme would result in a fall in the amount of productive agricultural land for John R MacKintosh and Company's business. This could be a matter that OBJ/105 John R MacKintosh and Company choose to seek compensation for. This would be a matter for the District Valuer and not for this inquiry.

-Plots 1822 and 2206

7.235 We find that the acquisition of Plots 1822 and 2206 is not excessive since:

- Plot 1822 is required for construction of the A939 realignment and the environmental and landscape mitigation identified in [ES Figure 9.5r](#) (CD007); and,
- Plot 2206 is required for construction of a headwall for part of the road drainage outfall and must be acquired to protect Scottish Ministers' future interests.

7.236 Not acquiring these plots would result in uncertainty about delivering vital aspects of the proposed scheme. We note that Scottish Ministers may be willing to sell back Plot 2206, with appropriate burdens, should it be deemed surplus to requirements. We find this to be a matter for the Scottish Ministers to determine post construction and therefore this is not a matter for this inquiry.

7.237 We consider matters relating to Plot 2206 with regard to drainage and flood risk below.

-Drainage and flooding

7.238 We find that Plots 2205 and 2206 would form new or enhanced drainage channels carrying water from the proposed SuDS ponds between ch28700 to ch28900 southwards to tributary 1 of the Auldearn Burn (as shown in ES Figures [9.2h](#), [9.5u](#) and [13.1d](#) – CD007). [Draft CPO Sheet 22 of 23](#) (CD001) shows that Plot 2205 (and also 2204) would be a servitude right and TS confirms Plot 2206 would be a acquired to construct and maintain a headwall that would form an integral part of the road drainage outfall. This does not suggest that either plot would not be needed as part of the proposed scheme.

7.239 [ES Figure 15.6k](#) (CD007) shows that these two plots affect field 39/1W, the northern corner of woodland owned by the objector. We note that this woodland contains a pond at its southwest corner and that the tributary of the Auldearn Burn, affected by the proposed acquisition of Plots 2205 and 2206, would flow south, into/alongside this pond, before discharging and flowing west towards Auldearn.

7.240 ES Appendix A15.7 (CD006) confirms that field 39/1W would require the tie-in of existing woodland drainage with road drainage/provision of new as required and also mitigation item CP-AG10 (ES Table 15.23 – CD005). We note that similar drainage requirements have also been identified for other affected fields farmed by the objector. We find that these measures are included in the ES, which would form part of any construction contract and, therefore, be binding on the contractor. TS confirms that the proposed works

would not unacceptably increase the risk of flooding and [ES Appendix A13.2](#) (CD006) does not suggest we should conclude differently.

7.241 ES Appendix A13.2 paragraph 3.3 (CD006) explains that due to its size, significance and hydraulic complexity, hydraulic numerical modelling has been undertaken on the Auldearn Burn to develop an understanding of its fluvial flood risk for both the baseline 'with scheme' and 'with mitigation' scenarios.

7.242 Auldearn Burn Hydraulic Model Report Annex A13.2.F Diagram 1 on page A13.2.F-3 (CD006) shows the Auldearn Burn Study Area. This focuses on the area around the confluence of Tributary 1 and Tributary 2. We find that this does not mean the modelling work has failed to consider the matters concerning the objector. We find this to be logical since two tributaries affected by the proposed scheme would meet in an area with some recognised flood risk. We also find that this must, necessarily, consider water volumes originating upstream and resulting from the proposed scheme, including the flow through Plots 2205 and 2206. The evidence before us does not suggest that the proposed scheme would result in an unacceptable increase to flood risk at Plots 2205 or 2206 or elsewhere, including Meadowfield.

7.243 We attach weight to the fact that SEPA has not objected and this supports our conclusion that the proposed arrangements are acceptable in principle. We note that more detailed design work would be carried out at the next stage, were the proposed scheme to proceed.

-Access and the proposed stopping up of the U3010 (Granny Barbour's Road)

7.244 We find that Mr MacKintosh's concerns regarding access, and TS's position in response, evolved during their discussions as shown in TS105.01 to TS105.08.

7.245 We find that access to some land could be affected as a result of construction. However, we also find that ES Table 15.23 (CD005) lists Mitigation Items CP-AG3 and CP-AG5. Together these would ensure that access is available at all times and that affected parties are informed in advance of the alternative access arrangements and the likely duration of works. Both mitigation items are identified as necessary for the land farmed by Mr MacKintosh in ES Appendix A15.7 (CD006). As mitigation items identified in the ES, we find that these would form part of any construction contract and therefore their delivery would be binding on the contractor.

7.246 Mr MacKintosh had been concerned about access arrangements to severed fields. We find that ES Figure 15.6j (CD007) shows that the southern sections of fields 43/1, 43/2, 43/3 and 43/4 would be severed by the proposed scheme. To resolve this, ES Appendix A15.7 (CD006) proposes merging these southern field sections into one single field with a single point of access off the southern access ramp of the realigned A939. This is shown as new means of access 420 (draft SRO Plan SR18 – CD003). We find this would resolve severance and provide access.

7.247 ES Appendix A15.7 (CD006) also proposes a new means of access at point 417 (draft SRO Plan SR18 – CD003) to provide access from the realigned A939 to fields north of the proposed dual carriageway. In TS105.08 TS confirms that this new access would be provided and that there is some opportunity to discuss the type of access arrangements to ensure they are suitable.

7.248 Mr MacKintosh's original objections (TS105.01 and TS105.02) sought a new access on the north side of the proposed dual carriageway from the realigned A939 to the farm steading. In TS105.03 TS confirmed its willingness to provide a new access track between new means of access 417 (draft SRO Plan SR18 – CD003) and the farm steading with new means of access 417 being capable of handling vehicles of 16.5 metres in length), as accommodation works. However, Mr MacKintosh rejected this suggestion as he considered it would take more of his land.

7.249 We find that, instead Mr MacKintosh sought improvements to the existing access off the U3010 (Granny Barbour Road). His principal contention is that the curvature of the existing access only favours vehicles travelling to and from the south. We saw the access on our site inspection and agree that its curve does currently favour such movements. We note that the proposed scheme includes a turning head south of this access (point 85 on draft SRO Plan SR19 – CD003) but that Mr MacKintosh opposes this because he considers it would unsuitable for accommodating large HGVs, including articulated lorries. At Inquiry Session 8 he stated that there are between 50 and 100 such vehicle movements per year and we find no reason to doubt this.

7.250 At Inquiry Session 8 TS contended that Mr MacKintosh was raising new matters, such as vehicle types and costs. Whilst we agree that the detail of these may be newer we find that the basis for the discussion remains access to the farm, which was a matter covered in the original objections. We find that the various correspondence between Mr MacKintosh and TS have identified the issue and proposed a solution but this has been rejected and further proposals were then suggested. We find that the way these discussions have played out is not unreasonable in procedural terms.

7.251 At Inquiry Session 8 Mr MacKintosh reiterated his concerns about the proposed turning head (Point 85 draft SRO Plan SR19 – CD003) being unsuitable for the size of vehicles that would access his farm and he continued to seek the widening of the existing entrance. However, TS stated that the land either side of this entrance is not in Mr MacKintosh's ownership and is not part of the proposed CPO. We note from other objections that Mr MacKintosh does not own this land. We find that it is only possible to remove land from the draft CPO, not to add it. As such whilst Mr MacKintosh's proposal may at first seem simple, for the reasons above we find it would be impractical.

7.252 In TS105.08, following a meeting with Mr MacKintosh on 8 August 2018, TS accepts that it is currently possible for large articulated vehicles (16.5 metres long) travelling north on Granny Barbour's Road to access Blackpark Farm, albeit with careful manoeuvring and a degree of verge overrun. It therefore commits to a new turning head at the point where the U3010 would be severed by the proposed dual carriageway. TS105.08 includes an outline proposal for this turning head (Drawing No. A96PIN-JAC-HML-21400-SK-CI-0002 Rev. P00). TS argues this to be designed to cater for articulated vehicles up to 16.5 metres long, and other long agricultural vehicles such as a tractor and bale wagon. At Inquiry Session 8 TS's engineering expert confirmed that it would be possible for a vehicle of 18.5 metres long to turn at the facility.

7.253 This matter was discussed at length during Inquiry Session 8. We find no reason to doubt TS's proposal and find that it would be capable of resolving Mr MacKintosh's access concerns. We also note it is entirely within the existing CPO boundary. We also agree with the point made by TS at Inquiry Session 8, that this proposed new turning facility could be used by lorries from the nearby Grigorhill industrial estate and/or to resolve situations where

HGVs are lost, have missed the turning to the industrial estate and require a place to turn around. We therefore find that this would fully address the access concerns of Mr MacKintosh as it would allow large HGVs, of the size he describes, to enter Blackpark Farm and would also have wider benefits.

7.254 We note Mr MacKintosh reiterated previous concerns about unauthorised parking and fly tipping at the originally proposed turning head (Point 85 – CD003) and at the proposed new turning head (TS105.08). He also raised concerns about unauthorised use by travellers, however we agree with TS that this was a new issue raised only at Inquiry Session 8, which did not form part of the initial objection. We find that the concerns Mr MacKintosh raises could arise at any such facility, irrespective of its location and TS could not reasonably be expected to stop such activities through design alone. TS confirms that any traffic regulations order (double yellow lines) would be a matter for The Highland Council, but that the likelihood of emplacing these would be dependent, amongst other things, on their enforceability.

7.255 At Inquiry Session 8 Mr MacKintosh appeared to oppose the proposed new turning head arguing that the matter had arisen as a result of a design error and that it was for TS to resolve this and to acquire the necessary land to enlarge his current access onto the U3010. However, as stated above, we have found that land can only be removed from the draft CPO, not added. We find that the proposed turning head would resolve Mr MacKintosh's access concerns, though it may not be in the manner he prefers, and that it would serve other HGVs too.

7.256 We agree with Mr MacKintosh that the proposed stopping up of the U3010 would require all vehicle movements to/from Blackpark Farm's eastern entrance to arrive/leave from the north. However, we disagree that vehicles would then be required to travel through Nairn since they could instead travel via the A939 and B9101 to reach his land at Auldearn (and other destinations). Were this to result in additional journey costs then this could form part of any compensation claim that Mr MacKintosh may choose to make. Compensation is a matter for the objector, TS and the District Valuer and not for this inquiry.

7.257 Mr MacKintosh had originally sought an underpass/overbridge at the point where the U3010 would be severed by the proposed dual carriageway. We note TS's consideration of development proposals in the locality in ES Chapter 15 (CD005) and its consideration of [IMFLDP paragraph 4.39](#) (CD062). We find no reason to disagree with its findings that these would generate insufficient traffic to justify an underpass/overpass around ch24700.

7.258 Whilst TS does not provide any costs, we recognise that providing either structure would come with construction and maintenance costs. We find that any scheme promoter must make informed judgements, in designing its proposed scheme, about whether such structures should be included or not on the grounds of cost, as well as other factors.

7.259 We find that an underpass at ch24700 would have to be sufficiently deep to pass safely beneath the proposed dual carriageway at a point where it is proposed to be in a cutting (ES Figures [4.1i](#) and [9.6j cross section S-S](#) – CD007). Similarly an overbridge would also require sufficient clearance and could require access ramps similar to those for the nearby PS16 A939 Overbridge. Whilst we do not have specific designs or costs before us, we find it reasonable to assume that whatever their dimensions, each would require land not currently in the draft CPO and additional materials, labour and cost. Given the

availability of alternatives (considered above) it does not appear unreasonable for TS to conclude that the costs would not justify provision of such a structure.

7.260 We find that the factors considered above collectively negate any requirement to provide an underpass/overbridge and provide appropriate mechanisms to allow access to and from Blackpark Farm and other parts of Mr MacKintosh's business.

Contracting

7.261 We find that the proposed contracting regime would build-in from the outset any relevant requirements for mitigation from the ES and any agreed accommodation works. We find that this, a clerk of works and TS's appointment of a site manager (Jacobs) to oversee the contract, would provide a mechanism to hold the contractor to account.

7.262 We find that the contractor would have some design 'freedom' (our word). However, we find that this would remain within the requirements of the contract and the land acquired by CPO. At several inquiry sessions TS explained that all designs must be approved through the clerk of works and would be considered against the ES. Were these considered to result in new or changed environmental impacts, they would be reassessed, including with any necessary mitigation. We find that this provides an additional mechanism to ensure that design 'freedom' would not result in unintended environmental consequences that differ from those already foreseen by the ES (CD005, CD006 and CD007) and already built into the contract.

7.263 We understand the concerns of Mr MacKintosh regarding any route for recourse in the event of unsatisfactory works. TS confirmed the on-site staffing arrangements that would be in place during construction. We find that these arrangements would allow concerned parties to approach the service provider (the contractor) and the independent overseer (in this case Jacobs).

7.264 Overall, we find the contracting approach provides for mitigation and accommodation works to be carried out to an appropriate standard within an independent inspection regime. We also find that the contractor has some design freedom but this remains within the bounds of the contract and a regime for assessing any additional environmental impacts. Affected parties would have a route of recourse to both the contractor and the contract overseer. The evidence does not suggest we should conclude this to be deficient.

Residential property impacts

-Route realignment

7.265 We find that the approach to the realignment of the proposed scheme south of Blackpark Farm is explained in [The Skene Park – Blackpark – Russell's Wood Alternative Alignment Report \(TS220\)](#). Specific objections to this were raised by OBJ/110 Mr James A Philip, which have been considered earlier in this chapter (above). We note that these objections appear to address the same issue but seek a different and contrary solution to that sought by OBJ/105 Mr MacKintosh and Company.

7.266 We find that TS initiated the realignment exercise to respond to concerns raised by OBJ/105 Mr MacKintosh. We also find that the selected, refined route (TS220) was a compromise that included responding to Mr MacKintosh's concerns but also avoiding those raised by others.

7.267 The evidence in TS220 does not suggest that TS has carried out this exercise incorrectly or that in doing so it has reached erroneous conclusions. We note Mr MacKintosh's concerns that the proposed scheme is too close to his home because it is, by his estimation, within 200 metres and he contends this to be contrary to planning guidance. We note TS's point that DMRB does not identify a minimum distance and that [DMRB HA 207/07 Air Quality](#) (CD049.14) refers to 200 metres as being the distance beyond which air quality impacts do not need to be measured. The evidence does not suggest we should reach an alternative conclusion. [ES Figure 8.14i](#) (CD007) shows that the residential property at Blackpark Farm is on the north east side of the farm buildings complex. This corresponds with what we saw on our site inspections from the A939 and U3010 Roads. It has also not been disputed by the objector. Using [ES Figure 4.1i](#) (CD007), we note that the nearest (southern) corner of that property would be in excess of 200 metres from the nearest edge of the proposed dual carriageway. We also note that this same property would be over 200 metres from nearest edge of the realigned A939 (using [ES Figure 4.1i](#) (CD007)). Given these findings the only significance we can attribute to the distance of the residential property at Blackpark Farm from the proposed scheme relates to noise and vibration, visual and air quality impacts. These are considered separately below.

7.268 We also find Mr MacKintosh's suggestion that it is unclear what mitigation has been provided in response to these matters (TS105.01) to be inaccurate since this mitigation is identified in [ES Figure 9.5r](#) (CD007) and also in [ES Appendix A15.7](#) (CD006) with cross reference to mitigation items set out in [ES Table 15.23](#) (CD005).

-Noise and Vibrations

7.269 We consider the noise assessment process at various points in this report. In Chapter 2: Matters of Principle we discuss the chosen noise mitigation threshold and TS's decision not to use the recently published 2018 World Health Organisation (WHO) guidelines (CD140) in its assessment of this proposal. Our conclusion there was that the evidence does not suggest we should find the noise assessment in [ES Chapter 8](#) (CD005) to have been carried out incorrectly or to have reached inappropriate or erroneous conclusions, that the noise mitigation threshold requires revision, or that it was inappropriate for TS not to have revisited this issue upon publication of the 2018 WHO guidelines (CD140).

7.270 For noise level changes we find that [DMRB HD 213/11 paragraph 3.38](#) (CD049.19) identifies changes of 1 dB or less in the short-term and 3 dB or less in the long-term to be imperceptible. As such, we find it to be reasonable that noise level changes above this threshold would be perceptible and that mitigation should be offered, provided that the appropriate absolute noise level threshold is also exceeded.

7.271 The ES mitigation strategy uses a threshold of 59.5 dB $L_{A10, 18h}$. Use of the $L_{A10, 18h}$ metric is reasonable because it is used in the [CRTN](#) (CD084) to predict traffic noise. It covers an 18 hour period whereas the L_{Aeq} defined by WHO is for a 16 hour period and free field. Free field means that it does not account for the reflective impacts of buildings ('façade effects'). The $L_{A10, 18h}$ 59.5 dB includes façade effects. We agree with TS that $L_{A10, 18h}$ and L_{Aeq} are therefore each different metrics for measuring absolute noise in the same way that centimetres and inches are different metrics for measuring distance.

7.272 Applying the appropriate conversion factor for L_{Aeq} to $L_{A10, 18h}$ and to account for façade noise means that $L_{A10, 18h}$ 59.5 dB and L_{Aeq} 55 dB are the same absolute noise level.

Therefore we find that the absolute noise levels of the $L_{A10, 18h}$ 59.5 dB is based on the [WHO guidance 1999](#) (CD090) level of 55 L_{Aeq} but is a different metric.

7.273 The WHO 1999 (CD090) guidance quotes two thresholds for absolute noise levels. These are 50 dB L_{Aeq} and 55 dB L_{Aeq} . TS has adopted the higher of these. Based on the [National Noise Incidence Survey 2000-02](#) (CD123) we found that the daytime noise levels in Scotland already exceed the 50 dB L_{Aeq} levels and that it was therefore reasonable for TS to adopt the higher 55 dB L_{Aeq} (equivalent to $L_{A10, 18h}$ 59.5 dB).

7.274 Therefore we find no reason to conclude that TS's noise mitigation thresholds are set unreasonably high.

7.275 We agree with Mr Mackintosh that TS has used a computer model to assess predicted noise impacts. We do not find no reason to conclude this to be unusual or erroneous practice. TS confirms in TS105.07 that it uses the prediction methodology rather than a measurement methodology because this, typically, uses longer term road traffic count information. It also argues that actual measurement can often include extraneous noise from sources at the preferred measurement location. We find this to be plausible.

7.276 TS105.03 Tables 1 and 2 show that, with the proposed scheme in place, predicted changes in noise level would be perceptible, exceeding 1 dB in the short-term and 3 dB in the long-term. However, predicted absolute noise level thresholds would not exceed the 59.5 dB $L_{A10, 18h}$ threshold in the noise mitigation strategy ([ES paragraphs 8.2.24 to 8.2.34](#) - CD005). Therefore we find that no additional receptor-specific mitigation would be required beyond that already proposed.

7.277 We also note John R MacKintosh and Company's suggestion of tree and hedge row planting to limit the noise impact (TS105.05). However, TS's noise expert clarified in various other inquiry sessions that vegetation such as this would have very little, if any, impact on noise unless it was dense woodland. Based on this and ES Figure 9.5r (CD007) we find that the proposed tree and hedge mitigation would be unlikely to offer significant noise amelioration benefits.

7.278 We also note from TS105.07 that TS would conduct a post-construction review to ensure that all noise mitigation detailed in the ES has been implemented and is in a satisfactory condition. It asks for concerned parties to raise these issues with TS post construction to allow them to be investigated and, if necessary, TS would consider appropriate mitigation. We find this to explain a route of recourse for affected parties should they have concerns about the effectiveness of noise mitigation post construction.

-WHO Guidelines 2018

7.279 Immediately before the inquiry began at the end of October 2018, the WHO published new guidance on noise levels (CD140). This new guidance was presented to us by TS during the inquiry. We invited participants to consider this during the inquiry and to provide any written comments alongside closing statements, if they wished. OBJ/105 John R Mackintosh and Company chose to provide comments on the [WHO Guidelines 2018](#) (CD140). We have considered matters relating the WHO Guidelines 2018 (CD140) in Chapter 2: Matters of Principle of this report paragraphs 2.388 to 2.432. We consider Mr MacKintosh's concerns below.

7.280 OBJ/105 John R MacKintosh and Company argues that:

- The WHO guidelines 2018 (CD140) and [TS supplementary precognition](#) imply that the WHO is recommending an enhancement of the previous noise impact limits based on evidence of harmful impacts upon human health and wellbeing.
- the change in noise impact levels at the affected properties has already been identified as significant and adverse but the promoter considers that additional mitigation works are unjustified, but this is based upon the predicted modelling falling just short of the current WHO guidelines ([CD090](#) and [CD091](#)).
- there is concern that a risk of impacts on the health and wellbeing of residents remains and TS has a duty to undertake a revised assessment and if necessary provide appropriate additional mitigation to prevent such adverse health impacts.
- should the revised WHO guidelines (CD140) be adopted by the relevant statutory authorities before the proposed scheme is built, it would be unjustified for TS to proceed without undertaking such further review.
- the dualling of the A96 is proceeding in sections. If the revised WHO guidelines are adopted whilst other sections remain under design consideration, it is conceivable that later sections of the dualled A96 may be subject to a different noise impact assessment regime to that for this proposed scheme. This would be inequitable and unreasonable.
- the Reporters should recommend that an updated noise impact assessment is carried out in the event of the amended WHO guidance (CD140) being adopted before the whole A96 dualling (and not just this proposed scheme) is completed.

7.281 TS provided a supplementary precognition for the inquiry and this was discussed at Inquiry Session 8 with Mr MacKintosh. There and in its [Closing Statement](#), TS makes clear its view that the WHO Guidelines 2018 have been published but have not yet been adopted in Scotland. We agree that this is the case and it does not appear to be disputed by Mr MacKintosh, who seems to accept this in his arguments. This being so, we accept that the adopted guidance available to TS when carrying out the noise assessment and also now (at the time of writing this report) is the WHO 1999 guidance (CD090 and CD091).

7.282 TS explains that the new guidance uses a noise metric L_{den} . This is a single metric for day, evening and night. TS argues that this metric differs from both the L_{Aeq} and $L_{A10, 18h}$ metrics currently used by WHO 1999 (CD090) and the noise assessment for the proposed scheme respectively. TS also argues that the L_{den} metric quoted in the 2018 guidelines (CD140) also exclude façade noise. We have already found that a difference in metrics and inclusion or exclusion of façade effects are important distinctions when considering noise measurements. We therefore agree with TS that this would be an important consideration when reading the proposed noise level thresholds in the new guidance (CD140) and comparing them with those of the WHO 1999 (CD090) and those used for the noise assessment in ES Chapter 8 (CD005).

7.283 TS also explains in paragraphs 4.8 to 4.12 of its closing statement regarding WHO Guidelines 2018 (CD140) that WHO acknowledges a knowledge gap and a need for 'longitudinal studies on health impacts from exposure to environmental noise to inform future recommendations properly'. We find this to be further recognised by the WHO Guidelines 2018 (CD140) page 29 in the recommendations section, which explains that the guidelines should:

...serve as the basis for a policy-making process in which policy options are quantified and discussed. It should be recognised that in that process additional considerations of costs, feasibility, values and preferences should also feature in

decision-making when choosing reference values such as noise limits for a possible standard or legislation.

7.284 In the WHO Guidelines 2018 section 5 implementation guidelines section 5.1 (CD140) reinforces this position recognising that the factors quoted above can 'feature in and can influence the ultimate value chosen as a noise limit.'

7.285 We find this to demonstrate that the WHO Guidelines 2018 (CD140) are not necessarily expected to be adopted verbatim, rather that work is incomplete. We agree with the points in TS closing submission on WHO 2018 paragraph 4.13. This explains that the WHO Guidelines 2018 (CD140) do not have legislative force, but are aspirational. This suggests to us that any adopting process must consider the matters identified further, carry out additional research and assess the practicalities of these matters before adopting threshold values. We also find this to suggest that any threshold values that are ultimately adopted may differ from those currently presented in WHO Guidelines 2018 (CD140) as a result of this additional work. We therefore conclude that it is not appropriate or rational to simply expect that the thresholds identified in CD140 would be the thresholds ultimately adopted by Scottish Ministers; since the work to determine this has yet to take place and its conclusions therefore cannot be known in advance.

7.286 Based on the above consideration, we find that one cannot simply take the existing noise assessment and alter the absolute noise level thresholds to reflect those in the new WHO guidelines 2018 (CD140). Since this uses different metrics an entirely new noise assessment would be required. Furthermore, we have found that this new guidance (CD140) is not yet adopted and there is no current requirement for it to be followed. Similarly there is no guarantee what the respective noise thresholds would actually be. We also agree with TS's point that following any such research and conclusions would follow consultation and engagement as part of the normal framework for adoption of policy and/or legislation. We see no basis to justify advising Scottish Ministers to instruct a new noise assessment since the basis for doing so and any new standards upon which it would be based are yet to be determined.

7.287 We agree with Mr MacKintosh that it is plausible to suggest that were the WHO guidelines 2018 (CD140) to be adopted over the coming years that later sections of the A96 dualling towards Aberdeen (and other roads) may be subject to different noise thresholds compared with this proposed scheme. We also agree that this could mean (although it is far from certain) the newest sections of the road having different design standards to older sections of the road. However, we find this to be unavoidable in any field of development where standards of design change over time. Any proposal must be assessed against the requirements of the time. We find this to be the case here.

7.288 Mr MacKintosh also makes reference to his arguments with regard to the current noise assessment conclusions. We have already considered and made findings on these in paragraphs 7.269 to 7.278 above.

7.289 We therefore find that the newly published WHO Guidelines 2018 (CD140) are neither law nor adopted policy. A process of further research and consideration will be required prior to any adoption, with no guarantee of what the actual thresholds would be. The proposed scheme has been subject to a noise assessment based on the appropriate adopted guidance. We find no reason to recommend that Scottish Ministers seek a

reassessment of the noise impacts. Scottish Ministers may wish to take their own expert and / or legal advice on this matter.

-Visual impacts

7.290 We find that TS has assessed the landscape and visual impacts and effects of the proposed scheme including the dual carriageway, the A939 realignment, and, lighting and vehicle headlight impacts. We find no evidence to suggest that this assessment work has been carried out incorrectly or that it has reached erroneous conclusions.

7.291 [ES Figure 10.2d](#) (CD007) confirms that only the six grade-separated junctions of the proposed scheme would be lit and that the proposed A939 realignment would not be. This persuades us that lighting impacts have formed part of the design considerations for the proposed scheme and we note these have formed part of the assessment.

7.292 [ES Figure 10.3g](#) (CD007) shows that the visual effects of the proposed scheme over the 15 years from opening would reduce. We find this to be the result of maturing vegetation. However, we note that the visual effects would remain 'moderate / substantial'. We find that the visual impacts / effects from the road, traffic and vehicle headlights would be limited by:

- the proposed dual carriageway being in a six to nine and a half metre deep cutting south of Blackpark Farm from approximate ch23800 to ch25200 (ES [Figure 4.1i](#) (CD007) and cross section S-S in [ES Figure 9.6j](#) (CD007)).
- the proposed hedgerow planting along the northern side of this cutting shown on ES [Figure 9.6j](#) and [ES Figure 9.5r](#) (CD007).
- the proposed planting/retention of woodland on the eastern side of the proposed A939 realignment embankments west of Blackpark Farm on the north side of the proposed dual carriageway (ES [Figure 9.5r](#) –CD007).

7.293 Whilst we recognise the role that these measures would play in reducing the possible impacts of the proposed scheme we note from [ES Appendix A10.1](#) (CD006) and ES [Figure 10.3g](#) (CD007) that they would not remove visual impacts / effects entirely. We find this to be in part because the proposed scheme and associated mitigation would become new landscape features that therefore change, and affect, current views.

7.294 ES Appendix 10.1 Table 2 (CD006) acknowledges that the existing view from Blackpark Farm is rural and includes existing and mature deciduous trees around the property. ES [Figure 10.3g](#) (CD007) amongst others, shows that Blackpark Farm is currently flanked by woodland on three sides from immediately northeast to southwest. We find that this currently limits views in these directions to a foreground of agricultural land with a woodland backdrop that restricts longer distance views.

7.295 Whilst the proposed cutting/hedgerow for the proposed dual carriageway and proposed planting/retention of woodland for the A939 realignment may limit views of the roads and associated traffic, we find that they would become a new feature in a view already limited by its present and future woodland backdrop. However, we do not find the visibility of these aspects of the proposed scheme to mean that there would be an adverse impact on residential amenity at Blackpark Farm to an extent that would compromise the public interest of the proposed scheme.

7.296 We note from emails/meetings with TS in September 2017 (TS105.05) that Mr MacKintosh has made suggestions for the species to be used for the proposed hedgerow

planting. In TS105.07, TS argues that the proposed hedgerow is a hedgerow only and not a hedgerow with trees. We find this distinction to be clarified in [ES paragraphs 9.6.41 and 9.6.42](#) (CD005). As such we find it reasonable for TS to point out that species such as Oak, Rowan and Cherry would not form part of a hedgerow. However, it may be that these tree species could form part of the proposed planting on the eastern side of the realigned A939. We find that details such as the species mix would be determined at a subsequent stage in line with those species identified in the ES. We find this to be a detailed matter for TS in which the objector may have some involvement.

-Air quality

7.297 The evidence does not suggest that the air quality assessment was carried out incorrectly or that it has reached erroneous conclusions. We find that the predicted changes in NO₂, PM₁₀ and PM_{2.5} concentrations with the proposed scheme in place, shown in [ES Appendix A7.4](#) (CD006), would remain well below the respective national air quality standards shown in ES Table 7.3 (CD005).

7.298 We also find that dust has been considered by the assessment. [ES Table 20.1](#) (CD005) confirms that construction dust would form part of a construction environmental management plan (CEMP), with appropriate standards to be agreed by The Highland Council. We find that this would introduce some external scrutiny. We also find that the CEMP and associated dust control would form part of the construction contract and therefore would be binding on the contractor.

7.299 Therefore, whilst there may be some changes in air quality as a result of the proposed scheme the evidence does not suggest these would adversely affect health or residential amenity.

Overall

7.300 We note that Mr MacKintosh has contacted his constituency MSP Fergus Ewing via his local councillor Tom Heggie (TS105.06). We find that the matters Mr MacKintosh raises in this correspondence are considered above.

7.301 We find that objections raised by Mr MacKintosh can either be overcome through programmed mitigation / accommodation works and/or the design of the proposed scheme. Whilst there may be some residual impacts / effects from the proposed scheme these would not require additional mitigation and would not compromise the public interest value of the proposed scheme. Therefore the evidence does not suggest we should recommend that Scottish Ministers modify the draft Orders or refuse to confirm them.

OBJ/106 Mr Ronald D Gordon, Mr P Scott Gordon and Mrs Mhari Blanchfield (Kinstearry Woodland Estate)

Objector

7.302 OBJ/106 Mr Ronald D Gordon, Mr P Scott Gordon and Mrs Mhari Blanchfield (Kinstearry Woodland Estate) are the part/joint owners of woodland including Bognafuaran Woods and that running northeast and southwest of Blackpark Farm (the farm itself is owned separately by OBJ/105 Mr MacKintosh and Company and considered above).

Objections

Business impact

-Land take

7.303 OBJ/106 Mr Ronald D Gordon, Mr P Scott Gordon and Mrs Mhari Blanchfield (Kinsteady Woodland Estate) object to the proposed compulsory purchase of Plots 1828, 1829, 1830, 1832, 1833, 1834, 1902 and 1903. This is because they consider this would have an impact on their agricultural (woodland) business due to what they term 'permanent loss of productive timber output and value from Kinsteady Woodland including sporting and minerals assets'.

-Fragmentation and severance

7.304 OBJ/106 Mr Ronald D Gordon, Mr P Scott Gordon and Mrs Mhari Blanchfield (Kinsteady Woodland Estate) argue that the proposed scheme would fragment the woodland into three parcels of 3 hectares, 1.5 hectares and 0.8 hectares. They argue that the smallest of the fragmented holdings could not continue as a commercial crop.

7.305 They argue that the two remaining holdings would not be accessible, although the service area for the northeast holding should be provided as accommodation works.

-Harvesting costs and windthrow/windblow

7.306 They argue that there would be higher harvesting costs and a greater risk of windblow at the newly exposed edges.

7.307 They also contend that:

- there would be increased costs associated with diversity of species.
- long-term losses from the premature felling of woodland.

Transport Scotland's Response

Business impact

-Land take

7.308 TS argues that:

- [ES Appendix A15.7](#) (CD006) assesses the impact of the proposed scheme, including land loss, at Kinsteady Woodland Estate.
- the assessment is based on a total loss of 3.50 hectares of land of which 3.46 hectares is from woodland, 0.03 hectares is from other land and 0.01 hectares would be subject to servitude rights.
- the [draft CPO Sheets 18 and 19 of 23](#) (CD001) show land to be acquired from seven land plots totalling 34,934 square metres and servitude rights to be acquired from one further land plot of 101 square metres.
- its [Guidance on the Compulsory Purchase Process and Compensation](#) (CD046) provides information on entitlements to compensation for loss of land and how to make a claim.
- all claims for compensation would be subject to the District Valuer's assessment.

-Fragmentation and severance

7.309 TS argues that:

- the woodland plots affected by the proposed scheme have been identified as fields 141/1W and 141/2W in [ES Figure 15.6i](#) (CD007).
- ES Appendix A15.7 (CD006) shows that field 141/1W has an area of 6.54 hectares with 2.75 hectares (42%) proposed for acquisition. Two areas are identified as being created due to severance of the woodland parcel, the northern area being approximately 0.8 hectares and the southern area approximately 3.0 hectares.
- field 141/2W has an area of 2.10 hectares with 0.72 hectares (34%) proposed for acquisition. The severed areas remaining would be approximately 0.2 hectares for the southernmost area and approximately 1.2 hectares for the northernmost area.
- access to the southernmost portion of 141/1W would be provided from the realigned A939 with access to the northernmost portion provided from the existing A939 (new means of access 418 and 421 on [draft SRO Plan SR18](#) – CD003).
- access to 141/2W would be provided off the Blackpark – Grigorhill – Newmill Road (U3010) using existing access points.

7.310 TS recognises that work within the objectors land ownership may be necessary to assist with future access into the section of forest lying north of the proposed dual carriageway. It confirms that:

- this could be carried out as part of the accommodation works included in the construction contract for the proposed scheme, subject to the objector's agreement.
- further discussions with regard to accommodation works would be held at the time the contract documents are being prepared.

7.311 TS confirms that:

- a 'Moderate/Substantial' significance of residual impact is assessed in ES Appendix A15.7 (CD006).
- it accepts that the commercial value of the smaller areas would be diminished due to their size and, in the case of 141/1W, its moderate to high risk of windthrow.

-Harvesting costs and windthrow/windblow

7.312 TS argues that:

- ES Appendix A15.7 assesses the risk of windthrow as 'moderate to high' for 141/1W and 'low' for 141/2W.
- ES Appendix A15.7 (CD006) identifies Mitigation Item CP-F3 to address windthrow, as being required for woodland parcel 141/1W.
- Mitigation Item CP-F3, which states:

'Where individual stands of trees and woodland compartments would be affected, an appropriate arboricultural assessment (including tree protection plan and method statement) and/or wind throw assessment (using an appropriate assessment tool such as ForestGALES) would be undertaken pre-construction and appropriate mitigation employed to address safety risk to land within the proposed scheme. Any felling to create a windfirm edge would take account of ecological, landscape and visual effects and designed where feasible to maximise ecological, landscape and visual opportunities.'

- detailed proposals of the pre-construction works required would be informed by the windthrow and arboricultural assessment completed at that time.

- the appointed contractor would be required to develop and employ appropriate mitigation.
- should any work outwith the CPO boundary be identified, at that time, as necessary to protect the proposed scheme this would be carried out subject to the objector's agreement.
- it would carry out work to protect existing trees outwith the CPO boundary if these trees present a safety risk to land within the CPO boundary.
- any further work considered necessary by the objectors to protect existing trees outwith the CPO boundary would need to be arranged by them.
- compensation for such work may be available subject to the agreement of the District Valuer.
- Guidance on the Compulsory Purchase Process and Compensation (CD046) provides information on entitlement to compensation for disturbance and injurious affection and how to make a claim.
- all claims for compensation would be subject to the District Valuer's assessment.

Findings of Fact

Business impact

-Land take

7.313 [ES Figure 4.1i and 4.1j](#) (CD007) and [draft CPO Sheets 18 and 19 of 23](#) (CD001) show that:

- Plots 1828, 1829, 1830, 1832, 1833 and 1834 would be needed for the proposed dual carriageway and the realignment of the A939 as well as associated landscape and ecological mitigation, including five bat boxes on Plot 1833, shown on [ES Figure 9.5r](#) (CD007).
- Plot 1903 would be needed for the proposed dual carriageway and Plot 1902 would be needed for the placement of five bat boxes, as shown on [ES Figure 9.5r](#) (CD007).

7.314 None of the parties appears to dispute the need for the land to be acquired. [ES Appendix A15.7](#) (CD007) concludes that the proposed scheme would result in the loss of 3.50 hectares of land of which the majority, 3.46 hectares is from woodland, with the remainder being other land, including servitude rights.

7.315 [ES Appendix A15.7](#) (CD006) confirms that this land loss would represent 8% of the 45 hectares of total woodland identified in [ES Appendix A15.6](#) (CD006). No parties appear to dispute these calculations.

7.316 We therefore find no reason to disagree with either party that there would be a loss of commercial woodland equating to the areas stated above. Any business losses incurred may form part of any compensation claim made by the objector. These would be matters for them, TS and the District Valuer and not for this inquiry.

-Fragmentation and severance

7.317 The evidence before us does not indicate the entire extent of the 45 hectares which comprises Kinstearry Woodland Estate. [ES Figure 15.6i](#) (CD007) shows only the parcels of woodland affected by the proposed scheme, these being fields 141/1W and 141/2W. Each is located on opposite sides (southwest and northeast respectively) of Blackpark Farm, which itself is in different ownership.

7.318 The objector argues that the proposed scheme would sever the woodland into three parcels of 3 hectares, 1.5 hectares and 0.8 hectares. We do not dispute the calculation of general size in area terms. However, [ES Figure 15.6i](#) (CD007) appears to show that fields 141/1W and 141/2W would each be severed with a residual northern and southern part. This would suggest fragmentation into four segments rather than three. We find this to be confirmed by [TS106.04](#).

7.319 We note that both southern sections of fields 141/1W and 141/2W adjoin the larger body of woodland to the south that is identified on ES Figure 15.6i (CD007) as Bognafuaran Wood. The evidence before us does not explain whether this woodland also forms part of the 45 hectares of woodland owned by the objector in ES Appendix A15.6 (CD006).

7.320 However, were this to be so, and given the scale on draft ES Figure 15.6i (CD006) and [draft SRO Plans SR18 and SR19](#) (CD003), we find it plausible that the two southern sections of fields 141/1W and 141/2W could be considered as one entity, and that these could, together, comprise approximately 3 hectares. We find that the area calculations in TS106.04 appear to confirm this. This would then suggest that the two northern sections of each respective field comprise the remaining two parcels referenced by the objector as 1.5 hectares (plausibly field 141/2W north) and 0.8 hectares (plausibly field 141/1W north). Though not exact these approximate sizes correspond with the respective figure quoted by TS in TS106.04.

7.321 However, irrespective of the number of residual parcels of land and their exact size, the matter of objection is that the fragmentation would make it commercially unviable to operate these. Similarly the objector highlights the need for access to be guaranteed.

7.322 We find that ES Figure 15.6i (CD007) and (draft SRO Plan SR18 – CD003) show that field 141/1W north would be accessible via the retained section of the A939 near Skene Cottage and new means of access 418 (draft SRO Plan SR18 – CD003). The southern section of field 141/1W would be located east of the realigned A939 and be accessible via new means of access 421 (draft SRO Plan SR18 – CD003).

[The reporters note that ES Appendix A15.7 page A15.7-57 (CD006) refers twice to the A969 Grantown on Spey to Nairn Road. We consider this to be a typing error that should refer to the A939 Grantown on Spey to Nairn Road.]

7.323 ES Appendix A15.7 (CD006) does not identify any new means of access as being required for field 141/2W. However, TS confirms in TS106.04 that access to fields 141/2W north and south would be provided via existing means of access. We find that draft SRO Plan SR19 (CD003) shows two access points passing through field 141/2W, off Granny Barbour Road (U3010). One is the access road to Blackpark Farm, which would be located north of the proposed dual carriageway. The other is diagonally opposite (northeast) the gas works entrance off the U3010 that would be south of the proposed dual carriageway. We saw both on our site inspections.

7.324 We note TS's point in TS106.04 that providing new means of access could require land currently in the objector's ownership and that these would be provided as accommodation works, subject to the objectors' agreement. We find this to mean that whilst severance would occur, access could and would be retained.

7.325 We find that the assessment of viability is not a commentary on whether specific fields / plantations or business practices would be commercially successful but instead whether the proposed scheme would prevent a particular land use, in this case woodland, from taking place. The evidence does not suggest that this northern plot could no longer be used for woodland. We note that objector's contention that this size of field would be costly to operate and may not make sense commercially. We find that, should the objector consider losses would be incurred as a result of severance, this could form part of any claim for compensation they may choose to make. This would be a matter for the objector, TS and the District Valuer and not for this inquiry.

-Harvesting costs and windthrow/windblow

7.326 We accept that fragmentation and felling associated with acquisition of land for the proposed scheme would lead to newly exposed edges that could be susceptible to windblow/windthrow. TS acknowledges this in ES Appendix A15.7 (CD006) by concluding a 'moderate' risk of wind throw to field 141/1W, where it also identified the need for Mitigation Item CP-F3 ([ES Table 15.23](#) – CD005). It concludes a 'low' risk for field 141/2W. TS also sets out various considerations relating to risks from felling in TS106.04.

7.327 These factors persuade us that TS is aware of the risks identified by the objectors and that the ES contains anticipatory mitigation measures. Further, we find that the identification of these measures in the ES and agreed accommodation works would form part of the construction contract, as such these would be binding on the contractor.

7.328 We also note that TS refers the objector to its [Guidance on the Compulsory Purchase Process and Compensation](#) (CD046). Were the objectors to conclude that they had or would incur losses as a result of the proposed scheme then this may form part of any compensation claim they choose to make. This would be a matter for them, TS and the District Valuer and not for this inquiry.

Overall

7.329 The evidence suggests that the objections raised would either be avoided/limited due to proposed mitigation/accommodation works; or, would not come about. Whilst there would be some residual impacts / effects these would not require additional mitigation and would not override the public interest in providing the proposed scheme. Overall therefore the evidence does not suggest we should recommend that Scottish Ministers modify the draft Orders or refuse to confirm them.

The Nairn Show

OBJ/110 Mr James A Philip

OBJ/130 Nairnshire Farming Society

Objectors

7.330 OBJ/130 Nairnshire Farming Society runs The Nairn Show. This is an annual agricultural show that takes place on fields at Kinnudie Farm just off the B9111 south of Auldearn. Kinnudie Farm is owned by OBJ/110 Mr James A Philip, who allows the show to take place on his land.

7.331 We consider the objections relating to the Nairn Show from OBJ/130 Nairnshire Farming Society and OBJ/110 Mr James A Philip below. OBJ/110 Mr James A Philip's

objections relating to Kinnudie Farm and Skene Park Farm are covered separately in paragraphs 7.74 to 7.93 above.

Objections

7.332 OBJ/110 Mr James A Philip and OBJ/130 Nairnshire Farming Society explain that part of Kinnudie Farm is currently used for the Nairn Show. They state that the part of land where the show takes place would be severed from the part which is used for the car park. OBJ/110 Mr James A Philip notes that [ES Appendix A15.7](#) (CD006) suggests that the show could be relocated to another field. However, he does not consider this viable due to the size of the show and associated car parking, topography and cropping arrangements for the remainder of the farm.

7.333 OBJ/130 Nairnshire Farming Society ask TS and the Reporters to consider relocating The Nairn Show to an alternative site.

Transport Scotland's Response

7.334 TS confirms that:

- the proposed scheme would include land currently used for the Nairn Show at Kinnudie farm.
- the impacts of the proposed scheme on the running of the Show were considered as part of the EIA in [ES Appendix A15.6](#) page A15.6-5 (CD006) and in ES Appendix A15.7 pages A15.7-41 to A15.7-42 (CD006).
- ES Appendix A15.7 pages A15.7-41 to A15.7- 43 (CD006) state that the annual Nairn Show could be relocated to a field south of the proposed dual carriageway where it could be accommodated in the remaining land within the fields to the south of the proposed scheme, including those identified as 143/2 and the southern portion of 143/1 ([ES Figure 15.6j](#) - CD007).

7.335 TS recognises that such relocation would likely involve changes to the current use of the land at Kinnudie Farm and that arrangements for access, parking and water supply may be required. Alternatively, TS contends that adjacent fields within Kinnudie Farm or on neighbouring farms could also be utilised. TS states that doing so would be a matter for the respective land owner and OBJ/130 Nairnshire Farming Society to agree upon.

7.336 TS notes separate correspondence between itself and Mr W Downie (on behalf of the Nairnshire Farming Society). It refers to its email of 11 January 2017, in response to Mr Downie's email of 14 December 2016 (TS130.01). TS states that it has undertaken a further review of the relevant title deeds and confirmed to its satisfaction that the Nairnshire Farming Society does not hold formal rights, recorded by the Land Register of Scotland, over the land used for the Show. As such, TS confirms it is unable to assist the Society with the re-location of the Nairn Show to an alternative site.

Findings of Fact

7.337 We agree that the proposed scheme would acquire some land which has been used in the past for the Nairn Show at Kinnudie Farm, as indicated by the [Agricultural Assessment Report Photograph 1 on page 82 \(TS215\)](#). The impacts of the proposed scheme upon the Nairn Show have been assessed and are recorded in ES Appendices

A15.6 and A15.7 (CD006). Were the proposed scheme to go ahead it would no longer be possible to use this land and alternative land would need to be found.

7.338 We find no reason to suggest that this could not take place but it would be dependent on satisfying the relevant conditions of any license/permission, organising the necessary logistics and equipment and would need to be agreed with the respective land owner. OBJ/110 Mr Philip suggests that cropping arrangements at Kinnudie Farm would likely prevent the use of other land at the farm for hosting the Nairn Show in future. As such we find it probable that an alternative site elsewhere would be needed.

7.339 TS has found that the show does not hold any formal rights over the land and, as such, it is not obliged to provide assistance to find an alternative site. The evidence does not suggest we should reach a different conclusion.

7.340 Were the proposed scheme to proceed it is inevitable that the show would need to use an alternative site. While we consider this to be a disbenefit of the proposed scheme, we do not regard it as sufficiently significant to require a modification to the draft Orders. Our role is to consider the impacts of the proposed scheme only and not to consider the merits of any alternative site for the Nairn Show, this would be for the show organisers and the respective land owner, licencing authorities and planning authority as appropriate.

Overall

7.341 Whilst there would be a need for the Nairn Show to find an alternative location this would not compromise the public interest value of the proposed scheme. Therefore the evidence does not suggest we should recommend that Scottish Ministers modify the draft Orders or refuse to confirm them.

CHAPTER 8: NAIRN EAST TO HARDMUIR

Introduction

8.1 This chapter considers objections and representations raised in connection with the proposed dualling of the A96 from Nairn East (including the proposed Nairn East Junction) to Hardmuir where the proposed scheme ends.

8.2 The Nairn East Junction is proposed to emerge from Russell's Wood and cross the B9111 and the existing A96 via PS22 and PS17 overbridges to the east of the existing B9111/A96 junction. The B9111 would be realigned into a cutting to pass beneath the Nairn East Junction via PS22. Junction exit and entry slip roads are proposed to feed to and from new roundabouts on the existing A96 east and west of the proposed dual carriageway overbridge (PS17). This is shown on [ES Figure 4.1j](#) (CD007) and [draft SRO Plan SR20](#) (CD003).

8.3 On the north side of the proposed Nairn East Junction the route would swing east, passing southeast of Waterloo Cottages and north of the existing A96 and Auldearn. [Draft SRO Plan SR21](#) (CD003) and [ES Figure 4.1j](#) (CD007) show the proposed route crossing the Waterloo – Eastertown – Inschoch Road (U2997) and the Auldearn Burn at approximate ch26700. Here several junction and other improvements, including new means of access to fields are proposed on the U2997 at Points 99, 100, 101 and 178, and also points 182, 103 and 183. [ES Figure 4.1j](#) (CD007) shows that the existing U2997 would pass beneath the dual carriageway via PS28 NMU only underpass. A replacement public right of way for non-vehicular access via the underpass is proposed as shown at point 4 and [draft EPW Plan ROW2](#) (CD004).

8.4 SuDS ponds are proposed on the south side of the dual carriageway to the west of East Lodge Cottage and to the north and west of Mill of Boath at approximate ch26600 to ch26900 ([ES Figures 4.1j](#) and [9.5s](#) - CD007). These would be accessed via the U2997 and then proposed new means of access/road improvements 104, 430 and 431 ([draft SRO Plan SR21](#) – CD003). These same accesses would provide turning for HGVs, including refuse collection and access to a field south of the U2997.

8.5 The proposed route would continue eastwards and would sever the Bogside of Boath service road at points 316 and 317 and the C1172, which is proposed to be stopped up at points 243 and 244 ([draft SRO Plan SR21](#) – CD003). The C1172 would be realigned (point 105 on [draft SRO Plan SR21](#) – CD003) and pass beneath the proposed dual carriageway via PS18 C1172 Underbridge at approximate ch27400 ([ES Figure 4.1j](#) – CD007). This realignment is also proposed to link with the U3164 Penick Road at a new junction, point 106 on [draft SRO Plan SR21](#) (CD003). An improved access to the east of Bogside of Boath farm buildings is proposed at point 434 on [draft SRO Plan SR21](#) (CD003).

8.6 [ES Figure 4.1k](#) (CD007) shows the proposed route would then swing southeast towards the existing A96, passing the northeast side of Gallowshill in a cutting. [Draft SRO Plan SR22](#) (CD003) shows that proposed route would pass beneath the existing A96 via PS19 at approximate ch29000, northeast of Courage. [Draft SRO Plan SR22](#) (CD003) shows the existing A96 is proposed to be stopped up (points 246 and 247) and diverted north at point 109 via PS19 Hardmuir Overbridge number 1 to cross to the north side of the proposed dual carriageway.

8.7 The existing entrance to Courage is proposed to be stopped up (Point 319 - Draft SRO Plan SR22 – CD003) and a new access is proposed joining the existing A96 further west at the location where point 109 also joins the existing A96 (Draft SRO Plan SR22 – CD003).

8.8 The realigned existing A96 (Point 109 draft SRO Plan SR22 – CD003) and the existing U3164 would join at a new junction (Point 110 draft SRO Plan SR22 – CD003) just west of the existing junction.

8.9 The proposed dual carriageway route would continue eastwards on the south side of the exiting A96 through the northern edge of Wester Hardmuir Wood ([draft CPO Sheet 23](#) and [draft Side Roads Order Plan SR23](#)). At the point between approximate ch29800 and ch30700 (south of Wester Hardmuir Farm) the proposed dual carriageway would run in a cutting. Several access tracks to Wester Hardmuir Wood are proposed to be stopped up (points 320 to 324 on draft SRO Plan SR23 – CD003). New access points for the Wood are proposed at points 440 to 443 via PS20 Hardmuir Overbridge number 2. This overbridge would cross the proposed dual carriageway linking the woods to the south with the existing A96 to the north.

8.10 Further east the proposed route for the dual carriageway would merge with the existing A96 to end the Seafield to Hardmuir dualling phase (the proposed scheme). Here the proposed dual carriageway would merge into the existing A96 from the southwest. A section of the existing A96 (Point 249 on draft SRO Plan SR23 – CD003) would be stopped up. A new section on the existing A96 (Point 111) would run east to a new junction with the Ellands – Hardmuir – Boghole Road (U3036) at point 112 (draft SRO Plan SR23 – CD003) on the north side of the existing A96. This junction would replace the existing U3036/existing A96 junction and be located immediately northwest of there.

8.11 The proposed dual carriageway would taper to single carriageway west of the proposed new Hardmuir junction. The replacement Hardmuir Junction is shown on [ES Figure 4.1](#) (CD007) between approximate ch30900 and ch31000. The proposed scheme would end just east of the proposed new Hardmuir junction and ch31100. From this point eastwards motorists would use the existing A96.

Objecting/commenting parties

8.12 The parties listed below are local residents/property owners, including some landlords who live elsewhere. Others are business owners; including farm owners/tenants and those running businesses from their homes. Many live or have property assets on the north side of Auldearn close to the proposed scheme. The parties listed below object to the impacts of the proposed scheme on their homes/properties and/or business interests:

REP/100 Mr Peter Mason

OBJ/108 Auldearn Community Council

OBJ/111 Firm of Auchnacloch Farm (Trustees for firm of Auchnacloch)

OBJ/112 etc. Auldearn Residents Group

OBJ/132 Mr Niall B Holden and Mr Euan J Holden

OBJ/136 Penick Farms

OBJ/138 Mr Philip and Mrs Gillian Pullan

OBJ/139 Mr Hugh Andrews and Ms Janet Banks

OBJ/141 Mr James D and Mrs Sylvia AG Clarke

OBJ/142 Mr Jamie B and Mrs Elizabeth Watson

8.13 OBJ/112 etc. The Auldearn Residents Group is made up of several parties who jointly signed a single objection letter to the draft Orders. Some members of the group also accompanied this with their own specific objections relating to their own property or circumstances. For brevity, all Auldearn Residents Group objections, including those made individually by its members, have been grouped together. These are considered under the heading OBJ/112 etc. The Auldearn Residents Group.

8.14 OBJ/111 Firm of Auchnacloch Farm (Trustees for firm of Auchnacloch), OBJ/112 etc. The Auldearn Residents Group, OBJ/129 Mr Stephen R and Mrs Elaine Bailey, OBJ/133 Mr Richard McCulloch, OBJ/138 Mr Philip Pullan and Mrs Gillian Pullan and OBJ/142 Mr Jamie B and Mrs Elizabeth Watson also object on one or more of the following grounds: the rationale for the proposed scheme, the route selection and/or matters relating to scrutiny and engagement. These matters have been covered separately in Chapter 2: Matters of Principle.

Objections

8.15 The objectors listed above raised matters covering some or all of the following subjects:

- engagement (specific to an objector or their locality)
- environmental impact assessment
- proximity
- noise and vibration impacts
- air quality impacts
- construction disruption
- health impacts
- visual and landscape impacts
- SuDS, land drainage and water environment
- business impacts
- local road, access and community severance
- human rights, blight and omission from the draft CPO

8.16 The objecting parties refer directly to the above impacts in relation to specific property and/or business interests at:

- Auchnacloch Farm
- Waterloo Cottages
- Waterloo House
- Millhill (and surrounding properties)
- Drumduan Farm (and surrounding properties)
- Mill of Boath
- East Lodge Cottage
- Boath Steadings/Stables
- Bogside of Boath
- Bogside of Brodie
- Penick Farms
- Innesfree and Courage
- Wester Hardmuir Wood
- Wester Hardmuir Farm

Engagement

Objections

-Area specific engagement

8.17 OBJ/112 etc. Auldearn Residents Group and OBJ/138 Mr and Mrs Pullan argue that TS's engagement with and consideration of their community has been limited compared with others [assumed to mean other communities/parties]. OBJ/120 Mr George Fraser (one of the Auldearn Residents Group) contends that engagement has not been to ask questions but instead to tell them [assumed to be the local community] what is going to happen. OBJ/138 Mr and Mrs Pullan argue that TS's engagement approach favoured a small minority, with vested interests, who live in Auldearn itself rather than in the surrounding countryside. Mr and Mrs Pullan and the Auldearn Residents Group contend there to have been limited local knowledge.

-Earlier engagement and earlier iterations of the proposed scheme

8.18 Mr and Mrs Pullan also argue that the consultation in October 2013 did not provide a potential route corridor but instead 'hard fixed' routes from Inverness to Hardmuir. They argue that six of the nine routes presented overlaid access from Courage to the A96 and required the compulsory purchase of their land.

8.19 They argue that the public consultation in February 2012 was based on an earlier design for a dual carriageway to the west of Nairn with a single carriageway Nairn bypass. They argue that this changed in 2013 and, consequently, that none of consultation prior to this can be considered relevant to the current proposals.

8.20 They also argue that the draft orders have been the first opportunity to comment on these proposals.

Transport Scotland's Response

-Area specific engagement

8.21 TS argues that a rolling programme of engagement with local communities/other stakeholders was timed to coincide with key stages in the design and development of the proposed scheme:

- February 2012 - dual carriageway length to Gollanfield/single carriageway bypass of Nairn with at-grade roundabouts exhibitions;
- November 2013 - exhibitions held along the A96 corridor (DMRB Stage 2 route option consultation);
- November 2013 - 1A to 1D (MV) and 2A to 2H options public exhibitions – dual carriageway with grade separated junctions;
- following November 2013 exhibitions – route option refinement drawings uploaded to TS website in May 2014 and publicised in the local press;
- October 2014 - preferred option exhibition;
- August 2015 - meet the team;
- February 2016 – preferred option design update drop-in session; and,
- December 2016 – draft order exhibitions.

8.22 TS argues that:

- public exhibitions and information events were advertised in local and regional newspapers, with information posters displayed at public buildings (including shops and other commercial premises) throughout the local area.
- invitations were sent to all local councillors, community councils and members of the public who had provided contact details whilst attending previous public engagement events.
- feedback received from local residents, landowners, property owners and other stakeholders has been carefully considered as part of the scheme design and development.

8.23 In response to OBJ/120 Mr George Fraser, TS argues that an individual meeting was held with him on 21 July 2015 and it also notes that he attended a meeting with TS and Jacobs representatives along with Edward Mountain MSP and other Auldearn residents on 10 October 2016.

8.24 TS acknowledges that the proposed scheme would have adverse environmental impacts on Mr Fraser's property and others, and that their occupiers do not support the design as proposed. However, TS considers that the level of engagement with local residents, has been appropriate.

8.25 In response to OBJ/138 Mr and Mrs Pullan TS notes from its records that Mr and Mrs Pullan attended and provided feedback following the February 2016 and December 2016 exhibitions, and that they submitted formal feedback following the exhibitions in November 2013 and October 2014. TS argues that it responded to the points raised on each occasion.

-Earlier engagement and earlier iterations of the proposed scheme

8.26 TS argues that it does not usually carry out extensive individual landowner consultations during route option stage and prior to announcing its preferred option (in this case, October 2014). It confirms that it did have limited direct consultations with a small number of landowners and also held community council fora at Smithton and Nairn on 27 and 28 May 2014.

8.27 However, TS argues that the main period of 'detailed' face to face consultations with landowners and residents, takes place during the design development of the preferred option (DMRB Stage 3). At DMRB Stage 3, it argues that its consultants, Jacobs:

- started these consultations in June 2015 and met with Mr and Mrs Pullan on eight separate occasions to update them on the proposed scheme development, to seek relevant information and to agree details as part of the design development and assessment process.
- a meeting with Mr and Mrs Pullan on 23 March 2016 included a farm business survey, the findings of which are discussed in more detail separately along with Mr and Mrs Pullan's other objections (paragraphs 8.720 to 8.796 below).

8.28 In response to OBJ/138 Mr and Mrs Pullan's contention that the proposed scheme changed and that earlier consultation material cannot be considered relevant, TS argues that:

- the [Scottish Government's Infrastructure and Investment Plan](#) (December 2011) (CD037.01) proposed to dual the A96 from Inverness to Aberdeen by 2030.

- public exhibitions held in February 2012 displayed route options for a dual carriageway from Inverness to Nairn and a bypass of Nairn.
- these options supported The Highland Council's development strategy for this part of the A96 corridor, as set out in the [A96 Corridor Development Framework](#) (CD056) and the (then emerging now adopted) [Highland Wide Local Development Plan](#) (CD061).
- the Nairn bypass options shown at the time were designed to single carriageway standard, but as explained in the exhibition material, were also feasible as a dual carriageway.
- the exhibition also included a link between the A9 at Inshes and the A96 at Smithton, which now forms a separate scheme.
- at the public consultation event held in November 2013, the exhibition explained that further design development had been done to take into account public feedback and the decision to dual the A96 from Inverness to Aberdeen.
- at the exhibition it was explained that work had focused on development of dual carriageway routes, including provision of grade separated junctions and extension of the scheme proposals, east of Nairn, to support future dualling of the A96.
- this provided four potential route options past Auldearn which re-joined the line of the existing A96 between Courage and Hardmuir.
- the public consultation event in November 2013 was the first time that these proposals were published for consultation.
- several communications were received from OBJ/138 Mr and Mrs Pullan outlining their comments on these proposals (dated 8 December 2013, 29 January 2014 and 17 June 2014), all of which received responses.
- following public feedback, the route options were refined and re-published in May 2014 prior to completion of the DMRB Stage 2 Scheme Assessment Report.
- the preferred option, published in October 2014, showed the dual carriageway crossing over the existing A96 single carriageway on an embankment past Courage.
- between October 2014 and February 2016, following public feedback, including from Mr and Mrs Pullan, the dual carriageway was lowered with the existing A96 single carriageway passing over the dual carriageway on a bridge.

8.29 TS disagrees with Mr and Mrs Pullan's comment about a lack of site knowledge. It argues that:

- it and its consultant, Jacobs, visited the site on a number of occasions during the design development of the scheme;
- these visits were in addition to topographical surveys, aerial photography, constraints mapping and members of staff being based permanently in a local Inverness office;
- together these provided local knowledge of the A96 corridor;
- representatives from TS and Jacobs were available to discuss the route options and receive feedback from the public at each of the events referenced above; and,
- the appropriate and relevant consultation has taken place throughout the design development process, as described above.

8.30 In [TS138.04](#) (dated 31 July 2017) TS argued that:

- the programme of consultations and public exhibitions, which is being followed to announce route options and design development for the A96 Hardmuir to Fochabers section is similar to that followed on the A96 Dualling Inverness to Nairn (including Nairn Bypass) scheme;
- there has been no consultation [at that time - July 2017] on broad route corridors on the A96 Dualling Hardmuir to Fochabers scheme as suggested by some letters;

- proper consultation has been conducted throughout the scheme development process and continues to be conducted appropriately.

Findings of Fact

8.31 Objections relating to the engagement process in general and to the role of Auldearn Community Council are covered in Chapter 2: Matters of Principle. Objector-specific engagement points are addressed below.

-Area specific engagement

8.32 Some objections to community level engagement relate to the matters considered in Chapter 2: Matters of Principle, in connection with Auldearn Community Council.

8.33 ES Chapter 6 (CD006) explains the various exhibitions/events that TS carried out, timed to coincide with different stages in the development of the proposed scheme. Exhibition and other material from these events is set out in TS230 to TS236. No party has suggested that these records are inaccurate.

8.34 TS confirms that it does not generally undertake detailed discussions with land owners and individual parties prior to DMRB Stage 3. This is rational since detailed consultation prior to determining the preferred route could be abortive work and could also alarm/upset parties unnecessarily. [DMRB Volume 11, Section 3, Part 6 – Land use paragraph 10.7 bullet \(ii\) \(a\)](#) (CD049.18) advises against this for similar reasons.

8.35 At Inquiry Session 1 Mr and Mrs Pullan did not dispute TS's records of correspondence throughout the process, including various different design suggestions which are considered separately in this report under the heading OBJ/138 Mr and Mrs Pullan paragraphs 8.720 to 8.796. This suggests that Mr and Mrs Pullan have fully involved themselves in the process at various different points.

8.36 Documents TS230 to TS236 show the exhibition material for events from 2013 to 2016. The evidence indicates that the appropriate level of engagement has taken place at the appropriate times. It is logical that the level of engagement or number of individual meetings with parties would be determined by how they would be affected by the proposed scheme and the complexity of the issues in question. It is not abnormal for community councils to be targeted by promoters and other bodies seeking to engage with local communities, since this is one of the roles of community councils. Therefore the evidence does not suggest that specific parties have been treated more or less favourably than others.

8.37 Mr and Mrs Pullan and the Auldearn Residents Group appear to consider that insufficient local knowledge was used. At Inquiry Session 1 TS's DMRB Stage 2 expert explained that numerous desktop studies had been done but also that a variety of on the ground survey work had taken place, including topographical surveys and site walk overs. DMRB Stage 2 Report (CD011 to CD013), DMRB Stage 3 Report (CD008 to CD009) and the ES (CD005 to CD007) along with a variety of route refinements (TS220 to TS228) each contain detailed surveys, maps, profiles and locally-specific consideration of engineering and environmental factors. [ES Appendix A15.7](#) (CD006) shows the agricultural assessment with detailed consideration of field access and drainage for example. These do not suggest an absence of local or locational knowledge. That was also the impression we gained from

the inquiry process, at which TS's witnesses clearly demonstrated a genuine understanding of the local area along the full length of the proposed route.

8.38 In the [Auldearn Residents Group Rebuttal Precognition](#) the suggestion is made that residents along the next phase (Hardmuir to Fochabers) have been treated with much greater respect. We note TS's points (made at an earlier stage) that the same processes would be used. There is no evidence before us to verify the nature and satisfaction with engagement for the next phase. The next phase does not form part of the proposed scheme and is not before us. We have already drawn appropriate conclusions above for the proposed scheme engagement process. These conclusions do not suggest it is 'broken' as suggested by the Auldearn Residents Group, though we accept TS may have reached conclusions with which those parties disagree.

-Earlier engagement and earlier iterations of the proposed scheme

8.39 DMRB Stage 2 Report (CD011) and the proposed route alternatives in [ES Figure 3.1](#) (CD007) do not suggest that these routes were 'hard fixed', as suggested by OBJ/138 Mr and Mrs Pullan. Instead, these suggest that alternative route options were derived and then considered, in light of various technical and other information. These were then consulted upon and a preferred route was then selected based on technical considerations and the feedback received. Route selection is covered separately in Chapter 2: Matters of Principle. There we find no reason to doubt that this process was carried out appropriately.

8.40 The proposed scheme is for a dual carriageway from Inverness to Hardmuir and this is what was considered at DMRB Stage 2 route selection during 2013 and 2014, after Scottish Government's announcement to dual the whole of the A96 by 2030 in the IIP (2011) (CD037.01). This is confirmed in the [exhibition material page 55 from November 2013](#) (TS231). We also note TS's point that the proposed Nairn bypass route was suitable for dual carriageway or single carriageway. The evidence does not suggest we should find differently.

8.41 The draft Orders and ES material published for public consultation in 2016 is based on a Nairn Bypass of dual carriageway standard. The Inverness to Gollanfield section was proposed as dual carriageway from the outset. We therefore do not accept that Scottish Government's change of approach in the IIP (2011) would render all previous consultation work irrelevant for the reasons stated above.

Overall

8.42 We find that the objections do not suggest a failure of process that would warrant our recommending that Scottish Ministers modify or refuse to confirm the draft Orders.

OBJ/108 Auldearn Community Council

Objections

*Proposed Nairn East Junction
Visual and landscape impacts*

8.43 OBJ/108 Auldearn Community Council argues that the proposed Nairn East Junction had to be relocated and changed due to flood risk and so would now be highly visible. It argues that the previous design was proposed to be in a cutting which, in its view, would

have minimised its visual (including vehicle lights at night), landscape and noise impacts. It suggests that a junction with a lower elevation would also reduce the need to import construction materials.

Noise and vibration Construction disruption

8.44 The community council argues that:

- many people are concerned because details of proposed noise mitigation are not included, with some dwellings expected to be exposed to increased noise levels in excess of 10 dB (doubling of the perceived volume).
- mitigation and screening to overcome these issues must be an integral part of the proposed scheme and must be made available before it proceeds.
- it is unreasonable to be offered the promise of mitigation without any details of what measures would be taken.

Impact on amenity and property value

8.45 The community council argues that the visual and noise impacts from the proposed scheme would affect the value of many properties, which are not entitled to compensation but whose value may fall. It also argues that nobody should experience net detrimental environmental effects without recourse to seek compensation.

Design of access road to the dwellings at Courage

8.46 In [TS108.01](#), the community council argues that:

- the proposed new access road at Courage would be used by a variety of vehicles including the school bus (dropping off and collecting children), refuse collection, farm vehicles (entry, exit and turning) and domestic and commercial traffic leaving the Courage access and turning eastward across the main road;
- traffic heading west, crossing the new flyover, could be unexpectedly presented with a stationary bus or slowly turning vehicles on the road ahead of them;
- even if they managed to stop in time, following vehicles would have reduced scope to do so, with possibly serious consequences; and,
- the proposed design of the junction does not show any consideration for the safe completion of any of the above manoeuvres and could be better designed.

8.47 In [TS108.02](#) the community council supports OBJ/138 Mr and Mrs Pullan's alternative road layout proposals [assumed to refer to [Mr and Mrs Pullan's Rev 4.2](#) proposal given the date of the community council's objection letter] arguing that these would:

- resolve these concerns (above);
- negate the need for a flyover to carry the existing A96 over the proposed dual carriageway;
- offer better operational advantages for access, egress and safety, and, reduce costs; and,
- guarantee access to Auldearn from the east when the next phase of dualling takes place, without the need for substantial further investment.

8.48 The community council is amongst several parties objecting to the proposed design of the proposed tie-in and junction at Hardmuir on the basis that this would be unsafe.

These objections have been grouped together and considered separately under the heading 'Hardmuir tie-in and Hardmuir junction' paragraphs 8.869 to 8.915 (below).

Transport Scotland's Response

Nairn East junction

8.49 TS states that, after publication of the preferred option in October 2014, the following issues with respect to the design of the Nairn East Junction (set out in the [Nairn East Design Development Report – TS225](#)), were raised through public consultation feedback, consultation with landowners and design review by the project team:

- the junction layout required lengthy realignment and diversion to the existing A96 and B9111 Auchnacloch – Auldearn Road which would have an impact on road users during construction in terms of traffic management and potential delays;
- the realignments to the existing A96 and B9111 would cross the Auldearn Burn and its tributaries in three locations which would likely require works to the existing structures;
- the existing A96 farm underpass for Auchnacloch Farm would be removed;
- Auchnacloch Farm and Kinnudie Farm would experience severance as a result of the proposals and farm traffic would have to pass through the Nairn East junction in order to reach parts of the farm on the other side of the dual carriageway;
- the realignment of the existing A96 to the west of the junction would pass under the 132kV electricity transmission line and over a pipeline;
- the realignment of the B9111 would require land to be acquired from the Dunbar Recreation Ground which is an area for public amenity;
- the junction layout would overlap with the 1 in 200 year flood risk extent for the Auldearn Burn based on flood mapping provided by SEPA, indicating that the road infrastructure could flood and become a flow path for flooding from the Auldearn Burn; and,
- the path providing a link between Auldearn and Nairn which runs alongside the existing B9111 would be severed and NMU would be diverted along the realigned B9111 and through the proposed Nairn East junction, including at-grade crossings of slip roads.

Visual and landscape impacts

8.50 TS argues that the ES acknowledges that the proposed scheme in the vicinity of Auldearn would have adverse visual impacts for some properties. It explains that ES [Chapters 9 and 10](#) (CD005), [ES Appendices 10.1 and 10.2](#) (CD006) and [ES Figures 9.5r to 9.5v and 9.6i to 9.6k](#) (CD007) describe/show the landscape and visual impact assessment and proposed mitigation. TS argues that the landscape mitigation proposals would:

- include native mixed woodland and hedgerow planting to assist in screening views towards the proposed scheme from built and outdoor receptors; and,
- integrate the proposed dual carriageway, earthworks and other associated elements, such as SuDS and structures, into the surrounding landscape.

8.51 TS states that it is satisfied that the changes made to the proposed design of the Nairn East Junction (TS225) are appropriate.

Noise and vibration

8.52 TS argues that:

- the proposed scheme incorporates noise mitigation in the form of earthworks and low noise road surfacing (LNRS) and, where necessary, it has been supplemented with receptor-specific noise mitigation, such as, for example, close boarded fencing;
- careful consideration has been given as to where additional receptor-specific mitigation could be offered based on a noise mitigation strategy set out in [ES paragraphs 8.2.24 to 8.2.34](#) (CD005);
- the noise mitigation strategy has been derived based on the guidance in the [DMRB HD 213/11](#) (CD049.19) and by the WHO ([CD090](#) and [CD091](#));
- under the strategy, noise mitigation is considered where the significance of impact at a receptor is predicted to be:
 - Slight/Moderate adverse or worse, which for high noise sensitive receptors equates to at least a 1 dB noise level increase in the short term (the year of opening), and/or at least a 3 dB in the long term (typically within 15 years of the scheme opening) and, in addition, the predicted ground floor façade noise level exceeds 59.5 dB $L_{A10,18h}$.
 - Slight/Moderate adverse or worse, in the long-term with a predicted noise level that exceeds 55 dB $L_{night,outside}$.

8.53 TS acknowledges that there are predicted increases in noise level at some locations in excess of 10 dB. However, it argues that the absolute noise levels are predicted to remain below the level identified for receptor specific mitigation, as described above. TS argues that:

- for example, the noise level in a very quiet rural area may change from $L_{A10,18h}$ 35 dB to $L_{A10,18h}$ 40 dB, which equates to a very quiet noise level increasing to a slightly less quiet noise level;
- as such, mitigation needs to be applied with caution in rural areas;
- an absolute noise threshold is necessary to avoid recommending inappropriate / unnecessary noise mitigation measures; and,
- therefore, based on WHO guidance, an absolute noise threshold for mitigation has been adopted which, may at some locations result in noise level changes in excess of 10 dB, however, the associated absolute noise level at these locations remains within WHO guidance levels.

Construction disruption

8.54 TS accepts it to be inevitable that during the construction of the proposed scheme some disruption would occur. However, it argues that:

- disruption during construction is assessed in the ES.
- measures would be taken to reduce disruption for those using the roads and those living in the vicinity of the areas under construction;
- to mitigate any potential impacts associated with disruption and noise during construction a Construction Environmental Management Plan (CEMP) would be prepared by the appointed contractor, in consultation with the relevant regulatory authorities;
- the CEMP would set out the intended methods to manage potential environmental impacts from construction of the proposed scheme, including best practice measures to mitigate and manage construction noise impacts in compliance with requirements of BS 5228 code of practice for noise and vibration control of construction and open sites;

- these best practice measures would include restricted construction working hours which would be set in consultation with The Highland Council; and,
- the overall construction period for the project is estimated to be three to four years, but disruption at any one location on the route is likely to last for a considerably shorter period.

Impact on property values

8.55 TS argues that:

- those who have not otherwise been compensated may be entitled to claim for compensation under Part 1 of the [Land Compensation \(Scotland\) Act 1973](#) (CD086);
- under Part 1 (CD086) there is a right to compensation in respect of any depreciation of more than £50 in the value of certain interests in land caused by the use of the new or altered roads resulting from specified physical factors (noise, vibration, smell, fumes, smoke and artificial lighting and the discharge onto the land in respect of which the claim is made of any solid or liquid substance);
- compensation is assessed by reference to prices current at the date 12 months after the new or altered road was first open to public traffic;
- the valuation of any such compensation would be assessed by the Valuation Office Agency and TS would advertise in local press providing contact details at the appropriate time to make home owners aware that claims can be submitted.

Design of the access road to the dwellings at Courage

8.56 TS identifies a series of technical reasons why it considers the Courage – Hardmuir Revised Route Proposal put forward by Mr and Mrs Pullan (Rev 4.2) is unacceptable. It argues that it does not comply with the standards set out in the DMRB as follows:

- the design of the published proposed scheme includes a major/minor priority junction between the existing A96 and U3036 at ch30920 and from that location, based on the design standards given in the DMRB and the Traffic Signs Manual (TSM) the following minimum dimensions apply to the design of the eastbound carriageway:
 - minimum 500 metres from the end of any junction merge taper to the first 'Dual Carriageway Ends Ahead' sign ([DMRB TD42/95 para 2.28](#) – CD049.31);
 - minimum 420 metres from the 'Dual Carriageway Ends Ahead' sign to the end of the physical central reserve (TSM Chapter 4, Figure 5.2);
 - minimum 302.5 metres long taper (based on a 1 in 55 symmetrical taper) from the dual carriageway cross section to the single carriageway cross section ([DMRB TD27/05 Table 4-3](#) (CD049.08) and TSM Chapter 4, Table 5-1);
 - minimum 295 metres stopping sight distance from the start of the single carriageway section to the first major/minor priority junction ([DMRB TD9/93 Table 3](#) – CD049.07);
 - this gives an overall minimum desirable distance from the end of any eastbound merge taper to the junction with the U3036 at ch30920 of 1,517.5 metres.
- it is not clear from the Courage – Hardmuir Revised Route Proposal where the dual carriageway would transition to a single carriageway and tie-in with the existing A96 or the intended layout of the U3036/existing A96 junction;
- in order to provide a major/minor priority junction at ch30920 for the U3036 and to achieve the design standards and minimum distances given above, it would not be possible to locate an eastbound merge slip road at the location indicated;
- such a merge slip road would need to be located before ch29400 in the vicinity of the properties at Courage;

- each of the eastbound and westbound slip roads includes a section for two-way traffic followed by a section of one-way traffic;
- two-way single carriageway slip roads are not permitted ([DMRB TD22/06 paragraph 5.27](#) – CD049.09) and therefore the location of the overbridge at Hardmuir indicated in the Courage – Hardmuir Revised Route Proposal is not suitable;
- eastbound traffic travelling along the existing A96 past Courage and wishing to continue east towards Brodie and Forres is required to negotiate two junctions to the north and south of the Hardmuir overbridge;
- public transport services currently travel along the existing A96 and serve the junction of Penick Road (U3164);
- The Courage – Hardmuir Revised Route Proposal would divert these public transport services to the south of the proposed dual carriageway, increasing the distance that residents on Penick Road would have to walk to reach a location served by the bus services.

8.57 In response to OBJ/138 Mr and Mrs Pullan regarding Rev 4.2 TS also argues that:

- the re-aligned section of the existing A96, that would cross the proposed dual carriageway at Courage has been designed in accordance with the DMRB for a design speed of 85kph (just over 50mph);
- this design speed has been assessed and considered appropriate for the standard of carriageway at this location;
- the horizontal and vertical geometry of the alignment is shown in [DMRB Stage 3 Scheme Assessment Report Figure 3.2r](#) (CD009);
- for a road with this design speed, the desirable minimum forward stopping sight distance is 160 metres;
- this desirable minimum is achieved in both directions throughout the length of the re-aligned section of the existing A96;
- in addition, the current design includes 160 metres visibility looking both east and west from the Courage access;
- this visibility measurement is taken from a set-back of 2.4 metres from the edge of the re-aligned section of the existing A96;
- traffic levels on this road would be significantly reduced compared to the current situation; and,
- refuse would continue to be collected by The Highland Council at the junction with the realigned existing A96.

Findings of Fact

Nairn East junction

8.58 The [Nairn East Design Development Report](#) (TS225) confirms that the variety of issues identified by TS (above) collectively influenced the revised design and that those considerations were identified through the public engagement process. TS225 explains the various considerations and the subsequent implications of various alternative designs. Whilst flood risk was one of the issue identified we are satisfied that the proposed design resolves this matter and the others identified by TS. We attach weight to the fact that SEPA has not objected to the proposed design on flood risk grounds.

8.59 The junction design, as proposed, is the result of having considered the various factors above. This does not suggest it would be possible to resolve those issues at a

lower elevation, in particular the practicalities of crossing both the B9111 and the existing A96. At Inquiry Session 1 TS's engineering expert explained that the water table in the area limits the depth of the realigned B9111 which in turn dictates the height of the dual carriageway overbridge.

8.60 DMRB Stage 3 has involved the refinement of numerous aspects of the proposed scheme, including but not limited to Nairn East Junction. It is our understanding that once a preferred route is selected at DMRB Stage 2, more detailed information is considered for the scheme design at DMRB Stage 3. TS225 shows that this has clearly included consideration of matters raised in public feedback. Doing so does not appear to be an unreasonable response to such engagement, since design modification is presumably the outcome sought by those who originally contributed to the engagement process and raised the concerns in the first instance.

8.61 OBJ/108 Auldearn Community Council is correct that the proposed design alters the proposed route from being in a cutting to being on an embankment south of Waterloo Cottages. This change results in residual visual and noise impacts / effects which have been considered through the EIA process and reported in the respective sections of the ES. Visual, landscape and noise impacts are considered separately below.

Landscape and visual impacts

8.62 [ES Figure 10.3g and 10.3h](#) (CD007) show that the most significant visual effects in the Auldearn area would be on the north and west sides of the village closest to the proposed dual carriageway with slight or lesser effects (including beneficial) within the village and furthest away from the proposed scheme. We find this to be logical since those receptors in closest proximity would be expected to experience the most significant visual effects.

8.63 [ES Figures 9.5s to 9.5v and 9.6j to 9.6k cross sections T-T to V-V](#) (CD007) show proposed landscape and ecological mitigation. This includes scrub and mixed woodland planting and hedgerows, as well as locations where the proposed scheme would be in cutting. Together these features would contribute to reducing the visual signature and landscape impact of the proposed scheme. Local gradient, including the proposed north roundabout being in cutting and hedgerows/tree planting would contribute to diminishing the impacts of vehicle headlights.

8.64 The proposed planting would also contribute to reducing the visual impacts of the proposed scheme, as indicated on ES Figures 10.3g and 10.3h (CD007) and as described in [ES Appendix A10.1](#) (CD006). However, the proposed scheme would not be hidden in totality and the proposed mitigation would add new features to the landscape and therefore change views. As such the mitigation itself would contribute to the visual impact of the proposed scheme. It is unlikely that this could be resolved by further planting for example, since this would add to the visual effects of the proposed scheme. Therefore, whilst there is likely to be some significant residual visual effects, we do not find these to be sufficient, on their own, to justify recommending either modification to the draft Orders or refusal to confirm them.

Noise and vibration

8.65 The community council's contention, that noise mitigation is not shown, is inaccurate. [ES paragraphs 8.6.10 to 8.6.11](#) (CD005) identify incorporated mitigation measures. Features such as cuttings, earth bunds and LNRS, which offer the potential to limit noise impacts, are not considered to be additional mitigation since they form part of the design of the proposed scheme rather than mitigation responses subsequent to the design.

8.66 Receptor-specific noise mitigation is identified in [ES paragraphs 8.6.12 to 8.6.16 and ES Table 8.33](#) (CD005) and [ES Figures 8.9, 9.5 and 9.6](#) (CD007). The absence of receptor-specific mitigation indicates that TS has concluded that noise mitigation, beyond that already designed-in, would not be necessary given the conclusions of the noise assessment. Alternatively, the predicted change in noise levels is predicted to be attributable to changes in traffic on local roads and not as part of the proposed scheme (ES paragraph 8.6.15 – CD005). Neither instance justifies additional mitigation beyond that already identified and considered by the noise assessment.

8.67 [ES Figure 8.12o and 8.12p](#) (CD007) show noise level differences between the do minimum baseline (without the proposed scheme) and the do something future (with the proposed scheme after 15 years) with mitigation in place for ground floor (freefield). These predict noise increases of above 10 dB (as recognised by the community council) in localities immediately adjacent to the proposed dual carriageway north of Auldearn. But the magnitude of increase falls to between 5 and 10 dB and between 3 and 5 dB closer to Auldearn and Waterloo Cottages. Areas of Auldearn village north and south of the existing A96 are predicted to see a fall in noise levels, in some cases of more than 10 dB.

8.68 Detailed consideration of noise impacts for individual properties north of Auldearn are considered separately in the respective sections of this chapter and also Chapter 7: River Nairn to Nairn East Junction, where residents raise objections. There we find that, despite an increase in noise levels as high as 10 dB or more, the absolute noise levels are predicted to remain below the respective noise mitigation strategy thresholds ([ES paragraphs 8.2.24 to 8.2.34](#) – CD005). This suggests that no additional receptor-specific noise mitigation would be necessary, beyond that already planned and covered by the noise assessment.

Construction disruption

8.69 Since the proposed CEMP forms part of Mitigation Item GR1 in [ES Table 20.1](#) (CD005) it would form part of any construction contract and therefore be binding on the contractor. Similarly the contractor would operate within an independent inspection regime and the various standards in the CEMP (ES Table 20.1 Mitigation Item GR2), such as noise and air quality, would be agreed with The Highland Council. Therefore, whilst it would be impossible to avoid all forms of disruption during the construction phase the proposed CEMP would go some way to avoiding or limiting these based on relevant and appropriate standards.

Impact on property values

8.70 TS has identified the procedures that could be available to parties to claim compensation for losses in the value of assets or property 12 months after the proposed scheme is completed under Part 1 of the [Land Compensation \(Scotland\) Act 1973](#) (CD086).

This is a separate process and it would be for the respective asset/property owners to make claims at the appropriate point, when TS advertises this. Any decision would be a matter for the Valuation Office Agency. Compensation is not a matter for this inquiry.

Design of the access road to the dwellings at Courage

8.71 TS has considered accident data showing instances where accidents involving personal injury occurred for the period 2010-14 ([Figure 2.4 Page 2](#) – CD009). This shows no accidents at the Courage access track resulting in personal injury. However, we acknowledge that these statistics do not include instances where an accident has occurred but no personal injury resulted.

8.72 We note that TS's preferred design attempts to resolve numerous inter-related factors, including visual amenity concerns raised by those in the Courage area at an earlier stage. [TS209](#), [TS221](#) and [TS222](#) show the consideration TS gave to a variety of factors that influenced its decision to opt for the preferred alignment of the existing A96, including the PS19 overbridge. These factors included safety and smooth flowing traffic and also land take, cost and environmental impacts such as responding to the visual amenity concerns raised by objectors at Courage. This led to the preferred option for the dual carriageway being placed in a cutting.

8.73 Auldearn Community Council supports Mr and Mrs Pullan's alternative proposed road layout (Rev 4.2 dated 15/01/2017) but Mr and Mrs Pullan themselves argue that it is indicative (see paragraph 8.730 below). We therefore find it to be reasonable for TS to consider all of the relevant engineering matters to arrive at a potential design for consideration of such an alternative. TS explains a series of visibility, stopping and sign posting distance factors that make aspects of OBJ/138 Mr and Mrs Pullan's alternative design unfeasible. The evidence does not suggest we should find differently.

8.74 The TS analysis in TS209, TS221, TS222 and the TS Hearing Statement for Session 12 show that the visibility requirements in DMRB for an 85kph (just over 50mph) road can be achieved along the whole alignment and at Courage access. Diagrammatic representations from the Courage access track are shown in TS216. The evidence suggests that even though it is possible to depart from DMRB in justified circumstances it is, at least with the preferred alignment, unnecessary.

8.75 The evidence in TS witness Mr Herd's precognition for Session 1 paragraphs 5.39 to 5.43, indicates that the only solution to accommodate all of the junction and traffic flow issues arising from Rev 4.2 would be similar to the previously considered TS222 Option 4 (drawing B2103500/HW/0100/SK/199 Rev 0). TS222 Option 4 does not place the overbridge at Wester Hardmuir, as Mr and Mrs Pullan's alternative may wish.

8.76 TS221 and TS222 demonstrate a rational process for considering the variety of matters that affect and are affected by the alternative alignment options considered by those documents. That evidence concludes that TS222 Option 4 is not better than the preferred option. Rather, that it requires additional land from additional sources and would involve greater cost than the preferred option.

8.77 Choosing now TS222 Option 4 or even more rigidly following Mr and Mrs Pullan's alternative (Rev 4.2), with the existing A96 crossing the dual carriageway on a bridge at Wester Hardmuir, would require additional land that is not within the [draft CPO](#) (CD001).

The draft CPO can only be modified to remove land, not to add it. As such, this would require a redesign, new impact assessments, consultation on new draft Orders and another public inquiry. The evidence confirms that this additional delay would be for an option which is more expensive and does not offer a better solution, however much it may be preferred by certain objectors.

8.78 Whilst the risk of an accident cannot be totally eliminated, the evidence does not indicate that the risk of an accident occurring would increase at Courage or that it would do so as a result of the proposed new access. The evidence does not indicate that there is a better performing alternative.

8.79 We also note that Mr and Mrs Pullan submitted a further revision ([PP002 Rev 4.3 map](#)) which differs from Rev 4.2. We assume that Mr and Mrs Pullan have accepted TS's engineering critique in TS138.04. The evidence does not indicate whether Auldearn Community Council supports Rev 4.3 in place of Rev 4.2. Rev 4.3 is discussed alongside Mr and Mrs Pullan's objections below.

Overall

8.80 We find that objections raised by Auldearn Community Council can either be overcome through programmed mitigation/accommodation works and/or the design of the proposed scheme. Where residual impacts / effects remain we find these would not require additional mitigation and would not override the public interest in providing the road and do not warrant/cannot be overcome by modification to the draft Orders. This does not suggest we should recommend that Scottish Ministers modify or refuse to confirm the draft Orders.

OBJ/111 Firm of Auchnacloch Farm (Trustees for firm of Auchnacloch)

Objectors

8.81 OBJ/111 Firm of Auchnacloch Farm (Trustees for firm of Auchnacloch) owns and farms land at Auchnacloch Farm, located between Nairn and Auldearn. The farm buildings are located north of the existing A96 but the farm covers land to its north and south. Part of the farm's land would be required for parts of the proposed dual carriageway and Nairn East Junction.

8.82 OBJ/111 Firm of Auchnacloch Farm (Trustees for firm of Auchnacloch) accept the principle of dualling the A96 but object to the effects of the proposed scheme on Auchnacloch Farm.

Procedural matter

8.83 At inquiry Session 10, TS queried the status of documents submitted by the objector entitled 'precognitions'. TS argued it could not formally rebut these. We note that precognitions are not necessary for hearing sessions such as Inquiry Session 10 on Wednesday 14 November 2018. We consider these documents to have the status of being supplementary to the statement of case, such as a hearing statement, and not to have the formal status of precognitions, despite their titles. This report continues to refer to the objector's submitted documents as 'precognitions' for consistency of title and referencing.

8.84 We accept that TS did not have an opportunity to formally rebut these, but we are satisfied that it had the opportunity to express its views in its existing submission, during Inquiry Session 10 and in its closing statement.

8.85 At inquiry Session 10, TS argued that [section 5 of Mr Anderson's precognition](#) on behalf of OBJ/111 Firm of Auchnacloch Farm (Trustees for firm of Auchnacloch) referenced a new issue. However, we find that this elaborates on a point raised in the final sentence of [section 2.3 of the objector's statement of case](#). We consider this matter under the heading 'Access (including underpasses)' below.

8.86 As such we do not consider that our acceptance of this evidence and the status we have afforded it would prejudice the interests of either party.

Objections

Alternative route

8.87 OBJ/111 Firm of Auchnacloch Farm (Trustees for firm of Auchnacloch) argues that TS has ignored that land had already been set aside for the proposed dualling of the existing A96 Auldearn bypass when it was constructed in the 1980s. The objector argues this has not been acknowledged by TS.

8.88 The objector supports OBJ/133 Mr Richard McCulloch's alternative route, which follows the route of the existing A96 Auldearn bypass. In [TS111.01 and TS111.04](#) the objector accepts that the cost estimate of the preferred route (Option 2E) was lower than Option 2F (similar to the objector's proposed alternative), but contends that it would be significantly cheaper to follow the southern route [assumed to be routes south of Auldearn].

-Auchnacloch Farm

8.89 The objector considers that OBJ/133 Mr McCulloch's alternative route would avoid adverse business and residential amenity impacts at Auchnacloch Farm that the proposed scheme would bring. These are identified in TS111.01 and TS111.04 as being reduced visual and noise impacts and reduced severance and loss of agricultural land for Auchnacloch Farm (related matters are covered in more detail below under various headings).

8.90 Route selection, including this proposed alternative and cost issues, are covered separately in this report at Chapter 2: Matters of Principle. Business and residential amenity impacts at Auchnacloch Farm are considered separately in this chapter below.

-Agricultural land

8.91 In TS111.01 and TS111.04 the objector argues that its alternative route proposal would avoid LCA class 2 prime agricultural land north of Auldearn.

-Land and property acquisition

8.92 In TS111.01 and TS111.04 the objector argues that:

- TS's assumptions about demolition and acquisition to be inaccurate;
- the proposed route would ruin and devalue many properties and some of those affected may prefer demolition given the effects of the project;
- retention of Dunbar Recreation Ground has taken precedence over the losses to its farm business resultant from the proposed scheme; and,

- Dunbar Recreation Ground is small and underused and could be replaced in a safer location under its route proposal.

Engagement

8.93 OBJ/111 Firm of Auchnacloch Farm (Trustees for firm of Auchnacloch) considers the engagement process to have been inadequate. It argues that:

- it had no input in to the route selection process because it was not properly consulted about the proposed route in 2013 and because the preferred route was selected in 2014, without its substantive input;
- it is odd that the first time it found out about the selection of the preferred route was at the public meeting held at Dunbar Hall, Auldearn;
- there were no individual landowner meetings and consultation prior to route selection;
- it met with TS during 2016 but that TS has not properly taken into account the agricultural and business interests of Auchnacloch Farm;
- TS considered these meetings to be too late to amend their 2014 preferred route;
- at the meeting on 28 April 2016 referenced in [TS111.03](#), TS's agricultural consultant proposed a number of unrealistic and impractical measures, all of which were challenged but ignored by TS; and,
- this demonstrates a failure to consider local knowledge.

Business impact

-Agricultural assessment and business viability

8.94 The objector argues that its land was originally severed by the existing A96 Auldearn bypass in the 1980s and would be further severed into four sections by the proposed scheme. The objector argues that the proposed scheme would:

- take 34 acres of its land;
- remove some of its most productive land, contrary to [SPP paragraph 80](#) (CD045);
- render adjacent land unworkable through severance, small field sizes and impractical field shapes;
- prevent use of the land for future viable agricultural business/livelihood;
- lead to depreciation of the capital value of the farm; and,
- require a shift to livestock farming, but that this would be prohibited by TS's refusal to provide agricultural underpasses.

8.95 The objector argues that sufficient land was acquired in the 1980s to enable dualling of the existing A96 Auldearn bypass and that the matters above could be resolved by adopting its proposed route alternative instead.

8.96 [AUCH10](#) concludes that the acquisition of small parts of field 7 and field 9 [[ES Figure 15.6j](#)] (CD007) fields 159/3 and 159/4 respectively], proposed to be acquired for improvements to the U2997, would have a negligible impact.

8.97 In AUCH10 it argues that the specific outcomes would be that:

- the severed northern rectangular section of AUCH10 field 9 would be an impractical shape, partly due to the ingress of Waterloo Cottages, and would require additional machinery turns leading to reduced yield and increasing the uncropped areas. It would also require a switch from north-south direction of operations to east-west resulting in increased erosion risk from the prevailing westerly winds;

- the southern triangular section of AUCH10 field 9 would require increased turning and overlap leading to crop loss and wasted inputs. When in vegetables, uncropped land would be increased relative to existing practice and doubtlessly reflected in rents offered;
- the productive capacity of field 9 would fall below current cereal and particularly vegetable sourced levels of rent;
- overall this would reduce all the remainder of field 9 to low value arable ground and, more likely semi intensive grazing;
- the western severed area of AUCH10 field 8 [ES Figure 15.6j (CD007) field 159/5] would form a one hectare paddock of little practical use;
- the eastern end of AUCH10 field 8 would be severed from the rest of the farm by two major roads rather than one, as at present; and,
- productive capacity for field 8 would fall below current cereal and particularly vegetable sourced levels of rent.

8.98 The objector argues that the proposed scheme is contrary to SPP paragraph 80 (CD045) because it would take some of the farm's most productive agricultural land and because an alternative route is available – the objector's proposed alternative route.

8.99 The objector contends that the shrunken field sizes created by severance would not be suitable for cereal crops, causing blight and injurious affection. In AUCH10 it argues that:

- fields 8 and 9 [ES Figure 15.6j (CD007) fields 159/5 and 159/4 respectively], its best performing arable fields, would each see some land acquired or rendered less useful;
- the loss would be equivalent to 25% of the best productive agricultural land such that the proposed land acquisition of 13% of the farm would lead to a 20% income loss;
- income levels would drop in perpetuity threatening the sustainability of the farm requiring mitigation by diversifying into livestock farming; and,
- alternative route option 2F would have a lesser impact on the farm business.

8.100 The objector argues that TS's conclusion that the impact on future farm viability would be 'neutral' is misguided. The objector contends that the impact would be severe and would render the farm unmarketable. Instead it suggests that 'adverse' would be a more accurate conclusion for the agricultural assessment.

-Access (including underpasses)

8.101 In [Colin Anderson's Precognition](#) paragraph 5 the objector proposes an alternative access to field 159/4 southern triangle via proposed new means of access 430 ([draft SRO Plan SR21](#) – CD003). It suggests that this could be accessed via the U2997, as it passes beneath the dual carriageway near the proposed SuDS ponds at Mill of Boath. It argues it could then travel across or alongside existing fields. Otherwise, the objector argues, farm traffic would need to access the A96 (as is), which 'as the key junction for Nairn East and sole entry point for eastwards traffic coming from the A939', would retain significant traffic volumes, in order to cross both roundabouts and access the field directly off the road.

8.102 OBJ/111 Firm of Auchnacloch Farm (Trustees for firm of Auchnacloch) argues that the proposed removal of the existing A96 underpass for construction of the proposed Nairn East Junction would inhibit access. However, the objector later accepts that the underpass would not be removed due to redesign of the proposed junction at DMRB Stage 3, forming part of the draft Orders. It argues instead that the existing A96 underpass was constructed in the 1980s and implies that it may not be suitable for modern farm machinery.

8.103 The objector argues that the severance caused by the proposed scheme would be compounded by TS's refusal to provide livestock underpasses. This it argues would inhibit reorganisation to livestock only farming. The objector refutes TS's arguments in [TS111.06](#) that floats could be used to transport livestock and questions who would maintain such floats.

8.104 In AUCH10 the objector argues that it is unclear why field 2 [ES Figure 15.6j (CD007) field 159/1] would require a new access. It contends that the proposed new access to field 2 would be at its lowest, and often boggiest part, which is why the current access is on higher ground opposite field 8. As such the objector is unclear why the existing access opposite the proposed SuDS pond would be unusable.

-Claim for compensation

8.105 The objector argues that TS has failed to mitigate the impacts of the proposed scheme on its agricultural businesses. Given the above impacts the objector confirms that it will submit a claim for compensation. Were the route to be amended it recognises that any claim may also be amended.

Residential amenity

-Proximity of the proposed scheme

8.106 The objector argues that the proximity of the proposed Nairn East Junction to the residential properties at Auchnacloch Farm would result in blight and injurious effects. It argues that the 'enormous and expensive' flyover arrangement close to Auchnacloch Farmhouse demonstrates blight that could be mitigated by selection of an alternative route.

8.107 The objector also contends that there would be disturbance during the construction phase. Objections to visual and noise impacts are covered separately below.

-Visual impacts

8.108 OBJ/111 Firm of Auchnacloch Farm (Trustees for firm of Auchnacloch) argues that the visual impacts of the proposed scheme on Auchnacloch Farm would be significantly adverse.

8.109 In [Mr Neil Cameron's precognition](#) the objector argues that:

- the proposed planting in [ES Figure 9.5s](#) (CD007) would be inadequate and only serve to mitigate the effects of the proposed scheme at Waterloo Cottages, with no plans to screen Nairn East junction and artificial lighting from Auchnacloch Farm, which would be looking directly at it;
- there would be approximately 40 artificial lighting stands at the proposed Nairn East junction, each being ten metres tall and these would 'completely dominate' the outlook from Auchnacloch Farmhouse;
- with artificial lighting being on the same contour as Auchnacloch the mitigation hedge row planting is unlikely to be effective;
- vehicles travelling east and leaving the dual carriageway would shine their headlights/beams directly at Auchnacloch Farmhouse as they exit the proposed northern roundabout; and,
- the conclusion of 'moderate' visual impact after 15 years appears to be unrealistically favourable.

8.110 In its [closing statement](#) paragraph 7 the objector suggests it to be unrealistic that sufficient cover would be provided by 15 years. Were this to be successful, it argues that it would take 15 years for the visual impacts of the proposed scheme to become only 'moderately' acceptable. The objector also argues that any deciduous trees, including those already at Auchnacloch Farm, would cease to provide screening between late autumn and late spring as the leaves fall.

8.111 The objector argues that its proposed route alternative would result in a reduced visual impact at Auchnacloch Farm.

-Noise and vibration

8.112 The objector argues that the noise and vibration impacts of the proposed scheme on Auchnacloch Farm:

- would be significantly adverse.
- would reduce if its proposed alternative option was used.

SuDS

8.113 In [TS111.04](#) the objector argues that the proposed SuDS pond at the Nairn East Junction would result in pollution of the surrounding land, including Auchnacloch.

8.114 In [Mr Ross's precognition](#) and at Inquiry Session 10 the objector explained its concerns that during a dry spell or prolonged heat these ponds could become stagnant with a strong smell. It also argues that additional land would be required around the pond to provide fencing that would sterilise the objector's ability to use this area.

Topsoil

8.115 The objector argues that every spring, after sowing, winds blow topsoil from Auchnacloch fields across the existing A96 and along the U2997 Waterloo Road, making for treacherous driving conditions.

Transport Scotland's Response

Alternative route

8.116 TS considers that the alternative route proposed by the objector [OBJ/133 Mr Richard McCulloch's RM1] to be similar to Option 2F. It argues that DMRB Stage 2 Scheme Assessment Report (CD011):

- considered Option 2F alongside other options and to the same level of detail with none being dismissed until selection of the preferred option in October 2014;
- concluded that no single option performed better than others for every individual assessment criterion; and,
- concluded Option 2F had greater impacts/fewer benefits compared with the preferred option (Option 2E) and that, on balance, Option 2E remained the best performing option across the full range of assessment criteria.

8.117 In its [closing statement paragraph 9.49](#) TS argues that the cost estimates for route options 2E and 2F were similar and this was not a significant differentiator between these two options.

8.118 TS argues that [DMRB Stage 2 Scheme Assessment Report, Part 4 – Traffic and Economic Assessment Table 20.3](#) (CD011) (reproduced below), shows that a southern route [assumed to be south of Auldearn], would not have been cheaper than the preferred route.

Route location	DMRB Stage 2 Route Options	Estimated Cost
Options north of Auldearn and Auldearn Bypass	Option 2A	£224.8 million
	Option 2E (Preferred Option)	£202.4 million
	Option 2H	£239.1 million
Options north of Auldearn and partially following the line of the Auldearn Bypass	Option 2B	£224.8 million
	Option 2F (similar to objector's proposal)	£204.3 million
Options south of Auldearn	Option 2C	£237.0 million
	Option 2D	£240.2 million
	Option 2G	£214.4 million
	Option 2I	£225.8 million

Note: All costs exclude VAT and are at Quarter 1 2014 prices

8.119 TS's responses to objections about the route selection process are covered separately in Chapter 2: Matters of Principle.

-Auchnacloch Farm

8.120 TS's responses to matters of business and residential amenity assessment including business viability, land loss, noise and visual impacts, amongst others, are considered separately in this chapter under the respective headings below.

-Agricultural land

8.121 TS's consideration of agricultural land associated with route options is covered separately in this report at Chapter 2: Matters of Principle. TS's consideration of agricultural land loss at Auchnacloch Farm specifically is covered separately in this chapter under the heading 'business impact' below.

-Land and property acquisition

8.122 TS letters [TS111.03](#) and [TS111.05](#) state that, avoiding the potential acquisition and demolition of residential properties was a key issue along the existing A96 road corridor. It argues that:

- this is normal practice for trunk road projects, other than where it is unavoidable;
- risk of acquisition and demolition of residential property was a particular constraint on route options following the line of the existing Auldearn Bypass; and,
- Option 2F would have required the acquisition of land forming part of the playing fields adjacent to Auldearn Primary School. This may have been possible to resolve by obtaining alternative land elsewhere. Nonetheless, this was an impact that needed to be considered as part of the overall assessment.

8.123 TS letter TS111.05 argues that:

- it is incorrect to say that one specific property (namely the Dunbar Recreation Ground) 'took priority' over the objector's land and business;
- the proposed Nairn East Junction was redesigned at DMRB Stage 3 to overcome the need to realign the B9111 through part of Dunbar Recreation Ground as well as several other factors.

Engagement

8.124 TS states that one to one land owner consultation did not take place at DMRB Stage 2 because it would have been impractical for so many land owners. TS argues that the public consultation on route options between November 2013 and January 2014 was the main opportunity for all interested parties to express views on the route options at DMRB Stage 2. It also states that exhibitions were run and feedback provided. TS argues that:

- once the preferred option was selected, it announced this by notifying all landowners and members of the public at the same time using a press release, timed to coincide with the October 2014 public exhibitions;
- it provided further information on the consultation process in TS111.03; and,
- appropriate and relevant consultation has taken place throughout the design development process.

8.125 TS understands the reference to the first public meeting at Dunbar Memorial Hall to be the public exhibition of 6 October 2014. It argues that:

- this was the exhibition at which the preferred option was announced; and,
- public exhibitions were also held in November 2013, prior to the selection of the preferred option.

8.126 TS argues that at least one representative from the objectors' family attended all of the public exhibitions. It argues that:

- the objector (Mr Alick Ross) submitted formal feedback following the November 2013 exhibitions and in October 2014 with TS responses to each ([TS111.08 to TS111.12](#)); and,
- it is therefore not correct to state that the preferred route was selected without any input from the objector or communications from TS.

8.127 TS argues that all feedback received following the November 2013 exhibitions was considered before the preferred option was selected. It argues that:

- its consultants, Jacobs, met with the objector on six separate occasions (including on 28 April 2016) to provide updates on the scheme development, to seek relevant information and agree details as part of the design development and assessment process.
- the meeting on 28 April 2016 included a farm business survey to inform the assessment of impact, the mitigation that may be required and the significance of the residual impacts.

8.128 TS argues this to show that appropriate and relevant consultation has taken place throughout the design development process, as described above.

Business impacts

-Agricultural assessment and business viability

8.129 TS argues that [ES Appendix A15.7](#) (CD006) confirms the permanent proposed land-take from Auchnacloch Farm would be 13.23 hectares (32.69 acres), excluding Plot 2007 ([draft CPO sheet 20 of 23](#) – CD001), which is owned by the objector, but required for servitude rights only.

8.130 TS argues that [ES Chapter 15](#) (CD005):

- commits to avoid prime quality agricultural land (LCA classes 1, 2 and 3.1) as far as possible but states that the proposed scheme unavoidably affects 245 hectares of farmland (of which 47% is prime quality).
- describes mitigation to reduce impacts on the agricultural land capability such as reinstating land to agricultural use where possible (post construction), and adopting appropriate measures during construction and reinstatement to ensure soil resources are properly managed to avoid potential damage to agricultural capability ([ES Table 15.23](#) – CD005).

8.131 With regard to route options and agricultural land TS argues that:

- for any trunk road scheme, loss of prime agricultural land is one of many assessment criteria to be considered;
- the general presumption in SPP paragraph 80 (CD045) against the loss of prime agricultural land, states that exceptions include where development is ‘necessary to meet an established need, for example for essential infrastructure, where no other suitable site is available’; and,
- the national and local context for the dualling of the A96 between Inverness and Nairn, including a bypass of Nairn is described in ES Chapter 2.

8.132 TS’s response to agricultural land quality relating to route selection is covered separately in Chapter 2: Matters of Principle.

8.133 TS argues that:

- ES Chapter 15 (CD005) reports the potential impacts of the proposed scheme on the farm as ‘Moderate/Substantial’;
- ES Appendix A15.7 (CD006) sets out the field by field impacts and a summary for Auchnacloch Farm, which concludes that:
 - the proposed scheme would result in severance of two fields;
 - the proposed land-take would result in a reduction of output;
 - severance would limit the land use to predominantly arable farming; and,
 - the current land use (arable cropping) would be able to be maintained;
- the assessment of the potential impacts of the proposed scheme on likely future farm business viability concludes that the likely future farm viability would be ‘Neutral’ as defined in [ES paragraphs 15.3.59 to 15.3.63](#) (CD005);
- this would not compromise the likely future viability of the farm business and it is likely to be able to continue trading, albeit after some restructuring of its operations; and,
- the assessment does not support the objector’s statement that the proposed scheme would render its farming business unviable or prevent it from using the land for a future viable agricultural business/livelihood.

-Access (including underpasses)

8.134 TS letter TS111.05 confirms that the existing A96 farm underpass would not be removed as part of the proposed scheme following redesign of the proposed Nairn East Junction during the DMRB Stage 3 design development.

8.135 TS accepts that the objector may wish to alter the mix of its farming enterprises in the future and that underpasses would give some additional flexibility. However it argues that:

- normal practice is to assess the farm business impacts based on the current use of the land (currently used primarily for arable crops rather than livestock and farmed under a contract farming agreement that has been in place for some years);
- the assessment concludes that the farm could continue to be used productively for growing crops;
- additional underpass provision is not essential for current agricultural operations and that the proposed access arrangement would be sufficient;
- should a change from arable to livestock farming be made, the farm could viably be used for livestock farming, with animals transported, where required, by float; and,
- at the meeting on 28 April 2016, a number of potential options to allow the farm to be used in the future for livestock farming were discussed, including the use of a cattle float to transport animals since it is no longer considered safe to move livestock along public roads.

-Claim for compensation

8.136 TS confirms that land and compensation costs were taken into account as part of the DMRB Stage 2 route options assessment.

8.137 Regarding potential claims for compensation by the objector, TS argues that:

- its [Guidance on the Compulsory Purchase Process and Compensation](#) (CD046) provides information on the objector's entitlement to compensation and how it may be able to make a claim.
- potential impacts on the capital value of the farm, disturbance and injurious affection, are matters of compensation that would be considered by the District Valuer, subject to submission of a valid claim.

Residential amenity

-Proximity of the proposed scheme

8.138 TS argues that:

- the embankment and flyover form part of the proposed Nairn East Junction;
- the junction was redesigned during DMRB Stage 3, following public consultation feedback in October 2014;
- the reasons for the redesign are listed in TS111.05; and
- the revised design is assessed in the ES.

-Visual impacts

8.139 TS argues that the proposed scheme, including the proposed underbridge and associated earthworks, would have a significant adverse visual impact on Auchnacloch Farm (Receptor 148), resulting in Moderate/Substantial effects at winter year of opening. It argues that the mitigation proposals associated with the proposed Nairn East Junction include:

- scrub woodland to soften views of the PS17 Nairn East Underbridge and embankment and to screen traffic movement from properties located to the north;
- tree planting to enhance the approach to Nairn which would assist in creating a sense of place;
- proposed hedge planting to assist to soften views of the slip road, local road and roundabout and riparian woodland to improve integration of the SuDS detention basin/pond with its surroundings; and,

- proposed mixed woodland on the approach to the proposed junction (from the west) to assist to screen views of the dual carriageway on embankment while tying into the existing Russell’s wood.

8.140 By the summer 15 years after opening, TS argues that the established mitigation planting would reduce the visual effects to ‘Moderate’ for receptor 148.

8.141 TS acknowledges that the objector’s proposed alternative route would result in a reduced visual impact at Auchnacloch Farm. However, it argues that the preferred option was not, and should not be selected based solely on the impacts at one property (or group of properties). TS states that the DMRB Stage 2 scheme assessment found that, in visual impact terms, Option 2E (the preferred option) performed broadly similarly to Option 2F (similar to the alternative route proposed by the objector).

8.142 It also argues that its preferred option (Option 2E) was not the best performing option with regard to all of the individual assessment criteria but that no single option performed better than others for every assessment criterion. TS’s consideration of route selection objections is covered separately in this report at Chapter 2: Matters of Principle.

-Noise and vibration

8.143 TS acknowledges that the noise impacts specifically at Auchnacloch Farm may be lower with the objector’s proposed alternative route than with the preferred option (Option 2E). However, it argues that route Option 2F performed poorer than Option 2E for noise and vibration impacts. TS states this to be because the outcome of the assessment is based on the overall impact of each route on all properties and other receptors within the relevant study area.

8.144 TS argues that:

- the Auchnacloch Farm residences are closer to the existing A96 than they would be to the proposed dual carriageway;
- the façade of the farmhouse, with the highest noise level if the proposed scheme was in place, is predicted to experience a reduction in noise levels due to traffic migrating from the existing A96 to the proposed dual carriageway;
- the noise level changes at the Auchnacloch farmhouse façade most exposed to road traffic noise are presented in TS111.05 Table 1 (reproduced below), which shows that:
 - beneficial noise impacts are predicted to occur with the proposed scheme in place; and,
 - without the proposed scheme, by the future year there is predicted to be an increase in noise due to increased traffic flows;
- additional site-specific noise mitigation, over and above that offered by the proposed scheme’s incorporated noise mitigation (earthworks and low noise road surfacing (LNRS)), is not required for the farmhouse.

TS111.05 Table 1 – Noise level changes at most exposed façade at Auchnacloch farmhouse

Scenario	LA10,18hr (dB)	LA10,18hr (dB)	Change in Noise Level (dB)
DMB vs DSB	56.2	53.3	-2.9
DMB vs DMF	56.2	56.8	0.6
DMB vs DSF	56.2	53.7	-2.5

[The Reporters note that TS111.05 Table 1 headings refer in columns 2 and 3 headers to LA10,18r. The Reporters consider this to be a typing error that should instead refer to LA10,18hr or LA10,18h. This typing error does not affect our the data presented or our understanding and consideration of this evidence]

Notes:

DMB: Do-Minimum Baseline (year of opening)

DMF: Do-Minimum Future (fifteen years after opening)

DSB: Do-Something Baseline (year of opening)

DSF: Do-Something Future (fifteen years after opening)

Do-minimum is the scenario where the proposed scheme is not constructed,

Do-something is the scenario where the scheme is constructed.

SuDS

8.145 With regards to the proposed SuDS pond at the Nairn East junction, TS argues that:

- the SuDS ponds/detention basins design is being developed in line with current SEPA and SuDS guidance;
- one of the functions of SuDS is to prevent pollution of watercourses into which the proposed road drainage system discharges;
- all SuDS ponds would be lined with an impermeable liner to allow sediment to settle out and be retained for future removal;
- the impact of potential pollution from runoff on groundwater has been assessed in accordance with DMRB guidance and is classed as low risk; and,
- SEPA has been consulted on the proposed drainage infrastructure and is in agreement with the design principles implemented.

Topsoil

8.146 In TS111.05 TS is unclear of the exact point of objection but states that the proposed scheme would be elevated through Nairn East Junction, as opposed to the existing A96 which is in cutting. It therefore considers that, the risk of topsoil blowing across the proposed dual carriageway is potentially reduced compared to the current situation in respect of the existing A96.

Findings of Fact

Alternative route

8.147 OBJ/111 Firm of Auchnacloch Farm (Trustees for firm of Auchnacloch)'s objection appears to contend that TS should adopt Mr Richard McCulloch's proposed route alternative RM1 (similar to Option 2F). This appears to be motivated by the view that business impacts and residential amenity impacts apparent with the proposed scheme could be avoided by adopting the alternative route.

8.148 We consider route selection, separately in Chapter 2: Matters of Principle. There we have found that DMRB Stage 2 Scheme Assessment Report (CD011) confirms that no single route performed best for every criterion. However, it also confirms that no route was better overall than the preferred option (the proposed scheme). The evidence does not suggest any failure by TS to properly consider all options in the same level of detail to find a preferred option.

8.149 The cost summary of DMRB Stage 2 route options in [TS111.05](#) suggests that route options south of Auldearn would not be lower cost than either the preferred option (Option 2E) or the objector's proposal (similar to Option 2F). It also shows that the preferred option would be lower cost than option 2F.

8.150 The evidence considered in Chapter 2 of this report does not suggest that the proposed alternative is better than TS's preferred option. Therefore, there is no compelling reason to recommend that Scottish Ministers refuse to confirm the draft Orders and delay the project on that basis.

-Auchnacloch Farm

8.151 We accept that the objector's proposed route alternative would limit or avoid impacts of the proposed scheme at Auchnacloch Farm, principally since it would be further away from the farm and utilise different land. However, it would bring its own impacts elsewhere. Route selection is covered separately in Chapter 2: Matters of Principle. Business, residential amenity and other impacts at Auchnacloch Farm are considered in this chapter below.

-Agricultural land

8.152 AUCH12 and [ES Figure 15.5j, 15.5k, 15.6j and 15.6k](#) (CD007) show that the proposed scheme would pass through some LCA class 2 agricultural land north and east of Auldearn. Route selection process, including agricultural land, is covered separately in Chapter 2: Matters of Principle. The agricultural land impacts at Auchnacloch Farm are considered under the heading 'business impacts' below.

-Land and property acquisition

8.153 [TS225 Nairn East Junction Design Development Report](#) shows that TS considered a variety of issues raised by objections at DMRB Stage 2 regarding the proposed design for the Nairn East junction. Together these resulted in the relocation and redesign of the junction. This does not persuade us that Dunbar Recreation Ground was ranked more highly or considered to be more important than the impacts identified at Auchnacloch Farm. Instead, it shows that the changes were motivated by a series of factors, of which the impact upon Dunbar Recreation Ground was one. Route selection, in general terms, is covered in Chapter 2: Matters of Principle.

Engagement

8.154 [ES Chapter 6](#) (CD005) describes the engagement process for DMRB Stages 2 and 3. The evidence does not suggest we should doubt that these activities took place.

8.155 [TS111.08](#) confirms that Mr Alick Ross (one of the trustees of the firm of Auchnacloch Farm) completed a comments form during the consultation on DMRB Stage 2 Route Options between November 2013 and January 2014. In TS111.08 Mr Ross acknowledges the necessity of the project but suggests that the existing A96 route should be considered given the impact that other proposed routes could have on his business interests and project costs.

8.156 [TS111.09](#) is the response letter from TS dated 3 April 2014, following Mr Ross's submission of TS111.08. It contains some process explanations and a list of frequently asked questions, including some that are locally specific and which suggest these are the result of public feedback and queries. We find this to demonstrate that the objector did participate in the route selection consultation.

8.157 [TS111.10](#) is Mr Ross's completed feedback form dating from the public exhibitions and consultation in October/November 2014. This is when the preferred route option was announced. Though the objector expresses shock that the preferred route has been

selected, we find this to be the point when all interested parties discovered this information, as confirmed by TS in its letter dated 6 February 2015 ([TS111.11](#)). Discovering this information in this manner was not unique to the objector and, on balance, does not appear unreasonable.

8.158 This shows that, from this point forward, TS had selected its preferred route and that any subsequent discussions and engagement were orientated towards understanding impacts, mitigation and related matters. Therefore it is not unreasonable for TS to explain, at later meetings with the objector, that it was then too late to influence the route choice.

8.159 It is also reasonable that TS chose to announce the preferred route to all interested parties and the public at the same time. There does not seem to be any justifiable reason why some parties would be informed ahead of others. Similarly we find no procedural error or prejudicial outcome from the DMRB Stage 2 Route Selection consultation in November 2013 being the main public consultation for all interested parties to participate. Again, there does not seem to be any beneficial reason why such an engagement process would happen for different parties at different times.

8.160 One to one landowner engagement prior to route selection could have brought practicalities given the number of potential affected parties. It could also have led to unnecessary alarm and expense for interested parties at a stage when, in all likelihood, the preferred route would only affect a comparatively smaller group of respective parties. This is acknowledged in [DMRB Volume 11, Section 3, Part 6: Land Use paragraph 10.7 bullet point \(iii\)](#) (CD049.18). As such, any party with any interest was able to participate in route selection (as did the objector) and this has not prejudiced anybody's interests, including those of the objector.

8.161 One to one engagement did take place at DMRB Stage 3, following selection of the preferred option. Although this has not always satisfied the objector, this does not suggest it to have been unreasonable or inappropriate. The matters referred to at the meeting of 28 April 2016 are discussed separately under the 'business impacts' heading below.

8.162 These factors and the commentary in TS225 covering the matters that motivated the redesign of the proposed Nairn East Junction do not suggest an absence of local knowledge. Nor do they suggest any failure to consider local issues identified through the consultation process.

8.163 Overall, the evidence above clarifies that the objector participated in the engagement process from route selection to draft Orders. Whilst TS decided on a preferred route that is not favoured by the objector, this does not make erroneous the process of decision making or the decision itself. Similarly, the evidence does not suggest that the engagement process was inadequate or failed.

8.164 At Inquiry Session 10 the objector made reference to 1993 guidance and indicated that it would pick this up in closing statements. No reference has been made to this in closing statements. Without any evidence or explanation of this it is not possible to reach a conclusion or make recommendations regarding that particular matter. There is therefore no additional evidence to refute the conclusions we have already reached above with regard to the engagement process.

Business impacts

-Agricultural assessment and business viability

8.165 [DMRB Volume 11, Section 3, Part 6, Paragraph 6.3](#) (CD049.18) lists the four main effects on agricultural land that assessments need to cover. The assessment of impact on the farming business at Auchnacloch Farm in [ES Appendix A15.7](#) (CD006) does not suggest any failure to cover these matters. The evidence also does not suggest that TS has incorrectly identified the receptor sensitivity or the magnitude of impact using the approach set out in [ES Tables 15.7 and 15.8](#) (CD005).

8.166 [ES Figure 15.5](#) (CD007) suggests that the proposed scheme would affect some prime agricultural land along its route and the objector does not dispute TS's quantification of this. However, ES Appendix A15.7 (CD006) and ES Figure 15.5j (CD007) show Auchnacloch Farm is made up of LCA class 3.2 and 4.1, neither of which is prime agricultural land.

8.167 Using [SPP paragraph 80](#) (CD045), it could be argued that this is land of lesser quality that is locally important. However, SPP paragraph 80 bullet point 1 (CD045) refers to exceptions being for 'essential infrastructure' and 'where no alternative is available'. The SPP glossary page 76 (CD045) refers to essential infrastructure as including transport infrastructure. Though that glossary references this in the context of flood risk we find it reasonable to accept that reference in SPP paragraph 80 (CD045) also covers transport infrastructure.

8.168 Given the breadth of policy matters considered in SPP (CD045) and those matters considered at DMRB Stage 2, it is reasonable to recognise that the existence of an alternative route, on its own, does not represent a process or policy failure. It is plausible that an alternative could perform better in agricultural land terms but may not do so for other criteria that are also covered by policy in SPP. We consider route selection, including agricultural land, separately in Chapter 2: Matters of Principle.

8.169 TS's closing statement confirms that only the land necessary for the proposed scheme has been included in the [draft CPO](#) (CD001). The evidence does not suggest we should doubt TS's calculations that the proposed scheme would acquire 13.23 hectares of land from Auchnacloch Farm, excluding Plot 2007, which is proposed for servitude access rights in draft CPO Sheets 20 of 23 (CD001).

8.170 At Inquiry Session 10 the objector contended that its proposed alternative route (similar to Option 2F) would require less land from Auchnacloch Farm than the proposed scheme. [DMRB Stage 2 Scheme Assessment Report Part 3 \(CD011\) Tables 16.37 and 16.40](#) confirm this to be accurate. However, in both instances the tables also confirm a 'medium' impact for Auchnacloch Farm. In other words the impact would be the same for either option, given the land take criteria set out in [ES Table 15.8](#) (CD005) for the farm assessment.

8.171 Neither party disputes that the land take of the proposed scheme would result in a fall in income at Auchnacloch Farm. We find no evidence to suggest that [AUCH10](#) is incorrect in concluding that the proposed land acquisition would affect some of the most productive land at Auchnacloch Farm and could have a disproportionate impact on future income. However, detailed matters about any scale of financial loss are matters that could

form part of any compensation claim subject to the District Valuer's assessment. Compensation is not a matter for this inquiry.

8.172 The shape, size and severance of the affected fields 159/4 and 159/5 are shown in [ES Figure 15.6j](#) (CD007) with mitigation described in ES Appendix A15.7 (CD006). Proposed new field accesses are proposed with the details of these covered below in paragraphs 8.186 to 8.206.

8.173 AUCH10 field 8 west (ES Figure 15.6j (CD007) field 159/5 west) would be comparatively small, though it may not be dissimilar in size to other fields shown in AUCH10 page 5 such as fields 1, 3, 5 and 6. TS accepts in [TS215](#) paragraph 5.22.19 that the size of northern severed area of 159/5 would preclude its use for cereal production and it would be more suited to a grassland land use, as is currently the case for field 159/2. We accept the objector's point that its size would limit its uses and value.

8.174 AUCH10 also refers to the impact on field 159/4 north from Waterloo Cottages' incursion into that field. We note that this specific aspect of the field would not alter due to the proposed scheme since Waterloo Cottages already exist. However, we appreciate that the severance of this field by the proposed road would make the existing incursion more of a 'pinch point', which could affect the way in which it was cultivated.

8.175 At Inquiry Session 10 TS confirmed that field size and shape is considered as part of the assessment as described in bullet two of [ES Table 15.8](#) (CD005). TS215 paragraph 5.22.19 states that the average field size of those fields affected by the proposed scheme at Auchnacloch Farm, although reduced, would be greater than the average sizes of fields affected throughout the proposed scheme that are used for arable and livestock farming. The evidence does not suggest we should disagree with this analysis.

8.176 The objector's position on the matter of future farm viability is based on its assertions in AUCH10 and a wider position that the proposed scheme would reduce the income base of the farm due to land loss, severance and field size/shape changes. [The objector's closing statement paragraph 5](#) considers TS's analysis of viability to be abstract due to TS's agricultural expert's points at Inquiry Session 10, where he explained that farm viability is not an economic test.

8.177 TS disagrees with the findings of AUCH10 in [closing statement paragraphs 13.25 to 13.28 and 13.30](#). It considers that arable farming is still possible based on its analysis in TS215 Section 5.22. These contend that the word 'viability' distracts from what is being assessed and that this term is not defined in DMRB or in any Defra farm business management guidance.

8.178 TS argues that there is no requirement under DMRB or EIA to assess the commercial impact and that this is not an economic impact assessment. Instead it argues that the general principles relate to whether the farming unit has the potential to adapt its operations and whether it could continue to operate as a farming unit. As such TS argues that there is no need or reason to look at the financial books and records of a farming business. It further argues that DMRB does not give any detailed analysis of the scale of impact on future farm business viability and so it must be informed by professional judgement of the facts. Our consideration of [DMRB](#) (CD049.18) and the EIA process do not suggest we should find differently.

8.179 Both parties agree that Auchnacloch Farm could be used for livestock but the objector continues to argue that this would be a necessary outcome of the proposed scheme. TS disagrees, arguing in its closing statement paragraph 13.49 that the fields affected by the proposed scheme would remain viable for arable purposes, albeit not 'optimal'.

8.180 Were a switch to livestock necessary as a result of the proposed scheme the objector continues to argue that it would need underpasses (considered separately below at paragraphs 8.186 to 8.206). As such, it remains the objector's contention in closing statement that the proposed scheme's impact would be 'adverse' rather than 'neutral'. Either way, this confirms that Auchnacloch Farm could continue to be used for agriculture. The matter of contention is about the impact and potential subsequent losses to the business.

8.181 We find that the agricultural assessment is not using the term 'viability' to describe how profitable or otherwise a business or individual field may be or may become. Instead, it is describing whether agriculture remains a viable land use. Severance and changes to field size and shape would have some implications for future farming practices and business operations. TS confirms that viable farm size forms part of the viability assessment.

8.182 The evidence does not suggest that farming will cease to be possible at Auchnacloch Farm and none of the parties appears to dispute this (though they do dispute what type of agricultural practice could occur and its profitability). The evidence does not suggest that agriculture would cease to be possible at Auchnacloch Farm if the proposed scheme was to proceed.

8.183 At Inquiry Session 10 TS explained that it has sought to reduce the impacts of the proposed scheme on land interests through the design process. We note that mitigation has been identified in ES Appendix A15.7 (CD006) and that this cross refers to measures set out in [ES Chapter 20](#) (CD005), the schedule of environmental commitments. These mitigation measures, along with any agreed accommodation works, would form part of any contract and be binding on the contractor, within an independent inspection regime. This suggests we should not doubt the sincerity of TS's remarks, but with a recognition that it is not possible to mitigate for all impacts and this could result in residual impacts.

8.184 We understand that some have taken the term 'neutral' to represent the status quo. However, we find that [ES paragraph 15.3.61](#) (CD005) is clear that this is not its intended meaning. The definition provided in that paragraph makes clear that the term 'neutral' involves change and that this may result in a reduction or restructuring of activities. We also note the definitions of the terms 'beneficial' and 'adverse' in ES paragraph 15.3.61 (CD005). At Inquiry Session 10 TS confirmed that only two properties along the proposed scheme route had been assessed as 'adverse' and neither had objected. We find that the definition of 'neutral' accurately describes the anticipated impacts of the proposed scheme at Auchnacloch Farm and that the terms 'beneficial' and 'adverse' do not.

8.185 As such we accept that OBJ/111 Firm of Auchnacloch Farm (Trustees for firm of Auchnacloch) has the potential to experience losses as a result of the proposed scheme. However, these would not prevent continued use for agriculture and would require changes to business and practice. The objector could choose to make a claim for compensation for

any losses it considers it would incur subject to the District Valuer's assessment. Compensation is not a matter for this inquiry.

-Access (including underpasses)

8.186 ES Figure 15.6j (CD007) shows that the northern rectangular section of field 159/4 (AUCH10 field 9) would continue to be accessible from the northwest via the U2997 adjacent to the underpass. The southern triangular shaped section of field 159/4 could continue to take access from the existing A96 at its southeast side. We saw both accesses on our site inspection. At inquiry Session 10 TS confirmed that there would be opportunities for land owners to liaise with it to ensure that gates were wide enough.

8.187 [ES Figure 4.1j](#) (CD007) shows that the proposed dual carriageway underbridge near Mill of Boath is PS28 Auldearn NMU underpass. [Draft EPW Plan ROW2](#) (CD004) identifies the extinguishment of right of way 2 and replacement with right of way 4. This covers NMU route R1 ([ES Figure 16.2j](#) – CD007). Neither the present right of way nor its proposed replacement are now or would be in the future for vehicular access under the proposed scheme.

8.188 Vehicular access would therefore be via the C1172 underbridge. ES Figure 15.6j (CD007) shows that new means of access 430 ([draft SRO Plan SR21](#) – CD003) would be for field 113/1 (owned by a third party). As such the objector's proposal would require an additional right of access across this third party land. Alternatively, the objector's proposal would require access to pass through proposed CPO area on the south side of the proposed dual carriageway and westbound off slip road between ch26700 and ch26400. This land is currently identified for landscape and ecological mitigation identified in [ES Figure 9.5s](#) (CD007)

8.189 Either outcome of the objector's proposed alternative access would involve greater complexity or the need for additional agreements or servitude rights/land acquisition that are not already part of the [draft CPO](#) (CD001). It is possible to remove land from a draft CPO but not to add it. As such this could result in some delay to the project were additional land/servitudes required.

8.190 Similarly, the existing A96 would become less busy if the proposed scheme were in place. Whilst some traffic originating from the A939 may travel through Nairn to the Nairn East junction it could also access the junction from the A939 via the B9101 and B9111. We noted on our site inspection that the latter avoided the traffic lighted A939/existing A96 junction in Nairn.

8.191 Given that an existing access to field 159/4 southern triangular field already exists and would be on a less busy road, there does not appear to be any sound rationale for the objector's alternative proposal, which does not seem to be better than the existing arrangements.

8.192 ES Figure 15.6j (CD007) shows that the small northwest section of field 159/5 would continue to be accessible from the existing A96 underpass via the proposed SuDS pond tracks at new means of access 424 and 425 ([draft SRO Plan SR20](#) – CD003). This does not seem unreasonable.

8.193 A new means of access 426 ([draft SRO Plan SR20](#) – CD003) would allow access to the remainder of field 159/5 directly from the realigned B9111. At Inquiry Session 10 TS

confirmed that new means of access 426 would be sufficient to accommodate a combine harvester or tractor with a harrow for example. We find the only significant difference to be that the southern section of field 159/5 would be accessed via the B9111 rather than by travelling through the existing field.

8.194 ES Figure 15.6j (CD007) field 159/1 (AUCH10 field 2) would require a new means of access further west since its present access would be disrupted by the vertical realignment of the B9111 as it passes beneath the proposed Nairn East junction at PS22 B9111 underbridge, where it would be in a cutting. The profile of this cutting is shown in [DMRB Stage 3 Report Figure 3.2o Sheet 15 of 19](#) (CD009). This would result in some loss of land from field 159/1, although the objector's own agricultural consultant describes this as 'a very small area.' (AUCH010 first page).

8.195 Whilst the proposed scheme would acquire and sever land at Auchnacloch Farm, access would be retained to all fields by new means of access and/or mitigation / accommodation works. These would form part of the construction contract and be binding on the respective contractor. Therefore, whilst severance may occur, reasonable action is proposed to mitigate this.

8.196 ES Figures 4.1j and 15.6j (CD007) and TS225 Nairn East Design Development Report confirm that the proposed scheme would not remove the existing A96 underpass. This had been previously proposed for removal but changed when the proposed Nairn East Junction was redesigned during DMRB Stage 3 and for the ES and draft Orders. The objector appears to accept this and so we regard this matter as resolved.

[The Reporters note the TS closing statement paragraph 15.19 refers to the Nairn East Junction Design Development Report as TS227. This is considered to be a typing error that should say TS225].

8.197 At Inquiry Session 10 the objector reiterated its wish for the existing A96 underpass to be upgraded. [DMRB Stage 3 Report paragraphs 2.5.14 to 2.5.15](#) (CD008) conclude that the underpass is in good condition, with a category 3 defect to safety fencing over the underpass that does not affect its structural integrity.

8.198 It is possible that the current underpass may not be capable of accommodating all types of modern farm machinery, however, the evidence does not confirm this with detailed dimensions or turning circles.

8.199 The evidence does not suggest the proposed scheme would prevent access to severed (or already severed) land by any other means. The existing underpass would continue to facilitate access between land off the U2997 and the B9111. Access could also continue via the existing A96, which is predicted to experience lower volumes of traffic, if specific equipment did not fit through the existing underpass.

8.200 Together, these factors suggest no reason why the underpass could not continue to operate, no reason why the objector would be denied access to any severed land and no reason why an underpass upgrade would be essential as a result of the proposed scheme.

8.201 The objector seeks additional agricultural underpasses because it argues the proposed scheme would render its current operations unviable and require a switch to livestock that would itself be limited due to severance. The agricultural assessment

undertaken by TS is based, in accordance with [DMRB](#) (CD049.18), on present circumstances and not those of the future, whatever they may be. We have already concluded that farming would remain a viable land use at Auchnacloch Farm, were the proposed scheme to go ahead. We have also found that a 'neutral' impact recognises that change would take place in business operations.

8.202 These matters do not suggest that a switch to livestock is essential as a result of the proposed scheme. Instead it appears that the objector has concluded that such a switch would be one method to reduce future business losses that may otherwise occur. These are two different things.

8.203 At Inquiry Session 10, and before, the parties disagree that any future transport of livestock could be done using floats, should the farm switch to livestock. We also note the objector's query at Inquiry Session 10, about who would maintain these. We find no reason to conclude that floats could not be used to transport livestock, however much the objector does not favour this.

8.204 The agricultural assessment excludes compensation from mitigation and assumes, for viability impact purposes, that compensation has been paid, although not how it is spent. This suggests that any decision to diversify to livestock and arrangements for its transport would be a decision for the objector and may form part of any compensation claim it chooses to make. Compensation is a matter for the District Valuer and not for this inquiry.

8.205 Wildlife underpasses (Dry Mammal Underpasses) do form part of the proposed scheme, such as those shown in [ES Figure 9.5s](#) (CD007). However, these have been justified as mitigation for wildlife, including protected species, as identified in [ES Chapter 11](#) and [ES Table 20.6 Mitigation Item E6](#) (CD005). Agricultural underpasses have not been justified in this way. Therefore the integration of wildlife underpasses and culverts within the proposed scheme does not suggest any double standard, as inferred by the objector.

8.206 Together the factors above do not persuade us that new underpasses would be essential to gain access to the severed fields.

-Claim for compensation

8.207 [TS111.07](#) confirms that potential compensation for landowners was considered as part of the route option costings at DMRB Stage 2. Route selection is covered separately in Chapter 2: Matters of Principle. There we conclude that the objector's proposed route alternative (similar to Option 2F) was not better than the preferred route (Option 2E). Whilst any specific compensation for losses at Auchnacloch Farm could diminish for Option 2F the evidence does not suggest this would have swung the balance in favour of that option.

8.208 At Inquiry Session 10 and in [closing statement paragraph 13.28](#) TS confirms that the assessment of viability assumes that compensation for losses to the farm business will have been paid, but not the consequences of that payment (i.e. what the recipient chooses to do with it). It further confirms that any assessment of compensation by the District Valuer, including the remaining capacity of the farm, would not be pre-determined by the assessment in the ES.

8.209 This may provide some reassurance to the objector where it has concerns that the conclusions of the assessment, and ES in general, could affect any future compensation claim it may choose to make. Similarly, it also confirms that the future decisions and

management of the farm would be taken by the objector, albeit in recognition of the changed circumstances brought about by the proposed scheme.

8.210 Were the objector to make a claim for compensation TS's [Guidance on the Compulsory Purchase Process and Compensation](#) (CD046) provides information on how to do so. As noted at various points above, any claim would be subject to the District Valuer's assessment. Compensation is not a matter for this inquiry.

Residential amenity

-Proximity of the proposed scheme

8.211 From a residential amenity perspective, the proximity objections appear to relate to largely to visual and noise impacts / effects. These are considered separately below under the respective headings.

8.212 ES Figure 4.1j (CD007) shows that the bridge referenced by the objector is part of the proposed Nairn East junction and would be necessary to allow the proposed dual carriageway to cross the existing A96 and B9111.

8.213 ES Figure 4.1j (CD007) confirms that the proposed scheme (including the proposed Nairn East junction) would be further from Auchnacloch Farm than the existing A96. The objector's principal issue appears to be that its proposed alternative shown in [AUCH4](#) (30 January 2017) would have been further away still, from Auchnacloch Farm. The evidence suggests this to be correct but DMRB Stage 2 found that Option 2F (similar to the objector's proposed alternative) did not perform better than the preferred route (Option 2E). The route selection is covered separately in Chapter 2: Matters of Principle, where it is recognised that the route options were considered against a series of issues over a broad area and not just the impact / effects at one property or group of properties.

8.214 The objector is correct that the construction phase may result in some disturbance. However, this would be a temporary phase. It would also be covered by a CEMP, identified in ES Table 20.1 as Mitigation Item GR1 (CD005). This would, in conjunction with The Highland Council, define standards such as access during construction, noise limits, dust suppression and limits to working times. The CEMP would be binding on the contractor.

8.215 The whole ES, including the schedule of environmental commitments in ES Chapter 20 (CD005) and all identified mitigation and agreed accommodation works, would form part of the contract documents. As such these would also be binding on the contractor.

8.216 At Inquiry Session 10 TS confirmed that construction specialists would be on site during the construction phase. It also confirmed that the on-site supervision team (Jacobs) would assess completion and compliance with the ES and terms of the contract. We find this to provide an independent inspection regime to hold the contractor to account. As the proposed scheme falls within STAG it would also be required to undergo post-opening monitoring. We find this would bring an additional stage of scrutiny to identify and understand residual impacts.

8.217 This suggests that whilst construction may bring about some inconvenience, efforts would be made to minimise this based on recognised standards, it would take place

within a controlled, independent inspection regime, and, there would be a route of recourse direct to the contractor, or its overseer (Jacobs), or, ultimately, to TS.

-Visual impacts

8.218 The potential visual impacts and suitability of proposed mitigation were discussed at length at inquiry session 10 by TS and the objector. As noted above, the objector's alternative route may have reduced the visual impacts and effects of the proposed scheme for Auchnacloch Farm but this is not the only consideration. The approach to route selection is covered separately in Chapter 2: Matters of Principle.

8.219 [ES Figure 9.5s](#) (CD007) shows that the southern and eastern elevations of the residences at Auchnacloch Farm do not directly face the proposed scheme. Instead they are at an oblique angle.

8.220 [ES Appendix 10.1](#) (CD006) and [ES Figure 10.3g](#) (CD007) confirm that the predicted visual effects at receptor 148 (Auchnacloch Farm) would be 'Moderate/Substantial' in winter year of opening and would diminish to 'Moderate' 15 years after opening. The objector is therefore correct that the full benefit of the proposed planting may not be realised for 15 years. Although we recognise that some faster growing species may yield screening benefits earlier than 15 years dependent on species mix.

8.221 On our site inspection we saw trees and shrubs at each of the Auchnacloch Farm residences. Whilst it was evident that some were deciduous it was unclear that all were. ES Appendix A10.1 (CD006) recognises the existing and potential future contribution of this vegetation as regards visual screening. We find no evidence to suggest we should doubt this conclusion.

8.222 At Inquiry Session 10 TS confirmed that proposed planting in [ES Figure 9.5s](#) (CD007) would be a mix of evergreen and deciduous trees, including some faster growing species. It also confirmed that screening mitigation tends to include more evergreen. This may provide some reassurance to the objector given its concerns about lack of foliage on deciduous species between late autumn and late spring. The exact mix of planting would be established at a subsequent stage with some opportunity to liaise with the ecologists to determine the exact species mix.

8.223 [ES Figure 10.2d](#) (CD007) shows that only the proposed Nairn East Junction slip roads, roundabouts and A96 passing beneath the dual carriageway would be artificially lit. This would mostly be accommodated on ten metre columns. TS argues this to be the minimum lighting required for a roundabout. [DMRB Volume 6, Section 2, Part 1, TD22/06 paragraphs 5.33 to 5.35](#) (CD049.09) confirms this.

8.224 [ES Figure 10.2d](#) (CD007) shows that approximately half of this proposed artificial lighting (for the westbound on and off ramps) would be located on the eastern side of the junction. As such, at least some of these would be fully/partially shielded from Auchnacloch Farm buildings by the junction, its embankment and the proposed mitigation planting described in [ES Figure 9.5s, 9.6j cross section T-T and 9.7o photomontage](#) (CD007).

8.225 The proposed artificial lighting, traffic and carriageway on the northern side of the proposed junction would be partially/wholly screened by proposed mixed woodland planting along the north side of the proposed eastbound entry slip road from the A96 roundabout

eastwards. The eastbound exit slip road carriageway, traffic and artificial lighting would be partially/wholly screened by mixed woodland planting on its north side between Russell's Wood and the realigned B9111 underbridge at approximate ch25700. The remaining traffic, carriageway and artificial lighting at the eastern end of this slip road would be partially or wholly screened by the proposed riparian woodland planting screen around the SuDS pond that would provide a visual buffer between Auchnacloch Farm buildings and the slip road. During daylight hours the proposed planting described above and the hedgerow planting would contribute to softening views of the proposed junction, as noted in [TS212 section 12.9](#).

8.226 [ES paragraph 10.7.6](#) (CD005) confirms that lighting and headlights have been taken into account in the assessment. [ES paragraphs 10.6.8 to 10.6.10](#) (CD005) describe the potential impacts and refer to Mitigation Item V2. [The Reporters note that [ES Table 20.5](#) (CD005) refers to two Mitigation Items each entitled V1. The Reporters consider this to be a typing error and that the second – referring to lighting – should be entitled V2 and, either way, corresponds with the remarks in ES paragraphs 10.6.8 to 10.6.10].

8.227 At Inquiry Session 10 TS confirmed that:

- the proposed artificial lighting would be dynamic (would dim or switch off when traffic is absent), as set out in [TS209 Scheme Design Development and Consideration of Alternatives Report paragraph 5.5.4](#);
- the lighting would include a focused/directional beam (no emissions above the horizontal);
- loop detectors would monitor vehicles and gauge traffic levels and so the system would not turn on and off for one vehicle; and,
- these factors would contribute to diminishing the noticeability of lighting, particularly later at night when traffic flows are usually lower and when residents expect lower levels of disturbance.

8.228 ES Figure 9.5s (CD007) confirms that hedgerows are proposed along the north side of the eastbound exit slip road, the existing A96 and roundabout closest to Auchnacloch Farm buildings and along the realigned B9111. These hedgerows would be unlikely to diminish the impact of artificial lighting on ten metre high columns, as pointed out by the objector. However, the purpose of hedgerows is, amongst other things, to diminish the impact of car headlights at the junction, as noted in TS212 paragraph 12.8.9.

8.229 [DMRB Stage 3 Figure 3.3o](#) (CD009) shows that the eastbound exit slip road would run to northeast and that vehicles travelling along this road would not shine headlights at Auchnacloch Farm. At the roundabout a left turn on the A96 (Nairn-bound) would momentarily shine headlights in the direction of the southeast corner of Auchnacloch Farm buildings. However, DMRB Stage 3 Figure 3.3o shows that the proposed roundabout and existing A96 would be in cutting at this point, which our site inspection confirmed. ES Figure 9.5s shows proposed mitigation tree planting from Russell's Wood to ch25700; hedgerow is then proposed from here up to and including the roundabout.

8.230 The positioning of these proposed hedgerows (ES Figure 9.5s – CD007) and the northern side of the western roundabout being in cutting does not suggest that Auchnacloch Farm residences would be exposed to unreasonable levels of glare from vehicle headlights.

8.231 We also note that the north to south shelter belt running to the east side of Auchnacloch Farm and north of Waterloo Cottages. This could contribute to limiting the arc of view and restrict longer distance views of the proposed scheme, along with mitigation identified in ES Figure 9.5s (CD007).

8.232 At Inquiry Session 10 TS's visual and landscape expert explained that the residual impact of the proposed scheme would be low/medium (with 'moderate' effects) 15 years after opening. [ES Table 10.4](#) (CD005) defines the terms medium and low with regard to magnitude of visual impact. This makes clear that for a medium impact the proposed scheme would be noticeable in the view, affecting its character and altering some of its components and features over a noticeable geographic area.

8.233 Whilst the proposed mitigation measures would contribute to integrating the proposed scheme into the landscape they would be unlikely to hide it in its entirety. Where it would be partly/fully screened the planting itself and/or earthworks would become new visual features in the landscape. Therefore the mitigation would have a visual impact of its own, which, necessarily, forms part of the visual impact and effects fifteen years after opening, as assessed in ES Figure 10.3g (CD007). Mitigation, including planting, is therefore part of the predicted future visual impact. This therefore suggests that additional planting may not reduce the visual effects of the proposed scheme, even if it did result in hiding more of it.

8.234 We accept that, with mitigation planting in place the proposed junction would not be hidden in its entirety and that some artificial lighting could be visible. However, this does not mean that the mitigation would be ineffective and it does not suggest that the conclusion reached by TS of 'Moderate' effect by 15 years after opening is inaccurate or erroneous.

8.235 Overall, the proposed scheme offers mitigation planting that would contribute to diminishing some of the visual impacts of the proposed scheme and softening, screening or limiting views of it from the oblique angles viewed from Auchnacloch Farm. However, the residual effects, including that resulting from proposed mitigation planting, do not compromise the public interest value of the proposed scheme and are not sufficient reason, in our view, to recommend that Scottish Ministers modify the draft Orders or refuse to confirm them.

-Noise and vibration

8.236 ES Figure 4.1j (CD007) confirms that Auchnacloch Farm is closer to the existing A96 than it would be to the proposed scheme. TS111.05 Table 1 confirms that, for the most exposed façade at Auchnacloch Farmhouse, predicted noise levels would fall with the proposed scheme but would increase without it. The fall in noise levels would be perceptible in the short-term (above 1 dB) but imperceptible in the long-term (below 3 dB), based on [DMRB HD213/11 paragraph 3.37](#) (CD049.19). Noise levels with and without the proposed scheme would remain below the 59.5 dB $L_{A10,18hr}$ threshold in the ES mitigation strategy ([ES paragraphs 8.2.24 to 8.2.34](#) – CD005). As such no additional mitigation would be necessary beyond that already planned as part of the proposed scheme.

8.237 The objector's [precognition by Mr Neil Cameron](#) queries whether the noise assessment gives fair consideration to the noise effects of accelerating vehicles joining the dual carriageway at the proposed Nairn East junction. This was discussed in detail at Inquiry Session 10.

8.238 [ES Figure 8.5n and 8.6n](#) (CD007) show predicted noise levels change for ground and first floors respectively. Each compares the noise levels change between the baseline with and without the proposed scheme. These and related ES figures demonstrate that the proposed slip roads were considered as part of the noise assessment that predicts a drop in noise levels at Auchnacloch Farmhouse with the proposed scheme.

8.239 At Inquiry Session 10 and in its closing statement TS's noise expert explained how the slip roads were assessed. He argued that:

- the noise assessment treats slip roads as a single speed road of 96kph (about 60mph).
- adoption of a higher average speed for the whole slip road offsets any noise increases due to accelerating/decelerating vehicles.

8.240 Responding to comments by the objector at Inquiry Session 10 TS's noise expert stated that when [CRTN](#) (CD084) advises mean speed for junctions and roundabouts, this is based on evidence of empirical movements and so takes account of acceleration and deceleration.

8.241 We agree that the general approach in CRTN paragraph 11 (CD084) is to divide roads into segments to account for different speeds and gradients for example. CRTN paragraph 33 (CD084) and those other sections of CRTN it references indicate this is not straight forward for slip roads. TS closing statement paragraph 11.35 refers us to CRTN paragraph 33, Chart 4 and Annex 16 (CD084) with reference to Auchnacloch Farm and the proposed Nairn East Junction. We find these to confirm that the TS approach is consistent with CRTN (CD084).

8.242 In its approach TS recognises that some HGVs would use the existing A96 but most would use the proposed dual carriageway. Its traffic forecasting work concludes that HGVs would represent 1% of all traffic through the Nairn East Junction. We note that this conclusion has been reached based on the MFTM. The MFTM is covered separately in Chapter 2: Matters of Principle. There we conclude that the traffic modelling process is sound.

8.243 No parties appear to dispute the objector's point that some HGV traffic from the A939 would join the proposed dual carriageway via the A939/existing A96 junction in Nairn to reach the Nairn East junction. On our site inspection we saw that this was a traffic light controlled junction. The evidence does not suggest any failure to consider this eventuality and no party disputes that some HGVs would still use this route. However, we also recognise that such traffic could join the proposed dual carriageway from the A939 via the B9101, B9111 and existing A96 at Nairn East junction without traffic lights. The evidence does not suggest that Auchnacloch Farm would experience unreasonably higher levels of HGV traffic on the existing A96 as a result of the proposed scheme. [ES Figures 2.1 and 2.2](#) (CD007) suggest it would experience between a half and two thirds reduction for all traffic.

8.244 TS's engineering expert explained, at Inquiry Session 10, that the MFTM takes account of all traffic movements (including those of HGVs). This was confirmed in [TS's closing statement paragraph 7.12](#) and in the [Traffic Forecasting Report, Section 3.3, Tables 3.9 to 3.11 and Tables 3.12 to 3.14](#) (TS251). The latter summarise the predicted totals by vehicle type and journey purpose based on the high growth scenario. This is a precautionary approach representing the highest predicted volumes of traffic.

8.245 TS argues that, had it segmented the slip roads, then the correction factor in CRTN Chart 4 (CD084) (for 1% of traffic being HGVs) would have led to a reduction in predicted noise levels. We therefore find the approach adopted by TS to be precautionary in that it predicts higher overall noise levels.

8.246 TS's explanation reflects its stated position in [TS213 paragraphs 5.5.3 to 5.5.5](#), albeit that these paragraphs use the proposed Balloch junction as an example. On balance we agree that the approach reflects the relevant sections of CRTN (CD084), which recognise the limitations of segmenting slip roads. We find that the approach of predicting higher overall speeds across the whole slip road, and thus avoiding a correction factor that would reduce the predicted noise levels, would give a reasonable proxy for a worst case scenario. As such we find that this approach ensures that full account is taken of the noise levels of accelerating/decelerating vehicles by the precautionary adoption of higher noise levels than would otherwise be the case. The evidence does not suggest that TS's assumptions underestimate slip road noise levels.

-WHO Guidelines 2018

8.247 Immediately before the inquiry began at the end of October 2018 the [WHO published new guidance on noise levels \(CD140\)](#). This new guidance was presented by TS to the inquiry. We invited participants to consider this during the inquiry and to provide any written comments alongside closing statements if they wished.

8.248 OBJ/111 Firm of Auchnacloch Farm (Trustees for firm of Auchnacloch) did not provide comments specifically on the WHO Guidelines 2018 (CD140) in its closing statement. However, in paragraph 8 of [its closing statement](#) it argued that, were the draft Orders to be confirmed by the Scottish Ministers, then a more rigorous mitigation strategy would be required to protect the amenity of residential properties at Auchnacloch Farm. We have considered the approach to mitigation with regard to proximity, visual impact and noise above.

8.249 During Inquiry Session 10 TS explained what it considered the WHO Guidelines 2018 (CD140) to mean and also how to convert between the metrics used for the ES ($LA_{10, 18hr}$ and $L_{night, outside}$) to those referenced in the WHO Guidelines 2018 (CD140) L_{den} . The objector argued that TS ought to have provided these conversion calculations rather than relying on objectors to do it themselves.

8.250 In its closing statement, TS makes clear its view that the WHO Guidelines 2018 have been published but have not yet been adopted in Scotland. We agree that this is the case and it does not appear to be disputed by the objector. This being so, we accept that the adopted guidance available to TS when carrying out the noise assessment and also now (at the time of writing this report) is the [WHO 1999 guidance](#) (CD090) and the [WHO Night Noise Guidelines for Europe 2009](#) (CD091).

8.251 We discuss the 2018 WHO guidelines and TS's decision not to use them, in Chapter 2: Matters of Principle of this report. There we conclude that it would be unhelpfully misleading for TS to do as the objector seeks since it would imply an interchangeability between the existing noise assessment and the thresholds stated in the WHO Guidelines 2018 (CD140).

SuDS

8.252 Plot 2002 ([draft CPO](#) - CD001) covers land for the proposed SuDS pond, its embankments and planting (shown in [ES Figure 9.5s](#) – CD007) and the proposed new means of access 424 and 425 ([draft SRO Plan SR21](#) – CD003). We note that the objector would be allowed to use these new means of access to get to field 159/5 north. This does not suggest that any planting or fencing would inhibit operations of the objector.

8.253 [TS's hearing statement appendix 5](#) clarifies that its reference to road drainage and water environment in TS111.03 was to recognise that the preferred option 2E performed better in these terms than option 2F (similar to the objectors favoured route). TS's approach to route selection is covered separately in Chapter 2: Matters of Principle.

8.254 [TS209 section 5.4](#) confirms that:

- the proposed scheme would be drained using SuDS to reduce potential impacts of pollution into watercourses and to attenuate water to diminish flood risk;
- the SuDS ponds would be designed in accordance with CIRIA and SEPA guidelines (CD133, CD134, CD135 and CD136);
- the filter drains would provide the initial treatment for removal of suspended solids and heavy metals, with the pond being used for sedimentation of suspended solids and microbial activity supported by aquatic vegetation; and,
- the filter drains and ponds would form two levels of pollution treatment to satisfy SEPA requirements.

8.255 [TS's closing statement paragraph 15.16](#) confirms that the SuDS pond would be lined with an impermeable layer to address contamination issues.

8.256 [DMRB Stage 3 Report paragraph 4.4.14 and associated Table 4.7 page 4-13](#) (CD008) explain that the proposed SuDS at Nairn East Junction would form drainage Network W, as shown on [DMRB Stage 3 Figure 4.2 Sheet 2](#) (CD009). [Table 4.7](#) (CD008) confirms that Network W would contain three levels of water treatment; one more than the minimum described in [Paragraph 4.4.16](#) (CD008) as being necessary to meet SEPA guidance. It explains in bullet 4 (paragraph 4.4.16 – CD008) that the third level of treatment would be a grassed swale prior to outfall into the Auldearn Burn. This additional, third level of pollution treatment (polishing) is, it states, to respond to the ecological sensitivity of the Auldearn Burn.

8.257 TS also clarifies that an overflow weir would avoid risk of overtopping during heavy periods of rainfall. It also explains that during heavy rainfall the effects of dilution can be very significant.

8.258 These factors suggest that the proposed SuDS pond at Nairn East junction has been designed to consider the pollution concerns raised by the objector and the broader ecological sensitivities of the Auldearn Burn. We attach weight to the fact that SEPA has not objected to the proposed drainage arrangements and SuDS ponds. We find these to be acceptable in principle.

8.259 At Inquiry Session 10 TS clarified that SuDS ponds would be maintained as part of the contract for maintaining the road but was not in a position to identify the exact frequency. Nevertheless, we find this to confirm that the SuDS ponds would be maintained within an appropriate contract regime. Such a regime would enable the objector (or indeed

others) to raise matters of concern direct with the contractor, or with TS, were the proposed scheme to proceed and become operational.

8.260 [The SuDS Manual page 795](#) (CD133) explains that water in SuDS should not be stagnant but should have low nutrient levels and be relatively clean. It suggests nutrient removal upstream should be considered in the design. This could involve the filtering described in the [DMRB Stage 3 Report paragraph 4.4.15 bullet 2](#) (CD008).

8.261 [The SuDS manual page 521](#) (CD133) also describes the role that planting of trees could play in contributing to reduce the risk of thermal heating. The proposed riparian woodland planting around the proposed SuDS pond shown in ES Figure 9.5s (CD007) could fulfil such a role. TS closing statement paragraph 15.17 also recognises the role of planting to provide habitats to address issues relating to insects and odours.

8.262 [The SuDS Manual Figure 24.4 page 531](#) (CD133) shows examples of different SuDS pond outfall designs. The topmost of the two examples shows an outfall at the foot of the pond. Designs such as this would ensure no standing water once drainage is complete.

8.263 These factors indicate that well designed SuDS ponds have the potential to ensure no standing water (and thus no stagnant water) is left during dry spells. However, we note from [ES Figure 4.1j](#) (CD007) that the proposed SuDS pond designs have yet to be finalised. As such we must accept that were an outfall to be placed higher than the lowest level of the pond there would be some risk of standing water during prolonged dry periods, were it not to have dried up in totality.

Topsoil

8.264 Both parties accept that blown topsoil is a risk and well recognised phenomenon in this part of Scotland. We did not see this phenomenon during our site inspections but no parties dispute it and we see no reason to doubt the objector's account. The evidence does not indicate the scale of impact from blown top soil but does make clear that it is temporary and infrequent, being apparent during springtime crop sowing dependent on wind and soil conditions.

8.265 At Inquiry Session 10 and in [closing statement paragraph 15.18](#), TS argued that it was a function of wind and soil conditions rather than the proposed scheme. The objector disagreed arguing that the proposed scheme would force cultivation of [AUCH10](#) field 9 ([ES Figure 15.6j](#) field 159/4) in a different direction, thus increasing the risk from blown topsoil (as described in AUCH10).

8.266 We find that construction of the proposed scheme, on its own, would not increase the risk of blown topsoil since it is a function of wind and soil rather than construction. However, TS's agriculture witness did not disagree that, as a consequence of the proposed land-take required to construct the scheme, this field might be worked differently and that this could affect the likelihood of blown topsoil occurring. However, we find that a worsening of the existing problem is not inevitable, and that this issue would need to be addressed in the event that the scheme goes ahead.

8.267 We note TS's suggestion that the objector could plant nurse crops. We also note the objector's earlier contention that it would have to cease cereal cropping and switch to livestock. Whilst the objector may dispute the practicalities of these, we find it to suggest

that more than one option exists and that the direction of cultivation is one response to changed circumstances. Our conclusion is that the field would remain capable of agricultural use in some form following construction of the proposed scheme, notwithstanding the existing blown topsoil problem. If as a consequence of the proposed scheme, the objector was obliged to modify its use of this field in a way that made it less profitable, this would be a matter for a subsequent compensation claim and not for this inquiry.

8.268 Neither party disputes TS's contention that cultivation is covered by the [Controlled Activities Regulations](#) (CAR) (CD115) designed to prevent the pollution of water courses, including from top soil. The evidence does not suggest we should reach a different conclusion. As such this would place a requirement on the objector to carry out their works in a compliant manner, accepting that the risk of windblown topsoil may not be totally eradicated.

8.269 The objector's concerns appear to suggest some risk to drivers using the existing A96 and/or proposed scheme were windblown topsoil dust storms to occur at Auchnacloch.

8.270 On our site inspection we noted the north to south shelter belt located east of Auchnacloch Farm and north of Waterloo Cottages. Our site inspection also showed that the existing A96 is relatively open between Auchnacloch Farm buildings and Auldearn, with little planting or shielding either side to limit/prevent the effects of blown topsoil. ES Figures 9.5s and 15.6j (CD007) show that the proposed scheme would change the landscape and field sizes around the proposed Nairn East junction, existing A96 and U2997.

8.271 ES Figure 9.5s (CD007) shows proposed mixed woodland planting and some hedgerows on the north and south sides of the proposed scheme. It is plausible that the introduction of this vegetation could contribute to intercepting at least some of the blown topsoil and limit its likely impact on both the proposed scheme and parts of the existing A96, dependent on wind direction. It is also plausible that the proposed dual carriageway embankment for the Nairn East junction and proposed planting would act as a partial wind break to limit some effects of the wind on what would be shrunken fields.

8.272 TS's contention that the height of the proposed scheme would limit or avoid blown top soil is plausible, provided that it is a relatively low level phenomenon. Nevertheless the proposed planting described above, particularly the woodland, would add some additional height to the proposed scheme, as indicated in ES Figure 9.6j cross section T-T (CD007).

8.273 Were blown top soil only to affect the existing A96 but not the proposed scheme it is plausible that the migration of traffic to the dual carriageway would limit its impact upon traffic movements.

8.274 If the emergency services were to deem blown top soil to make driving too dangerous at any point in time they may choose to close the respective road. This would not be unique since any road could be temporarily closed due to maintenance, accidents or hazardous incidents (such as blown top soil). Were this to happen at all, ES Figures 4.1j to 4.1l (CD007) suggests that traffic could be redirected from the proposed scheme along the existing A96 between Nairn East junction and Hardmuir. Alternatively other local routes would need to be used as deemed appropriate by the relevant authorities.

Overall

8.275 We find that objections raised by OBJ/111 Firm of Auchnacloch Farm (Trustees for firm of Auchnacloch) can either be overcome through programmed mitigation / accommodation works and/or the design of the proposed scheme. Where residual impacts / effects remain we find these would not require additional mitigation, would not override the public interest in providing the road, and, do not warrant/cannot be overcome by modification to the draft Orders. This does not suggest that we should recommend that Scottish Ministers modify or refuse to confirm the draft Orders.

OBJ/112 etc. The Auldearn Residents Group

The Objectors

8.276 OBJ/112 etc. The Auldearn Residents Group was represented at Inquiry Sessions 1 and 11 by OBJ/129 Mrs Bailey. The group consists of the parties listed below, who live and/or own property in the area north of Auldearn:

OBJ/112 Mr John & Mrs Frances Farquhar
OBJ/113 Mr J Ledsham
OBJ/114 Mr Mark Pinder
OBJ/115 Mrs C Turvey
OBJ/117 Mr R and Mrs K Grantham
OBJ/118 Mrs Jean Peck
OBJ/120 Mr George Fraser
OBJ/121 Mrs Doreen M Davidson
OBJ/122 Mr D Davidson
OBJ/123 Mr Malcolm S Davidson and Ms Jennifer M Philips
OBJ/124 Mr Derek L Prior and Ms L M Rutter
OBJ/125 Mr K and Mrs K James
OBJ/126 Mr Alfred and Mrs M James
OBJ/127 Mr P and Mrs J James
OBJ/128 Mr Hugh and Mrs Nicola Urquhart
OBJ/129 Mr Stephen R and Mrs Elaine Bailey
OBJ/131 Mr James Maxwell and Mrs Ellen Maxwell
OBJ/133 Mr Richard McCulloch
OBJ/134 Mrs Carolyn Mitchell
OBJ/135 Mrs C Scott

8.277 The Auldearn Resident's Group's outline statement advised that OBJ/116 L and T Firlez, OBJ/118 N Andrew and OBJ/119 J Grigor have moved away and are no longer part of the group. These parties have therefore been omitted from the list above. TS's closing statement paragraph 16.1 suggests that OBJ/118 Mrs Jean Peck has withdrawn but this was not indicated by correspondence from the Auldearn Residents Group. Either way, having raised identical objections to those other members of the Auldearn Residents Group (listed above) the matters of objection raised by the parties in this paragraph are identical to the remainder of the Group that have not withdrawn and these are covered in this Chapter of the report and also in Chapter 2: Matters of Principle.

8.278 The Auldearn Residents Group includes residents and businesses north of Auldearn including at Waterloo Cottages and House, Millhill and nearby properties, Drumduan Farm

and nearby properties, East Lodge Cottage, Mill of Boath, Boath Steadings/Stables and Bogside of Brodie.

8.279 The Auldearn Resident's Group each signed an identical letter of objection. The following members of the Auldearn Residents Group also made individual additional objections or submitted further written representations:

OBJ/112 Mr John & Mrs Frances Farquhar (Waterloo House)

OBJ/120 Mr George Fraser (Waterloo Cottages)

OBJ/123 Mr Malcolm S Davidson and Ms Jenifer M Philips (Millhill)

OBJ/128 Mr Hugh & Mrs Nicola Urquhart (Mill of Boath)

OBJ/129 Mr Stephen R & Mrs Elaine Bailey (East Lodge Cottage)

OBJ/131 Mr James & Mrs Ellen Maxwell (Boath Steadings/Stables)

OBJ/133 Mr Richard McCulloch (Bogside of Brodie)

8.280 The Auldearn Residents Group and some of the individual members also raise objections to the proposed scheme including the rationale, traffic modelling and route selection. These matters are covered separately in Chapter 2: Matters of Principle under the respective headings.

Objections

Environmental Impact Assessment

8.281 OBJ/112 etc. The Auldearn Residents Group argues that:

- the ES aims to 'minimise the environmental effects on communities in the corridor' but that the proposed scheme shifts the environmental effects from one place to another instead of proper engineering solutions that would make it better for all.
- no effort has been made through DMRB stage 3 to provide appropriate mitigation for any of the residential properties along the route.

8.282 OBJ/133 Mr Richard McCulloch argues that the proposed scheme would create unnecessary and disproportionate interference with the environment and harm to the local economy, particularly agriculture and tourism. This, he argues, would significantly affect residents and businesses with rights and interests in the affected area. Mr McCulloch's objections relating to economic impact and rationale for the proposed scheme are covered separately in Chapter 2: Matters of Principle.

Proximity

8.283 OBJ/112 etc. The Auldearn Residents Group argues that the preferred route design means that the residents of Waterloo Cottages would be adversely affected by the proximity of the new road, which they also argue avoids the need for compulsory purchase.

8.284 OBJ/129 Mr Stephen R and Mrs Elaine Bailey contend that TS maintain that East Lodge Cottage and Mill of Boath are not directly affected by the proposed scheme despite being 26 metres away. They argue that averaging out of data represents poor data capture and dilutes the effects when considering this diverse area and skews the provision of proper mitigation.

8.285 OBJ/133 Mr McCulloch's Statement of Case describes Bogside of Brodie as being made up of two separate residential properties: Bogside of Brodie Farm House and Bogside

of Brodie Steading. Mr McCulloch's Statement of Case raises concerns that the ES has not properly considered that there is more than one dwelling at Bogside of Brodie.

Noise and vibration

-Noise assessment

8.286 OBJ/112 etc. The Auldearn Residents Group argues that the noise monitoring was not robust because it was carried out when the milking machine at nearby Drumduan Farm was operating at extra capacity with broken silencers. This, it contends, provided a false baseline and allowed TS to conclude a lesser magnitude of noise change than would otherwise be the case. It argues this went on to affect the mitigation proposed.

8.287 The Auldearn Residents Group also argues that no noise monitoring was carried out at Waterloo properties and no proper mitigation is proposed.

-Noise mitigation threshold

8.288 The Auldearn Residents Group argues it was assured by TS at DMRB Stage 2 that all possible mitigation would be applied to those residents subjected to significant adverse noise effects. It states that the noise methodology in DMRB stage 3 concludes increases in excess of 10 dB, which it considers to be 'a very significant increase' given the logarithmic scale.

8.289 It argues that TS has set an 'arbitrary' mitigation threshold of 68 dB for mitigation. It therefore considers TS's original assurances to have been misleading. It accepts that the threshold is a WHO recommendation but considers it more pertinent to a place such as Lagos rather than Scotland.

8.290 OBJ/129 Mr Stephen R and Mrs Elaine Bailey argue that there is a crucial and, in their view, an 'arguably deliberate' omission in the ES for predicted noise levels. They argue that the ES says that noise levels will not exceed 55 dB but contend that data has not been produced to show this. They argue that even if this level is not exceeded the ES suggests that at 55 dB communication becomes difficult [The Reporters assume this to be a reference to [ES Table 8.1](#) – CD005]. They also argue that it is not possible to ascertain whether noise levels of 55 dB would affect sleep.

-Property specific noise impacts and mitigation

8.291 OBJ/112 etc. The Auldearn Residents Group argues that the proximity of the proposed scheme to Waterloo Cottages would bring about residential amenity impacts [assumed to include noise]. Auldearn Residents Group considers that no mitigation has been proposed and argues this to be unacceptable. Several of its individual members raise specific concerns which elaborate on this argument with regard to individual properties. In some instances the objectors propose specific mitigation.

8.292 OBJ/120 Mr George Fraser is concerned about the residential amenity impacts of the proposed scheme on his home and residential tenancy business at Waterloo Cottages (business impacts are considered separately under the respective heading below).

8.293 OBJ/123 Mr Malcolm S Davidson and Ms Jennifer M Philips argue that the proposed noise mitigation at Millhill dwellings is poor given the predicted noise increase of 10 dB to 11 dB. They argue that DMRB Stage 2 says that mitigation should happen for those predicted to be 'severely affected' by noise but contend that what they consider to be a lack

of such measures is justified in DMRB Stage 3 by quoting the threshold for mitigation. They suggest earth bunds and concrete barriers would help limit noise and light pollution at Millhill.

8.294 OBJ/128 Mr Hugh and Mrs Nicola Urquhart and OBJ/129 Mr Stephen R and Mrs Elaine Bailey object to the noise impacts of the proposed scheme on Mill of Boath and East Lodge Cottage respectively. They do so based on OBJ/112 etc. Auldearn Residents Group's and their own objections to the noise methodology and data collection process which they argue was flawed and resulted in inadequate mitigation proposals (see paragraphs 8.286 to 8.287 above).

8.295 OBJ/129 Mr and Mrs Bailey state that their conservatory is a rehearsal space for several classical music groups and that an upstairs office is used to run a UK-wide professional mentoring business using video conferencing. Based on TS's noise analysis they argue that the noise increases would render their conservatory unusable for rehearsals and their mentoring business impractical because communication would become difficult at 55 dB (ES Table 8.1) (the business impacts of this are considered separately under the heading 'business impacts' below).

8.296 OBJ/129 Mr and Mrs Bailey argue that TS has not provided the information for night time noise levels. They contend that even if this does not exceed 55 dB, as TS states, communication would still be difficult (ES Table 8.1). They consider this would adversely affect sleep.

8.297 OBJ/129 Mr and Mrs Bailey also argue that TS acknowledge private gardens to be areas of high sensitivity. They seek the noise predictions for their garden, where they argue they spend a lot of time.

8.298 Mr and Mrs Bailey contend that the properties listed below perform similarly in the noise assessment to East Lodge Cottage and Mill of Boath but have been afforded noise mitigation barriers whereas theirs and their neighbour's properties have not:

- North Kildrummie Farm – ES Figures [8.16g](#) and [9.5m](#) (CD007 and EB14)
- Easter Glackton Farm – ES Figure [9.5l](#) (CD007 and EB15)
- Skene Park Farm – ES Figure [9.5q](#) (CD007 and EB16)

8.299 OBJ/131 Mr James and Mrs Ellen Maxwell are concerned about the noise impact from the proposed scheme upon their home and self-catering accommodation business at Boath Steading/Sables.

8.300 [OBJ/129 Mr and Mrs Bailey's Statement of Case](#) argues that the prevailing wind would carry noise impacts to their property. They also ask that a solid, noise-reducing fence be added in both directions to give 'meaningful noise mitigation'.

8.301 OBJ/133 Mr Richard McCulloch argues that tourism and agriculture are 'the main economies in this tranquil area'. He contends that this environment would be transformed by the noise generated by the new road traffic. This would, in his view, be exacerbated by the elevation of the road. Initial designs had the road much lower and therefore screened within the landscape.

Air quality

8.302 OBJ/112 etc. The Auldearn Residents Group argues that:

- the air pollution monitoring was not robust because a storm damaged the equipment so that it was not monitoring air quality for some weeks.
- the air quality assessment failed to consider the localised impact of wind direction at different times of year which, in its view, alters the effects of air pollution on some properties.

8.303 It also questions how air quality monitoring shows no adverse effect when changing from arable farming to a dual carriageway.

8.304 OBJ/129 Mr and Mrs Bailey contend that the area is susceptible to strong northeasterly wind, such as in 2016 when it did not change direction for almost three months. This they argue, should be considered as well as the impact on their organic vegetable garden.

Construction disruption

8.305 OBJ/131 Mr James and Mrs Ellen Maxwell argue that there has been no proper consideration of:

- disruption during the construction phase.
- the ongoing impact of an elevated dual carriageway behind what should be peaceful holiday retreats [referring to their home and self-catering accommodation business].

Health

8.306 OBJ/128 Mr and Mrs Urquhart and OBJ/129 Mr and Mrs Bailey argue that research published in the Lancet medical journal shows that the risk of dementia is 7% higher for those living within 50 metres of a major road compared with those living within 300 metres. This research, they argue, cites traffic as the cause of 7 to 11% of dementia cases within 50 metres of a major road.

Visual and landscape

8.307 OBJ/112 etc. The Auldearn Residents Group, OBJ/120 Mr George Fraser and OBJ/133 Mr Richard McCulloch argue that the proposed Nairn East Junction had to be relocated and changed due to flood risk and so would now be highly visible. They argue that the previous design was proposed to be in a cutting which, in their view, would have minimised its visual (including vehicle lights), landscape and noise impacts. Noise objections are covered separately above.

8.308 OBJ/133 Mr Richard McCulloch argues that the proposed scheme would introduce an incongruous feature within an attractive landscape. He argues that as the proposed scheme has developed there is no evidence that the design follows expert advice on how to develop an alignment that is sympathetic to the landscape. He contends that the justification for this has not been provided.

8.309 OBJ/123 Mr Malcolm S Davidson and Ms Jenifer M Philips, OBJ/128 Mr and Mrs Urquhart and OBJ/129 Mr and Mrs Bailey agree with the ES that there is a high susceptibility to visual impacts at Millhill, Mill of Both and East Lodge Cottage. Mr Davidson and Ms Philip consider that it would not be difficult to provide mitigation in the form of bunds or concrete. The Urquharts and the Baileys argue that the proposed planting

would take time to grow and this does not take account of it only being in leaf for part of the year. OBJ/128 Mr Hugh & Mrs Nicola Urquhart argue that the proposed hedges would not adequately mitigate light pollution at Mill of Boath.

8.310 OBJ/129 Mr and Mrs Bailey argue that:

- the ES comparison of winter year of opening and summer 15 years after opening is not a like for like comparison and wish to know what the impact would be in winter 15 years after opening.
- in [EB18 DMRB Stage 2](#) visual graphic that East Lodge Cottage is omitted.
- the proposed 2.2 metre high landscape earthwork (ch26830 to ch27020) needs to be significantly extended and heightened.

8.311 OBJ/131 Mr and Mrs Maxwell consider that the proposed scheme would bring about adverse landscape and visual impacts in close proximity [assumed to be close proximity to their home and self-catering accommodation business at Boath Steadings/Stables]. They further argue that the proposed scheme, in the vicinity of Boath Steadings/Stables, would

- be totally out of proportion for such a small stretch of road.
- spoil the natural landscape changing it to an urban landscape.

SuDS ponds and flood risk along the U2997

-Flood risk on the U2997 at Waterloo

8.312 In their outline statement (May 2018) OBJ/112 Mr and Mrs Farquhar express concerns that the proposed scheme would exacerbate existing flood risk along the U2997 as shown in photographs provided within their outline statement.

8.313 In particular they are concerned that the proposed embankment for the dual carriageway and eastbound entry slip road (proposed to be located on higher ground south of their property at Waterloo House) would lead to increased runoff in this locality.

-Proposed SuDS ponds and flood risk at Mill of Boath/East Lodge Cottage

8.314 OBJ/128 Mr and Mrs Urquhart and OBJ/129 Mr and Mrs Bailey argue that the proposed SuDS pond location near Boath Mill/East Lodge Cottage is on high ground; contrary to the ES statement ([ES paragraph 9.6.19](#) (CD005)) that SuDS ponds will be in low lying areas.

8.315 Mr and Mrs Bailey and Mr and Mrs Urquhart each argue that the positioning of the proposed SuDS ponds near their respective properties would make mitigation impossible. This is because they argue that the proposed location would utilise space and remove high ground, both of which could be used to deploy more extensive screening mitigation measures than those currently proposed. As proposed they contend it would leave only a hedge at the point where the proposed dual carriageway would be closest to each objector's respective home (East Lodge Cottage and Mill of Boath). They also argue that the provision of these SuDS ponds, near to both properties, would result in a breeding ground for midges and mosquitos that would be unpleasant and unhealthy.

8.316 The objectors propose the relocation of the proposed SuDS ponds to the north side of the proposed dual carriageway. They note that the SuDS ponds were previously located on the north side of the dual carriageway at DMRB Stage 2 as shown in document [EB2](#).

8.317 Moving the SuDS ponds to the north side of the dual carriageway would, they argue:

- allow use of the land for mitigation to protect the residential amenity of properties from noise and visual impacts (as described above).
- remove flood risk from their respective properties.

8.318 Mr and Mrs Bailey explain that in January 2018 TS met with them to resolve the above issues. They contend that TS subsequently wrote to them to say it would be feasible to move the SuDS ponds and that it was writing to the appropriate landowners to request purchase of the necessary land. Mr and Mrs Bailey explain that nothing further has been heard [at the time of their writing].

Local roads, access and community severance

-New field access points

8.319 OBJ/112 etc. The Auldearn Residents Group argues that proposed field access points do not respect current ownership because they would require access to, for example, Bogside fields across Auchnacloch land.

-Nairn not properly served by the bypass scheme

8.320 Auldearn Residents Group also argues that Nairn would not be properly served by the proposed bypass because traffic for Grigor Hill industrial estate, saw mills and new development in Nairn would leave the bypass and travel through Nairn; requiring road upgrades that are not part of the proposed scheme but are consequent from it.

-HGVs on U2997 Waterloo – Eastertown – Inshoch Road

8.321 OBJ/128 Mr Hugh and Mrs Nicola Urquhart and OBJ/129 Mr Stephen R and Mrs Elaine Bailey argue that:

- the stopping up of the U2997 and its circular route would limit access of HGVs, including bin lorries.
- there appears to be no turning circle and the bridge at Mill of Boath is too weak and the entrance at the Wendy Hoose is too tight.

- Nairn East junction design

8.322 OBJ/133 Mr Richard McCulloch argues that the proposed Nairn East junction design includes roundabouts on the existing A96. He contends that these would introduce additional delays and conflicts for Nairn-bound travellers, which are significantly underestimated/misrepresented by TS.

8.323 OBJ/112 etc. the Auldearn Residents Group argues that:

- TS gives priority to grade-separated junctions but the environmental impact of Nairn East junction is significant and a junction of this scale is not necessary at this location.
- the ES seeks to 'minimise the environmental effect on communities in the corridor', which does not mean shift the problem from one place to another but instead provide a proper engineering solution that makes it better for all.
- DMRB is a guideline and should not take priority over a national policy.
- DMRB states that local-specific considerations should be taken into account and the design should reflect these.

8.324 The Auldearn Residents Group argues that:

- traffic entering and exiting laybys would impede traffic on the dual carriageway.
- if this kind of basic layby is permitted then the provisions set out in DMRB for local, specific considerations ought to be re-examined to provide a better solution for the rural environment, that would result in better route selection and less land-take.

[The Reporters assume the layby reference to be referring to the proposed laybys on the east and west bound carriageways at approximate ch27800 and ch28000.]

-Community severance

8.325 OBJ/112 etc. The Auldearn Residents Group and OBJ/112 Mr and Mrs Farquhar argue that the existing A96 cut off the area north of Auldearn from the village itself. It contends that this area has become a community in itself, but that the proposed scheme would sever this community leaving a small group of houses on 'an island' between a four lane dual carriageway and a small, local distributor road.

8.326 OBJ/133 Mr Richard McCulloch argues that the proposed changes (assumed to be design changes during DMRB Stage 3) add significant length and change in levels, therefore adding to severance between Bogside of Brodie and Auldearn. He contends that the proposed changes would add significant length to this and the drop down into the valley would be extremely hazardous in winter months. He argues that there is insufficient information on the safety of this vertical alignment.

Business impacts

8.327 OBJ/120 Mr George Fraser argues that the proximity of the proposed scheme and associated residential amenity impacts would adversely affect his income from renting accommodation to tenants at Waterloo Cottages. Mr Fraser states that several tenants of Waterloo Cottages complex have already said they will leave once work commences on the road.

8.328 OBJ/131 Mr and Mrs Maxwell argue that the proposed scheme would adversely affect their self-catering accommodation business, their income and the value of their home. They contend that these matters have not been properly considered by TS and nor have they been properly mitigated.

8.329 OBJ/129 Mr and Mrs Bailey argue that the noise from the proposed scheme would adversely affect the conservatory at East Lodge Cottage, where Mrs Bailey conducts music teaching and rehearsals. They also argue it would affect the upstairs office from where they run a mentoring business, which uses internet video-conferencing and relies on suitable noise levels to communicate.

Human rights, blight and omissions from the draft CPO

8.330 OBJ/112 etc. The Auldearn Residents Group argues that the proposed scheme fails to consider the provisions of Article 1, Protocol 1 of the European Convention on Human Rights. It argues that the loss of amenity resulting from the proposed scheme is so great and the current mitigation proposal so minimal that it would affect their fundamental freedoms under the convention. OBJ/120 Mr George Fraser. OBJ/128 Mr and Mrs Urquhart and OBJ/129 Mr and Mrs Bailey reiterate this in their own objections.

8.331 OBJ/129 Mr and Mrs Bailey argue that a chartered surveyor suggests that their property has already devalued by 50% (EB4) and that country homes are very difficult to sell once they become urban.

8.332 OBJ/128 Mr and Mrs Urquhart contend that the marketability of their property at Mill of Boath has become blighted by the proposed scheme. They contend that TS argued the effects of the proposed scheme would not render their property uninhabitable. However, they argue that TS could not have made this judgement prior to the ES publication several months later. The objectors contend that the ES shows that the property would not be habitable for those who wish to live in a peaceful, rural community.

8.333 Mr and Mrs Urquhart and Mr and Mrs Bailey each argue that:

- their respective properties at Mill of Boath and East Lodge Cottage should be voluntarily or compulsorily purchased by TS.
- if each property was compulsorily purchased it would then allow for construction of a fuller earth bund for the Wendy Hoose, which, they argue, is tied to Boath House by a Section 75 legal agreement.

8.334 Mr and Mrs Bailey also sought the acquisition of East Lodge Cottage only in order to provide further mitigation for Mill of Boath and the Wendy Hoose.

8.335 Based on TS's letter of 22 June 2016 (EB21) Mr and Mrs Bailey and Mr and Mrs Urquhart argue that:

- TS concluded that their homes would remain habitable with the proposed scheme in place despite the ES having not been completed (at that time).
- no new entrance would need to be constructed for the Wendy Hoose as the current entrance could be joined to the track.

8.336 Mr and Mrs Bailey contend that TS did not deal with their request for acquisition of their property quickly and that this wasted time and provided little incentive for TS to do so.

Transport Scotland's Response

Environmental Impact Assessment

8.337 TS argues that:

- it worked to minimise the number of residential properties that would need to be acquired and the extent of land acquisition from domestic gardens of residential properties throughout DMRB Stages 2 and 3.
- in places where the proposed scheme passes close to existing property any requirement for environmental mitigation has been assessed and reported in the ES.
- mitigation proposals were developed based on the outcome of the EIA, in accordance with the requirements of DMRB, other relevant regulations and guidance, and based on the professional judgement of the specialists who carry out the EIA.
- where possible and reasonably practicable, potential adverse environmental impacts of the proposed scheme have been prevented through an iterative design process, rather than relying on additional abatement measures to mitigate the effects.
- where complete prevention of potential effects was not feasible, measures have been proposed to reduce potentially significant effects through abatement measures either at source, at the site (e.g. visual screen planting and landscaping), or at the receptor (e.g. design of culverts).

- whilst public feedback is taken into account throughout the development of the scheme design, TS do not generally carry out detailed consultation regarding proposed additional mitigation measures with individuals along the line of the route, in advance of the ES being published.

8.338 TS acknowledges that the proposed alignment is not favoured by the objectors. However, it argues that the EIA involved detailed assessments of the proposed scheme, describing the aspects of the environment likely to be significantly affected and the measures envisaged to prevent, reduce and where possible offset these significant adverse effect, as set out in the ES.

Proximity

8.339 TS confirms that it would not need to purchase any of the land owned by Waterloo Cottages for the proposed scheme. It also confirms that the proposed scheme would no longer be in a cutting as it passes south of Waterloo but would instead be on an embankment due to the redesign of the proposed Nairn East junction.

8.340 At Inquiry Session 11 TS disagreed that the proposed scheme was 26 metres from East Lodge Cottage. It argued that the southern edge of the proposed dual carriageway would be approximately 26 metres from the garden boundary of East Lodge Cottage and approximately 80 metres from the closest elevation of the house.

8.341 TS considers more detailed matters of proximity impact under headings such as noise and vibration, air quality and visual impacts below. It considers matters relating to route selection in Chapter 2: Matters of Principle.

Noise and vibration

-Noise assessment

8.342 TS states that:

- the purpose of the noise monitoring was to acquire an overview and understanding of the noise climate along the length of the proposed scheme, which was achieved through measurements taken at representative NSRs.
- baseline noise level measurements were not undertaken at each and every NSR.
- representative NSRs were chosen based on professional judgement and agreed with the Environmental Health Department of The Highland Council prior to going on site.
- in agreement with The Highland Council noise monitoring locations at East Lodge Cottage, Millhill and The Orchard were determined to provide satisfactory coverage for this locality.

8.343 With regard to the milking machine at Drumduan Farm TS argues that:

- following completion of the noise monitoring, the noise and weather data were carefully analysed to determine the robustness of the data and ensure that it was fit for purpose.
- this analysis showed no evidence of atypical noise events that would warrant additional baseline noise level measurements.
- during periods of unattended noise measurement, the noise monitoring team remained within the locality and, periodically, wrote on-site descriptions of the sources of noise contributing to the overall noise environment at noise monitoring locations to provide information regarding the measured noise levels.

- none of these on-site descriptions included audible milking machine noise that could have contributed to elevated background noise levels at noise monitoring locations.

8.344 TS argues that [ES Appendix A8.2 Table 47](#): Daily Summarised Noise Levels at East Lodge Cottage (CD006) shows that the noise measurements ($L_{A90,T}$) during the night time period (2300 to 0700) had the following characteristics:

- the noise levels vary between 31.1 dB to 39.6 dB, which is a good indication that the background noise level was not dominated by a single continuous noise source, such as a milking machine, during the measurement periods;
- provides a good indication that the background noise level is relatively quiet;
- the relationship between the $L_{Aeq,T}$, $L_{A10,T}$ and $L_{A90,T}$ is such that it provides further evidence that the measured noise levels were not dominated by a single continuous noise source; and,
- if this were the case the noise levels would have a more similar magnitude.

8.345 TS argues that Millhill ([ES Appendix 8.2 Table 45 – CD006](#)) has similar $L_{A90,T}$ night time noise levels (29.0 dB to 40.3 dB), and is a similar distance from the milking machine.

8.346 As such TS concludes that:

- upon review, it is content that the baseline data are robust and accurately represent the existing conditions.
- further noise level measurements would be very unlikely to result in conclusions different to those drawn from the existing measurements at East Lodge Cottage.

-Noise mitigation threshold

8.347 TS argues that:

- careful consideration has been given to where additional receptor-specific mitigation should be offered, and the form this mitigation should take based on noise mitigation criteria in the noise mitigation strategy ([ES paragraphs 8.2.24 to 8.2.34](#) - CD005)
- the noise mitigation criteria are based on guidance in the [DMRB HD 213/11](#) (CD049.19) and WHO ([CD090](#) and [CD091](#)) that is fundamentally based on health and wellbeing of all citizens regardless of where they reside.
- it also takes into consideration the conclusions of the DMRB Stage 2 Scheme Assessment Report.
- noise mitigation is considered where the significance of impact at a receptor is predicted to be:
 - Slight/Moderate adverse or worse, which for high noise sensitive receptors equates to at least a 1 dB noise level change in the short-term (the year of opening), and/or at least a 3 dB in the long-term (typically within 15 years of the scheme opening) and, in addition, the predicted ground floor façade noise level exceeds 59.5 dB $L_{A10,18h}$.
 - Slight/Moderate adverse or worse, in the long-term with a predicted noise level that exceeds 55 dB $L_{night,outside}$.

8.348 TS confirms that the absolute noise level threshold for noise mitigation is 59.5 dB $L_{A10,18h}$ not 68 dB, as suggested by the Auldearn Residents Group and by Mr and Mrs Bailey. It argues that the adopted thresholds (above) are not arbitrary but are based instead on WHO guidance (ES paragraphs 8.2.24 to 8.2.34 - CD005 - above). TS argues that the DMRB Stage 2 Report (CD011) noted that:

- potential mitigation, taking into account best practice, legislation and guidance, would be developed and refined during the DMRB Stage 3 Assessment; and,

- those sensitive receptors predicted to experience the greatest noise increases would be likely to be the initial focus for noise mitigation.

8.349 TS confirms that:

- the proposed scheme would result in some locations experiencing noise level increases exceeding 10 dB but that others would experience less than this and some would experience noise level reductions.
- a greater than 10 dB noise level change in both the short or long-term is deemed to be major adverse magnitude of noise impact as set out in [ES Tables 8.3 and 8.4](#) (CD005).

8.350 TS confirms that for mitigation to be provided both the predicted change in noise level and the predicted absolute noise level must exceed the thresholds in the strategy. It argues that:

- were it only to consider the predicted magnitude of change, there would be a requirement to mitigate just perceptible noise change (1 dB or below in the short-term and 3 dB or below in the long-term) with no regard to the resultant noise level.
- for example, in a very quiet rural area, the noise level may change from 35 dB $L_{A10,18h}$ to 38 dB $L_{A10,18h}$, which equates to a very quiet noise level increasing to a slightly less very quiet noise level.
- this shows how mitigation needs to be applied with caution, and why an absolute noise threshold is necessary to avoid recommending inappropriate/unnecessary noise mitigation measures.

-Property specific noise impacts and mitigation

8.351 TS confirms that the proposed scheme near Waterloo Cottages was proposed in a cutting at DMRB Stage 2, with its associated noise dampening characteristics. However, for the reasons stated above, TS remains convinced that appropriate noise monitoring locations were selected and the measurement, analysis and reporting of measured noise levels is robust, with appropriate mitigation provided where required.

8.352 TS agrees with Mr Davidson and Ms Philips that DMRB Stage 2 Scheme Assessment Report (CD011) identifies that NSRs which fall within the moderate or major adverse noise impact category would be 'considered as the priority' and with respect to the DMRB Stage 3 assessment, that 'the operational assessment would be modelled using computer based software modelling and appropriate noise mitigation measures identified where required'.

8.353 TS argues that:

- when used as an acoustic barrier, closed boarded timber fencing requires a minimum mass per unit area of 15kg per square metre.
- [ES Table 8.33](#) (CD005) summarises the proposed receptor-specific noise mitigation i.e. provision of acoustic barrier.
- it shows that these barriers are not of a uniform height of three metres but, instead, have an appropriate height such that, at NSRs for which this noise mitigation is required, exceedances of the noise mitigation criteria do not occur.
- the proposed scheme was designed using an iterative process, which allowed the incorporation of mitigation measures such as Lower Noise Road Surfacing (LNRS) and, where appropriate, earthworks (e.g. cuts, bunds and false crests) and noise barriers ([ES Paragraphs 8.6.10 to 8.6.14](#) - CD005).

- where appropriate, based on the adopted noise mitigation strategy (discussed above), the design of the proposed scheme is also supplemented with receptor-specific mitigation.
- [ES paragraphs 8.6.10 to 8.6.16](#) (CD005) summarise the proposed incorporated and receptor-specific noise mitigation for the proposed scheme as a whole.
- noise mitigation is targeted at NSRs that meet the noise mitigation criteria set out in ES paragraphs 8.2.24 to 8.2.34 (CD005).

8.354 TS agrees with OBJ/128 Mr and Mrs Urquhart and OBJ/129 Mr and Mrs Bailey that hedges (and also trees and shrubs), typically, have little effect in mitigating noise, unless it is very dense and many metres thick. Accordingly, it confirms that, any potential noise reduction from vegetation has not been included in the noise assessment.

8.355 TS confirms that detailed predictive noise modelling assessment was undertaken for all NSRs. It argues that this process has determined:

- the ‘least beneficial’ impacts at the dwelling i.e. where the greatest adverse noise level change would be, anywhere at the dwelling (using a number of receptor points within the computer based model are positioned 1 metre from the façade of the dwelling); and,
- the highest absolute noise level receptor point (the predicted noisiest receptor point), which may not be at the same location as the ‘least beneficial’ receptor point.

8.356 TS argues that the nearside carriageway of the proposed scheme would be approximately 250 metres from Millhill. It argues that predicted absolute noise levels, in the long term, would be below the 59.5 dB $L_{A10, 18hr}$ noise mitigation threshold at:

- Waterloo Cottages (NV221 to NV228) ([ES Appendix A8.3](#) – CD006),
- Millhill ([TS123.03 Table 1](#) – reproduced below)
- Mill of Boath (see below paragraphs 8.357 to 8.359)
- East Lodge Cottage (conservatory and garden) (see below paragraphs 8.360 to 8.368)
- Boath Steading lodges (NV190 and NV191) (ES Appendix A8.3 – CD006)
- Bogside of Brodie (NV185 and NV186) ([TS133.03 Tables 1 and 2](#) – reproduced below).

8.357 As such it proposes no additional noise mitigation.

TS123.03 Table 1: Noise Levels and Significance of Impacts at the Noisiest Millhill Receptor Point

Scenario	Noise Level $L_{A10,18h}$ dB	
Baseline Year: Do Minimum (2021) [DMB]	50.6	
Baseline Year: Do Something (2021) [DSB]	56.5	
Future Year: Do Minimum (2036) [DMF]	51.2	
Future Year: Do Something (2036) [DSF]	57.5	
Scenario	Noise Level difference (dB)	Significance of Impact
DMB vs DSB	5.9	Large/ Very Large Adverse
DMB vs DMF	0.6	Slight Adverse
DMB vs DSF	6.9	Moderate/ Large Adverse

TS133.03 Table 1: Predicted DMRB Noise Levels and Significance of Impacts at Bogside of Brodie Dwelling

Scenario	LA _{10,18hr} DMB Noise Level (dB)	LA _{10,18hr} Scenario Comparison Noise Level (dB)	Noise Level Difference (dB)	Significance of Impact
DMB vs DSB	43.9	51.5	7.6	Large/ Very Large Adverse
DMB vs DMF	45.7	46.4	0.7	Slight Adverse
DMB vs DSF	43.9	53.0	9.1	Moderate/ Large Adverse

TS133.03 Table 2: Absolute Noise Levels at the Noisiest Bogside of Brodie Receptor Point

Bogside of Brodie Dwelling Scenario	Noise Level LA _{10,18h} dB
Baseline Year: Do Minimum (2021) [DMB]	46.3
Baseline Year: Do Something (2021) [DSB]	53.1
Future Year: Do Minimum (2036) [DMF]	46.9
Future Year: Do Something (2036) [DSF]	54.4

The DMRB assessment requires the following scenarios to be compared:

Baseline Year Do-Minimum vs Baseline Do-Something (DMB vs DSB)

Baseline Year Do-Minimum vs Future Year Do-Minimum (DMB v DMF)

Baseline Year Do-Minimum vs Future Year Do Something (DMB v DSF)

Baseline Year is the year of opening.

Future Year is fifteen years after the Baseline Year.

8.358 Regarding the noise impact of the prevailing wind and proposed SuDS ponds at Mill of Boath, TS argues that:

- OBJ/128 Mr and Mrs Urquhart’s objection suggests a prevailing wind direction from the north, which contradicts the prevailing wind direction at Inverness Airport (approximately 15 kilometres west) which is south-west/west-southwest, as shown in TS128.05 Figure 1.
- TS128.05 Figure 1 shows how many hours per year the wind blows from the indicated direction.
- therefore, in reality, for the majority of the time, the noise levels at Mill of Boath would be lower than predicted.
- this is because the prediction methodology assumes that receptor points are downwind of the road traffic noise source, whilst Mill of Boath would be predominately upwind of it.

8.359 With regard to night-time noise at Mill of Boath, TS argues that:

- the highest predicted LA_{10,18h} noise level at the first floor is predicted to be 58.9 dB, which equates to an L_{night, outside} of 49.2 dB.
- this night time noise level is approximately 6 dB below the WHO interim target night noise guideline (CD091) value of 55 dB L_{night, outside}.

8.360 TS argues that:

- the 2.2 metre high earthwork bund between ch26830 and ch27020 is directly incorporated into the proposed scheme’s design and would provide noise mitigation sufficient that the predicted noise levels at Mill of Boath would be below the noise mitigation thresholds.
- the section of the existing land north of Mill of Boath that would accommodate a SuDS pond would also provide a level of additional noise mitigation, especially as the proposed dual carriageway would be in a minor cut into the existing landform.
- its analysis above shows that no additional receptor-specific noise mitigation would be necessary for Mill of Boath.

8.361 For East Lodge Cottage, TS acknowledges that the predicted long term least beneficial magnitude of change would be 18.2 dB, (Large/Very Large Adverse). However, it contends that the absolute noise levels would not exceed the respective mitigation thresholds.

8.362 Regarding East Lodge Cottage's conservatory, that is used as a music rehearsal space, TS argues that:

- predicted noise levels are external, rather than internal, $L_{A10,18h}$ noise levels.
- the long term predicted external free field noise level, 1 metre from the façade, at the conservatory is predicted to be approximately 55.0 dB $L_{A10,18h}$ and, assuming that:
 - the glazing of the conservatory is of a standard double glazing unit of 4/12/4 (4 millimetres glass/12 millimetres air gap/4 millimetres glass);
 - a room size of approximately 5 metres x 5 metres x 3.2 metres;
 - a reverberation time of 0.8 seconds; and,
 - the predicted sound reduction offered by the conservatory façade would be approximately 25 dB(A).
- this equates to an internal noise level of $L_{Aeq,16h}$ 28.0 dB (-25 dB façade reduction, and -2 dB to convert from $L_{A10,18h}$ to $L_{Aeq,16h}$) – assuming the windows are closed.
- if the windows were opened for ventilation the sound reduction would reduce by 15 dB(A), giving a predicted noise level of $L_{Aeq,16h}$ 38.0 dB (-15 dB façade reduction, and -2 dB to convert from $L_{A10,18h}$ to $L_{Aeq,16h}$).
- when compared with the typical noise levels in ES Table 8.1 (CD005), it can be seen that, with windows closed, the conservatory would be quieter than a typical bedroom and so is likely that it would be able to accommodate music rehearsals.
- with the windows open, the conservatory would be quieter than a quiet library.

8.363 With regards to resultant noise levels at East Lodge Cottage's first floor, TS argues that:

- the predicted highest free field road traffic noise level would be 56.4 dB $L_{A10,18h}$;
- therefore, assuming a 15 dB noise level reduction for a partially open window, would result in a predicted $L_{A10,18h}$ of 41.4 dB, equivalent to $L_{Aeq,16h}$ 39.4 dB; and,
- this indicates that for 90% of the time the sound pressure level would be at least 13.6 dB below the level at which communication becomes difficult.

8.364 With regards to night time noise levels at East Lodge Cottage, TS argues that:

- as stated in the ES, these levels have been determined using Method 3 of the [Transport Research Laboratory report: Converting the UK traffic noise index \$L_{A10,18h}\$ to EU noise indices for noise mapping](#) (CD085).
- the Method 3 conversion is as follows: $L_{night,outside} = 0.9 \times L_{A10,18h} - 3.77$ dB
- accordingly, the highest predicted $L_{night,outside}$ noise level 1 metre from the façade of the property would be 47.0 dB.
- assuming a 15 dB noise level reduction for a partially open window, this external noise level equates to a predicted $L_{night,inside}$ of 32 dB for the night time period at East Lodge Cottage.

8.365 TS argues that:

- the aforementioned conversion from $L_{A10,18h}$ to $L_{night,outside}$ can be applied to the least beneficial receptor $L_{A10,18h}$ noise levels presented in Appendix A8.3 (CD006) for each property to give the predicted night time noise levels at the least beneficial receptor (where least beneficial is based on magnitude of change).

- accordingly, at the least beneficial receptor at East Lodge Cottage, the predicted $L_{\text{night, outside}}$ is: $0.9 \times (58.3 - 2.5) - 3.77 = 46.5$ dB
- the predicted $L_{A10,18h}$ noise level is a façade noise level 1 metre from the façade, whereas the $L_{\text{night, outside}}$, is a free field noise level 1 metre from the façade
- as such, to convert a façade to a free field noise level, 2.5 dB should be subtracted from the façade noise level (DMRB HD213/11 Paragraph 3.27 – CD049.19).

8.366 TS confirms that all predicted noise levels in [ES Chapter 8](#) (CD005) relate to external rather than internal noise levels, and that a predicted noise level of $L_{A10,18h}$ 55 dB implies that the sound pressure level is below the level at which communication becomes difficult for 90% of the time.

8.367 Regarding East Lodge Cottage's garden, TS argues that [ES Figures 8.3 to 8.8 and 8.10 to 8.13](#) (sheet 14 of 18 in each case) (CD007) show the predicted noise level changes for each scenario comparisons in East Lodge Cottage's garden.

8.368 TS argues that its analysis above shows that no additional receptor-specific noise mitigation would be necessary for East Lodge Cottage. TS states that the 2.2 metre high earthwork bund between ch26830 and ch27020 is directly incorporated into the proposed scheme's design and would provide noise mitigation sufficient that the predicted noise levels at East Lodge Cottage would be below the noise mitigation thresholds.

Air quality

8.369 TS argues that:

- data capture is an important aspect of any air quality monitoring survey.
- monitoring results need to be based on sufficient data capture to ensure the conclusions drawn from the survey results are robust.
- in any monitoring survey, it is inevitable that data capture will not be 100% and as such, the survey is designed to include more locations than necessary to achieve the purpose of the survey.
- for the proposed scheme, the purpose of the survey was to establish the baseline pollutant concentration levels, to compare dispersion modelling results, as per the requirements of DEFRA Technical Guidance (TG(16)). [[CD074.02](#) and [CD074.03](#)]
- for the proposed scheme, a total of 28 monitoring sites were identified.
- the tube locations were primarily chosen to represent a variety of locations where ambient air quality is influenced by traffic emissions.
- locations were not chosen on the basis that they are closest to the proposed alignment of the dual carriageway.
- over the duration of the survey, data collection at a number of locations was affected by a number of factors; including weather events (high winds), tampering, loss (stolen), insect interference, and failure of laboratory tests.
- these factors are a known limitation of this type of data collection.
- where these events occur, the results are treated with great caution.
- in this case, any locations with data capture less than 90% were excluded from further use in the assessment.
- the remaining monitoring locations covered a variety of locations, where traffic emissions influence ambient air quality, and are considered to be representative of the exposure levels across the study area of the proposed scheme.

- therefore the survey met the requirements of the assessment and the survey was considered to be robust.
- with regard to the use of meteorological data in the detailed air quality modelling, the software calculates ambient concentrations calculations for all hours in the year.
- in each hour, the following meteorological conditions are considered - prevailing wind, wind speed and direction.
- [ES Appendix A7.1](#) (CD006) provides a figure representing the wind direction throughout the year.

8.370 Regarding East Lodge Cottage TS argues that:

- Without the proposed scheme (Do Minimum) NO₂ concentration at the property was predicted to be 4 µg/m³, (90% below the Air Quality Objective of 40 µg/m³).
- receptors experience reduced impacts the further away they are located from an emissions source, such as the A96.
- air pollution impacts will reduce to background concentrations after 200 metres.
- East Lodge Cottage is approximately 80 metres from the proposed dual carriageway alignment.
- With the proposed scheme (Do Something) NO₂ concentration was predicted to be 5 µg/m³, a change of approximately 1 µg/m³ (approximately 88% below the Air Quality Objective of 40 µg/m³), as set for the protection of human health.

Construction disruption

8.371 During the construction phase TS argues that:

- the ES identifies the need for a Construction Environmental Management Plan (CEMP) to be prepared by the contractor to mitigate any potential impacts associated with disruption and noise during construction.
- the CEMP would be prepared in consultation with the relevant regulatory authorities (including The Highland Council).
- it would set out the intended methods to manage potential environmental impacts from construction of the proposed scheme; including best practice measures to mitigate and manage construction noise impacts in compliance with requirements of BS 5228 Code of Practice for noise and vibration control of construction and open sites.
- these best practice measures would include restricted construction working hours which would be set in consultation with The Highland Council.
- ES mitigation items CP-R1 and CP-C1 (see [ES paragraphs 15.6.6 and 15.6.8](#)) would be required.
- Mitigation item CP-R1 states:

'During construction, there would be temporary disturbance on access to/from properties adjacent to the proposed Scheme. To mitigate this, access to/from properties shall be maintained throughout the construction period by means of signed diversions where necessary. The contractor shall be required to ensure the local community is aware of the estimated duration and locations of diversions before they are put in place (Mitigation Item CP-R1)'

Health

8.372 [TS's Hearing Statement Appendix 10](#) argues that:

- human health and wellbeing have formed part of the proposed scheme as detailed in [Scheme Design Development and Consideration of Alternatives Report Section 4.2](#) (TS209) and [STPR paragraph 4.22](#) (CD036).
- it has considered both the harmful health effects such as air pollution, noise and traffic accidents and beneficial effects such as promotion of active travel through NMU provision.
- for air quality all worst case receptor locations assessed in the vicinity of Auldearn predicted air pollutant concentrations with and without the proposed scheme that were below the respective air quality standards, as set out in [sections 4.4 and 5.6 of the Air Quality Report](#) (TS214).
- for noise it has followed [DMRB HD 213/11](#) (CD049.19), which was formulated taking into account noise related human health effects.
- human health forms an integral part of the EIA process.

Visual and landscape

8.373 Regarding landscape and visual effects, TS argues that:

- [ES Chapter 10](#) (CD005) contains the visual assessment linked with the assessment of landscape effects in [ES Chapter 9](#) (CD005).
- the landscape and visual assessment of the proposed scheme was undertaken with reference to the DMRB including [Interim Advice Note IAN135/10 Landscape and Visual Effects Assessment](#) (Highways Agency 2010), and the Guidelines for Landscape and Visual Impact Assessment 3rd Edition (Landscape Institute 2013) (CD050.03).
- ES paragraph 10.6.7 states, as per DMRB IAN 135/10 guidance that:

'Mitigation measures are taken into account for winter year of opening, when integrated landscape earthworks and other built screening elements, such as noise barriers and bunds, are in place, but before new planting has become established. The impacts of the proposed scheme are also assessed for the summer 15 years after opening when mitigation planting would be established. The former is intended to represent the 'maximum effect' scenario and the latter the 'least effect' scenario for permanent impacts'.

- ES Chapter 9 identifies the potential impacts on the Local Landscape Character Areas (LLCAs) including the effects on the Auldearn Forested Rolling Farmland LLCA, in which it considers the area the objectors are referring to is located.
- [ES Appendices A10.1 and A10.2](#) (CD006) provide detailed information on the application of the specific mitigation measures for built and outdoor receptors.
- [ES Figures 9.5r to 9.5t and ES Figures 9.6i to 9.6k](#) (CD007) show mitigation proposals in the vicinity of Auldearn within the LLCA.
- the ES acknowledges that a number of properties in the vicinity of Auldearn would experience adverse visual effects from the proposed scheme.
- the landscape and visual impact assessment takes into account the final design and elevation of the proposed scheme.
- landscape mitigation proposals have been developed to mitigate the potential landscape and visual effects arising from elements of the proposed scheme, whilst assisting integration with the local landscape character.

- mitigation planting within the LLCA is designed to reflect the existing forested landscape character, with coniferous and mixed woodland planting to the west to reflect and compensate for the lost woodland resource and mixed woodland to the east to link with existing estate woodland surrounding Boath House.
- hedgerows would follow footpath boundaries to strengthen the landscape qualities where field patterns have been truncated.
- ES Figure 9.5s and 9.6j (CD007) show landscape and ecological mitigation proposals, developed to mitigate the potential landscape and visual effects arising from elements of the proposed scheme, in the vicinity of Waterloo Cottages (Receptor 149), which includes mixed woodland planting to screen views from the properties.
- ES Figure 9.5t (CD007) shows mitigation proposals in the vicinity of Bogside of Brodie (Receptor 156); including mixed woodland planting to integrate the proposed underbridge (PS18 C1172 Underbridge) and local roads into the surroundings and to screen views from the property.
- the horizontal and vertical alignment of the proposed Auldearn – Station – Drum Road C1172 and the proposed Penick Road (U3164) are shown on [DMRB Stage 3 Scheme Assessment Report Figure 3.2p](#) (CD009).
- the ES acknowledges that the proposed scheme would result in a significant adverse visual effect on East Lodge Cottage (Receptor 159).
- [ES paragraph 10.7.78](#) (CD005) acknowledges that, East Lodge Cottage would be likely to incur ‘Substantial’ effects during the winter year of opening due to the close proximity to the proposed scheme and the introduction of SuDS close to the property.
- the mitigation planting proposals in the vicinity of East Lodge Cottage include the following:
 - hedgerow to assist with screening views of the dual carriageway and slip road from East Lodge Cottage, Mill of Boath and from Wendy Hoose located to the south of the SuDS.
 - hedgerow to screen SuDS from the dual carriageway.
 - mixed woodland to screen SuDS and traffic movement from East Lodge Cottage, Mill of Boath and from Wendy Hoose to the south of the dual carriageway.
 - riparian woodland adjacent to Auldearn Burn and SuDS to aid integration with surroundings and to provide habitat and promote biodiversity.
 - a combination of an approximate 2.2 metre high landscape earthworks and mixed visual screening provided by the proposed mitigation planting and the combination of the landscape earthworks, established hedgerow planting and mixed woodland would assist to provide screening of potential views to the proposed scheme from East Lodge Cottage.
- the proposed mixed woodland mixes would require the inclusion of both broad-leaved and coniferous woodland for visual screening purposes and would comprise plants which range in size from feathered trees to whips and transplants;
- this would aim to create multi-layered woodland with a balanced mix of native deciduous and coniferous trees, including native evergreen understorey.
- the balance between deciduous and evergreen species would be varied to achieve year-round screening and reflect existing woodland local to the various sections of the road.
- as with the coniferous woodland mix, the coniferous species within the mixed woodland should be dominated by the native species, such as Scots Pine, reflecting surrounding woodlands and providing a strong evergreen framework and a habitat for red squirrels.
- native shrub species shall also be included to provide understorey and edge planting.
- while the establishment of the mitigation planting would help to provide some screening for East Lodge Cottage and would reinforce the screening provided by existing mature

trees adjacent to the properties, residual effects would remain significant (Moderate/Substantial) in summer after 15 years, as the introduction of the proposed scheme would significantly alter the character of the views.

8.374 Regarding potential light pollution TS argues that:

- ES Chapter 10 (CD005) visual assessment of the proposed scheme includes consideration of the introduction of artificial lighting from road lighting and headlight glare.
- the ES acknowledges that the construction of the proposed scheme north of Auldearn would lead to impacts from the presence of vehicles travelling at night being introduced to the previously unlit rural areas.
- when assessing magnitude and sensitivity, the impact of road lighting and headlights have been taken into account so that the level of impact determined for each of the receptors affected encompasses all elements of the proposed scheme.
- proposed lighting and landscape mitigation have been designed to avoid or reduce adverse impacts where practicable.
- consideration has been given to light mitigation by installing passive lighting in the form of reflective road markings and signage wherever possible and using lighting controlled by motion sensors in NMU underpasses, to reduce the level of lighting introduced into rural locations as a result of the proposed scheme.
- the mainline dual carriageway would only be lit at the six grade-separated junctions.

SuDS ponds and flood risk along the U2997

-Flood risk on the U2997 at Waterloo

8.375 TS argues in TS112.03 that:

- the proposed scheme drainage system would convey water from the carriageway and verges of all new roads, via pipes or channels, to suitable outfall points;
- this would reduce the surface water catchment area naturally flowing over land towards Mr and Mrs Urquhart's property;
- under the preliminary drainage design, the outfalls proposed for draining the proposed dual carriageway in the vicinity of Waterloo, including Nairn East Junction, are into Auldearn Burn, with one being west of the existing A96 to the south of Auchnacloch, and one being close to Mill of Boath;
- ditches or drains would be provided to collect run-off from the proposed embankment and take it to a suitable outfall point;
- the preliminary design also includes SuDS ponds at the outfall points into Auldearn Burn, to attenuate and treat the surface water run-off from the road before discharge into the burn;
- this would have the function of reducing the rate at which surface water from the carriageway and verges outfalls into the Auldearn Burn to the pre-development (greenfield) discharge rate for the equivalent natural catchment;
- the ponds would be sized to provide the volume of storage required to attenuate the flows from the connected network for any flood event up to the 0.5% Annual Exceedance Probability (AEP) (i.e. a 200 year return period event) so that no more than the greenfield runoff rate is discharged;
- the design of the proposed scheme would therefore ensure that the risk of flooding, of the type described by Mr and Mrs Farquhar, would not be increased.

-Proposed SuDS ponds and flood risk at Mill of Boath/East Lodge Cottage

8.376 Regarding the positioning of the SuDS, TS argues that:

- the SuDS ponds have been positioned on the south side of the dual carriageway to avoid the flood risk area associated with the Auldearn Burn and minimise impacts on Bogside of Boath Farm;
- the area of land chosen for the pond between the U2997 road and the proposed dual carriageway is 'more badly severed from the remainder of Bogside of Boath Farm than would be the case for the alternative potential pond location' to the north of the dual carriageway;
- this area of land was therefore chosen as a more appropriate pond location to limit the extent of land acquired on the north side of the proposed dual carriageway;
- the appropriate mitigation has been incorporated into the proposed scheme design in the area surrounding this pond.

8.377 Regarding nuisance insects (midges and mosquitoes) TS argues that:

- by following best practice guidance in the choice of SuDS technique and design, a balanced pond habitat would be created to deter breeding of nuisance insects such as mosquitoes;
- such insects generally breed in shallow temporary, stagnant water features (such as water butts), where normal pond predators are absent;
- the SuDS systems for the proposed scheme have been designed to maximise, where feasible, their wildlife and wetland habitat value in line with the Highland wide Biodiversity Action Plan;
- the SuDS retention ponds (wet basins), as proposed, would contribute to:
 - the support and protection of natural local habitats and species;
 - the delivery of local biodiversity objectives;
 - habitat connectivity; and
 - the creation of diverse, self-sustaining and resilient ecosystems.
- these benefits would be achieved through a combination of good design and effective planting;
- the planting around the ponds would comprise deciduous woodland, including riparian types, under-planted with grass;
- aquatic plants would be planted within the ponds themselves;
- all planting would consist of native species of known wildlife value that are appropriate to the region and of local provenance where possible.

Local roads, access and community severance

-New field access points

8.378 TS argues that:

- wherever possible, new field accesses are provided directly into the relevant area of land;
- in some circumstances this is not possible and it is necessary to acquire land from one party in order to provide access to another party; and,
- there are no accesses to Bogside of Boath Farm being provided through Auchnacloch Farm.

-Nairn not properly served by the bypass scheme

8.379 TS argues that:

- during the DMRB Stage 2 the provision of grade separated junctions to serve Nairn was carefully considered;
- the existing A96 from the east and west provides the most suitable routes for traffic to enter and leave Nairn;
- the other routes heading south of Nairn such as the A939, B9090 and the B9091 are all less well suited to provide direct connection to the Nairn Bypass;
- additional junctions around Nairn are not proposed since the A96 dual carriageway has a strategic function and is not intended to act as a local distributor road around Nairn;
- the access route between the existing A96 and Grigorhill Industrial Estate is not changed by the proposed scheme, and any potential improvements to this route are considered to be outwith the scope of the proposed scheme;
- the proposed scheme includes a new link road between the existing A96 Delnies junction and the existing C1170 Moss-side Broadley Road/B9091 Balblair Road junction;
- this new link road would allow traffic to access Gordon's Sawmill from the proposed Nairn West Junction without the need to travel through Nairn;
- similarly, this road may potentially allow access to future housing areas to the south of Nairn, although the final access arrangements for such developments will be a matter for the developer(s) and The Highland Council.

-HGVs on U2997 Waterloo – Eastertown – Inshoch Road

8.380 TS argues that:

- turning heads for large vehicles have been incorporated into the proposed scheme designed, in accordance with Highland Council guidelines;
- [ES Figure 9.5s](#) shows turning heads to allow vehicles which visit East Lodge Cottage, Mill of Boath and Wendy Hoose to return, east, along the U2997 towards the Auldearn – Station – Drum Road (C1172);
- service vehicles will need to amend their routes to take account of the revised road layout.

- Nairn East junction design

8.381 TS assumes that Mr McCulloch is referring to page 7 of his objection. TS accepts that it is possible that drivers could experience a delay in negotiating the proposed roundabouts at the Nairn East grade-separated junction since it may be that particular routes travelling via the junction would experience an element of additional travel time. However, TS argues that this would be:

- dependent on the destination of travel;
- likely to be offset, to a certain extent, by the lower travel times provided by the proposed dual carriageway.

8.382 TS argues that:

- DMRB provides standards, advice notes and other documents relating to the design, assessment and operation of trunk roads in the UK;
- it is important for driver understanding and road safety that the standard of dual carriageway and junctions is consistent across the length of the proposed scheme;
- the proposed scheme forms part of the Scottish Government's A96 Dualling Programme;

- the A96 Dualling Programme is being promoted as a Category 7A all-purpose dual carriageway, as defined in [DMRB Volume 6, Section 1, Part 1, TD 9/93 Highway Link Design, Table 4](#) (CD049.07);
- this is the highest category of all-purpose road with grade separated junctions and a smooth flowing alignment;
- the existing A96 single carriageway serves strategic longer distance traffic as well as local traffic;
- the proposed scheme includes grade separated junctions at key points to provide connections between the strategic road network and the local road network;
- the existing A96 between Inverness and Hardmuir will generally remain as a local road to serve local traffic, maintain existing access to land and property and maintain public transport services to local communities.

8.383 TS argues that:

- lay-bys perform a different function to junctions and are important for a low number of drivers who need to stop during their journey;
- the location and layout of lay-bys for the scheme are in accordance with [DMRB Volume 6, Section 3, Part 3, TD 69/07 'The location and layout of lay-bys and rest areas'](#) (CD049.32);
- it is appropriate to provide lay-bys for road travellers while restricting the number of junctions with the local road network.

-Community severance

8.384 TS confirms that:

- [ES Chapter 15](#) (CD005) considers the potential impacts from the proposed scheme on access to properties and community facilities;
- [ES paragraph 15.5.45](#) (CD005) references the impacts at Waterloo regarding the stopping up of the public right of way (R1) and its use in accessing community facilities in Auldearn;
- [ES paragraph 15.5.21](#) (CD005) details the impacts of stopping up of the Waterloo – Eastertown – Inshoch Road (U2997) and restriction of current journeys to the west (to Nairn);
- [ES paragraph 15.5.46](#) (CD005) references the stopping up of the Waterloo – Eastertown – Inshoch Road (U2997) to access community facilities in Auldearn;
- [ES Table 15.24](#) (CD005) identifies the residual impacts of change in access for journeys to the west (to Nairn) as Moderate after implementation of mitigation;
- [ES Table 15.25](#) (CD005) details residual impacts of community severance at Waterloo;
- the significance of community severance for pedestrians is assessed as 'Moderate', for cyclists as 'Slight' and for vehicles as 'Slight';
- ES mitigation items CP-R1 and CP-C1 relate (see [ES paragraphs 15.6.6 and 15.6.8](#));
- mitigation item CP-R1 states:

'During construction, there would be temporary disturbance on access to/from properties adjacent to the proposed scheme. To mitigate this, access to/from properties shall be maintained throughout the construction period by means of signed diversions where necessary. The contractor shall be required to ensure the local community is aware of the estimated duration and locations of diversions before they are put in place (Mitigation Item CP-R1)'

- in relation to East Lodge Cottage and Mill of Boath, it argues that the assessment considered the potential impacts on the residential properties in relation to access changes or potential land take requirements;
- for both properties, the residual impact was assessed as Moderate, recognising the additional journey distances (by vehicle) for residents, due to the severance of the local road for vehicular traffic. Mitigation to ensure access during construction has been identified.

Business impacts

8.385 TS's response to proximity and residential amenity impacts are covered separately under the noise, air quality, health, construction and visual impact headings above.

8.386 TS confirms that the proposed scheme would not result in any direct land-take from any of the properties within OBJ/120 Mr George Fraser's ownership.

8.387 For Boath Steadings/Stables TS argues that:

- where possible and reasonably practicable, potential adverse environmental impacts of the proposed scheme have been prevented through an iterative design process but, where complete prevention of potential effects was not feasible, measures have been proposed to reduce potentially significant effects through abatement measures either at source or at the receptor;
- ES Chapter 15 (CD005) assessment concludes that the impacts at Boath Steading would be similar to those specified in the ES for Mill of Boath and East Lodge Cottage;
- ES paragraph 15.5.21 (CD005) details the impacts of stopping up of the U2997 and restriction of current journeys to the west (to Nairn);
- ES Table 15.24 (CD005) identifies the residual impacts of change in access for journeys to the west (to Nairn) as Moderate after implementation of mitigation;
- ES mitigation items CP-R1 and CP-C1 relate (see ES paragraphs 15.6.6 and 15.6.8);
- Mitigation item CP-R1 states:

'During construction, there would be temporary disturbance on access to/from properties adjacent to the proposed Scheme. To mitigate this, access to/from properties shall be maintained throughout the construction period by means of signed diversions where necessary. The contractor shall be required to ensure the local community is aware of the estimated duration and locations of diversions before they are put in place (Mitigation Item CP-R1)'

- with regard to concerns about the financial implications of the proposed scheme:
 - twelve months after the opening of a new road, those who have not otherwise been compensated and who consider that their property has reduced in value by virtue of the operation of the new or altered road may be entitled to claim for compensation in that regard within the terms of Part I of [the Land Compensation \(Scotland\) Act 1973](#) (CD086);
 - the valuation of any such compensation will be assessed by the Valuation Office Agency.

Human rights, blight and omissions from the draft CPO

8.388 TS argues that, although it does not propose to compulsorily acquire the objectors' land. It argues that the rules and procedures around compulsory purchase are still relevant

because these parties have made representations on the basis that the public works would impact their respective properties.

8.389 TS argues that [Planning Circular 6/2011: Compulsory Purchase Orders](#) (OBJ002- 3.16) gives some general guidance:

‘Compulsory purchase will not breach the European Convention on Human Rights where it is authorised by law, is proportionate and where it can be demonstrated to be in the public interest’.

‘This reinforces the requirement that the authority should use compulsory purchase only where it is a proportionate response in the circumstances and there is a strong enough case for this in the public interest. The authority should therefore properly assess the public benefit in what it proposes against the impact on the people likely to be affected. It should also properly assess any reasonable alternative ways that it might realise its aims.’

8.390 TS argues that these requirements of being authorised by law, proportionate and being in the public interest have been met:

- in relation to all of the draft roads orders for the proposed scheme; and,
- through the process that has been followed from publication of the STPR (2008) to publication of the ES and draft Orders in 2016.

8.391 It contends that further details of this process are provided in ES Chapters 1-3 (CD005).

8.392 TS argues it has undertaken a full assessment of the public benefit of the proposed scheme against the impact on the people likely to be affected, including in respect of those from whom it is not proposed to compulsorily acquire land.

8.393 TS confirms that the potential impacts of the proposed scheme on the Wendy Hoose have been considered as part of the EIA and appropriate mitigation incorporated into the proposed scheme design. It argues, therefore, that the land at East Lodge Cottage and Mill of Boath, would not be required for construction of the proposed scheme and therefore TS is unable to include it in the CPO.

8.394 TS argues that the information in [TS128.05 \(dated 23 November 2017 – TS Closing Statement Appendix C\)](#) should provide Mr and Mrs Urquhart with some reassurance that Mill of Boath would not become uninhabitable as a result of the proposed scheme.

8.395 TS advises that twelve months after the opening of a new road, those parties that consider their property has reduced in value by virtue of the operation of the proposed scheme, may be entitled to claim for compensation in that regard within the terms of Part I of the Land Compensation (Scotland) Act 1973. The valuation of any such compensation will be assessed by the Valuation Office Agency.

Findings of Fact

Environmental impact assessment

8.396 [ES Figures 9.5 and 9.6](#) (CD007) show a variety of embankments, cuttings, noise barriers and planting have been designed into the proposed scheme at various points along its proposed route. These respond to impacts identified through an iterative EIA process. We therefore find The Auldearn Residents Group's statement that 'no effort was made through DMRB stage 3 to provide appropriate mitigation for any residential properties along the proposed route' to be inaccurate.

8.397 Were it to proceed, the proposed scheme would transfer traffic and associated impacts from the existing A96 to the proposed scheme. The proposed scheme would acquire some agricultural land and could have some implications for tourism and the local economy, though the evidence that the latter two would be 'harmed' and the significance of this were it so, is more limited. We consider specific business impacts raised by the Auldearn Residents Group and individual members of it separately under the respective heading below.

8.398 Route selection is covered separately in Chapter 2: Matters of Principle. There we conclude that TS's route options assessment at DMRB Stage 2 considered a variety of factors, including environmental, social and economic impacts. That exercise found no single route option was without impact upon at least one of the criteria. It also found that no route option performed best for every one of the criteria. However, it concluded that the route of the existing A96 (either option 2F or an alternative thereto) was not better than the preferred route (Option 2E). We have found no reason to reach a different conclusion.

8.399 We note the objectors' specific contention that 'no mitigation' has been proposed for parts of the proposed scheme close to them. Above we have found that the proposed scheme has been designed iteratively, to incorporate abatement measures into the design such as cuttings, earth bunds and planting. Mitigation is also deployed based on the magnitude of impact identified in the ES. We consider these matters in detail under the relevant headings such as for noise and vibration, air quality and visual impacts in this chapter below.

8.400 Therefore, we accept that the proposed scheme could bring impacts that are not welcomed by the residents close to it. However, we find that such impacts would be apparent in some way for those close to any of the options. The evidence suggests that there is no better alternative route, even if one or other of the alternative routes tested at DMRB stage 2 would affect these particular objectors less.

Proximity

8.401 This matter appears to be one where Mr and Mrs Bailey sought assistance from their constituency MSP Fergus Ewing, who wrote to TS on Mr and Mrs Bailey's behalf.

8.402 [TS's response on 3 November 2017 \(TS129.04\)](#) explains that the distance between East Lodge Cottage and the proposed dual carriageway has not altered. It explains that the closest point of East Lodge Cottage is 74 metres from the proposed dual carriageway. It also confirms that the northernmost edge of the garden of East Lodge Cottage is 26 metres from the edge of the proposed dual carriageway.

8.403 We saw East Lodge Cottage and its garden, and also Mill of Boath on our site visit. [ES Figure 4.1j](#) (CD007) and [DMRB Stage 3 Scheme Assessment Report Figure 3.1s](#) (CD009) confirm TS's measurements of the proximity of the proposed scheme to East Lodge Cottage itself and the northernmost edge of its garden.

8.404 At Inquiry Sessions 1 and 11 it was clear that the rationale for the Auldearn Residents Group's objections relates to implications for Waterloo Cottages from route selection and the redesign of the proposed Nairn East junction. The amenity implications of the proposed Nairn East junction are considered under the respective headings below for noise, air quality and visual impacts amongst others. Consideration of the design changes at Nairn East junction and the rationale are considered under the heading Nairn East junction design (below).

8.405 We note Mr McCulloch's point that Bogside of Brodie consists of two separate buildings. This reflects our understanding from our site inspection and also the details shown on TS's aerial photography in [ES Figure 4.1k](#) (CD007). We note that in [TS133.02](#) Mr McCulloch refers to there being three residential properties. We accept that it is possible that one of the two residential buildings referenced in the Statement of Case and seen by us on our site inspection may be subdivided into two separate homes. The matter in question is whether the ES has appropriately considered the impacts of the proposed scheme upon these residential buildings.

8.406 In considering this matter we have focussed on the ES's consideration of visual, noise and air quality impacts since these have been directly referenced by Mr McCulloch (either directly or as part of the Auldearn Residents Group).

8.407 [ES Figure 10.3g](#) (CD007) shows that the whole area of Bogside of Brodie (including both buildings) has been covered as receptor 156. This is also referenced in ES [Appendix A10.1](#) (CD006). We note that other groups of properties have been collectively considered as a single receptor and this does not appear unusual or deficient. Similarly [ES Figure 8.1](#) (CD007) shows that the whole complex at Bogside of Brodie is within the Calculation Area and the Study Area for noise. [ES Appendix A8.3](#) (CD006) identified both buildings as receptor NV185 Bogside of Brodie and NV186 Bogside of Brodie Steadings. In both instances we are content that both buildings and all of the residential properties therein have been appropriately considered from the point of view of noise and visual impacts / effects from the proposed scheme.

8.408 For Air Quality [ES Figure 7.1](#) (CD007) shows that neither property at Bogside of Brodie formed part of the baseline air quality survey. However, we find no reason to conclude this as deficient. The baseline study provided a survey of present conditions and did not constitute the assessment of impacts from the proposed scheme. Subsequent [ES Figures 7.2, 7.3, 7.4 and 7.5](#) (CD007) each include a receptor point on the complex at Bogside of Brodie. [ES Appendix A7.4](#) (CD006) identifies AQ315 Bogside of Brodie. We take this to represent the complex at Bogside of Brodie. Were it not to do so we are content from the results shown there and the relative proximity of the home at Bogside of Brodie that these results provide a reasonable proxy for the other properties. As noted in our consideration of air quality (paragraphs 8.475 to 8.485 below) the predicted changes in nitrogen dioxide and particulates would result in levels that remain well below the respective air quality standards identified in [ES Table 7.3](#) (CD005).

8.409 As such we are content that the matters of concern to Mr McCulloch with regard to the residential properties at Bogside of Brodie has been considered appropriately in the ES.

Noise and vibration

-Noise assessment

8.410 TS undertook a pre-scheme baseline monitoring assessment of the proposed route to understand existing noise levels. It was not necessary for this exercise to carry out monitoring at every single NSR as the purpose of the monitoring was to validate the computer modelling that was used to calculate noise effects, rather than to obtain a comprehensive source of data from which to estimate likely noise effects. This explains why, for example, no monitoring took place at Waterloo Cottages.

8.411 The monitoring locations were agreed in advance with The Highland Council. The evidence does not suggest any objection from The Highland Council to the specific locations that were finally chosen or to the omission of others.

8.412 In the [Auldearn Residents Group Rebuttal Precognition](#) it is argued that [paragraph 5.3 bullet point 2 of Dr Palmer's Precognition](#) prioritises cost and minimum effort over 'doing the right thing' [assumed to mean providing mitigation sought by the Auldearn Residents Group]. However, we find that this misunderstands Dr Palmer's statement.

8.413 There is a distinction between the baseline monitoring assessment (above) and the subsequent noise impact assessment. For clarity TS did assess the predicted noise impacts with and without the proposed scheme for all NSRs within the defined area ([ES Figure 8.1](#) – CD007) along the proposed route. It is the noise impact assessment that forms the basis for considering the impacts of the proposed scheme and what, if any, noise mitigation ought to be deployed.

8.414 [ES Appendix A8.2](#) (CD006) does not suggest the presence of noise from the Drumduan Farm milking machine at multiple monitoring points. The initial noise monitoring data showed a noticeable degree of variability and did not indicate a continuous noise, such as would be expected from machinery such as a milking machine. Therefore this does not suggest that the results have been skewed to give an artificially high baseline.

8.415 The evidence does not suggest we should doubt the credibility of the baseline noise monitoring exercise or that of subsequent work. The evidence also does not suggest we should find the noise assessment to have been carried out incorrectly or to have reached inappropriate or erroneous conclusions.

-Noise mitigation threshold

8.416 The TS mitigation strategy ([ES paragraphs 8.2.24 to 8.2.34](#) – CD005) includes the requirement to consider both the predicted magnitude of noise level change and the predicted absolute noise level that would result from the proposed scheme.

8.417 In its outline statement the OBJ/112 etc. the Auldearn Residents Group contends that the noise threshold was set by 'a man who lives in Manchester who could not possibly have any idea what life in the rural highlands is like'. We disregard this statement, since it presumes that living in one place prevents an individual experiencing other places or from carrying out survey work and applying professional knowledge there.

8.418 We consider the noise mitigation strategy (ES paragraphs 8.2.24 to 8.2.34 – CD005) and noise mitigation thresholds in Chapter 2: Matters of Principle and Chapter 4: Smithton, Culloden, Allanfearn, Balloch and the Hedges. The evidence suggests that the noise mitigation strategy appropriately identifies noise mitigation thresholds for changes in noise levels and for absolute noise levels.

8.419 For noise level changes we find that [DMRB HD 213/11 paragraph 3.37](#) (CD049.19) identifies changes of 1 dB or less in the short-term and 3 dB or less in the long-term to be imperceptible. As such we find it to be reasonable that noise level changes above this threshold would be perceptible and that mitigation should be offered, provided that the appropriate absolute noise level threshold is also exceeded. We agree with TS that it would not be rational to mitigate only when the magnitude of noise level change exceeds perceptible levels. This is because such changes could result in areas remaining quiet albeit with a perceptible noise level change. Following queries by Mrs Bailey at Inquiry Session 1 this was confirmed by TS's noise expert.

8.420 The ES mitigation strategy uses a threshold of 59.5 dB $L_{A10, 18h}$. Use of the $L_{A10, 18h}$ metric is reasonable because it is used in the [CRTN](#) (CD084) to predict traffic noise. It covers an 18 hour period where as the L_{Aeq} defined by WHO (CD090) is for a 16 hour period and free field. Free field means that it does not account for the reflective impacts of buildings – known as the 'façade' effect. The $L_{A10, 18h}$ 59.5 dB includes façade measurements. We agree with TS that $L_{A10, 18h}$ and L_{Aeq} are therefore each different metrics for measuring absolute noise in the same way that centimetres and inches are different metrics for measuring distance.

8.421 Applying the appropriate conversion factor for L_{Aeq} to $L_{A10, 18h}$ and to account for façade noise means that $L_{A10, 18h}$ 59.5 dB and L_{Aeq} 55 dB are the same absolute noise level. Therefore we find that the absolute noise levels of the $L_{A10, 18h}$ 59.5 dB is based on the WHO guidance 1999 (CD090) level of 55 L_{Aeq} but is a different metric.

8.422 The [WHO guidance 1999](#) (CD090) quotes two thresholds for absolute noise levels. These are 50 dB L_{Aeq} and 55 dB L_{Aeq} . Based on [the National Noise Incidence Survey 2000- 02](#) (CD123) we found that the daytime noise levels already exceed the 50 dB L_{Aeq} in Scotland and that it was therefore reasonable for TS to adopt the higher 55 dB L_{Aeq} threshold (equivalent to $L_{A10, 18h}$ 59.5 dB). This is explained in TS closing statement paragraph 11.26, with which we concur.

8.423 At Inquiry Session 1 Mrs Bailey argued that the Highlands were different but TS's noise expert confirmed that there is only information for Scotland as a whole in the National Noise Incidence Survey 2000- 02 (CD123). At Inquiry Session 1 Mr McCulloch also asked how tranquillity had been considered. TS's noise expert explained that it had not and that the noise assessment had been carried out as set out in [ES Chapter 8](#) (CD005).

8.424 Following a question from the Reporters at Inquiry Session 1 TS's noise expert confirmed that similar thresholds had been used on other proposals such as the AWPR and the A9 dualling, he noted that the A9 was also in the Highlands.

8.425 We accept that there is no separate distinction made for the Highlands versus any other part of Scotland in the National Noise Incidence Survey 2000-02 (CD123). There is therefore no evidential basis for such a comparison. Our understanding of the Highland Council area is that it is vast and includes cities, towns, village and varied countryside from

mountains to coastal plains and forests. As such we find that there is not one single Highland experience of noise.

8.426 The Oxford English dictionary defines tranquillity as ‘the quality or state of being tranquil, calm’. This does not have any immediate reference to noise and there does not appear to be a specific EIA category for tranquillity. We assume that Mr McCulloch considers tranquil to mean peaceful and that he is drawing a comparison between the situation with and without the proposed scheme. The noise assessment conclusions with and without the proposed scheme have been outlined by TS in the ES and above. We consider these below. We walked the U2997 and C1172 north of Auldearn on our site inspection and the existing A96 was audible at mid-morning and was free flowing at that time. Though we have no means of quantifying the levels of traffic or traffic and other background noise, this did not suggest to us an area devoid of existing traffic noise or noise from other sources. It is therefore reasonable for TS to have considered noise but not tranquillity.

8.427 The [WHO Night Noise Guidelines \(NNG\) \(2009\) executive summary page 17 Table 3 \(CD091\)](#) lists two possible thresholds:

Night noise guideline (NNG) $L_{\text{night, outside}} = 40 \text{ dB}$

Interim target (IT) $L_{\text{night, outside}} = 55 \text{ dB}$

8.428 [ES paragraph 8.2.33](#) explains that TS has adopted a night-time noise mitigation threshold is 55 dB $L_{\text{night, outside}}$, above which mitigation would be considered. [DMRB HD 213/11 paragraph 2.29 \(CD049.19\)](#) gives scope for policymakers to adopt the Interim Target temporarily for exceptional local situations. It also sets no timescale to achieve these noise levels.

8.429 DMRB HD 213/11 paragraph 2.29 sentence one (CD049.19) advises that, for road projects that introduce a new noise source into an area, a key consideration is the change in the level of night time noise. This persuades us that the absolute noise threshold is not the only consideration.

8.430 TS has argued that the 40 dB $L_{\text{night, outside}}$ target is intended to protect the most vulnerable groups, everywhere at any given time from any risk of sleep disturbance and that this is a precautionary approach based on the lowest observable adverse effect level (LOAEL). The evidence does not suggest we should reach a different conclusion.

8.431 [DMRB HD213/11 Paragraph 3.38 \(CD049.19\)](#) urges caution in predicting night-time noise as traffic levels fall at night. It recommends therefore that only those NSRs predicted to be subject to an $L_{\text{night, outside}}$ exceeding of 55 dB should be considered. This corresponds with the interim target in the WHO Night Noise Guidelines (CD091) and that quoted in [ES paragraph 8.2.33 \(CD005\)](#).

8.432 Therefore we find that the thresholds in TS’s noise mitigation strategy ([ES paragraphs 8.2.24 to 8.2.34](#) – CD005) appropriately reflect the respective guidance in DMRB HD 213/11 paragraph 3.38 (CD049.19) and WHO guidance (CD090 and CD091).

8.433 The 68 dB threshold, as quoted by the Auldearn Residents Group and Mr and Mrs Bailey, does not correspond with any of the thresholds identified in ES noise mitigation strategy (ES paragraphs 8.2.24 to 8.2.34 (CD005)) using the $L_{A10, 18h}$ or $L_{\text{night, outside}}$ metrics

and nor does it correspond with any of the L_{Aeq} and $L_{night, outside}$ metrics in the WHO guidance (CD090 and CD091) and DMRB HD 213/11 (CD049.19).

-Property specific noise impacts and mitigation

8.434 [DMRB Stage 2 Scheme Assessment Section 3 Mainline Alignment for Option 2E \(Drawings B1557601-MLA-2500 to 2514\)](#) (CD012) [web link provides a list of links to document on TS website] and [DMRB Stage 3 Figures 3.1r and 3.1s](#) (CD009) confirm that the proposed scheme design changed from being in a cutting from Nairn East junction to the crossing of the U2997 (at DMRB stage 2) to being on an embankment at DMRB Stage 3. This matter is covered separately in paragraphs 8.501 to 8.506 (below). There we accept the rationale for this design change based on the explanation in [TS225](#). The changes fall within the remit of DMRB Stage 3 and do not fundamentally alter the route option selected in October 2014.

8.435 [ES Appendix A8.3](#) (CD006), [TS123.03 Table 1](#) and [TS133.03 Tables 1 and 2](#) confirm that properties of interest to OBJ/112 etc. The Auldearn Residents Group (collectively and individually), would experience predicted noise level increases. In some cases this would be in excess of 10 dB. However, the predicted absolute noise levels would remain below the respective absolute day and night time noise level thresholds in the ES noise mitigation strategy. We set out in Chapter 2: Matters of Principle, that an assessment of the significance of noise effects for each receptor is a separate process to the choice of a mitigation threshold. We conclude there that the noise assessment that forms part of the ES has not ignored the fact that some residents currently experience a quieter environment than others. On the contrary, it has factored this into its assessment of the significance of each predicted noise increase. However, we also find that, when determining the noise level at which additional mitigation should be provided, it is appropriate to apply (as TS has done) a consistent threshold for all properties. On that basis, we agree with TS that no additional mitigation (including close board timber fencing) would be needed for these properties besides that already planned and/or designed into the proposed scheme.

8.436 At Inquiry Session 1 Mr McCulloch queried the [final sentence of the Noise and Vibration Report paragraph 8.9.2 \(TS213\)](#), which appeared to contradict this. At the Inquiry Session Mr McCulloch appeared to recognise this as a typing error. TS's noise expert confirmed that this was so and that the word 'not' was missing. This is confirmed by [TS's closing statement paragraph 11.5](#). We acknowledge this typing error and that the correction would make the final sentence consistent with the evidence presented in TS133.03 Tables 1 and 2 and also the position stated there. Given Mr McCulloch's seeking of clarification and his previous receipt of TS133.03 we do not consider this typing error to have prejudiced him or his case.

8.437 It is clear that the objectors are, understandably, concerned that perceptible noise level changes are predicted but that noise mitigation does not appear, to them, to be proposed. Mrs Bailey reiterated these points at Inquiry Session 1. We find that the analysis above concludes no additional mitigation (our emphasis) to be necessary. This distinction is important because it recognises that both EIA and scheme design are iterative processes that anticipate and measure potential impacts, design-in measures to resolve these and then reassess the impact before settling on a proposed design.

8.438 [ES Figures 4.1j/4.1k, 9.5s/9.5t, 9.6j cross sections T-T and 9.6k cross-section U-U](#) (CD007) and [DMRB Stage 3 Figure 3.1r to t](#) (CD009) collectively show that the proposed

scheme would include designed-in mitigation such as cuttings, earth bunds etc. This is also described in [ES paragraphs 8.6.10 to 8.6.11](#) (CD005). For instance a 2.2 metre bund is proposed north of East Lodge Cottage that would contribute to limiting noise levels for that property and others nearby. Similarly the proposed SuDS pond embankment north of Mill of Boath and the slight cutting for the proposed scheme here, and the larger one to the east of Boath Steadings/Stables would also contribute to reducing noise impacts.

8.439 At Inquiry Session 11 Mrs Bailey argued that [ES Table 8.34](#) (CD005) shows a large/adverse impact for East Lodge Cottage, which TS acknowledged. However, this table shows that predicted absolute noise levels, with mitigation in place, would remain below the 59.5 dB LA10, 18h threshold.

8.440 TS's noise expert and also [TS closing statement paragraph 11.24](#) argue that ES Table 8.34 (CD005) presents the significance of impact for the sample receptors following mitigation. We agree that the title of ES Table 8.34 (CD005) makes clear that this is a comparison of predicted impacts with mitigation in place (including that designed into the proposed scheme) comparing the Do Minimum (without the proposed scheme) with the Do Something (with the proposed scheme) for the opening year (2021) for ground floor and first floor as each respective NSR. It shows that, for example, in the case of NV022 East Lodge Cottage noise levels with and without the proposed scheme would remain below the respective 59.5 dB LA10,18h threshold at ground floor and first floor.

8.441 At Inquiry Session 11 Mrs Bailey also argued that other properties, such as Skene Park, had been provided with mitigation ([document EB16](#)) but that her property had not.

8.442 TS's noise expert argued that, in some instances, mitigation would be deployed to resolve noise impacts at one property, but this same mitigation could also benefit other properties, that did not require mitigation. We find this to be a legitimate consequence that does not represent any form of special treatment.

8.443 TS's noise expert argued that the iterative design process meant that noise impacts had been identified and the need for mitigation, in the form of a close boarded fence, had been identified. However, he argued that, the visual impact assessment had concluded that an earth bund would be more appropriate. We find that this represents a broad consideration of ameliorating one set of impacts and then appraising the subsequent impact and effect of that mitigation to resolve both favourably.

8.444 TS closing statement paragraph 11.24 also recognises that the effects of traffic noise can vary along the length of the proposed scheme due to factors such as gradient and the landform between the proposed scheme and the NSR. We agree that these factors are logical considerations that could have some effect on the noise impact of the proposed scheme at different places along the proposed route. As such we agree with TS's closing statement paragraph 11.24 which recognises that, for the reasons above, there is not a direct correlation between distance from a proposed road and the need for mitigation.

8.445 Our role is to consider the noise impacts and effects of the proposed scheme and not those which may have resulted from earlier design iterations prior to TS having reached a conclusion on the design it wished to promote. ES paragraph 8.6.11 lists those earth bunds that were designed into the proposed scheme, including the 2.2 metre bunds north of Skene Park and East Lodge Cottage respectively. This does not suggest that other

properties have been considered differently in a manner that would prejudice the interests of East Lodge Cottage or its occupants.

8.446 It is therefore true to say that potential noise impacts have been considered in advance and mitigation has been designed into the proposed scheme to resolve this. As such the noise assessment concludes that no additional mitigation would be needed at the individual properties (NSRs) in question, beyond what has already been planned and covered by the noise assessment. This does not therefore suggest that TS has failed to properly mitigate the proposed scheme, rather that no further mitigation would be needed. It therefore does not suggest any requirement for a close boarded timber fence to be provided, though we accept that if one were to be put in place it may contribute to limiting the absolute noise levels experienced in this locality. The evidence does not suggest we should find differently to TS's conclusions in the ES.

8.447 The same evidence demonstrates that the noise impacts with open and closed windows would be suppressed, assuming the design of Mr and Mrs Bailey's conservatory is as per TS's assumptions (which the Baileys have not disputed). Similarly the evidence does not suggest that night-time noise levels would exceed the thresholds, even with the windows open for Mill of Boath or at East Lodge Cottage. We note that there also tends to be less traffic (and thus less traffic noise) at night.

8.448 At Inquiry Session 11 Mrs Bailey argued that TS should not have suggested that her conservatory would be 'quieter than a quiet library' in [TS129.03](#) when the predicted noise level change would be 18.2 dB. She also queried where such a conclusion had come from. TS's noise expert explained that this had been based on the noise assessment predictions at the façade and then assumptions made about the design of the conservatory outlined in TS129.03 page 3 (and covered above in paragraph 8.362) and the descriptions in [ES Table 8.1](#) (CD005). The evidence does not suggest that TS's conclusion are inaccurate.

8.449 TS's noise expert also argued that perceptions of what a quiet library sounds like could differ. At Inquiry Session 1 he explained that a quiet library is 40 dB, which reflects ES Table 8.1 (CD005). He stated that noise levels can be noticeable if one is not acclimatised. We agree that perceptions can vary and that, even without the benefit of noise monitoring equipment, we are satisfied that a quiet library is not necessarily a totally silent environment. We also agree that noise can be less noticeable if one is acclimatised to it. It is also possible that acclimatisation may not take a significant period of time, as suggested by TS.

8.450 [TS's closing statement paragraph 11.40](#) explains that noise modelling does not cover inside. It is also not clear exactly which side of the property Mr and Mrs Bailey's upstairs office is located at. However, assuming it is at the least beneficial first floor receptor point [ES Appendix A8.3](#) (CD006) suggests that outside, first floor noise levels would be 57.3 dB LA10, 18h in the baseline year and 58.3 dB LA10, 18h in the future year. In each case these remain below the respective threshold of 59.5 dB. Similarly, we recognise that noise within the property would be expected to be lower due to the noise suppressing effects of walls and windows (even when windows are open – as stated above). This does not suggest the need for further additional mitigation beyond that already identified and/or incorporated into the proposed scheme and the noise assessment.

8.451 [ES Appendix A8.2 Table 48](#) (CD006) comments boxes make clear that East Lodge Cottage already experiences traffic noise from existing A96 besides localised animal, vegetation and other residential noise.

8.452 TS's noise expert acknowledges that there would be a predicted change of 18.2 dB at the least beneficial receptor. He explained that this receptor was located at the centre of the north façade of East Lodge Cottage. He argues that, at present the building itself screens this façade from the noise of the existing A96. He argued that the south facing façade (which faces the existing A96) experiences absolute noise levels of approximately 50 dB $L_{A10, 18h}$ compared with the north façade, which is predicted to experience a maximum of 57 dB $L_{A10, 18h}$ with the proposed scheme in place. He therefore argues there to be a difference of 7 dB between the proposed scheme going ahead and not doing so.

8.453 This comparison appears to compare the façade facing the existing A96 (south) without the proposed scheme and the façade facing the proposed scheme (north) with the proposed scheme in place. We do not dispute that the difference may be 7 dB but we accept Mrs Bailey's contention that her garden and amenity is currently based on the north side of the property. However, this does not support Mrs Bailey's argument that loss of amenity has not been considered. We find that the detailed noise assessment work presented in evidence and discussed at length during Inquiry Session 11 is testament to matters of residential amenity having formed part of the iterative design process for the proposed scheme.

8.454 At Inquiry Session 11 Mrs Bailey argued that East Lodge Cottage would be 26 metres from the proposed scheme and would experience noise four times greater than at present. In paragraph 8.402 (above) we conclude that the nearest part of East Lodge Cottage's garden is approximately 26 metres from the edge of the southern carriageway of the proposed scheme. We also found that the nearest part of East Lodge Cottage would be almost 80 metres from the same place.

8.455 We note that the decibel scale is logarithmic. Mrs Bailey's contention of a fourfold increase in noise levels at East Lodge Cottage appears to recognise that a 10 dB increase would be a doubling of perceived noise levels and so a further 8 dB would be almost double again. Whilst an increase in perceived noise levels of that magnitude could be almost equivalent to a fourfold noise level increase, the noise level change is not the sole factor when considering noise impacts and noise mitigation for residential properties. We also recognise that the provision of mitigation is based on the impact upon residential properties rather than gardens.

8.456 ES Figures [8.10n](#) and [8.12n](#) (CD007) compare ground floor noise level changes for the Do Minimum Baseline (year of opening) with the Do Something Baseline year and future year respectively (with mitigation). These two ES Figures show an increase of between 5 dB and 10 dB for much of the area covering Mr and Mrs Bailey's garden. Each also shows an increase of 10 dB or more at the periphery of the garden. ES Figures 8.10n and 8.12n (CD007) also suggest that the predicted magnitude of noise level change at East Lodge Cottage would be higher than for much of the garden. It is plausible that some of this could be attributable to façade reflecting from this elevation (north) that would face the proposed scheme.

8.457 This suggests a perceptible change in noise levels in the garden. However, we note that the absolute noise levels in ES Appendix A8.3 (CD006) for East Lodge Cottage would remain below the 59.5 dB $L_{A10, 18h}$ threshold in both the opening year without the proposed scheme and the future year with the proposed scheme. We also note that much of the garden is beyond one metre from the property façade and so 2.5 dB would need to be subtracted to avoid counting the façade effects that are presented in ES Appendix A8.3 (CD006).

8.458 Whilst this suggests that noise levels in the garden of East Lodge Cottage are predicted to increase by levels that would be perceptible in the short and long-term, the evidence does not indicate that it would exceed levels similar to 59.5 dB $L_{A10, 18h}$. Similarly, this does not suggest that amenity would be affected in a manner that would require modification to the draft Orders or that would justify recommending that Scottish Ministers refuse to confirm them.

8.459 [ES paragraph 8.1.7](#) (CD005) recognises the importance of screening/barriers and the wind strength and direction in influencing noise. This confirms OBJ/128 Mr and Mrs Urquhart and OBJ/129 Mr and Mrs Bailey contention that wind direction can influence noise levels experienced at receptors.

8.460 Mr and Mrs Bailey argue that it is possible to hear the existing A96 more when the wind is blowing from the south. The evidence does not refute this and we heard traffic on the existing A96 on our site inspection when in the vicinity of East Lodge Cottage and Mill of Boath on the road to the north of those properties. However, we had no means of identifying wind direction or noise levels. The existing A96 would see traffic levels fall if the proposed scheme were to proceed ([ES Figures 2.1 and 2.2](#) – CD007). This suggests that such experiences of traffic noise from the existing A96 would likely diminish.

8.461 ES Appendix A8.3 (CD006) contains the predicted absolute noise levels with the proposed scheme in place for Mill of Boath and for East Lodge Cottage. [TS closing statement paragraph 11.18](#) also confirms that, as per [CRTN](#) (CD084), all receptors are assumed to be downwind of the noise source. Therefore the data in ES Appendix A8.3 (CD006) assumes a worst case scenario since not all receptors would be downwind of the respective noise source(s).

8.462 [TS128.05 Figure 1](#) [TS Closing Statement Appendix C] and document [EB37](#) each contain different but relatively similar wind rose diagrams. The evidence does not suggest we should doubt the accuracy of either. Both confirm that the prevailing wind blows from and not to (our emphasis) the southwest or west-southwest.

8.463 Document EB37 superimposes its wind rose on top of ES Figure 9.5s (CD007). However, we find it more helpful to use [ES Figure 9.5t](#) (CD007) since this covers Mill of Boath, East Lodge Cottage and areas either side. Together these confirm TS's assertion in TS128.05 that Mill of Boath and East Lodge Cottage would be upwind, rather than downwind, of the proposed scheme, based on the prevailing wind direction. This further confirms TS's assertion in TS128.05 that both properties would generally experience lower noise levels than predicted.

8.464 Therefore, this suggests that the prevailing wind would have a positive rather than negative effect on noise impacts at Mill of Boath and East Lodge Cottage. Even were the wind from the opposite direction (i.e. originating at the proposed scheme and blowing south

or south west) the proposed 2.2 metre high embankment (approximate ch26830 to ch27020) would intercept that wind direction angle. ES Appendix A8.3 does not suggest there would be a need for additional mitigation besides that already designed into the proposed scheme and covered by the noise assessment since the predicted absolute noise levels with the proposed scheme in place (and assuming that properties would be down-wind of the noise source) would remain below the 59.5 dB LA10, 18h noise mitigation threshold.

8.465 Though not a matter for this inquiry TS has identified in [ES paragraph 8.5.44](#) (CD005) those properties that would qualify for insulation/sound proofing in accordance with the Noise Insulation (Scotland) Regulations 1975. This list does not include East Lodge Cottage or any of the other properties that have been identified as being of interest (residential or otherwise) to the membership of the Auldearn Residents Group.

8.466 At Inquiry Session 11 Mrs Bailey contended that the anticipated noise impacts meant that TS's position as promoter was immoral. It is not our role to consider the morality of the promoter's position since judgement of such would vary dependent on an individual's attitude to such matters. However, the evidence above does not suggest that additional mitigation would be necessary, beyond that already proposed and included in the noise assessment. This does not suggest there to be any disconnect between the ES and proposed mitigation.

8.467 We note that Mr and Mrs Bailey (and indeed other members of the Auldearn Residents Group) could make a claim for compensation under part 1 of the [Land Compensation \(Scotland\) Act 1973](#) on the basis of noise. This would be a matter for them and would be based on the District Valuer's assessment of any claim. TS's compensation expert explained that if parties disagreed with the verdict of the District Valuer they could appeal to the Land Tribunals Service. Compensation and land tribunals are not matters for this inquiry.

WHO Noise Guidelines 2018

8.468 Immediately before the inquiry began at the end of October 2018 the [WHO published new guidance on noise levels \(CD140\)](#). This new guidance was presented by TS to the inquiry along with a precognition.

8.469 At Inquiry Session 1 the Auldearn Residents Group, Mrs Bailey and Mr McCulloch questioned the timing of the submission. TS's noise expert confirmed that the document was published without any prior knowledge of Jacobs, TS or the Institute for Acoustics. He confirms that no indication had been given of likely content or any of the recommendations. As such he had become aware of it a week prior to the inquiry commencing. Based on the timing of the inquiry and the publication of the new WHO guidelines, it would have been difficult for TS to have done anything more than provide the supplementary precognition. As such we accept this evidence. At Inquiry Session 1 (and all subsequent inquiry sessions) we invited participants to consider this during the inquiry and to provide any written comments alongside closing statements if they wished. Given the circumstances we consider this to be the most reasonable course of action and that it would not prejudice their ability to raise these matters.

8.470 During Inquiry Session 1 (where the Auldearn Residents Group, Mr and Mrs Bailey and Mr McCulloch were present) TS explained what it considered the WHO

Guidelines 2018 (CD140) to mean based on that document's own summary and also how to convert between the metrics used for the ES ($L_{A10, 18hr}$ and $L_{night, outside}$) to those referenced in the WHO Guidelines 2018 (CD140) L_{den} .

8.471 In its Closing Statement The Auldearn Residents Group disagrees with TS that a detailed review would be necessary before adopting the recommendations in the WHO Guidelines 2018 (CD140). It argues that:

- WHO gives a 'strong recommendation' that should be given 'prompt attention' and it argues that 'no forward-looking government would deny the benefit to its citizens'. [The Reporters assume the reference to 'benefit' to be the Auldearn Residents Group support for the provisions, including thresholds, identified in the WHO Guidelines 2018 (CD140).]
- it is probable that later phases of the A96 dualling project would be subject to the recommendations in the WHO guidelines 2018 but that the proposed scheme would not;
- the year for measuring environmental effects for the first section of the dualling programme (the proposed scheme) is 2036 and so it seems unambitious not to adopt updated noise levels now for a project with target dates so far in the future, particularly when work has not yet begun and the design has not yet been finalised;
- there is still an opportunity to make changes that would be to the benefit of the affected residents who would otherwise have to suffer the environmental effects for the rest of their lives;
- when new information is available, presumably based on years of learned research by appropriate professionals, particularly in the field of human health, it should be adopted as quickly as possible for the benefit of all;
- TS appears to resist adoption of the new WHO recommendations for the A96 project without reasoned debate;
- members of the public should be able to expect government agencies to act in the best interests of the public they serve, hence TS has a duty to direct an evaluation of the new recommendations as a matter of urgency, rather than looking for excuses for doing nothing;
- the new WHO recommendations are applicable to several different aspects of transport and other technologies, but does not accept that, the fact that the recommendations are wide-ranging is a reason for delaying adoption and implementation in a certain area, particularly when a scheme is still to be approved by ministers;
- TS is 'blatantly disregarding' the long term benefits that the WHO recommendations would have on the health and well-being of affected citizens and public opinion on this matter will not allow the government to ignore this issue.

8.472 In his closing statement Mr McCulloch argues that no evidence or comfort was provided by TS to indicate that the proposed noise levels could be maintained within these thresholds [assumed to be the levels within the WHO Guidelines 2018] or indeed the number of households that would experience noise levels above this threshold.

8.473 In its closing statement, TS makes clear its view that the WHO Guidelines 2018 have been published but have not yet been adopted in Scotland. We agree that this is the case and it does not appear to be disputed by the objectors. This being so, we accept that the adopted guidance available to TS when carrying out the noise assessment and also now (at the time of writing this report) is the [WHO 1999 guidance](#) (CD090) and the [WHO Night Noise Guidelines for Europe 2009](#) (CD091).

8.474 In our consideration of this issue in Chapter 2: Matters of Principle we find that the publication of the 2018 guidelines does not undermine the noise assessment process or the

adopted mitigation strategy. We conclude that whether, and, if so, in what form, the 2018 guidelines are adopted into legislation or policy at some future point in time is a matter for separate consideration.

Air quality

8.475 The baseline monitoring exercise used information from monitoring stations to understand the current situation. A separate process used a model to predict future impacts under the Do Minimum (without the proposed scheme) and Do Something (with the proposed scheme) scenarios. We therefore agree with [TS closing statement paragraph 14.21](#) because the baseline monitoring exercise and the subsequent air quality assessment were different. Therefore impacts on the baseline monitoring apparatus had no bearing on the conclusions of the assessment since it was an entirely different exercise.

8.476 The evidence suggests that air quality monitoring surveys, including the one carried out for the proposed scheme, include sufficient monitoring to overcome the loss of data from damaged equipment, as well as other reasons. We also note that locations where data capture is less than 90% were excluded. This suggests that a degree of risk is planned into such exercises and that the loss of monitoring equipment identified by the Auldearn Residents Group has not affected the outcome of the baseline assessment.

8.477 [The Report on Air Quality paragraph 5.5.3](#) (TS214) explains the purpose of the baseline monitoring. Given its purpose it would not seem odd for monitoring to be carried out at selective locations. Following a Reporter question at Inquiry Session 11 on whether past monitoring is carried out; TS's air quality expert confirmed that the model it used is accepted as a 'state of the art model'. She argued that post and pre-assessment work often requires several years of data to account for meteorological conditions and to identify any trend. The evidence does not suggest we should doubt the appropriateness of the modelling exercise.

8.478 Wind direction could affect the level of air pollution experienced by some properties. At Inquiry Session 11 TS's air quality expert confirmed that:

- modelling had taken into account the volume, speed and vehicle mix of traffic;
- this was supplemented by an emissions dispersion model which considered matters such as wind speed as well as the contribution of road transport and other factors to determine PM and NO_x concentrations by taking account of atmospheric conditions; and,
- both the Do Minimum and Do Something scenarios used the same methodology but different traffic flows.

8.479 [ES Appendix A7.1 Section 3 and Diagram 1](#) (CD006) confirms the assumptions made for the prevailing wind, wind speed and wind direction. We note that this diagram differs slightly but does not refute the information in [EB37](#) or [TS128.05 Figure 1](#) [TS Closing Statement Appendix C]. As such the assessment has not failed to consider the localised impact of wind direction at different times of year.

8.480 The Auldearn Residents Group disputes that changing agricultural land to a road would not have adverse air quality impacts. We accept that such a change of land use may change the concentration of air pollutants in that area. However, this does not automatically mean that such a change would result in those concentrations exceeding the national air quality standards for the respective pollutants.

8.481 At Inquiry Session 11 Mrs Bailey was concerned about the impact of the proposed scheme on her organic vegetables. She cited the example of an organic farm near the AWPR that lost its licence due to its proximity to that road. She argued that TS did not know what the impact would be. However, TS's air quality expert argued that TS knows the relative impacts before the Do Minimum and after the Do Something scenarios. She argued that:

- NO₂ concentrations at Auldearn would be around 10% of the national standards and that even if PM₁₀ and PM_{2.5} concentrations were to double these would still remain below the national standards.
- there are a low number of potential sources since this locality does not contain a dense network of industry, housing and roads.
- locations close to busier roads/sections of road are not predicted to experience significant problems associated with air quality (e.g. receptor AQ009).

8.482 [ES Appendix A7.4](#) (CD006) and [ES Figures 7.4](#) (CD007) show that properties north of Auldearn (the north and south of the proposed scheme) would experience some increase in concentrations of NO₂, PM₁₀ and PM_{2.5}. However, the magnitude of change would be limited and these concentrations would not exceed the national air quality standards set out in [ES Table 7.3](#) (CD005) for properties of interest to the Auldearn Residents Group, including East Lodge Cottage.

8.483 At Inquiry Session 11 TS's air quality expert explained that the Scottish Air Quality Objectives are set at very high standards that are above those of other countries such as England.

8.484 It is not possible for us to corroborate whether an unnamed farm close to the AWPR lost its organic vegetable licence or, if it did so, the circumstances which brought this about. The evidence does not suggest that we should find that those members of the Auldearn Residents Group with organic vegetable gardens would no longer be able to grow organic produce as a result of the proposed scheme.

8.485 The evidence does not, therefore, suggest that the air quality assessment has been carried out incorrectly, used erroneous data or reached unfounded conclusions. This evidence does not suggest the air pollution impacts to be inaccurately identified. The factors above suggest that predicted air quality changes from the proposed scheme would not reach levels that are considered to be detrimental to human health.

Construction disruption

8.486 The construction phase would be likely to bring about some disruption for a temporary period of time.

8.487 [ES Table 20.1](#) (CD005) mitigation item GR1 requires the contractor to prepare a CEMP, whose standards would be agreed with The Highland Council. The CEMP would form part of the construction contract, binding the contractor to work to those standards. It is not unreasonable for TS to identify potential disruption in advance and to then introduce a binding mechanism to ensure that construction works disruption is minimised to within the appropriate standards.

8.488 [ES Table 15.24](#) (CD005) includes mitigation item CP-R1 for Mill of Boath and East Lodge Cottage. It does not do so for Boath Steadings/Boath Mill. [ES Figure 4.1j](#) (CD007)

suggests that the proposed scheme would not affect access to Boath Steadings/Stables on the C1172 from Auldearn via the existing A96/C1172 junction.

8.489 This should bring some reassurance to Mr and Mrs Maxwell during what would be a temporary period of disruption.

Health

8.490 We agree that the identification of environmental effects in the EIA process is designed to help understand and address matters of human health, amongst other things.

8.491 [ES paragraph 15.3.67](#) (CD005) reiterates a commitment from the A96 dualling SEA and confirms that deliberate effort has been made to design and align the proposed scheme to avoid, as much as possible, residential properties. The evidence for this locality (as considered above) does not suggest that the proposed scheme would lead to air quality exceeding national standards or that noise levels would exceed those that require additional mitigation beyond what is already proposed.

8.492 The Lancet article identified by the objectors was not provided. The evidence before us does not suggest we should dispute the possibility of links between neurodegenerative illnesses such as dementia and the proximity to major roads. However, the evidence does show that TS has made reasonable efforts to mitigate, where necessary noise, air quality and other impacts and effects of the proposed scheme.

8.493 The evidence before us does not provide compelling reasons to recommend that Scottish Ministers should modify the draft Orders, and if they were to do so what modification should be made. Similarly the evidence does not suggest that Scottish Ministers should refuse to confirm the draft Orders. Scottish Ministers may wish to seek further medical and/or legal advice on this matter.

8.494 At Inquiry Session 1 Mrs Bailey questioned the role public health within the consideration of public interest. This formed part of the noise discussion. We note [TS closing statement paragraph 11.6](#) regarding the noise assessment consideration of the impacts of noise on human health, including annoyance and sleep disturbance. This reflects our understanding of the current WHO guidelines ([CD090](#) and [CD091](#)). Noise is not the only factor to influence public health and the ES covers a variety of matters that could also be considered to affect this such as air quality and impacts on the water environment for example.

8.495 These factors have been considered as part of the scheme design and therefore have influenced conclusions about the public interest of the proposed scheme. The evidence does not suggest that public health would be compromised as a result of the proposed scheme or that matters of public health would justify recommending that Scottish Ministers modify the draft Orders or refuse to confirm them. Scottish Ministers may wish to seek further medical and/or legal advice on this matter.

Visual and landscape

8.496 ES [Chapters 9](#) and [10](#) (CD005) show that the LVIA has considered the impacts of the proposed scheme as designed, including matters of light pollution. This appears to have followed the appropriate guidance to identify landscape character and assess impacts

upon it and upon views to establish visual effects at individual receptors. The fact that it concludes there would be residual effects does not constitute a failure to consider them.

8.497 [ES Appendix A10.1](#) (CD006) and [Figure 10.3g](#) (CD007) show the predicted visual effects at winter year of opening and summer 15 years later for receptors (individual and groups of properties) north of Auldearn. Many of these are of interest to the Auldearn Residents Group collectively and individually. We have summarised these predicted visual effects reported below:

Receptor	Predicted visual effects year of opening	Predicted visual effects 15 years after opening
Receptor 149 Waterloo Cottages	Substantial	Moderate/Substantial
Receptor 150 Drumduan Mill	Substantial	Moderate/Substantial
Receptor 151 Millhill	Substantial	Moderate/Substantial
Receptor 156 Bogside of Brodie	Moderate/Substantial	Moderate
Receptor 158 Wendy House	Moderate/Substantial	Moderate
Receptor 159 East Lodge Cottage/Mill of Boath	Substantial	Moderate/Substantial
Receptor 160 Boath Steading	Slight/Moderate	Slight

8.498 This information confirms that the visual effects at East Lodge Cottage have been considered since it forms a group of two properties identified as receptor 159. It also confirms that the proposed mitigation planting would contribute to diminishing the visual effects of the proposed scheme in all instances after 15 years compared with the year of opening.

8.499 Mr and Mrs Bailey are correct that the information above compares winter year of opening with summer 15 years later and does not compare two winter time periods. [TS212 paragraph 6.3.3](#) confirms that ES Figure 10.3 (CD007) provides a sense of the visual effects when mitigation is least established (winter year of opening) and compares this with the effects when the mitigation is established (summer 15 years after opening). This provides an understanding of the full benefits that the proposed mitigation would bring.

8.500 The evidence does not suggest we should find the assessment to have been deficient, incorrectly carried out or to have reached erroneous conclusions.

-Waterloo Cottages, Millhill and Drumduan Farm

8.501 The objectors are correct that:

- the proposed Nairn East junction design changed after DMRB Stage 2 route selection and so is no longer proposed to pass south of Waterloo Cottages in a cutting.
- the proposed scheme would have more significant visual effects at Waterloo Cottages compared with the original design as shown by comparing Document [EB018/DMRB Stage 2 Figure 10.21o](#) (CD013) with ES Figure 10.3g (CD007).
- We also note OBJ/123 Mr Malcolm S Davidson and Ms Jennifer M Philips point that Millhill contains two dwellings. ES Figure 10.3g (CD007) shows that receptor 151 covers a group of buildings, which we saw on our site inspection.

8.502 [The Nairn East Design Development Report](#) (TS225) explains that the junction was reconfigured in response to a series of issues, including flood risk, which made the previous design from DMRB Stage impractical. Our role, in this instance, is to consider the visual effects of the proposed scheme that is before us. It is not to consider the implications of

what may previously have formed a provisional design for route consideration, since that does not form the proposed scheme.

8.503 [ES Figures 9.5r, 9.6j cross section T-T and 9.7o view point 11](#) (CD007) show the proposed landscape and ecological mitigation near to Waterloo Cottages and for Mill Hill and Drumduan Mill. All three show the proposed mixed woodland on the north side of the east bound entry slip road and proposed dual carriageway. ES Figure 9.6j cross-section T- T (CD007) shows the topography. It demonstrates that Waterloo Cottages would be at a lower point with views looking up hill to the proposed mixed woodland on the embankment of the slip road. Additional scrub planting would then be accommodated on the southern embankment of the slip road and the northern embankment of the dual carriageway.

8.504 ES Figure 9.7o (CD007) shows that this area would have the appearance of dense woodland by 15 years after opening. We note from ES Figure 9.6o (CD007) that the current view includes visible traffic from the existing A96 but that 15 years after opening the view would be of mature mixed woodland. For clarity ES Appendix A10.1 (CD006) confirms that vehicles, lighting and the bridge would be visible.

8.505 [ES Figure 10.2d](#) (CD007) confirms that only the proposed grade separate junction would be lit with artificial lighting. It shows that lighting columns at the Nairn East junction would be almost entirely on 10 metre columns. At least half of the lighting would be on the opposite side of the proposed dual carriageway and as such partially screened by embankments, planting, natural topography and angle of view. TS has also confirmed that lighting would be dynamic so it would dim or turn off in the absence of vehicles.

8.506 It may not be possible to hide the proposed dual carriageway in its entirety, but we note that the existing A96 is not totally hidden either. We find that the proposed planting would contribute to wholly or partially screening some parts of the proposed junction, slip roads and dual carriageway, particularly by 15 years after opening. It would also help to blend it into the landscape. These factors persuade us that mitigation has been proposed and the measures sought by Mr Davidson and Ms Philips would not be necessary.

-Mill of Boath/East Lodge Cottage

8.507 [ES Figures 9.5s to 9.5t and 9.6k cross section U-U](#) (CD007) show the proposed mitigation close to Mill of Boath, East Lodge Cottage, the Wendy Hoose, Boath Steadings/Stable and Bogside of Brodie. ES Figure 9.5s to 9.5t (CD007) confirm that mixed woodland planting is proposed on the south side of the proposed dual carriageway between ch26300 (Nairn East junction west bound off slip road) and the realigned C1172 (approximately ch27300). In particular this shows the densest woodland planting around both proposed SuDS ponds west of Mill of Boath and East Lodge Cottage. ES Figures 9.5s to 9.5t (CD007) also show the proposed 2.2 metre earth bund north of East Lodge Cottage between approximate ch26830 and ch27020. This would also be planted in mixed woodland.

8.508 At Inquiry Session 11 TS did not dispute Mrs Bailey's account that ES Figure 9.6k cross section U-U is taken at a point where there is no proposed earth bund. The evidence does not suggest we should find differently. However, we note the proposed mitigation planting at this location and also the location of the proposed SuDS ponds and associated mitigation planting.

8.509 At Inquiry Session 11 TS's engineering expert explained that the proposed SuDS ponds planting had been proposed to mitigate the impact of the SuDS ponds and not the proposed dual carriageway. However, we note that the positioning of the SuDS ponds and associated planting would provide some further, additional screening of the dual carriageway, beyond that assessed in the ES as being necessary. As such we do not agree with Mrs Bailey's point at Inquiry Session 11 that the proposed SuDS ponds would remove any topographical advantage from the locations of Mill of Boath and East Lodge Cottage.

8.510 At Inquiry Session 11 Mr and Mrs Bailey sought an increase in the height of the proposed 2.2 metre embankment on the basis that this would better screen the properties from the proposed scheme. TS's engineering expert argued that doing so would require additional land to accommodate a wider earthwork base needed for a stable structure with an appropriate angle of gradient. The evidence does not suggest we should disagree with TS's engineering expert.

8.511 The draft CPO cannot be modified to add more land, only to remove it. Instead additional or replacement orders would be required, with the associated design, EIA, engagement and inquiry time. The evidence does not suggest the need for a higher embankment and therefore this does not suggest we should recommend delaying the project for new or replacement Orders to be prepared.

8.512 ES Figure 9.6k cross section U-U (CD007) confirms that the proposed scheme would be in slight cutting north of Mill of Boath. It also shows the proposed woodland screening. The gradient in this area was confirmed by our site inspection and by the image in EB36. We agree with TS that these factors, and those described above, would diminish the potential glare from vehicle headlights at this location.

8.513 We visited this area on our site inspection and noted the current views across the valley northwards to the crest of the hill. In particular this (and also ES Figure 9.6K cross section U-U, [EB36](#) and ES Figure 9.7o) show that Mill of Boath and East Lodge Cottage are situated at a comparatively low lying location close to the Auldearn Burn looking in an uphill (northerly) direction towards where the proposed scheme would be (accommodated in a slight dip and behind a 2.2 metre embankment). The proposed mitigation planting (as well as that around the proposed SuDS ponds) would alter this view such that it would have a woodland/copse feel instead of open fields. This is illustrated in ES Figure 9.7o (CD007) photo montage.

8.514 This does not suggest that Mill of Boath and East Lodge Cottage would be provided with no mitigation, though we accept that the planting would take time to mature.

-Boath Steadings/Stables

8.515 ES Figure 9.5t (CD007) shows that the proposed dual carriageway would be almost at grade just north of Boath Steadings/Stables. ES Figure 10.3g (CD007) shows that the predicted significance of visual effects at receptor 160 (Boath Steadings) would be slight/moderate at winter year of opening and would diminish to slight by 15 years after opening.

8.516 ES Appendix A10.1 (CD006) recognises the role played by existing mature trees and hedgerows north, east and west of the property. We saw these on our site inspection. It

also recognises the role of proposed mitigation planting identified in ES Figure 9.5t (CD007), as it matures.

8.517 Mixed woodland planting on the south side of the proposed scheme would assist in screening views from the south. Planting on the 2.2 metre earthwork between approximate ch26830 and ch27020 and around the SuDS ponds west of there would also contribute to diminish the visual effects of the proposed scheme. Closer to Boath Steadings/Stables new hedgerow would screen the realigned C1172. East of ch27400 a hedgerow is proposed on the southern side of the dual carriageway as it travels into a cutting.

-Bogside of Brodie

8.518 ES Figure 9.5t (CD007) shows that proposed mixed woodland planting would form a deep block at the junction of the realigned C1172 and U3164. This would contribute to reinforcing the proposed mixed woodland planting along the north side of the dual carriageway from the Auldearn Burn Culvert (approximate ch26700) to approximate ch27700. East of this point the proposed dual carriageway would be in cutting with hedgerow planting along the north side. Similarly the U3164 and the C1172 would be in cutting south west of Bogside of Brodie and screened by the proposed mixed woodland planting. These factors persuade us that the proposed mitigation would limit the impact of vehicle headlights and contribute to wholly/partly screening views of the dual carriageway from Bogside of Brodie.

-Overall

8.519 In each instance the proposed mitigation would contribute to diminishing the visual effects of the proposed scheme over the 15 years after opening, as indicated in ES Figure 10.3g (CD007). The presence of cuttings, earth bunds and the density and location of planting could contribute to limiting views along the proposed scheme as well as when looking directly at it from the respective properties.

8.520 The proposed scheme has been designed through an iterative process which identifies issues and attempts to resolve them before reaching a settled view of the final design. Therefore measures, such as embankments and cuttings, that have a mitigating effect, are already incorporated into the proposed scheme.

8.521 We accept the proposed mitigation would blend the proposed scheme into the landscape. However, by the same token, the proposed scheme would introduce new landscape features such as mitigation planting around the proposed SuDS ponds and on the north and south sides of the proposals dual carriageway. Even where the mitigation would successfully hide the proposed scheme the mitigation itself would have visual effects by significantly altering the character of views that are recognised in the assessment reported in ES Figure 10.3g (CD007). This is also reflected in the [Report on Landscape and Visual Issues \(TS212\) at paragraphs 12.10.11, 12.01.12 and 12.10.20.](#)

8.522 Therefore, whilst additional mitigation could, perhaps, contribute to hiding the proposed scheme to a greater extent, the evidence does not suggest it would diminish the reported visual effects any further, since it would become an additional factor contributing to those effects.

8.523 The evidence above persuades us that it is inaccurate to state that no consideration has been given to visual and landscape impacts and, similarly, that no mitigation has been proposed or incorporated into the proposed scheme. While we acknowledge that the

proposed scheme would affect the outlook from properties north of Auldearn, we find that careful consideration has been given to minimising the effect on visual amenity such that no receptor would experience an unreasonable or unacceptable adverse effect.

SuDS ponds and flood risk along the U2997

-Flood risk on the U2997 at Waterloo

8.524 The photographs supplied in Mr and Mrs Farquhar's letter of May 2018 suggest that water can collect on parts of the U2997 close to Waterloo. TS does not dispute this and we see no reason to doubt Mr and Mrs Farquhar's account.

8.525 As the promoter of the proposed scheme, TS's role is not to solve this existing problem but to ensure that the proposed scheme would not make it worse. TS has described the principle of the proposed drainage and SuDS arrangements in the locality. This confirms that the proposed scheme would be designed to capture its own runoff from the roads and verges etc. and direct this flow via drainage networks.

8.526 [DMRB Stage 3 Report paragraph 4.4.14 and associated Table 4.7 page 4-13](#) (CD008) explain that the proposed SuDS at Nairn East Junction would form drainage Network W and east of there into Network X, as shown on [DMRB Stage 3 Figure 4.2 Sheet 2](#) (CD009). These drainage networks would pass through SuDS ponds that would attenuate water and slow the rate of discharge into the Auldearn Burn to limit flood risk.

8.527 This suggests that the proposed scheme would not exacerbate flood risks at Waterloo Cottages or on the U2997 nearby. This should provide some reassurance for Mr and Mrs Farquhar.

-Proposed SuDS ponds and flood risk at Mill of Boath/East Lodge Cottage

8.528 Mr and Mrs Bailey sought the assistance of their constituency MSP Fergus Ewing on the matter of SuDS ponds proposed near Mill of Boath and East Lodge Cottage ([TS129.04 and TS129.05](#)). There the contention is made that the SuDS ponds are not built on naturally low lying land, as sought by [ES paragraph 9.6.19](#) (CD005) and would remove some higher ground, impacting on mitigation. They are concerned that if SuDS provision was to the north rather than the south of the proposed road, additional visual and/or noise mitigation could be provided in its place. They are also concerned that the ponds could attract nuisance insects such as midges, and that existing flooding concerns from the Auldearn Burn could be exacerbated.

8.529 In [TS129.07](#) TS accepts that Mill of Boath and East Lodge Cottage are at lower level than the proposed SuDS pond but argues that it is still accurate to describe the location as low lying within the context of the local topography. TS argues that the ponds need to be located higher than the Auldearn Burn, in order for them to outfall into the burn.

8.530 Our site inspection showed the local landscape context as being the valley of the Auldearn Burn, with the burn itself being at the lowest point. ES Figure 9.6k cross section U-U (CD007) and photograph EB36 confirm this. These factors and [DMRB Stage 3 Report Figure 3.1s](#) (CD009) persuade us that the proposed dual carriageway would be higher than the proposed SuDS pond and that the SuDS ponds would be higher than the Auldearn Burn. This would facilitate gravity-led drainage of the dual carriageway and of the proposed SuDS ponds. Therefore, whilst the objectors' properties may be lower lying than

the proposed SuDS ponds, this does not contradict the ES description of their proposed location.

8.531 The objectors argue that if the SuDS pond north of the U2997 (nearest East Lodge Cottage) was moved then it would free up space for additional mitigation to be deployed. It is fair to say that removing the SuDS ponds would liberate space that could be used for something else, such as additional mitigation were it needed. Noise and visual impacts of the proposed scheme are covered separately above in paragraphs 8.410 to 8.474 and 8.496 to 8.523 respectively. There we conclude that the proposed level of noise and visual mitigation is acceptable.

8.532 As we have noted elsewhere in the proposed scheme, we find that an iterative design process has allowed measures that limit environmental impacts to be designed into the proposed scheme. ES Figure 9.5s (CD007) shows that mitigation is already proposed in this location in the form of mixed and riparian woodland planting along the southern edge of the proposed dual carriageway and a 2.2 metre high earthwork between approximate ch26830 and 27030. Further planting is also proposed to screen the proposed SuDS ponds between the proposed scheme and East Lodge Cottage/Mill of Boath.

8.533 ES Figure 9.6k (CD007) cross section U-U, DMRB stage 3 Report Figure 3.1s (CD009) confirm that the proposed scheme would be in slight cutting just north of the eastern proposed SuDS pond. This is also inferred from the gradient on document EB36.

8.534 In [TS's Closing Statement paragraph 10.80](#) and at Inquiry Session 11 TS's visual expert argued that bringing the proposed bund further along (assumed to be west) would provide no additional benefit. This is because she argued the road would be at grade and sufficient planting is already proposed at this location to screen and integrate the road. We note that TS would give careful consideration to the mix of species that would form the planting within the provision of the ES. ES Figures 9.5t and 9.6k (CD007) do not suggest TS's contention to be incorrect. This matter is also covered in our consideration of visual impacts (above) at paragraphs 8.496 to 8.523.

8.535 Overall therefore, we find no justification on noise or visual amenity grounds to relocate the SuDS to the north of the proposed road.

8.536 We note the concerns about insect nuisance around water courses. However, we also accept that this forms part of the design consideration for SuDS. SuDS are designed to attenuate water to limit flood risk and to filter out pollutants. As such they have an entry and exit point for water. This means that water flows through them, albeit in a controlled manner that is designed to limit the rate of discharge to diminish contribution to flood events.

8.537 [TS209 section 5.4](#) confirms that:

- the proposed scheme would be drained using SuDS to reduce potential impacts of pollution into watercourses and to attenuate water to diminish flood risk;
- the SuDS ponds would be designed in accordance with CIRIA and SEPA guidelines ([CD133](#), [CD134](#), [CD135](#) and [CD136](#));
- the filter drains would provide the initial treatment for removal of suspended solids and heavy metals, with the pond being used for sedimentation of suspended solids and microbial activity supported by aquatic vegetation; and,

- the filter drains and ponds would form two levels of pollution treatment to satisfy SEPA requirements.

8.538 The SuDS Manual (CD133) page 795 explains that water in SuDS should not be stagnant but should have low nutrient levels and be relatively clean. It suggests nutrient removal upstream should be considered in the design. This could involve the filtering described in the [DMRB Stage 3 Report paragraph 4.4.15 bullet 2](#) (CD008).

8.539 The SuDS manual page 521 (CD133) also describes the role that planting of trees could play in contributing to reduce the risk of thermal heating. The proposed riparian woodland planting around the proposed SuDS pond on its south side shown in ES Figure 9.5t (CD007) could fulfil such a role. TS closing statement paragraph 15.17 also recognises the role of planting to provide habitats to address issues relating to insects and odours.

8.540 The SuDS Manual Figure 24.4 page 531 (CD133) shows examples of different SuDS pond outfall designs. TS Closing Statement paragraph 10.76 confirms that the SuDS ponds would have a small permanent wet area and that other areas would remain generally dry in normal weather conditions. They would fill during storm events. It also confirms that the ponds would be designed to halve in volume in 24 hours, if filled up. This suggests limited likelihood of water stagnation.

8.541 [ES Table 20.1](#) (CD005) Mitigation Items GR3, GR4 and GR5 confirms that SuDS ponds would be constructed in accordance with SEPA guidance. Mitigation Item GR2 (also ES Table 20.1 – CD005) confirms that any works would be carried out under the supervision of an environmental clerk of works. As such these would form part of the construction contract documents and be binding on the contractor within an independent inspection regime.

8.542 Whilst one cannot necessarily prevent all insects habituating in areas near a SuDS pond the proposed design, operation and mitigation planting would contribute to limiting any subsequent nuisance effects, should they occur.

8.543 [ES Appendix A13.2](#) (CD006) and [ES Figure 13.1](#) (CD007) both indicate that neither of the proposed SuDS ponds close to Mill of Boath would be located within an area identified by SEPA as at risk of flooding. Therefore neither SuDS pond is utilising space that would otherwise be used for water storage during a flood event.

8.544 At Inquiry Session 1 Mr and Mrs Bailey described their ongoing anxiety about the flood risk impacts in this area. We do not doubt that flooding has happened at this location in the past, as demonstrated in document AGrp10, as such we understand their concern. ES Appendix A13.2 Diagrams 33 and 34 (CD006) recognise existing flood risk in this locality and identify this as Areas 1 and 2. ES Appendix A13.2 paragraph 3.155 (CD006) concludes that this flood risk relates to the bridge across the Auldearn Burn at Mill of Boath.

8.545 ES Appendix A13.2 (CD006) has considered the hydrology of the Auldearn Burn and modelled flood risk circumstances with the proposed scheme in place. It concludes that the SuDS ponds would not exacerbate flood risk at Mill of Boath as shown in ES Appendix A13.2 diagram 35 (CD006). We accept that it is not the role of the proposed scheme to improve flood management, but instead to ensure it is not worsened. The evidence suggests that flood risk would not be worsened.

8.546 Both SuDS ponds are also down stream of Mill of Boath and East Lodge Cottage and would discharge into the Auldearn Burn down stream of these points. This therefore suggests that discharge from the SuDS ponds would have a limited impact on flood risk at either property.

8.547 At Inquiry Session 11 Mr and Mrs Bailey explained that the existing stone bridge that carries the U2997 over the Auldearn Burn can act as a block, particularly when clogged with branches and detritus, exacerbating flood risk. Though we did not see this happening on our site inspection it was clear to us how such events could occur, as confirmed by ES Appendix A13.2 paragraph 3.155 (CD006).

8.548 At Inquiry Session 11 TS also confirmed that SuDS would be subject to CAR licence requirements and, although flood risk was not one of the requirements of this, SEPA would wish to be satisfied of this. It also confirmed that the discharge from the SuDS ponds would be downstream of the above mentioned stone bridge. We attach some weight to the fact that SEPA has not objected to the flood risk assessment.

8.549 We accept Mr and Mrs Bailey's concerns that two bodies of water would be located near to East Lodge Cottage and Mill of Boath. However, we note TS's explanation that these ponds would contain only some area that would be permanently wet and would halve their capacity through drainage in 24 hours. This does not suggest the permanent storage of water and shows that in-built drainage systems would exist. In previous evidence at Inquiry Session 10, TS's engineering expert explained that SuDS ponds would contain overflow systems to ensure they did not exceed their capacity during heavy rainfall events. Whilst we note Mr and Mrs Bailey's ongoing concerns this suggests to us that some comfort can be taken from this.

8.550 At Inquiry Session 11, TS explained that the proposed scheme would involve a new culvert for the Auldearn Burn passing beneath the proposed dual carriageway. [TS262 Auldearn Burn Alternative Crossing Design Assessment Report \(Dec 2017\)](#) explains that TS made modifications to the design of the proposed Auldearn Burn Culvert in response to objections by the Findhorn, Nairn and Lossie Fisheries Trust. Its objections were consequently withdrawn. Flood modelling summarised in TS262 Section 3.6 explains that this design modification resulted in an increase in flood risk on the Auldearn Burn upstream of the U2997 stone bridge over the burn.

8.551 TS determined that this increased flood risk would be unacceptable and concluded it would need to be mitigated through increased channel capacity. TS262 Section 3.6 explains that, while the natural bed and lower channel could be preserved the capacity increase would require a two stage channel through lowering the level of the river banks and to update the assessment findings for geomorphology and ecology.

8.552 To provide the additional capacity an indicative two stage channel is shown in the [Auldearn Burn – Section Restoration and Culvert Design drawings A96PIN-JAC-EWE-26700-DR-CI-0001 to 0007](#) (TS261.02). The drawings contain proposals for two flood relief channels, each containing several underground pipes to convey water. One would be located west of the current stone bridge which carries the U2997 over the Auldearn Burn west of Mill of Boath. The second, longer relief channel would run parallel to the proposed new Auldearn Burn Culvert as each passes beneath the proposed dual carriageway. [The Technical Note](#) (TS261.01) explains that this is an indicative concept within the draft CPO

area designed to improve in-stream fish habitat for migratory fish in response to the Findhorn, Nairn and Lossie Fisheries Trust referenced above.

8.553 At Inquiry Session 11 TS confirmed that the capacity of the proposed SuDS ponds would be a fraction of peak flood water. ES Appendix A13.2 (CD006) concludes that the SuDS ponds would not have an additional adverse impact on flood risk. However, subsequent redesigns of the culvert for migratory fish (as described above) could exacerbate flood risk had the remediation measures not been proposed in the form of additional capacity pipes described above (TS261.01). We find these measures would have the effect of improving capacity to convey water from this point beneath the U2997 and dual carriageway and into the Auldearn Burn downstream from Mill of Both and East lodge Cottage.

8.554 These factors persuade us that the SuDS ponds are not inappropriately located and would not exacerbate flood risk. Any knock-on flood risk increase created by the redesign of the Auldearn Burn Culvert (TS262) would be resolved by increasing flow capacity with relief channels (TS261 – summarised above).

8.555 At Inquiry Session 11 TS also confirmed that these measures would contribute to limiting any flood risk impact on the use of the proposed NMU underpass PS28. This therefore suggests that community severance would be prevented or limited by these measures.

8.556 [TS129.06](#) (letter 23 November 2017) confirms that the two proposed SuDS ponds were moved south of the proposed dual carriageway at DMRB Stage 3 to limit impact on Bogside of Both Farm and to avoid flood risk from the Auldearn Burn. These do not appear to be unreasonable motivating factors and the evidence does not suggest we should doubt either factor. [TS235 page 40](#) shows images from the public exhibition of February 2016 which identifies the proposed SuDS ponds on the south side of the dual carriageway. This was nine months prior to the publication of the draft Orders and over 18 months prior to TS129.06.

8.557 [Auldearn Burn Retention Ponds Location Report](#) (TS263) confirms that a site meeting took place on 26 January 2018 with TS, the objectors and Fergus Ewing MSP as constituency MSP. At that meeting TS agreed it would be technically feasible to move the SuDS north of the proposed dual carriageway. No parties dispute this.

8.558 TS263 Section 2 and Table 1 compare the technical differences between the proposed design, south of the dual carriageway, and the alternative north of it, as sought by the objectors. These differences related to:

- the quantity of excavation – SuDS ponds on the north side of the dual carriageway would result in less site-won material and would instead require the import of additional materials with associated costs;
- the length of access tracks – SuDS ponds on the north side of the dual carriageway would require a new track to access the eastern pond. A direct access from the U2997 would have increased costs due to the need to cross the Auldearn Burn. A less costly alternative would be to take a new access from the C1172 and run south and then west along field boundaries. This would be a lengthier track and, although cheaper than the direct access from the U2997, would be more expensive than the access to the proposed ponds south of the dual carriageway;

- the length of diversion of the medium pressure gas main – the proposed dual carriageway crosses a gas main. The proposed location of the east pond (north of the dual carriageway) would require a diversion of this gas main that would be almost twice as long as the currently planned diversion were the SuDS ponds to remain south of the proposed dual carriageway.

8.559 Whilst these matters and those others considered in TS263 Table 1 show that it would be technically feasible to accommodate the proposed SuDS ponds north of the dual carriageway they also show it would be more expensive and less practical compared with the current proposals. We therefore agree with TS's conclusion that this alternative proposal north of the dual carriageway is not better than the current planned location south of the dual carriageway.

8.560 We note from TS263 that TS presented the alternative proposal to the land owner to see if the requisite land could be acquired by voluntary agreement. [TS132.08](#) confirms that the landowners would prefer the ponds to remain in the positions currently proposed. They are therefore unwilling to enter into a voluntary agreement for the purchase of the land that would be needed to move them north of the proposed dual carriageway.

8.561 Therefore the proposed alternative is not on land within the draft CPO, the landowners are not amenable to sell and the proposed alternative is not better than the current design but would instead be less practical and more expensive. These factors, and the conclusions we set out above as to the absence of any objectionable effects, persuade us that the current location of the proposed SuDS ponds south of the dual carriageway remains sound.

Local roads, access and community severance

-New field access points

8.562 [ES Figure 15.6j](#) (CD007) shows fields that would be affected by the proposed scheme, including where land is proposed to be acquired for new means of access shown in [draft SRO Plans SR21](#) (CD003). This and [ES Appendix A15.7 pages A15.7-43 to 44](#) (CD006) confirm that no land owned by OBJ/111 Firm of Auchnacloch Farm (field identification prefix 159 in ES Figure 15.6j – CD007) would be acquired for new means of access to land owned by other parties.

-Nairn not properly served by the bypass scheme

8.563 The objection talks about the proposed bypass not 'properly serving Nairn'. We find this statement to contain a degree of preference in what is defined to constitute 'properly'. This could vary greatly depending on an individual's point of view. We address this issue in Chapter 2: Matters of Principle at paragraph 2.264.

-HGVs on U2997 Waterloo – Eastertown – Inshoch Road

8.564 The objector is correct that the proposed closing off of vehicular access along the U2997 near ch26700 would remove the current circular route for HGVs such as refuse collection services. [ES Figure 9.5s](#) (CD007) shows that a turning head would be located on the south side of the U2997 at the service entrance to the western-most SuDS pond (points 183 and 104 draft SRO Plan SR21 – CD003).

8.565 Assuming this is designed to the appropriate standard (TS confirmed it would be at Inquiry Session 11), there is no reason to suggest that the new road arrangements would

prevent refuse collection lorries or other vehicles (including HGVs) from visiting East Lodge Cottage, Mill of Boath or the Wendy Hoose.

-Nairn East junction design

8.566 The Auldearn Residents Group considers flood risk associated with the Nairn East junction at DMRB Stage 2 to have been discovered late. They consider this to have resulted in the redesign of the junction and to have led to a change in noise, visual and other impacts on the locality, in particular at Waterloo Cottages. This forms part of the justification, amongst other things, for their arguments supporting an alternative route. Route selection is covered separately in Chapter 2: Matters of Principle.

8.567 At Inquiry Session 1 Mr McCulloch was concerned about the height of the proposed junction and the effect this would have on Waterloo Cottages. His concern was that the avoidance of flood risk to the proposed junction was unreasonably given priority over the effects the scheme would have on nearby residents. [TS225](#) shows the various factors that were taken into account when considering alternative design approaches for the junction. These include the effect each option would have on Waterloo Cottages. During Inquiry Session 1, TS's engineering expert also explained that the height of the proposed junction was constrained by the water table, which restricted the minimum depth of the realigned B9111 and therefore the minimum height of the dual carriageway overbridge at that location. We are satisfied that, in the redesign of the Nairn East junction, all relevant considerations, including the effect on Waterloo Cottages, were taken into account.

8.568 At Inquiry Session 1 Mr McCulloch also queried the implications for the cut fill balance, since the section near Waterloo Cottage would no longer be in a trench and would 'miss out' on site won material. It is understood that this line of argument would also contribute to Mr McCulloch's wider arguments about rationale and scheme cost / benefit that are covered separately in Chapter 2: Matters of Principle. TS's engineering expert confirmed that the [Skenepark-Blackpark-Russell's Wood Realignment \(TS220\)](#) would result in a new cutting south of Blackpark Farm that would provide additional site won material that would at least compensate for the changes near Waterloo Cottages.

8.569 At Inquiry Session 1 TS also confirmed that the proposed dual carriageway close to East Lodge Cottage crosses the flood plain at the narrowest point. This is confirmed by [ES Figure 13.1d](#) (CD007), which also suggests limited opportunity for alternative alignments without impinging on functional flood plain areas or other sensitive areas.

8.570 Mr McCulloch appears to contend that the proposed Nairn East junction would increase the time taken for journeys passing through the junction due to the introduction of roundabouts on the existing A96, in a locality where there are presently none.

8.571 Neither party disputes that the introduction of two roundabouts at Nairn East junction could introduce a degree of delay or increased journey time for travellers negotiating them. This is logical since drivers would need to slow, and potentially wait, before negotiating the roundabout and then following their chosen exit.

8.572 However, Mr McCulloch's contention cannot be considered in isolation. One must recognise the improved journey times on the proposed dual carriageway and also the consequences for journey time from anticipated traffic reduction on the existing A96, including through Nairn ([ES Figures 2.1 and 2.2](#) – traffic flows with and without the proposed scheme – CD007). Recognition of these factors offers some credence to TS's

assertion that any delay caused by the roundabouts would be offset by journey time improvements elsewhere. The evidence does not suggest we should conclude differently. It is difficult to envisage an alternative design with a similar or better environmental impact and DMRB compliance that would not have the need for roundabouts or some equivalent traffic management feature that requires some traffic to wait for safe transit.

8.573 We also find the above paragraphs to respond to Mr McCulloch's assumption that there would be little if any journey time saving along the section from Hardmuir to Nairn East. In concluding this we recognise that the proposed scheme would promote faster speeds for users of the dual carriageway; separate local, agricultural and public transport traffic; and, free up capacity on local roads, including the existing A96. We do not doubt that the Auldearn bypass may perform well at present, however, as with any improvement scheme, the share of the total time saving benefit may vary in magnitude when compared with different individual sections of the existing road.

8.574 The environmental impacts of the Nairn East junction and the rest of the proposed scheme in this locality have been considered in the ES. Related objections have been covered for each specific objector/group of objectors in this chapter and also in Chapter 7: River Nairn to Nairn East, as appropriate.

8.575 TS225 shows that TS has considered a variety of matters to resolve issues associated with the design of the Nairn East junction, including many raised by objectors. The evidence does not suggest any justification for us to recommend not having a junction at Nairn East, or indeed having a junction that is not grade-separated given the proposed category of dual carriage-way.

8.576 The Auldearn Residents Group appears to be concerned about interference to traffic flow from laybys in close proximity to the proposed Nairn East junction slip roads. It is also possible that they are concerned that the presence of laybys demonstrates that 'left-in and left-out' junctions could be used in place of a grade-separated junction. TS clarifies that slip roads, junctions and laybys perform different functions. We agree with TS that this is the case. In particular, we accept that laybys cater for far lower levels of vehicles than a typical junction. We have considered the necessity of grade-separated junction and design for Nairn East above.

8.577 Following the objector's argument through suggests that any form of layby or grade-separated junction entry/exit slip road would be an impediment to traffic flow. In its purest sense this may be true. However, it fails to recognise the need to enter/exit the dual carriage way at different points along the route and for safe refuges to stop and rest or deal with emergency situations, each of which could otherwise affect traffic flow and road safety. As such one must accept any associated impact from this, limited as it may be. This line of argument does not negate the need to provide laybys or junction slip roads and does not render TS's junction strategy or layby strategy incorrect.

8.578 It is assumed that the objection is referring to laybys proposed at approximate ch27800 on the south side of the westbound carriageway and at ch27900 on the north side of the eastbound carriageway. [ES Figure 9.5t](#) (CD007) and [DMRB Stage 3 Report Figure 3.1s](#) (CD009) confirm that these laybys would be within a cutting of between 2.7 metres and 6.5 metres in depth. ES Figure 9.5t (CD007) also shows proposed hedgerow planting along the northern and southern edges of the proposed dual carriageway, including at the top of the proposed cutting embankment. Mixed woodland

planting is proposed from the C1172 eastwards to approximate ch27700 on the northern side of the dual carriageway. These proposed measures would contribute to limiting visual impacts and effects of the proposed laybys from adjacent areas. The proposed cutting could also contribute to limiting any associated noise impacts. These factors do not suggest that those living or owning property in the vicinity would experience unreasonable levels of visual or noise disturbance from the proposed laybys.

8.579 [DMRB TD69/07](#) (CD049.32) paragraph 3.7 is contained in a bold box which means its provisions are mandatory. It explains that for a grade-separated junction (such as Nairn East junction) and a lay-by the minimum distance between the two is as stated in [DMRB TD22/06](#) (CD049.09). DMRB Volume 6, Section 2, Part 1 – TD22/06 Figure 2/9, paragraphs 4.34 to 4.38 and Figures 4/9 to 4/14 (CD049.09) are also mandatory and confirm that the minimum weaving length between a grade separated junction and a layby for a rural all-purpose road must be one kilometre. [ES Figure 4.1j](#) (CD007) shows these laybys each to be in excess of one kilometre from the nearest point of the respective Nairn East junction slip roads.

-Community severance

8.580 On our site inspection we walked from Auldearn across the existing A96, along the C1172, U2997 and B9111. We agree that the existing A96 severs the area north of Auldearn from Auldearn itself. This is because all NMU and vehicle traffic wishing to move between the two areas must cross the existing A96 on foot near Boath House or via footpath R1 ([ES Figure 16.2j](#) – CD007) to the west of Auldearn. Alternatively they could drive via the B9111/Existing A96/U2997 in the west or B9111/Existing A96/C1172 in the east. The volume of traffic on the existing A96 could contribute to inhibiting these movements and perceptions of their relative inconvenience.

8.581 [ES Section 15.3](#) explains that TS has considered both existing and new severance, which includes access to services and facilities. [ES Table 15.17](#) (CD005) recognises Auldearn and Nairn as locations of local services and facilities.

8.582 ES Figure 4.1j (CD007) shows that the proposed scheme would separate the community north of Auldearn, who would be located either side of it. However, the ES describes two proposed measures to mitigate this (each shown on ES Figure 4.1j – CD007):

- realignment of the U2997 west of Mill of Boath with a new NMU only underpass (PS28); and,
- realignment of the C1172 under the proposed dual carriageway (including NMU shared use path).

8.583 ES Figure 16.2j (CD007) shows that the proposed scheme would also disrupt a public right of way R1, which currently runs from the U2997 south of Millhill across fields southwards to the existing A96 and into Auldearn. ES Figure 16.2j (CD007) shows the proposed diversion of this route via the proposed PS28 Auldearn NMU underpass. This proposed new right of way is set out in [draft EPW Plan ROW2](#) (CD004).

8.584 The realignment of both roads (U2997 and C1172) is proposed to be close to the existing road locations. These realignments appear to reflect the principles identified in the STPR SEA as stated in [ES paragraph 15.3.66 bullet one and 15.3.67 bullets one and two](#) (CD005). These commit to mitigate temporary or permanent disruption to walking and

cycling routes by accommodating crossings with local/national paths and cycleway to minimise disruption to their alignment and retain existing routes wherever possible.

8.585 The ES reports on the anticipated impacts of these changes to the local road network resulting from the proposed scheme as follows:

- [ES paragraph 15.5.21 and Table 15.24](#) (CD005) explain that, at East Lodge Cottage and Mill of Boath, vehicles would no longer be able to travel west along the U2997 towards Nairn. Instead they would need to travel east on the U2997 before joining the existing A96 near Auldearn. This would result in approximately an additional 1.1 kilometres journey distance for residents travelling west towards Nairn. The ES concludes, a 'Moderate' significance of impact. For residents travelling east, no change in journey distance would be expected;
- [ES paragraphs 15.5.45 to 15.5.46 and ES Table 15.25](#) (CD005) describe the predicted impacts for Millhill and Waterloo. These explain that:
 - severance of public right of way R1 (ES Figure 16.2j – CD007) would result in a diversion (0.3 kilometres) via PS28 Auldearn NMU Underpass to access community facilities in Auldearn. It concludes a 'Moderate' significance of impact for pedestrians, 'Slight' significance of impact for cyclists and no impact for vehicle access (presumably since R1 is a public right of way with no vehicular access in any case);
 - stopping-up of the U2997 would result in a diversion for vehicles to access community facilities in Auldearn using a variety of routes including via PS18 C1172 Underbridge (longest diversion of 0.6 kilometres) or PS22 B9111 Underbridge (shortest diversion of 0.2 kilometres). It concludes a 'Slight' significance of impact for vehicles.

8.586 The conclusions appear to reflect the significance criteria for new severance in [ES Table 15.6](#) (CD007).

8.587 Although vehicles would not be able to use the U2997 NMU underpass, neither of the existing routes would be stopped-up by the proposed scheme in a manner that would prevent any type of access. Similarly, lengthy detours would not be required in either instance since the realignments remain close to the current locations. This would prevent total severance of the communities north and south of the proposed scheme and continue to enable NMU and vehicular access. This suggests that the proposed scheme, despite being wider than the existing A96 Auldearn Bypass, would be unlikely to have the same severance consequences as the existing A96.

8.588 The existing A96 would, itself, become less busy if the proposed scheme went ahead. [TS Hearing Statement for Inquiry Session 11 paragraph 1.4](#) suggests this would be a reduction of 82%. This could facilitate safer and easier crossing of the existing Auldearn bypass for NMU and vehicle movements. We accept that it would not remove the physical separation between Auldearn and the area to its north but these proposed changes would go some way to limiting the existing severance impacts of this feature.

8.589 In response to OBJ/133 Mr McCulloch's concerns about the safety of the realigned C1172 in icy conditions, [DMRB Stage 3 Report Figure 3.2p](#) (CD009) shows the profiles of the proposed realignment of the C1172 and U3164 south of Bogside of Brodie. This indicates that the vertical realignment would be achieved by excavating the existing ground. We measured the gradients on DMRB Stage 3 Report Figure 3.2p (CD009) using a

protractor. This showed that the steepest section of proposed vertical realignment of the C1172 would afford a gradient of less than five degrees (1 in 11.43 or 8.75%) for entering/exiting the underpass on the south side of the proposed dual carriageway. We also measured the proposed realignment of the U3164 where it would join the C1172. The steepest part of this realignment would afford a gradient of at least 15 degrees (1 in 3.7 or 26.9%). We accept that this particular section of the U3164 could be considered steep by some users. However, the evidence does not suggest that either gradient would pose any greater risk from icy conditions than any other road of a similar gradient. Surface treatment of roads would be a matter for The Highland Council as the local roads authority.

8.590 [ES Figure 4.1k](#) (CD007) also confirms that this realigned section of the C1172 would include a NMU shared use path. This would improve safety in the locality by separating NMUs from the main vehicle carriageway.

8.591 No problems are identified with the proposed C1172 realignment (including its proposed new junction with the U3164) in the Stage 1 Road Safety Audit (TS219.01 to TS219.03).

8.592 Therefore the evidence does not suggest we should find any specific safety concerns with the proposed realignment of the C1172 (including its proposed new junction with the U3164).

Business impacts

8.593 The objections to the proposed scheme on grounds of business impact appear to relate to the future perception of tenants/customers in light of potential changes to access arrangements (community severance), construction disruption, noise and vibration, air quality, proximity and visual and landscape impacts / effects. We have considered each of these factors individually under respective headings above. The evidence suggests that:

- visual effects at Waterloo Cottages would be substantial, falling to moderate/substantial by 15 years after opening;
- Both Steadings/Stables would experience 'Slight Moderate' visual effects at the year opening, diminishing to 'Slight' 15 years later;
- noise impacts at East Lodge Cottage's conservatory would be limited by its glazing to levels equivalent to a bedroom or a quiet library dependent on whether the window is open or closed;
- air pollution would not exceed national standards at any of the properties;
- noise levels would not exceed the respective thresholds for additional receptor-specific noise mitigation at any of the properties; and,
- access would not be denied to any of the properties/businesses considered above.

8.594 The outstanding factors in all three instances are therefore the preferences of tenants/customers versus TS's contention that its proposed design would limit the environmental and other concerns of the objectors. Whilst these objector concerns are understandable the evidence suggests that TS has provided appropriate mitigation or designed-in appropriate measures to limit the adverse environmental impacts in so far as would be possible.

8.595 TS has explained that compensation could be sought at a point 12 months after the proposed scheme opens, in the event of loss in the value of assets based on the provisions of Part 1 of the Land Compensation (Scotland) Act 1973. This would be a matter for the

respective parties and the Valuation Office Agency. Compensation is not a matter for this Inquiry.

Human rights, blight and omissions from the draft CPO

8.596 We consider the human rights aspect in general terms within Chapter 2: Matters of Principle. There we conclude that the compulsory acquisition of land need not be contrary to the European Convention on Human Rights and The Human Rights Act 1998, provided that it is justified and proportionate. Our conclusion there is that TS has demonstrated in this proposed scheme an approach that is consistent with the expectations of human rights legislation.

8.597 Some objectors feel they have been unfairly treated by not having had their land included within the proposed CPO. They feel that they would be left in a financially worse position on account of their property lying close to the proposed scheme, whereas, had their property been acquired (either voluntarily or by CPO) they would have avoided that situation. TS has confirmed that no land is proposed to be purchased from OBJ/120 Mr George Fraser, OBJ/128 Mr and Mrs Urquhart or OBJ/129 Mr and Mrs Bailey. We note that TS did consider, route realignment to compulsorily acquire the Urquhart's and the Bailey's properties (at their request) but ruled this out on grounds of cost and wider impacts.

8.598 Part of the Urquhart's and Bailey's rationale for seeking compulsory purchase also relies on the arguments that the impacts of the proposed scheme at Mill of Boath and East Lodge Cottage respectively. Again, in each instance the evidence, considered by us above, does not suggest that residential amenity would be compromised to an unacceptable degree or to a level that requires additional receptor-specific mitigation.

8.599 At Inquiry Session 11 TS explained that it had considered refining the design of the proposed scheme to move it slightly south so as to require the compulsory purchase of the properties. This is explained in [EB21](#) (TS letter dated 22 June 2016) and in [EB29](#) (TS's Russell's Wood – Auchnacloch – Penick Alternative Alignment Report, May 2016). This exercise concluded that the alternative alignment in EB29 would:

- be slightly shortened and would not require realignment of the B9111;
- require a greater quantity of imported fill, adding to an already high imported fill requirement and the acquisition of two additional properties;
- lead to positive noise, air quality, landscape and visual impacts for Waterloo Cottage and Bogside of Boath and negative impacts for the Wendy Hoose, Boath House and Boath Steading;
- increase the impact on the Auldearn Battlefield by moving the mainline closer to the centre of the battlefield. It would also bring the mainline closer to the Category A listed Boath House and Category B listed Boath Steadings;
- require acquisition of land from a greater number of land owners including some that would not otherwise have been included.

8.600 In [TS's closing statement paragraph 10.123](#) TS argues that the Auldearn Residents Group/Mr and Mrs Bailey identify new issues with regard to cultural heritage and that it has reserved its position on these matters. It also argues that these issues were 'not the sole or even weighty reasons' for reaching the conclusions they did.

8.601 We agree that cultural heritage was not the sole reason for dismissing the alternative alignment based on EB29 (as set out above). TS argued at Inquiry Session 11 that the

alternatives were relatively evenly balanced but for the increase in cost associated with acquisition of the properties. Document EB29 concludes that the cost would increase by £1.75 million under the alternative compared with the proposed scheme. It is not unreasonable to consider cost as a factor relating to the public interest of a public infrastructure project.

8.602 Whilst these may have been new issues in so much as they identified specific factors, we have considered it helpful to cover the criticisms of EB29 made in the Closing Statement for The Auldearn Residents Group/Mr and Mrs Bailey. This is because it relates to their standing objections relating to acquisition of East Lodge Cottage and Mill of Boath.

8.603 The objectors argue that:

- the battlefield designation in [NTS Figure 15](#) differs from that in [EB39](#);
- referring to Historic Scotland's Map of the Auldearn Battlefield (EB39) they argue that the realignment would be 'completely outside of the battlefield area';
- the map in EB29 shows that the realigned route would represent 'a tiny shift' into the battlefield area.

8.604 Document EB39 appears to show the locations of the opposing sides at the battle. It does not define the battlefield designation. The Auldearn Battlefield is identified using a consistent boundary in both [NTS Figure 15](#) and [ES Figure 14.2](#) (CD007). We also give weight to the fact that Historic Environment Scotland has not objected or identified these boundaries as incorrect. It is therefore reasonable for us to assume that this geography represents the battlefield designation and that EB39 does not.

8.605 It is fair to say that the realignment of the proposed scheme in EB29 would encroach slightly further into the battlefield designated area than before. However, this would be closer to the location of the opposing sides shown in document EB39 and we must also recognise that opposing military forces seldom remain in one place during and after a battle. It therefore does not seem unreasonable for TS to recognise that the alternative considered in EB29 would have moved the proposed scheme closer to the centre of the battlefield. However, the evidence does not support the contention in the Auldearn Residents Group's/Mr and Mrs Bailey's closing statement that doing so would have 'absolutely no impact on the centre of the Auldearn battlefield'.

8.606 Our site inspection and [ES Appendix A14.1](#) photo 3 (CD006) confirm the presence of visitor facilities at the Auldearn Battlefield. However, whilst a visitor centre may give a greater sense of importance from a tourism perspective it does not alter the level of protection and historical significance afforded by a battlefield designation. Similarly, we do not doubt that the Auldearn battlefield has been ploughed up and built upon at various points over several hundreds of years. This is common throughout the world, since battlefields are often only valued by later generations. However, subsequent and continued use of the land does not change or override the battlefield designation. ES Appendix A14.1 paragraph 16.6 (CD006) concludes that this is a high value asset.

8.607 EB29 confirms the distances from Boath House and Boath Steadings that are quoted by the Auldearn Residents Group/Mr and Mrs Bailey in their closing statement. There the objectors argue that these distances fail to acknowledge that it would be 'far better' than being 26 metres from the garden at East Lodge Cottage and 74 metres from the house. We note that the objectors appear to accept these distances and the distinction between

the distance from the house and from the garden, we have already drawn conclusions on that matter above.

8.608 [ES Figure 14.1g](#) (CD007) shows the category A listed Boath House, Category B listed Boath Steadings and also several other category B listed buildings in the vicinity of Boath Steading. East Lodge Cottage is not a listed building. The evidence does not allow us to conclude that the realignment considered in EB29 (closer to these listed buildings) would be without impact.

8.609 In closing statement the objectors appear to argue that East Lodge Cottage is older and more historically significant than TS concludes. We attach some weight to the fact that HES has not objected to the proposed scheme and the ES findings for the historic environment. Were East Lodge Cottage to have more historic significance than TS has attributed to it then this would tend to reinforce the decision taken in document EB29, which recognised the impacts on the historic environment of realigning the proposed scheme through East Lodge Cottage.

8.610 Given the disadvantages associated with a route that passed through East Lodge Cottage and Mill of Boath, we find no grounds to doubt TS's conclusion in its closing statement paragraph 10.123 that an alignment passing through East Lodge Cottage is not better than the proposed scheme and that purchase of East Lodge Cottage is not necessary.

8.611 At Inquiry Session 11 Mr and Mrs Bailey argued for purchase of East Lodge Cottage under Section 106 of the [Roads \(Scotland\) Act 1984](#) (CD020) which, they contend, allows TS to purchase homes that would be or are blighted. They argue this land could then be used to provide mitigation for Mill of Boath and the Wendy Hoose. TS did not dispute the provisions of the Roads (Scotland) Act 1984 but contends that the definition of blight in the Town and Country Planning (Scotland) Act 1997 (as amended) has not been met.

8.612 We note the objectors disagree with TS about noise and vibration, air quality, health and visual and landscape impacts / effects, amongst others. However, in each instance the evidence considered (above) does not suggest that residential amenity would be so severely affected that the proposed scheme would no longer be in the public interest. This does not suggest that individuals would be expected to bear an excessive burden or that they have had few procedural avenues to challenge any deprivation of their rights.

8.613 At Inquiry Session 11 Mr and Mrs Bailey argued that TS had not initially passed on the request for compulsory purchase and that TS had altered the proposed route at [Skene Park-Blackpark-Russell's Wood](#) (document TS220). We have considered TS220 separately in chapter 7 paragraphs 7.116 to 7.153. There we conclude that that realignment avoided the need to acquire parts of Blackpark Farm and limited the impacts upon that farm business. This is contextually different to the circumstances at East Lodge Cottage where the objectors seek the circumstances that were ultimately avoided by the Skene Park-Blackpark-Russell's Wood realignment.

8.614 It is not our role to comment on the speed with which TS dealt with Mr and Mrs Bailey's request. Document EB29 contains their consideration of proposed scheme realignment to acquire East Lodge Cottage. Document [EB30](#) confirms that then Transport Minister Keith Brown MSP was briefed on the request by the Baileys and the Urquharts and the outcomes of the exercise in EB29. Document [EB21](#) confirms that voluntary purchase of

properties and realignment to include East Lodge Cottage in the CPO were each considered.

8.615 In its closing statement The Auldearn Residents Group/Mr and Mrs Bailey argue that a freedom of information request provided document EB26, which they argue to show that no change was proposed and that this decision was based on no discussion and no assessment.

8.616 However, document EB29 shows that consideration was given to both voluntary acquisition of and also compulsory purchase through proposed scheme realignment for Mill of Boath and East Lodge Cottage. Document EB29 is the assessment of an alternative alignment and therefore it is incorrect to state that no assessment took place.

8.617 [TS closing statement paragraph 10.122](#) argues that EB21 had not been provided with earlier material amongst TS129 because it had been confidential. This is understandable given the sensitivity of the contents and TS's decision to ultimately not proceed with the measures proposed in EB29. We do not therefore find any fault in either party respecting the confidentiality of this prior to the public inquiry taking place.

8.618 Document EB21 shows that TS's decision was communicated to the respective parties on 22 June 2016. This was prior to publication of the draft Orders later that year and, as such could have allowed time for the realignment in EB29 to be incorporated into the proposed scheme had TS considered it appropriate. This does not suggest there to have been no discussion, although it did, ultimately mean no change was made to the proposed route alignment.

8.619 TS has concluded that there are no reasons to justify voluntary acquisition of East Lodge Cottage in the public interest ([TS closing statement paragraph 10.121](#)). It has also concluded that the alternative alignment it considered in EB29 would not be better than the proposed scheme. The evidence suggests that the alternative in EB29 and also Mr and Mrs Bailey's proposal at Inquiry Session 11, would not be better than the proposed scheme, even if it brought about the outcomes sought by Mr and Mrs Bailey and also Mr and Mrs Urquhart.

8.620 The Oxford English Dictionary defines 'uninhabitable' as 'a place unsuitable for living in'. None of our findings above suggest that either East Lodge Cottage or Mill of Boath would become uninhabitable if the proposed scheme was constructed. Though, we accept that the Baileys and/or the Urquharts may no longer wish to continue living in the properties if the proposed scheme went ahead.

8.621 Mr and Mrs Urquhart's point that the proposed scheme would render their property uninhabitable 'for those wishing to live in the countryside' appears to be a statement about marketability to future prospective buyers. Habitability and marketability for specific would-be owners are entirely different matters. Not being marketable or being less marketable would not render a property uninhabitable.

8.622 At Inquiry Session 11 TS explained that it had considered cumulative effects of the proposed scheme in [ES Chapter 19](#) (CD005). In so doing it found that significant residual effects were apparent for noise and for visual impacts / effects but not for air quality. However, nowhere was the combination of significant effects such that it identified the need to raise significance levels or investigation. Mrs Bailey and TS debated that some of the

properties in question were on the existing A96 and so already experienced significant impacts. TS confirmed that the ES considers new impacts / effects resulting from the proposed scheme. This reflects our understanding of the ES.

8.623 The role of the ES and accompanying design process is to best accommodate the proposed scheme and not to devise solutions for all problems apparent on the existing A96. We note from ES Chapter 19 (CD005) that neither East Lodge Cottage nor Mill of Boath is identified as experiencing cumulative impacts that would result in higher attributable levels of significance or the need for additional mitigation besides that already designed-in/planned for as part of the proposed scheme.

8.624 It is not for us to determine whether or not it was reasonable for TS to reach a conclusion that the properties would not be uninhabitable prior to completing the ES. However, at Inquiry Session 1 TS's noise expert confirmed that the noise assessment was carried out in February 2016 and published alongside the draft Orders in November 2016. We recognise that it would have been plausible for TS to have carried out sufficient work and to have had sufficient understanding of the locality to reach such a professional conclusion in advance of the ES publication.

8.625 TS has explained the approach to compensation for non-statutory objectors following construction of the proposed scheme. Any claim would be a matter for the respective parties and the Valuation Office Agency. Compensation is not a matter for this inquiry.

Additional matters raised in closing statements

8.626 The Auldearn Group/Mr and Mrs Bailey raise several other matters in their closing statement. These are points of clarity and are not of direct relevance to our consideration of the proposed scheme. However, for completeness we respond to these as follows:

- it is not abnormal for public bodies to commission and appoint external consultants following a tendering process. Often this can be a method of buying in expertise, capacity and independence of professional judgement.
- given that Jacobs carried out detailed technical work on behalf of TS it does not seem unreasonable that these personnel should then attend the public inquiry sessions to appear as witnesses and defend or answer questions about their work. This serves to illustrate the scale of work and that the design and EIA required a variety of different professional expertise to come together.

8.627 This does not suggest that TS has behaved incorrectly in its promotion of the proposed scheme or in its use of external consultants.

Overall

8.628 We find that objections by the Auldearn Residents Group collectively and Mr and Mrs Farquhar, Mr and Mrs Urquhart, Mrs and Mrs Bailey, Mr and Mrs Maxwell, Mr Davidson and Ms Philips, Mr McCulloch and Mr Fraser can either be overcome through programmed mitigation/accommodation works and/or the design of the proposed scheme. Where residual impacts / effects remain these would not require additional mitigation, would not override the public interest in providing the road, and, do not warrant/cannot be overcome by modification to the draft Orders. Therefore the evidence does not suggest that we should recommend that Scottish Ministers modify or refuse to confirm the draft Orders.

OBJ/132 Mr Niall B Holden and Mr Euan J Holden

8.629 OBJ/132 Mr Niall B Holden and Mr Euan J Holden are the owners of Bogside of Boath Farm, which is located to north of Auldearn. Some of its land would be acquired for the proposed scheme.

Objections

Business viability

8.630 OBJ/132 Messrs Holden argue that the ES agricultural assessment treats Bogside of Boath Farm and Feddan Farm as the same when it should not. They argue that:

- they own Bogside of Boath and are contract farmers (not tenants) for C Innes and Sons, who own Feddan Farm.
- they are active farmers of Bogside of Boath and C Innes & Sons have no notifiable interest.
- when Bogside of Boath Farm is considered in isolation the impact of the proposed scheme cannot be considered to be 'neutral' as stated in the ES.

8.631 Following TS's recognition that both are separate farms and its revision of the agricultural assessment ([TS132.02](#)) Messrs Holden continue their objection in their [outline statement](#) (24 May 2018) arguing that:

- the proposed scheme would remove 14.18 hectares (around 16% of the farm) together with the effects of severance and fragmentation;
- the proposed scheme would sever the current holding and take some of the best land thereby reducing the area of several fields and severing others;
- the size and shape of severed fields would be less suited to modern practices and equipment thus increasing costs and adversely affecting the viability of the farming unit; and,
- the proposed scheme would not have a 'neutral' impact on viability of the farm as a standalone unit.

Access

8.632 Messrs Holden argue that:

- severance of fields from the proposed scheme would result in significant accessibility issues, particularly for areas north-west of the farm that would become directly inaccessible from the remainder of the farm; and,
- several locations across the farm are proposed for acquisition to facilitate new field accesses, including some that would protrude into the field and pose potential difficulties for future working of these fields that could be resolved by accesses in alternative locations.

8.633 They request more detail.

Proximity impacts and development proposals

-Development proposals

8.634 In [TS132.01](#) Messrs Holden argue that the proposed scheme and associated noise and visual impacts would adversely affect planning permission for six residential properties on their land. Although they say that this would form part of a compensation claim they

prefer an alternative route that would avoid their land. Alternative routes are covered separately in Chapter 2: Matters of Principle.

8.635 In their outline statement (24 May 2018) Messrs Holden contest TS's claim in TS132.02 that this permission for redevelopment of the steading has lapsed. They argue that The Highland Council confirmed on 7 August 2013 that development had been initiated and therefore that the permission is live indefinitely [assumed to mean that Messrs Holden consider this permission to be extant]. They argue that the impact of the proposed scheme upon this development proposal is therefore a material consideration.

-Proximity

8.636 The objectors argue that the proximity, noise and visual impacts of the proposed scheme would adversely affect Bogside of Boath Farmhouse and their proposed steading development.

-Noise and vibration

8.637 In TS132.01 Messrs Holden seek more detail on proposed noise mitigation measures without prejudice to their CPO objection. Following provision of this (TS132.02) Messrs Holden argue in their outline statement (24 May 2018) that, TS132.02 acknowledges that the noise impacts on Bogside of Boath Farm House and a proposed steading development would be 59.3 dB and 59.4 dB respectively. This, they argue, is marginally below the absolute mitigation threshold of 59.5 dB LA10, 18h. Given what they consider to be a very minor difference and, allowing for margins of error, they contend that mitigation should be considered.

8.638 Messrs Holden question the basis for the absolute noise level mitigation threshold of 59.5 dB LA10, 18h. This, they argue, may be acceptable in an urban environment with high background noise levels but not in a rural area.

-Visual impacts and mitigation

8.639 In TS132.01 Messrs Holden seek more detail on the proposed visual mitigation measures without prejudice to their CPO objection. Following provision of this (TS132.02) Messrs Holden argue in their outline statement (24 May 2018) that, whilst the ES and TS132.02 cover the general principles of landscape mitigation, it is reasonable for them to have more information in order to properly assess the impacts upon their property.

Drainage

8.640 OBJ/132 Messrs Holden argue that:

- the impact of the proposed scheme on the farm's drainage network would be significant;
- the design and build contract for drainage would not allow them to understand the detailed proposals prior to the public inquiry.

Transport Scotland's Response

Business impact

8.641 In TS132.02 TS accepts that Feddan Farm and Bogside of Boath Farm were incorrectly considered together in the agricultural assessment. It therefore considers the impact of the proposed scheme on the 89 hectares of land at Bogside of Boath Farm only. For the revised assessment TS confirms that:

- as set out in [ES paragraphs 15.3.52 to 15.3.63](#) (CD005) a high sensitivity would be assigned, reflecting the intensive arable cropping and prime quality land;
- a high magnitude would be assigned, reflecting the loss of 14.48 hectares of land within 10 fields (16% of the total land holding) and a high degree of field fragmentation and severance (four fields severed);
- mitigation, as identified in [ES Appendix A15.7 at pages A15.7-44 to A15.7-50](#) (CD006), would include measures such as:
 - provision of new field accesses;
 - reinstatement of boundary features;
 - through consultation, opportunity to merge severed fields to make remaining field shapes and sizes more manageable; and,
 - reinstatement of field drainage systems.
- a residual significance of 'Substantial' would be assessed.
- when considering the impact of the proposed scheme on likely future viability of the farm, a 'Neutral' impact is predicted, reflecting the assessment criteria in [ES paragraph 15.3.61](#) (CD005);
- accommodation works would be determined in consultation with the objectors during the preparation of the construction contract documents.

8.642 TS confirms that:

- plots 2021 and 2102 would be required for construction of the proposed scheme and essential environmental mitigation identified in the ES which includes:
 - land for the permanent SuDS ponds, including sufficient working space to enable construction;
 - within the vicinity of the SuDS ponds this includes planting of mixed woodland to screen views from surrounding properties and riparian woodland to aid integration of the SuDS and provide habitat and promote biodiversity; and,
 - mixed woodland planting (north of the proposed dual carriageway) to screen views from properties to the north and riparian woodland to aid integration of the realigned Auldearn Burn and provide habitat and promote biodiversity.
- land to the north west of PS28 Auldearn NMU Underpass is required to allow construction of the Auldearn Burn culvert and associated watercourse diversion and protection works, the Auldearn NMU Underpass, and for compensatory flood storage;
- if, following construction of the proposed scheme, any part of these plots is deemed surplus to requirements, the Scottish Ministers may offer to sell this land back to the objectors in line with the Crichel Down rules.

8.643 TS states that:

- ES Appendix A15.7 (CD006) on pages A15.7-47 to A15.7-50 and [ES Figure 15.6j](#) (CD007) show the impacts of the proposed scheme on the land at Bogside of Boath Farm as affecting fields 113/1 to 113/10;
- [ES Appendix A15.1](#) (CD006) and [ES Figure 15.5](#) (CD007) confirm that, of the 14.22 hectares of land proposed for acquisition, 10.32 hectares is made up of prime quality land (LCA Class 2 and Class 3.1). The remainder is made up of non-prime land (LCA Class 3.2 and Class 4.2);
- ES Appendix A15.7 (CD006) identifies opportunities to merge severed areas within fields 113/3, 113/4 and 113/8 to improve field husbandry through creation of more manageable field sizes and shapes;
- this could be done as accommodation works, subject to agreement by the objector; and,

- should Messrs Holden feel they have a valid claim for compensation, TS's Guidance on the Compulsory Purchase Process and Compensation (CD046) provides information on their entitlement to compensation and how to make a claim for compensation. All claims for compensation would be subject to the District Valuer's assessment.

Access

8.644 TS argues that:

- access to severed fields would be retained through the provision of new means of access 428 and 429 ([draft SRO Plan SR21](#) – CD003);
- it accepts that this could lead to additional journey lengths when accessing land from the steading at Bogside of Boath;
- any additional costs resulting from this could form part of a claim for compensation, which would be subject to the District Valuer's assessment;
- new means of access have been designed to an appropriate standard for their proposed use and developed in sufficient detail for the purposes of preparing the ES and publishing the draft Orders;
- the location of the field access is fixed by the draft Road Orders. However, the final detailed design of all aspects of the proposed scheme, including farm and field accesses would be carried out closer to the time of construction;
- it is currently expected that this detailed design would be the responsibility of the Design and Build contractor. As part of the detailed design, it may be possible to slightly reduce the length of the accesses;
- if, following construction of the proposed scheme, part or all of the land purchased for the construction of these accesses is deemed surplus to requirements, TS may offer to sell this land back to the objectors;
- any reduction in the value of the surrounding land as a result of the construction of the accesses could form part of a claim for compensation subject to the District Valuer's assessment.

Proximity impacts and development proposals

-Development proposals

8.645 TS understands the outline planning permission to be 08/00055/OUTNA, which it contends was determined in June 2008. TS argues that:

- [ES paragraphs 15.3.12 to 15.3.14](#) (CD005) describe the methodology for assessing impacts on development land, which includes a three year assessment period for extant planning applications (June 2013 to June 2016);
- this approach is consistent with other trunk road schemes of this nature and reflects the statutory time limits for initiating development which has been granted planning permission;
- there are no documents available to view on The Highland Council planning portal page for this 2008 outline planning permission. However, a further approval was granted (11/02308/MS) on 24 August 2011 for the dwellings subject to the condition that the development must commence no later than two years from the date on the decision notice (i.e. by 24/08/2013);
- there is no indication on The Highland Council's planning portal that an Initiation of Development certificate (enclosed with the planning permission decision notice) has been submitted and any development begun;

- as such, unless the objectors can provide evidence that the pre-commencement conditions of the permission have been agreed with The Highland Council, and development was initiated within the approved timescale it is assumed that the permission has lapsed; and,
- any impact on the value of the objectors' property resulting from the proposed scheme could form part of a claim for compensation, which would be subject to the District Valuer's assessment.

-Proximity impacts

8.646 TS considers the proximity impacts in relation to Bogside of Boath Farmhouse and the proposed development at Bogside of Boath Steading under noise and vibration and visual impacts below.

-Noise and vibration

8.647 TS argues that it has given detailed consideration to noise mitigation based on its noise mitigation strategy in [ES paragraphs 8.2.24 to 8.2.34](#) (CD005). It contends that this strategy has been devised based on [DMRB guidance](#) (CD049.19) and WHO guidance ([CD090](#) and [CD091](#)). TS explains that noise mitigation is considered where the significance of impact at a receptor is predicted to be:

- Slight/Moderate adverse or worse, which for high noise sensitive receptors equates to at least a 1 dB noise level change in the short term (the year of opening), and/or at least a 3 dB in the long term (typically within 15 years of the scheme opening) and, in addition, the predicted ground floor façade noise level exceeds 59.5 dB LA10,18h;
- Slight/Moderate adverse or worse, in the long-term with a predicted noise level that exceeds 55 dB Lnight,outside.

8.648 TS confirms that both the predicted noise level change and the predicted absolute noise level thresholds need to be exceeded for mitigation to be considered.

8.649 TS argues that the ES, as required by DMRB HD213/11 (CD049.19), presents the noise levels at the 'least beneficial' (the greatest adverse noise level change). TS explains that the 'least beneficial' noise level change is determined using modelled receptor points, which are situated one metre from the façade of each building, as shown in [TS132.02](#) Figure 1. However, it explains that the least beneficial receptor may not always be the noisiest receptor. At Bogside of Boath these receptor points are in different places, as shown on TS132.02 Figure 1. As such TS argues that:

- TS132.02 Table 1 (reproduced below) shows the predicted noise levels and significance of noise impacts for the 'least beneficial' receptor at the Bogside of Boath Steading;
- TS132.02 Table 2 (reproduced below) shows the predicted noise levels and associated Significance of Impacts for the noisiest receptor points at Bogside of Boath Steading and Bogside of Boath Farmhouse.

TS132.02 Table 1: Predicted DMRB Noise Levels and Significance of Impacts at Bogside of Boath Steading

Scenario	LA10,18hr DMB Noise Level (dB)	LA10,18hr Scenario Comparison Noise Level (dB)	Noise Level Difference (dB)	Significance of Impact
DMB vs DSB	37.9	52.0	14.1	Large/ Very Large Adverse
DMB vs DMF	45.4	46.1	0.7	Slight Adverse
DMB vs DSF	37.9	52.9	15.0	Large/ Very Large Adverse

TS132.02 Table 2: Noise Levels and Significance of Impacts at the Predicted Noisiest Receptor Point

Scenario	Noise Level LA10,18h dB	Noise Level LA10,18h dB
	Bogside of Boath Steading	Bogside of Boath Farmhouse
Baseline Year: Do Minimum (2021) [DMB]	47.5	48.0
Baseline Year: Do Something (2021) [DSB]	58.3	58.4
Future Year: Do Minimum (2036) [DMF]	48.1	48.6
Future Year: Do Something (2036) [DSF]	59.3	59.4

Scenario	Noise Level difference (dB)	Significance of Impact	Noise Level difference (dB)	Significance of Impact
	Bogside of Boath Steading		Bogside of Boath Farmhouse	
DMB vs DSB	10.8	Large/Very Large Adverse	10.4	Large/Very Large Adverse
DMB vs DMF	0.6	Slight Adverse	0.6	Slight Adverse
DMB vs DSF	11.8	Large/Very Large Adverse	11.4	Large/Very Large Adverse

Notes:

The DMRB assessment requires the following scenarios to be compared:

- Baseline Year Do-Minimum vs Baseline Do-Something (DMB vs DSB)
- Baseline Year Do-Minimum vs Future Year Do-Minimum (DMB v DMF)
- Baseline Year vs Future Year Do Something (DMB v DSF)

Baseline Year, is the year of opening (for assessment purposes)

Future Year, is fifteen years after the Baseline Year

Do-Minimum describes the situation without the proposed scheme

Do-Something is with the proposed scheme in place

8.650 TS argues that:

- TS132.02 Table 2 (above) shows that with the proposed scheme in place the absolute noise levels (for the predicted noisiest receptor points) would remain below the 59.5 dB LA10,18h threshold for both the Year of Opening and the Future Year at both the farmhouse and the steading. Therefore noise mitigation is not proposed at this location;
- if the proposed steading development conversion to residential dwellings was already complete, based on the noise mitigation strategy, they would not have met the noise mitigation criteria.

-Visual impact and mitigation

8.651 TS argues that:

- [ES Chapter 10](#) and associated figures and appendices (CD005, 006 and 007) acknowledge that the proposed scheme would have a significant adverse visual effect on Bogside of Boath Farm;
- the visual assessment found that at winter in the year of opening there would be a 'Substantial' effect on the property (Receptor 157) due to the introduction of the proposed dual carriageway and PS18 (C1172 Underbridge) in close proximity;
- establishment of mitigation planting for increased screening would reduce the effects to 'Moderate' (significant) by summer 15 years after opening;
- landscape and mitigation measures ([ES Section 9.6](#) (CD005), ES Appendices [A10.1 and A10.2](#) (CD006) and [ES Figures 9.5t and 9.6k](#) (CD007)) have been applied to reduce both landscape and visual impacts of the proposed scheme on Bogside of Boath whilst assisting integration with the local landscape character;
- proposed measures to the north of the proposed dual carriageway between ch26700 and ch27350 include a belt of mixed woodland planting connecting to a hedgerow

running along the top of the cutting for the realigned Auldearn-Station-Drum Road (C1172);

- mixed woodland requires the inclusion of both broad-leaved and coniferous woodland for visual screening purposes and would comprise plants which range in size from feathered trees to whips and transplants;
- this would aim to create multi-layered woodland with a balanced mix of native deciduous and coniferous trees, including a native green understory;
- the balance between deciduous and evergreen species would be varied to achieve year-round screening and reflect the existing woodland local to the various sections of the road;
- the woodland mix would include typical species such as Oak, Alder, Scots Pine and Rowan;
- as the woodland establishes over time it would assist to screen potential visibility of the carriageway and passing traffic to the south of the property;
- as the realigned Auldearn-Station-Drum Road (C1172) would move into cutting as it travels towards the proposed underbridge it would be provided with partial screening of the carriageway and traffic from Bogside of Boath Farm;
- a proposed hedgerow at the top of the cutting would further assist to increase the extent of the screening as the hedgerow establishes;
- [ES Section 9.6.41](#) (CD005) explains that hedgerows are proposed to tie revised boundaries into existing field boundaries, but also enhance landscape character and biodiversity and provide screening where required;
- native planting mixes aim to reflect species found in the region and a typical mix may include Hawthorn, Blackthorn, Beech and Holly.
- [ES Section 9.6.9](#) (CD005) explains that more detailed development of the landscape mitigation proposals will be progressed and details incorporated within contract documents, along with employer's requirements and specification; and,
- this will include a requirement that the detailed design meets the objectives of the mitigation and overarching Landscape Objectives.'

Drainage

8.652 TS argues that Mitigation Item No. CP-AG10 specifically addresses impacts on field drainage ([ES Table 15.23](#) - CD005) and that [ES Appendix A15.7](#) (CD006) identifies this as necessary for all affected fields owned by the objectors. Mitigation Item CP-AG10 states:

'Particular care shall be taken to reduce damage or disturbance to field and forestry drainage systems. Laying of new drains would be undertaken to maintain drainage systems during construction. Repairing and reinstatement of field drains affected by construction shall be agreed with the landowner/occupier to ensure that land capability is maintained and flooding is not exacerbated. Where appropriate, the integrity of the drainage system would be secured in advance through the installation of header drains (cut off drains) to facilitate construction. All remaining remedial works shall be undertaken post-construction.'

8.653 TS argues that:

- the construction contract documents would specify that where existing field drainage is likely to be affected by the proposed scheme, the contractor would be responsible for locating and reconnecting the drainage as appropriate;

- the detailed design is expected to be the responsibility of the Design and Build contractor, however, it is anticipated that the field drains would be connected a new pre-earthworks ditch, which outfalls into the Auldearn Burn.

Findings of Fact

Business impacts

8.654 TS accepts that it made an error in the ES agricultural assessment regarding the arrangements for farming of Feddan Farm. The evidence does not suggest the owners of Feddan Farm object to the proposed acquisition of land on the north sides of fields 1/1 and 1/2 respectively. [ES Appendix A15.7](#) (CD006) and [ES Figure 15.6k](#) (CD007) distinguish between the affected land at Feddan Farm and at Bogside of Boath Farm by using different field codes beginning 1/ and 113/ respectively for each farm. We find this to allow continued consideration of the impacts on Bogside of Boath as a standalone unit alongside the material contained in [TS132.03](#).

8.655 We find the principle of this matter to be resolved with the outstanding issue being the impact on the residual farming unit of Bogside of Boath, owned by the objectors.

8.656 [ES Figure 4.1j/4.1k](#) and [15.6j/15.6k](#) (CD007) demonstrate that the proposed land take at Bogside of Boath Farm would be required for construction of the proposed scheme, SuDS ponds etc. and associated landscape and ecological mitigation as identified in [ES Figure 9.5s/9.5t](#) (CD007).

8.657 Messrs Holden and TS disagree about the impact of 'neutral' identified by TS in its revised agricultural assessment in TS132.02. Messrs Holden also consider the impact on the viability of their agricultural business would be 'significant'.

8.658 [DMRB Volume 11, Section 3, Part 6, Paragraph 6.3](#) (CD049.18) lists the four main effects on agricultural land that assessments need to cover. [Paragraph 6.4](#) (CD49.18) explains that impacts on farmers as residents or business people, additional to the items in paragraph 6.3 (CD049.19), should be assessed following the methods used to assess effects on other residents or businesses affected by a scheme. The evidence does not suggest that [ES Appendix A15.7](#) (CD006) has failed to consider these factors.

8.659 [Paragraph 10.17](#) (CD49.18) talks about the likely future viability of affected agricultural units. We find this to mean that the assessment is focussed on farming rather than other interests and specifically whether farming remains a viable land use. We find that the agricultural assessment is not using the term 'viability' to describe how profitable or otherwise a business or individual field may be or may become. Instead, it is describing whether agriculture remains a viable land use. We find that the mitigation measures identified in [ES Appendix A15.7](#) for fields 113/1 to 113/10 are orientated towards sustaining farming as a viable land use. The evidence does not suggest that farming would cease to be possible at Bogside of Boath Farm.

8.660 The revised assessment in TS132.02 confirms that the proposed scheme would acquire 16% of the land at Bogside of Boath Farm and the impact on future farm viability would be 'neutral'. We find that [ES paragraph 15.3.61](#) (CD005) is clear that the intended meaning of the term 'neutral' involves change and that this may result in a reduction or restructuring of activities. We also note the definitions of the terms 'beneficial' and 'adverse'

in ES paragraph 15.3.61 (CD005). We find that the definition of 'neutral' most accurately describes the anticipated impacts on Bogside of Boath Farms that would result from the proposed scheme and that the terms 'beneficial' and 'adverse' do not.

8.661 Were Bogside of Boath Farms to consider it had or would incur losses as a result of the proposed scheme it could choose to seek compensation subject to consideration by the District Valuer. Compensation is not a matter for this inquiry.

8.662 Further, we also note from ES Appendix A15.7 (CD006) and [ES Figure 15.6l](#) (CD007) that the affected areas at Feddan Farm fields 1/1 and 1/2 (now separated from Bogside of Boath Farm in the revised assessment) account for the smallest share of the combined proposed land take (0.41 hectares) with no severed areas. This suggests to us that, on balance, the original agricultural assessment would be not substantially altered by the removal of Feddan Farm. As such we find TS's conclusions on sensitivity and impact, following the revised assessment, to be plausible.

Access

8.663 ES Appendix A15.7 (CD006) and ES Figure 15.6j/15.6k (CD007) show that fields 113/1, 113/4, 113/6 and 113/8 would be severed by the proposed scheme. Other fields such as 113/2 and 113/3, for example, would lose land but would be shrunk rather than severed. ES Appendix A15.7 (CD006) proposes a series of field mergers to overcome the impact of shape and size and/or facilitate entry to/from/via merged fields from new means of access 428, 429, 431 (via 430), 433 and 435 ([draft SRO Plan SR21](#) – CD003). As such the proposed scheme would not result in access being denied to parts of Bogside of Boath Farm.

8.664 We agree that the proposed closing-off to vehicles of the U2997 at the PS28 Auldearn NMU underpass, could result in some additional journey length and an increase in the number of journeys needed to access different parts of the farm. Should the objectors consider they would lose out financially they could choose make a claim for compensation subject to the District Valuer's assessment. Compensation is not a matter for this inquiry.

Proximity impacts and development proposals

-Development proposals

8.665 Both parties dispute whether the outline planning permission at Bogside of Boath Farm Steadings is extant. The date of 7 August 2013 presented in OBJ/132 Messrs Holden's outline statement (24 May 2018) would fall within the time period identified by TS in [ES paragraphs 15.3.12 to 15.3.14](#) (CD005). More than two years has passed since the two year deadline for commencement of development quoted by TS312.01 decision notice for the 2011 permission (11/02308/MS) and longer for the 2008 permission (08/00055/OUTNA).

8.666 There is no evidence before us in the form of an Initiation of Development certificate or other confirmation that the permission was implemented lawfully prior to its expiry. However, we accept that, in time, the appropriate evidence may be produced to verify that it is extant. Ultimately, we find the issue at stake to be one of compensation, as mentioned by the objectors in their letter [TS132.01](#) and not one that requires further investigation at this stage; given that TS has provided sufficient information on how the proposal would affect the steading in terms of noise and other effects.

8.667 Were the objectors to consider that the proposed scheme would result in losses or blight then this could form part of a claim for compensation subject to an assessment by the District Valuer. Compensation is not a matter for this inquiry.

-Proximity impacts

8.668 [ES Figure 4.1k](#) (CD007) shows that the proposed scheme would be closer to Bogside of Boath Farm than the existing A96. It also shows proposed works to side roads and changes to access arrangements for Bogside of Boath Farmhouse and steadings that are also covered in [draft SRO Plan SR21](#) (CD003). We consider the noise and visual impacts in greater detail below.

-Noise and vibration

8.669 The evidence does not suggest we should find the noise assessment in [ES Chapter 8](#) (CD005) to have been carried out incorrectly or to have reached inappropriate or erroneous conclusions.

8.670 Similarly we consider the noise mitigation strategy ([ES paragraphs 8.2.24 to 8.2.34](#) – CD005) and noise mitigation thresholds in Chapter 2: Matters of Principle and in Chapter 4: Smithton, Culloden, Allanfearn, Balloch and the Hedges. We are satisfied that the noise mitigation strategy appropriately identifies noise mitigation thresholds for changes in noise levels and for absolute noise levels.

8.671 For noise level changes we find that [DMRB HD 213/11 paragraph 3.38](#) (CD049.19) identifies changes of 1 dB or less in the short-term and 3 dB or less in the long-term to be imperceptible. As such, we find it to be reasonable that noise level changes above this threshold would be perceptible and that mitigation should be offered, provided that the appropriate absolute noise level threshold is also exceeded.

8.672 The ES mitigation strategy uses a threshold of $L_{A10, 18h}$ 59.5 dB for absolute noise levels. Use of the $L_{A10, 18h}$ metric is reasonable because it is used in the [CRTN](#) (CD084) to predict traffic noise. It covers an 18 hour period whereas the L_{Aeq} defined by [WHO guidance \(CD090\)](#) is for a 16 hour period and free field. Free field means that it does not account for the reflective impacts of buildings ('façade effects'). The $L_{A10, 18h}$ 59.5 dB includes façade effects. We agree with TS that $L_{A10, 18h}$ and L_{Aeq} are therefore each different metrics for measuring absolute noise in the same way that centimetres and inches are different metrics for measuring distance.

8.673 The [WHO NNG executive summary page 17 Table 3](#) (CD091) lists two possible thresholds:

Night noise guideline (NNG) $L_{night, outside} = 40$ dB
Interim target (IT) $L_{night, outside} = 55$ dB

8.674 [ES paragraph 8.2.33](#) explains that TS has adopted a night time noise mitigation threshold is 55 dB $L_{night, outside}$, above which mitigation would be considered. [DMRB HD 213/11 paragraph 2.29](#) (CD049.19) gives scope for policymakers to adopt the Interim Target temporarily for exceptional local situations. It also sets no timescale to achieve these noise levels.

8.675 DMRB HD 213/11 paragraph 2.29 sentence one (CD049.19) advises that, for road projects that introduce a new noise source into an area, a key consideration is the change

in the level of night-time noise. This persuades us that the absolute noise threshold is not the only consideration.

8.676 TS has argued that the 40 dB $L_{\text{night, outside}}$ target is intended to protect the most vulnerable groups, everywhere at any given time from any risk of sleep disturbance and that this is a precautionary approach based on the lowest observable adverse effect level (LOAEL). The evidence does not suggest we should reach a different conclusion.

8.677 [DMRB HD213/11 Paragraph 3.38](#) (CD049.19) urges caution in predicting night-time noise as traffic levels fall at night. It recommends therefore that only those NSRs predicted to be subject to a $L_{\text{night, outside}}$ exceeding of 55 dB should be considered. This corresponds with the interim target in the WHO Night Noise Guidelines (CD091) and that quoted in ES paragraph 8.2.33 (CD005).

8.678 Therefore we find that the thresholds in TS's noise mitigation strategy ([ES paragraphs 8.2.24 to 8.2.34](#) – CD005) appropriately reflect the respective guidance in DMRB HD 213/11 paragraph 3.38 (CD049.19) and WHO guidance (CD090).

8.679 TS has provided details in [TS132.02](#) Tables 1 and 2 based on the least beneficial facade (greatest adverse noise level change) and the noisiest receptors respectively. We find these to show the predicted worst case scenarios for both predicted noise level change and predicted absolute noise levels.

8.680 Based on the descriptions in [DMRB HD 213/11 paragraph 3.37](#) (CD049.19) we find the predicted noise level changes in both instances would be perceptible in the short-term and the long-term. Whilst we agree with the objectors that 59.3 dB and 59.4 dB $LA_{10, 18h}$ would be marginally below the 59.5 dB $LA_{10, 18h}$ threshold, we still find these worst case levels to be below that threshold. Therefore, under the noise mitigation strategy (ES paragraphs 8.2.24 to 8.2.34 – CD005), this would not trigger the need for additional receptor-specific noise mitigation at Bogside of Boath Farmhouse or Steading, beyond what is already proposed. We also find this to confirm that were the proposed development (paragraphs 8.665 to 8.667 above) to have commenced or completed, it too would not require additional receptor specific mitigation.

8.681 We do not find that TS has ignored existing background noise levels. The 'do minimum' baseline and future levels are set out in the tables at TS132.02 (reproduced above) and show, as the objectors assert, that noise levels in the absence of the proposed scheme would be significantly lower than in the 'Do Something' scenarios. However, that conclusion is accepted by TS and is reflected in its prediction that there would be 'Large / Very Large' adverse effects as a result of the proposed scheme. This is a disbenefit of the scheme that was assessed in the ES and should be taken into account when deciding whether to confirm the proposed orders. However, as we confirm in Chapter 2: Matters of Principle, it is a separate process from the adoption of a noise mitigation strategy, where the question is not how significantly the receptor would notice the increase in noise, but whether, when considered objectively, the resultant noise level would reach a level that would be objectionable (thereby justifying receptor-specific mitigation).

8.682 The noise mitigation threshold of 59.5 dB $LA_{10, 18h}$ is one that is applied consistently throughout the country. TS's noise witness confirmed at the inquiry that he has never encountered a lower threshold being used. We find no evidence to undermine TS's decision to maintain its consistent approach to noise mitigation in respect of this project.

-Visual impact and mitigation

8.683 TS confirms that, whilst the proposed landscape and ecological mitigation would reduce the visual and landscape effects of the proposed scheme it would remain 'Moderate' (substantial) in the longer term.

8.684 We find this to be, in part, because the proposed scheme would change the landscape and introduce mitigation that would, itself be visible and change the current landscape and views. We find that further mitigation could provide additional screening but would, for the reasons stated above, be unlikely to further reduce the magnitude of effect.

8.685 The objectors have sought further information from TS, however we find the referenced material above from TS132.02 to be sufficient for our understanding of proposed landscape and ecological mitigation. We note that further engagement would/could take place to consider the species mix (within the bounds defined in the ES). We do not find this to be unreasonable since this mix of species may need to vary from locality to locality.

8.686 Whilst we accept that a 'moderate' visual effects would remain, we are satisfied that the proposed mitigation would contribute to blending the proposed scheme into the landscape. We are not persuaded that this residual visual effect would be sufficient to warrant modifications to the draft Orders or recommending to Scottish Ministers that they refuse to confirm them.

Drainage

8.687 ES Appendix A15.7 (CD006) identifies a requirement for Mitigation Item CP-AG10 and reinstatement of drainage networks for all fields affected by the proposed scheme at Bogside of Both Farm. TS has prepared preliminary drainage plans for the preparation of the ES and publication of the draft Orders. TS confirms that field drains would be anticipated to connect into new pre-earthwork ditches and outfall into the Auldearn Burn.

8.688 The ES would become part of the construction contract and therefore provision of the measures outlined within it, including CP-AG10, would be binding on any contractor. The contractor would have some design 'freedom' (our word) to respond to issues on the ground but within the terms of the contract, the ES and the CPO boundary.

8.689 As such we are satisfied that TS has identified potential issues relating to field drainage and sought to identify mitigation in advance that would be binding as part of a future contract. We also conclude in Chapter 2: Matters of Principle that the contracting approach is satisfactory.

Overall

8.690 We find that objections raised by Messrs Holden and Holden can either be overcome through programmed mitigation/accommodation works and/or the design of the proposed scheme. Where residual impacts / effects remain we find these would not require additional mitigation, would not override the public interest in providing the road and do not warrant/cannot be overcome by modification to the draft Orders. The evidence does not suggest that we should recommend that Scottish Ministers modify or refuse to confirm the draft Orders.

OBJ/136 Penick Farms

Objector

8.691 OBJ/136 Penick Farms covers land that includes Penick Farm, Inshoch Farm and Washingwells. It is a 187 hectare farm used primarily for a mixture of livestock and cropping ([ES Appendix A15.6](#) - CD006). The affected land is located to the north of the existing A96 and the proposed dual carriageway.

Business viability

8.692 OBJ/136 Penick Farms argues that:

- the proposed compulsory purchase of Plots 2201, 2215, 2216 would be difficult and costly to replace, assuming any land is available locally;
- long term cropping rotations and stocking densities would have to be addressed and adjusted;
- regardless of the proposed scheme being for the greater good, the cost impact on the business must be taken into account; and,
- the impact of the proposed scheme would be 'significant'.

Road Layout in vicinity of Penick Farm

8.693 Penick Farms argues that:

- during construction there would be a total of eight lanes of traffic close to the access point for the farm (the new dual carriage way, the existing A96 and the new service road for local traffic (points AW to BA map [draft trunking/detrunking Order](#) Plan TR5 – CD002));
- this would be excessive, when the project is proposed to stop 150 metres east of Hardmuir with, in its view, no indication of proposed route thereafter;
- several factors would dictate how busy the proposed new local roads would become including the role these would play in carrying traffic exiting the proposed dual carriageway;
- it is not clear how local traffic would access its respective destinations;
- there are some safety considerations on the road at present and it would be disappointing to recreate the hazard in a new road layout through lack of information.

Elevation data

8.694 Penick Farms argues that:

- it has requested elevation data from the consultant engineers regarding the initial cutting as the route enters the farm and then at the proposed flyover arrangement southeast of the farm as it approaches Hardmuir; and,
- it is impossible to assess the potential noise and visual impact of the proposed scheme without the key data and so this project remains, in its view, ill-defined.

A96 Dualling Hardmuir to Fochabers

8.695 Penick Farms argues that:

- it is unclear what proposed route and services would be east of Hardmuir; and,

- it supports the Auldearn Residents Group suggestion that the proposed scheme should end west of Auldearn. [This matter is covered alongside other route selection considerations in this report Chapter 2: Matters of Principle.]

Transport Scotland's Response

Business viability

8.696 TS confirms that:

- the impacts of the proposed scheme on Penick Farms has been assessed within [ES Chapter 15](#) (CD005) and [ES Appendix A15.7](#) (CD006); and,
- the significance of residual impact on the business is assessed as 'Moderate' following implementation of a range of agricultural mitigation measures to address impacts relating to the loss of agricultural land and restoration of drainage and boundary features.

8.697 TS notes that Penick Farm (in [TS136.01](#)) does not consider the impacts on its business to be grounds for objection. However, TS advises in [TS136.02](#) that:

- Penick Farms could be entitled to compensation for impacts on the business;
- TS's [Guidance on the Compulsory Purchase Process and Compensation](#) (CD046) provides information on both Penick Farms' possible entitlement to compensation and how it may be able to make a claim; and,
- all claims for compensation would be subject to the District Valuer's assessment.

Road Layout in vicinity of Penick Farm

8.698 TS confirms from [draft SRO Plan SR22](#) (CD003) that:

- the existing A96 (points 246 and 247) would be realigned north of its current alignment to that shown as point 109;
- the re-aligned A96 would cross the new A96 dual carriageway via an overbridge, located to the north of Courage;
- the re-aligned section of the existing A96 (point 109) would tie back into the existing A96 just west of Courage and to the east of Penick Road (U3164), with improvements and a relocation of the junction with Penick Road (point 110); and,
- the section of the existing A96 lying between these two tie in points (points 246 and 247 and the relocated junction, point 248) would be stopped up.

8.699 TS argues that:

- road materials from the redundant section of road are normally removed or covered over with appropriate landscaping;
- [ES Figure 9.5u](#) (CD007) shows that this area would comprise mixed woodland planting;
- whilst the construction programme and associated traffic management would be the responsibility of the appointed contractor, TS does not anticipate a situation where traffic would be present on both the re-aligned A96 and existing A96 road at the same time (Numbers 109 and 246/247 as shown on draft SRO Plan SR22 (CD003), respectively).

Elevation Data

8.700 Following the objectors request for elevation data in TS136.01 TS confirms in TS136.02 that:

- elevation data for the proposed dual carriageway design levels and existing ground levels can be found in [DMRB Stage 3 Scheme Assessment Report Figures 3.1s and 3.1t](#) (CD009);
- these indicate that where the dual carriageway enters the western boundary of Penick Farm (approximately ch27700 on Figure 3.1s – CD009), it would be in a cutting of approximately 3.5 metres below existing ground level, reaching a maximum depth of approximately 6.5 metres, at a point approximately 150 metres east of ch27700;
- the proposed A96 dual carriageway would continue in cutting towards the south east, until ch28300 (north of the mast at Gallows Hill, Figure 3.1t – CD009), whereupon the A96 dual carriageway would return to existing ground level, and continue at this level, or on embankment up to 3 metres in height, until the eastern boundary of Penick Farm property (close to the existing A96 trunk road);
- the proposed design levels of the realigned existing A96 and existing ground levels can be found in [DMRB Stage 3 Scheme Assessment Report Figure 3.2r](#) (CD009) which shows the realigned A96 to be up to approximately 10 metres above existing ground levels in order for it to pass over the new dual carriageway section.

A96 Dualling Hardmuir to Fochabers

8.701 In TS136.02 (dated 31 July 2017) TS confirms that:

- in June 2016, TS awarded a contract to Mott MacDonald Sweco Joint Venture to carry out a DMRB Stage 2 route options assessment for dualling of the A96 between Hardmuir and Fochabers;
- this assessment work is now underway and TS sought feedback on the emerging options with a series of public exhibitions on 19 to 22 June 2017;
- the options presented at these public engagement events included the proposed route options tying in at Hardmuir with potential grade-separated junction locations indicated for each of the route options on display;
- interested parties will continue to be kept fully informed and feedback will be taken into account as TS develops its plans for the Hardmuir to Fochabers scheme;
- it expects the preferred option for the Hardmuir to Fochabers scheme would be identified during 2018, following further design development and assessment work.

Findings of Fact

Business viability

8.702 [ES Figure 15.6k](#) (CD007) shows the proposed dual carriageway would pass through and acquire the entire southern sections of fields 29/1, 29/2, 29/3, 29/5, 29/6 and 30/1 without residual severance. Field 29/4 would be split in half from east to west. As such we find this to justify the proposed acquisition of Plot 2201 for construction of the proposed dual carriageway and SuDS ponds, of Plot 2215 for realignment of the U3164 Penick Road and of Plot 2216 for new means of access 439 off the realigned A96 ([draft CPO Sheet 22 of 23](#) – CD001 and [draft SRO](#) Plan SR22 – CD003).

8.703 [ES Appendix A15.7](#) (CD006) confirms reinstatement of field boundaries and drainage. For fields 29/4 and 30/1 it confirms new means of access directly from or via the

existing A96. ES Appendix A15.7 (CD006) confirms that the proposed scheme would acquire 8% of the land at Penick Farm and the impact would be 'neutral'.

8.704 We find that [ES paragraph 15.3.61](#) (CD005) is clear that the intended meaning of the term 'neutral' involves change and that this may result in a reduction or restructuring of activities. We also note the definitions of the terms 'beneficial' and 'adverse' in ES paragraph 15.3.61 (CD005). We find that the definition of 'neutral' most accurately describes the anticipated impacts on Penick Farms that would result from the proposed scheme and that the terms 'beneficial' and 'adverse' do not.

8.705 Were Penick Farms to consider it had or would incur losses as a result of the proposed scheme it could choose to seek compensation subject to consideration by the District Valuer. Compensation is not a matter for this inquiry.

Road Layout in vicinity of Penick Farm

8.706 We note that OBJ/136 Penick Farms refers to eight lanes between points AW and BA on [draft Trunking and De-trunking Order](#) (TDO) Plan TR5 (CD002) but also refers to the proximity of the Hardmuir tie-in. Draft TDO Plan TR5 (CD002) shows point AW and BA to be located on the north and south sides, respectively, of the proposed Nairn East junction. We have therefore considered the objection with regard to Nairn East junction and the area around the Hardmuir tie-in, the latter of which is in close proximity to Penick Farms.

8.707 Draft TDO plan TR2 (CD002) and draft SRO Plan SR21 (CD003) each show that the proposed dual carriageway would pass over the existing A96 at the Nairn East Junction. Slip roads north and south would link both via roundabouts.

8.708 Were one to stand at point AW and look south one might see across the eastbound entry slip road, the proposed dual carriageway, the existing A96 and the westbound entry slip road to point BA. However, in reality the differing levels of the overbridge and access ramps and also the proposed landscape and ecological mitigation ([ES Figures 9.5s and 9.6j cross section T-T](#), CD007) would limit views and it would be unlikely that one would view six or eight carriageways all at the same time in a linear manner. Given that this is a proposed grade-separated junction we find no reason to suggest that any of this road space would be excessive.

8.709 We find that draft SRO Plan SR22 (CD003), draft TDO Plan TR5 (CD002) and [ES Figure 4.1k](#) (CD007) confirm TS's description of proposed road layouts in TS136.02 for the locality closer to Penick Farms and Hardmuir (east of Auldearn). [ES Figures 9.5u and 9.6k cross section V-V](#) (CD007) show proposed planting of mixed woodland and hedge row along the north and south sides of the proposed dual carriageway and realigned A96, and the embankment of the realigned A96 would contribute to limiting views of the proposed scheme. [ES Figures 4.1k and 4.1l](#) and 9.6k cross section V-V (CD007) also confirm that the proposed dual carriageway would be in a cutting between ch29100 and ch29500. As such there would not be eight lanes of traffic side by side once the proposed scheme became operational and direct linear visibility of all operational lanes of traffic would be limited.

8.710 We find this to be confirmed by [ES Figure 10.3h](#) (CD007) and [ES Appendix A10.2](#) (CD007) which shows a reduction in visual effect from moderate/substantial at winter year

of opening to moderate by summer fifteen years later for receptor 174 (Penick Farm and Farmhouse and Inshoch Farmhouse).

Elevation Data

8.711 The evidence in [DMRB Stage 3 Report Figures 3.1r to 3.1t](#) (CD009) and ES Figures 4.1k and [15.6k](#) (CD007) does not suggest we should doubt TS's descriptions of the elevation data it provides in [TS136.02](#). We find this to confirm that the proposed dual carriageway would pass southwest and southeast of Penick Farm buildings in cutting and on an embankment to its immediate south. We have considered the visual impacts / effects of the proposed scheme at localities south and southeast of Penick Farm in paragraphs 8.706 to 8.710 above.

8.712 [ES Figures 9.5t and 9.5u](#) (CD007) show the proposed dual carriageway in cutting between ch27600 and ch28300 with mixed woodland planting on the north side of the proposed scheme both west and east of these locations. We find these factors together would contribute to reducing the visual impacts / effects of the proposed scheme as concluded in ES Appendix A10.2 (CD006) and ES Figure 10.3h (CD007).

8.713 [ES Appendix A8.3](#) (CD006) shows predicted absolute noise levels for the least beneficial façade, with and without the proposed scheme (mitigated and unmitigated) for first floor and ground floor at receptor NV024 (Penick Farmhouse). It shows that with the proposed scheme in place (Do Something Baseline) ground floor absolute noise levels would increase to 41.8 dB LA_{10, 18h} from the Do Minimum Baseline of 39.0 dB LA_{10 18h}. This would represent a short-term noise level increase of 2.8 dB compared to without the proposed scheme. In the longer term (fifteen years after opening) with the proposed scheme in place (Do Something Future) absolute noise levels would reach 42.9 dB LA_{10 18h}. An increase of 3.9 dB compared to without the proposed scheme (Do Minimum Baseline).

8.714 This shows that the predicted noise level change would be perceptible in the short term (above 1 dB) and in the long term (above 3 dB) as explained in [DMRB HD213/11 Section 3, Part 7 paragraph 3.37](#) (CD049.19). However, absolute noise levels would remain below the absolute noise level threshold of 59.5 dB LA_{10 18h}. Therefore, this does not indicate the need for additional mitigation beyond that already planned and factored into the noise assessment.

8.715 We are satisfied that the evidence above is sufficient to have reached conclusions regarding the provision or otherwise of noise and visual impact mitigation. The evidence does not suggest that the proposed scheme is ill-defined.

A96 Dualling Hardmuir to Fochabers

8.716 We consider matters of route selection, including whether the proposed scheme should end west of Auldearn, in Chapter 2: Matters of Principle.

8.717 We note that Penick Farms is amongst several objectors close to Hardmuir that have recognised that the next phase of the A96 dualling project would also have the potential to affect them; including through the placement of future junctions and route selection. However, only the proposed scheme (Inverness to Hardmuir) is before us and not the next phase.

8.718 TS has confirmed that the work has begun to select the preferred route for the Hardmuir to Fochabers phase along with associated public engagement. We note that TS has promised to keep Penick Farms informed of progress and that there would likely be further opportunities for Penick Farms (and others) to become involved and comment further in the next phase. We find that our conclusions for the proposed scheme would not prejudice Penick Farms' ability to comment further and make its views known about subsequent proposals.

Overall

8.719 We find that objections for Penick Farms can either be overcome through programmed mitigation/accommodation works and/or the design of the proposed scheme. Where residual impacts / effects remain we find these would not require additional mitigation, would not override the public interest in providing the road and do not warrant/cannot be overcome by modification to the draft Orders. The evidence does not suggest that we should recommend that Scottish Ministers modify or refuse to confirm the draft Orders.

OBJ/138 Mr Philip Pullan and Mrs Gillian Pullan

The Objector

8.720 OBJ/138 Mr and Mrs Pullan own Innesfree, one of five residential properties and a storage area for a commercial enterprise at Courage. According to Mr and Mrs Pullan, a sixth home has planning permission. Courage is located east of Auldearn on the south side of the existing A96.

8.721 Mr and Mrs Pullan also own land to the north of Innesfree that is used by tenant farmers for livestock grazing and the production of silage. Courage and the nearby agricultural fields are accessed from an at-grade junction and access track on the south side of the existing A96. This access track is owned by Mr and Mrs Pullan but the other properties at Courage have a right of access over this access track.

8.722 The proposed dual carriageway would pass north of Auldearn and then through a cutting on the north east side of Gallows Hill, opposite to the north of Courage. It would then swing eastwards (still in a cutting) past the north side of Courage. The existing A96 would run on its present course on the south side of the proposed dual carriageway until the existing access track at Courage. Here it is proposed to follow a new alignment via an overbridge crossing to the north side of the proposed dual carriageway. It would then run along the north side of the dual carriageway to the proposed Hardmuir junction and tie-in.

8.723 The proposed scheme would acquire plots 2207, 2208, 2209, 2210, 2211, 2212 and 2218, which are owned by Mr and Mrs Pullan. These plots include parts of two agricultural fields running parallel (south) of the existing A96. It would also see compulsory purchase of the northern end of the existing access track to Courage including gate access to two fields. These plots would accommodate part of the proposed scheme including New Means of Access Number 465 on [draft SRO](#) Plan 33 (CD003).

8.724 Although Mr and Mrs Pullan do not formally represent the residents at Courage they indicate that those living at Courage share many of their concerns.

Objections

References to Courage Farm

8.725 OBJ/0138 Mr and Mrs Pullan argue that several TS documents and correspondence refer to Courage Farm but they contend that their property is Innesfree not Courage Farm. Following cross examination by TS's legal representative at Inquiry Session 1 Mr Pullan confirmed that the [ES Appendix A5.1 Receptor Register](#) reference P0027 (CD006) refers to Innesfree. However, he pointed out that earlier material had not done so.

Rationale and Hardmuir Junction/tie-in

8.726 Mr and Mrs Pullan argue that the rationale for the proposed Nairn bypass is flawed and that the Hardmuir junction and tie-in are unsafe. Proposed scheme rationale is covered separately in Chapter 2: Matters of Principle. Matters relating to the Hardmuir junction and tie-in are covered under a separate heading below (paragraphs 8.869 to 8.915), including Mr and Mrs Pullan's objections. Mr and Mrs Pullan propose a redesign of the local road layout between the proposed Hardmuir junction and Courage, this matter is considered separately below under the heading 'Road design and safety at the proposed new Courage access track'.

Business impact

8.727 Mr and Mrs Pullan argue that:

- the proposed compulsory purchase would adversely impact the value of their property and leave the remaining agricultural fields too small for viable agriculture;
- compulsory purchase of this land could be avoided by shifting the proposed alignment north onto Penick land so the land take would affect one party rather than three;
- TS documentation does not consider the balance of land take in this manner. As such TS has failed to properly consider these matters.

Road design and safety at the proposed new Courage access track

8.728 Mr and Mrs Pullan argue that:

- the existing entrance to the Courage access track is used by a variety of vehicles including bin lorries, hail and stop bus services, school buses, cars and agricultural machinery;
- these are often slow moving and there are safety risks with the fast moving traffic on the existing A96;
- the proposed scheme risks fast moving traffic leaving the proposed dual carriageway at Hardmuir encountering slow moving traffic at Courage with limited visibility on the new road alignment; and,
- this would be exacerbated during poor weather conditions.

8.729 Mr and Mrs Pullan propose an alternative road layout and traffic arrangement which they argue would resolve this situation and negate the rationale for the proposed 'expensive and dangerous flyover' at Courage. Initially Mr and Mrs Pullan had put forward a proposed road layout [Rev 4.2 \(15 January 2017\) \[TS138.03\]](#) that was rejected by TS in [TS138.04](#). They subsequently modified this (Rev 4.3 30 May 2018) which was submitted in [TS138.09](#) in August 2018 and alongside their precognition as [PP002](#) and explanatory notes [PP001](#).

8.730 Mr and Mrs Pullan raised during the inquiry session that:

- TS rejected Rev 4.2 on the basis of right angled turns at the overbridge and failed to provide compelling evidence for doing so with no engineering justification;
- TS has adhered to DMRB principles but this is general guidance, whereas Courage is a local situation and departures from DMRB are allowed; and,
- TS should recognise the indicative nature of the alternative solution (Rev 4.2) and an engineer should be capable of overcoming matters such as right angled turns.

Proposed new access arrangements for Courage

-Ownership and maintenance

8.731 Mr and Mrs Pullan argue that:

- there is a small strip of land owned by TS, between the existing A96 carriageway and the access track to Courage;
- access across this is not guaranteed and so required various legal hurdles to be overcome when Innesfree was purchased; and,
- the proposed new means of access, at 170 metres longer, would still be owned and maintained by TS and, as such, would replicate this legal issue at a more significant scale.

-Additional journey length

8.732 Mr and Mrs Pullan argue that:

- the proposed new access (point 465 [draft SRO](#) Plan SR33 – CD003) would extend the distance from Courage to the de-trunked, existing A96 by approximately 170 metres;
- this would cause additional difficulties for taking bins to the junction for collection;
- this may not seem a long distance but it would be for elderly people;
- it would also add inconvenience for walking to catch the bus at the access to the new track.

-Drainage and Flood Risk

8.733 Mr and Mrs Pullan argue that there are issues of localised flood risk at points along the proposed new access (point 465 draft SRO Plan SR33 – CD003) that would limit access and inhibit navigation by foot for example to place bins for collection or to catch the bus.

Amenity impacts from the proposed scheme

-Air quality

8.734 Mr and Mrs Pullan argue that the air quality impacts of the proposed scheme would adversely affect the amenity of Innesfree.

-Visual

8.735 Mr and Mrs Pullan argue that the visual impacts of the proposed scheme would adversely affect the amenity of Innesfree.

-Noise and vibration

8.736 Mr and Mrs Pullan argue that the noise impacts of the proposed scheme would adversely affect the amenity of Innesfree.

Septic Tank

8.737 Mr and Mrs Pullan were concerned about potential impact of the proposed scheme on a septic tank.

Consultation

8.738 Mr and Mrs Pullan argue that there has been inadequate engagement. They contend that TS did not meet with them or visit the Courage area until after the preferred route had been decided. They contend that the junction and access design was a desk top exercise which did not appreciate the location. In contrast, they argue, the approach for the Hardmuir to Fochabers section was carried out better. This has, they consider, led to opposition from landowners and the public.

8.739 Under cross examination, Mr Pullan conceded that TS had contacted him by letter following his participation in each of the engagement events during November 2013, December 2013, January 2014 and June 2014 and that meetings took place from June 2015 onwards on eight separate occasions for updates, to seek information and to agree design issues. Mr Pullan recalled this but stated that only the meeting in June 2014 was a visit from the team and that the other times it involved staff from the Inverness Office who were what he terms 'couriers of information'.

Transport Scotland's response

Business impact

8.740 TS argues that:

- a Farm Business Survey on 23 March 2016 found that the agricultural fields are let annually for sheep grazing (80 sheep for 10 weeks between September and February) and for silage making (26-30 big bales of silage harvested per year from one cut);
- the acquisition of the agricultural fields would be necessary to provide access to the properties at Courage and adjacent farmland;
- access would be lost at the northern end of both fields but alternative access could be provided through accommodation works;
- the current access at the southern ends of both fields from the Courage access track would be undisturbed;
- the productive capacity of the land would reduce, but it could continue to be accessible to farm machinery and for grazing livestock and silage making; and,
- as such [ES Table 15:24](#) (CD005) concludes that the proposed land-take of 0.48 hectares is expected to be of 'Moderate' residual significance and the additional journey distance using the proposed new means of access (approximately 170 metres) is assessed as being of 'Negligible' significance.

8.741 Regarding the acquisition of alternative land TS argues that the draft Orders can only be modified to reduce the proposed land-take for compulsory acquisition and not to increase the land take with new/alternative sources.

8.742 TS confirms that the objectors may be entitled to compensation for the impacts of the proposed scheme on their land and that all such claims for compensation would be subject to the District Valuer's assessment.

Road design and safety at the proposed new Courage access track

8.743 TS argues that:

- proposed new means of access 465 to Courage (draft SRO Plan SR33 – CD003) would be suitably sized and designed to cater for the multiple users described by Mr and Mrs Pullan.
- alternative Rev 4.2 is addressed in:
 - the [TS Hearing Statement for Session 12](#) (Appendix 1 paragraphs 2.4 and 2.5),
 - TS Witness [Mr Herd's Precognition for Inquiry Session 1](#) (paragraphs 5.39 to 5.43),
 - TS letter dated 31 July 2017 ([TS138.04 pages 6 to 8](#)),
 - [Scheme Design Development and Consideration of Alternatives Report](#) Sections 4.9 and 4.10 (TS209), and,
 - [Penick – Courage – Hardmuir Alternative Alignment Report](#) (TS221) and [Addendum](#) (TS222);
- following concerns raised by the residents at Courage three alternatives were considered (TS221) for the Penick – Courage – Hardmuir alignment from ch31700 to the end of the proposed scheme;
- these were developed to maintain the horizontal alignment of the preferred option and revise the vertical alignment of the dual carriageway to better optimise the earthworks cut/fill balance, reduce land acquisition and environmental impact around Courage and reduce the size and cost of the structure carrying the existing A96 over or under the proposed dual carriageway;
- a fourth option was also considered which moved the alignment further away from Courage;
- this fourth option was initially sifted out of the further option assessment on the basis that it was unlikely to offer any material benefits in comparison to the three options proposed;
- however, following further landowner feedback this alternative was considered further and in the same level of detail as other three options and is described in full in the Penick – Courage – Wester Hardmuir Alternative Addendum (TS222).

8.744 With regard to this fourth option (alternative eastern alignment) TS argues that:

- it would not provide a better balance of assessment outcomes than the DMRB Stage 3 developed design;
- there would be a significant increase in land take from three landowners;
- the dual carriageway alignment, whilst further away from Innesfree and Courage, would be in closer proximity to the properties at Oakside and Kinnaird and closer to Penick Farm; and,
- the cost of this option would also be greater than the DMRB Stage 3 developed design.

8.745 TS argues that:

- the preferred option resulted in the proposed dual carriageway being placed in a cutting rather than on an embankment, thus lowering its height past Courage and through to Wester Hardmuir;
- the existing A96 at Courage was realigned on an overbridge above the dual carriageway;
- the overbridge structure required to carry the realigned single carriageway existing A96 would be much reduced in size compared to the previously proposed dual carriageway structure; and,

- an additional overbridge was included in the design at Wester Hardmuir to maintain local access to the existing A96 and avoid a lengthy alternative access track of 1.2 kilometres.

8.746 With regard to the existing A96 realignments TS argues that:

- these have been designed to a design speed of 85kph (just over 50mph) with a minimum forward stopping sight distance of 160 metres (consistent with DMRB);
- local roads and private means of access are designed to The Highland Council design standards;
- this design speed has been assessed and considered appropriate for the standard of carriageway at this location;
- the horizontal and vertical geometry of the alignment is shown on the [DMRB Stage 3 Scheme Assessment Report, Figure 3.2r](#) (CD009);
- the desirable minimum forward stopping sight distance of 160 metres would be achieved in both directions throughout the length of the re-aligned section of the existing A96;
- in addition, the current design includes 160 metres visibility looking both east and west from the Courage access;
- this visibility measurement is taken from a set-back of 2.4 metres from the edge of the re-aligned section of the existing A96; and,
- traffic levels on this road would be significantly reduced compared to the current situation.

8.747 TS also argues that there are technical factors which make its proposal superior to Mr and Mrs Pullan's alternative proposal, which are that:

- the design of the published proposed scheme includes a major/minor priority junction between the A96 and the Ellands – Hardmuir – Boghole Road (U3036) at ch30920 and from that location, based on the design standards given in the DMRB and the Traffic Signs Manual (TSM) the following minimum dimensions apply to the design of the eastbound carriageway:
- a minimum of 500 metres from the end of any junction merge taper to the first 'Dual Carriageway Ends Ahead' sign ([DMRB TD42/95](#) paragraph 2.28);
- 420 metres from the 'Dual Carriageway Ends Ahead' sign to the end of the physical central reserve (TSM Chapter 4, Figure 5.2);
- a 302.5 metre long taper (based on a 1 in 55 symmetrical taper) from the dual carriageway cross section to the single carriageway cross section ([DMRB TD27/05](#) Table 4-3 and TSM Chapter 4, Table 5-1);
- a minimum 295 metres stopping sight distance from the start of the single carriageway section to the first major/minor priority junction ([DMRB TD9/93](#) Table 3);
- this gives an overall minimum desirable distance from the end of any eastbound merge taper to the junction with the U3036 at ch30920 of 1,517.5 metres;
- it is not clear from Rev 4.2 where the dual carriageway would transition to a single carriageway and tie-in with the existing A96 or the intended layout of the junction between the A96 and the Ellands–Hardmuir–Boghole Road (U3036). In order to provide a major/minor priority junction at ch30920 for the U3036 and to achieve the design standards and minimum distances given above, it would not be possible to locate an eastbound merge slip road at the location indicated. Such a merge slip road would need to be located before ch29400 in the vicinity of the properties at Courage;
- each of the eastbound and westbound slip roads in Rev4.2 includes a section for two-way traffic followed by a section of one-way traffic. Two-way single carriageway slip

roads are not permitted ([DMRB TD22/06](#) paragraph 5.27) and therefore the location of the overbridge at Hardmuir indicated in Rev 4.2 is not suitable;

- eastbound traffic travelling along the existing A96 past Courage and wishing to continue east towards Brodie and Forres would be required to negotiate two junctions to the north and south of the Hardmuir overbridge; and,
- public transport services which currently travel along the existing A96 serve the junction of Penick Road (U3164). Rev 4.2 would divert these public transport services to the south of the proposed dual carriageway, increasing the distance that residents on Penick Road would have to walk to reach a location served by the bus services.

8.748 At Hearing Session 12, in response to Reporter questions about local conditions, TS's engineering witness advised that a new road offers the opportunity to design-out risk with, for example, approach gradients, additional road signs or markings to raise awareness (in this instance a sign indicating a turn off for Courage).

Proposed new access arrangements for Courage

-Ownership and maintenance

8.749 TS confirms that:

- the proposed scheme would sever the existing access track to Courage and so new means of access 465 ([draft SRO](#) Plan SR33 –CD003) is proposed specifically to resolve this;
- reassurance can be taken from its letter dated 31 July 2017 (TS138.04 page 6) which explains that Scottish Ministers would own and maintain this new access and that access is 'guaranteed in perpetuity' to the affected occupants at Courage; and,
- both this [TS138.04](#) and the Draft Orders are a matter of public record.

-Additional journey length

8.750 TS confirms that refuse collection by The Highland Council would continue at the junction between the new point of access to Courage and the existing A96.

8.751 TS recognises the additional 170 metres distance to take bins and confirms its willingness to provide a bin store close to the point where the access track meets the existing A96. This could allow smaller loads of refuse to be transferred to a main bin(s) rather than needing to drag the heavy, full bin to the road side.

8.752 During Inquiry Session 12 the Reporters asked TS about surfacing of the proposed new means of access and how gravel, for example, would or would not inhibit the movement of bins. TS acknowledged this and noted that it is often the case that gravel tracks cease some distance from public roads and are replaced by e.g. tarmac or other materials. TS confirmed that this is to prevent the deposition of gravel on the main carriageway. TS confirmed that surfacing would be considered during the design process in accordance with the standards of The Highland Council. It also referred to its earlier willingness to provide bin stores (above) with regards to dragging of bins across gravel.

-Drainage and flood risk

8.753 TS confirms that:

- the detailed drainage design for the proposed new means of access would be the responsibility of the design and build contractor;
- the construction contract would require that all roads and access tracks are provided with a suitable drainage system.

8.754 TS confirms that the specimen design developed for the purposes of preparing the ES and draft Orders proposes that:

- pre-earthworks drainage ditches be provided along the south side of the access track to intercept potential run-off from the adjacent fields;
- the access track drainage networks, including pre-earthworks ditches are proposed to connect into the proposed dual carriageway drainage network;
- the final outfall would be to a local watercourse; and,
- the access track would be designed with cross-fall and longitudinal fall to ensure it would drain freely.

8.755 TS confirms that a further round of engagement, with affected landowners, would take place as part of the development of the specimen design. This, it argues, would help inform the more detailed design process by obtaining further information with regards to the existing road and field drainage systems.

Amenity impacts from the proposed scheme

-Air quality

8.756 TS argues that at Innesfree:

- nitrogen dioxide (NO₂) levels are predicted to increase slightly but would remain 90% below the national standards;
- no changes are predicted in particulate matter (PM₁₀ and PM_{2.5}) levels;
- no changes are predicted that would exceed air quality objectives.

8.757 TS confirms that:

- the air quality assessment also considers construction dust;
- it concludes that the implementation of best practice dust mitigation measures during the construction phase (through a construction environmental management plan (CEMP)), would reduce the impact of dust on surrounding areas, and that there would not be a significant effect;
- these mitigation measures were included within the ES, and would be developed further at the next stage.

-Visual

8.758 TS confirms that:

- [ES Figure 10.3h](#) (CD007) acknowledges that the proposed scheme would cause 'significant adverse visual effects' for Innesfree (Receptor 170);
- this is because Innesfree is situated on higher ground above the existing A96 and has long range views over the undulating open landscape towards the Black Isle;
- [ES Chapter 10](#) (CD005) explains that the introduction of the dual carriageway, PS19: Hardmuir Overbridge No 1 ([ES Figure 4.1k](#) – CD007) and the realignment of the access road to properties, would cause a significant change to the landform in the foreground and the character of the views from Innesfree;
- this would result in 'Substantial' effects on the visual amenity during the winter year of opening;
- landscape and ecological mitigation proposals ([ES Figures 9.5u and 9.6k](#) - CD007) in the vicinity of Innesfree include mixed woodland to integrate the proposed scheme (including SUDS ponds) into the landscape whilst also screening views of the dual carriageway, structure and traffic, from Courage Steading and Innesfree;
- in addition, hedgerow planting has been proposed to assist in screening views of the access road from the properties;

- as described in the ES, while the proposed woodland mitigation would help to partially screen the proposed scheme from Innesfree, the effects on the receptor would remain 'Substantial' in the summer after 15 years due to magnitude of impact remaining high for the properties affected.

-Noise and vibration

8.759 TS confirms that:

- the noise impact assessment is reported in [ES Tables 8.11, 8.13 and 8.14](#) (CD005) for Innesfree (Receptor NV025);
- the noise mitigation strategy ([ES paragraphs 8.2.24 to 8.2.34](#) – CD005) takes into account the guidance offered in [DMRB](#) (CD049.19) and by the [WHO \(1999\)](#) (CD090);
- this strategy considers noise mitigation where the significance of impact at a receptor is predicted to be:
 - 'Slight/Moderate adverse' or worse, which for high noise sensitive receptors equates to at least a 1 dB noise level change in the short term (year of opening), and/or at least a 3 dB change in the long term (typically within 15 years of the scheme opening) and, in addition, the predicted ground floor façade noise level exceeds 59.5 dB LA10,18h;
 - 'Slight/Moderate adverse' or worse, in the long-term with a predicted noise level that exceeds 55 dB Lnight,outside;
- the noise assessment considered the least beneficial receptor at a distance of one metre from the property;
- [TS138.04](#) Table 1 (reproduced below) summarises the predicted change in noise level, the noise sensitivity of the receptor, and the assessment year;
- the assessment predicts a significance of impact of 'Slight Beneficial' in the Year of Opening, reducing to 'Slight Adverse' in the Future Year;
- this analysis shows that, even at the least beneficial receptor location, there would be a beneficial noise impact in the year of opening and, in the future year the predicted noise level change would be imperceptible (see Paragraph 3.37, [DMRB, Volume 11, Section 3, Part 7, HD213/11 – Revision 1 Noise and Vibration](#) – CD049.19).
Consequently, noise mitigation is not recommended at Innesfree to supplement that offered by earthworks and LNRS (low noise road surfaces).

TS138.04 Table 1: Predicted DMRB Noise Levels and Significance of Impacts at Innesfree

Scenario	LA10,18hr DMB Noise Level (dB)	LA10,18hr Scenario Comparison Noise Level (dB)	Noise Level Difference (dB)	Significance of Impact
DMB vs DSB	56.6	56.5	-0.1	Slight Beneficial
DMB vs DMF	58.5	59.1	0.6	Slight Adverse
DMB vs DSF	56.6	57.4	0.8	Slight Adverse

Note:

(DMB vs DSB) - Baseline Year Do-Minimum vs Baseline Do-Something

(DMB v DMF) - Baseline Year Do-Minimum vs Future Year Do-Minimum

(DMB v DSF) - Baseline Year Do-Minimum vs Future Year Do Something

Baseline Year is the assumed year of opening;

Future Year is fifteen years after the Baseline Year;

Do-Minimum describes the situation without the proposed scheme

Do-Something is with the proposed scheme in place.

Septic tank

8.760 TS argues that:

- this was raised as a new matter during Inquiry Session 12 but it is confident that there is information about it;
- such matters are not unusual and can be dealt with; and,
- should the septic tank or its soakaway be affected by the proposed scheme they will be moved.

Consultation

8.761 TS does not recognise the meetings referred to by Mr and Mrs Pullan in section 4 of their letter ([TS138.03](#)) and rejects their point regarding undue influence of any party. TS's consideration of objections relating to the DMRB Stage 2 route options comments by Auldearn Community Council and broader matters of engagement are considered separately in Chapter 2: Matters of principle with locally related matters covered in paragraphs 8.17 to 8.42 above.

8.762 TS confirms that it met with representatives from all of the local Community Councils as part of the stakeholder engagement activity during DMRB Stage 2 (on 27 and 28 May 2014). TS argues that community council activities, including how such bodies liaise with their local communities is not within TS's control. Therefore, TS rejects the assertion that the community council's response had a significant impact on the choice of route.

8.763 TS considers that there was ample opportunity for local residents to attend public exhibitions and provide feedback on the scheme proposals as presented. It argues that:

- this feedback was only part of a much wider assessment of the route options for the proposed scheme, which was carried out in accordance with DMRB guidance;
- the assessment of each of the route options was published in the DMRB Stage 2 Scheme Assessment Report (CD011);
- the DMRB Stage 3 EIA process, has been integral to the ongoing development of the proposed scheme;
- this involved undertaking detailed assessments of the environmental factors relevant to the final proposed scheme, reporting the likely significant impacts and describing the measures required to prevent, reduce and, where possible, offset any significant adverse effects on the environment;
- the assessment findings together with the mitigation measures are reported in the ES.

Findings of Fact

References to Courage Farm

8.764 References to an incorrect property name do not necessarily mean that the process has been flawed. The purpose of engagement is, amongst other things, to identify such matters and resolve them. The [draft CPO](#) (CD001) and the ES in e.g. [chapters 8](#) and [10](#) (CD005) refer to Innesfree specifically. We therefore conclude that even had the name of the location been incorrect at an earlier stage it is now consistent with the name identified by Mr and Mrs Pullan and is consistent between the ES and the Draft CPO.

Business impact

8.765 We accept TS's explanation that for infrastructure projects such as this, compulsory purchase is preferred since it removes the risk of delay from negotiations with individual land owners. The acquisition of Plots 2207, 2208, 2209, 2210, 2211, 2212 and 2218 is necessary for construction of the proposed scheme; including the proposed new means of access to Courage.

8.766 We accept TS's contention that the draft CPO can only be modified to remove land and that additional land (even for replacement of land removed) cannot be added into the draft CPO through modification. Such action would require an entirely new set of draft Orders, a new EIA to cover the environmental impacts of the new land in question, a new consultation for the public to comment and a new public inquiry to consider these matters and any new factors affecting the parties on whose land the new route would be located. This would cause further delay to the process.

8.767 The business impact of the proposed relates to the identity of the individual farming unit (IFU) that is being assessed ([DMRB Volume 11, Section 3, Part 6](#), Paragraph 10.6 – CD049.18). Paragraph 6.3 (CD049.18) lists the four main effects on agricultural land that assessments need to cover. Paragraph 6.4 (CD049.18) explains that impacts on farmers as residents or business people, additional to the items in paragraph 6.3, should be assessed following the methods used to assess effects on other residents or businesses affected by a scheme. Paragraph 10.17 (CD049.18) talks about the likely future viability of affected agricultural units. We find this to mean that the assessment is focussed on farming rather than other interests and specifically whether farming remains a viable land use.

8.768 ES Appendix A15.7 has assessed Mr and Mrs Pullan's land amongst that farmed by another party. There does not appear to be any dispute about this. Therefore this suggests that Mr and Mrs Pullan are commercial landlords who rent farmland.

8.769 The proposed scheme is likely to alter the way in which Mr and Mrs Pullan's agricultural fields are used. ES Appendix A15.7 (CD006) suggests that appropriate mitigation and accommodation works could limit the impacts of the proposed scheme and allow continued agricultural use, albeit on a different scale. We note that those listed in the draft CPO (CD001) as having an interest in Mr and Mrs Pullan's land have either not objected or have withdrawn their objections. The evidence does not indicate that the proposed scheme would prevent the future use of this land for agriculture, though it may reduce the amount of land available to do so.

8.770 Were it the case that Mr and Mrs Pullan's land is farmed under contract then if they consider that they would incur losses as a result of the proposed scheme they could choose to seek compensation. Any claim would be subject to an assessment by the District Valuer. Whether the Pullan's are commercial landlords or have their lands farmed under contract, compensation is not a matter for this Inquiry.

8.771 TS has considered matters of land take, amongst other matters. This is covered in the section below on road design and safety etc. (below).

Road design and safety at the proposed new Courage access track

8.772 Mr and Mrs Pullan had proposed a revision to the alignment of the proposed scheme to move it further from Courage and Innesfree and closer to other properties including Wester Hardmuir Wood, Penick Farm and Bogside of Boath. In [TS closing statement](#) paragraph 10.109 TS argues that Mr and Mrs Pullan provided a new alternative shown in [TS138.03 as Rev 4.2](#) dated 15/01/17. We note that TS rejected this on various engineering grounds stated in [TS138.04](#) and that Mr and Mrs Pullan subsequently revised this in Rev 4.3 which accompanied their precognition as [PP002](#). We take this further revision (PP002) to be at least some acceptance by Mr and Mrs Pullan of the matters raised by TS; since it (Rev 4.3) involves removal of a junction on the south side of the road at Hardmuir and defines various one way and two way traffic arrangements instead.

8.773 We acknowledge the safety concerns raised by Mr and Mrs Pullan regarding the access to Courage. We also note that TS has considered accident statistics for period 2010-14 ([DMRB Stage 3 Scheme Assessment Figure 2.4](#) Page 2 – CD009). These statistics show the instances where accidents involving personal injury have occurred. This shows no accidents at the Courage access track resulting in personal injury. However, we acknowledge that these statistics do not include instances where an accident has occurred but no personal injury resulted or, clearly, where an accident was narrowly avoided.

8.774 Whilst we acknowledge that the risk of an accident cannot be totally eliminated the evidence before us does not indicate that the risk of an accident occurring would increase at Courage or that it would do so as a result of the proposed new access. The evidence does not indicate that there is a better performing alternative in accident terms.

8.775 We note that the preferred design attempts to resolve numerous inter-related factors; including visual amenity concerns raised by those in the Courage area at an earlier stage.

8.776 [TS209](#), [TS221](#) and [TS222](#) show the consideration TS gave to a variety of factors that influenced its decision to opt for the preferred alignment including the PS19 overbridge carrying the realigned existing A96. These factors included safety and smooth flowing traffic and also land take, cost and environmental impacts such as responding to the visual amenity concerns raised by objectors at Courage. This led to the preferred option for the dual carriageway being placed in a cutting.

8.777 At Inquiry Session 1 Mr Pullan argued that placing the dual carriageway in cutting took two years to achieve by DMRB Stage 3. No parties dispute the timescale, however, this forms part of the proposed scheme before us. We consider that particular issue to be resolved.

8.778 We agree with Mr and Mrs Pullan that departures from DMRB can be made in certain instances and TS does not dispute this. This issue is discussed in general terms in Chapter 2: Matters of Principle. However, it is logical that any departure from DMRB would be based on some evidence and rationale. The TS analysis in [TS209](#), [TS221](#), [TS222](#) and the TS Hearing Statement for Session 12 suggest that the visibility requirements in [DMRB TD9/93](#) (CD049.07) for an 85kph (just over 50mph) road can be achieved along the whole alignment and at Courage access in the proposed scheme. Diagrammatic representations from the Courage access track are shown in [TS216](#). The evidence suggests that even though it is possible to depart from DMRB in justified circumstances it is, at least with the preferred alignment, unnecessary.

8.779 At Inquiry Session 11 Mr and Mrs Pullan argued that their alternative (Rev 4.3 – PP002) was not properly considered. We note it has been considered in [TS closing statement](#) paragraphs 10.107 to 10.112, to which we have had regard. Mr and Mrs Pullan also confirmed Rev 4.3 is indicative, arguing at Inquiry Session 12 that an engineer ought to be able to overcome the issues of ‘right angled’ turns that would arise at the proposed Hardmuir overbridge from a literal interpretation. We therefore find it to be reasonable for TS to consider all of the relevant engineering matters to arrive at a potential design for consideration of such an alternative.

8.780 Whilst TS222 Option 4 does not place the overbridge at Wester Hardmuir, as Mr and Mrs Pullan may wish, the evidence in TS witness [Mr Herd’s precognition for Session 1](#) paragraphs 5.39 to 5.43 and TS209 paragraphs 6.10.13 to 6.10.17, indicates that the only solution to accommodate all of the junction and traffic flow issues arising from PP002 (Rev 4.3) would be similar to the previously considered TS222 Option 4 (drawing B2103500/HW/0100/SK/199 Rev 0). The factors relating to Rev 4.3 have therefore been considered by TS.

8.781 TS221 and TS222 demonstrate a rational process for considering the variety of matters that affect and are affected by the alternative alignment options considered by those documents. That evidence concludes that TS222 Option 4 is not better than the preferred option; rather that it requires additional land and would involve greater cost than the preferred option.

8.782 Choosing now TS222 Option 4 or even more rigidly following Mr and Mrs Pullan’s alternative (PP002), with the existing A96 crossing the dual carriageway on a bridge at Wester Hardmuir, would require additional land that is not within the draft CPO (CD001). It is not possible to modify the draft CPO since land cannot be added; only removed. Doing so would require a redesign, new impact assessments, consultation and another public inquiry. The evidence before us suggests that this additional delay would be for an option which is more expensive and does not offer a better solution, however much it may be preferred by certain objectors.

Proposed new access arrangements for Courage

-Ownership and maintenance

8.783 The [draft SRO](#) (CD003) provides for a new means of access to resolve severance of the existing courage access track by the proposed scheme. This would be owned and maintained by Scottish Ministers. TS letter 31 July 2017 ([TS138.04](#) page 6 paragraphs 2 and 3) provides a public record of TS’s intention to ensure access for the occupants of Courage in perpetuity using this proposed new means of access. This should provide some reassurance for the objectors that the purpose of the new means of access is specifically to allow them to continue to access their property.

-Additional journey length

8.784 We note the potential challenges for residents moving heavy bins an extra 170 metres and the potential implications that different access track surfaces may have for this. It is clear that a more detailed design stage would subsequently take place and that this would provide an opportunity to consider the potential accommodation works suggested by TS in discussion with the affected parties (e.g. a bin store). Whilst these proposed solutions would not reduce the additional distance of the new access, a bin store

for example, could contribute to limiting the impacts of this on Mr and Mrs Pullan and others affected at Courage.

-Drainage and flood risk

8.785 We agree that it would be unsatisfactory for a new means of access to fail due to flood risk/drainage issues. However, TS138.04 (page 7) suggests that TS has considered the new means of access as part of the wider drainage solutions for this part of the proposed scheme and is in the process of more detailed design in consultation with the affected parties. We therefore find that this matter has not been ignored and that an appropriate process is in place to ensure that these risks are minimised through an appropriate design solution.

Amenity impacts from the proposed scheme

-Air quality

8.786 The evidence does not suggest that we should find the air quality assessment process to have been carried out incorrectly or to have reached erroneous conclusions.

8.787 [ES Appendix 7.4](#) (CD006) predicts:

- NO₂ concentrations at Innesfree (receptor AQ_214) of around 4 µg/m³, which is around 90% below the relevant air quality standards for annual mean concentrations of NO₂ of 40 µg/m³; and,
- particulate matter concentrations of 8-9 µg/m³ for PM₁₀, and 5-6 µg/m³ for PM_{2.5} both with and without the proposed scheme, which is under half of the relevant air quality standards for PM₁₀ of 18 µg/m³ and around half the relevant standard for PM_{2.5} of 10 µg/m³.

8.788 These predicted concentrations would be 'Well below' the respective relevant air quality objectives identified in [ES Table 7.3](#) (CD005). As such the property at Innesfree is not predicted to experience exceedances of air quality objectives with the proposed scheme in place.

8.789 [ES Table 20.1](#) (CD005) mitigation item GR1 includes consideration of 'fugitive dust' as a components of the CEMP based on IAQM standards in liaison with The Highland Council. This suggests that appropriate mitigation measures would be in place to resolve issues of construction dust. The evidence before us does not suggest we should reach an alternative conclusion.

-Visual

8.790 The proposed scheme would result in visual impacts on Innesfree and at Courage. [ES Chapter 9](#) (CD005) indicates that this would be the consequence of Innesfree being on higher ground and interference with open views. This is described and illustrated in the [Report on Landscape and Visual Issues](#) (TS212) pages 108 to 111. In particular this illustrates the proposed planting mitigation which forms part of the proposed scheme and shows a cross section at point V-V (page 109) taken from [ES Figure 9.6](#) (CD007).

8.791 We understand this to mean that whilst the mitigation planting should increase the screening of the road, in doing so, it would also affect the open views of the countryside. This would continue to represent a 'Substantial Adverse' visual impact resulting from the proposed scheme mitigation. This suggests that additional mitigation could contribute to further hiding the proposed scheme but would be unlikely to diminish the visual effects

brought about since more mitigation would bring visual effects of its own on the landscape and views at Courage.

-Noise and vibration

8.792 [ES Tables 8.11, 8.13 and 8.14](#) (CD005) for Innesfree (receptor NV025) and [TS138.04](#) Table 1 show that the predicted noise level change at the year of opening and at 15 years after opening would be imperceptible (below 1 dB short-term and 3 dB long-term). Predicted absolute noise levels with and without the proposed scheme in the baseline year and 15 years after opening at Innesfree would be below the threshold level of 59.5 dB L_{A10,18h}. As such no additional noise mitigation would be required beyond that already proposed and incorporated into the noise assessment.

Septic tank

8.793 Whilst this was a new matter raised during Inquiry Session 12 it has been raised by other objectors for other respective locations. We note that TS recognises such matters and is prepared to resolve these where a septic tank or its soakaway are affected by the proposed scheme. Resolution of such matters would form part of any accommodation works agreed with the respective party. As such these would form part of any construction contract and be binding on the contractor.

Consultation

8.794 Matters covering the adequacy of public engagement on route selection are covered separately in Chapter 2: Matters of Principle. Those relating to general engagement issues affecting the locality of Auldearn are covered separately in paragraphs 8.17 to 8.42 above. Below we consider public engagement matters relating specifically to Mr and Mrs Pullan.

8.795 We note Mr and Mrs Pullan's concerns about how engagement was carried out by TS. [ES chapter 6](#) (CD005) outlines the chronology of engagement from DMRB Stage 2 to publication of the draft Orders and ES. The evidence does not suggest we should conclude this to have been deficient. We also find no substantive evidence to suggest that certain parties were given more say than others. Mr Pullan conceded that he participated following various events during 2013 and 2014, this is indicated in [TS138.06](#) and [TS138.07](#). The correspondence chain from TS138.01 to TS138.08 confirms various written activity. Mr Pullan also accepted at Inquiry Session 1 that meetings had taken place between himself and TS / its representatives. We appreciate that the outcome of such discussion may not have been to his liking; however, the evidence does not suggest a failure to consult or that the process for doing so was deficient

Overall

8.796 We find that objections raised by Mr and Mrs Pullan can either be overcome through programmed mitigation/accommodation works and/or the design of the proposed scheme. Where residual impacts / effects remain these would not require additional mitigation, do not warrant/cannot be overcome by modification to the draft Orders and would not override the public interest in providing the proposed scheme. The evidence does not suggest that we should recommend that Scottish Ministers modify or refuse to confirm the draft Orders.

OBJ/139 Mr Hugh Andrews and Ms Janet Banks

The objectors

8.797 OBJ/139 Mr Hugh Andrews and Ms Janet Banks own Plot 2305, which is part of Wester Hardmuir Wood. The proposed scheme would run through a northern section of this woodland between it and the existing A96, from which the wood is currently accessible by vehicle.

Objections

Business viability

8.798 Mr Andrews and Ms Banks argue that the proposed scheme would:

- result in a loss of 18% of the woodland;
- reduce the woodland's amenity value;
- limit opportunities to develop and enhance the environmental and conservation aspects of the woodland; and,
- increase windthrow risk to remaining trees following proposed removal of the northern section.

8.799 They therefore seek detailed proposals for any felling and for the design and mitigation methods proposed to minimise these risks.

Access

8.800 Mr Andrews and Ms Banks seek clarity on the maintenance arrangements for the proposed new means of access to Wester Hardmuir Wood ([draft SRO Plan SR23 – CD003](#)). They are concerned that, as a shared access, this would greatly increase maintenance costs.

8.801 They also argue that the proposed new access must be constructed to at least as good a standard as the current access and seek the detailed proposals for its design and construction.

Drainage

8.802 Mr Andrews and Ms Banks argue that the proposed scheme is likely to cause significant drainage disruption and seek detailed proposals of mitigation measures to ensure adequate drainage of remaining land.

8.803 They also object to the proposed design and build contract. They argue that TS must employ parties appropriately qualified in agricultural and land drainage and that TS must remain liable for the installation of this.

Layby

8.804 Mr Andrews and Ms Banks argue that:

- the layby proposed at Plot 2305, adjacent to the entrance of their woodland, would be at risk of being used as a toilet and to dump waste;

- this would seriously compromise the recreation and conservation elements of their woodland as well as bringing its own health and safety issues; and,
- an alternative layby location should be found away from the woodland to the west, but if this is not possible then it should be located 100 metres further east in the new cutting where the steep sides would deter misuse of the woodland.

Transport Scotland's Response

Business viability

8.805 TS states that potential adverse environmental impacts of the proposed scheme have been avoided, where possible and reasonably practicable, through an iterative design process; including a thorough and robust route selection process. However, it recognises that the proposed scheme would still result in certain adverse environmental impacts. TS argues that:

- [ES Chapter 15](#) (CD005) and [ES Appendix A15.7](#), page A15.7-59 (CD006) assess the impact of the proposed scheme on woodland at Wester Hardmuir and that the significance of impact arising from land-take and future management of the woodland has been assessed as 'Substantial';
- whilst it has not been possible to avoid adverse impacts on this woodland, the ES identifies mitigation measures to minimise these impacts, which include requirements for a windthrow assessment and for an arboriculture assessment, including tree protection plan and method statement to inform retention of trees;
- a windthrow risk assessment was undertaken and reported in the ES Appendix A15.7, page A15.7-59 (CD006), which shows the windthrow risk as 'low' within two areas of woodland (mixed conifers and young broadleaves) and 'low to moderate' windthrow risk in the remaining area of Scots pine;
- felling would be undertaken within the draft CPO boundary to provide land for the main alignment and a parallel access track. The remaining land would be planted with mixed woodland to offset habitat loss for protected species;
- [ES Table 15.23](#) specifies Mitigation Item No. CP-F3 which states:

'Where individual stands of trees and woodland compartments would be affected, an appropriate arboricultural assessment (including tree protection plan and method statement) and/or windthrow assessment (using an appropriate assessment tool such as ForestGALES) would be undertaken preconstruction and appropriate mitigation employed to address safety risk to land within the proposed Scheme. Any felling to create a windfirm edge would take account of ecological, landscape and visual effects and designed where feasible to maximise ecological, landscape and visual opportunities.'

- this mitigation measure has been identified as being required for woodland parcel 16/1W due to expected 'low to moderate' windthrow risk;
- detailed proposals of the pre-construction works required would be informed by the windthrow and arboricultural assessment completed at that time;
- the appointed contractor would be required to develop and employ appropriate mitigation; and,
- should any work outwith the CPO boundary be identified at that time as being necessary to protect the proposed scheme this would be carried out subject to the objectors' agreement.

8.806 TS confirms that:

- it would carry out work to protect existing trees outwith the CPO boundary if these trees were to present a safety risk to land within the CPO boundary;
- any further work considered necessary by the objectors to protect existing trees outwith the CPO boundary would need to be arranged by them; and,
- compensation for such work may be available subject to the agreement of the District Valuer.

Access

8.807 TS confirms that:

- new means of access tracks 440 and 442 ([draft SRO](#) Plan SR23 - CD003) would be owned and maintained by Scottish Ministers following completion of the proposed scheme;
- new means of access track 440 would provide joint access to the objectors' land and to neighbouring land owned by the Ramjung Gomde Trust and by Ms Catherine Thompson, Ms Helen Thompson and Mr Neil Thompson;
- if, following construction of the proposed scheme, part or all of the land purchased for the construction is deemed surplus, the Scottish Ministers may offer to sell it (including sections of the track, where relevant) back to the objectors, subject to suitable burdens to protect future access rights of the other users of new means of access 440;
- the accesses have been designed in accordance with The Highland Council Roads and Transport Guidelines for New Developments for single track access roads, with a width of 3.3 metres, providing passing places to allow for safe passing of vehicles;
- the surfacing specification for the track is still to be confirmed and would be subject to consultation with the relevant property owners at the time of contract document preparation, but would be at least equivalent to the standard of surfacing on the existing track.

Drainage

8.808 TS argues that:

- ES Table 15.23 (CD005) contains Mitigation Item No. CP-AG10, which ES Appendix A15.7, page A15.7-59 (CD006) identifies as being required for woodland parcel 16/1W ([ES Figure 15.6k](#) – CD007). CP-AG10 states:

'Particular care shall be taken to reduce damage or disturbance to field and forestry drainage systems. Laying of new drains would be undertaken to maintain drainage systems during construction. Repairing and reinstatement of field drains affected by construction shall be agreed with the landowner/occupier to ensure that land capability is maintained and flooding is not exacerbated. Where appropriate, the integrity of the drainage system would be secured in advance through the installation of header drains (cut off drains) to facilitate construction. All remaining remedial works shall be undertaken post construction.'

- the drainage design prepared to date is an outline design, developed in sufficient detail for the ES and draft orders;
- the design and build contractor is expected to be responsible for the final detailed design of all aspects of the proposed scheme and would be carried out closer to the time of construction;

- the construction contract documents would specify that where existing land drainage is likely to be affected by the proposed scheme, the contractor would have responsibility for locating and reconnecting the drainage as appropriate;
- the outline design prepared to date proposes that any existing land drains encountered within Plot 2305 would be conveyed through suitably sized pipes beneath the proposed Wester Hardmuir Wood access track;
- the pipes would then connect into a cut-off drain running longitudinally along the top of earthworks cutting at the proposed dual carriageway; and,
- the cut-off drainage would then connect into the proposed dual carriageway drainage network and outfall into the local watercourse.

Layby

8.809 TS argues that it would not be possible to move the proposed layby further west as this would place it at a curve in the road with a 1,700 metre horizontal radius, and the placement of laybys on radii below 2,040 metres is not recommended in DMRB standard [TD69/07](#) (CD049.32).

8.810 TS confirms that it proposes to re-position the lay-by approximately 50 metres further east of the original proposed location (Drawing B2103500-HW-0100-SK-244 in [TS139.02](#)). TS considers it impractical to re-locate the layby any further east due to the increased land take required, the proximity of the Hardmuir Overbridge No. 2 (PS20) and the dual carriageway to single carriageway taper in the alignment.

8.811 TS confirms that:

- further meetings would be held with the objectors to discuss accommodation works as part of the preparation of the construction contract documents;
- any relevant information regarding the proposed scheme design that is available would be provided during these meetings.

Findings of Fact

Business viability

8.812 We find that no parties appear to dispute the matters in bullet points, below:

- ES Figures [4.11](#) and [15.61](#) (CD007) confirm that the northern section of parcel 16/1W would be required for construction of the proposed dual carriageway and new means of access ([draft SRO Plan SR23 – CD003](#));
- [ES Appendix A15.7](#) (CD006) confirms that the proposed scheme would take 18% of the 20 hectares of land (woodland) contained in parcel 16/1W; and,
- [ES Appendix A15.6](#) (CD006) identifies this land as non-commercial woodland that is well used by dog walkers, equestrians and the charity 'Wild Things'.

8.813 We find some potential for an impact on woodland amenity value due to the loss of land but recognise that access to and through the woodland would continue via the proposed new means of access as indicated in ES Appendix A15.7 page A15.7-59 (CD006) and draft SRO Plan SR23 (CD003)

8.814 Whilst this does not appear to be commercial woodland, TS has identified the risk to existing trees from windblow/windthrow via the assessment and reported its conclusions in ES Appendix A15.7 (CD006). This shows that TS recognises the potential impact of the

proposed scheme upon the woodland. It has also considered measures to resolve this such as [ES Table 15.23](#) (CD005) Mitigation Item CP-F3 and treatment of issues outside the CPO boundary that could affect land within it. We recognise that these would form part of the construction contract and therefore would bind the contractor to implement and complete any works to the appropriate standard. We find these measures to be reasonable.

8.815 We also note that compensation may be available for works that the objectors are required to carry out that are not within the CPO boundary but that come about as a result of the proposed scheme. This would be a matter for the objectors, TS and the District Valuer. Compensation is not a matter for this inquiry.

Access

8.816 We find that the costs of maintenance for proposed new means of access 440 and 442 (draft SRO Plan SR23 – CD003) would be borne by Scottish Ministers as the landowner, were the proposed scheme to proceed, and therefore, not by Mr Andrews and Ms Banks (or indeed other parties who would use the proposed access).

8.817 It is reasonable that the land could be sold back to the objectors with legal burdens to ensure other affected land owners were not denied access. This would be a matter for the respective parties at that time under the appropriate procedures.

8.818 It is appropriate that the proposed new access tracks would comply with the relevant standards of The Highland Council as the local roads authority. Whilst the surfacing has yet to be decided, we find it reasonable that this would be of at least the same standard as the present access and that Mr Andrews and Ms Banks would have an opportunity to participate further in the consideration of this. We find this would not prejudice Mr Andrews and Ms Banks' interests.

Drainage

8.819 No parties dispute that the proposed scheme would potentially impact on drainage of the objectors' land in parcel 16/1W (ES Figure 15.6l – CD007). ES Appendix A15.7 page A15.7-59 acknowledges this and identifies mitigation through the tie-in of existing woodland drainage with road drainage and new as required (as outlined by TS in TS139.02). We note that the ES would form part of any contract documents for construction of the proposed scheme and therefore that mitigation (including Mitigation Item CP-AG10 – ES Table 15.23 – CD005) and any agreed accommodation works would be binding on the contractor. As such we are persuaded that TS has considered matters of drainage upfront and devised approaches to resolve these where they arise. We find this to be reasonable.

8.820 We note that initial designs for drainage were prepared for the ES and draft Orders but that these would be subject to a further design stage upon award of any contract. This is not unreasonable.

8.821 We understand the objectors' concerns and their wish to ensure the proposed scheme does not result in inadequate drainage or other problems arising. We also acknowledge their wish for a clear route of recourse in the event of problems. Other objectors elsewhere have raised similar issues.

8.822 TS has included initial drainage designs for the purposes of the ES and the draft Orders. [ES Appendix A13.2: Flood Risk Assessment](#) (CD006) does not suggest any substantive risks from flooding and we attach weight to the fact that SEPA has not raised objections to the proposed drainage arrangements. We find the proposed drainage arrangements to be satisfactory in principle.

8.823 We disagree with Mr Andrews and Ms Banks that TS should be directly responsible for all problems arising. Were this to be the case it would relieve the contractor of responsibility, placing the costs of resolution on the taxpayer via TS. This would be sub optimal unless TS were itself to become the contractor. The proposed contracting regime would build-in from the outset any relevant requirements for mitigation from the ES and any agreed accommodation works. We find that this, oversight by TS's site management (Jacobs) and a clerk of works (Mitigation Item GR2 – [ES Table 20.1](#) – CD005) would provide a mechanism to hold the contractor to account.

8.824 The contractor would have some design 'freedom' (our word). However, this would remain within the requirements of the contract and the land acquired by CPO. In response to other objections during hearing sessions, TS explained that all designs must be approved through the clerk of works and would be considered against the ES. Where these would be considered to result in new or changed environmental impacts, they would be reassessed, including with any necessary mitigation. This provides an additional mechanism to ensure that design 'freedom' would not result in unintended environmental consequences that differ from those already foreseen by the ES (CD005, CD006 and CD007) and already built into the contract.

8.825 We understand the concerns of Mr Andrews and Ms Banks regarding any route for recourse in the event of unsatisfactory works. In hearing sessions TS confirmed the on-site staffing arrangements that would be in place during construction. We find that these arrangements would allow concerned parties to approach the service provider (the contractor) and their independent overseer (in this case Jacobs).

Layby

8.826 The objectors' proposed relocation of the layby further west would move it away from their woodland. However, this would not, on its own, eliminate their concerns, rather it would transfer these to other land where the respective land owner may plausibly express identical concerns.

8.827 We note [DMRB TS69/07](#) Table 3-1 (CD049.32) confirms TS's conclusions in [TS139.03](#) with regard to radii below 2,040 metres for roads with a design speed of 120 kilometres per hour. We therefore agree that locating the layby further west would not be practical.

8.828 [DMRB Stage 3 Figure 3.1u](#) sheet 21 of 22 (CD009) confirms that relocating the proposed layby 50 metres east, as TS now proposes, would place it further and deeper into the cutting. Whilst we acknowledge the potential for anti-social behaviour taking place at the layby, we find this to be possible wherever a layby is located. Moving of the layby further east and deeper into the cutting (as proposed by TS) would result in steeper sides limiting access from the layby to neighbouring woodland. As such this would contribute to reducing the risks identified by Mr Andrews and Ms Banks.

8.829 In their Outline Statement (24 May 2018) Mr Andrews and Ms Banks raise concerns that the scale of grade-separated junctions would be likely to result in higher speeds as vehicles depart the proposed dual carriageway onto the local road network. They contend that this would have an 'unnecessarily detrimental impact upon the amenity and environment' of areas within which they are situated. We agree that grade-separated junctions are designed to accommodate traffic entering or exiting the dual carriageway at high speed (or at least higher speeds than those permitted on the local road network).

8.830 Each grade-separated junction as shown on [ES Figure 4.11](#) (CD007) contains slip roads from the dual carriageway to roundabouts, thus requiring traffic to slow and stop before navigating the junction. Such slip roads are designed to enable the appropriate speed transitions and we do not find this to be an unusual phenomenon for drivers to experience. Whilst one cannot rule out the possibility of some drivers exceeding the permitted speed limits the design of grade-separated junctions and the proposed scheme in general (including side road improvements) does not appear to promote such action.

Overall

8.831 We find that objections raised by Mr Andrews and Ms Banks can either be overcome through programmed mitigation/accommodation works and/or the design of the proposed scheme. Where residual impacts / effects remain these would not require additional mitigation, would not override the public interest in providing the road and do not warrant/cannot be overcome by modification to the draft Orders. The evidence does not suggest we should recommend that Scottish Ministers modify or refuse to confirm the draft Orders.

OBJ/141 Mr James D and Mrs Sylvia AG Clarke

Objectors

8.832 OBJ/141 Mr James D and Mrs Sylvia AG Clarke own Wester Hardmuir Farm; which includes a fruit picking business and children's play facilities business that are both open to the public.

Objections

Proposed land take Plot 2311

8.833 Mr and Mrs Clarke argue that the proposed acquisition of Plot 2311 for construction of a loop road from the existing A96 to the U3036 and proposed dual carriageway includes some land proposed for planting but a large area is proposed to be left as verge grass. They argue that it is not clear why this area is needed for the proposed scheme. They are concerned this land would be compulsorily purchased but not be required due to changes in road alignments from the tie-in with the future Hardmuir to Fochabers section of dualling. As such they would therefore prefer to retain ownership of this land.

Access

8.834 In [TS141.01](#) (their objection letter dated 17 January 2017) Mr and Mrs Clarke raise concerns about the loss of direct access to the existing A96. Whilst they would prefer direct access from the proposed dual carriageway, in the absence of this they seek brown tourist

signs. If these are not provided they argue that they would seek compensation to cover the costs of placing their own signage.

8.835 In their outline statement submitted in May 2018 Mr and Mrs Clarke refer us to their letter to TS of 2 August 2017 ([document WH6](#) in the outline statement submission). There they argue that they are being asked to comment on the proposed scheme without any knowledge of how the next phase of proposed A96 dualling (Hardmuir to Fochabers) would tie-in.

8.836 They argue that the proposed Hardmuir to Fochabers Purple P1 option would 'obliterate' the new access route into Wester Hardmuir Farm from the U3036 which forms part of this proposed scheme and that little information is available about a proposed new junction at Macbeth's Hillock [part of the Hardmuir to Fochabers section proposals at the time of the objection]. Mr and Mrs Clarke oppose the Purple P1 route of the Hardmuir to Fochabers phase.

8.837 They also identify concerns with route Red R1 of the Hardmuir to Fochabers phase. However, they explain that whilst direct access from the proposed dual carriageway would be preferable, they support route Red R1 on the basis that direct access to Wester Hardmuir Farm from the new A96 via the U3036, as proposed in the proposed scheme draft Orders, would be retained. They reserve the right to comment further on the Hardmuir to Fochabers section.

Noise and vibration

8.838 Mr and Mrs Clarke argue that they cannot find any noise measurements taken at Wester Hardmuir Farm to show what the predicted noise impacts of the proposed scheme would be upon their property.

Visual impacts and proposed mitigation

8.839 Mr and Mrs Clarke contend that no cross-sections or visualisations have been provided for the proposed Hardmuir overbridge number two and its likely impacts on Wester Hardmuir Farm. They note that new woodland planting is proposed between the existing A96 and the proposed dual carriageway. However, they also note the proposed landscape and ecological mitigation ([ES Figure 9.5v](#) – CD007) shows no planting north of the proposed new loop road. They argue that this area is currently used to grow trees and they wish to see replacement planting of any trees lost. They also seek hedgerow planting on this boundary and also the northern edge of the proposed dual carriageway to filter views and create new habitats.

Transport Scotland's Response

Proposed land take Plot 2311

8.840 TS argues that:

- Plot 2311 would be required for construction of the connection from the existing A96 to the eastern tie-in of the proposed dual carriageway;
- the area of land marked as 'Verge Grass' on ES Figure 9.5v (CD007) is required for sightlines on the approach to the proposed junction in order to comply with road design

standards, minimum lengths of forward visibility are required, especially on the immediate approach to a junction, for road safety reasons.

Access

8.841 In [TS141.02](#) and [TS141.04](#) TS confirms that:

- it awarded a contract to Mott MacDonald Sweco Joint Venture to carry out DMRB Stage 2 route options assessment for dualling of the A96 between Hardmuir and Fochabers in June 2016 and that this work is progressing;
- it sought feedback on the emerging options with a series of public exhibitions on 19 to 22 June 2017 and further public engagement is anticipated;
- the options presented at these public engagement events in June 2017 included the proposed route options in the vicinity of Wester Hardmuir Farm;
- Mr and Mrs Clarke will be kept informed of progress and their feedback taken into account as these plans are progressed.

8.842 TS confirms that:

- the proposed scheme would be a Category 7A all-purpose dual carriageway (Section 3.1.4 of the [DMRB Stage 3 Scheme Assessment Report](#) - CD008), the highest category, with access only via grade separated junctions;
- left in/left out junctions onto the proposed dual carriageway are not permitted for this category of all-purpose road and were consequently not considered during the DMRB Stage 3 design development and assessment work;
- it is therefore unable to accommodate the objector's request for a left in/left out junction in these circumstances; and,
- on completion of the proposed scheme, access to Wester Hardmuir Farm would be available via the proposed Nairn East Junction or the new junction at Hardmuir.

8.843 TS confirms its willingness to provide a brown tourist sign subject to confirmation that the business participates in the relevant VisitScotland Quality Assurance Scheme. TS also confirms that the exact location and details for the signs would be determined in accordance with relevant guidelines and would be discussed with Mr and Mrs Clarke during the preparation of the contract documents in advance of the construction stage.

Noise and vibration

8.844 TS states that:

- Wester Hardmuir Farm was not amongst the baseline monitoring locations listed in [ES Table 8.7](#) (CD005), in accordance with standard best practice, baseline noise level measurements are not taken at all locations as this is not required for noise modelling purposes;
- the nearest baseline noise monitoring location to Wester Hardmuir Farm was Hardmuir of Boath, Auldearn, Nairn, IV12 5QG (OS Grid: 295127,855699);
- noise levels at Wester Hardmuir Farm, have been predicted in accordance with the prediction methodology in [CRTN](#) (CD084), supplemented with the additional guidance in [DMRB HD 213/11](#) Annex 4 – Revision 1 (DMRBF 2011) (CD049.19).
- in accordance with CRTN 1988 (CD084), prediction is the preferred method for determining road traffic noise levels;
- [TS141.02](#) Table 1 (reproduced below) summarises the DMRB assessment noise levels and associated significance of impacts for the residential property at Wester Hardmuir

Farm for the predicted least beneficial impacts at the dwelling for each scenario comparison.

TS141.02 Table 1: Predicted DMRB Noise Levels and Significance of Impacts at Wester Hardmuir Farm Dwelling

Scenario	LA10,18hr DMB Noise Level (dB)	LA10,18hr Scenario Comparison Noise Level (dB)	Noise Level Difference (dB)	Significance of Impact
DMB vs DSB	59.6	53.6	-6.0	Large/ Very Large Beneficial
DMB vs DMF	66.5	67.1	0.6	Slight Adverse
DMB vs DSF	59.6	54.4	-5.2	Moderate/ Large Beneficial

Note

These scenario comparisons are:

Baseline Year Do-Minimum vs Baseline Do-Something (DMB vs DSB)

Baseline Year Do-Minimum vs Future Year Do-Minimum (DMB v DMF)

Baseline Year Do-Minimum vs Future Year Do Something (DMB v DSF)

Baseline Year is the year of opening (for assessment purposes)

Future Year is fifteen years after the Baseline Year.

Do-Minimum describes the situation without the proposed scheme

Do-Something is with the proposed scheme in place.

8.845 TS confirms that TS141.02 Table 1 predicts Large/Very Large Beneficial noise impacts at the farm dwelling in the opening year, with the significance reducing to Moderate/Large Beneficial by the future year. It argues that these predicted beneficial impacts would arise because:

- the proposed dual carriageway would be further from the farm than the existing A96; and,
- the proposed dual carriageway would be in a cutting as it passes the farm.

8.846 As such, it argues that the design of the proposed scheme (including associated earthworks) provides acoustic screening of the proposed scheme at the farm dwelling.

Visual impacts and proposed mitigation

8.847 TS argues that the proposed scheme includes a new overbridge (PS20 Hardmuir Overbridge No.2) ([ES Figure 4.1](#) – CD007) to maintain access to Hardmuir of Boath from the existing A96. It argues that this structure would remain at existing ground level and the proposed dual carriageway would be accommodated in a cutting (approximately eight and half metres deep at the deepest point) between ch29800 and ch30550. TS confirms that it proposes planting of mixed woodland on the cutting slopes to provide year-round screening of views to the south and PS20. TS also confirms it proposes to retain, wherever possible, existing vegetation that is within the proposed scheme boundary.

8.848 For these reasons TS argues that the proposed dual carriageway would not be visible from the property at Wester Hardmuir Farm or from the existing A96 in the vicinity of the property. As such it argues there would be no need to plant additional hedgerows on the northern side of the proposed scheme to screen views from the property.

8.849 TS confirms that landscape planting and retention proposals are designed to reduce disturbance, fragmentation and habitat loss for protected species whilst also creating new habitat by offsetting habitat loss.

8.850 TS argues that the cost of replacing any commercial trees lost as a result of the proposed scheme could form part of a claim for compensation, subject to District Valuer's assessment and as detailed in TS's [Guidance on the Compulsory Purchase Process and Compensation](#) (CD046).

Findings of Fact

Proposed land take Plot 2311

8.851 ES Figure 4.1l (CD007) and [draft SRO](#) Plan SR23 (CD003) confirm that Plot 2311 would be required for the construction of a new loop of the existing A96, new junction of the existing A96/U3036 and existing A96/dual carriageway Hardmuir Junction (draft SRO Plan SR23 Point 111 and 112).

8.852 [ES Figure 9.5v](#) (CD007) confirms that land forming part of Plot 2311 on the south side of the proposed realignment of the existing A96 would be planted as verge grass. Given the presence of two proposed junctions in this vicinity, acquisition is the optimum method to ensure that the appropriate sightlines are achieved and maintained. This part of Plot 2311 would be required for the proposed scheme.

8.853 At the time of writing this report it is unclear which route has been proposed for the next phase (Hardmuir to Fochabers) and what, if any land requirements this would bring in this locality. Only the proposed scheme is before us. Were circumstances to change as a result of the next phase then Mr and Mrs Clarke could participate in the consultation exercise and make their views known at the appropriate time. Our findings for the proposed scheme would not prejudice their ability to comment on subsequent phases.

Access

8.854 [ES Figure 4.1k](#) (CD007) and draft SRO Plan SR22 and SR23 (CD003) show that no changes are proposed to the access arrangements for Wester Hardmuir Farm off the existing A96, save for new means of access 439 which is an improvement of the existing access. Therefore access to or from Wester Hardmuir Farm would not be denied via the existing A96 as a result of the proposed scheme.

8.855 A Category 7A dual carriageway (such as the proposed scheme) would allow access and egress only from grade-separated junctions. As such access to Wester Hardmuir Farm from the proposed dual carriageway would be via the proposed Nairn East junction and existing A96 or the proposed Hardmuir junction and realigned existing A96. It would not be directly off the proposed dual carriageway.

8.856 [ES Sections 1.1 and 1.2](#) (CD005) confirm that the dualling of the A96 would take place in phases with the proposed scheme being first because it was already the most advanced when Scottish Ministers decided to dual the whole route. We find nothing unusual or piecemeal about a large road infrastructure project being carried out in stages.

8.857 We note Mr and Mrs Clarke's concerns that their location means they could be expected to agree to one set of proposals for the proposed scheme only for these to potentially change or be affected again by a later set of proposals at the next phase.

8.858 We can only consider the draft Orders that are before us for the proposed scheme and not the next phase. Should Mr and Mrs Clarke wish, they could participate in the consultation on the draft orders for the next phase at the appropriate point(s). We find that they would not be prejudiced by this.

8.859 TS's agreement, in TS141.04, to provide brown tourist signs in locations determined by the relevant guidelines for signage placement resolves Mr and Mrs Clarke's request for this.

Noise and vibration

8.860 [ES section 8.3](#) (CD005) confirms that Wester Hardmuir Farm was not amongst those locations used for the baseline monitoring. This is consistent with the guidance in [DMRB Volume 11 Section 3 Part 7 HD213/11](#) paragraphs 3.8 to 3.12 and Annex 4 (CD049.19). Therefore the evidence does not suggest we should doubt the methodology, results or conclusions of the noise assessment.

8.861 [ES Figure 4.11](#) (CD007) shows that the proposed scheme would be further away from the property at Wester Hardmuir Farm than the existing A96 and that it would also be in a cutting at this location. We find this to provide some explanation for the predicted reduction in noise levels summarised in [TS141.02](#) Table 1. This is also demonstrated by the noise contours in [ES Figure 8.12p](#) (CD007) which shows predicted reductions in noise level comparing the baseline year without the proposed scheme and the future year with the proposed scheme. The proposed scheme would result in a predicted short and long-term reduction in noise levels to below the 59.5 dB LA10, 18h noise mitigation threshold. Predicted noise levels on the existing A96 would increase and continue to exceed the same threshold without the proposed scheme. Therefore no additional noise mitigation would be needed with the proposed scheme in place beyond that already proposed.

Visual impacts and proposed mitigation

8.862 [ES Figure 10.3h](#) (CD007) and [ES Appendix A10.1](#) (CD006) confirm these matters and suggest that the initial effects at winter year of opening at Wester Hardmuir Farm (Receptor 177) would be 'slight' reducing to 'negligible/slight' by 15 years after opening.

8.863 ES Figures 4.11 and [9.5v](#) (CD007) show that the proposed scheme would be in a cutting with proposed mixed woodland planting. Whilst there are no visualisations of this cross section we find that [DMRB Stage 3 Report Figure 3.1u](#) sheet 21 of 22 (CD009) confirms the difference between existing ground height and the level of the proposed scheme at Wester Hardmuir Farm property and the proposed overbridge No.2 (PS20). These factors persuade us that the cutting and planting would screen the dual carriageway from view at Wester Hardmuir Farm property and the existing A96 at this point.

8.864 Similarly this information also persuades us that PS20 would be at existing ground height and views of this from Wester Hardmuir Farm property would also be screened by the proposed vegetation.

8.865 Our site inspection and [ES Figure 9.2h](#) aerial photography indicate the presence of a wall and hedgerow along the southern boundary of one of the residences at Wester Hardmuir Farm east of the entrance point off the existing A96.

8.866 The evidence does not suggest we should find there to be a need for additional planting or screening mitigation or that the proposed mitigation is deficient.

8.867 TS has argued that the objector could seek compensation were they to experience any loss of commercial trees. This is a matter for the objector, TS and the District Valuer. Compensation is not a matter for this inquiry.

Overall

8.868 The objections raised by Mr and Mrs Clarke can either be overcome through programmed mitigation/accommodation works and/or the design of the proposed scheme. Where residual impacts / effects remain these would not require additional mitigation, would not override the public interest in providing the road and do not warrant/cannot be overcome by modification to the draft Orders. The evidence does not suggest we should recommend that Scottish Ministers modify or refuse to confirm the draft Orders.

Hardmuir tie-in and Hardmuir Junction

Objections

8.869 The parties listed below argue that the proposed Hardmuir tie-in, junction and associated local road arrangements would be unsafe:

REP/100 Mr Peter Mason

OBJ/108 Auldearn Community Council

OBJ/112 etc. Auldearn Residents Group

OBJ/123 Mr Malcolm S Davidson and Ms Jennifer M Philips

OBJ/133 Mr Richard McCulloch

OBJ/138 Mr and Mrs Pullan

Hardmuir tie-in and proposed north turn junction at Hardmuir

8.870 The parties above argue that the proposed new Hardmuir junction linking the realigned existing A96 and Ellands – Hardmuir – Boghole Road (U3036) to the north with the proposed scheme to the south is dangerous. This is because they consider the junction would require west-bound traffic using the junction to cross on-coming (east-bound) traffic in order to turn north; close to the point where the proposed dual carriageway ends and transitions into the single carriageway of the existing A96 east of Hardmuir.

8.871 Whilst REP/100 Mr Peter Mason specifies that he does not object to the proposed scheme he shares safety concerns about the proposed Hardmuir junction and suggests a grade separated junction instead.

8.872 OBJ/108 Auldearn Community Council states that well publicised safety issues are apparent on similar junctions on the A9 [assumed to be comparing the proposed Hardmuir junction with other junctions on the A9 which the objector considers to be have safety issues].

8.873 OBJ/123 Mr Malcolm S Davidson and Ms Jennifer M Philips are concerned about the temporary nature of the proposed Hardmuir junction and broader safety considerations from the proposed tie-in arrangements.

8.874 OBJ/133 Mr Richard McCulloch argues that the configuration of the proposed Hardmuir tie-in has not demonstrated compliance with DMRB regarding to road safety and that the requisite improvements would add cost. In particular he contends that:

- the proposed junction would be in an equivalent location to that of Point C on [DMRB TD9/93](#) Figure 2 (RM004 and CD049.07), which differs from the existing arrangement because approach speeds are likely to be 'significantly increased' as there is a risk that vehicles would seek to complete overtaking manoeuvres in the transitional area (assumed to be referring to the part of the road which transitions from dual to single carriageway);
- the junction would be unsafe as it would be likely to result in 'elevated accident levels both in terms of frequency and severity';
- the Hardmuir junction in this location is a departure from [DMRB TD42/95](#) mandatory paragraph 2.21 (RM006 and CD049.31), states that:

'Ghost islands shall not be used where overtaking opportunities on adjacent links are restricted or where traffic turning right out of the minor road would need to make this manoeuvre in two stages.'

- if the transitional area were fully assessed with the requirements of DMRB TD9/93 (RM004 and CD049.07) it is likely that other departures may be identified;
- in those circumstances the financial and human cost of an unsafe junction configuration should be appropriately apportioned to this scheme; and,
- Option RM1 (proposed by Mr McCulloch) offers an alternative, safer proposal with left-in left-out junctions on either carriageway with a realigned local road layout to avoid the proposed ghost island arrangement and associated safety issues.

[The Reporters note that these factors also relate to Mr McCulloch's wider arguments about the costs and rationale for the proposed scheme and the route selection process, including his promotion of RM1 as an alternative. These matters have been considered separately in this report at Chapter 2: Matters of Principle.]

8.875 Auldearn Community Council and Mr McCulloch argue that the proposed Hardmuir junction is inconsistent with the promotion of a category 7A (grade-separated junction access/exit only) road for the whole proposed scheme.

Local road layout/arrangements from Hardmuir tie-in to Courage

8.876 OBJ/138 Mr and Mrs Pullan and OBJ/108 Auldearn Community Council each propose alternative local road layouts from Hardmuir junction to Courage. These are covered separately for Mr and Mrs Pullan at paragraphs 8.772 to 8.782 above and for Auldearn Community Council at paragraphs 8.71 to 8.79 above.

Transport Scotland's Response

8.877 TS is satisfied that the road layout at the east end of the proposed scheme, including the at-grade junction at Hardmuir, is designed in accordance with the relevant design standards and would not have an adverse impact on road safety. It argues that:

- the transition from dual to single carriageway at Hardmuir has been considered carefully during design development and a free-flow transition from dual carriageway to single carriageway is considered appropriate;

- in order to maintain access for the existing A96 single carriageway past Wester Hardmuir and Courage the design connects to the existing A96 single carriageway via an at grade junction at Hardmuir that would also continue to serve the U3036;
- the existing junction at Hardmuir would be upgraded to current design standards and would include a ghost island right turn lane for westbound traffic leaving the A96;
- the forward sight distance for eastbound and westbound vehicles approaching the junction and the visibility splay from the side road satisfies the highest required standards as outlined in DMRB;
- this provides suitable visibility of any junction movements on the approach to the junction and to allow drivers manoeuvring to or from the side road to view oncoming traffic;
- the eastbound dual carriageway ends at ch30130 and traffic signs and road markings would direct vehicles to merge into a single platoon of traffic by ch30330, some 600 metres in advance of the proposed Hardmuir at grade junction at ch30930;
- other examples of this form of road layout where there is a T-junction after a section of dual carriageway are commonplace on the existing trunk road network, with five similar sites on the A9 and one on the A96;
- a technical review concluded that other locations on the trunk road network, with similar junction arrangements to that proposed for the A96 at Hardmuir do not have any serious safety issues in terms of recorded road traffic accidents.

Findings of Fact

8.878 OBJ/108 Auldearn Community Council and OBJ/138 Mr and Mrs Pullan each raise similar concerns about local road network matters between the Hardmuir junction and Courage, including the modified existing A96. These are covered separately in our findings of fact for both parties respectively. Below we consider only the Hardmuir tie-in and junction proposals.

8.879 Hardmuir is where the proposed scheme ends. The proposed Hardmuir junction would continue to link local roads, the existing A96 west of Hardmuir and localities in the vicinity with the existing, single carriageway A96 east of Hardmuir. TS points out that failure to provide a junction here would produce a cul-de-sac on local roads, thus requiring traffic to detour west to the Nairn East junction. We agree that this would be the case and that there is logic in providing a junction at this location or thereabouts. The various points covered in objections and TS's responses were discussed in detail during Inquiry Session 1.

8.880 The proposed dual carriageway would merge into a single carriageway via a tie-in that would guide two lanes into one over a distance of approximately 200 metres. [TS209](#) paragraphs 4.10.3 to 4.10.4 confirm that:

- the Hardmuir junction would be located at ch30930.
- the merge would begin at ch30130.
- the merge would end at ch30330.

TS209 paragraph 4.10.4 therefore confirms that the merge would begin 800 metres in advance of the proposed Hardmuir junction and end 600 metres in advance for east bound traffic.

8.881 This is therefore not an inconsistent approach to junction provision since the proposed Hardmuir junction would not be located on the category 7A dual carriageway but

instead on a section of modified single carriageway that forms part of the proposed scheme tie-in with the existing A96. We therefore find no conflict between the design level of the dual carriageway and provision of a new junction at Hardmuir. We consider design, safety and alternatives below.

8.882 The objector's safety contentions relate to the proximity of the proposed junction and the dual to single carriageway transition and junction traffic crossing oncoming eastbound traffic that may still be travelling at high speed. TS's engineering expert noted at Inquiry Session 1 that there is no specific DMRB guidance for how to design a dual to single carriageway merge. Therefore, he argued, TS has brought together other requirements from DMRB and the road signs manual. This was not disputed. Given the absence of such guidance it seems logical to use various standards that do already exist for the features that would form part of this section of road since these would inevitably influence the design in any event.

8.883 TS209 paragraph 4.10.3 explains that the existing Hardmuir junction would be upgraded to current design standards. This indicates that the current junction does not fulfil such standards. TS proposes a 'ghost island' to allow west bound traffic turning right (north) to cross oncoming eastbound traffic to access the realigned A96 westbound and the U3036.

8.884 At Inquiry Session 1 Mr McCulloch argued that this would not be safe, that it was contrary to DMRB and that alternatives such as left-in left-out arrangements as part of his proposed route alternative RM1 or a roundabout would be more appropriate. We consider the merits of RM1 separately in Chapter 2: Matters of Principle. However, at Inquiry Session 1 TS's engineering expert considered that the proposed left-in left-out junctions along with laybys and bus stops would require various different speeds of traffic to be merging at various features in close proximity. He contended that this would influence traffic flow, speed and safety. We agree that such arrangements, though appearing safer on the face of it have the potential to introduce slower moving traffic into the traffic flow leading to varying speeds and potential risks of collision.

8.885 Similarly we also accept the points made by TS's engineering expert regarding RM1 at Inquiry Session 1. This contention was that RM1 is an online proposal which would bring together local traffic, longer distance traffic, public transport, school transport and agricultural traffic. We agree that this would be the case, whereas the proposed scheme would provide for these types of traffic to be separated by retention of the existing A96. Similarly, accommodating these different types of traffic on one road would contribute to or exacerbate the circumstances described by TS in the paragraph above. As such we are not convinced that RM1 offers a better solution to the Hardmuir Junction issues. In Chapter 2: Matters of Principle we have also concluded that RM1 is not better than the proposed scheme.

8.886 At Inquiry Session 1 Mr Pullan and Mr McCulloch also consider that a roundabout would be an option instead of the proposed Hardmuir junction. Mr Pullan does not consider drivers would take notice without one. We agree with TS that a roundabout would require more land that does not currently form part of the draft CPO. The draft CPO can only be modified to remove land and not to add it. Were a roundabout to be justified this would require procedural delays to the project to carry out the appropriate statutory procedures. It would also be temporary, prior to the next phase of dualling (Hardmuir to Fochabers).

8.887 In his [statement of case and at Inquiry Session 1 Mr McCulloch](#) contended that the proposed scheme would compromise public transport (including for schools) provision in Auldearn and the surrounding locale. He suggested that RM1 would better cater for this. TS rejected this arguing that the junction would promote public transport provision.

8.888 DMRB Stage 3 Report Figures [2.2e, 2.2f, 2.3e and 2.3f](#) (CD009) show that TS has considered public transport and school transport. [ES Figure 4.1j to 4.1l](#) (CD007) show that the proposed junction would provide access and egress from the existing A96 for eastbound and westbound public transport via the modified A96, Courage and Auldearn. The absence of the proposed junction or retention of the current substandard junction could inhibit or limit this provision. Similarly, the merits of RM1, with regard to various types of traffic, is not better than the proposed scheme for the reasons explained in paragraphs 8.884 and 8.885 above.

8.889 At Inquiry Session 1 TS's experts confirmed that the MFTM concludes 15,000 vehicle movements per day are predicted on this section of the proposed scheme with approximately 1,400 vehicles per day (equivalent to 90 vehicles per minute during the peak AM - the busiest period) passing through the proposed Hardmuir junction. At Inquiry Session 1 Mr Pullan remain unconvinced by the figures provided. In Chapter 2: Matters of Principle we have concluded that the MFTM and its assumptions and conclusions are sound.

8.890 Based on the volumes of traffic (above) we agree with TS's engineering expert that a ghost island design based on [DMRB TD42/95](#) Figure 2/2 on page 2/4 (CD049.31) is the appropriate solution. This same information also concludes that alternative suggestions such as roundabouts, single lane dualling and a simple junction would not be appropriate or necessary. Given that the existing Hardmuir junction is a simple junction, this evidence confirms that the upgrade is necessary. DMRB TD42/95 mandatory paragraph 2.24 (RM006 and CD049.31) also confirms that single lane dualling would be inappropriate in circumstances where a long length of dual carriageway ends and/or where there is intermittent single and dual carriageway. Both circumstances exist in the vicinity of the proposed Hardmuir Junction. This persuades us that TS has considered these matters in proposing the design.

8.891 Such judgements appear to be based on engineering principles, as stated in DMRB, and these appear rational. Though Mr McCulloch sought clarity on cost considerations for alternatives (at Inquiry Session 1) we do not find this to be necessary or proportionate when the engineering evidence suggest that alternatives such as roundabouts and single lane dualling would not be appropriate.

8.892 At Inquiry Session 1, Mr McCulloch contended that the traffic volume information had not been lodged as evidence by TS and was therefore new. However TS argued that it has published information to this effect in [TS250 MFTM Base Model Update Calibration Report](#) at Appendix E Tables E1, E6 and E11, which reference outbound and inbound journey on the A96 East of Nairn. This document appears to contain the information referred to.

8.893 Mr Pullan queried how the rate of 90 vehicles per hour was calculated. TS's transport modelling expert confirmed that the MFTM allows investigation and extraction of traffic flows for link and turning for all model locations, including Hardmuir, which form part of the proposed scheme. This capability reflects our understanding of this and other

transport models. It does not suggest we should doubt either the assumptions or the conclusions of the model, as confirmed in Chapter 2: Matters of Principle.

8.894 TS's transport modelling expert also disagreed with Mr Pullan's contention that traffic from east of Hardmuir would turn off at Hardmuir junction. On balance we agree with TS that, if the proposed scheme was in place, westbound travellers would use the proposed dual carriageway out of preference over turning off at Hardmuir and that only those for destinations close to Hardmuir and parts of Auldearn would turn off at Hardmuir.

8.895 Mr McCulloch is correct that DMRB TD42/95 mandatory paragraph 2.21 (RM006 and CD049.31) says that ghost islands 'shall not be used where overtaking opportunities on adjacent links are restricted'. However, [TS265](#) Diagram B1557601/0000/285 shows the proposed layout of the transition and ghost island Hardmuir junction along with proposed location of road signs. It confirms that, at the proposed junction there would be two single carriageways (one in each direction) and that each would be distinctly separate from the proposed ghost island and waiting area.

8.896 By providing a ghost island (as recommended in TS265) westbound traffic waiting to turn right would be accommodated separately and sheltered from westbound traffic continuing west and from oncoming eastbound traffic whilst waiting for a safe time to turn. TS265 also recommends the closure of the existing layby adjacent to the existing junction of the U3036 and existing A96 to avoid conflicts and to form a new diverge lane. These factors do not suggest that the proposed ghost island would be provided in an area of limited overtaking opportunities on adjacent links since both eastbound and westbound traffic could continue to flow in its respective direction.

8.897 At Inquiry Session 1 Mr McCulloch was also concerned about driver confusion for westbound traffic having recently left the existing Feddan section of dual carriageway (to the east) to then encounter the ghost island when drivers would be expecting to join the proposed new dual carriageway (further west). TS's engineering expert referred to proposed signage arrangements shown on TS265 Diagram B1557601/0000/285. This shows that the first sign encountered by westbound traffic would be a right turn sign in advance of the proposed Hardmuir junction. A dual carriageway ahead sign would be located after (west of it). This signage appears to be appropriately located to warn drivers of approaching road features in a logical sequence to avoid confusion. We also note our conclusions above with regard to the ghost island separating traffic.

8.898 Mr McCulloch is correct that DMRB TD42/95 mandatory paragraph 2.21 (RM006 and CD049.31) says that ghost islands 'shall not be used where traffic turning right out of the minor road would need to make this manoeuvre in two stages'. We accept the possibility that some drivers could choose to turn right out of the Hardmuir junction onto the westbound carriageway of the westbound A96. We also accept that such a manoeuvre could be considered dangerous since it could conflict with westbound traffic waiting to turn north at the ghost junction.

8.899 However, TS265 Diagram B1557601/0000/285 does not suggest that the junction has been designed to accommodate or facilitate this type of turn. The ghost island is only to allow right turns north off the proposed scheme and onto the modified existing A96. We are also satisfied that the existing A96 would provide appropriate access to the Nairn East junction for westbound traffic.

8.900 TS's transport modelling expert confirmed at Inquiry Session 1 that the proposed Hardmuir junction is not in place and so national accident rates were used. He also confirmed that the junction is included in the DMRB Stages 2 and 3 evaluations and that accident rates are compared with the do minimum scenario. We find that this does not demonstrate that the proposed junction would be unsafe, instead it applies a standard set of accident assumptions to a proposed new junction. This does not appear to be an unreasonable approach to evaluating future safety considerations.

8.901 TS265 confirms that the existing Hardmuir junction experienced two accidents in the 36 month period to December 2012, one of which involved a right turn manoeuvre. We note that the existing junction does not meet current standards and would be upgraded to do so. Mr McCulloch's contention is that there would be a likely increase in accidents at the junction as a result of the speed of eastbound traffic completing overtaking manoeuvres following transition to single carriageway.

8.902 The engineering assessment in TS265 Section 5 explains that assumptions have been made for sight stopping distance on the single carriageway after transition from dual carriageway using dual carriageway speeds. This information explains that a dual carriageway design speed (120kph) the minimum distance between the end of the transition and the first at-grade junction would be 295 metres. This is shown in TS265 Diagram B1557601/0000/285.

8.903 This appears to be a reasonable precautionary assumption for traffic that has not fully slowed from dual carriageway speeds post transition to lower single carriageway speeds. Such an assumption would appear to cater for Mr McCulloch's concern that traffic may still be overtaking or slowing from dual carriageway speed. This factor was also recognised in [TS219.03 Stage 1 Road Safety Audit](#) page 12.

8.904 [TS209](#) paragraph 4.10.3 explains that the proposed Hardmuir junction upgrade would include forward sight distance for eastbound and westbound vehicles' approach to the junction and the visibility splay from the side road would satisfy the highest required standards outlined in DMRB. Assuming this were so it would suggest that the proposed junction upgrade would provide suitable visibility of any junction movements on approach to the junction and allow drivers to manoeuvre to and from the side road to view oncoming traffic. [ES Figure 9.5v](#) (CD007) also shows that mitigation planting would be set back from the edge of the proposed carriageway between ch30800 and ch31100. These factors persuade us that the visibility issues at the proposed Hardmuir junction have been appropriately considered.

8.905 TS209 paragraph 4.10.5 explains that examples of similar junctions to that proposed at Hardmuir at locations after a section of dual carriageway are common on the existing trunk road network with five similar examples on the A9 and one on the A96. At Inquiry Session 1 and in TS209 paragraph 4.10.5 TS referred to TS265, which contains a technical review of junctions arrangements, similar to those proposed for Hardmuir, on the A9 and A96. TS265 Section 4.9 concludes that these other locations with similar designs of junction to that proposed for the Hardmuir junction do not have any 'serious safety issues' in terms of recorded collisions. It notes that the only site to have minor issues, with two similar incidents, has a distance of 250 metres between the dualling section and the junction. TS209 paragraph 4.10.4 confirms that there would be 600 metres between the end of the merge to single carriageway and the proposed Hardmuir junction. This is over twice the

distance for vehicles to moderate their speed appropriately and adjust to single carriageway driving.

8.906 At Inquiry Session 1 Mr Pullan considered that TS265 does not appear to make clear its use of the term 'serious' safety issues versus for example 'non-serious'. However, we consider this to be a reference to the type of accident where 'serious' refers to those resulting in death or injury and the term 'minor' appears to be used to describe less serious incidents. Whilst TS265 may not fully explain this we are satisfied that we understand what is meant. Under cross examination Mr Pullan conceded that he was not suggesting that TS had chosen to design an unsafe junction.

8.907 TS265 indicates that full consideration has been given to incorporating the minimum 295 metre sight stopping distance for 120kph (dual carriageway speed) on the single carriageway with a national speed limit of 60mph (96.5kph for cars). This does not suggest that this type of junction is inherently unsafe or that the record of equivalent A9 junctions should justify an alternative design or junction type at this location.

8.908 At Inquiry Session 1 TS's engineering expert confirmed that the proposed Hardmuir junction would be reviewed as part of the next phase (Hardmuir to Fochabers). The next phase does not form part of the proposed scheme and is not before us. However, such a review would provide opportunities to consider improvements to or total removal of that junction, dependent on decisions associated with the next phase. Mr McCulloch suggested that the short life of the junction could compromise safety. TS rejected this assertion. The evidence considered above does not suggest to us that TS has tried to design a substandard junction because it could have a short operational life.

8.909 At Inquiry Session 1 Mr Pullan contended that TS had not quantified cost and time impacts from accidents. However, we have found that accident rates have formed part of the consideration of junction design and that traffic flows form part of this as well. TS's transport and economic modelling expert confirmed how these factors had formed part of the modelling process in the MFTM. In Chapter 2 we have concluded that the modelling process is sound.

8.910 Whilst the risk of accidents can never be removed totally the evidence does not suggest the proposed junction would result in a 'likely' increase in accident rates or severity, as contended by Mr McCulloch. As such the proposed design of the junction and road layout arrangements do not appear to be deficient to an extent that their function and design would place unacceptable safety risks on users. No design can ever fully account for those who choose not to follow the Highway Code and drive without the appropriate care and attention.

8.911 Mr McCulloch uses his arguments about the proposed Hardmuir junction and tie-in to argue that the safety costs and benefits of the proposed scheme at Auldearn to Hardmuir may not stack up. We have considered these matters separately in Chapter 2: Matters of Principle

8.912 Given that Hardmuir represents the end of the proposed scheme it is understandable that those in the vicinity will have questions and concerns about how the next phase would proceed. However, our role is only to consider the proposed scheme (Inverness to Hardmuir) and not what may or may not be proposed thereafter. All parties would be (and have been) able to participate in the DMRB Stages 2 and 3 process for the Hardmuir to

Fochabers phase. Our conclusion should not prejudice their ability to influence the next phase.

8.913 The factors above persuade us that consideration has been given to safety, design guidance and the respective locality. The predicted volume of traffic suggests a need to upgrade the present junction with a ghost island. The evidence also suggests that sufficient consideration has been given the sight stopping distances and tie-in arrangements further west. The junction arrangement is designed to contain turning traffic whilst waiting, so as to avoid conflicts with the main flows on either carriageway.

8.914 The design has been considered in the context of relative performance from equivalent junctions elsewhere and, where those junctions have experienced minor issues, these are the consequence of contextually circumstances, such as different distances between transitions from single to dual carriageway and/or sight stopping distances.

Overall

8.915 The proposed scheme is designed to avoid or overcome many of the concerns raised by objectors, particularly regarding traffic flow and safety. Where impacts / effects remain these do not override the public interest in providing the road and do not warrant/cannot be overcome by modification to the draft Orders. The evidence does not suggest we should recommend that Scottish Ministers modify or refuse to confirm the draft Orders.

CHAPTER 9: CONCLUSIONS AND RECOMMENDATIONS

Conclusions

9.1 The proposed dualling of the A96 (Inverness to Nairn (including Nairn Bypass)) is part of a broader programme of improvements to the whole A96 corridor (Inverness to Aberdeen) that has been justified and evolved through numerous iterations of national economic, transport and planning strategy and policy. The proposed scheme has also formed a significant part of thinking for local/regional planning, economic and transport policy over much of the last two decades as part of a wider strategy for growth of the Inverness City Region. We are therefore persuaded that the policy case has been made.

9.2 The policy, safety and operational advantages have been considered, including through a sound transport modelling process and the rationale for the proposed scheme is sound. These factors persuade us that the proposed scheme reflects a variety of objectives that are in the wider public interest.

9.3 The design of the proposed scheme, including its alignment and junctions, and the processes that led up to the chosen design (modelling, engagement etc.) conform to the requirements and guidance of the DMRB and STAG; with appropriate levels of public engagement during each stage of design. We are satisfied that the proposed scheme would cater adequately for the scale of development envisaged in the region when the traffic modelling was undertaken. In the light of the environmental information in Chapter 1 (summarising the ES) and our findings of fact (in chapters 2 to 8), and subject to the following paragraphs, we conclude that the proposed scheme is generally acceptable, both technically and environmentally.

9.4 We are satisfied that the environmental information has been thoroughly considered and that the assessment has been undertaken robustly. We recognise that the proposed scheme would have a wide range of environmental effects. Considerable effort has gone into iterating/modifying designs to avoid and/or limit these potential effects or to subsequently mitigate them. However, significant residual effects would remain in some instances. Our summary of the residual significant effects that were identified in the ES is set out in Chapter 1 between paragraphs 1.38 and 1.143. Having taken into account all environmental information, including that provided by objectors to the scheme and those who have provided comments, we agree with the ES's summary of the effects that are likely to remain significant following mitigation.

9.5 We accept that some residual significant effects are inevitable with a scheme such as this and we do not consider that those that are predicted in this instance would be so severe as to render the proposed scheme unacceptable or to compromise the wider public interest. Furthermore, we have not been persuaded that any of the route alternatives that have been proposed would have a clear overall advantage over the proposed scheme.

9.6 In accordance with Regulation 3A of the [Town and Country Planning \(Environmental Impact\) \(Scotland\) Regulations 2011](#) (CD026), Scottish Ministers will need to examine all of the environmental information and either to adopt our reasoned conclusion on the significant effects of the development on the environment, which we have set out in this report, or set out their own reasoned conclusion, having identified, described and assessed the direct and indirect effects of the proposed development on all of the factors listed in paragraph 1.40 of this report and the interaction between those factors.

9.7 The proposed scheme would affect the habitats of several protected species (including European Protected Species - EPS). In TS266 SNH has confirmed that TS would need to apply for the relevant licences with regards to the protected species affected by the proposed scheme. We note that SNH has been involved in the scoping and preparation of the ES and has not objected. We have noted the requirements in ES Chapter 20 (CD005) under various mitigation items to retain trees that form habitat and to provide replacement habitat, amongst other things. We have also noted the ES requirement to carry out species surveys prior to commencement of works and for the contractor to employ an environmental clerk of works. These and other related factors being covered in the ES means that they would form part of the contract and therefore be binding on the contractor. For these reasons we conclude that the proposed scheme has appropriately considered the risks to protected species (including EPS) and proposed mitigation measures that would make the proposed scheme capable of maintaining favourable conservation status for the respective species.

9.8 In accordance with the Conservation (Natural Habitats, &c) Regulations 1994, Scottish Ministers, as the 'competent authority', must undertake an appropriate assessment should it be concluded that one is necessary.

9.9 TS prepared a [Habitats Regulations Appraisal \(CD010\)](#) at DMRB Stage 3 which concludes that:

- an appropriate assessment would be needed.
- no adverse effects to the site integrity of any European/Ramsar sites from the proposed scheme could be identified provided that embedded and other proposed mitigation was applied.

9.10 REP/154 SNH shares this view in its response letter to the draft Orders and ES consultation ([TS266](#)). Neither SNH nor any other parties suggest any reasons for us to recommend that Scottish Ministers should not adopt the information contained in the Habitats Regulations Appraisal (CD010). This suggests that the proposed scheme would be likely to have a significant effect upon the qualifying interests of a Natura 2000 site and that an appropriate assessment would therefore be required. The evidence in CD010 could also be used to inform the conclusions that Scottish Minister draw if they agree that an appropriate assessment is necessary. Scottish Ministers may wish to take their own legal and environmental advice on these matters.

9.11 With respect to the [Roads \(Scotland\) Act 1984](#), we are satisfied, based on our findings of fact and the evidence before us, that the proposed scheme has taken into consideration the requirements of local and national planning, including the requirements of agriculture and industry. As noted above we are also satisfied that appropriate consideration has been given to the environmental impacts and effects of the proposed scheme.

9.12 TS has proposed a number of minor modifications to the draft Orders prior to any confirmation ([TS Closing Statement Appendix B](#)). These modifications have been proposed following discussions between TS and objecting parties.

9.13 We have identified several specific issues that may require re-examination:

- the accuracy of title for specific parties whose land is proposed to be compulsorily purchased in the draft Orders; and,
- whether the need to acquire Plot 1001 and Plot 1005 respectively could be dispensed with.

9.14 In reaching these conclusions, we have taken into account all the relevant environmental information that has been provided, including that in the ES and also all written and oral evidence presented to us.

9.15 In our findings we highlighted a number of legal matters and obligations which Ministers and their advisers will wish to consider. These relate, in particular, to the following matters:

- the requirements of the EU Habitats Directive and the Conservation (Natural Habitats, &c.) Regulations 1994, with respect to Loch Flemington SPA and other Natura sites in the locality, and also to European protected species;
- the requirements of the Wildlife and Countryside Act 1981, with respect to national protected species; and,
- the Human Rights Act 1998.

9.16 Our conclusions about the general acceptability of the proposal are, necessarily, based on the assumption that none of these matters presents an obstacle to confirming the draft Orders.

9.17 We are satisfied that the land within the draft CPO, as proposed to be modified, would be required for the completion of the project. We are also satisfied that the other draft Orders, as proposed to be modified in some cases, are appropriate. As noted, we consider that some further detailed modifications should be considered and these are listed in the recommendations section below. In some instances these proposed modifications have resulted in the respective party withdrawing some or all of their objection to the proposed scheme.

Recommendations

9.18 We therefore recommend that, provided the Scottish Ministers are satisfied that the proposed scheme would comply with the legal provisions highlighted above, the Orders be confirmed, subject to the modifications set out in [TS Closing Statement Appendix B](#) (as reiterated below).

Modifications proposed in TS Closing Statement Appendix B

Order Ref.	Party	Issue	Proposed change to Orders
CPO Plot 149	Network Rail	Plot not required after changes in the design	Plot 149 will be removed from the made order.
CPO Plot 203	Unknown	Reduction of plot size reflecting changes in design	Plot 203 will be reduced in size in the made order. The change to this Plot is a result of the design changes which also led to the removal of Plot 204 and the removal of New Means of Access 341 (both referenced below).
CPO Plot 204	Mr John and Mrs Anne Callum	Plot not required after changes in design	Plot 204 will be removed from the made order.

Order Ref.	Party	Issue	Proposed change to Orders
CPO Plot 207	Mr John and Mrs Anne Callum	Plot not required after changes in design	Plot 207 will be removed from the made order. This change is a result of the removal of New Means of Access 341 (referenced below).
CPO Plot 303	Mrs Jane Bradley and Mr Colin Cumming	Plot not required after changes in design	Plot 303 will be removed from the made order. This change is a result of the removal of New Means of Access 345 (referenced below).
CPO Plot 1123	Representation from Historic Environment Scotland affecting land owned by Moray Estates Development Company Ltd	Adjustment of plot boundary to avoid Scheduled Monument	Plot 1123 will be reduced in size in the made order to avoid encroaching into Scheduled Monument.
CPO Plot 1315	Mr Oliver Mackintosh	Reduction of plot size to allow continued use of an existing field access.	Plot 1315 will be reduced in size in the made order.
CPO Plots 1828, 1829, 1830	Objection from John R Mackintosh and Co affecting land owned by R D Gordon and A M Gordon	Reduction of plot size to allow continued use of septic tank soakaway	Plots 1828, 1829 and 1830 will be reduced in size in the made order. The reduction in size of Plots 1829 and 1830 is necessary to allow continued use by the Gordons of an existing access track which provides access to the septic tank soakaway.
CPO Plot 2203	Mr James Downie	Reduction of plot size to tie-in with the changes associated with the proposed additional field access.	Plot 2203 will be reduced in size in the made order.
Side Road Order Plan SR1 – New Means of Access 341	Mr John and Mrs Anne Callum	New Means of Access to be removed from design.	Side Road Order will be amended to remove New Means of Access 341 on Side Road Order Plan SR1. This change is a result of feedback from The Highland Council rather than as a result of an objection.
Side Road Order Plan	Mrs Jane Bradley and Mr	New Means of Access to be	Side Roads Order will be amended to remove New

Order Ref.	Party	Issue	Proposed change to Orders
SR3 – New Means of Access 345	Colin Cumming	removed from design	Means of Access 345 on Side Roads Order Plan SR3. This change is a result of feedback from The Highland Council rather than as a result of an objection.
CPO Plots 1216, 1219 and 1604	in respect of Network Rail	These were included at Section 13 of Craig Cameron's precognition for Inquiry Session 1 as plots which may be removed from the made CPO if a deed of servitude is granted through voluntary agreement with Network Rail.	However, the removal of these plots from the CPO should not be treated as committed changes as this is subject to reaching a voluntary agreement with the landowner. The Promoter has signed a letter of comfort with Network Rail committing to pursuing such an agreement but meantime these plots must remain in the made CPO to ensure delivery of the proposed scheme.

9.19 TS Closing Statement Appendix B also includes seven maps which incorporate the proposed modifications set out above. These would be substituted for the requisite maps in the draft Orders subject to Scottish Ministers' agreeing to accept these proposed modifications.

9.20 Accordingly, subject to there being a favourable outcome from any appropriate assessment, we recommend that Scottish Ministers should, subject to the matters set out above and modifications proposed above, confirm:

- [The A96 Trunk Road \(Inverness to Nairn \(including Nairn Bypass\)\) Compulsory Purchase Order 201\[\]](#) (CD001);
- [The A96 Trunk Road \(Inverness to Nairn \(including Nairn Bypass\)\) \(Trunking & Detrunking Order 201\[\]](#) (CD002);
- [The A96 Trunk Road \(Inverness to Nairn \(including Nairn Bypass\)\) \(Side Roads\) Order 201\[\]](#) (CD003); and,
- [The A96 Trunk Road \(Inverness to Nairn \(including Nairn Bypass\)\) \(Extinguishment of Public Rights of Way\) Order 201\[\]](#) (CD004).

David Buylła Nick Smith

Reporters

APPENDICES

Appendix 1: Documents

Core Documents

CD001 The A96 Trunk Road (Inverness to Nairn (including Nairn Bypass))
Compulsory Purchase Order 201[] ('the CPO')

CD002 The A96 Trunk Road (Inverness to Nairn (including Nairn Bypass)) (Trunking
and Detrunking) Order 201[]

CD003 The A96 Trunk Road (Inverness to Nairn (including Nairn Bypass)) (Side
Roads) Order 201[]

CD004 The A96 Trunk Road (Inverness to Nairn (including Nairn Bypass))
(Extinguishment of Public Rights of Way) Order 201[]

CD005 Environmental Statement Volume 1: Main Report

CD006 Environmental Statement Volume 2: Technical Appendices

CD007 Environmental Statement Volume 3: Figures

CD008 A96 Dualling Inverness to Nairn (including Nairn Bypass) DMRB Stage 3
Scheme Assessment Report: Engineering, Traffic and Economic Assessment:
Volume 1 – Main Report and Appendices (Jacobs, November 2016)

CD009 A96 Dualling Inverness to Nairn (including Nairn Bypass) DMRB Stage 3
Scheme Assessment Report: Engineering, Traffic and Economic Assessment:
Volume 2 – Figures (Jacobs, November 2016)

CD010 A96 Dualling Inverness to Nairn (including Nairn Bypass) DMRB Stage 3:
Habitat Regulations Appraisal (Jacobs, November 2016)

CD011 A96 Dualling Inverness to Nairn (including Nairn Bypass) DMRB Stage 2
Scheme Assessment Report Volume 1: Main Report and Appendices (Jacobs,
October 2014)

CD012 A96 Dualling Inverness to Nairn (including Nairn Bypass) DMRB Stage 2
Scheme Assessment Report Volume 2: Engineering Drawings (Jacobs, October
2014)

CD013 A96 Dualling Inverness to Nairn (including Nairn Bypass) DMRB Stage 2
Scheme Assessment Report Volume 3: Environmental Figures (Jacobs, October
2014)

CD014 A96 Dualling Inverness to Nairn (including Nairn Bypass) Habitat
Regulations Appraisal Screening Report (Jacobs, 2015)

CD015 A96 Dualling Inverness to Aberdeen Strategic Business Case (Transport
Scotland, September 2014)

CD016 A96 Dualling Programme Strategic Environmental Assessment, Tier 1 Environmental Report (Halcrow, September 2014)

CD017 A96 Dualling Programme Strategic Environmental Assessment, Tier 2 Environmental Report (CH2M, May 2015)

CD018 A96 Dualling Inverness to Aberdeen DMRB Stage 1 Assessment

CD018.01. A96 Dualling Inverness to Aberdeen DMRB Stage 1 Assessment Report (Jacobs, May 2015)

CD018.02. Appendix J – Junctions & Access Strategy (Jacobs, May 2015)

CD018.03. Appendix L – NMU Strategy (Jacobs, May 2015)

CD019 A96 Dualling Preliminary Engineering Services: Non-Motorised User Strategy (May 2016)

CD020 Roads (Scotland) Act 1984

CD021 Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (Scottish Government, 1947)

CD022 Compulsory Purchase by Public Authorities (Inquiries Procedure) (Scotland) Rules 1998

CD023 Environmental Impact Assessment (Scotland) Regulations 1999

CD024 Environment Protection Act 1990 Part III

CD025 Environment Act 1995, Part IV

CD026 The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011

CD027 Air Quality Standard Regulations (Scotland) 2010

CD028 New Roads and Street Works Act 1991

CD029 Reservoirs Act 1975

CD030 Reservoir (Scotland) Act 2011

CD031 The Climate Change (Scotland) Act 2009

CD032 The Flood Risk Management (Scotland) Act 2009

CD033 Scotland's Transport Future (Scottish Executive, 2004)

CD034 Scotland's Transport – Delivering Improvements (Scottish Executive, 2002)

CD035 National Transport Strategy (Scottish Executive, 2006)

CD036 Strategic Transport Projects Review (Scottish Government, October 2009)

CD037 Infrastructure Investment Plan

CD037.01. Infrastructure Investment Plan (Scottish Government, December 2011)

CD037.02. Infrastructure Investment Plan (Scottish Government, December 2015)

CD038 Scotland's Cities: Delivering for Scotland (Scottish Government, December 2011)

CD039 The Government Economic Strategy (Scottish Government 2011)

CD040 Scotland's Economic Strategy (Scottish Government, March 2015)

CD041 National Transport Strategy (Scottish Government, 2016)

CD042 Regional Transport Strategy

CD042.01. HiTrans Regional Transport Strategy 2008 (HiTrans, April 2008)

CD042.02. HiTrans Draft Updated Regional Transport Strategy May 2017 (HiTrans, 2017)

CD042.03. HiTrans Draft Delivery Plan and Associated Documentation 2008 (HiTrans, September 2008)

CD043 The Highland Council Local Transport Strategy, 2010/11 – 2013/14 (The Highland Council, August 2010)

CD044 The Scottish Government National Planning Framework

CD044.01. The Scottish Government National Planning Framework (NPF2) (Scottish Government, June 2009)

CD044.02. The Scottish Government National Planning Framework (NPF3) (Scottish Government, June 2014)

CD045 Scottish Planning Policy (SPP) (Scottish Government, June 2014)

CD046 Guidance on the Compulsory Purchase Process and Compensation (Transport Scotland, 2014)

CD047 Disposal of Surplus Government Land - The Crichton Down Rules (Scottish Planning Series - Planning Circular 5 / 2011) (Scottish Government, October 2011).

CD048 National Standards for Community Engagement (Scottish Government, 2016)

CD049 Extracts from the Design Manual for Roads and Bridges (DMRB)

CD049.01. DMRB Volume 1, Section 3, Part 6, BA 59/94 The Design of Highway Bridges for Hydraulic Action

CD049.02. DMRB Volume 3, Section 4, Part 21, BD 97/12 The Assessment of Scour and other Hydraulic Actions at Highway Structures

CD049.03. DMRB Volume 4, Section 2, Part 7, HA 107/04 Design of Outfall and Culvert Details

CD049.04. DMRB Volume 5, Section 1, Part 2, TD 37/93 Scheme Assessment Reporting

CD049.05. DMRB Volume 5, Section 1, Part 3, TA 46/97 Traffic Flow Ranges for Use in The Assessment of New Rural Roads

CD049.06. DMRB Volume 5, Section 2, Part 2, HD 19/15 Road Safety Audit

CD049.07. DMRB Volume 6, Section 1, Part 1, TD 9/93 Highway Link Design

CD049.08. DMRB Volume 6, Section 1, Part 2, TD 27/05 Cross-sections and Headrooms

CD049.09. DMRB Volume 6, Section 2, Part 1, TD 22/06 Layout of Grade Separated Junctions

CD049.010. DMRB Volume 6, Section 2, Part 1, TD16/07, Geometric Design of Roundabouts

CD049.011. DMRB Volume 11, Section 2, Part 1, HA201/08 General Principles and Guidance of Environmental Impact Assessment

CD049.012. DMRB Volume 11, Section 2, Part 2, HA202/08 Environmental Impact Assessment

CD049.013. DMRB Volume 11, Section 2, Part 5, HA205/08 Assessment and Management of Environmental Effects.

CD049.014. DMRB Volume 11, Section 3, Part 1, HA207/07 Air Quality

CD049.015. DMRB Volume 11, Section 3, Part 2, HA208/07 Cultural Heritage

CD049.016. DMRB Volume 11, Section 3, Part 4, Ecology and Nature Conservation

CD049.017. DMRB Volume 11, Section 3, Part 5, Landscape Effects

CD049.018. DMRB Volume 11, Section 3 Part 6, Land Use

CD049.019. DMRB Volume 11, Section 3, Part 7, HD 213/11 Revision 1 'Noise and Vibration'

CD049.020. DMRB Volume 11, Section 3, Part 10 HD45/09 Road Drainage and the Water Environment

CD049.021. DMRB Volume 11, Section 3, Part 12: Impact on Road Schemes on Policies and Plans

CD049.022. DMRB Volume 11, Section 2, Part 4 – Scoping of Environmental Impact Assessments

CD049.023. [Not Used]

CD049.024. DMRB Volume 10, Section 1, Part 1 – HA 55/92 New Roads Landform and Alignment

CD049.025. DMRB Volume 10, Section 1, Part 2 – HA56/92 New Roads Planting, Vegetation and Soils

CD049.026. DMRB Volume 10, Section 1, Part 3 – HA57/92 New Roads Integration with Rural Landscapes

CD049.027. DMRB Volume 10, Section 1, Part 4 – HA58/92 The Road Corridor

CD049.028. DMRB Volume 10, Section 1, Part 5 – HA60/92 New Roads Heritage

CD049.029. DMRB Volume 4, Section 1, Part 7 – SH4/89 Geotechnical Certification Procedures: Trunk Road Ground Investigations.

CD049.030. DMRB Volume 5, Section 1, Part 4 – SH1/97 The Traffic and Economic Assessment of Road Schemes in Scotland

CD049.031. DMRB Volume 6, Section 2, Part 6 – TD42/95 Geometric Design of Major/Minor Priority Junctions

CD049.032. DMRB Volume 6, Section 3, Part 3 – TD69/07 The Location and Layout of Lay-Bys and Rest Areas

CD050 Extracts from the Design Manual for Roads and Bridges (DMRB) Interim Advice Notes (IAN)

CD050.01. IAN 125/15: Supplementary Guidance for Users of DMRB Volume 11 'Environmental Assessment'

CD050.02. IAN 130/10 'Ecology and Nature Conservation: Criteria for Impact Assessment'.

CD050.03. IAN 135/10 - Landscape and Visual Effects Assessment (Highways Agency, 2010)

CD050.04. IAN 170/12 Updated air quality advice on the assessment of future NO_x and NO₂ projections for users of DMRB Volume 11, Section 3, Part 1 'Air Quality (Highways Agency, 2013)

CD050.05. IAN 174/13 Updated advice for evaluating significant local air quality effects for users of DMRB Volume 11, Section 3, Part 1 'Air Quality (HA207/07) (Highways Agency, 2013)

CD050.06. IAN 175/13 Updated air quality advice on risk assessment related to compliance with the EU Directive on ambient air quality and on the production of

Scheme Air Quality Action Plans for user of DMRB 11.3.1 'Air Quality' (Highways Agency, 2013)

CD050.07. [NOT USED]

CD051 [NOT USED]

CD052 Roads and Transportation Guidelines for New Developments (The Highland Council, May 2013)

CD053 Access to Single Houses and Small Housing Developments (The Highland Council, May 2011)

CD054 [NOT USED]

CD055 [NOT USED]

CD056 A96 Growth Corridor Development Framework (The Highland Council/Transport Scotland, 2007)

CD057 Inverness, Nairn and A96 Corridor Transport Study (The Highland Council, September 2010)

CD058 Highland Structure Plan (The Highland Council, 2001)

CD059 Local Plan – Inverness (The Highland Council, 2006)

CD059 Local Plan – Inverness (The Highland Council, 2006) analysis map a

CD059 Local Plan – Inverness (The Highland Council, 2006) analysis map b

CD059 Local Plan – Inverness (The Highland Council, 2006) INLP City Map adopted

CD059 Local Plan – Inverness (The Highland Council, 2006) INLP Proposals Map Adopted

CD059 Local Plan – Inverness (The Highland Council, 2006) Inverness Local Development Plan written statement 2006 pt1

CD059 Local Plan – Inverness (The Highland Council, 2006) Inverness Local Development Plan written statement 2006 pt2

CD060 Local Plan – Nairnshire (The Highland Council, 2000)

CD060 - Local Plan – Nairnshire (The Highland Council, 2000)

CD060 - Local Plan – Nairnshire (The Highland Council, 2000) Nairnshire Local Plan Legend

CD060 - Local Plan – Nairnshire (The Highland Council, 2000) Nairnshire Local Plan Nairn Inset A1

CD060 - Local Plan – Nairnshire (The Highland Council, 2000) Nairnshire Local Plan Proposals Map

CD060 - Local Plan – Nairnshire (The Highland Council, 2000) Nairnshire Local Plan Written Statement

CD061 The Highland-Wide Local Development Plan (The Highland Council, 2012)

CD062 The Inner Moray Firth Local Development Plan (The Highland Council, 2015)

CD063 The Moray Local Development Plan (The Highland Council, 2015)

CD064 Inverness East Development Brief

CD064.01. Draft Inverness East Development Brief (The Highland Council, 2017)

CD064.02. Adopted Inverness East Development Brief (The Highland Council, 2018)

CD065 Planning Advice Notes

CD065.01. PAN 1/2013, Planning Advice Note, Environmental Impact Assessment (Scottish Government, 2013)

CD065.02. PAN 1/2013 (Rev.1), Planning Advice Note, Environmental Impact Assessment (Scottish Government, 2017)

CD065.03. PAN 1/2011, Planning Advice Note, Planning and Noise (Scottish Government, 2011)

CD065.04. PAN 2/2011, Planning Advice Note, Planning and Archaeology (Scottish Government, 2011)

CD065.05. PAN 3/2010, Planning Advice Note, Community Engagement (Scottish Government, 2010)

CD065.06. PAN 33, Planning Advice Note, Development of Contaminated Land (Scottish Government, 2000)

CD065.07. PAN 33 (updated 2016), Planning Advice Note, Development of Contaminated Land (Scottish Government, 2016)

CD065.08. PAN 51, Planning Advice Note, Planning, Environmental Protection and Regulation (Scottish Government, 2006)

CD065.09. PAN 60, Planning Advice Note, Planning for Natural Heritage (Scottish Government, 2000)

CD065.010. PAN 61, Planning Advice Note, Planning and Sustainable Urban Drainage Systems (Scottish Government, 2001)

CD065.011. PAN 65, Planning Advice Note, Planning and Open Space (Scottish Government, 2008)

CD065.012. PAN 75, Planning Advice Note, Planning for Transport (Scottish Government, 2005)

CD065.013. PAN 77, Planning Advice Note, Designing Safer Places (Scottish Government, 2006)

CD065.014. PAN 78, Planning Advice Note, Inclusive Design (Scottish Government, 2006)

CD065.015. PAN 79, Planning Advice Note, Water and Drainage (Scottish Government, 2006)

CD066 Circular 18/1987: Development Involving Agricultural Land amended by 29/1988 and 25/1994 (Scottish Office, 1987)

CD067 Circular 8/2007: The Environmental Impact Assessment Regulations 1999 (Annex E - Environmental Impact Assessment of Trunk Road Projects) (Scottish Government, 2007)

CD068 Circular 3/2011: The Town and Country Planning (EIA) (Scotland) Regulations 2011 (Scottish Government, 2011)

CD069 Housing Need and Demand Assessment (HNDA) (The Highland Council, 2015)

CD070 Road Casualties Scotland 2015 (Scotland Government, 2016)

CD071 The Green Book, Appraisal and Evaluation in Central Government (HM Treasury, 2011)

CD072 Transport Analysis Guidance: WebTAG

CD072.01. TAG UNIT M3.1 Highway Assignment Modelling (Department for Transport, January 2014)

CD073 Institute of Air Quality Management Guidance on the Assessment of Impacts of Construction on Air Quality and the Determination of their Significance (IAQM, 2011)

CD074 Local Air Quality Management Technical Guidance

CD074.01. Local Air Quality Management Technical Guidance TG09 (Defra, February 2009)

CD074.02. Local Air Quality Management Technical Guidance TG16 (Defra, April 2016)

CD074.03. Local Air Quality Management Technical Guidance TG16 (Defra, February 2018)

CD075 National Atmospheric Emissions Inventory (Defra, 2014)

CD076 [NOT USED]

CD077 [NOT USED]

CD078 The Air Quality Strategy for England, Scotland, Wales and Northern Ireland - Volume 2

CD079 Guidance on the assessment of dust from demolition and construction

CD079.01. Guidance on the assessment of dust from demolition and construction (IAQM, 2014)

CD079.02. Guidance on the assessment of dust from demolition and construction (IAQM, 2016)

CD080 Acoustics of Schools: a design guide (Institute of Acoustics and Acoustics and Noise Consultants, 2015)

CD081 BS 5228-1:2009+A1:2014 Code of practice for noise and vibration control on construction and open sites - Part 1: Noise (British Standards Institution, 2014)

CD082 BS 5228-2:2009+A1:2014 Code of practice for noise and vibration control on construction and open sites - Part 2: Vibration (British Standards Institution, 2014)

CD083 [NOT USED]

CD084 Calculation of Road Traffic Noise (Department of Transport and Welsh office, 1988)

CD085 Converting the UK traffic noise index $LA_{10,18hr}$ to EU noise indices for noise mapping (TRL, 2002)

CD086 Land Compensation (Scotland) Act 1973 (UK Government, 1973)

CD087 Memorandum on the Noise Insulation (Scotland) Regulations (Memorandum) (HMSO, 1975)

CD088 Noise Insulation (Scotland) Regulations 1975 (Department of Transport and Welsh office, 1975)

CD089 Technical Advice Note Assessment of Noise (Scottish Government, 2011)

CD090 World Health Organisation (1999) Guidelines for Community Noise. WHO Geneva

CD091 World Health Organisation (2009). Night Noise Guidelines for Europe. WHO Geneva

CD092 A96 Corridor Landscape Assessment (Entec UK Limited, 2004)

CD093 Fitting Landscapes: Securing more sustainable landscapes (Transport Scotland, 2014)

CD094 [NOT USED]

CD095 Guidelines for Landscape and Visual Impact Assessment Third Edition (Landscape Institute and Institute of Environmental Management & Assessment, 2013)

CD096 Inner Moray Firth Landscape Character Assessment (Scottish Natural Heritage, 1998)

CD097 Inverness District Landscape Assessment (Scottish Natural Heritage, 1999)

CD098 Moray and Nairn Landscape Assessment (Scottish Natural Heritage, 1998)

CD099 Nairn South Landscape Character Assessment (The Highland Council, 2004)

CD100 Site Layout Planning for Daylight and Sunlight, A guide to Good Practice Second Edition (BRE Trust, 2011)

CD101 A handbook on environmental impact assessment: Guidance for Competent Authorities, Consultees and others involved in the Environmental Impact Assessment Process in Scotland (4th Edition) (Scottish Natural Heritage (SNH), 2013)

CD102 Guidelines for Ecological Impact Assessment in the UK and Ireland Terrestrial, Freshwater and Coastal (2nd edition). (Chartered Institute of Ecology and Environmental Management (CIEEM), 2016)

CD103 Guidelines for Ecological Impact Assessment in the United Kingdom (Institute for Ecology and Environmental Management, 2006)

CD104 Pollution Prevention Guidance (PPG) and Guidance for Pollution Prevention (GPP)

CD104.01. PPG1 – Understanding your environmental responsibilities – Good environmental practices (SEPA, 2013)

CD104.02. GPP2 – Above ground oil storage tanks (SEPA, 2017)

CD104.03. PPG3 – Use and design of oil separators in surface water drainage systems (SEPA, 2006)

CD104.04. GPP4 – Treatment and disposal of wastewater where there is no connection to the public foul sewer (SEPA, 2017)

CD104.05. GPP5 – Works and maintenance in or near water (SEPA, 2018)

CD104.06. PPG6 – Working at construction and demolition sites (SEPA, 2012)

CD104.07. PPG7 – The safe operation of refuelling facilities (SEPA, 2011)

CD104.08. GPP8 – Safe storage and disposal of used oils (SEPA, 2017)

CD104.09. GPP13 – Vehicle washing and cleaning (SEPA, 2017)

CD104.010. GPP21 – Pollution incident response plans (SEPA, 2017)

CD104.011. PPG22 – Incident Response, Dealing with spills (SEPA, 2011)

CD105 Scottish Transport Appraisal Guidance (STAG)

CD105.01. STAG Technical Database Section 2 – Analysis of Problems and Opportunities (Transport Scotland, January 2015)

CD105.02. Scottish Transport Appraisal Guidance (STAG) 2008

CD106 [NOT USED]

CD107 [NOT USED]

CD108 Scottish Environment Protection Agency (SEPA) Technical Flood Risk Guidance for Stakeholders (SEPA, 2014)

CD109 CIRIA C689 Culvert Design and Operation Guide (CIRIA, November 2014)

CD110 CIRIA C742 Manual on Scour at Bridges and other Hydraulic Structures (CIRIA, 2017)

CD111 SEPA's - Engineering in the water environment: good practice guide – Bank Protection – River and Lochs (SEPA, April 2008)

CD112 SEPA's - Engineering in the water environment: good practice guide – Intakes and Outfalls (SEPA, October 2008)

CD113 SEPA's - Engineering in the water environment: good practice guide – River Crossings (SEPA, November 2010)

CD114 Floods and Reservoir Safety, 4th edition (ICE Publishing, April 2014)

CD115 The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended): A Practical Guide (SEPA, 2011)

CD116 DMRB Stage 3: Environmental Impact Assessment - Screening and Scoping Report (Transport Scotland, November 2015)

CD117 Strategic Environmental Assessment for the Strategic Transport Projects Review, Post Adoption Statement (Transport Scotland, 2009)

CD118 IEMA Guidance on Environmental Impact Assessment: Delivering Quality Development (IEMA, July 2016)

CD119 The Highland-Wide Local Development Plan Examination Report

CD120 The Highland Council – Inner Moray Firth Proposed Local Development Plan Examination Report

CD121 Objections to the Inverness Local Plan PLI Report (2004)

- CD122 The European Noise Directive (Directive 2002/49/EC), 2002.
- CD123 The National Noise Incidence Study 2000/2001 (Volume 1 (United Kingdom): Volume 1 – Noise Levels Client report number 206344f) (BRE, 2002)
- CD124 TAG UNIT A3 Environmental Impact Appraisal (TAG) (Department of Transport, 2015)
- CD125 Traffic induced vibration in buildings. TRRL RR246 (1980) (Transport and Road Research Laboratory, 1990)
- CD126 Vibration nuisance from road traffic – Results of a 50 site survey (1980), TRRL Report LR1119 (Transport and Road Research Laboratory, 1984)
- CD127 Vibration nuisance from road traffic at fourteen residential sites, TRRL Laboratory Report LR120 (Transport and Road Research Laboratory, 1981)
- CD128 Aberdeen Western Peripheral Route – Report to the Scottish Ministers Volume 1 (June 2009)
- CD129 [NOT USED]
- CD130 A96 Dualling Programme. Strategic Environmental Assessment, Post Adoption Statement (Transport Scotland, February 2016)
- CD131 Bat Surveys: Good Practice Guidelines, 2nd edition (Bat Conservation Trust, 2012)
- CD132 Valuing Bats in Ecological Impact Assessment (CIEEM, In Practice, December 2010)
- CD133 CIRIA Report C753 – The SuDS Manual (CIRIA, 2015)
- CD134 SEPA Guidance Note 2: Planning advise on Sustainable Urban Drainage Systems (SEPA, 2010)
- CD135 CIRIA C609, Sustainable Drainage Systems (CIRIA, 2004)
- CD136 CIRIA C698, Site handbook for the construction of SUDS (CIRIA, 2007)
- CD137 A96 Dualling Inverness to Aberdeen Strategic Flood Risk Assessment (CH2M, 2015)
- CD138 Public Participation Directive 2003/35/EC (The European Parliament and the Council of the European Union, June 2003)
- CD139 The Highland Council, City of Inverness Area Committee Paper (Agenda item 6: Inverness East Development Brief) (The Highland Council, May 2018)
- CD140 WHO 2018 Guidelines
- CD141 The Highland Council Supplementary Guidance – Open Space in New Residential Development

Transport Scotland

TS000 - List of Transport Scotland's Documents

TS001 - Transform Scotland (R)

1. Email from Transform Scotland to Transport Scotland dated 31 January 2017.
2. Letter from Transport Scotland to Transform Scotland dated 31 July 2017.

TS002 - Hazledene (Inverness) Limited (R)

1. Letter from HBJ Gateley on behalf of Hazledene (Inverness) Limited to Transport Scotland dated 31 January 2017.
2. Letter from Transport Scotland to HBJ Gateley on behalf of Hazledene (Inverness) Limited dated 31 July 2017.
3. Letter from Park Lane on behalf of Hazledene (Inverness) Limited to Julie Adams dated 8 May 2018.
4. Letter from Morton Fraser on behalf of Transport Scotland to Addleshaw Goddard on behalf of Hazledene (Inverness) Limited dated 17 July 2018.
5. Email from Julie Adams of Jacobs to Brian Clarke of Park Lane on behalf of Inverness Estates dated 25 September 2015.
6. Landowner Consultations – Meeting between Brian Clarke of Park Lane on behalf of Inverness Estates and Jacobs dated 14 October 2015.
7. Minutes from meeting between Jacobs, Brian Clarke of Park Lane on behalf of Inverness Estates and Paul White of WSP dated 1 March 2016.
8. Email from Julie Adams of Jacobs to Brian Clarke of Park Lane on behalf of Inverness Estates dated 4 March 2016.
9. Minutes from meeting between Jacobs and Brian Clarke of Park Lane on behalf of Inverness Estates dated 13 April 2016.
10. Email from Julie Adams of Jacobs to Brian Clarke of Park Lane on behalf of Inverness Estates dated 2 November 2016.
11. Minutes from meeting between Jacobs and Brian Clarke of Park Lane on behalf of Hazledene Inverness Ltd (previously Inverness Estates) dated 9 November 2016.
12. Email from Julie Adams of Jacobs to Brian Clarke of Park Lane on behalf of Hazledene Inverness Ltd (previously Inverness Estates) dated 9 November 2016.
13. Minutes from meeting between Jacobs and Brian Clarke of Park Lane on behalf of Hazledene Inverness Ltd (previously Inverness Estates) dated 10 March 2017.

14. Minutes from meeting between Jacobs and Brian Clarke of Park Lane on behalf of Hazledene Inverness Ltd (previously Inverness Estates) dated 3 May 2017

15. Letter from Transport Scotland to Brian Clarke of Park Lane on behalf of Hazledene Inverness Ltd (previously Inverness Estates) dated 24 August 2018.

TS003 - Mr Richard Brady (R)

1. Email from Mr Richard Brady to Transport Scotland dated 27 January 2017.

2. Letter from Transport Scotland to Mr Richard Brady dated 31 July 2017.

TS004 - Mr David Gow - (R)

1. Email from Mr David Gow to Transport Scotland dated 31 January 2017.

2. Letter from Transport Scotland to Mr David Gow dated 31 July 2017.

TS006 - Mr Donald Peterkin (R)

1. Email from Mr Donald Peterkin to Transport Scotland dated 26 January 2017.

2. Letter from Transport Scotland to Mr Donald Peterkin dated 31 July 2017.

3. Letter from Transport Scotland to Mr Donald Peterkin dated 30 July 2018.

TS007 - Smithton and Culloden Community Council (R)

1. Email from Smithton and Culloden Community Council to Transport Scotland dated 31 December 2016.

2. Email from Smithton and Culloden Community Council to Transport Scotland dated 9 January 2017.

3. Email from Transport Scotland to Smithton and Culloden Community Council dated 11 January 2017.

4. Email from Smithton and Culloden Community Council to Transport Scotland dated 30 January 2017.

5. Letter from Transport Scotland to Smithton and Culloden Community Council dated 31 July 2017.

6. Letter from Transport Scotland to Smithton and Culloden Community Council dated 30 July 2018.

TS008 - Mr Donald Keith (R)

1. Email from Mr Donald Keith to Transport Scotland dated 20 January 2017.

2. Letter from Transport Scotland to Mr Donald Keith dated 31 July 2017.

3. Letter from Transport Scotland to Mr Donald Keith dated 30 July 2018.

TS010 - MacDonald Hotels Investments Ltd (R)

1. Letter from Neil Cameron Associates on behalf of MacDonald Hotels Investments Ltd to Transport Scotland dated 30 January 2017.
2. Letter from Transport Scotland to Neil Cameron Associates on behalf of MacDonald Hotels Investments Ltd dated 31 July 2017.
3. Letter from Transport Scotland to Neil Cameron Associates on behalf of MacDonald Hotels Investments Ltd dated 31 July 2018.

TS011 - Mr William Hardie (R)

1. Email from Mr William Hardie to Transport Scotland dated 31 January 2017.
2. Letter from Transport Scotland to Mr William Hardie dated 31 July 2017.
3. Letter from Transport Scotland to Mr William Hardie dated 30 July 2018.

TS012 - Mr Paul Hay (R)

1. Email from Mr Paul Hay to Transport Scotland dated 11 January 2017.
2. Letter from Transport Scotland to Mr Paul Hay dated 31 July 2017.
3. Letter from Transport Scotland to Mr Paul Hay dated 30 July 2018.

TS013 - Mr and Mrs Lathan (R)

1. Email from Mr and Mrs Lathan to Transport Scotland dated 22 January 2017.
2. Letter from Transport Scotland to Mr and Mrs Lathan dated 31 July 2017.
3. Letter from Transport Scotland to Mr and Mrs Lathan dated 30 July 2018.
4. Response Form from Mr and Mrs Lathan to Transport Scotland dated 15 August 2018.

TS014 - Ms Ailsa Hart (R)

1. Email from Ms Ailsa Hart to Transport Scotland dated 19 January 2017.
2. Letter from Transport Scotland to Ms Ailsa Hart dated 31 July 2017.
3. Letter from Transport Scotland to Ms Ailsa Hart dated 30 July 2018.

TS015 - Ms Sharron Lukas (R)

1. Email from Ms Sharron Lukas to Transport Scotland dated 19 January 2017.
2. Letter from Transport Scotland to Ms Sharron Lukas dated 31 July 2017.
3. Letter from Transport Scotland to Ms Sharon Lukas dated 30 July 2018.

TS016 - Mr Andrew Mackenzie (R)

1. Email from Mr Andrew Mackenzie to Transport Scotland dated 20 January 2017.
2. Letter from Transport Scotland to Mr Andrew Mackenzie dated 31 July 2017.
3. Letter from Transport Scotland to Mr Andrew Mackenzie dated 30 July 2018.

TS017 - Mr Donald H Williams and Mrs Ellen V Williams (R)

1. Letter from Neil Cameron Associates on behalf of Mr Donald H Williams and Mrs Ellen V Williams to Transport Scotland dated 27 January 2017.
2. Letter from Transport Scotland to Neil Cameron Associates on behalf of Mr Donald H Williams and Mrs Ellen V Williams dated 31 July 2017.
3. Letter from Transport Scotland to Neil Cameron Associates on behalf of Mr Donald H Williams and Mrs Ellen V Williams dated 31 July 2018.

TS018 - Mr Roddy MacPhee (R)

1. Email from Mr Roddy MacPhee to Transport Scotland dated 29 January 2017.
2. Letter from Transport Scotland to Mr Roddy MacPhee dated 31 July 2017.
3. Letter from Transport Scotland to Mr Roddy MacPhee dated 30 July 2018.

TS020 - Ms Shona Frame and Mr William Frame (R)

1. Email from Ms Shona Frame and Mr William Frame to Transport Scotland dated 21 January 2017.
2. Letter from Transport Scotland to Ms Shona Frame and Mr William Frame dated 31 July 2017.
3. Letter from Transport Scotland to Ms Shona Frame and Mr William Frame dated 30 July 2018.

TS021 - Ms Pamela Martin (R)

1. Letter from Ms Pamela Martin to Transport Scotland dated 25 January 2017.
2. Letter from Transport Scotland to Ms Pamela Martin dated 31 July 2017.
3. Letter from Transport Scotland to Ms Pamela Martin dated 30 July 2018.

TS022 - Ms Rachel Kinsman (R)

1. Email from Ms Rachel Kinsman to Transport Scotland dated 11 January 2017.
2. Letter from Transport Scotland to Ms Rachel Kinsman dated 31 July 2017.
3. Letter from Transport Scotland to Ms Rachel Kinsman dated 30 July 2018.

TS023 - Ms Marion Hasson (R)

1. Email from Ms Marion Hasson to Transport Scotland dated 24 January 2017.
2. Letter from Transport Scotland to Ms Marion Hasson dated 31 July 2017.
3. Letter from Ms Marion Hasson to Transport Scotland dated 31 August 2017.
4. Letter from Transport Scotland to Ms Marion Hasson dated 4 October 2017.
5. Letter from Transport Scotland to Ms Marion Hasson dated 30 July 2018.
6. Letter from Ms Marion Hasson to Transport Scotland dated 16 August 2018.

TS024 - Ms Kate MacLean (R)

1. Email from Ms Kate Maclean to Transport Scotland dated 20 January 2017.
2. Letter from Transport Scotland to Ms Kate Maclean dated 31 July 2017.
3. Letter from Transport Scotland to Ms Kate Maclean dated 30 July 2018.

TS025 - Mr Michael Carson (R)

1. Email from Mr Michael Carson to Transport Scotland dated 26 January 2017.
2. Letter from Transport Scotland to Mr Michael Carson dated 31 July 2017.
3. Letter from Transport Scotland to Mr Michael Carson dated 30 July 2018.

TS026 - Ms Margaret McAllister (R)

1. Email from Ms Margaret McAllister to Transport Scotland dated 28 January 2017.
2. Letter from Transport Scotland to Ms Margaret McAllister dated 31 July 2017.
3. Letter from Transport Scotland to Ms Margaret McAllister dated 30 July 2018.

TS027 - Ms Faye Armitstead (R)

1. Email from Ms Faye Armitstead to Transport Scotland dated 30 January 2017.
2. Letter from Transport Scotland to Ms Faye Armitstead dated 31 July 2017.

TS028 - Mr John Callum and Mrs Anne Callum (R)

1. Letter from Neil Cameron Associates on behalf of Mr John Callum and Mrs Anne Callum to Transport Scotland dated 27 January 2017.
2. Letter from Transport Scotland to Neil Cameron Associates on behalf of Mr John Callum and Mrs Anne Callum dated 31 July 2017.
3. Letter from Transport Scotland to Neil Cameron Associates on behalf of Mr John Callum and Mrs Anne Callum dated 31 July 2018.

4. Letter from Transport Scotland to Neil Cameron Associates on behalf of Mr John Callum and Mrs Anne Callum dated 1 August 2018.

TS029 - Ms Helen Keltie (R)

1. Email from Ms Helen Keltie to Transport Scotland dated 11 January 2017.
2. Email from Ms Helen Keltie to Transport Scotland dated 25 January 2017.
3. Letter from Transport Scotland to Ms Helen Keltie dated 31 July 2017.

TS030 - Mr Alan Armitstead (R)

1. Email from Mr Alan Armitstead to Transport Scotland dated 31 January 2017.
2. Letter from Transport Scotland to Mr Alan Armitstead dated 31 July 2017.

TS031 - Mrs Terri-Anne Sinclair (R)

1. Email from Mrs Terri-Anne Sinclair to Transport Scotland dated 30 January 2017.
2. Letter from Transport Scotland to Mrs Terri-Anne Sinclair dated 31 July 2017.

TS032 - Ms Penny Williamson (R)

1. Email from Ms Penny Williamson to Transport Scotland dated 28 January 2017.
2. Letter from Transport Scotland to Ms Penny Williamson dated 31 July 2017.

TS033 - Ms Linda Simpson (R)

1. Email from Ms Linda Simpson to Transport Scotland dated 9 January 2017.
2. Letter from Transport Scotland to Ms Linda Simpson dated 31 July 2017.
3. Letter from Transport Scotland to Ms Linda Simpson dated 30 July 2018.

TS034 - Mrs Janferie Mackintosh (R)

1. Email from Mrs Janferie Mackintosh to Transport Scotland dated 21 January 2017.
2. Letter from Transport Scotland to Mrs Janferie Mackintosh dated 31 July 2017.
3. Letter from Transport Scotland to Mrs Janferie Mackintosh dated 30 July 2018.

TS035 - Mr Andrew Kirkland (R)

1. Letter from Mr Andrew Kirkland to Transport Scotland dated 24 January 2017.
2. Letter from Transport Scotland to Mr Andrew Kirkland dated 31 July 2017.

TS037 - Mr Kenneth I Munro (R)

1. Letter from Bowlts Chartered Surveyors on behalf of Mr Kenneth I Munro to Transport Scotland dated 30 January 2017.
2. Letter from Transport Scotland to Bowlts Chartered Surveyors on behalf of Mr Kenneth I Munro dated 31 July 2017.

TS038 - Ms Liza Grant (R)

1. Email from Ms Liza Grant to Transport Scotland dated 17 January 2017.
2. Letter from Transport Scotland to Ms Liza Grant dated 31 July 2017.

TS039 - Mrs Jane Bradley and Mr Colin Cumming (R)

1. Letter from Bowlts Chartered Surveyors on behalf of Mrs Jane Bradley and Mr Colin Cumming to Transport Scotland dated 27 January 2017.
2. Letter from Bowlts Chartered Surveyors on behalf of Mrs Jane Bradley and Mr Colin Cumming to Transport Scotland dated 31 January 2017.
3. Letter from Transport Scotland to Bowlts Chartered Surveyors on behalf of Mrs Jane Bradley and Mr Colin Cumming dated 31 July 2017.
4. Email correspondence between Julie Adams of Jacobs and Mr Patrick Bradley (on behalf of Mrs Jane Bradley) dated 8 August 2017.
5. Letter from Bowlts Chartered Surveyors on behalf of Mrs Jane Bradley and Mr Colin Cumming to Transport Scotland dated 7 September 2017.
6. Email from Mr Patrick Bradley to Julie Adams of Jacobs dated 11 October 2017.
7. Letter from Transport Scotland to Bowlts Chartered Surveyors on Behalf of Mrs Jane Bradley and Mr Colin Cumming to Transport Scotland dated 19 July 2018.
8. Objection form from Mrs Jane Bradley to Transport Scotland dated 25 August 2018.
9. Letter from Mrs Jane Bradley to Transport Scotland dated 28 August 2018.

TS040 - Mr Brian Grant (R)

1. Letter from Bowlts Chartered Surveyors on behalf of Mr Brian Grant to Transport Scotland dated 30 January 2017.
2. Letter from Transport Scotland to Bowlts Chartered Surveyors on behalf of Mr Brian Grant dated 31 July 2017.

TS041 - Mr Martin Macleod (R)

1. Letter from Mr Martin Macleod to Transport Scotland dated 5 January 2017.
2. Letter from Transport Scotland to Mr Martin Macleod dated 31 July 2017.

TS042 - Mr N Green and Mrs E Green (R)

1. Letter from Mr N Green and Mrs E Green to Transport Scotland dated 22 January 2017.
2. Letter from Transport Scotland to Mr N Green and Mrs E Green dated 31 July 2017.

TS043 - Mr Stephen Robertson (R)

1. Email from Mr Steven Robertson to Transport Scotland dated 28 January 2017.
2. Letter from Transport Scotland to Mr Steven Robertson dated 31 July 2017.

TS047 - Mr Hamish Johnston (R)

1. Letter from Mr Hamish Johnston to Transport Scotland dated 13 January 2017.
2. Letter from Transport Scotland to Mr Hamish Johnston dated 31 July 2017.

TS050 - Balloch Community Council (R)

1. Letter from Balloch Community Council to Transport Scotland dated 24 January 2017.
2. Letter from Transport Scotland to Balloch Community Council dated 31 July 2017.

TS052 - Ms Sheena Fraser and Ms Ann Hulse (R)

1. Letter from Ms Sheena Fraser and Ms Ann Hulse to Transport Scotland dated 27 January 2017.
2. Letter from Transport Scotland to Ms Sheena Fraser and Ms Ann Hulse dated 31 July 2017.

TS053 - Mr Ewen MacDonald (R)

1. Letter from Mr Ewen Macdonald to Transport Scotland dated 15 January 2017.
2. Letter from Transport Scotland to Mr Ewen Macdonald dated 31 July 2017.

TS054 - Mr David Mitchell (R)

1. Email from Mr David Mitchell to Transport Scotland dated 29 January 2017.
2. Letter from Transport Scotland to Mr David Mitchell dated 31 July 2017.

TS055 - Ms Anna Gow (R)

1. Email from Ms Anna Gow to Transport Scotland dated 31 January 2017.
2. Letter from Transport Scotland to Ms Anna Gow dated 31 July 2017.

TS056 - Mr Fraser Gow (R)

1. Email from Mr Fraser Gow to Transport Scotland dated 31 January 2017.
2. Letter from Transport Scotland to Mr Fraser Gow dated 31 July 2017.

TS057 - Mr Robert Cavaye (Snr) (R)

1. Letter from Mr Robert Cavaye (Snr) to Transport Scotland dated 24 January 2017.
2. Letter from Transport Scotland to Mr Robert Cavaye (Snr) dated 31 July 2017.

TS058 - Mr John W Brown (R)

1. Letter from Mr John W Brown to Transport Scotland dated 19 January 2017.
2. Letter from Transport Scotland to Mr John W Brown dated 31 July 2017.

TS059 - Mr Alexander Bennie and Mrs Marion Bennie (R)

1. Letter from Mr Alexander Bennie and Mrs Marion Bennie to Transport Scotland dated 30 January 2017.
2. Letter from Transport Scotland to Mr Alexander Bennie and Mrs Marion Bennie dated 31 July 2017.

TS060 - Mr Allan Robertson and Mrs Lorna Robertson (R)

1. Email from Mr Allan Robertson to Transport Scotland dated 15 December 2016.
2. Email from Transport Scotland to Mr Allan Robertson dated 11 January 2017
3. Email from Mr Allan Robertson to Transport Scotland dated 11 January 2017.
4. Email from Mr Allan Robertson to Transport Scotland dated 14 January 2017.
5. Letter from Mr Allan Robertson and Mrs Lorna Robertson to Transport Scotland dated 26 January 2017.
6. Letter from Transport Scotland to Mr Allan Robertson and Mrs Lorna Robertson dated 31 July 2017.
7. Letter from Morton Fraser on behalf of Transport Scotland to Mr Allan Robertson and Mrs Lorna Robertson dated 28 June 2018.
8. Letter from Mr Allan Robertson to Morton Fraser on behalf of Transport Scotland dated 12 July 2018
9. Letter from Morton Fraser on behalf of Transport Scotland to Mr Allan Robertson dated 17 July 2018
10. Letter from Mr Allan Robertson to Morton Fraser on behalf of Transport Scotland received 19 July 2018, letter dated 12 July 2018.

TS061 - Ms Ashley Sutherland (R)

1. Email from Ms Ashley Sutherland to Transport Scotland dated 31 January 2017.
2. Letter from Transport Scotland to Ms Ashley Sutherland dated 31 July 2017.

TS062 - Mr Alex Shaw (R)

1. Email from Mr Alex Shaw to Transport Scotland dated 24 January 2017.
2. Letter from Transport Scotland to Mr Alex Shaw dated 31 July 2017.

TS064 - Ms Norma Duncan (R)

1. Letter from Ms Norma Duncan to Transport Scotland dated 29 January 2017.
2. Letter from Transport Scotland to Ms Norma Duncan dated 31 July 2017.

TS066 - Mr James S Brennan (R)

1. Email from Mr James S Brennan to Transport Scotland dated 19 January 2017.
2. Email from Transport Scotland to Mr James S Brennan dated 24 January 2017.
3. Email from Mr James S Brennan to Transport Scotland dated 26 January 2017.
4. Letter from Transport Scotland to Mr James S Brennan dated 31 July 2017.
5. Email from Mr James S Brennan to A96 Dualling Mailbox dated 8 September 2017.
6. Letter from Transport Scotland to Mr James S Brennan dated 21 February 2018.

TS071 - Croy and Culloden Moor Community Council (R)

1. Email from Croy and Culloden Moor Community Council to Transport Scotland dated 25 January 2017.
2. Letter from Transport Scotland to Croy and Culloden Moor Community Council dated 31 July 2017.

TS073 - Mr David Macbean (R)

1. Letter from Bidwells on behalf of Mr David Macbean to Transport Scotland dated 27 January 2017.
2. Letter from Transport Scotland to Bidwells on behalf of Mr David Macbean dated 31 July 2017.
3. Letter from Transport Scotland to Bidwells on behalf of Mr David Macbean dated 31 August 2018.

4. Landowner consultation form from meeting between Sharon Kelly, Natalie Moore of Jacobs and Mr David Macbean dated 21 July 2015

TS074 - Mr Peter McGibbon (R)

1. Email from Mr Peter McGibbon to Transport Scotland dated 8 December 2016.
2. Letter from Transport Scotland to Mr Peter McGibbon dated 31 July 2017.
3. Letter from Mr Peter McGibbon to Transport Scotland dated 15 August 2017.

TS076 - Mr Tamer Tasasiz (R)

1. Email from R&R Urquhart LLP on behalf of Mr Tamer Tasasiz to Transport Scotland dated 30 January 2017.
2. Letter from Transport Scotland to R&R Urquhart LLP on behalf of Mr Tamer Tasasiz dated 31 July 2017.

TS081 - Mrs Elaine de Ste Croix (R)

1. Email from Mrs Elaine de Ste Croix to Transport Scotland dated 31 January 2017.
2. Letter from Transport Scotland to Mrs Elaine de Ste Croix dated 31 July 2017.

TS082 - Mr William Rose - (R)

1. Letter from Bidwells on behalf of Mr William Rose to Transport Scotland dated 26 January 2017.
2. Letter from Transport Scotland to Bidwells on behalf of Mr William Rose dated 31 July 2017.
3. Letter from Transport Scotland to Bidwells on behalf of Mr William Rose dated 20 July 2018
4. Not used
5. Not used
6. Not used
7. Not used
8. Letter from Transport Scotland to Bidwells on behalf of Mr William Rose dated 02 November 2018

TS083 - Mr Colin H Philip (R)

1. Letter from Bowlts Chartered Surveyors on behalf of Mr Colin H Philip to Transport Scotland dated 26 January 2017.

2. Letter from Transport Scotland to Bowlts Chartered Surveyors on behalf of Mr Colin H Philip dated 31 July 2017.

3. Letter from Transport Scotland to Bowlts Chartered Surveyors on behalf of Mr Colin H Philip dated 11 September 2018.

TS084 - Mr John MacLennan and MacLennan (R)

1. Letter from Bidwells on behalf of Mr John MacLennan to Transport Scotland dated 27 January 2017.

2. Letter from Transport Scotland to Bidwells on behalf of Mr John MacLennan dated 31 July 2017.

3. Letter from Transport Scotland to Bidwells on behalf of Mr John MacLennan dated 20 July 2018.

TS087 - Mr Oliver Mackintosh (R)

1. Letter from Savills (UK) Ltd on behalf of Mr Oliver Mackintosh to Transport Scotland dated 10 January 2017.

2. Letter from Transport Scotland to Savills (UK) Ltd on behalf of Mr Oliver Mackintosh dated 31 July 2017.

3. Email from Murry Innes of Jacobs to Savills (UK) Ltd on behalf of Mr Oliver Mackintosh dated 07 June 2018.

4. Email from Savills (UK) Ltd on behalf of Mr Oliver Mackintosh to Murry Innes of Jacobs dated 12 June 2018.

5. Email from Murry Innes of Jacobs to Savills (UK) Ltd on behalf of Mr Oliver Mackintosh dated 29 June 2018.

6. Letter from Transport Scotland to Savills (UK) Ltd on behalf of Mr Oliver Mackintosh dated 11 September 2018.

TS088 - Ardersier Port Limited (R)

1. Letter from Graham + Sibbald on behalf of Ardersier Port Limited to Transport Scotland dated 12 January 2017.

2. Letter from Transport Scotland to Graham + Sibbald on behalf of Ardersier Port Limited dated 31 July 2017.

3. Letter from Graham + Sibbald on behalf of Ardersier Port Limited to Transport Scotland dated 4 September 2017.

4. Letter from Graham + Sibbald on behalf of Ardersier Port Limited to Transport Scotland dated 6 February 2018.

5. Letter from Transport Scotland to Graham + Sibbald on behalf of Ardersier Port limited dated 6 July 2018.

6. Letter from Graham + Sibbald on behalf of Ardersier Port Limited to Transport Scotland dated 17 July 2018.

7. Letter from Transport Scotland to Graham + Sibbald on behalf of Ardersier Port Limited dated 14 August 2018

TS089 - The Right Honourable Angelika Ilona Dowager Countess Cawdor (R)

1. Letter from Bowlts Chartered Surveyors on behalf of The Right Honourable Angelika Ilona Dowager Countess Cawdor to Transport Scotland dated 27 January 2017.

2. Letter from Transport Scotland to Bowlts Chartered Surveyors on behalf of The Right Honourable Angelika Ilona Dowager Countess Cawdor dated 31 July 2017.

3. Letter from Transport Scotland to Bowlts Chartered Surveyors on behalf of The Right Honourable Angelika Ilona Dowager Countess Cawdor dated 15 August 2018

TS090 - Cawdor Maintenance Trust (R)

1. Letter from Bowlts Chartered Surveyors on behalf of Cawdor Maintenance Trust to Transport Scotland dated 30 January 2017.

2. Letter from Transport Scotland to Bowlts Chartered Surveyors on behalf of Cawdor Maintenance Trust dated 31 July 2017.

3. Letter from Transport Scotland to Bowlts Chartered Surveyors on behalf of Cawdor Maintenance Trust dated 31 August 2018.

TS091 - Mr Stewart MacKinnon and Mrs Verena MacKinnon (R)

1. Email and letter from Mr Stewart MacKinnon and Mrs Verena MacKinnon to Transport Scotland dated 30 January 2017.

2. Letter from Transport Scotland to Mr Stewart MacKinnon and Mrs Verena MacKinnon dated 31 July 2017.

3. Telecom record from Julie Adams of Jacobs to Mrs Verena MacKinnon dated 10 August 2017

4. Telecom record from Julie Adams of Jacobs to Mr Stewart MacKinnon dated 11 August 2017

5. Meeting minutes from consultation with Julie Adams and Jan Misek of Jacobs and Mr Stewart and Mrs Verena MacKinnon dated 1 September 2017

6. Email from Fergus Ewing MSP to Transport Scotland dated 31 October 2017.

7. Letter from Transport Scotland to Fergus Ewing MSP dated 14 November 2017.

8. Email from Fergus Ewing MSP to Transport Scotland dated 13 February 2018.

9. Letter from Transport Scotland to Fergus Ewing MSP dated 28 February 2018.

10. Email from Mr Gregor MacKinnon (Son) to Transport Scotland dated 28 March 2018.
11. Letter from Transport Scotland to Mr Gregor MacKinnon dated 26 April 2018.
12. Letter from Morton Fraser on behalf of Transport Scotland to Mr and Mrs MacKinnon dated 12 July 2018
13. Letter from Verena, Stewart, and Gregor MacKinnon to Morton Fraser Lawyers dated 6 August 2018
14. Email from Mr Stewart MacKinnon and Mrs Verena MacKinnon to Transport Scotland dated 31 January 2014
15. Email from Graeme Herd of Jacobs to Mr Stewart MacKinnon and Mrs Verena MacKinnon dated 1 June 2014
16. Email from Mr Stewart MacKinnon and Mrs Verena MacKinnon to Graeme Herd of Jacobs dated 9 September 2014
17. Letter from Graeme Herd of Jacobs to Mr Stewart MacKinnon dated 16 October 2014
18. Landowner consultation form from meeting between Sharon Kelly, John MacLennan of Jacobs and Mr Stewart MacKinnon dated 16 July 2015
19. Meeting minutes from consultation between Sharon Kelly of Jacobs, Aimee Slater and Mr Stewart MacKinnon and Mrs Verena MacKinnon dated 24 February 2016
20. Email from Jan Misek of Jacobs to Mr Stewart Mackinnon dated 4 July 2016
21. Meeting minutes from consultation meeting between Murray Innes, Chris Fleming of Jacobs and Mr and Mrs MacKinnon dated 7 September 2016

TS092 - Mr and Mrs Andrew MacDonald (R)

1. Email from Savills (UK) Limited on behalf of Mr and Mrs Andrew MacDonald to Transport Scotland dated 25 January 2017.
2. Letter from Transport Scotland to Savills (UK) Limited on behalf of Mr and Mrs Andrew MacDonald dated 31 July 2017.

TS093 - Mr John Baird and Mrs Joanna Baird (R)

1. Letter from Bowlts Chartered Surveyors on behalf of Mr John Baird and Mrs Joanna Baird to Transport Scotland dated 26 January 2017.
2. Letter from Transport Scotland to Bowlts Chartered Surveyors on behalf of Mr John Baird and Mrs Joanna Baird dated 31 July 2017.

TS096 - Mr Sean Gallagher (R)

1. Email from Mr Sean Gallagher to Transport Scotland dated 29 January 2017.
2. Letter from Transport Scotland to Mr Sean Gallagher dated 31 July 2017.

TS097 - Partners and Trustees of the Firm of JM & LM Forbes (R)

1. Letter from R&R Urquhart LLP on behalf of Partners and Trustees of the Firm of JM & LM Forbes to Transport Scotland dated 30 January 2017.
2. Letter from Transport Scotland to R&R Urquhart LLP on behalf of Partners and Trustees of the Firm of JM & LM Forbes dated 31 July 2017.
3. Letter from R&R Urquhart LLP on behalf of Partners and Trustees of the Firm of JM & LM Forbes to Transport Scotland dated 08 September 2017.
4. Letter from Transport Scotland to R&R Urquhart LLP on behalf of the Firm of JM & LM Forbes dated 19 July 2018
5. Letter from R&R Urquhart LLP on behalf of Partners and Trustees of the Firm of JM & LM Forbes to Transport Scotland dated 06 August 2018.

TS098 - Mr Charles W Hynman Allenby and Mr James D Carnegie-Arbuthnott (Executors of the Estate of Charles Hynman Allenby) (R)

1. Letter from Anderson Strathern LLP on behalf of Mr Charles William Hynman Allenby and Mr James David Carnegie-Arbuthnott (Executors of the Estate of Charles Hynman Allenby) to Transport Scotland dated 27 January 2017.
2. Letter from Transport Scotland to Anderson Strathern LLP on behalf of Mr Charles William Hynman Allenby and Mr James David Carnegie-Arbuthnott (Executors of the Estate of Charles Hynman Allenby) dated 31 July 2017.
3. Letter from Anderson Strathern LLP on behalf of Mr Charles William Hynman Allenby and Mr James David Carnegie-Arbuthnott (Executors of the Estate of Charles Hynman Allenby) to Transport Scotland dated 1 September 2017.
4. Letter from Transport Scotland to Anderson Strathern LLP on behalf of Mr Charles William Hynman Allenby and Mr James David Carnegie-Arbuthnott (Executors of the Estate of Charles Hynman Allenby) dated 23 July 2018.

TS101 - BDW North Scotland Limited (Barratt) & Robertson Homes Ltd (R)

1. Letter from BDW North Scotland Limited (Barratt) & Robertson Homes Ltd to Transport Scotland dated 31 January 2017.
2. Letter from Transport Scotland to BDW North Scotland Limited (Barratt) & Robertson Homes Ltd dated 31 July 2017.

TS102 - Mr John Graham (R)

1. Letter from Mr John Graham to Transport Scotland dated 25 January 2017.
2. Letter from Transport Scotland to Mr John Graham dated 31 July 2017.

3. Email from Julie Adams of Jacobs to Mr John Graham dated 22 September 2017
4. Email from Mr John Graham to Julie Adams of Jacobs dated 22 September 2017.

TS103 - Mr David Philip and Mr Daniel Philip (R)

1. Letter from Bowlts Chartered Surveyors on behalf of Mr David Philip and Mr Daniel Philip to Transport Scotland dated 27 January 2017.
2. Letter from Transport Scotland to Bowlts Chartered Surveyors on behalf of Mr David Philip and Mr Daniel Philip dated 31 July 2017.

TS105 - John R MacKintosh and Company (R)

1. Letter from Bidwells on behalf of John R MacKintosh and Company to Transport Scotland dated 16 December 2016.
2. Letter from Bidwells on behalf of John R MacKintosh and Company to Transport Scotland dated 25 January 2017.
3. Letter from Transport Scotland to Bidwells on behalf of John R MacKintosh and Company dated 31 July 2017.
4. Letter from Bidwells on behalf of John R MacKintosh and Company to Transport Scotland dated 14 August 2017.
5. Email from Mrs Deirdre Mackintosh on behalf of John R MacKintosh and Company to Julie Adams of Jacobs dated 18 September 2017.
6. Email from Councillor Tom Heggie of The Highland Council on behalf of John R MacKintosh and Company to Fergus Ewing MSP dated 15 May 2018.
7. Letter from Transport Scotland to Bidwells on behalf of John R MacKintosh and Company dated 10 July 2018
8. Letter from Transport Scotland to Bidwells on behalf of John R MacKintosh and Company dated 10 September 2018

TS106 - Kinstearry Woodland Estate (R)

1. Email from Mr Scott Gordon to Jacobs dated 6 December 2016.
2. Email from Transport Scotland to Mr Scott Gordon dated 11 January 2017.
3. Letter from GH Johnston Building Consultants Ltd on behalf of Kinstearry Woodland Estate dated 31 January 2017.
4. Letter from Transport Scotland to GH Johnston Building Consultants Ltd on behalf of Kinstearry Woodland Estate dated 31 July 2017.

TS107 - Mr George D Strawson (R)

1. Letter from Strawson's Property on behalf of Mr George D Strawson to Transport Scotland dated 30 January 2017.

2. Letter from Transport Scotland to Strawson's Property on behalf of Mr George D Strawson dated 31 July 2017.

TS108 - Auldearn Community Council (R)

1. Letter from Auldearn Community Council to Transport Scotland dated 28 January 2017.

2. Letter from Auldearn Community Council to Transport Scotland dated 30 January 2017.

3. Letter from Transport Scotland to Auldearn Community Council dated 31 July 2017.

TS110 - Mr James A Philip (R)

1. Letter from Bowlts Chartered Surveyors on behalf of Mr James A Philip to Transport Scotland dated 30 January 2017.

2. Letter from Transport Scotland to Bowlts Chartered Surveyors on behalf of Mr James A Philip dated 31 July 2017.

TS111 - Firm of Auchnacloch Farm (R)

1. Letter from R&R Urquhart LLP on behalf of the Firm of Auchnacloch Farm to Transport Scotland dated 1 December 2016.

2. Letter from R&R Urquhart LLP on behalf of the Firm of Auchnacloch Farm to Transport Scotland dated 30 January 2017.

3. Letter from Transport Scotland to R&R Urquhart LLP on behalf of the Firm of Auchnacloch Farm dated 31 July 2017.

4. Letter from R&R Urquhart LLP on behalf of the Firm of Auchnacloch Farm to Transport Scotland dated 8 September 2017.

5. Letter from Transport Scotland to R&R Urquhart LLP on behalf of the Firm of Auchnacloch Farm dated 17 July 2018.

6. Letter from R&R Urquhart LLP on behalf of the Firm of Auchnacloch Farm to Transport Scotland dated 25 July 2018.

7. Letter from Transport Scotland to R&R Urquhart LLP on behalf of the Firm of Auchnacloch Farm dated 27 August 2018.

8. Letter from Firm of Auchnacloch Farm to Transport Scotland dated 29 January 2014.

9. Letter from Transport Scotland to Firm of Auchnacloch Farm dated 03 April 2014.

10. Letter from Firm of Auchnacloch Farm to Transport Scotland dated 28 November 2014.

11. Letter from Transport Scotland to Firm of Auchnacloch Farm dated 06 February 2015.

12. Letter from Transport Scotland to Firm of Auchnacloch Farm dated 25 November 2016.

TS112 - Mr John Farquhar and Mrs Frances Farquhar (R)

1. Joint letter from Mr John Farquhar and Mrs Frances Farquhar & others to Transport Scotland dated 24 January 2017.

2. Letter from Transport Scotland to Mr John Farquhar and Mrs Frances Farquhar dated 31 July 2017.

3. Letter from Transport Scotland to Mr John Farquhar and Mrs Frances Farquhar dated 11 September 2018

TS113 - Mr J Ledsham (R)

1. Joint letter from Mr J Ledsham & others to Transport Scotland dated 24 January 2017.

2. Letter from Transport Scotland to Mr J Ledsham dated 31 July 2017.

TS114 - Mr Mark Pinder (R)

1. Joint letter from Mr Mark Pinder & others to Transport Scotland dated 24 January 2017.

2. Letter from Transport Scotland to Mr Mark Pinder dated 31 July 2017.

TS115 - Mrs C Turvey (R)

1. Joint letter from Mrs C Turvey & others to Transport Scotland dated 24 January 2017.

2. Letter from Transport Scotland to Mrs C Turvey dated 31 July 2017.

TS116 - Mr L Firlez and Mrs T Firlez (R)

1. Joint letter from Mr L Firlez and Mrs T Firlez & others to Transport Scotland dated 24 January 2017.

2. Letter from Transport Scotland to Mr L Firlez and Mrs T Firlez dated 31 July 2017.

TS117 - Mr R Grantham and Mrs K Grantham (R)

1. Joint letter from Mr R Grantham and Mrs K Grantham & others to Transport Scotland dated 24 January 2017.

2. Letter from Transport Scotland to Mr R Grantham and Mrs K Grantham dated 31 July 2017.

TS118 - Mr N Andrew and Mrs Jean Peck (R)

1. Joint letter from Mr N Andrew and Mrs Jean Peck & others to Transport Scotland dated 24 January 2017.

2. Letter from Transport Scotland to Mr N Andrew and Mrs Jean Peck dated 31 July 2017.

TS119 - Mr J Grigor (R)

1. Joint letter from Mr J Grigor & others to Transport Scotland dated 24 January 2017.

2. Letter from Transport Scotland to Mr J Grigor dated 31 July 2017.

TS120 - Mr George Fraser (R)

1. Joint letter from Mr George Fraser & others to Transport Scotland dated 24 January 2017.

2. Letter from Mr George Fraser to Transport Scotland dated 25 January 2017.

3. Letter (1) from Transport Scotland to Mr George Fraser dated 31 July 2017.

4. Letter (2) from Transport Scotland to Mr George Fraser dated 31 July 2017.

5. Email from Fergus Ewing MSP on behalf of George Fraser to Transport Scotland dated 31 October 2017.

6. Letter from Transport Scotland to Fergus Ewing MSP on behalf of George Fraser dated 20 November 2017.

7. Email from Fergus Ewing MSP on behalf of George Fraser to Transport Scotland dated 16 January 2018.

8. Email from Fergus Ewing MSP on behalf of George Fraser to Transport Scotland dated 02 February 2018.

9. Letter from Transport Scotland to Fergus Ewing MSP on behalf of George Fraser dated 06 February 2018.

10. Letter from Transport Scotland to Fergus Ewing MSP on behalf of George Fraser dated 22 February 2018.

TS121 - Mrs Doreen M Davidson (R)

1. Joint letter from Mrs Doreen M Davidson & others to Transport Scotland dated 24 January 2017.

2. Letter from Transport Scotland to Mrs Doreen M Davidson dated 31 July 2017.

TS122 - Mr D Davidson (R)

1. Joint letter from Mr D Davidson & others to Transport Scotland dated 24 January 2017.
2. Letter from Transport Scotland to Mr D Davidson dated 31 July 2017.

TS123 - Mr Malcolm S Davidson and Ms Jennifer M Philips (R)

1. Joint letter from Mr Malcolm S Davidson and Ms Jennifer M Philips & others to Transport Scotland dated 24 January 2017.
2. Letter from Mr Malcolm S Davidson and Ms Jennifer M Philips to Transport Scotland dated 24 January 2017.
3. Letter (1) from Transport Scotland to Mr Malcolm S Davidson and Ms Jennifer M Philips dated 31 July 2017.
4. Letter (2) from Transport Scotland to Mr Malcolm S Davidson and Ms Jennifer M Philips dated 31 July 2017.

TS124 - Mr Derek L Prior and Ms L M Rutter (R)

1. Joint letter from Mr Derek L Prior and Ms L M Rutter & others to Transport Scotland dated 24 January 2017.
2. Letter from Transport Scotland to Mr Derek L Prior and Ms L M Rutter dated 31 July 2017.

TS125 - Mr K James and Mrs K James (R)

1. Joint letter from Mr K James and Mrs K James & others to Transport Scotland dated 24 January 2017.
2. Letter from Transport Scotland to Mr K James and Mrs K James dated 31 July 2017.

TS126 - Mr Alfred James and Mrs M James (R)

1. Joint letter from Mr Alfred James and Mrs M James & others to Transport Scotland dated 24 January 2017.
2. Letter from Transport Scotland to Mr Alfred James and Mrs M James dated 31 July 2017.

TS127 - Mr P James and Mrs J James (R)

1. Joint letter from Mr P James and Mrs J James & others to Transport Scotland dated 24 January 2017.
2. Letter from Transport Scotland to Mr P James and Mrs J James dated 31 July 2017.

TS128 - Mr Hugh Urquhart and Mrs Nicola Urquhart (R)

1. Joint letter from Mr Hugh Urquhart and Mrs Nicola Urquhart & others to Transport Scotland dated 24 January 2017.
2. Letter from Mr Hugh Urquhart and Mrs Nicola Urquhart to Transport Scotland dated 26 January 2017.
3. Letter (1) from Transport Scotland to Mr Hugh Urquhart and Mrs Nicola Urquhart dated 31 July 2017.
4. Letter from Morton Fraser on behalf of Transport Scotland to Mr and Mrs Urquhart dated 10 August 2018

TS129 - Mr Stephen R Bailey and Mrs Elaine Bailey (R)

1. Joint letter from Mr Stephen R Bailey and Mrs Elaine Bailey & others to Transport Scotland dated 24 January 2017.
2. Letter from Mr Stephen R Bailey and Mrs Elaine Bailey to Transport Scotland dated 25 January 2017.
3. Letter from Transport Scotland to Mr Stephen R Bailey and Mrs Elaine Bailey dated 31 July 2017.
4. Email from Transport Scotland to Fergus Ewing MSP on behalf of Mr and Mrs Bailey dated 03 November 2017
5. Email from Fergus Ewing MSP on behalf of Mr and Mrs Bailey to Transport Scotland dated 21 November 2017
6. Letter from Transport Scotland to Mr Stephen R Bailey and Mrs Elaine Bailey dated 23 November 2017.
7. Letter from Transport Scotland to Fergus Ewing MSP on behalf of Mr and Mrs Bailey dated 08 December 2017
8. Letter from Morton Fraser on behalf of Transport Scotland to Mr and Mrs Bailey dated 10 August 2018.

TS130 - Nairnshire Farming Society (R)

1. Email from Mr Will Downie on behalf of Nairnshire Farming Society to Ms Julie Adams of Jacobs dated 14 December 2016.
2. Email from Ms Julie Adams of Jacobs to Mr Will Downie on behalf of Nairnshire Farming Society dated 15 December 2016.
3. Email from Mr Will Downie on behalf of Nairnshire Farming Society to Transport Scotland dated 9 January 2017.
4. Letter from Mr Peter Forbes on behalf of Nairnshire Farming Society to Transport Scotland dated 12 January 2017.

5. Letter from Transport Scotland to Mr Peter Forbes on behalf of Nairnshire Farming Society dated 31 July 2017.

TS131 - Mr James Maxwell and Mrs Ellen Maxwell (R)

1. Letter from Mr James Maxwell and Mrs Ellen Maxwell to Transport Scotland dated 22 January 2017.

2. Joint letter from Mr James Maxwell and Mrs Ellen Maxwell & others to Transport Scotland dated 24 January 2017.

3. Letter (1) from Transport Scotland to Mr James Maxwell and Mrs Ellen Maxwell dated 31 July 2017.

4. Letter (2) from Transport Scotland to Mr James Maxwell and Mrs Ellen Maxwell dated 31 July 2017.

TS132 - Mr Niall B Holden and Mr Euan J Holden (R)

1. Letter from Bowlts Chartered Surveyors on behalf of Mr Niall B Holden and Mr Euan J Holden to Transport Scotland dated 27 January 2017.

2. Letter from Transport Scotland to Bowlts Chartered Surveyors on behalf of Mr Niall B Holden and Mr Euan J Holden dated 31 July 2017.

3. Email from Bowlts Chartered Surveyors on behalf of Mr Niall B Holden and Mr Euan J Holden to Simon Young of Jacobs dated 23 January 2018.

4. Email from Simon Young of Jacobs to Bowlts Chartered Surveyors on behalf of Mr Niall B Holden and Mr Euan J Holden dated 16 February 2018.

5. Email from Simon Young of Jacobs to Bowlts Chartered Surveyors on behalf of Mr Niall B Holden and Mr Euan J Holden dated 25 May 2018.

6. Email from Bowlts Chartered Surveyors on behalf of Mr Niall B Holden and Mr Euan J Holden to Simon Young of Jacobs dated 29 May 2018.

7. Email from Simon Young of Jacobs to Bowlts Chartered Surveyors on behalf of Mr Niall B Holden and Mr Euan J Holden dated 4 June 2018.

8. Email from Bowlts Chartered Surveyors on behalf of Mr Niall B Holden and Mr Euan J Holden to Simon Young of Jacobs dated 10 July 2018

TS133 - Mr Richard McCulloch (R)

1. Joint letter from Mr Richard McCulloch & others to Transport Scotland dated 24 January 2017.

2. Letter from Mr Richard McCulloch to Transport Scotland dated 27 January 2017.

3. Letter (1) from Transport Scotland to Mr Richard McCulloch dated 31 July 2017.

4. Letter (2) from Transport Scotland to Mr Richard McCulloch dated 31 July 2017.

5. Letter from Transport Scotland to Mr Richard McCulloch dated 19 June 2018.
6. Letter from Morton Fraser on behalf of Transport Scotland dated 28 June 2018.
7. Email from Lorna Shelbourn of Jacobs and Mr Richard McCulloch dated 15 August 2018.

TS134 - Mrs Carolyn Mitchell (R)

1. Joint letter from Mrs Carolyn Mitchell & others to Transport Scotland dated 24 January 2017.
2. Letter from Transport Scotland to Mrs Carolyn Mitchell dated 31 July 2017.

TS135 - Mrs C Scott (R)

1. Joint letter from Mrs C Scott & others to Transport Scotland dated 24 January 2017.
2. Letter from Transport Scotland to Mrs C Scott dated 31 July 2017.

TS136 - Penick Farms (R)

1. Letter from Mr Neil Campbell on behalf of Penick Farms to Transport Scotland dated 30 January 2017.
2. Letter from Transport Scotland to Mr Neil Campbell on behalf of Penick Farms dated 31 July 2017.

TS138 - Mr Philip Pullan and Mrs Gillian Pullan (R)

1. Email from Mr Philip Pullan to Graeme Herd of Jacobs dated 18 January 2017.
2. Email from Mr Simon Young of Jacobs to Mr Philip Pullan dated 24 January 2017.
3. Letter from Mr Philip Pullan and Mrs Gillian Pullan to Transport Scotland dated 27 January 2017.
4. Letter from Transport Scotland to Mr Philip Pullan and Mrs Gillian Pullan dated 31 July 2017.
5. Letter from Morton Fraser on behalf Transport Scotland to Mr Philip Pullan and Mrs Gillian Pullan dated 21 June 2018.
6. Letter from Mr Philip Pullan and Mrs Gillian Pullan to Transport Scotland dated 12 November 2014.
7. Email from Graeme Herd of Jacobs to Mr Philip Pullan dated 8 December 2014.
8. Letter from Mr Philip Pullan and Mrs Gillian Pullan to Transport Scotland dated 11 March 2016.

9. Letter from Mr Philip Pullan and Mrs Gillian Pullan to Transport Scotland dated 15 August 2018.

TS139 - Mr Hugh Andrews and Ms Janet Banks (R)

1. Letter from Mr Hugh Andrews and Ms Janet Banks to Transport Scotland dated 16 December 2016.

2. Letter from Bowlts Chartered Surveyors on behalf of Mr Hugh Andrews and Ms Janet Banks to Transport Scotland dated 30 January 2017.

3. Letter from Transport Scotland to Bowlts Chartered Surveyors on behalf of Mr Hugh Andrews and Ms Janet Banks dated 31 July 2017.

TS141 - Mr James D Clarke and Mrs Sylvia AG Clarke (R)

1. Letter from Burness Paull on behalf of Mr James D Clarke and Mrs Sylvia AG Clarke to Transport Scotland dated 30 January 2017.

2. Letter from Transport Scotland to Burness Paull on behalf of Mr James D Clarke and Mrs Sylvia AG Clarke dated 31 July 2017.

3. Letter from Burness Paull on behalf of Mr James D Clarke and Mrs Sylvia AG Clarke to Transport Scotland dated 12 September 2017.

4. Letter from Transport Scotland to Burness Paull LLP on behalf of Mr James D Clarke and Mrs Sylvia AG Clarke dated 1 June 2018.

5. Letter from Burness Paull on behalf of Mr James D Clarke and Mrs Sylvia AG Clarke to Transport Scotland dated 28 June 2018.

6. Letter from Transport Scotland to Burness Paull LLP on behalf of Mr James D Clarke and Mrs Sylvia AG Clarke dated 26 July 2018.

TS142 - Mr Jamie B Watson and Mrs Elizabeth Watson (R)

1. Email from Mr Jamie B Watson to Transport Scotland dated 29 January 2017.

2. Letter from Transport Scotland to Mr Jamie B Watson and Mrs Elizabeth Watson dated 31 July 2017.

TS148 - Councillor Trish Robertson (R)

1. Email from Councillor Trish Robertson to Transport Scotland dated 13 January 2017.

2. Letter from Transport Scotland to Councillor Trish Robertson dated 31 July 2017.

3. Email from Councillor Trish Robertson to Transport Scotland dated 7 August 2017.

4. Letter from Transport Scotland to Councillor Trish Robertson dated 30 July 2018.

TS155 - Ms Stephanie Wood (R)

1. Letter from Ms Stephanie Wood to Transport Scotland dated 2 September 2017.
2. Letter from Transport Scotland to Ms Stephanie Wood dated 4 October 2017.
3. Letter from Transport Scotland to Ms Stephanie Wood and A Gibson dated 21 December 2017.

TS156 - Mr Robert Deacon (R)

1. Objection form from Mr Robert Deacon to Transport Scotland dated 17 August 2017.
2. Letter from Transport Scotland to Mr Robert Deacon dated 4 October 2017.

TS201 Transport Scotland Portfolio of Witness CVs

1. Additional Witness CV – Jonathan Dempsey

TS202 A96 Dualling Inverness to Aberdeen Ministerial Announcements and Press Releases 2011 to 2017

1. Transport Scotland Press Release 'A9 & A96 aerial surveys contract award' 19 July 2013
2. Transport Scotland Press Release 'A96 Dualling Show On The Road' 4 November 2013
3. Transport Scotland Press Release 'Brown rallying cry on A96 road plans' 11 November 2013
4. Transport Scotland Press Release 'A96 Dualling Programme – Public Turn Out In Drovers' 3 December 2013
5. Transport Scotland Press Release 'Multi-million contract for A96 Dualling work published' 19 August 2014
6. Transport Scotland Press Release 'Exhibitions for A96 Nairn Bypass Option' 22 September 2014
7. Transport Scotland Press Release 'Preferred option for Nairn Bypass selected' 3 October 2014
8. Transport Scotland Press Release '£30 Million A96 Dualling Contract Award' 10 February 2015
9. Transport Scotland Press Release 'A96 Dualling public exhibitions' 3 May 2015
10. Transport Scotland Press Release 'A96 Dualling Work Hits The Road' 11 May 2015

11. Transport Scotland Press Release 'Spring Watch on the A96' 1 June 2015
12. Transport Scotland Press Release 'Opportunity to meet the A96 Nairn Bypass design team' 14 August 2015
13. Transport Scotland Press Release 'Multi-Million Pound A96 Dualling Contract Up For Grabs' 13 October 2015
14. Transport Scotland Press Release 'Changes to A96 Nairn Bypass scheme to go on public display' 19 January 2016
15. Transport Scotland Press Release 'Proposed Changes to A96 Dualling Scheme On Display – Improved route for cyclists and walkers' 3 February 2016
16. Transport Scotland Press Release 'Shortlisted bidders for multi-million A96 design contract revealed' 26 February 2016
17. Transport Scotland Press Release 'Information for motorists as ground investigation work set to start for the A96 Nairn Bypass' 14 March 2016
18. Transport Scotland Press Release 'A96 Drilling Works Underway For Nairn Bypass' 21 March 2016
19. Transport Scotland Press Release 'A96 Dualling Pressing Ahead' 27 May 2016
20. Transport Scotland Press Release 'Plans for A96 Nairn Bypass set to go on public display' 29 November 2016
21. Transport Scotland Press Release 'Firms invited to bid for multi-million roads contract' 27 January 2017
22. Transport Scotland Press Release 'Four firms chasing multi-million A96 contract' 4 April 2017
23. Transport Scotland Press Release 'Pupils learning from A96 Dualling Programme' 11 May 2017
24. Transport Scotland Press Release 'Ground Investigations for A96 Dualling' 7 June 2017
25. Transport Scotland Press Release 'Multi-million pound contract awarded for A96 Dualling' 26 June 2017
26. Transport Scotland Press Release 'A96 Dualling plans start to take shape 9 May 2013

TS203 Parliamentary Questions

1. Parliamentary Question (Written) S3W-00231
2. Parliamentary Question (Written) S3W-00232
3. Parliamentary Question (Written) S3W-24698

4. Parliamentary Question (Written) S3W-39701
5. Parliamentary Question (Oral) S4O-02571
6. Parliamentary Question (Written) S4W-12852
7. Parliamentary Question (Written) S4W-18353
8. Parliamentary Question (Written) S4W-20226
9. Parliamentary Question (Written) S4W-23263
10. Parliamentary Question (Written) S4W-23293
11. Parliamentary Question (Written) S4W-27082
12. Parliamentary Question (Written) S4W-27533
13. Parliamentary Question (Written) S4W-27623
14. Parliamentary Question (Written) S5W-01181
15. Parliamentary Question (Written) S5W-04873
16. Parliamentary Question (Written) S5W-10135
17. Parliamentary Question (Written) S5W-11192

TS205 A96 Dualling Preliminary Engineering Services: Non-Motorised User Context Report (July 2016)

TS206 A96 Dualling Preliminary Engineering Services: Accessibility Context Report (May 2015)

TS207 A96 Dualling Inverness to Aberdeen Engaging with Communities (Transport Scotland, 2015)

TS208 Background Statement (September 2018)

TS209 Scheme Design Development and Consideration of Alternatives Report (September 2018)

TS210 Stratton New Town Development: Policy Context, Planning History and Relationship to the Proposed Scheme (September 2018)

TS211 Development Land Report (September 2018)

TS212 Report on Landscape & Visual Issues (September 2018)

TS213 Noise & Vibration Report (September 2018)

TS214 Report on Air Quality (September 2018)

TS215 Agriculture, Forestry and Sporting Impact Assessment (September 2018)

TS216 Transport Scotland's PLI Drawing Portfolio

TS217 A96 Dualling Inverness to Nairn (including Nairn Bypass) Departures for Standards Submissions

1. A96 Dualling Inverness to Nairn (including Nairn Bypass) Trunk Road Departures from Standards (Jacobs, June 2016)

2. A96 Dualling Inverness to Nairn (including Nairn Bypass) Submission for Volume 6 (Road Geometry) Departure from Standards Departure No A96IN-122 (Jacobs, November 2016)

3. A96 Dualling Inverness to Nairn (including Nairn Bypass) The Highland Council Local Road Departures from Standards (Jacobs, February 2017)

TS218 A96 Dualling Inverness to Nairn (including Nairn Bypass) Departures for Standards Determinations

1. A96 Dualling Inverness to Nairn (including Nairn bypass) Volume 6 Departure Determinations A96IN-001 to A96IN-008 (Transport Scotland, September 2016)

2. A96 Dualling Inverness to Nairn (including Nairn bypass) Volume 6 Departure Determinations A96IN-122 (Transport Scotland, November 2016)

3. A96 Dualling Inverness to Nairn (including Nairn bypass) Volume 6 Departure Determinations Local Roads (Transport Scotland, December 2016)

4. The Highland Council Departure Determinations Table 1 (The Highland Council, November 2016)

5. The Highland Council Departure Determinations Table 2 and 3 (The Highland Council, February 2017)

TS219 Road Safety Audit stage 1

1. Stage 1 Road Safety Audit Brief (Jacobs, August 2016)

2. A96 Dualling Inverness to Nairn (including Nairn Bypass), Road Safety Audit Stage 1 (Roadplan Consulting, October 2016)

3. Stage 1 Road Safety Audit Response Report (Jacobs, November 2016)

TS220 Skene Park - Blackpark - Russells Wood Alternative Alignment Report (Jacobs, November 2016)

TS221 Penick – Courage - Hardmuir Alternative Alignment Report (Jacobs, October 2016)

TS222 Penick – Courage - Hardmuir Alternative Alignment Addendum (Jacobs, December 2016)

TS223 Gollanfield Rail Options Report (Jacobs, September 2016)

TS224 Nairn West Junction Alternative Arrangement Report (Jacobs, December 2016)

TS225 Nairn East Junction Design Development Report (Jacobs, November 2016)

TS226 Moss-Side Railway Crossing Alternative Arrangement Report (Jacobs, December 2016)

TS227 Milton of Culloden South Access Design Development Report (Jacobs, November 2016)

TS228 Balloch Junction Design Development Report (Jacobs, January 2017)

TS229 6 Milton of Culloden South Review of Proposed Scheme and Construction Impacts (Jacobs, September 2016)

TS230 February 2012 A96 Inshes to Nairn Public Exhibition Materials

TS231 November 2013 Public Exhibition Materials and Summary Report (Jacobs, June 2014)

TS232 May 2014 Design Update Drawings (Transport Scotland, May 2014)

TS233 Preferred Option Public Exhibitions (October 2014) Summary Report (Jacobs, February 2015)

TS234 Meet the Team Events (August 2015) Summary Report (Jacobs, June 2017)

TS235 Public Drop-in Sessions (February 2016) Summary Report (Jacobs, June 2017)

TS236 Draft Order Publication Exhibition (December 2016) Summary Report (Jacobs, June 2017)

TS237 A96 Inshes to Nairn DMRB Stage 2 Route Options Assessment Report (Jacobs, April 2011)

TS238 Nairn Bypass DMRB Stage 2 Study Route Sifting Workshop (CVRL, April 2013)

TS239 Blar nam Fiadh Route Option Paper (Jacobs, February 2014)

TS240 Frequently Asked Questions February 2015 (Jacobs, February 2015)

TS241 A96 Dualling – Visualisation part 1: Inverness to Gollanfield

TS242 A96 Dualling – Visualisation part 2: Gollanfield to Hardmuir

TS243 A9 A96 Connections Study - MFTM Alternative Demand Scenarios Rationale and Development Memorandum (Transport Scotland)

TS244 A96 Inverness to Nairn (including Nairn Bypass) – Emerging Economic Assessment Memorandum (Transport Scotland, 2013)

TS246 A96 Inverness to Nairn DMRB Stage 3 Audit Comments (AECOM, 2016)

TS247 Moray Firth Transport Model, Audit Note AN1a: Model Calibration and Validation Audit (SIAS, October 2010)

TS248 Moray Firth Transport Model, Audit Note AN2a: Roads Network and PT Network Audit Note (SIAS, December 2010)

TS249 Moray Firth Transport Model Consolidated Development Report (AECOM, 2016)

TS250 Moray Firth Transport Model - Base Model Update, Local Model Calibration and Validation Report (Jacobs, 2017)

TS251 Moray Firth Transport Model Traffic Forecasting Report (Jacobs, January 2018)

TS252 A96 I-N Raigmore Interchange Operational Assessment Technical Note (Jacobs, 2018)

TS253 Aberdeen to Inverness Rail Improvement Project GRIP 3 – Phase 1 Enhancements Summary (Transport Scotland, 2014)

TS260 Statement of Reasons (Transport Scotland, 2018)

TS261 Auldearn Burn – Section Restoration and Culvert Design

1. Technical Note A96PIN-JAC-EWE-26700-TN-EN-0001
2. Drawings A96PIN-JAC-EWE-26700-DR-CI-0001 to 0007

TS262 Auldearn Burn Alternative Crossing Design Assessment Report A96PIN-JAC-GEN-XXX-RP-CI-0001 P02

TS263 Auldearn Burn Retention Ponds Location A96PIN-JAC-EWE-26700-RP-CI-0001 P00

TS264 [Not Used]

TS265 A96 Dualling Inverness to Nairn (including Nairn Bypass) Dual Carriageway to Single Carriageway Transition – Technical Paper (Transport Scotland, April 2015)

TS266 Letter from Scottish Natural Heritage to Transport Scotland dated 1 February 2017.

TS267 Entry in the Schedule of Monuments for the monument known as ‘Ballaggan, pit alignment 120 metres South East of’

TS301 09/00141/OUTIN Approved by The Highland Council on 12th August 2011

1. Decision Notice Dated 12 August 2011
2. Approved Plans
3. [NOT USED]
4. Planning Obligation By Minute of Agreement
5. Stratton Environmental Statement (WPS, February 2009)
6. Transport Assessment

TS302 13/01049/S42 Approved by The Highland Council on 12th August 2011

1. Letter of application for Section 42 consent dated 13 March 2013
2. Decision Notice dated 14 May 2015
3. Committee Report

TS303 16/02161/S42 Approved by The Highland Council on 29th July 2016.

1. Decision Notice dated 29 July 2016
2. Report to The Highland Council South Planning Applications Committee of 28 June 2016
3. Conditions 24 letter 06 June 2018

TS304 16/04179/MSC Approved by The Highland Council on 11th November 2016.

1. Stratton Phase 1 Area Development Brief (Barton Willmore, November 2016)
2. The Highland Council Report of Handling dated 11 November 2016
3. Decision Notice dated 11 November 2016

TS305 16/05533/MSC Approved by The Highland Council on 2 August 2017

1. Decision Notice dated 2 August 2017
2. Delegated Report of Handling dated 1 August 2017
3. Approved Site Layout Plan
4. Approved Design
5. Approved Plans

TS306 16/05669/MSC Approved by The Highland Council on 10 May 2017

1. Decision Notice dated 10 May 2017
2. Delegated Report of Handling dated 10 May 2017

3. Approved Plans

TS307 99/00506/FULIN – Planning Permission Subject to Conditions

TS308 99/00510/LBCIN – Listed Building Consent Subject to Conditions

TS309 14/04787/PREAPP Allanfearn Farm - Pre Application Advice from THC on Steading redevelopment

TS310 04/00017/OUTNA – Refusal of Planning Permission

TS311 04/00018/AGRNA – Prior Approval Will Be Required

TS312 11/02308/MSC – Bogside of Boath

1. Decision Notice dated 24 August 2011

2. Approved Location Site Plan

OBJ/002 - Addleshaw Goddard LLP for Hazeldene (Inverness) Ltd

OBJ002 - List of Documents

OBJ002-1.01 - Letter from Transport Scotland - Draft Order Publication Exhibitions Invite - dated 28 November 2016

OBJ002-1.02 - Objection to CPO letter from HBJ Gateley to Transport Scotland - dated 31 January 2017

OBJ002-1.03 - Transport Scotland objection letter response to HBJ Gateley - dated 31 July 2017

OBJ002-1.04 - Emails between Jacobs UK and Parklane - dated 18.10.2017 and 16.10.2017

OBJ002-1.05 - Email between Parklane and Jacobs UK - dated 9.11.2017

OBJ002-1.06 - Emails between Parklane and Jacobs UK - dated 2.11.2017

OBJ002-1.07 - Email from Jacobs UK to Parklane - dated 4.03.2016

OBJ002-1.08 - Email between Jacobs UK and Parklane - dated 3.3.2016

OBJ002-1.09 - Email from Jacobs UK to Parklane - dated 16.10.2015

OBJ002-1.10 - Emails between Parklane and Jacobs UK Limited - dated 1.10.2015 and 25.09.2015

OBJ002-1.11 - Condition 24 Letter from The Highland Council to Hazledene (Inverness) Ltd - dated 6 June 2018

OBJ002-1.12 - Email from BC to Jacobs 25 Sept 2018 and response

OBJ002-1.13 - Submission by HIL to THC re draft IEDB - 9 March 2018

OBJ002-1.14 - Letter to DPEA re Outline Issues of Case - dated 23 May 2018

OBJ002-1.15 - Letter from TS to Brian Clarke - dated 24 August 2018

OBJ002-2.01 - Decision notice in respect of 09,00141,OUTIN - dated 12 August 2011

OBJ002-2.02 - Consultation Response (TR,NPA,1) from Transport Scotland dated 23 April 2009 in respect of 09,00141,OU

OBJ002-2.03 - Approved Plans 09,00141,OUTIN

OBJ002-2.04 - Decision notice in respect of section 42 ref 13,01049,S42 - dated 14 May 2015

OBJ002-2.05 - South Planning Applications Committee - Report (16,02141,S42) - dated 28 June 2016

OBJ002-2.06 - South Planning Applications Committee - Report (13,01049,S42) - dated 30 September 2013

OBJ002-2.07 - Consultation Response (TR,NPA,1) from Transport Scotland - dated 24,05,2016

OBJ002-2.08 - Minute of Agreement for Section 75 Planning Obligation signed July 2016

OBJ002-2.08 - Minute of Agreement for Section 75 Planning Obligation signed July 2016_Redacted

OBJ002-2.09 - Decision notice in respect of 16,02161,S42 - dated 29 July 2016

OBJ002-2.10 - Report of Handling ref 16,04179,MSC - dated 11 November 2016

OBJ002-2.11 - Decision notice in respect of 16,04179,MSC - dated 11 November 2016

OBJ002-2.12 - ADB Phase 1 Approved (under 16,04179,MSC) Phase 1 Area Development Brief - November 2016

OBJ002-2.13 - Decision Notice in respect of 16,05669,MSC - dated 10 May 2017

OBJ002-2.14 - Approved Location Plan (16,05669,MSC)

OBJ002-2.15 - Delegated Report of Handling (16,05533,MSC) - dated 2 August 2017

OBJ002-2.16 - Decision Notice in respect of 16,05533,MSC - dated 2 August 2017

OBJ002-2.17 - Approved Site Layout Plan of Stratton Inverness (16,05533,MSC)

OBJ002-2.18 - Notification of Intention of Development 16,05533,MSC - dated 23.07.18

OBJ002-2.19 - Delegated Report of Handling (16,05669,MSC) - dated 10 May 2017

OBJ002-2.20 - Special Meeting of the Highland Council re 09,00141,PIPIN - dated September 2010

OBJ002-2.21 - Appendix to Special Meeting of the Highland Council re 09,00141,PIPIN - dated September 2010

OBJ002-2.22 - Planning History Stratton as at 28.09.18

OBJ002-3.01 - Inverness Local Plan Map, Adopted March 2006

OBJ002-3.02 - Inverness Local Development Plan, Written Statement (Part 1)

OBJ002-3.03 - Inverness Local Development Plan, Written Statement (Part 2)

OBJ002-3.04 - Highland Council A96 Growth Corridor Development Framework - dated September 2007

OBJ002-3.05 - Highland Council Inverness, Nairn and A96 Corridor Transport Study Update - dated September 2010

OBJ002-3.06 - Highland Wide Local Development Plan adopted 5 April 2012

OBJ002-3.07 - The Highland Council Inner Moray Firth Local Development Plan adopted July 2015

OBJ002-3.08 - The Highland Council Inverness East Development Brief adopted June 2018

OBJ002-3.09 - Scottish Government's National Planning Framework for Scotland 2 dated June 2009

OBJ002-3.10 - Scottish Government's Third National Planning Framework dated 2014

OBJ002-3.11 - Scottish Planning Policy (SPP)(Scottish Government, June 2014)

OBJ002-3.12 - Circular 4-1998 - Planning Conditions

OBJ002-3.13 - Circular 3-2012 - Planning Obligations and Good Neighbour Agreements

OBJ002-3.14 - Circular 3-2011 - The Town and Country Planning (EIA)(Scotland) Regulations 2011

OBJ002-3.15 - Circular 8-2007 - The Environmental Impact Assessment Regulations 1999

OBJ002-3.16 - Circular 6 2011 - Compulsory Purchase Orders

OBJ002-3.17 – Scotland’s Cities - Delivering for Scotland (Scottish Government, December 2011)

OBJ002-3.18 - The Government Economic Strategy (Scottish Government 2011)

OBJ002-3.19 - Scotland's Economic Strategy (Scottish Government, March 2015)

OBJ002-3.20 - Guidance on the Compulsory Purchase Process and Compensation (2007)

OBJ002-3.21 - National Standards for Community Engagement (Scottish Government, 2016)

OBJ002-3.22 - Highland Structure Plan (The Highland Council, 2001)

OBJ002-3.23 - The Highland Council Housing Need and Demand Assessment - dated November 2015

OBJ002-3.24 - PAN 1-2013 - Environmental Impact Assessment (Scottish Government, 2013)

OBJ002-3.25 - PAN 1-2013 (Rev. 1) - Environmental Impact Assessment (Scottish Government, 2017)

OBJ002-3.26 - PAN 1-2011 - Planning and Noise (Scottish Government, 2011)

OBJ002-3.27 - PAN 3-2010 - Community Engagement (Scottish Government, 2010)

OBJ002-3.28 - PAN 75 - Planning for Transport (Scottish Government, 2005)

OBJ002-3.29 - PAN 78 - Inclusive Design (Scottish Government, 2006)

OBJ002-3.30 - PAN 79 - Water and Drainage (Scottish Government, 2006)

OBJ002-3.31 - Creating Places

OBJ002-3.32 - The Highland Council LHS 2017-2022

OBJ002-3.33 - Housing Infrastructure Fund Criteria

OBJ002-3.34 - More Homes Scotland Factsheet

OBJ002-3.35 - Report on The Highland Council Local Housing Strategy

OBJ002-3.36 - Draft Inverness East Development Brief (The Highland Council, 2017)

OBJ002-3.37 - Inverness, Nairn and A96 Corridor Transport Study (The Highland Council, September 2010)

OBJ002-3.38 - The Highland Council Local Transport Strategy, 2010-2011 - 2013-2014

- OBJ002-4.01 - EIA Peer Review Report By ITP Energised
- OBJ002-4.02 - A handbook on environmental impact assessment (4th Edition)
(SNH 2013)
- OBJ002-4.03 - Guidelines for Ecological Impact Assessment in the UK (2nd Edition)
CIEEM 2016
- OBJ002-4.04 - IEMA Guidance on Environmental Impact Assessment, Delivering
Quality Development
- OBJ002-4.05 - Bat Surveys Good Practice Guidelines (3rd Edition) Bat Conservation
Trust, 2012
- OBJ002-4.06 - Valuing Bats in Ecological Impact Assessment (CIEEM, In Practice,
December 2010)
- OBJ002-4.07 - CV Brian Muir
- OBJ002-4.08 - CV Paul Darnbrough
- OBJ002-4.09 - CV Stuart McGowan
- OBJ002-4.10 - R. v Rochdale MBC ex parte Milne (No. 1)
- OBJ002-4.11 - R. v Rochdale MBC ex parte Tew [1999]
- OBJ002-4.12 - R. v Rochdale MBC ex parte Milne (No. 2) [2000]
- OBJ002-4.13 - Kent CC v Secretary of State for the Environment (1976)33 P. & C.R.
70
- OBJ002-4.14 - Bernard Wheatcroft Limited v Secretary of State for the Environment
[1982] J.P.L.37
- OBJ002-4.15 - Wessex Regional Health Authority v Salisbury District Council [1984]
J.P.L. 344
- OBJ002-4.16 - Johnson v Secretary of State for Communities and Local
Government 2007 WL 1623206
- OBJ002-4.17 - s37 of the Town and Country Planning (Scotland) Act 1997
- OBJ002-4.18 - Waverley Railway Scotland Bill Committee Reports
- OBJ002-4.19 - TS forth replacement crossing guidance on the parliamentary
process
- OBJ002-4.20 - Inverness & Highland City Deal
- OBJ002-4.21 - Environmental Impact Assessment (Scotland) Regulations 1999
- OBJ002-4.22 - The Town and Country Planning (EIA) (Scotland) Regulations 2011

OBJ002-4.23 - Guidelines for Ecological Impact Assessment in the United Kingdom (IEEM, 2006)

OBJ002-4.24 - Public Participation Directive 2003-35-EC

OBJ/039 - Bowlts Chartered Surveyors for Mrs Bradley and Mr Cumming

MBC - List of Documents

MBC001 to MBC011 - Letters

MBC012 to MBC018 - E-mails

MBC019 to MBC021 - Planning Pre-Applications

MBC022 to MBC026 - Limited Duration Tenancy - LDT - Extracts

MBC027 - Reports - Non Motorised User Surveys Factual Report

OBJ/055 Ms Anna Gow and OBJ/056 Mr Fraser Gow

FGAG001 - Hedgerow Path Redacted

OBJ/073 - Bidwells LLP for Mr Macbean

DM001 - The original objection - dated 27 January 2017

DM002 - Letter from Transport Scotland - dated 31 July 2018

DM003 - Letter to DPEA dated 24 May 2018, incorporating outline of items of objection

DM004 - Letter from Transport Scotland - dated 31 August 2018

OBJ/082 - Bidwells LLP for Mr Rose

WR001 - The original objection letter dated 26 January 2017

WR002 - Letter from Transport Scotland dated 31 July 201

WR003 - Letter to DPEA dated 24 May 2018, incorporating outline of items of objection

WR004 - Letter from Transport Scotland dated 20 July 2018

OBJ/091 - Land Consultancy Services Ltd for Mr and Mrs Mackinnon

VSM001 - Appendix 1 - alternative proposal

OBJ/105 - Bidwells LLP for Mr and Mrs MacKintosh

JM001 - The original objection letter dated 16 December 2016

JM002 - Supplement to Objection letter dated 25 January 2017

JM003 - Letter from Transport Scotland dated 31 July 2017

JM004 - Letter to Transport Scotland dated 14 August 2017

JM005 - Letter to DPEA dated 24 May 2018, incorporating outline of items of objection

JM006 - Letter from Transport Scotland dated 10 July 2018

JM007 - Letter from Transport Scotland dated 10 September 2018

OBJ/110 - Bowlts Chartered Surveyors for Mr James A Philip

JP PLAN 001 to JP PLAN 004 - Plans

JP001 to JP004 - Letters and E-mails

OBJ/111 - R & R Urquhart LLP The Firm of Auchnacloch Farm (Trustees for the firm of Auchnacloch)

AUCH001 - Letter from Transport Scotland to R & R Urquhart LLP - dated 25 November 2016

AUCH002 - Letter from R & R Urquhart LLP to Transport Scotland - dated 01 December 2016

AUCH003 - Letter from Transport Scotland to R & R Urquhart LLP - dated 20 December 2016

AUCH004 - Letter from R & R Urquhart LLP to Transport Scotland - dated 30 January 2017

AUCH005 - Letter from Transport Scotland to R & R Urquhart LLP - dated 31 July 2017

AUCH006 - Letter from R & R Urquhart LLP to Transport Scotland- dated 08 September 2017

AUCH007 - Letter from R & R Urquhart LLP to DPEA, Scottish Government - dated 23 May 2018

AUCH008 - Letter from Transport Scotland to R & R Urquhart LLP - dated 17 July 2018

AUCH009 - Letter from R & R Urquhart LLP to Transport Scotland - dated 25 July 2018

AUCH010 - Viability Impact Report - Auchnacloch Farm - 14 September 2018

AUCH011 - Letter from Scottish Development Department to Mrs Karen M Ross - dated 13 December 1985

OBJ/129 - Mr Stephen R & Mrs Elaine Bailey

EB 000 - List of Documents

EB 001 - Pages 20 and 21 from Auldearn Group Statement of Case.

EB 002 - Letter from Transport Scotland - dated 23 November 2017

EB 003 - Pages 21 and 22 from Auldearn Group Statement of Case.

EB 004 - Report from FG Burnett.

EB 005 - Loss flowchart.

EB 006 - Protocol No. 1 to the Convention Toolkit.

EB 007 - Graphic from DMRB Stage 2 report showing location of SUDS pond.

EB 008 - Graphic from DMRB Stage 3 report showing locations of SUDS ponds.

EB 009 - SEPA flood map of Auldearn Burn.

EB 010 - Photograph album showing flooding close to proposed SUDS ponds.

EB 011 - Page 16 from Auldearn Group Statement of Case.

EB 012 - Letter of objection to Transport Scotland - dated 25 January 2017.

EB 013 - Cross section U-U from DMRB Stage 3 report and Figure 9.5t.

EB 014 - Figure 8.16g and Figure 9.5m from Environmental Statement.

EB 015 - Figure 9.5l from Environmental Statement.

EB 016 - Figure 9.5q from Environmental Statement.

EB 017 - Figure 9.5t from Environmental Statement.

EB 018 - Visual impact graphic from DMRB Stage 2 report.

EB 019 - Two exhibition panels from October 2014 and one exhibition panel from February 2016.

EB 020 - Joint letter to Transport Scotland - dated 10 February 2016.

EB 021 - Response to letter (EB20) - dated 22 June 2016.

EB 022 - Letter from Mr Fergus Ewing MSP - dated 26 January 2016

EB 023 - E-mail from Jacobs to Bowlts land agent - dated 25 May 2018

EB 024 - E-mail from Mrs Holden to Mrs Bailey - dated 29 April 2018

EB 025 - Notes of Ms Kelly and assistant of meeting with Mr & Mrs Bailey on 25 August 2015

EB 026 - Extract from A96 Design Development Issues - 08 March 2016

EB 027 - Jacobs Meeting Minutes - Auldearn Residents - 21 October 2016

EB 028 - Jacobs Meeting Minutes - request to purchase property - 01 March 2016

EB 029 - Russell's Wood - Auchnacloch - Penick. Alternative Alignment Report - May 2016

EB 030 - E-mail to office of Keith Brown from TS Project Administrator - 17 June 2016

EB 031 - Extract from A96 Progress Statement - 06 April 2018

EB 032 - Jacobs Meeting Minutes - Consultation re SUDS ponds - 05 April 2018

EB 033 - Auldearn Burn Retention Ponds Location (feasibility document) - 01 May 2018

EB 034 - Jacobs A96 Telecom Record - 29 May 2018

EB 035 - E-mail from Bowlts re SUDS ponds - 10 July 2018

EB 036 - Photograph depicting cross section U-U from DMRB Stage 3 report (shown in EB13)

EB 037 - Extract from Figure 9.5s (Environmental Statement) with UK prevailing wind direction chart overlaid

EB 038 - Extract from chapter 14 of Environmental Statement, Cultural Heritage

EB 039 - Historic Scotland map showing area of Auldearn Battlefield

OBJ/133 - Mr Richard McCulloch

RM000 - List of Documents

RM001 - Part 1 - Strategic Transport Projects Review - Report 2

RM001 - Part 2 - Strategic Transport Projects Review - Report 3

RM001 - Part 3 - Strategic Transport Projects Review - Final Report

RM002 - A96 Inverness to Aberdeen Corridor Study - Strategic Business Case

RM003 - DMRB TA4697 - Traffic Flow Ranges for Use in the Assessment of New Rural Roads

RM004 - DMRB TD993 - Highway Link Design

RM005 - DMRB TD1607 - Geometric Design of Roundabouts

RM006 - DMRB TD4295 - Geometric Design of Major-Minor Priority Junctions

RM007 - Assessing Business Cases - a short plain English guide

RM008 - DMRB TD2206 - Layout of Grade Separated Junctions

RM009 - DMRB TD4094 - Layout of Compact Grade Separated Junctions

RM010 - DMRB TD4195 - Vehicular Access to All Purpose Trunk Roads

RM8 STAG Technical Database Section 13

OBJ/138 - Mr Philip & Mrs Gillian Pullan

PP001 - Notes for v4.3 Plan Courage - Hardmuir

PP002 - Plan v4.3 - 30 May 2018

OBJ/112 etc. The Auldearn Residents Group

AGRP000 - Document List

AGRP001 - Letter from Transport Scotland dated 31 July 2017

AGRP002 - Screen Shot from 'Gurn from Nurn' website of 09 January 2014

AGRP003 - Extracts from Highland Scheme for Establishment of Community Councils

AGRP004 - Letter from Auldearn Community Council dated 23 January 2014

AGRP005 - Minute of Auldearn Community Council meeting of 08 January 2014

AGRP006 - Letter of complaint from extended Auldearn Group

AGRP007 - Minute of meeting with Jacobs and Transport Scotland dated 24 June 2015

AGRP008 - Letter to Mrs Bailey from Chief Executive of Highland Council dated 02 February 2015

AGRP009.1 - Graphic from DMRB Stage 2 Report

AGRP009.2 - Graphic from DMRB Stage 3 Report

AGRP010 - Photograph Album showing flooding challenges of residents

AGRP011 - Extract from diary of Mrs Davidson

AGRP012 - SEPA flood map

AGRP013 - Petition from 188 local residents

AGRP014 - Petition from 1302 local people

AGRP015 - Soil Map of Arable Land around Auldearn

AGRP016 - Extract from SPP in relation to prime arable land

AGRP017 - Extract from SPP in relation to promoting appropriate rural development

AGRP018 - Extracts from Stability and Simplicity

AGRP019 - Extract from A Future Strategy for Scottish Agriculture

AGRP020 - Extract from Getting the best from our land

AGRP021 - Extract from Scottish Planning Policy in relation to managing flood risk

AGRP022 - Extract from DMRB Volume 6 - Section 1 - appropriate use of the standard

AGRP023 - Extract from Workshop Outputs - showing agricultural weighting

AGRP024 - Extract from Workshop Outputs - showing promotable weighting

AGRP025 - Toolkit from Protocol No 1 - detailing the fair balance test

AGRP026 - Extract from Transport Scotland's Route Options - Design update August 2018

Closing Statements (including evidence regarding WHO Noise Guidelines (2018) (CD140)

OBJ/039 Mrs J Bradley & Mr C Cumming Closing Statement

OBJ/060 Mr Allan & Mrs Lorna Robertson Closing Statement

OBJ/073 Mr David Macbean, OBJ/082 Mr William Rose and OBJ/105 John R MacKintosh & Company - comments on WHO Guidance Closing Statement

OBJ/091 Verena, Stewart & Gregor MacKinnon including high level timeline Closing Statement

OBJ/111 Firm of Auchnacloch Farm Closing Statement

OBJ/112 etc. the Auldearn Residents Group and OBJ/129 Mr and Mrs Bailey Closing Statement

OBJ/133 Mr Richard McCulloch Closing Statement

Transport Scotland - Closing Submissions Closing Statement

Transport Scotland - Closing Submissions - Appendices Closing Statement

Transport Scotland - Comments on WHO Guidance (2018) Closing Statement

Transport Scotland - Final Closing Submission Closing Statement

OBJ/129 inaccuracies in TS closing submissions Closing Statement

Transport Scotland no comment to make on submission from OBJ/129 Elaine Bailey Closing Statement

Appendix 2: Parties that withdrew

OBJ/002	Hazeldene (Inverness) Ltd**
OBJ/005	Withdrawn prior to inquiry*
OBJ/019	Ms Grace Brian
OBJ/045	Withdrawn prior to inquiry*
OBJ/046	Withdrawn prior to inquiry*
OBJ/065	Moray Estates Development Company Limited / John Douglas Stuart, Earl of Moray / Lord Doune's Accumulation and Maintenance Trust
REP/069	Highlands and Islands Airports Limited
OBJ/070	Withdrawn prior to inquiry*
OBJ/077	Dr Ivor Davies and Ms Una Lee
OBJ/078	Mr Alexander Rose
OBJ/079	Mr George Philip
OBJ/094	John Dewar and Sons Ltd (Royal Brackla Distillery)
OBJ/095	Mr Stephen Forbes
OBJ/104	Mrs Margaret R Nicolson or Tulloch
OBJ/116	Mr L and Mrs T Firlez
OBJ/118	Mr N Andrew***
OBJ/119	Mr J Grigor
OBJ/137	Mr James Downie
OBJ/140	Withdrawn prior to inquiry*
OBJ/143	Network Rail
REP/150	Vodafone Infrastructure
OBJ/151	Findhorn, Nairn and Lossie Fisheries Trust and Nairn District Salmon Fishery Board
OBJ/157	Mr and Mrs Malcolm

Note

*Parties listed above as 'Withdrawn prior to inquiry' are not named. These parties were listed in the numerical sequence of objections and representations submitted by TS but were unnamed, having already withdrawn their objections at that stage. We have included their reference number here for completeness.

**OBJ/002 Hazeldene (Inverness) Ltd withdrew following agreement with TS reached during the first day of Inquiry Session 13.

***OBJ/129 Mrs Bailey for OBJ/112 etc. Auldearn Residents Group advised that several parties from the group had moved away and had therefore withdrawn their objections. Her list included OBJ/118 Mr N Andrew but did not include OBJ/118 Mrs Jean Peck. TS Closing Statement advises that both OBJ/118 Mr N Andrew and Mrs Jean Peck had withdrawn. Both Mr Andrew and Mrs Peck submitted identical representations to the Auldearn Residents Group and therefore the objections raised by those parties have been fully considered as part of the Auldearn Residents Group in Chapters 2 and 8 of this report.

Appendix 3: Representations from Scottish Government agencies



Scottish Natural Heritage Dualchas Nàdair na h-Alba

All of nature for all of Scotland
Nàdar air fad airson Alba air fad

Transport Scotland
9th Floor
Buchanan House
58 Port Dundas Road
Glasgow
G4 0HF

1 February 2017

Dear Sir/Madam

A96 Dualling Inverness to Nairn (including Nairn Bypass) Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011

Thank you for consulting us on the above proposal.

Summary

There are natural heritage interests of international importance on the site, but in our view, these will not be adversely affected by the proposal. We have no objection to the proposal and offer advice to minimise its effect on the natural heritage.

Appraisal of the impacts of the proposal and advice

European Protected Sites

This proposal has the potential to impact a number of Special Areas of Conservation (SAC) and Special Protection Areas (SPA). A list of sites and their designated features are outlined in Appendix A.

In our view, this proposal is likely to have a significant effect on a number of qualifying interests. Consequently, Transport Scotland is required to carry out an appropriate assessment in view of the sites conservation objectives for its qualifying interests.

To help you do this we advise that, in our view, based on the information provided, the proposal will not adversely affect the integrity of the site.

We are content with the conclusions drawn in the Habitat Regulations appraisal.

European Protected Species

A number of European Protected Species (EPS) were recorded within the proposal area. All species of bat are EPS. Three roost sites, containing three species (brown long-eared, common pipistrelle and soprano pipistrelle) were identified within the proposal area. Currently these roost sites are not scheduled for destruction or disturbance, but if this

Scottish Natural Heritage, Fodderty Way, Dingwall Business Park, Dingwall, IV15 9XB
Tel: 01349 865333 Fax: 01349 865609 www.snh.gov.uk

Dualchas Nàdair na h-Alba, Slighe Fodhraitidh, Pàirc Gniomhachas Inbhir Pheofharain,
Inbhir Pheofharain IV15 9XB
Fòn: 01349 865333 Facs: 01349 865609 www.snh.gov.uk

changes a licence will be required. Pre-construction surveys may identify new roost sites, and if so this should be dealt with through a species licence application. A Species Protection Plan should be completed and agreed with us prior to the commencement of works.

Otter are also EPS, and a number of resting sites were identified in the proposal area. The ES identifies that a Species Protection Plan will be produced. This should be agreed with us prior to works commencing. Mitigation outlined in Table 11.11 should be included in this species protection plan. Should works be planned within 30m of a holt or couch a species licence will be required.

Other Protected Species

Badgers are protected under the Protection of Badgers Act 1992. They are widespread along the A96 corridor and the survey work in the Environmental Statement reflects that. Two setts have been marked for destruction, and two artificial setts are proposed. This will require a licence, and should be discussed with our licensing team at the earliest opportunity. The licence application will be informed by both the survey work and a species protection plan which should be prepared (mentioned in the ES as mitigation item E2).

Red squirrel are protected under the Wildlife & Countryside Act 1981 (as amended). The surveys within the ES record a number of red squirrel signs, but no dreys were recorded. Pre-construction surveys should be carried out for all suitable woodland which will be felled. If dreys are found, a species licence should be sought. A species protection plan should be agreed with us prior to work commencing.

Conclusion

Should you have any questions or require further information, please feel free to contact me.

Yours faithfully

Operations Officer
South Highland
Nathan.mclaughlan@snh.gov.uk

Appendix A

European Sites :Qualifying Interests

SACs

Cawdor Wood	: Western Acidic Oak Woodland
Culbin Bar	: Atlantic Salt Meadows Coastal Shingle vegetation outside the reach of waves Shifting Dunes
Lower Findhorn Woods	: Mixed woodland on base-rich soils associated with rocky slopes
Moray Firth	: Bottlenose Dolphins Subtidal sandbanks

SPAs

Darnaway and Lethen Forest	: Capercaillie, breeding
Inner Moray Firth	: Common Tern, breeding Osprey, breeding Bar-tailed godwit, non-breeding Cormorant, non-breeding Curlew, non-breeding Goldeneye, non-breeding Goosander, non-breeding Greylag goose, non-breeding Oystercatcher, non-breeding Red-breasted merganser, non-breeding Redshank, non-breeding Scaup, non-breeding Teal, non-breeding Wigeon, non-breeding Waterfowl assemblage, non-breeding
Loch Flemington	: Slavonian grebe, breeding
Moray and Nairn Coast	: Osprey, breeding Bar-tailed godwit, non-breeding Common Scoter, non-breeding Dunlin, non-breeding Greylag goose, non-breeding Long-tailed duck, non-breeding Oystercatcher, non-breeding

Pink-footed goose, non-breeding
Red-breasted merganser, non-breeding
Redshank, non-breeding
Velvet scoter, non-breeding
Wigeon, non-breeding
Waterfowl assemblage, non-breeding

Ramsar Sites

Inner Moray Firth

: Intertidal mudflats and sandflats
Saltmarsh
Sand dune
Shingle
Bar-tailed godwit, non-breeding
Greylag goose, non-breeding
Red-breasted merganser, non-breeding
Redshank, non-breeding
Waterfowl assemblage, non-breeding

Moray and Nairn Coast

: Intertidal mudflats and sandflats
Saltmarsh
Sand dune
Shingle
Wet woodland
Greylag goose, non-breeding
Pink-footed goose, non-breeding
Redshank, non-breeding
Waterfowl assemblage, non-breeding

Operations Officer, South Highland
Scottish Natural Heritage
Fodderty Way
Dingwall Business Park
Dingwall
IV15 9XB

Our ref:
B2103500/TR/SH0027/REP/154

Date:
31 July 2017

Dear

The A96 Trunk Road (Inverness to Nairn (including Nairn Bypass)) (Trunking & Detrunking) Order 201[]

The A96 Trunk Road (Inverness to Nairn (including Nairn Bypass)) (Side Roads) Order 201[]
A96 Dualling Inverness to Nairn (including Nairn Bypass) Environmental Statement

Thank you for your letter of 1 February 2017, responding to the publication of the above draft Orders and Environmental Statement for the A96 Dualling Inverness to Nairn (including Nairn Bypass) scheme.

Transport Scotland notes the view of Scottish Natural Heritage (SNH) that the scheme proposals will not adversely affect the integrity of the identified European/Ramsar sites, and we will take account of that view in the preparation of the required appropriate assessment.

A full series of preliminary Species Protection Plans including, but not limited to, badger, bats, otter and red squirrel will be produced as part of the Construction Environment Management Plan (CEMP) as indicated by Mitigation Item E2 in the Environmental Statement (Chapter 20). The plans will detail the environmental commitments identified within the Environmental Statement where applicable and will be required to be adopted and delivered by the appointed contractor to ensure mitigation strategies necessary for safeguarding protected species are implemented.

In addition, pre-construction surveys will form part of the finalised Species Protection Plans which will be produced by or on behalf of the appointed contractor, and will be developed in consultation with SNH and all relevant stakeholders. Any additional mitigation needed will be developed at that stage.

Any requirement for licensing will be discussed with SNH's licensing team at the earliest opportunity.

We look forward to continued engagement with SNH on this project as we move towards the next phase and will be in contact again in due course to take this forward.

Yours sincerely,


Project Manager



By email to:

A96Dualling@transportscotland.gsi.gov.uk

A96 Dualling Team
Transport Scotland
Buchanan House
58 Port Dundas Road
Glasgow
G4 0HF

Longmore House
Salisbury Place
Edinburgh
EH9 1SH

Enquiry Line: 0131-668-8716

HMConsultations@hes.scot

Our ref: AMN/16/H

Our Case ID: 201604635

Your ref: A96/ORD/A15834144

31 January 2017

Dear

The Roads (Scotland) Act 1984

1. The A96 Trunk Road (Inverness to Nairn (Including Nairn Bypass)) (Trunking & Detrunking) Order 201[]
2. The A96 Trunk Road (Inverness to Nairn (Including Nairn Bypass)) (Side Roads) Order 201[]
3. The A96 Trunk Road (Inverness to Nairn (Including Nairn Bypass)) (Extinguishment of Public Rights of Way Order 201[]

The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011

Thank you for your consultation which we received on 29 November 2016. We have considered the above orders and their accompanying Environmental Statement (ES) for our role as a consultee under the terms of the above regulations and for our historic environment remit as set out under the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013. Our remit is for world heritage sites, scheduled monuments and their setting, category A-listed buildings and their setting, and gardens and designed landscapes (GDLs) and battlefields in their respective Inventories. You should also seek advice from the relevant local authority archaeology and conservation service for matters including unscheduled archaeology and category B and C-listed buildings.

Draft Road Orders

Historic Environment Scotland (and its predecessor body Historic Scotland) have welcomed the continued discussion with Transport Scotland and their consultants throughout the evolution of the project and the preparation of these draft Road Orders for the dualling of the A96 between Inverness and Auldearn. In particular we welcome the focus on avoidance of direct impacts on nationally important historic environment assets and the consideration given to mitigating the effects the proposed scheme will have on the setting of these assets in the wider area.

The A96 Trunk Road (Inverness to Nairn (Including Nairn Bypass)) (Trunking & Detrunking) Order 201[]

We are content that the trunking and detrunking proposals depicted in the draft road orders do not lead to impacts on the designated historic environment assets of a significance that raises issue of national significance. Consequently we have no objection to these road orders. The assessment of these proposals has identified a number of impacts on the designated historic environment where mitigation will be required. Further details on the assessment findings and mitigation proposals can be found in the annex to this response.

The A96 Trunk Road (Inverness to Nairn (Including Nairn Bypass)) (Side Roads) Order 201[]

Having studied the supplied draft orders for side roads and access points we have some concerns regarding access arrangements to land adjacent to scheduled archaeology. However, we are satisfied that these issues can be adequately addressed through the schedule of environmental commitments and the construction environmental management plan. Further details on these issues can be found in the annex relating to the assessment of impact of individual components of the road orders.

The A96 Trunk Road (Inverness to Nairn (Including Nairn Bypass)) (Extinguishment of Public Rights of Way Order 201[]

We can confirm that we have no comments to offer on the Extinguishment of Public Rights of Way order.

To summarise, we can confirm that we offer no objection to the draft road orders. In terms of impacts on historic environment assets and their associated assessments outwith our remit views should be sought from the local authority archaeology and conservation services who will also be able to advise on these issues. In relation to our specific comments on individual impacts on designated assets within our remit further detail can be found below and in the annex to this response.

Environmental Statement

We welcome the assessment provided in relation to the potential impact of the proposed scheme. An appropriate baseline has been identified against which to carry out this assessment and we consider the findings to be an accurate reflection of the likely impacts of the proposed scheme on those historic environment assets within our remit. Our detailed comments can be found in the annex to this response.

Please contact us if you have any questions about this response. The officer managing this case is Andrew Stevenson, who can be contacted by phone on 0131 668 8960 or by email on andrew.stevenson2@hes.scot.

Yours sincerely

Historic Environment Scotland

Annex

Environmental Statement

Legislative and Policy Background

For clarification, recent changes in the legislative and policy background relating to the historic environment include the Historic Environment Scotland Policy Statement June 2016. This Policy Statement replaces Scottish Historic Environment Policy 2011 (SHEP), updating the operational policy and reflecting legislative changes that were introduced by the Historic Environment Scotland Act 2014.

Methodology and Baseline

We note and welcome that the methodology applied throughout the assessment is in line with the Design Manual for Roads and Bridges Stage 3 Environmental Impact Assessment. An appropriate historic environment baseline has been identified for the assessment and the extensive field survey work through metal detecting, geophysical survey and aerial photographic rectification has further aided in the identification of baseline data. The assessment itself focuses on the likely impacts of the various road orders on the historic environment baseline. However, the assessment would have benefited from more detailed consideration of the impacts of mitigation identified for other topic areas (e.g. the Landscape and Ecological Mitigation Plan) on the baseline. We have noted where we consider there to be impacts as a result of other identified mitigation within our comments on the individual site assessments.

In terms of impacts and mitigation on undesignated archaeology we welcome the recognition of the need to agree a programme of archaeological works with The Highland Council's Historic Environment Team and your archaeological advisors.

Individual Site Assessments

The following comments relate to specific impacts on historic environment assets within our remit, their assessment and the mitigation offered for identified impacts. As a general point it would have been beneficial to refer to scheduled monuments by their legal name as in at least one instance the name attributed to a scheduled monument within the assessment relates to a Highland Historic Environment Record site which does not correspond to the monument. Further details on this issue can be found in our comments on Asset No. 163.

Archaeological Remains

Asset No. 43 - Milton, ring-ditch 320m SSE of (SM no. 6001)

This monument comprises of a ring-ditch of the mid to late prehistoric period. The site is under plough and visible as a cropmark. We note that the assessment considers that there will be a moderate magnitude of impact on the setting of this cropmark site and that the significance of this effect is assessed as Moderate. The proposed scheme will bring road infrastructure closer to the monument with the introduction of screening through mixed woodland as part of the Landscape and Ecological Mitigation. There will also be a new means of access provided to the east of the monument (SR24 –

444). In light of these changes to the setting of the monument we are content to agree with the assessment provided in that there will be a moderate impact on the setting of the site.

Asset No. 74 - Balloch of Culloden, enclosure 1050m NNW of (SM no. 5008)

The archaeological remains covered by this designation include an enclosure likely to be the remains of a prehistoric burial or settlement. The site is under plough and visible as a cropmark. The proposed scheme would introduce new road infrastructure to the south of the site, with the monument to be between the existing A96 and its successor. We also note that screening of the road corridor will be provided by hedge planting. The assessment considers that there will be moderate magnitude of impact on the setting of this cropmark site and that the significance of this effect is Moderate. We are content to agree with this assessment.

Asset No. 85 - Isle View, ring cairn 125m SW of (SM no. 5021)

The Isle View ring cairn is a well preserved prehistoric burial cairn visible in the landscape close to the route of the existing A96. As with the Balloch of Culloden enclosure, the proposed scheme to the south of the cairn will leave the monument in arable land between the existing A96 and the new route corridor. The proposed scheme will be screened from the monument by hedge planting as laid out in the Landscape and Ecological Mitigation drawings. We are content to agree with the conclusion of a moderate magnitude of impact on the setting of this site leading to an effect of Moderate significance.

Asset No. 255 - Ballagan, enclosure 300m ENE of (SM no. 5028)

In terms of the impact of the proposed scheme and side road on this cropmark designation we are content to agree with the findings presented in that the impact will be of slight significance. We also welcome the acknowledgement within the Landscape and Ecological Mitigation figure that there should be no hedgerow planting within the scheduled area.

Asset No. 250 - Ballagan, pit alignment 120m SSE of (SM no.5041)

The proposed scheme includes a new side road (SR9 – 34) which will lie roughly 60m to the north of this monument. The designated site comprises of the remains of prehistoric enclosure currently under plough and is visible as a crop mark. We note that the assessment considers that there will be a minor magnitude impact on the setting of the site and that the road is to be screened by the planting of a hedgerow along its southern side. We are therefore content to agree with the assessment here of an impact of slight significance.

Asset No. 163 - Brackley, settlement 230m ENE of (SM no. 11834)

The title of asset 163 reported in the assessment (Possible Pit Circle) refers to the Highland Historic Environment Record site (MHG2832) that does not reflect the entirety of the scheduled area. While the description provided within Appendix A14.1: Cultural Heritage Desk-Based Survey does relate to the monument it should also be noted that the same description has mistakenly been attributed to Asset No. 164 to the north.

These issues are of concern given the potential impacts on the scheduled monument within this area. The scheduled monument in question comprises of four prehistoric

roundhouses and lies in close proximity to a proposed new means of access (SR10 – 375 and 376) off the rerouted road proposal for the B9006. The archaeological remains are visible as cropmarks, are currently under plough and lie within sloping ground to the east of the proposed new access road. We note that the assessment considers that there will be moderate magnitude of impact on the setting of this site and that the significance of this effect is assessed as Moderate.

The magnitude of impact associated with this intervention will rest on the ability to avoid disturbance of the scheduled archaeological remains either directly or indirectly. At this stage it is unclear from the information provided what level of intervention will be required to facilitate this access. We note that mitigation has been put forward that involves demarcating the scheduled area to avoid construction impacts.

Given the uncertainties introduced into the assessment of this monument through the issues highlighted above you will have to ensure that direct impacts on this monument are avoided. Should facilitating this access simply require an opening off the associated road proposal relating to the B9006 with no further engineering in the vicinity of the archaeological remains we would be satisfied with the mitigation offered. However, it remains unclear whether any intervention required would lead to destabilisation of the archaeological remains adjacent to the access route. It is also unclear the effect planting of mixed woodland as depicted in the Landscape and Ecological Mitigation plan in such proximity to the monument could have through damage as a result of tree roots. We would therefore welcome further details on this issue prior to the works being commenced in this area in order for the identified mitigation for this site to be delivered.

Asset No. 177 - Meikle Kildrummie, enclosure 400m WNW of (SM no. 5308)

This enclosure lies in arable land under plough to the south of the proposed scheme. A new side road is proposed here (SR29 – 114) that will lie roughly 75m from the designation before underpassing the proposed new A96. We note that the assessment considers that this will constitute a moderate magnitude of impact on the setting of the site and that the significance of this effect is considered to be of Moderate significance. We are content to agree with this assessment.

Asset No. 433 - Gollanfield, enclosure and pit circle 900m SE of (SM no. 5166)

The proposed A96 scheme and the associated road realignment works depicted in SR10 lie to the north of the above scheduled monument. This monument dates from the mid to late prehistoric period and survives as archaeological remains visible as cropmarks in arable land under plough. The assessment considers that the proposed scheme will have an impact of moderate magnitude and moderate significance and we are content to agree with this assessment.

Historic Buildings

We note that no significant effects on the site or setting of Category A listed buildings have been identified within the assessment. We are content to agree with this finding. We are content to agree with the findings presented in the assessment regarding the Category A listed Boath House and its associated parkland, both in terms of the setting of the house and the areas associated with the Battle of Auldearn. Simply for information, Boath House Dovecot (Asset 313) is noted as a Category B listed

building. As part of our Dual Designation project, we have reviewed this listing and concluded that scheduling is the most appropriate mechanism to secure the preservation of this structure as a monument of national importance. The Dovecot is therefore no longer a listed building but remains part of the scheduling of this site.

Historic Landscapes

HLT25 - Auldearn Battlefield

As you are aware, Auldearn Battlefield is on the Inventory of Historic Battlefields, the list of nationally important battlefields in Scotland that meet the criteria published in the Historic Environment Scotland Policy Statement June 2016. The proposed scheme crosses through the boundary of the Inventory battlefield on its western side, the area considered to cover the approach of the Covenanter army towards an initial formation, possibly around Kinnudie. As depicted in the proposed scheme a substantial intervention of infrastructure is required to cross and maintain access to the existing A96 in this area, which will lead to a significant reshaping of the topography in the area. Views towards this area, particularly from the viewpoint of Montrose on the Dooket Hill, are significant in understanding the early stages of troop deployment for the battle.

The Inventory description notes that the “spatial relationship between surviving elements of the battlefield landscape such as the motte and the enclosed grounds of Boath House and the Covenanters position below Garlic Hill on the open land to the west survive well, allowing for the movements of the initial deployment by the Royalists and the flight of the Covenanters to still be easily read and understood”. Figure 9.7 (Viewpoint 12) of the Environmental Statement clearly depicts the level of visibility of the intervention within the western section of the battlefield landscape and encroachment on views of the approach of the Covenanter army. We note the assessment findings of a moderate magnitude of impact resulting in an effect of moderate significance as a result of these interventions. We are content to agree with this finding and consider that the main areas of action within the foreground of this views will still readily be understandable.

In terms of mitigation and compensatory measures we note and welcome the measures outlined in Appendix A14.5 Potential Mitigation Tables and would advise that you explore these further with the local authority archaeology services and your archaeological advisors.

Construction Compounds and Land Acquisition

We note that no assessment has been carried out on land for construction compounds. In light of this we welcome the commitment in section 14.7.4 that avoidance of impact on designated assets as a result of construction related activity will be required in all cases. This is of particular importance given the proximity of nationally important archaeology along the route. Notwithstanding this, in noting that separate planning applications will be required for construction compounds outside of the land identified on the Compulsory Purchase Order (CPO) it should also be noted that any proposal for such a compound that directly affected a scheduled monument would require prior written consent from Historic Environment Scotland. This would

also apply to potential land acquisition scenarios noted in Sections 4.8.10 – 12 of the Environmental Statement.

Schedule of Environmental Commitments

Construction Environmental Management Plan (CEMP)

We welcome the inclusion of the specific mitigation measures for identified cultural heritage impacts as outlined in Table 20.9. We note that there is no specific mention of the historic environment as part of the General Requirement Mitigation as outlined in Table 20.1. We consider that the proposed Construction Environment Management Plan should advise of the constructors responsibilities towards managing impact on the historic environment (either known or unforeseen) during the development and implementation of the scheme. This will reflect the requirements of the general mitigation strategy for the historic environment as stated in CH1 of Table 20.9. Of importance will be the recognition of avoidance of impact from such factors as roadside signage (either for diversions during construction or permanent signage for the new roads) that have not been considered as part of the assessment.

Senior Heritage Management Officer
Historic Environment Scotland
Longmore House
Salisbury Place
Edinburgh
EH9 1SH

Your ref: AMN/16/H

Our ref:
B2103500//TR/SH0028/REP/152

Date:
31 July 2017

Dear

The A96 Trunk Road (Inverness to Nairn (including Nairn Bypass)) (Trunking & Detrunking) Order 201[]
The A96 Trunk Road (Inverness to Nairn (including Nairn Bypass)) (Side Roads) Order 201[]
The A96 Trunk Road (Inverness to Nairn (including Nairn Bypass)) (Extinguishment of Public Rights of Way) Order 201[]
A96 Dualling Inverness to Nairn (including Nairn Bypass) Environmental Statement

Thank you for your letter of 1 February 2017 responding to the publication of the above draft Orders and Environmental Statement for the A96 Dualling Inverness to Nairn (including Nairn Bypass) scheme. Transport Scotland has reviewed the points you have raised and respond as follows.

The A96 Trunk Road (Inverness to Nairn (including Nairn Bypass)) (Side Roads) Order 201[]:

Transport Scotland acknowledge your concerns relating to access arrangements to land adjacent to scheduled archaeology, and can confirm that these issues will be addressed through the schedule of environmental commitments and the Construction Environmental Management Plan.

Legislative and Policy Background:

Thank you for the clarification regarding recent changes in the legislative and policy background, including the Historic Environment Scotland Policy Statement June 2016; this is acknowledged.

Methodology and Baseline

Thank you for confirming that you consider the assessment to be in line with Design Manual for Roads and Bridges Stage 3 Environmental Impact Assessment.

Archaeological Remains

In the case of Asset No. 163 – Brackley, settlement 230m ENE of (SM no. 11834), this error is acknowledged, and the relevant updates will be incorporated in future documents relevant to the Asset, to remove any confusion with the Highland Historic Environment Record site MHG2832.

Transport Scotland appreciate your requirements to understand further the level of intervention needed to facilitate a new access in the vicinity of Asset 163, in order to give confidence that direct impacts can be avoided. We can confirm that it will be possible to locate the New Means of Access a greater distance from the Scheduled Monument, while complying with the published side road order.

The minimum distance between the Scheduled Monument and our proposed works is now 2.75m (previously 1.5m). A 2.0m offset between the proposed works and the CPO boundary will be maintained, and therefore a gap of 0.75m will now exist between the CPO boundary and the Scheduled Monument.

We can also confirm that, in order to avoid potential damage from roots, there will be no planting undertaken between the New Means of Access and the Scheduled Monument.

The Scheduled Monument will be demarcated and fenced off during construction.

Historic Buildings

Thank you for the clarification regarding the removal of the Category B Listed Building designation of Boath House Dovecot (Asset 313) through the Dual Designation project. We will update our records to take this into account.

Historic Landscapes: Auldearn Battlefield

Transport Scotland welcomes your feedback on Auldearn Battlefield, and can confirm that we will explore the proposed mitigation and compensatory measures with The Highland Council's Historic Environment Team and Transport Scotland's archaeological advisor.

Construction Compounds and Land Acquisition

Transport Scotland acknowledges your comments relating to the need to avoid impacts on designated assets as a result of construction activity, with reference to Section 14.7.4 of the Environmental Statement.

We confirm our understanding that separate planning applications will be required for construction compounds outside of land identified on the Compulsory Purchase Order, and that any proposal for a compound that directly affected a scheduled monument would require prior written consent from Historic Environment Scotland.

We also confirm our understanding that this would also apply to potential land acquisition scenarios noted in sections 4.8.20-12 of the Environmental Statement.

Schedule of Environmental Commitments: Construction Environmental Management Plan (CEMP)

Transport Scotland can confirm that the CEMP will advise of the constructor's responsibilities towards managing impact on the historic environment (both known and unforeseen) during the development and implementation of the proposed scheme. In addition, the CEMP will include requirements to site temporary signage in a way that avoids direct impacts on Scheduled Monuments.

We look forward to continued engagement with Historic Environment Scotland on this project as we move towards the next phase and will be in contact again in due course to take this forward.

Yours sincerely,

Project Manager

cc Jacobs

Our ref: PCS/150477
Your ref: A96 I to N ES

If telephoning ask for:

31 January 2017

A96 Dualling Team
Transport Scotland
Buchanan House
58 Port Dundas Road
Glasgow
G4 0HF

By email only to: A96Dualling@transportscotland.gsi.gov.uk

Dear Sir/Madam

Roads (Scotland) Act 1984 A96 Dualling - DMRB Stage 3 Environmental Statement – Inverness to Nairn

Thank you for your consultation letter which SEPA received on 30 November 2016. We welcome the continuing engagement with Transport Scotland in relation to both the A9 and A96 dualling projects.

We offer **no objection** to the proposal at this current stage, subject to the issues outlined in our response within Appendix 1 below being addressed either through continued dialogue with SEPA, satisfying the commitments relevant to SEPA's remit within the Schedule of Environmental Commitments (SEC) in Chapter 20 of the Environmental Statement (ES), or through detailed discussions with the appointed contractor for the construction element of the scheme.

We understand that in accordance with Section 20A and 55A of the Roads (Scotland) Act 1984 (the Act) the contractors, when appointed, will be legally bound to adhere to the mitigation outlined within the ES/SEC.

The role of the proposed Construction Environmental Management Plan (CEMP) outlined in Mitigation Item GR1, particularly in relation to construction SUDS, will be paramount in ensuring that the mitigation we highlight in the Appendix below is implemented as well as adhering to the other commitments outlined in the SEC. It is also crucial that a definitive assessment of any mitigation is made to ensure that the mitigation outlined is carried out correctly and in an environmentally sensitive manner.

We have outlined a number of issues within Appendix 1 which need to be addressed prior to commencement of the development of the proposed scheme. These issues are raised based on experience in previous and ongoing dealings with strategic linear infrastructure projects such as the one proposed.

Land made available for construction activities is a critical element to the environmentally sensitive



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delivery of schemes such as the one in question. We note within the SEC of the ES commitments have been given regarding the implementation of stringent construction methods and that certain parcels of land have been identified within the draft Compulsory Purchase Orders (CPO) for this purpose. Notwithstanding this until a contractor is appointed for the construction element of the scheme it will not be known if this land is sufficient to serve the construction activities adequately. We strongly recommend that a meeting is held between Transport Scotland, SEPA, other interested agencies/authorities and the potential contractors during the tendering process to ensure that these issues are sufficiently considered. Please note further information in Section 1 of Appendix 1 below.

It should be noted that since scoping of this section of the A96 Dualling project began the regulatory position at the adjacent Inverness Airport run by Highlands & Islands Airports Limited (HIAL) has changed. We have provided further comment on this in Section 2 of Appendix 1 below focusing on Transport Scotland's role under the Water Framework Directive (WFD).

We appreciate the scale of the development proposed and whilst, in principle, the majority of elements requiring authorisation under SEPA's various regulatory regimes appear likely to be consentable, our preference would be that all the technical information required for all permissions and licensing under SEPA's regulatory regimes are submitted at the same time as the ES or soon after. However, we consider it to be at the applicant's commercial risk if any significant changes required during the regulatory stage necessitate a further changes to the deemed planning consent that the scheme may receive and/or neighbour notification or advertising and changes to the draft CPO.

It should be noted that the comments made for this scheme are standalone in relation to other projects that SEPA and Transport Scotland are in dialogue about. It should also be noted at this stage that SEPA cannot rule out requesting further information not mentioned in this response as the proposals evolve.

SEPA would welcome a meeting to discuss the response, if Transport Scotland and Jacobs feel it be appropriate.

If you have any queries relating to this letter, please contact me by telephone on 0131 273 7333 or e-mail at planning.infrastructure@sepa.org.uk.

Yours faithfully

Senior Planning Officer
Planning Service

ECopy to:

Disclaimer

This advice is given without prejudice to any decision made on elements of the proposal regulated



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by us, as such a decision may take into account factors not considered at this time. We prefer all the technical information required for any SEPA consents to be submitted at the same time as the planning or similar application. However, we consider it to be at the applicant's commercial risk if any significant changes required during the regulatory stage necessitate a further planning application or similar application and/or neighbour notification or advertising. We have relied on the accuracy and completeness of the information supplied to us in providing the above advice and can take no responsibility for incorrect data or interpretation, or omissions, in such information. If we have not referred to a particular issue in our response, it should not be assumed that there is no impact associated with that issue. For planning applications, if you did not specifically request advice on flood risk, then advice will not have been provided on this issue. Further information on our consultation arrangements generally can be found on our [website planning pages](#).



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Appendix 1 Detailed SEPA Comments

1. Land made available for construction

- 1.1 Many of the construction elements of the scheme such as temporary construction SUDS, peat and material storage, mitigation for groundwater dependent terrestrial ecosystems (GWDTEs) and re-alignment of watercourses require a sufficient amount of land. A number of the mitigation items in the SEC aim to achieve satisfactory mitigation of construction/permanent impacts. If sufficient land is not made available then it may be difficult for adequate mitigation to be achieved and therefore fail to meet the requirements of the mitigation items set out in the SEC potentially causing issues with Transport Scotland or the contractor meeting their legal obligations under the Act.
- 1.2 We acknowledge that the CPO of parcels of land under the Act is heavily restricted to only acquire land required for the operation and construction of the road within reason. Whilst we consider it to be Transport Scotland's responsibility to ensure that enough land is acquired through CPO, SEPA consider that the acquisition of land for environmental mitigation, both in terms of the construction process and operational phase of the project, is key to the delivery of this project in an environmentally sensitive manner expected of Transport Scotland.
- 1.3 We strongly recommend that, prior to the appointment of a preferred contractor for the construction element of the proposals, details of the process of how the information discussed within the ES is carried over to the construction contract is outlined to SEPA's satisfaction to ensure that adequate land is made available to achieve successful environmental mitigation.

2. Water Framework Directive (WFD)

- 2.1 It should be noted that since scoping of this A96 Dualling project began the regulatory position at the adjacent Inverness Airport run by Highlands & Islands Airports Limited (HIAL) has changed.
- 2.2 Consequently HIAL are in the process of submitting a document to SEPA which should detail how HIAL intends to remediate the existing morphological pressures associated with culverting of the 'Tributary of the Ardersier Burn' watercourse through the airport.
- 2.3 It is important to note that the improvement of the watercourse is a Water Framework Directive (WFD) improvement which the Scottish Government has signed up to in a River Basin Management Plan (RBMP).
- 2.4 To achieve the desired improvement the watercourse will likely have to be realigned; however due to the restrictions associated with topography and existing infrastructure barriers (such as the Inverness to Aberdeen railway line and existing access roads), it is likely that some short term flexibility will also be required in finalising the course of the 'Tributary of the Ardersier Burn' under the new A96.
- 2.5 As Transport Scotland is a competent authority and so has a duty to ensure that this RBMP improvement is achieved, SEPA suggests that it would be prudent for the A96 arm of



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Transport Scotland to work with their HIAL counterparts and work towards an understanding to help facilitate the watercourse improvements by agreeing to allow flexibility until the best route for the watercourse realignment is agreed.

3. Groundwater dependent terrestrial ecosystems (GWDTEs)

- 3.1 A study area of up to 100metres from the centre of the line of the proposed scheme has been used within the ES. SEPA guidance: LUPS-GU31 (2014) states that a risk assessment is now required for any GWDTE within 250m of excavations below a depth of 1m, or within 100m of excavations <1m in depth. It is envisaged that the development would involve excavations of greater than 1m and would thus expect a 250m buffer zone to be applied to their assessment. This issue was highlighted within our Screening/Scoping request response on 27 January 2016.
- 3.2 After review of the Phase 1 habitat maps it appears that there are GWDTEs within 100m and 250m of the proposed scheme. Part of the marshy grassland habitat (TN29) which is noted within the ES to be a GWDTE appears to be within the 250m buffer zone. The area of Marshy grassland (TN24) is within the 100m buffer zone but it is argued to be surface water fed. There is a further area of marshy grassland which is surrounded by improved grassland and arable land (located between Gollanfield and Nairn West Junction) which will be impacted by the proposed scheme, however we cannot find any further information on this habitat and whether it is groundwater dependant. There is no target note for this habitat. As GWDTEs had been identified in Phase 1 survey, an NVC and risk assessment was requested for any GWDTE within 250m of excavations below a depth of 1m, or within 100m of excavations <1m in depth. It does not appear that these assessments have taken place and as a result SEPA cannot determine the NVC communities which were found in the area. SEPA required an NVC and risk assessment is provided for these areas. We require this to be provided to SEPA as soon as possible as we do not consider this element to be sufficiently covered within the SEC.
- 3.3 Potential mitigation measures that may come out of the risk assessment has the potential to impact on CPO if mitigation is required but not identified at this stage. We consider this to be Transport Scotland's risk if this transpires to be the case.
- 3.4 There is an area of raised bog known as Blàr nam Fiadh (TN 19 and 20) this area is M18 and has M2 pools present which indicates it is good quality bog habitat. In Chapter 12 it states that this peat bog is considered to be partially fed by groundwater. We assume that SNH will be commenting on this habitat and mitigation measures will be put in place to protect it as part of the proposed route runs close to part of it and could have potential impacts on it.

4. Flood risk

- 4.1 For information we have noted the inconsistencies we are aware of below however we would recommend that Jacobs ensure that the figures stated in all reports are consistent and that the final versions are up to date. The Flood Risk Assessment (FRA) within the ES and the further information submitted by way of e-mail dated 23 January 2017 demonstrate that the proposal is unlikely to have a significant adverse effect on flood risk. We therefore do not object to this element of the proposals in this site specific instance but wish to



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highlight the comments below as these will be of particular importance for future phases of the project which may require compensatory flood storage.

- 4.2 Prior to the finalised ES we have previously reviewed and provided comments on each of the 5 hydraulic modelling reports in Appendix A13.2 as well as the Minor Watercourses Assessment and the Hydrology Report. Please see the below queries and comments with regards to Appendix 13.2, some of which have been carried forward from the comments that we have previously made. These points are required to be addressed in order to demonstrate that there is no increased risk of flooding as a result of the scheme and to ensure that SEPA has a clear understanding of the methods used within the submitted reports. We have also noted that there is some inconsistency between the FRA and the hydraulic modelling reports. As the FRA and the hydraulic modelling reports are in a different format they are not readily comparable and there may be inconsistencies that we have not noted.
- 4.3 With regards to the Ardersier Tributary, Cairnlaw Burn and Rough Burn, we note that there are some changes to the water levels and culvert dimensions compared to Revision V1.0. The changes don't appear to have significantly increased flood risk to the scheme or elsewhere. As such we accept the findings of the report. It is assumed that some of the changes are due to the change in culvert size however, to improve our understanding of why these changes have occurred, it would be useful if further explanation could be provided.

Cairnlaw Burn

- 4.4 As previously noted, "With regards to Kenneth's Black Well, at the downstream end of the bypass channel is a culvert which is orientated at right angles to the channel. We note that the model has not predicted any out of bank flows at the 1 in 200 year event however we would advise that using such a sharp turn for flows to enter the culvert may act as a barrier where the flow hits the bank and before it negotiates the turn. This could increase water levels upstream and may cause increased rates of bank erosion. We would recommend that a gentler angle is applied which would allow the bypass channel to enter the culvert in a more 'natural' position". No further information has been provided at this stage and this paragraph has been omitted from the document entitled 'Responses to SEPA comments on hydraulic modelling reports'.
- 4.5 With regards to the blockage scenarios, paragraph 3.59 of the FRA states that a 50% blockage would cause an increase in upstream flood levels of 1.1m and the impact would extend 520m upstream on the Cairnlaw Burn whereas the hydraulic modelling report states that an increase in upstream flood levels of 1.036m and the impact would extend 440m upstream on the Cairnlaw Burn.
- 4.6 With regards to the Cairnlaw Burn within the hydrology report, the peak flow has changed, in the initial report the peak flow was ~6m³/s, in Revision V1.0 the peak for was ~3m³/s and now the peak flow is ~5.1m³/s. Additionally the peaks are now aligned for all the inflows whereas initially they peaked at different times. The reason for these changes should be confirmed.

Rough Burn



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- 4.7 With regards to the bund associated with relief culvert 1, paragraph 3.80 of the FRA states that the bund would be 1.6m high whereas the hydraulic modelling report states that the bund should be at least 0.80m high (paragraph 9.4).

Tributary of Ardersier Burn

- 4.8 With regards to the proposed storage area, paragraph 3.113 of the FRA states that the storage area would hold ~25,600m³ of water whereas the hydraulic modelling report states that the area could store ~30,000m³ of water.

Auldearn Burn

- 4.9 With regards to the blockage scenarios, paragraph 3.170 and 3.171 of the FRA states that a 50% and 90% blockage scenarios would cause an increase in upstream flood levels of 0.05m and 0.9m respectively whereas the hydraulic modelling report states that an increase in upstream flood levels of 299mm during the 50% blockage scenario and 1212mm in the 90% scenario.

Minor Watercourses

General

- 4.10 The names of the watercourses in Table 4 (Summary of Flood Risk – Minor Watercourses) of the FRA do not match those in the Minor Watercourses Assessment, as outlined in Table 1 below.

Table 1

FRA	MWC Assessment
Newton Burn	Trib of Rough burn
Tornagrain Wood	Trib of Unnamed burn - Castle Stuart to source

SWF09-A: Tributary of Rough Burn

- 4.11 The assessment demonstrates that the presence of the scheme would exacerbate flood risk to the existing A96 by displacing 1100m³ of flood water, in Revision V1.0 this was half that volume at 504m³ of flood water, and increasing flood levels above the level of the existing road. As such compensatory storage is proposed to be 'won' from the agricultural land to the east and west of the flood extent. Details of compensatory flood storage should be outlined as soon as possible so that the appropriate amount of land can be 'won'.
- 4.12 In line with SEPA's Technical Guidance for Stakeholders, SEPA recommends that the area of displaced flood plain is divided into 5-10 'slices' and the volume of each slice calculated. Compensatory storage can then be designed so that a volume, at least equal to that of each slice of displaced flood plain, will be provided at the same level as that it is replacing.
- 4.13 Where compensatory storage is to be provided, a more detailed ground survey may be required. It should be confirmed if a topographic survey is planned for this area to support



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the mitigation works, if not justification should be provided as to why using photogrammetry is appropriate.

SWF15-A: Tributary of unnamed burn – Castle Stuart to source (Tornagrain) (2)

- 4.14 We would agree with the do nothing options in terms of mitigation at this location however would note that this is a heavily wooded area and as such there is likely to be low confidence in the ground levels obtained via photogrammetry and LiDAR. We therefore support the suggestion in paragraph 4.36 that further numerical modelling may be required however we would recommend that a detailed ground survey is used to support this. Subsequent mitigation may be required depending on the additional information returned.

SWF22-A: Alton Burn

- 4.15 We note that the proposed scheme would result in an increase in the baseline flood level of 0.002m and would displace 642m³ of flood water. With regards to paragraph 4.60 it is stated that water would spill out of bank onto the left hand flood plain however paragraph 4.63 states that floodwater will spill from the left and right hand bank. As such it should be confirmed that no spill will occur from the right hand bank to the east.
- 4.16 We note that paragraph 4.56 of the published ES states flood cells extend 1.4km on left bank and 1.2km on left bank. It is our understanding that this should actually refer to the right bank. Clarification is sought on this point.

SEC Mitigation Item

- 4.17 We note the mitigation items in the SEC in relation to flood impacts and construction and these are welcomed. We also note mitigation item W34 regarding compensatory flood storage. Whilst not detailed we welcome this mitigation item, however we expect ongoing discussions with SEPA regarding this issue as the design proposals evolve.

5. Engineering activities in the water environment including hydromorphology

- 5.1 A number of the watercourse crossings will require authorisation under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (As Amended) (CAR). It is noted within section 13.8.7 of Chapter 13 that discussions on CAR authorisation and applications would be undertaken with SEPA and would continue during detailed design and mitigation refinement through the CAR application process.
- 5.2 Notwithstanding the above and it is likely that consentable solutions could be achieved under CAR, SEPA is keen to avoid that the approach currently being taken will result in a development being agreed with the expectation that the design drawings currently submitted for comment will be considered as final drawings. Our concern is that once the proposal progresses to the CAR application stage SEPA will then need to assess the existing morphological status of each affected watercourse in combination with the effects of the proposed morphological impacts from the engineering works. At that point SEPA will need to consider in detail the impacts each crossing and associated realignment has on the respective watercourse. The CAR morphological assessment process varies in 'depth of assessment' depending on the waterbody in question, but would need to consider, amongst other aspects, whether Best Practice is being adhered too, and the options of appropriately



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qualified fluvial geomorphologists. Such assessments may mean that the final details of each crossing, realignment, and outfall may need to be adjusted. We consider it would be prudent to assess the impacts on morphology in more detail now and amend designs as appropriate. Doing this would avoid unnecessary complication/delay further at the CAR application stage.

- 5.3 Having reviewed the baseline waterbodies to be crossed it is apparent that some of these are already at moderate status due to morphological pressures, (and the others 'at Good Status' do have morphological impacts). As the objective of WFD is to maintain or return waterbodies to Good Status it may be that some of these 'adjustments' need to be significant and discussed in detail.

Hydromorphology

- 5.4 The ES does include some level of geomorphic assessment, which describes current processes and pressures within a 500 m buffer around the proposed road. The ES highlights the potential impacts from the proposed works and also identifies a number of mitigating measures. At this stage it seems likely that a consentable solution could be achieved under CAR, assuming good practice is adhered to and that there is major input from an appropriately qualified fluvial geomorphologist when designing engineering works. However, once this reaches CAR application stage more information will be needed to support the designs, which should be based on sound fluvial geomorphology, and the final details of each crossing, realignment, and outfall may need to be adjusted.
- 5.5 At this stage we have a number of comments based on the general arrangement drawings and the ES.
- 5.6 Culvert design should follow SEPA's good practice guide (WAT-SG-25) so that the natural river bed level, bed slope, and channel width can be maintained. It should also be ensured that the culvert invert is sufficiently buried beneath the natural river bed level and this will vary depending on the size of the culvert. Good practice dictates that the culvert soffit should be higher than natural bank height.
- 5.7 More detailed information on the natural river bed material placed in the culvert will be needed (e.g. calibre, thickness, distribution). This should be supported by justification through geomorphic assessment (including sediment transport analysis) and will vary depending on site specific conditions.
- 5.8 In longer culverts and steeper gradient (i.e. higher energy channels) there is a likelihood that inappropriate bed material is stripped away from within the culvert and so mitigation measures (e.g. baffles) may need to be put in place. Again, this should be fully justified through geomorphic assessment.
- 5.9 All culvert designs include bed protection at the entrance and exit. This is likely to be unnecessary (particularly at the upstream end) assuming there are no abrupt changes in gradient. At the downstream end it is common practice to include a pool to dissipate energy, rather than hard protection, which will deflect energy downstream and create a pool here instead. Whilst we have no objection to bed protection, this must be buried beneath natural river bed material.



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- 5.10 For a number of culverts the flow enters and/or exits the structure on tight bends and this is not desirable. When the flow exits the culvert it is likely to be directed toward the left bank where it could erode. This energy needs to be dissipated in the design and culverts should be designed accordingly.
- 5.11 Culverts C26 and C09 includes bends in the culvert. These should be avoided where possible as the bends could enhance deposition within the structure. More detail and justification for the requirement is needed.
- 5.12 It is noted that a flood storage reservoir is to be constructed on the Tributary of Ardersier Burn. Although the exact details of this is not clear (i.e. location, extent, etc.), if it forms an online impoundment/reservoir then this will act as a sediment trap. This will result in excess energy downstream and a river starved of sediment, likely increasing erosion potential. An impoundment will also reduce change gradient here and this could result in channel change upstream. It is imperative that any channel alignment and culvert designs on the proposed A96 incorporate the impact of this. Also, at the licencing stage the storage reservoir design would need to be based on a detailed geomorphic assessment of its impact and include appropriate mitigation. Whilst such a reservoir is potentially consentable it is difficult to add any significant comment at this stage given the lack of detail. We strongly recommend detailed pre-construction discussion on this potential area of the proposal to avoid any unnecessary delays at the CAR application stage
- 5.13 The crossing over the River Nairn is a single span structure without instream supports and also spans the width of the floodplain. It appears that there are no abutments along the banks and that the piers are set back from the watercourse, which would be encouraged.
- 5.14 There is no general layout of the proposed channel realignments and so it is not possible to assess the risks. We note that the report suggests realigned channel will include natural planform and processes wherever possible and this should be encouraged. However, it is imperative that a fluvial geomorphologist has a significant input into channel designs. As a minimum we would expect detailed information/drawings on channel planform, long profiles, cross sections, bed and bank materials and any general features being constructed (e.g. bars, pools, riffles, etc.). These need geomorphic justification.
- 5.15 Given the delays that may occur SEPA recommend that Transport Scotland consider the requirements of CAR engineering in more detail at the earliest possible stage. We strongly recommend that discussions take place between all interested parties prior to the submission of proposals for CAR authorisation.
- 5.16 Previously the applicant has stated that they would comply with SEPA guidance when designing the river crossings. However, after review the ES shows that all the proposed crossings apart from the River Nairn bridge crossing are enclosed culverts. It is apparent from SEPA guidance document River Crossings ref section 5.2 (Options Appraisal) that closed culverts in general have a higher impact than single span structures with natural beds. It appears that no justification has been provided. Prior to receiving the CAR applications justification is required for this approach.
- 5.17 In addition, to our knowledge the Rough Burn contains migratory fish. Therefore the structure proposed will need to be justified as we would expect a structure to be provided which was a low risk to fish migration. However the Findhorn, Nairn and Lossie Fisheries



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Trust may have more knowledge on the situation and the impacts of such crossings in this section.

- 5.18 Within section 4.7.8 of Chapter 4 of the ES it is stated that ‘Culverts or bridges would be provided where necessary to take existing watercourses under new roads and access tracks. The proposed watercourse crossing structures described in this ES have been selected based on achieving a balance between environmental, engineering and economic factors’. We require clarification as to how this conclusion has been reached. The Best Practice assessments as per SEPA’s CAR guidance would enable this balance between environmental, engineering and economic factors. We require further clarification on this section as the proposals evolve.
- 5.19 Section 4.7.9 states ‘the detailed design of watercourse crossing structures would be undertaken by the appointed contractor and would require suitable provision for flood flows and ecological and geomorphological mitigation, and be in compliance with the environmental commitments detailed in this ES.

Mitigation Items

- 5.20 In relation to Mitigation Item W6 within the SEC, where channel realignment is proposed, SEPA also require to agree the exact location and design of the realignment with Transport Scotland, this element does not appear in Mitigation Item W6. We require this commitment to be made pre-CAR application stage.
- 5.21 In relation to Mitigation Items W30 & W31 we note that where existing culverts require extension they are to be extended to match the form of existing structures. Where these require extension/work we expect the contractor to improve culverts so that the whole culvert/structure complies with best practice. There is an opportunity, where feasible, to make improvements.
- 5.22 There is no mention in Mitigation Items W30, W31 and W32 of the developer having assessed the impacts that extending the culverts will have on the morphological classification of the affected watercourses. As outlined earlier this is imperative to achieving consentable solutions.
- 5.23 It is noted that watercourse realignments would be sensitively designed as mitigation to create a sinuous low flow channel with a sinuous planform, varied bank profiles and natural substrate, where practicable. We would expect it to be detailed within pre-application discussions regarding CAR authorisation for these works. We recommend that this is considered at the earliest opportunity to ensure that re-alignments are not restricted by CPO.
- 5.24 Throughout the ES is noted that outfall construction and/or culvert scour protection will consist of ‘Grey bank scour protection at outfalls/culverts, limited to that absolutely required and consideration given to alternative options, e.g. none or green bank protection’. To comply with best practice and minimising impacts on the water environment a commitment should be made to design all outfalls/culverts to have no or green bank protection, and only when this couldn’t be achieved would consideration be given to alternative options. We expect this to be covered within discussions with SEPA.



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WFD

- 5.25 As highlighted previously, Transport Scotland is a responsible authority within the River Basin Planning Process in Scotland. This means that Transport Scotland has a responsibility to ensure, where possible, there is no deterioration of the condition of the water environment and they put in place improvements on downgraded waterbodies.
- 5.26 The proposed route crosses seven baseline waterbodies that are classified by SEPA for WFD purposes. Many of these waterbodies have historic morphological impacts and water quality issues. Some of this is from agricultural realignments and soil run off and other pressures are associated with built development, flood protection and urban diffuse pollution. Further information about the current condition and the objectives that have been set on these waterbodies are listed here; <http://www.sepa.org.uk/data-visualisation/water-environment-hub/> The Scottish Government with the support of the responsible authorities have signed up to a programme of objectives set to improve Scotland's water environment. We would not expect this development to compromise those objectives.
- 5.27 For morphology the 2014 classifications are based on remotely sensed information, but there have been recent ground surveys of these waterbodies to improve the accuracy of the classification. It is expected that the new data will be available and influence the 2016 classification of these waterbodies. As a generalisation we believe the waterbodies are more severely impacted by morphological alterations than we previously believed and there will be downgraded waterbodies that require improvements. Please note Table 2 below.

Table 2

ID	Classification	Name	Theme	Pressure
20241	Moderate	Cairnlaw Burn	Physical condition	Modifications to physical condition
20245	Bad	Tributary of Ardersier Burn - sea to Mid Coull	Physical condition	Modifications to physical condition
20245	Bad	Tributary of Ardersier Burn - sea to Mid Coull	Water flows and levels	Agricultural irrigation
20245	Bad	Tributary of Ardersier Burn - sea to Mid Coull	Water quality	Rural diffuse pollution
20247	Bad	Balnagowan Burn	Physical condition	Modifications to physical condition
20247	Bad	Balnagowan Burn	Water flows and levels	Agricultural irrigation
20247	Bad	Balnagowan Burn	Water quality	Rural diffuse pollution
20305	Moderate	River Nairn - Moray Firth to River Farnack	Water flows and levels	Use by other industries



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		confluence		
20308	Moderate	Geddes Burn	Freedom from invasive species	Invasion by non-native species
20308	Moderate	Geddes Burn	Water quality	Rural diffuse pollution
20309	Poor	Cawdor Burn	Access for fish migration	Man-made barriers to fish migration
20309	Poor	Cawdor Burn	Water quality	Unknown sources
23398	Moderate	Rough Burn	Water quality	Unknown sources

- 5.28 The designs for the culverts and watercourse realignments do not seem to align with the position statements. There also seems to be no provision of mammal corridors through these culverts. The consentability of each these culverts will be assessed at the CAR application stage but we would strongly suggest that thorough pre application is carried out at an early stage to avoid delays. The proposals will add significant morphological impacts of a few, already downgraded, waterbodies and we would anticipate changes to the limited information that has been provided.
- 5.29 Where realignments are proposed we expect these to take a natural plan form. Extending some of the realignments in a natural form to improve conveyance, prevent erosion and restore natural processes may also need to be considered.
- 5.30 It is not clear within the ES that the impacts of flood storage basins on the WFD flow standards have been assessed. It needs to be clarified that flows standards will be maintained downstream of the 'abstraction' which will not compromise the achievement of Good Status.

6. Surface water drainage

- 6.1 From review of the ES there does not appear to be any significant impacts on the water environment that has not been considered provided that appropriate mitigation, as indicated in SEC, is provided for road drainage pre, during and post construction, and also that compliance is sought with best practice under CAR.
- 6.2 Mitigation Item GR1 for Pre Construction Issues references various best practices etc, but it does not appear to make specific reference to 'not stripping the site' nor does it make specific reference to the contractors having to retain suitable land off the construction route to provide suitable land area for the treatment/disposal of construction runoff. Although this may be assumed/inferred elsewhere it would be prudent given the experience of other linear infrastructure projects that this is clearly considered as part of the relevant mitigation items within the SEC.
- 6.3 Mitigation Item GR3 makes specific reference to the level of SUDS to be provided i.e. 3 for discharges to the River Nairn. However the ES does not appear to give any detail on the required size of each particular treatment level. We recommend that early engagement takes place with SEPA to ascertain whether the finalised drainage scheme is implementable and that the run off, both during construction and operation, is treated adequately.



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- 6.4 It is noted within the ES that discharges to the Tributaries of Castle Stuart Bay do not have 3 levels of treatment. 3 levels of treatment is required as was previously agreed with SEPA.
- 6.5 We would note that SEPA currently do not recognise HAWRAT as a technique of assessing the impact of surface water treatment. Notwithstanding this it is possible that the assessments undertaken could help inform potential assessments of treatments for the finalised treatment proposal. Again, we would recommend early discussions between SEPA and Transport Scotland regarding this issue particularly in relation to the SUDS outfalls potential impacts on the Bathing Waters at Nairn.
- 6.6 In Mitigation Item G3 we note that thirteen proposed road cuttings, seventeen proposed SUDS cuttings and seven proposed culvert cuttings are expected to intercept groundwater. Appropriately sizing the treatment levels of the SUDS feature will be crucial to their successful function
- 6.7 In Mitigation Item W3 reference is made to 'uncontrolled runoff' from newly paved areas being limited as far as possible. The use of the of the terminology 'uncontrolled' runoff from is slightly concerning as it is SEPA's opinion that if the works are planned properly and sufficient unstripped land is made available to receive and treat runoff then there should be little justification or need for having any 'uncontrolled' flows.
- 6.8 Building upon Section 1 of SEPA's response Mitigation Item W8 gives many mitigation options to reduce contaminated runoff, however, it fails to mention if additional land is being procured/made available to store/filter contaminated runoff. We suggest this is addressed and expanded upon.
- 6.9 The ES states that mitigation during construction will include adherence to relevant SEPA Pollution Prevention Guidelines (PPGs). This mitigation must also detail the availability of suitable land off the construction route so that surface water runoff from a stripped area is treated appropriately.
- 6.10 The ES outlines the potential for the disposal of surface water to the foul sewer, whilst this is for Scottish Water to authorise our experience shows that this is no longer acceptable. We require further clarification on this process through further detailed discussions.
- 6.11 Within section 4.20 of Appendix A4.1 it is stated that 'Where appropriate, topsoil would be stripped from the full area occupied by the roads, cuttings, embankments and associated structures to depths defined for each particular location. The topsoil would be removed from site if surplus to requirements or stockpiled outwith working areas, until such time as it is required for reuse. SEPA reiterate that it is crucial that enough land is available for storage.
- 6.12 Within Section 4.22 of Appendix A4.1 it is stated that 'Surface water carried by the pre-earthworks drainage is considered to be suitable for direct discharge to a receiving watercourse and can be transferred directly to watercourses'. SEPA do not agree with this approach and consider that this should be drained across land first or via filters. We consider this request to be justified as it is stated in Section 4.23 that some pre-earthwork drainage may have to be lined to prevent erosion of the ditch. We expect further details of this through early discussions regarding the CEMP.

- 6.13 We have concerns about the stripping of the site element of the proposal from previous experience on linear infrastructure projects in relation to treatment runoff and unnecessary storage periods. We recommend that the contractor does not strip the site all at once as from experience this could overwhelm construction runoff treatment that has been installed and lead to untreated run off entering the water environment.
- 6.14 The waterbodies in the area already have pressures associated with rural diffuse pollution, particularly the Nairn catchment which is currently being prioritised by SEPA's priority catchment work and has protected areas associated with the bathing waters and the Inner Moray Firth SAC. This element adds to our significant concern that enough land be made available for the construction of the project.

7. Waste management

- 7.1 We welcome within the SEC that mitigation item G1 that a Site Waste Management Plan (SWMP) will be provided pre-construction. We also note the mitigation proposals within G2 and G10. SEPA would expect detailed pre-construction discussions on any SWMP. The ES states that 2.887 million m³ of fill will be required. It does not detail how much of the excavated material is considered unsuitable. SEPA expect the details to be provided within the detailed SWMP.
- 7.2 From the ES it is expected that the project will take 3-4 years. Site clearance/earthworks would take place during phase 2. The ES states that materials to be re-used "would be stockpiled or taken to store". Where it is to be stored is not detailed. SEPA would expect there to be certainty of reuse otherwise this is a waste storage activity. "Unsuitable materials would be recycled" this may be a waste treatment activity.
- 7.3 SEPA investigated a complaint in 2013 regarding the possible import of waste to a site at Cranford Farm, Gollanfield (NGR: NH 8386 5414 adjacent to Blackcastle Quarry) Waste imported to the site was for repair to tracks, construction of tracks and included tar planings, blocks of sandstone, irregular building material, old concrete blocks, slabs tiles soil, stones, breeze blocks, plinths/lintels. This needs to be considered when formulating the SWMP.
- 7.4 Granish Landfill Site does not have sufficient capacity remaining to deal with the waste. Highland Council may consider accepting some subsoils for operational purposes and top soils for remediation if they were ready for doing a phase of restoration. There is not space for stockpiling material. Furthermore, any peat waste (which falls into the definition of liquid waste) will not be accepted at this site or any other site operated by Highland Council. Again another consideration for the SWMP.
- 7.5 SEPA agree with the summary of the impacts outlined. In table 17.15 of Chapter 17 it is mentioned that soils/rocks maybe reused on site or "at other construction projects off-site" This may have waste licencing implications. Any reuse of waste off-site must be under exemption/licence unless re-processed to engineering standard and tested to prove that the material has fallen outwith the definition of waste.
- 7.6 SEPA guidance has been considered on the re-use of Greenfield Soils and recovery of road planings. The appointed contractor must consider potential waste arisings prior to demolition works and this is to be detailed in the Site Waste management Plan. SEPA



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would expect that at this point if reuse off-site is identified then consideration would be made of any licensing requirement for these activities.

- 7.7 The SWMP has been identified as a live document which would be updated during construction to take into account any changes which is welcomed.
- 7.8 Consideration should be made of any environmental permits requirements required for any on-site reprocessing of waste or remediation of contaminated soils.

8. Impacts on peat

- 8.1 We note from Mitigation Item G1 and the information within the ES that a Peat Management Plan (PMP) will be developed in consultation with SEPA and that the PMP will explore methods which could be used to reduce the volumes of peat required to be excavated and look at ways of maximising peat re-use etc. We welcome this and, if considered necessary, we welcome being given the opportunity to review any draft versions of the PMP.
- 8.2 We would expect the PMP to specify the location of the peat storage areas and to detail the method of peat management to prevent the peat from drying out and ensure that the peat is re-used in the areas that it was generated (or as close to these areas as possible).
- 8.3 We would also expect that the plan details options for peat which cannot be reused within the project either as a surplus material or because the nature of the peat makes it unfit for reuse.
- 8.4 Whilst the quantity of waste peat generated is relatively small in relation to the project it is expected that the PMP will detail the volumes of the specific peat types generated and the potential for re-use within the project.
- 8.5 We would re-iterate, in relation to Mitigation Item G2, that enough land is made available for peat storage during construction.
- 8.6 It would be our preference that peat would not require to be stored, however we appreciate that this is not always possible and welcome that storage will be undertaken in accordance with SEPA and SNH's guidelines and with consideration for the Waste Management Licensing (Scotland) Regulations 2011.

9. Groundwater including private water supplies

- 9.1 There are no significant issues with the proposed development in terms of impact on groundwater. Groundwater dewatering is likely to be required in deep cutting sections of the road. This however can be dealt with by appropriate licensing. At that time the applicant is invited to estimate the groundwater dewatering required and apply for the relevant authorisation.
- 9.2 Table 12.11 with the ES lists 5 licensed SEPA abstractions associated to chainage. Coordinates and abstraction license codes are not given. Abstraction licenses were therefore identified by SEPA as follows:



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- Water abstractions GE401 and GE402 (Table 12.11 ES) were investigated and appear to be the same licensed surface-water abstraction from Alton Burn for agriculture Irrigation for 15540m³/year (CAR/L/1009797). Approximate abstraction location is NH 85516 54464;
- Water abstraction GE404 (Table 12.11 ES) is a licenced groundwater abstraction (CAR/R/1012366) for Allanfearn WWTW, at location NH7130 4740. Maximum abstraction rate is 50m³/day; and
- Water abstraction GE405 is a licensed groundwater abstraction (CAR/R/1014041) for agriculture irrigation at Drumduan Farm, at location NH9169 5670. The maximum abstraction rate is 40m³/day.

9.3 All other groundwater abstractions appear to have been identified correctly within the Environmental Statement.

9.4 The following planned cuttings, taken from the ES, are likely to require dewatering:

Table 3

Name	Approximate Chainage	Approximate Maximum Excavation Depth (mbgl)	Easting	Northing
C9	ch8180 to 8420	3.9	275769	849300
C19	ch14650 to 15500	6.58	281055	852851
C21	ch17050 to 17680	10.03	282935	854013
C24	ch18260 to 18410	2.9	283956	854378
C26	C26 ch21500 to 22200	5.59	287324	854463
C29	ch23500 to 25400	10.38	289793	854707
C33	ch27460 to 28360	7.2	292785	855940
C34	ch28890 to 29570	6.3	294073	855731
C35	ch29760 to 30880	9.13	294059	856123
C39	ch17720 to 17900	5.78	283497	854266
CS6	ch60 to 430	7.54	269132	845796
CS7	ch0 to 240	6.34	268793	845717
CS8	ch0 to 40	4.14	268723	845693
CV07	ch4745	3.4	272853	847741
CV09	ch7525	7.01	275277	848735
CV13	ch10200	1.71	276913	850795
CV14	ch10550	2.71	277245	850909



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CV18	ch19610	1.97	285233	854319
CV20	ch26695	1.49	291628	856294
CV22	ch11390	1.82	277772	851642
CP01	ch1350 to ch1450	6.07	269955	846226
CP02	ch1150 to ch1200	7.24	269870	845926
CP03	ch1200 to ch1300	7.27	269901	845994
CP05	ch2000 to ch2250	5.72	270681	846576
CP06	ch2300 to ch2400	4.6	270740	846710
CP12	ch10050 to ch10300	2.07	276780	850820
CP14	ch12670 to ch12960	2.53	279120	851840
CP17	ch17000 to ch17130	10.56	282720	853910
CP18	ch19800 to ch19950	1.7	285480	854330
CP19	ch22130 to ch22270	6.63	287810	854580
CP21	ch25700 to ch25800	5.76	290600	855960
CP22	ch26600 to ch26850	6.03	291620	856240
CP23	ch28650 to ch28870	4.72	293610	855580
CP24	ch23300 to ch23500	5.93	289100	854570
CP25	ch26600 to ch26850	4.59	291620	856240

- 9.5 The above cuttings are expected to require some degree of dewatering. Dewatering is a controlled activity and it is expected the applicant provides information regarding volumes of water removed for each cutting, and apply for relevant authorisation.
- 9.6 The following water receptors have been found within 250m of the cuttings. It is expected that each of these receptors is fully risk assessed against the cutting works and dewatering activities. Mitigating measures should be proposed, and if found not to be suitable, cutting proposals must be amended.
- The proposed road runs within 100m of Alton Burn (NH 85516 54464) (ES). If local shallow groundwater is contributing to flow in Alton Burn, dewatering during construction may reduce water quantities in Alton Burn. This is unlikely assuming no excavations here exceed 1.24mbgl (CV18, Table 12.12, ES);



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- Culvert CV06 (NH71376 47231) sits within the 250m radius of Allanfearn WWTW well (NH7130 4740) (GE04) (ES). There is uncertainty whether this proposed culvert will reach the local water table - depth to groundwater was measured outwith the footprint of the proposed culvert (Table 12.21 ES). Any dewatering of superificials into surface run-off may impact groundwater recharge at Allanfearn well (GE404). The ES does not note any details (e.g. depth, use) of the well at Allanfearn. Further investigations may be required; and
- Groundwater abstraction GE125 is identified in Ref 1 as being within 250m of a 9.13m deep excavation which is likely to require dewatering. This well is 100m deep and is unlikely to be affected by any dewatering.

9.7 Section 12.2.8 of Chapter 12 of the ES suggests groundwater levels were only recorded between March and August 2016. Higher groundwater levels may occur during winter. This may change the assessment of dewatering risks. The ES notes a more detailed site investigation is to be undertaken in 2017.

9.8 The ES does not mention aggregate source for road infilling. It is assumed fill will be sourced from existing local quarries (Table 4.6, Chapter 4.6.24, ES estimates 2.887m³ infilling material is required). SEPA will require confirmation of this as this could, depending on the type and permeability of the aggregate, have an impact on groundwater and flows.

10. Invasive non-native species (INNS)

10.1 One area of concern regarding the CEMP is the control of INNS. We welcome the potential mitigation measures outlined in SEC. Within the ES it is highlighted that earth movements from one site to another will be minimised to avoid cross-contamination with INNS. In similar cases SEPA has allowed movement where any soil is moved within a development site and has a management plan with regard to treating INNS onsite. If the waste is being taken off site for treatment then any movement, treatment and/or disposal must be done in accordance with current waste legislation. Chapter 11 and the SEC indicates that the CEMP and the proposed Habitat Management Plans will cover issues concerning INNS and the HMP in particular will make reference to INNS management plans. We would welcome pre-application engagement on these plans.

11. Construction site licences

11.1 It is likely that by the time that the scheme comes forward for construction that construction site licences will be required to be obtained under CAR. We recommend that discussions take place with SEPA in relation to this during the period of appointing a construction contractor, if not prior to this.

12. Air quality

12.1 The local authority is the responsible authority for local air quality management under the Environment Act 1995 and therefore we recommend that Environmental Health within the Local Authority be consulted.



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13. Contaminated land

- 13.1 Advice on land contamination issues should be sought from the Local Authority contaminated land specialists because the local authority is the lead authority on these matters under Part IIA of the Environmental Protection Act 1990 except for matters relating to radioactively contaminated land or special sites.



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Our ref:
B2103500//TR/SH/0029

Date:
25th April 2017

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Dear

The A96 Trunk Road (Inverness to Nairn (including Nairn Bypass)) (Trunking & Detrunking) Order 201[]

The A96 Trunk Road (Inverness to Nairn (including Nairn Bypass)) (Side Roads) Order 201[]
A96 Dualling Inverness to Nairn (including Nairn Bypass) Environmental Statement

Thank you for your email and letter of 31 January 2017 responding to the publication of the above draft road orders and Environmental Statement (ES).

To support continued engagement, we propose to develop a Scoping Report which will set out the proposed approach to preparing and developing the draft CAR licence submissions and also dealing with future assessments around flood risk and hydromorphological and river engineering.

Following your agreement to the principle of the Scoping Report, it will be issued for your review and consideration.

We respond to the main points you have raised in your response letter as follows:

Land made available for construction

We have carefully considered constructability issues in relation to the proposed scheme alongside consideration of the design and operational issues. We consider the land made available for construction is sufficient for the works to be programmed and constructed within a properly controlled environment and taking cognisance of current guidelines and best practice. We are also mindful that legislation requires that the land acquired for the proposed scheme is reasonable and no greater than necessary for the purposes of construction and operation. We believe the extent of the land identified in the CPO achieves the appropriate balance in this regard.

We would be happy to discuss this further with you as the design development progresses and discuss any specific requirements that you would wish to see included in the contract documentation to provide further assurance with regard to methods of construction and control of the water environment during construction.

Water Framework Directive (WFD)

Compliance with the WFD will be assessed under the Water Environment (Controlled Activities) (Scotland) Regulations 2013 (as amended) (CAR) (Scottish Government, 2013) and under the Water Environment and Water Services (Scotland) Act (2003) (WEWS Act), which transposes the EU WFD legislation into Scottish law.

The proposed approach to preparing and developing the draft CAR licence submissions will be set out in the future Scoping Report.

The design will be developed further to ensure the proposals comply with the Environmental Standards Tests carried out using MImAS (Morphological Impacts Assessment System). This will be done in consultation with SEPA during the design development phase.

The proposed improvement to the Tributary of Ardersier Burn by the Highlands & Islands Airports Limited (HIAL) at Inverness is noted along with it being a commitment in the River Basin Management Plan. We will be happy to collaborate with SEPA and HIAL in taking forward proposals to improve this watercourse and will be as flexible as possible in accommodating any proposed realignment. However, given the stage we have reached in the statutory process for promotion of the A96 Dualling Inverness to Nairn (including Nairn Bypass) scheme, any realignment proposal which would require the draft Road Orders or Environmental Statement to be republished would add significant delay to the programme which all parties should seek to avoid. We look forward to seeing the proposal from HIAL at the earliest opportunity.

Groundwater dependent terrestrial ecosystems (GWDTes)

Your comment on assessment of GWDTes is acknowledged. As a general starting point, a study area of up to 100m from the centre line of the proposed Scheme was used for the systematic identification of potential Ecological Receptors with Potential Groundwater Component.

In parallel to this, a cutting screening assessment was undertaken and the Sichert method was used to estimate the zone of dewatering influence around each of the cuttings considered likely to intercept groundwater.

The zones of influence calculated are therefore cutting specific, and would have been at times smaller than 100m and other times greater than 250m. The likely impacts on receptors within this zone of influence were then assessed; and these receptors included areas identified as potential GWDTes.

In relation to the calculated zones of influence associated with cuttings in exceedance of 100m, there was a review of GWDTes, based on a list of potential GWDTes identified at DMRB Stage 2 within a study area of 500m. This identification of GWDTes during DMRB Stage 2 was based on Phase 1 habitat surveys undertaken and which remained valid at DMRB Stage 3

The Phase 1 habitat survey information has been examined at DMRB Stages 2 and 3 to determine (i) the presence or absence of a wetland habitat and (ii) the likelihood of a groundwater component based on the habitat characteristics and association of the habitat with watercourses. Within the assessment methodology applied, where these conditions would be fulfilled and where an impact on the hydrogeology of these particular sites was expected, a targeted National Vegetation Classification (NVC) survey would have been triggered to support a further detailed risk assessment. This further assessment was not triggered for the proposed Scheme.

We would be happy to explain our methodology and approach in more detail in a meeting with you and provide also additional clarification on the Target Note and habitat areas that were specifically commented on in your response

Flood risk

The changes to culvert sizes noted at Ardersier Tributary, Cairnlaw Burn and Rough Burn have arisen as a result of the integration of considerations for mammal passage, aquatic ecology and hydromorphological reasons as the design has developed. Where there are conflicting requirements the balance between these factors may further change, we hope this can be usefully examined using the specimen design phase leading to the CAR application submissions. We propose to manage this process collaboratively with you, and the proposed approach to this work will be set out in the future Scoping Report.

With respect to comment 4.6 and the peak flows for the Cairnlaw Burn model, the interim version of the report (v1.0) included an incorrect chart which suggested a peak flow of ~3m³/s, although a correct peak flow value (5.12m³/s) was shown in the Table 7 of the same report. The chart was corrected for the final release of the Hydrology Report. The change in peak flow value from ~6 to ~5.1 m³/s between initial and final versions reflects improvement of the representation of both the sub-catchment areas and the catchment descriptors. The alignment of the peaks of the inflows is a reflection of the derivation of hydrograph shape from a single source and is a slightly conservative approach. We propose to address the comment in paragraph 4.4 regarding the culvert orientation for the Kenneth's Black Well bypass channel during the specimen design stage. The area is constrained by the properties to the west of the road but there is scope to improve the transition to the east and this can certainly be discussed further.

The comments in Paragraphs 4.5, 4.7, 4.9, 4.10 have all been addressed through minor corrections to the Flood Risk Assessment. As the update now stands independently to the ES this is provided as report B2103500-EN-FLOD-RP-014 Rev. 3.1 'Flood Risk Assessment'.

The crossing and SUDS ponds at location SWF09-A - Tributary of Rough Burn (Paragraphs 4.11- 4.13) will be subject to further assessment during the specimen design phase. Additional topographic survey to develop a detailed ground profile has been specified and is being obtained at present.

Additional topographic data is also being gathered for the wooded area assessed as being affected by the crossing of the Tributary of unnamed burn - Castle Stuart to source (Tornagrain) SWF15-A (Paragraph 4.14). This will then be further studied and modelled prior to confirming the do-nothing option as the preferred course of action.

With respect to the comments for the Alton Burn crossing SWF22-A, Paragraph 4.15 - we can confirm that no spill is predicted for the right hand bank to the east, and with regard to Paragraph 4.16, we can confirm that the right bank flood cell extends for 1.2km. This report is provided as report B2103500-EN-FLOD-RP-010 Rev. 3.0 'Minor Watercourse Assessment'.

Engineering activities in the water environment (incl. hydromorphology)

Consultation will be held with SEPA on the approach to developing the design of watercourse crossings and realignments from a hydromorphological and river engineering perspective, along with submission of draft CAR licence applications. Further detail on this will be outlined in the future Scoping Report.

This iterative design and consultation process should facilitate the CAR licencing process. The current design drawings submitted as part of the ES represent general arrangements of realignments and crossings; these designs will be developed further during the preparation of the supporting documentation for the CAR licence application. Specific designs will be drawn up on a site specific basis for complex and/or sensitive crossings or realignments. For crossings on existing realigned/non-sensitive ditches, it is assumed that a generic crossing design will be used for these watercourses.

A multi-disciplinary approach will be taken for the crossing and realignment designs going forward, with collaboration between engineers, fluvial geomorphologists, hydrologists, ecologists, flood risk specialists and SEPA. Additional morphological assessments will be undertaken, where required, which will inform the design for CAR licence compliance. These river dynamics assessments may include analyses of

stream power and sediment transport to inform appropriate sediment sizing for culverts and channel realignments. In addition, analyses will be undertaken to determine energy dissipation requirements through culverts and channel realignments. SEPA's good practice guidance will be followed in the design development stage. The location and design of channel realignments will be agreed with SEPA during the consultation phase.

Particular attention will be given to the creation of the Mid Coull flood detention area and the potential impacts on the geomorphological and ecological functioning of the associated watercourse. A multidisciplinary approach will be taken along with consultation with SEPA during the design development phase.

For watercourse crossings, justification for the proposed structure will be provided as part of the CAR licencing process. These will also be discussed with SEPA during the design development phase.

With regards to fish passage, in addition to our own assessments, the relevant fishery boards and trusts will be consulted to ensure any design does not have a negative impact upon migratory fish.

The need for bank protection around structures will be assessed on a case-by-case basis. Where practicable, either no or green bank protection will be used. The need for grey bank protection will be limited as far as practicable, and discussed with SEPA as part of the design development process.

Surface water drainage

Comments in relation to surface water drainage during construction and operation are noted and appreciated. As stated in the ES, the appointed contractor shall prepare a Construction Environmental Management Plan (CEMP) that will be developed and agreed with SEPA. The requirement for the CEMP and agreement with SEPA will be stipulated in the contract documentation for the future appointed contractor.

The CEMP will address the issues raised in your submission, including:

- the management treatment and disposal of construction runoff;
- management of site stripping activities, stockpiling and exposure of bare surfaces;
- control of runoff from newly paved areas;
- appropriate treatment of discharges from pre-earthworks drainage;
- adequate consideration of relevant protected areas such as bathing waters and the Moray Firth SAC; and
- potential issues surrounding disposal of surface water to foul sewers.

The sizing and performance of each SuDS treatment level will be considered at the design and build phase in consultation with SEPA. Notwithstanding this, all SuDS ponds and basins have been sized to accommodate the required Treatment Volume (Vt).

Within the ES, two types of treatment train are presented. Treatment Train 1 comprises two levels of treatment (filter drains and retention pond) and Treatment Train 2 comprising three levels of treatment (filter drains, retention pond and swale).

Discharges to the River Nairn and its tributaries include three levels of treatment (Treatment Train 2).

Discharges to the Longman and Castle Stuart Bay include two levels of treatment (Treatment Train 1). Prior discussions with SEPA (teleconference on 2 June 2016) indicated that SEPA would be content with two levels of treatment for discharges from the main carriageway that outfall within 1km upstream of the Longman and Castle Stuart Bay.

Therefore we would welcome discussion regarding concerns around discharges to tributaries of Longman and Castle Stuart Bay and the requirement for three levels of treatment stated within your response.

Comments relating to the use of HAWRAT are noted and the approach for further potential assessments at the design development phase will be detailed in the future Scoping Report.

Waste management

We can confirm that a Site Waste Management Plan (SWMP) will be prepared by the appointed contractor for the proposed Scheme, and that SEPA will be consulted in the development of the Plan, as detailed in Chapter 20 of the ES (ES), Mitigation Item GR1. These requirements will be stipulated in the contract documentation for the future appointed contractor

We note SEPA's comments in paragraphs 7.1 to 7.8 in relation to the issues relevant to the Plan, and can confirm that the Plan will appropriately consider and consult with SEPA on the issues raised.

Consideration will be given to any environmental permits required prior to the start of construction for on-site reprocessing of waste or remediation of contaminated soils, and the need for an exemption/licence for any reuse of waste off-site

Impacts on peat

We note SEPA's comments in paragraphs 8.1-8.6 in relation to the development of a Peat Management Plan for the proposed Scheme. The PMP will be developed by the appointed contractor and the Plan will appropriately consider and consult with SEPA on the issues raised in these paragraphs. These requirements will be stipulated in the contract documentation for the future appointed contractor.

Groundwater including private water supplies

The ES Chapter 12 acknowledges that dewatering is a controlled activity. Chapter 20 of the ES, Mitigation Item G3 identifies the need to estimate volumes of groundwater expected to be intercepted by cuttings as listed in Table 12.12, with a view to determining whether groundwater CAR licences are required.

We note SEPA's comment on the water receptors identified within 250m of the cuttings which are expected to require a degree of dewatering, and the requirement to risk assess these receptors against cutting works and dewatering activities.

In relation to CV06, the proposed Scheme design indicates that the culvert cutting CV06 would be 3.1m deep. The nearest groundwater level information available, outside the footprint of the cutting, suggests a groundwater table at circa 3.7m below ground level (bgl) and therefore this cutting was assessed as being dry within Chapter 12 of the ES.

It is acknowledged however that a level of uncertainty remains on the actual depth to groundwater below the footprint of CV06. With a cutting depth of 3.1m, assuming a worst case scenario of groundwater conditions at 0.5m bgl, this would be expected to generate a dewatering zone of influence of around 100m using the Sichardt method (as per the approach applied to other cuttings in the ES Chapter 12).

The licenced abstraction GE404 is located circa 200m away from the deepest part of CV06 (most likely area for dewatering to occur in shallow groundwater conditions), and 117m away from the start of CV06 (which is highly unlikely to generate any dewatering effect). On the basis of this review, even in the worst case scenario, it is our professional opinion that GE404 would not be exposed to dewatering impacts as a result of CV06. We are happy to review and consider this further with SEPA as required.

Road infilling materials are unlikely to be used in saturated site conditions (i.e. unlikely to be used to backfill areas where groundwater flows), and on this basis the nature of road infilling materials is not expected to impact on groundwater and flows. However, the source of aggregate for road infilling can be communicated to SEPA once this detail is confirmed.

Invasive non-native species (INNS)

We note SEPA's advice and comments regarding Invasive non-native species and welcome future pre-application engagement when the CEMP and Habitat Management Plans have been developed further.

Construction site licences

We are aware of the SEPA consultation that includes the proposals to include construction sites within the CAR licensing regime.

We expect the applications for these sites to come from the successful contractor. Whilst we would expect any appointed contractor to be fully aware of any developments we will ensure the requirement is highlighted in our documentation and we will identify the action to initiate this process within the project programme.

Air quality

In response Paragraph 12.1, the Highland Council are the relevant local authority for the proposed Scheme. Communications were held with Nick Thornton (Environmental Health Technical Officer), to obtain permission for the co-location of monitoring equipment, and on 18th February 2016 to discuss the proposed methodology for the air quality assessment. This consultation is noted within the ES and will be continued as required during future progression of the proposed Scheme.

Contaminated land

Consultation has been undertaken with the Highland Council in relation to the proposed Scheme and they have been provided with a copy of the ES. As required, future consultation will be undertaken in relation to land contamination issues during future progression of the proposed Scheme.

Yours sincerely,

Project Manager

cc Jacobs

Our ref: PCS/152884
Your ref: A96 I to N ES

If telephoning ask for:

30 May 2017

Transport Scotland
Buchanan House
58 Port Dundas Road
Glasgow
G4 0HF

Dear

**Roads (Scotland) Act 1984
The Town and Country Planning (Environmental Impact Assessment) (Scotland)
Regulations 2011
A96 Dualling - DMRB Stage 3 Environmental Statement - Transport Scotland
Response to SEPA**

Thank you for your letter dated 25 April 2017 which was accompanied by additional flood risk information.

SEPA welcomes the development of a scoping document which will set out the proposed approach to preparing and developing the draft CAR licence submissions and also dealing with future assessments around flood risk and hydromorphological and river engineering and we look forward to further engagement with Transport Scotland on the matter.

We also note the other comments made in your letter and welcome the clarification on a number of points. We have provided further comments and clarification, where necessary, below.

1. Groundwater including private water supplies

- 1.1 With reference to the further justifications presented in your letter to SEPA section 'Groundwater including private water supplies' SEPA concur that the risk to the groundwater feature GE404 is considered low. Notwithstanding this we would like to receive the mentioned dewatering radii calculations (Sichardt method) in particular the parameters used in the above equation. It may be that such information has been forwarded already as an annex or appendix but, given the amount of documents presented, it would be welcomed if we could be pointed to the relevant document.

2. Groundwater dependent terrestrial ecosystems (GWDTEs)

- 2.1 Our comments on wetland ecology are reliant on receiving the information requested above as these would be helpful in our assessment of the GWDTEs.

- 2.2 We also request that assessment findings are provided for the three areas of marshy grassland (TN29, TN24 and the one with no target note that is located between Gollanfield and Nairn West Junction) that were scoped out from further detailed assessment in order that we can evaluate this conclusion. In particular, how conclusions of likelihood of a groundwater component and of likely impact on the hydrogeology were reached for these three locations.

3. Surface water drainage

- 3.1 We note the query regarding the discharges to the Longman and Castle Stuart Bay and acknowledge that 2 levels were agreed as per the meeting notes for 2 June 2016, however in our response dated 11 November 2016 to Jacobs' summary of the finalised Stage 3 drainage design we noted that *out of Networks H, I and J which drain to Castle Stuart Bay only Network H has 3 levels of treatment. We will require justification as to why I & J do not.* From our review it does not appear that justification was provided in the Environmental Statement. Notwithstanding this we are happy to continue dialogue with Transport Scotland regarding the proposed levels of surface water drainage treatment in this area.

4. Flood risk

- 4.1 Unless specified by Transport Scotland we have assumed no other amendments have been made to either document. We reiterate our previous comments that as the Flood Risk Assessment (FRA) and the previously submitted hydraulic modelling reports are in different formats, they are not readily comparable and there may be other inconsistencies that we have not noted. We are still satisfied with the proposals at this current stage, but are still awaiting clarification regarding compensatory storage and culvert design.
- 4.2 Paragraph 4.3 of our previous letter (culvert size of Ardersier Tributary, Cairnlaw Burn, and Rough Burn): It has been stated that the sizes have changed due to considerations for ecology and hydromorphology. In our previous letter we stated that despite the changes, it appeared that flood risk had not significantly increased to the scheme or elsewhere. Therefore we have no further comments to make on this matter.
- 4.3 Paragraph 4.6 of our previous letter (peak flows for Cairnlaw Burn): we thank Transport Scotland for clarifying that the flow value of 3m³/s was incorrect and the correct peak flow is 5.1m³/s. It has also been clarified that the change in peak flow from 6m³/s to 5.1m³/s is due to an improvement in the representation of the sub-catchment areas and catchment descriptors. We welcome any opportunity for an improvement on flow estimates if more suitable data has been available. It has been confirmed that the alignment of the peaks is due to deriving the hydrograph shape from a single source. It is stated that this is a slightly more conservative approach. We have no further comments to make on this matter.
- 4.4 Paragraph 4.4 (Kenneth's Black Well Culvert): it is stated that that it is proposed to address to culvert orientation during the design stage. We welcome that there is scope to improve the transition to the east. We would be happy to provide further flood risk comments on this aspect if required at a later stage.
- 4.5 Paragraphs 4.5, 4.7, 4.9, and 4.10: we welcome that the FRA has been revised to take into account the corrections we had noted. We have no further comments to make on this matter.



Chairman
Bob Downes

Chief Executive
Terry A'Hearn

Perth Strathearn House

Broxden Business Park,
Lamberkine Drive, Perth, PH1 1RX
tel 01738 627989 fax 01738 630997
www.sepa.or

- 4.6 Paragraphs 4.11 – 4.13 (Tributary of Rough Burn): It is stated that the crossing and SUDS ponds will be subject to further assessment during the design stage. However, our previous comments related to compensatory storage. We are unsure if this is a mistake and whether the letter is referring to compensatory storage, although we highlight that SUDS would not be suitable to provide compensatory storage to mitigate fluvial flood risk. We reiterate our previous comment that details of compensatory storage should be outlined as soon as possible to ensure that appropriate land is available. Regarding the additional topographic survey, we welcome that further information is being obtained.
- 4.7 Paragraph 4.14 (Tributary of Unnamed Burn): we welcome that additional topographic data is being gathered for the wooded area. We will be happy to provide further comment if required once the do-nothing option has been modelled.
- 4.8 Paragraphs 4.15 and 4.16 (Alton Burn): It has been confirmed that no spill is predicted from the right bank, and that the minor watercourse assessment has been updated accordingly. It has also been clarified that the right bank cell extends for 1.2km. We have no further comments to make on this matter.
- 4.9 In paragraph 4.8 of our previous letter we noted in paragraph 3.113 of the FRA stated that the storage area would hold around 25,600m³ of water, whereas the hydraulic modelling report states that the area could store around 30,000m³ of water. In the revised version of the FRA (3.1) we note that paragraph 3.113 still states that a value of 25,600m³. We require this to be clarified.

We look forward to further engagement with Transport Scotland on this project. If you have any queries relating to this letter, please contact me by telephone on 0131 273 7333 or e-mail at planning.infrastructure@sepa.org.uk.

Yours sincerely

Senior Planning Officer
Planning Service

Disclaimer

This advice is given without prejudice to any decision made on elements of the proposal regulated by us, as such a decision may take into account factors not considered at this time. We prefer all the technical information required for any SEPA consents to be submitted at the same time as the planning or similar application. However, we consider it to be at the applicant's commercial risk if any significant changes required during the regulatory stage necessitate a further planning application or similar application and/or neighbour notification or advertising. We have relied on the accuracy and completeness of the information supplied to us in providing the above advice and can take no responsibility for incorrect data or interpretation, or omissions, in such information. If we have not referred to a particular issue in our response, it should not be assumed that there is no impact associated with that issue. For planning applications, if you did not specifically request advice on flood risk, then advice will not have been provided on this issue. Further information on our consultation arrangements generally can be found on our [website planning pages](#).



Chairman
Bob Downes

Chief Executive
Terry A'Hearn

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Your ref: PCS/152884

SEPA
Strathearn House,
Lamberkine Drive,
Broxden Business Park
Perth
PH1 1RX

Our ref:
B2103500/TR/SH0029/0143

Date:
4th July 2017

planning.infrastructure@sepa.org.uk

Dear

The A96 Trunk Road (Inverness to Nairn (including Nairn Bypass)) (Trunking & Detrunking) Order 201[]

The A96 Trunk Road (Inverness to Nairn (including Nairn Bypass)) (Side Roads) Order 201[]
A96 Dualling Inverness to Nairn (including Nairn Bypass) Environmental Statement

Thank you for your letter of 30th May 2017, relating to the Environmental Statement for the above scheme and SEPA's request for clarification on particular items.

We've provided clarification on the requested items below and welcome future engagement with SEPA in relation to the scheme.

Groundwater including private water supplies

Details of the general parameters used in the dewatering radii calculations (Sichardt method) are provided in the attached A96 Sichardt summary document (Attachment 1).

A conservative approach has been taken in these calculations with the consideration of both upper and lower hydraulic conductivity values obtained from infiltration tests in trial pits and slug tests in boreholes across the scheme. The C parameter was conventionally taken as 3000 for roughly symmetrical excavations even though lower values are sometimes used for elongate excavations but 3000 was used here to ensure a conservative assessment.

As explained previously in our correspondence of the 25th April 2017, a worst case scenario of groundwater conditions at 0.5m below ground level has been assessed for CV06 (the potential risk to groundwater receptor GE404). The parameters and the calculated dewatering zone for high, medium and low hydraulic conductivity values specific to CV06 are also provided within the attached A96 Sichardt summary document (Attachment 1). In addition, GE404 is approximately 200m from the deepest part of the CV06 (most likely area for dewatering to occur in shallow groundwater conditions), and 117m away from the start of CV06 (which is highly unlikely to generate any dewatering effect).

Groundwater dependent terrestrial ecosystems (GWDTEs)

The assessment findings for the three areas of marshy grassland as requested in your letter are provided in Table 1.0 below with the relevant Schardt calculations provided in the attached A96 Schardt summary document (Attachment 1). The generic parameters for each Schardt calculation are as described in the Groundwater including private water supplies response above. The groundwater levels for each cutting specific Schardt calculation have been determined using the most appropriate (nearest) groundwater level as collated during the 2016 ground investigation.

Surface water drainage

In relation to the discharges to Longman and Castle Stuart Bay, we have reviewed the design and are satisfied with incorporating 3 levels of treatment for both networks I & J.

Flood risk

Your comments are noted in relation to Paragraphs 4.1 to 4.9. In relation to Paragraphs 4.6 and 4.9, further clarification is outlined below.

- Paragraph 4.6 – The compensatory storage referred to is intended to offset the encroachment into the floodplain from the SUDS ponds included in the design at this point. The SUDS ponds are not intended to manage the fluvial flood risk but are located in the flood area because of the fall of the road in this area. We are now in receipt of the topographical data and are advancing the specimen design.
- Paragraph 4.9 The required volume of storage identified in the FRA of 25600m³, is the correct value on the basis of the Stage 3 Design. It should be noted that this is based on the requirements to limit flood risk, and the total storage capacity is likely to be higher once the specimen design of the flood detention area has been completed and the reservoir safety requirements are met. We would be happy to share the progress of this with you as it develops.

We would be happy to explain our methodology and approach in more detail in a meeting with you if required.

Additionally, if SEPA are now satisfied that the requested clarifications relating to the Environmental Statement have been addressed, we'd appreciate if this could be confirmed. We'd propose then to progress with issuing the Scoping Report which will set out the proposed approach to preparing and developing the draft CAR licence submissions and also dealing with future assessments around flood risk and hydromorphological and river engineering.

Yours sincerely,

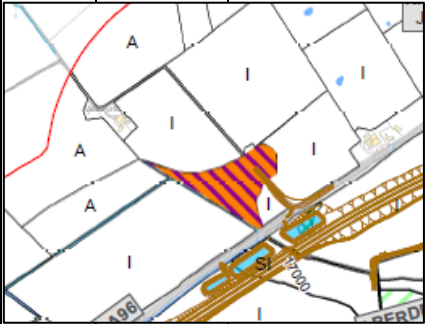

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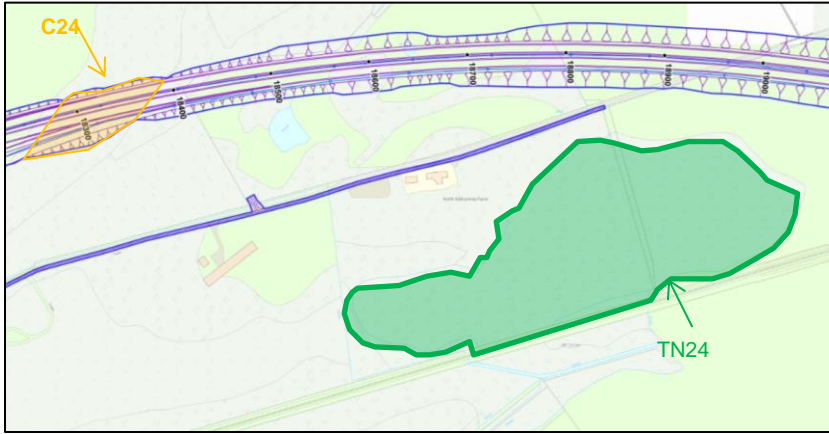
Project Manager

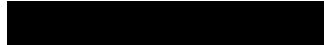
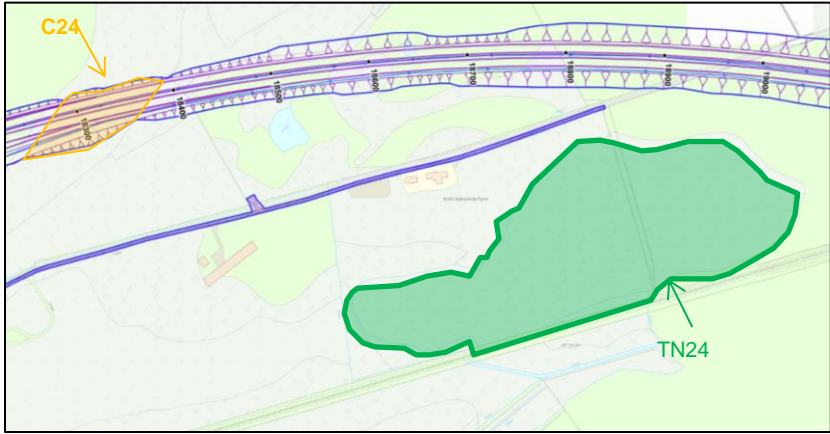
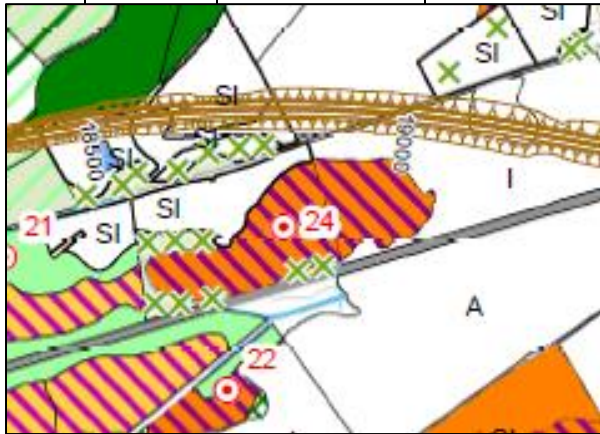
cc Jacobs

Table 1.0: GWDTE Assessment

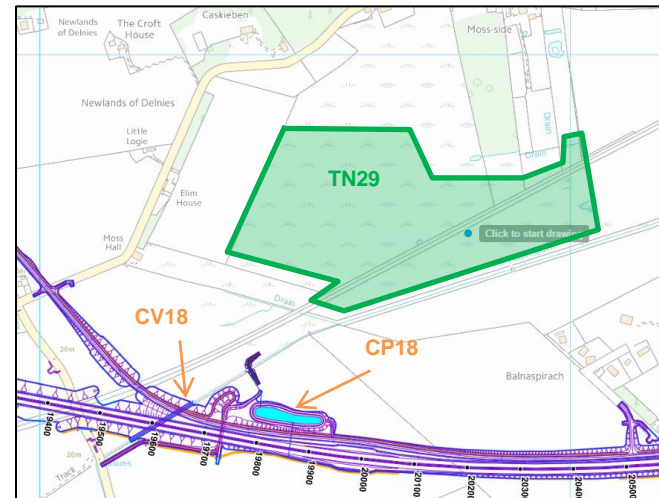
Target Note	Grid Reference	Proposed Scheme Chainage/ Location	SEPA Comment	Ecological Comments	Hydrogeological Comments	Conclusion	
N/A	NH 82681 53999	ch17000	<p><i>There is a further area of marshy grassland which is surrounded by improved grassland and arable land (located between Gollanfield and Nairn West Junction) which will be impacted by the proposed scheme, however we cannot find any further information on this habitat and whether it is groundwater dependant.</i></p>	<p>The area identified as marshy grassland represents a species poor agriculturally improved grassland with patchy areas of soft rush (as shown in photograph below). The habitat does not fit into an NVC category in our professional opinion and therefore is not considered to be a potential GWDTE. Further NVC surveys were not undertaken.</p>	N/A	<p>The area of improved grassland was not considered to be an 'ecological receptor' (nor potential GWDTE) and therefore this habitat was not assessed within the ES Chapter 10 (Geology, Soils, Contaminated Land and Groundwater).</p>	
							



Target Note	Grid Reference	Proposed Scheme Chainage/ Location	SEPA Comment	Ecological Comments	Hydrogeological Comments	Conclusion								
24	NH 85543 54717	ch18500 – 19000	<i>The area of Marshy grassland (TN24) is within the 100m buffer zone but it is argued to be surface water fed.</i>	The Phase 1 habitat indicated that there may be some element of groundwater dependency. However, site observations indicated that the habitat was likely to be dominated by surface water input. In addition, the receptor was located at a distance greater than 250m from any cuttings associated with the proposed scheme. Further NVC surveys were not undertaken.	<p>The area of marshy grassland occurs in a topographic hollow which seasonally becomes inundated. The nearest cutting (C24) to the marshy grassland is located approximately 270m away. The results of the detailed drawdown assessment are summarised below and provided in the A96 Scharth Summary.</p> <table border="1"> <thead> <tr> <th>Combined Radius of Influence (drawdown and excavation)(m)</th> <th>K (med)</th> <th>K (high)</th> <th>K (low)</th> </tr> </thead> <tbody> <tr> <td>C24</td> <td>108</td> <td>131</td> <td>60</td> </tr> </tbody> </table> 	Combined Radius of Influence (drawdown and excavation)(m)	K (med)	K (high)	K (low)	C24	108	131	60	<p>The marshy grassland is located outside the 250m buffer from any excavations associated with the scheme therefore in line with LUPS-GU31 there is no requirement for further NVC surveys or a detailed assessment.</p> <p>Nonetheless the detailed drawdown assessment undertaken within the ES chapter has indicated that there would be no impact on groundwater levels from the proposed cutting.</p>
Combined Radius of Influence (drawdown and excavation)(m)	K (med)	K (high)	K (low)											
C24	108	131	60											



Target Note	Grid Reference	Proposed Scheme Chainage/ Location	SEPA Comment	Ecological Comments	Hydrogeological Comments	Conclusion												
29	NH 84419 54237	ch20000	<i>Part of the marshy grassland habitat (TN29) which is noted within the ES to be a GWDTE appears to be within the 250m buffer zone.</i>	The Phase 1 habitat indicated that there may be some element of groundwater dependency. The habitat was assessed within the ES to determine if there would be any effect on groundwater levels within this receptor from the proposed scheme. No potential effect was identified; therefore further NVC surveys were not undertaken.	<p>The marshy grassland is located on the floodplain of the Alton Burn, and is separated from the proposed scheme by the Alton Burn. The closest excavations associated with the scheme are CP18 and CV18, located approximately 170m and 250m (respectively) from the GWDTE. The results of the detailed drawdown assessment for both are summarised below and provided in the A96 Scharth Summary.</p> <table border="1"> <thead> <tr> <th>Combined Radius of Influence (drawdown and excavation)(m)</th> <th>K (med)</th> <th>K (high)</th> <th>K (low)</th> </tr> </thead> <tbody> <tr> <td>CP18</td> <td>59</td> <td>65</td> <td>48</td> </tr> <tr> <td>CV18</td> <td>36</td> <td>45</td> <td>18</td> </tr> </tbody> </table>	Combined Radius of Influence (drawdown and excavation)(m)	K (med)	K (high)	K (low)	CP18	59	65	48	CV18	36	45	18	<p>Although an NVC survey has not been undertaken, it has been conservatively assumed that this receptor is a potential GWDTE.</p> <p>A detailed assessment has been undertaken which has identified that this receptor will not be affected by the proposed scheme.</p> <p>Therefore no further surveys or assessment are required.</p>
Combined Radius of Influence (drawdown and excavation)(m)	K (med)	K (high)	K (low)															
CP18	59	65	48															
CV18	36	45	18															



Attachment 1: Sichardt Summary

A96 Gollanfield to Nairn						
Sichardt's equation						
$Ro=C.s.K^{0.5}$	Radius of influence (drawdown) (m)					
$Re=(L.W/\pi)^{0.5}$	Equivalent radius of excavation (m)					
			CV06	C24	CP18	CV18
C	Usually taken as 3000 for K in m/s	3000				
s	Drawdown (m), taken as pre excavation groundwater level - base of excavation		2.61	1.94	0.46	0.73
	Pre-excavation groundwater level		0.5	0.96	1.24	1.24
	Excavation base (mBGL)		3.11	2.9	1.7	1.97
L	Length of excavation (m)		290	150	160	125
W	Width of excavation (m)		10	50	40	5
K (median)	Hydraulic conductivity, median (m/s)	1.02E-04				
K (max)	Hydraulic conductivity, high (m/s)	2.00E-04	Max value from TP infiltration tests			
K (min)	Hydraulic conductivity, low (m/s)	3.70E-06	Min value from TP infiltration tests			
CV06	Drawdown					
	Ro (m)	Re (m)	Combined (m)			
K (med)	79.02	30.38	109.40			
K (high)	110.73	30.38	141.12			
K (low)	15.06	30.38	45.44			
C24	Drawdown					
	Ro (m)	Re (m)	Combined (m)			
K (med)	58.74	48.86	107.60			
K (high)	82.31	48.86	131.17			
K (low)	11.19	48.86	60.06			
CP18	Drawdown					
	Ro (m)	Re (m)	Combined (m)			
K (med)	13.93	45.14	59.06			
K (high)	19.52	45.14	64.65			
K (low)	2.65	45.14	47.79			
CV18	Drawdown					
	Ro (m)	Re (m)	Combined (m)			
K (med)	22.10	14.10	36.21			
K (high)	30.97	14.10	45.08			
K (low)	4.21	14.10	18.32			

[REDACTED]

Subject:

FW: A96 Letter

From: Planning Infrastructure [<mailto:planning.infrastructure@sepa.org.uk>]

Sent: 31 July 2017 15:36

To: [REDACTED]

Cc: [REDACTED]

Subject: RE: A96 Letter

[REDACTED]

Thank you for sending through the below and the attached. Please note our comments below. In summary we are satisfied with the requested clarifications and look forward to receiving further information on the potential CAR submissions and information regarding flood risk and hydromorphology in due course.

Groundwater including private water supplies

The data and calculations forwarded appear suitable for the undertaken risk assessment and therefore acceptable to WRU. Table 1, NGR for wetland no. 24 has been assigned to wetland no. 29 and vice versa. We consider this to be a typo.

Groundwater dependent terrestrial ecosystems (GWDTEs)

We accept the GWDTE risk assessment.

Surface water drainage

Noted and welcomed.

Flood risk

It has been confirmed that the SUDS ponds have to be located in the floodplain due to the fall of the road in this area. This clarification and justification seems reasonable, however we highlight that additional compensatory storage may be required if the SUDS ponds within the functional floodplain are to be bunded.

It is stated that topographic data has been obtained. We welcome this, and would be happy to provide further comments on this, and the compensatory storage as the design progresses.

With regards to paragraph 4.9, it has been clarified that the volume of storage required is 25600m³. We have no further comments to make on this, but note that the total storage is likely to be higher once the design has been completed. Again, we would be happy to make further comments as the design progresses.

With regards to our comments in paragraph 4.4, we have not received any further details on the proposed new culvert orientation. However, we understand further details will be provided at the detailed design stage.

Please let me know if you have any queries regarding the above.

Kind Regards,

[REDACTED]

[REDACTED]
Senior Planning Officer – Linear Infrastructure Projects
Planning Service, SEPA, Silvan House, 231 Corstorphine Road, Edinburgh, EH12 7AT
Direct Tel: 0131 273 7333 Mobile: 07827 978 357
Email: alex.candlish@sepa.org.uk

Please note that my usual working days are Monday-Thursday.

From: [REDACTED]
Sent: 04 July 2017 13:46
To: Planning Infrastructure; 'Craig.Cameron@transport.gov.scot'
Cc: [REDACTED]
Subject: RE: A96 Letter

[REDACTED]

Please find attached a letter on behalf of Transport Scotland addressing the further comments and clarification requests contained in your letter dated 30th May 2017.

We look forward to further engagement on this process and, as always, are happy to discuss the next steps. As, stated in the letter, if SEPA are now satisfied that the requested clarifications relating to the Environmental Statement have been addressed, we'd appreciate if this could be confirmed. We would then propose to progress with issuing the Scoping Report which will set out the proposed approach to preparing and developing the draft CAR licence submission.

[REDACTED]
[REDACTED]
Jacobs
Divisional Director, Environmental Assessment | Sustainable Solutions
T +44 (0) 161 235 6176 | M +44 (0) 7482 234 897 | [REDACTED]

5 First Street
Manchester
M15 4GU

From: Planning Infrastructure [<mailto:planning.infrastructure@sepa.org.uk>]
Sent: 30 May 2017 14:25
To: [REDACTED]
Cc: [REDACTED]
Subject: A96 Letter

[REDACTED]

Please find attached SEPA's response in relation to Transport Scotland's A96 letter dated 25 April 2017.

Kind Regards,

[REDACTED]
[REDACTED]
Senior Planning Officer – Linear Infrastructure Projects
Planning Service, SEPA, Silvan House, 231 Corstorphine Road, Edinburgh, EH12 7AT
Direct Tel: 0131 273 7333 Mobile: 07827 978 357
Email: [REDACTED]

Please note that my usual working days are Monday-Thursday.

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