

On behalf of the Defendant  
Peter Miller  
First  
Exhibits DJB  
6 August 2012

CO/3477/2012, CO3467/2012,  
CO/3635/2012, CO/3605/2012, & CO/3732/2012

**IN THE HIGH COURT OF JUSTICE**

**QUEEN'S BENCH DIVISION**

**ADMINISTRATIVE COURT**

**IN THE MATTER OF AN APPLICATION TO PERMISSION TO APPLY FOR  
JUDICIAL REVIEW**

**BETWEEN:**

The QUEEN (on the application of  
(1) BUCKINGHAMSHIRE COUNTY COUNCIL and others  
(2) HS2 ACTION ALLIANCE LIMITED  
(3) HEATHROW HUB PROPERTY LIMITED and another  
(4) HS2 ACTION ALLIANCE LIMITED  
(5) AYLESBURY PARK GOLF CLUB LIMITED and others)

**Claimants**

-and-

SECRETARY OF STATE FOR TRANSPORT

**Defendant**

and

HIGH SPEED TWO (HS2) LIMITED

**Interested Party**

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**WITNESS STATEMENT OF PETER MILLER**

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I, PETER MILLER, of High Speed Two (HS2) Ltd, Eland House, Bressenden Place, London, SW1E 5DU will say as follows:

1. I am Head of Environment at High Speed Two (HS2) Ltd ("HS2 Ltd") and have held that position since September 2010. I take overall responsibility for the

management of the sustainability and environmental aspects of HS2 project. I am supported by a small technical team of specialists and that team in turn supports environmental managers devolved across the London to West Midlands and Leeds-Manchester-Heathrow phases of the project. I am also responsible for the specification, procurement and review of the environmental and sustainability work undertaken and ensure that such work is supported appropriately with resources and expertise. In this regard the project is supported by a range of specialist environmental consultants and experts who undertake sustainability appraisals and environmental impacts assessments in accordance with the programme of work being undertaken following the Government's decisions on high speed rail in January 2012.

2. The internal team is supported by CH2MHill, an infrastructure programme and project management consultancy appointed in January 2012.<sup>1</sup> Specialist environmental consultants provide recognised and class-leading support and include Arup, Atkins, Booz and Co, ERM, Mott MacDonald, Temple Group and URS and various industry experts in the field of railway noise. Technical challenge is currently provided by the Project's Sustainability and Environmental Review Group which consists of environmental experts with experience in environmental impact assessment, consultation, sustainability and construction.
3. I am duly authorised to make this witness statement on behalf of HS2 Ltd in response to the application by the Claimants for permission for judicial review of the Secretary of State for Transport's decision to approve HS2.
4. Except where stated otherwise, the facts and matters set out in this witness statement are within my own knowledge and are true. Where I have indicated that the matters set out are not within my own knowledge but rather are matters of information or belief, I have indicated their source. I refer to a number of exhibits in this statement which are included in the Defendant's Bundle marked "[DB/vol/tab/page]". I also refer to documents already included in the Claimant's Joint Bundle and will reference those documents according to the pagination used by the Claimants "[CJB/vol/tab/page]".
5. I hold a degree in Landscape Architecture and have over 18 years relevant environmental management experience in railway civil engineering primarily on

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<sup>1</sup><http://hs2.org.uk/press-releases/HS2-Ltd%e2%80%99s-appointment-of-CH2M-Hill-creates-new-job-opportunities-80080>

major projects. Between 1987 and 1990 I worked for British Rail as Environment Manager on the then Southern Region, practicing as a landscape architect. I managed the Board's Community funded programme of works including stations schemes for the Bournemouth to Weymouth Electrification project and followed their training scheme equivalent to the associate level of the Chartered Institute of Building.

6. In September 1990, I joined the Board's Channel Tunnel Rail Link ("**CTRL**" – now known as "**HS1**") team and was senior environment manager responsible for managing the environmental design aspects of that project. I was instrumental in developing option appraisal techniques and managed and contributed environmental reports to Government on behalf of that project. I also had responsibilities for the development of the CTRL Environmental Statement and managed specialist consultants to produce relevant documentation for the CTRL Bill. I also contributed to the environmental evidence provided to the Commons and Lords Select Committees. Finally, I was responsible for ensuring the smooth transition of environmental requirements to the private sector consortium who took over the CTRL Project from the Government and contributed to the mechanisms for environmental management applied by that project's contractor partners.
7. Between 1997 and 1998 I acted as deputy Environment Manager on Railtrack's Thameslink 2000 Project and was responsible for developing that project's Environmental Statement and contractual environmental requirements.
8. Between 1998 and 2001, I led Railtrack's West Coast Route Modernisation environment programme and was Head of Environment on that project responsible for the management and delivery of environmental assessments and effective environmental management from construction contractors. I ran a specialist team supported by consultants and was responsible for environmental impact assessments, environmental management systems and environmental engineering. I was instrumental in developing that projects' Statement of Case for the Railtrack (WCML) Order and acted as principal environmental witness before that project's Transport and Works Order public inquiry. I also supported and provided environmental evidence to the European Community and UK Treasury on behalf of Railtrack to prove the environmental credentials of that project and ensure continued financial support from Trans European Network (TEN) funds.

9. I have acted as an independent environmental consultant and provided environmental management for TfL's West London Tram Project on behalf of Schofield Lothian, I led the environment work for the development of the Northern Line Extension to Battersea on behalf of URS Corporation and assisted the early route development work for HS2 on behalf of Temple Group.
10. In this statement I will outline how in developing HS2, HS2 Ltd has made, and continues to make, the accommodation of environmental and wider issues of sustainability, fundamental to the development of the scheme.
11. I will then respond to certain allegations made by HS2AA, Heathrow Hub Limited and the Local Authority Claimants that the Secretary of State has, in connection with these assessments, acted in breach of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment ("the **SEA Directive**") and Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora ("the **Habitats Directive**") and/or the domestic regulations transposing these Directives.
12. I should make clear at the outset that the position of the Secretary of State and of HS2 Ltd is that these Directives are not applicable to the decisions under challenge as these do not themselves constitute a "plan or programme" for the purposes of the SEA Directive or a "plan or project" for the purposes of the Habitats Directive. My evidence goes to the issue of whether in any event there was substantial compliance with these Directives through the various environmental and related assessments that were in fact undertaken.
13. In respect of the Claimants arguments relating to the SEA Directive, without prejudice to the contention that Directive is not applicable, I intend to address arguments that:
  - i) there has been a failure to consult with designated authorities (English Heritage, Natural England and the Environment Agency) in accordance with Article 5(4) (paragraph 67 of HS2AA's Statement of Facts and Grounds);
  - ii) there has been a failure to undertake transboundary consultations in breach of Article 7(1) (paragraph 68 of HS2AA's Statement of Facts and Grounds);
  - iii) the decision document, *High Speed Rail: Investing in Britain's Future – Decisions and Next Steps* ("the **Decisions Document**") [CJB/4/18/1384]

was not accompanied by a statement of measures for monitoring significant effects (paragraph 69 of HS2AA's Statement of Facts and Grounds);

- iv) the documentation relating to the environmental assessments fails to comply with the requirements of Article 5 and Annex I in a number of respects including consideration of HS2 Phase 2 and cumulative effects of Phase 2 and Phase 1, transboundary effects, alternatives (including strategic alternatives), monitoring, and failure to report on the environmental implications of changes made to the HS2 route following public consultation (paragraph 70 of HS2AA's Statement of Facts and Grounds); and
- v) there has been a failure to assess the direct route via Heathrow proposed by Heathrow Hub Ltd as a reasonable alternative contrary to Article 5(1) and Annex I(h); that there was a failure to assess the spur to Heathrow within the HS2 proposals in their own right; and that in consequence Heathrow Hub Ltd were deprived of the opportunity to bring specialist input into the environmental features of their own alternative proposals contrary to Article 6(2) (paragraphs 70 to 72 of Heathrow Hub Ltd's Statement of Facts and Grounds).

14. In respect of the Claimants arguments relating to the Habitats Directive, I will set out for the benefit of the Court the work that has been carried out to date, and that which HS2 Ltd intends to undertake going forward.

15. Finally, the Local Authority Claimants make arguments regarding the Equalities Impact Assessment ("the **EqlA**") for HS2 and I will also deal with these below (paragraphs 153 to 174 of the Local Authority Claimants' Statement of Facts and Grounds).

### **Structure of the statement**

16. The structure that this statement follows is set out below:

- i) Documentation relating to the AoS;
- ii) General background to sustainability appraisals;
- iii) The remit of HS2 Ltd in respect of the AoS;
- iv) Establishing the approach to the AoS;
- v) The detailed assessment process including treatment of alternatives;

- vi) Reporting the AoS;
- vii) Public Consultation;
- viii) Response to criticisms made in respect of the SEA Directive;
- ix) Overview of work undertaken in respect of habitats;
- x) Work undertaken on environmental issues since January 2012; and
- xi) Equalities Impact Assessment.

### **Documentation relating to the AoS**

17. In order to assist the Court's consideration of this statement, I set out below the relevant documents in the public domain relating to these matters, which consist of:

- i) *Appraisal of Sustainability - A Report for HS2 - Non Technical summary*, published on 11 March 2010, which describes how the proposals at that time for HS2 supported objectives for sustainable development **[DB/4/89/809]**.
- ii) *HS2 London to the West Midlands Appraisal of Sustainability* report ("the **AoS Report**") which was finalised and published as part of the consultation material on 28 February 2011. The AoS Report consisted of:
  - Non-Technical Summary **[DB/5/101a/1770A]**;
  - Main Report Volume 1 **[CJB/2/12/650]**;
  - Main Report Volume 2 – Plans and Appraisal Framework **[DB/5/95/1174]**;
  - Appendix 1 – Appraisal Process **[DB/5/96/1311]**;
  - Appendix 2 – Greenhouse Gas Emissions **[DB/5/97/1353]**;
  - Appendix 3 – Socio-economic Assessment **[DB/5/98/1379]**;
  - Appendix 4 – Associated Assessment Reports (including Habitats Regulations Assessments ("HRA") screening report and EqIA screening report) **[CJB/2/12/791]**;
  - Appendix 5 – AoS Technical Reports **[DB/5/99/1441]**; and
  - Appendix 6 – March 2010 Preferred Scheme and Main Alternatives: AoS Information **[DB/5/100/1525]**.
- iii) *Review of possible refinements to the proposed HS2 London to West Midlands Route*, January 2012 **[CJB/4/20/1551]**.

- iv) *Review of HS2 London West Midlands Route Selection and Speed*, January 2012 [DB/6/105/1978] which further considers routes for the London-West Midlands proposition.
- v) *Review of HS2 London to West Midlands Appraisal of Sustainability*, January 2012 (“the **AoS Review**”), which was HS2 Ltd’s advice to the Government on the outcomes of the review of the consultation responses to the AoS [CJB/4/21/1592].

18. The AoS focused on Phase 1 of HS2, between London and the West Midlands. This is now the subject of an environmental impact assessment (“**EIA**”), with an Environmental Statement (“**ES**”) to be produced in 2013 to accompany the deposit of a hybrid Bill. I cover this later in my statement. A draft Scope and Methodology Report (“**SMR**”) for the EIA of HS2 Phase 1 sets out the intended approach to undertaking the EIA and has formed the basis for consultation. This was published on 4 April 2012 [DB/6/107/2095] and consultation closed on 30 May 2012. At the time of writing the responses to that consultation are being analysed with a view to publishing the EIA Scope and Methodology report in summer of this year.

19. A separate AoS is currently underway for Phase 2 of HS2, between the West Midlands and Manchester and Leeds, including a connection with Heathrow. This has followed the same approach used for Phase 1 and announcements by Government later in 2012 and in 2013 will be supported by AoS-related documentation.

### **General background to sustainability appraisals**

20. Before looking at the AoS undertaken in respect of Phase 1 of the HS2 project and its context within the decision under challenge in these proceedings, it may be helpful to the Court for me to set out some background on sustainability appraisals in general. Sustainability, defined in the AoS Report (Main Report, Volume 1 paragraph 1.1.2), “embraces considerations of economic development and job opportunities, and effects on communities, as well as environmental considerations such as landscape, natural environment and climate change” [CJB/2/12/660].

21. A form of sustainability appraisal process was developed by UK Government departments prior to the implementation of the SEA Directive, particularly for

local authority development plans. The purpose of sustainability appraisal is to appraise the social, environmental and economic effects from the outset to help to ensure that decisions are made that contribute to achieving sustainable development. The sustainability appraisal process was updated through the publication in 2005 of the Department for Communities and Local Government's ("CLG") *Sustainability Appraisal of Regional Spatial Strategies and Local Development Documents*.<sup>2</sup> The current guidance on Sustainability Appraisal is contained within the CLG's *Plan making manual*,<sup>3</sup> which supersedes the 2005 guidance. It should also be read alongside the CLG's 2005 *A Practical Guide to the Strategic Environmental Assessment Directive*.<sup>4</sup> It is generally considered that such appraisals incorporate the requirements of the SEA Directive. However, the sustainability appraisal covers wider social and economic effects of such plans, as well as the more environmentally-focused considerations in the Directive. None of this guidance has any direct application to the decisions in issue in these proceedings as they are not regional spatial strategies or local development documents. However, the principles developed in this context in terms of the approach to and content of such appraisals have informed the approach taken in this case.

22. At the time that work on HS2 commenced, it was suggested that HS2 may be included in the National Networks National Policy Statements ("NPS") and it was therefore required that the appraisal work for HS2 should be undertaken with this in mind. The context for the NPS and the approach to appraisal of sustainability formed part of the Planning Act 2008 which introduced a system for considering Nationally Significant Infrastructure Projects. NPSs written by Government Departments were to set out the framework on which the Infrastructure Planning Commission would base its decisions. The Act required the drafts of these NPSs to be subject to an AoS. The Planning Act 2008 included a duty on Ministers to ensure that NPSs were drawn up with the objective of contributing to the achievement of sustainable development, and explaining how they integrated strategic economic, social and environmental policy objectives, including the Government's climate change commitments, to deliver sustainable development.

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<http://webarchive.nationalarchives.gov.uk/+/http://www.communities.gov.uk/publications/planningandbuilding/sustainabilityappraisal>

<sup>3</sup> <http://www.pas.gov.uk/pas/core/page.do?pagelid=109798>

<sup>4</sup> <http://www.communities.gov.uk/publications/planningandbuilding/practicalguidesea>



23. Further context is provided in Volume 1 to the AoS Report, as well as in the Decisions Document and the AoS Review. Paragraphs 1.4.1 to 1.4.3 of the AoS Main Report Volume 1 state that:

“1.4.1 The AoS of the scheme was undertaken in line with planning requirements. It was devised to determine the extent to which HS2 reflects and promotes sustainable development through the integration of environmental, social and economic considerations. It has helped to ensure that decisions are made that contribute to sustainable development and demonstrate that proposals are reasonable given the main alternatives. The scope of the AoS reflected the level of detail available at this stage of the project ...

1.4.2 A range of appraisal and assessment techniques were available to help define the scope of the AoS. In particular the European Strategic Environmental Assessment (SEA) Directive was key to determining the overall appraisal framework, although the scheme would not qualify as either a plan or programme under the terms of the Directive.

1.4.3 In addition, as a major transport scheme, the principles of NATA/WebTAG,<sup>5</sup> the DfT’s multimodal guidance on appraising transport projects and proposals, have been addressed within the AoS.”  
**[CJB/2/12/661]**

24. Paragraphs 6.23 and 6.24 of the Decisions Document state that:

“6.23 A number of consultation responses expressed the view that the AoS was not compliant with European requirements for Strategic Environmental Assessment (SEA) and that a SEA should have been carried out at this stage. We have been clear that the Government’s proposals for high speed rail did not constitute a programme or plan under the meaning of the SEA Directive 2001/42/EC and the 2004 regulations, and that, therefore, there was not a requirement to undertake a SEA. However, for a scheme of such magnitude, a decision was taken that it would be appropriate and beneficial to apply SEA principles to the AoS.

6.24 We consider that the AoS appropriately applied the principles of the SEA Directive to the degree necessary for this stage in the project. In line with

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<sup>5</sup> NATA is the Department for Transport’s New Approach to Appraisal, which is supported by WebTAG – a web-based Transport Analysis Guidance tool ([www.dft.gov.uk/webtag](http://www.dft.gov.uk/webtag))

the SEA Directive, which outlines that an assessment must be made of reasonable alternatives to a proposed project, HS2 Ltd investigated these and explained why the alternatives were rejected. These can be found in the *Review of HS2 London to West Midlands Route Selection and Speed* which explores different design speed and route options.<sup>6</sup> [CJB/4/18/1485]

25. The AoS Review at paragraphs 3.1.1 to 3.1.7 states that:

“3.1.1 Consultation responses expressed the view that a Strategic Environmental Assessment (SEA) should have been carried out and that the AoS was not compliant with European requirements for SEA. Views were also expressed that the AoS was insufficiently detailed, and that more studies should have been undertaken. Similar views suggested that an EIA should have been undertaken at this stage, with detailed results available to inform the consultation.

3.1.2 The SEA Directive requires an assessment of likely significant effects on the environment from implementing a proposed plan or programme. As part of this assessment, consideration must be given to reasonable alternatives that are available, taking into account the objectives and geographical scope of the plan or programme.

3.1.3 The AoS was intended to be compliant with the principles of SEA although the proposed scheme would not qualify as a plan or programme under the terms of the Directive. Article 2 of the SEA Directive states that it applies to plans and programmes:

- which are subject to preparation and/adoption by an authority at national, regional or local level or which are prepared for adoption, through a legislative procedure by Parliament or Government; and
- which are required by legislative, regulatory or administrative provisions.

3.1.4 For any plan or programme to be subject to the requirements of the Directive, it must satisfy both these conditions. For the Directive to apply, plans or programmes prepared or adopted under administrative provisions must be required by them, as is the case with legislative or regulatory

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<sup>6</sup> The glossary in the Decisions Document records that the AoS is “An appraisal of the economic, environmental, and social effects of a plan that allows decision-making in accord with sustainable development. Conducted in accordance with the principles of EU Directive 2001/42/EC on strategic environmental assessment”

provisions. It is our view that neither of these conditions is satisfied in relation to the Government's proposals on high speed rail.

3.1.5 The AoS provides a strategic appraisal of key impacts relating to the proposals for high speed rail between London and the West Midlands. The approach was devised to meet relevant planning requirements and to determine the extent to which HS2 London to West Midlands would support objectives for sustainable development. It was developed and strengthened in dialogue with a Technical Challenge Group and an AoS Reference Group consisting of a number of Government departments and agencies including Defra, Natural England, the Environment Agency and English Heritage. To confirm that our approach was fully compliant with the principles of SEA and legally robust, we also sought advice from a commissioner of the Infrastructure Planning Commission with specialisation in Sustainability Appraisal (SA) and SEA.

3.1.6 As for any large development project, an EIA would be submitted in support of the proposal when seeking approval for HS2 London to West Midlands. The EIA is the process for identifying, predicting, evaluating and mitigating the likely significant effects on the environment from a proposed project and for making this information public. This ensures that the importance of the predicted effects, and the scope for reducing them, are properly understood by the community and the decision maker, before a decision is taken on whether to authorise the scheme to be built. As part of the preparation of the EIA, we would comply with relevant legislation and government guidance or policies.

3.1.7 The plan for the development of the EIA would be envisaged to follow the steps outlined in Figure 1." [CJB/4/21/1601]

### **The remit of HS2 Ltd in respect of the AoS**

26. Philip Graham in his evidence explains that the HS2 proposals were initiated in January 2009 by the DfT Report, *Britain's Transport Infrastructure: High Speed Two*. This report set out the basis on which HS2 Ltd was being established together with its overall remit which included the requirement to:

"...develop a proposal for an entirely new line between London and the West Midlands. To reach a view on this, the company will need to assess the likely

environmental impact and business case of different routes in enough detail to enable the options to be narrowed down. We expect work to be completed by the end of the year. The Government will thereafter assess the options put forward for the development of the new line.” **[DB/1/20/310/para 9]**

27. On 13 February 2009, the chairman of HS2 Ltd wrote to the Secretary of State outlining his initial views on HS2 Ltd’s objectives and remit for HS2. In particular, as regards the environment, Sir David Rowlands noted as follows:

“In discharging our remit, we will be paying close attention to the environmental impacts of the new line, both locally in terms of biodiversity, landscape, noise, etc and at the national/international level in terms of carbon emissions. We will factor these potential impacts into our work on the identification of route options, the specification of the new line, modal shift, etc.” **[DB/4/82/5]**.

28. The approach set out in this letter was endorsed by the Secretary of State in a letter of 9 March 2009 and made clear that the Government required HS2’s report to “include a route proposal – with any necessary options – from London to the West Midlands, with appropriate environmental, social and economic assessments.” This report was to be submitted by the end of 2009 **[DB/4/83/7]**.

### **Establishing the approach to the AoS**

29. In view of the factors set out above, it was clear that from the commencement of the development of HS2 that any appraisal of environmental, social and economic factors was to be integral to defining the proposed route and stations for HS2.
30. In March 2009, while developing a long list of possible route options (London to West Midlands) to meet the HS2 remit, HS2 Ltd was also giving consideration to the most appropriate way to assess the sustainability performance of these options, taking account of the factors I have referred to above in respect of related appraisal techniques. The AoS was devised as the way that sustainability issues would be addressed. I attach a copy of the brief for the AoS **[DB/4/84/9]**, which was explicit in its requirement for the AoS to give due regard to other relevant appraisal techniques.

31. On 20 May 2009, Booz and Co (UK) Ltd and Temple Group Ltd (“**Booz-Temple**”) were commissioned to take forward the AoS for HS2. I understand that the Booz-Temple team was selected from a number of short-listed companies, in part on the basis of it containing some of the most experienced individuals in the UK in the field of sustainability assessment generally and assessment of rail schemes in particular. Team members had worked on the environmental assessments of HS1 (CTRL), West Coast Route Modernisation, Crossrail, the Thameslink Programme (Thameslink 2000) and Airtrack, amongst others.
32. Broadly the role of Booz-Temple was to provide objective reporting and sustainability advice throughout the appraisal. More specifically the role of Booz-Temple included developing the AoS approach and implementing it using both a core AoS team of some 15 people and a wider team of specialists covering each of the key sustainability disciplines. It also included Booz-Temple providing wider support in other matters, for example, consultation with statutory bodies (which I describe later in this statement) and support to the development and sifting of options.
33. The AoS method developed by Booz-Temple drew on the requirements of related appraisal processes, as I have described earlier, as well as on techniques developed on other rail projects, including option appraisal and comparison processes developed for HS1 (CTRL).
34. Draft sustainable development objectives were defined by Booz-Temple to provide benchmarks against which the scheme could be appraised. These built upon sustainable development priorities from the UK Sustainability Development Strategy: *Securing the Future*<sup>7</sup> as the basis for defining sustainability, namely:
- reducing greenhouse gas emissions and combating climate change;
  - natural resource protection and environmental enhancement;
  - creating sustainable communities; and
  - sustainable consumption and production.
35. The objectives were also developed with reference to:

<sup>7</sup> The UK Sustainability Development Strategy: *Securing the Future*, DEFRA, March 2005.  
<http://www.defra.gov.uk/publications/2011/03/25/securing-the-future-pb10589/>

- the overall objectives for HS2;
- the Government's stated objectives and priorities for sustainable development and sustainable transport (which are yet to be superseded);
- the sustainability issues of most direct relevance to a high speed railway; and
- other core key processes, including NATA/WebTAG.

36. In June 2009, Booz-Temple produced a draft AoS Scoping Report which included these core objectives along with the wider proposed approach to the AoS **[DB/4/85a/30]**. The report was then the subject of consultation with a number of key stakeholders, identified on the basis of Part 2 of the Planning Act 2008 and the Environmental Assessment of Plans and Programmes Regulations 2004. These stakeholders formed the AoS Reference Group ("the **AoS Reference Group**") which comprised:

- The Environment Agency;
- Natural England;
- English Heritage;
- Government Office Network Lead: Planning and Housing;
- Department for Environment, Food and Rural Affairs;
- Department for Culture, Media and Sport;
- Department of Health;
- Department for Energy and Climate Change;
- Department for Transport; and
- Scottish Government.<sup>8</sup>

37. As described in section 4.6 of the AoS Report, Main Report Volume 1 **[CJB/2/12/692]** and section 3.1.5 of the AoS Review **[CJB/4/21/1601]**, the AoS

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<sup>8</sup> The Scottish Government SEA Gateway was consulted directly. They also provided a conduit to other consultation authorities, namely Historic Scotland and Scottish Natural Heritage. The Scottish consultees did not attend the AoS Reference Group meetings, but maintained correspondence with HS2 Ltd

approach was developed and strengthened in dialogue with this group. A series of meetings of the AoS Reference Group were held to discuss, amongst other things, the methodology of the AoS, including the sustainable design aims and accompanying guidance. These were discussed in the context of the geographical area involved; the scale, nature and location of the proposals; and, during the later stages, the key findings of the AoS. The terms of reference for these meetings is attached at **[DB/4/85/28]**. AoS Reference Group meetings took place in 2009 on 24 June, 4 September and 21 October.

38. In light of the comments received from the AoS Reference Group, revisions to the approach were made. The comments and the responses these elicited in the AoS approach were consolidated and set out in Appendix 1 to the final draft Scoping Report **[DB/4/87a/280]**.
39. In developing the approach to the AoS, and in seeking substantial compliance with the principles of SEA, Booz-Temple drew on the experience of a commissioner of the Infrastructure Planning Commission who had specialisation in Sustainability Appraisal and SEA. She was included in the team specifically to address matters of compliance.
40. The process that was followed is summarised in Appendix 1 to the AoS Report:

“3.1.2....the AoS objectives for HS2 were developed initially as a long list, supported by a review of relevant policies, programmes and plans and taking account of the topic areas addressed by other assessment techniques. This list was then refined in the light of known sensitivities and baseline characteristics within the area between London and the West Midlands. The list was then structured in line with the UK Government’s four priority areas for action and their associated strategic indicators for reviewing progress.

3.1.3. A total of 18 key headline sustainability issues emerged from this process. A set of 33 sustainability objectives was developed to support the appraisal of these 18 issues, each supported in turn by one or more evaluation criteria and performance indicators. The objectives were devised as the best possible outcome, unconstrained by the need in practice to balance different objectives, for example economic benefits and costs. This allowed the sustainability performance of the scheme to be appraised independently. This function is distinct from the sustainable design aims (see Section 2.1).



3.1.4 The objectives have evolved through successive stages of consultation with the AoS Reference Group and were refined further through experience in application. For example, community integrity was introduced as a new issue in order to consolidate objectives previously captured in other parts of the AoS framework. The issues and sustainability objectives are summarised in Table 1 below.” [DB/5/96/1318]

### **The detailed assessment process including treatment of alternatives**

41. Having agreed the scope and framework of the AoS, during July 2009 Booz-Temple undertook its implementation. The AoS was fundamental in the development of the scheme options for HS2 and was a key element in the sifting of alternatives, becoming sequentially more comprehensive in its coverage and detail as less favourable options fell away and the level of design detail increased for those that remained. This environmental information was presented as part of the sifting templates, examples of which can be found at [DB/4/86a)/201U].
42. HS2 Ltd’s overall approach to defining options and identifying preferences followed a staged process that saw a long list of over 90 station and route section options gradually reduced through an intermediate list and a short list to a recommended route and stations that provided the best response to meet the objectives of HS2 between London and the West Midlands, together with a number of main alternatives that were considered the next best options.
43. HS2 Ltd’s report *High Speed Rail: London to the West Midlands and Beyond* (“the **December 2009 Report**”) at Chapter 3.2 [DB/1/24/411] sets out the options sifting that HS2 Ltd undertook at both the long list and short list stages, and the criteria used at each stage. (See also Appendix 6 to the AoS Report [DB/5/100/1525], Annex B to *High Speed Rail: Investing in Britain’s Future - Consultation* [CJB/2/11/621] which outlines the main alternative options for HS2 (London-West Midlands) and Figure B2 of that Annex which illustrates the options that were considered in the original long list) [CJB/2/11/628].
44. The mechanisms used to ensure integration of sustainability matters in this process comprised the following elements.
45. **Sustainable design aims** were written that covered managing energy, managing flood risk, protecting environmental resources, protecting historic and

cultural resources, controlling noise and vibration, minimising property impacts, protecting communities, safety and optimising the land resource (see Table 1 in Appendix 1 to the AoS Report [DB/5/96/1318]). These were developed as basic principles of good practice for the design teams to address as part of scheme definition;

46. **Features maps** (see, for example, the AoS Report, Main Report Volume 2 [DB/5/95/1174]) which showed key sustainability features and were prepared to inform the engineering teams of the various sustainability constraints and opportunities along the corridors within which scheme options were developed.
47. **Direct liaison of the AoS team** with the engineering teams which enabled the range of environmental and sustainability matters to be considered throughout the process of option development that informed the alignment and station designs to be considered at sift meetings.
48. **Option templates** were created by HS2 Ltd that allowed for the recording of sustainability information, as well as other option information, at a consistent and easily comparable level of detail. These were used to encapsulate the key issues of each option, show how each option performed against the remit's requirements and provide the evidence upon which the HS2 Programme Board could make decisions about which options to progress. Examples of completed templates are included with this statement [DB/4/86a/201U].
49. **Sift meetings** were convened in stages by HS2 Ltd. The sifting process was designed to enable a staged progression of favoured scheme options. At these sift meetings, options were compared and template information for each option was considered, informed by presentations given by the engineering and AoS teams. The sifting process enabled the HS2 Ltd Programme Board to challenge the designs and thinking and determine route options and stations to be taken forward. Options were narrowed down from the original long list at various stages and a preferred route was recommended to Government alongside a small number of other alternatives. Each sift meeting was followed by an HS2 Ltd Programme Board meeting which ratified the decisions taken and made recommendations for the way forward to the next stage.
50. In addition, on 15 September 2009, towards the end of the option sifting process, an **AoS workshop** was run at which each of the AoS specialists was required to

outline the relative advantages and disadvantages of the remaining options from which a route preference would be derived. By undertaking this at one time, with all specialists in attendance, a clear perspective on overall sustainability performance was established for the remaining options. The conclusions of this workshop were then used to advise HS2 Ltd in their identification of a recommended scheme and a number of main alternatives to it.

51. **Working groups:** Discussions with key government departments, as well as statutory authorities within the AoS Reference Group were instrumental in establishing a wider consensus on the approach used in the AoS. I have referred to the dates and objectives of these meetings at paragraphs 36 to 38 of my statement (see also Terms of Reference at **[DB/4/85/28]**). In addition, other groups were established to help define our approach. For example, a meeting to discuss the appraisal of carbon emissions was held on 24 September 2009 and included individuals from, amongst others, the Climate Change Commission, the DfT, Campaign for Better Transport, Imperial College and Eurostar. An acoustics working group was also established to agree the approach to the appraisal of noise impacts and to provide scrutiny and advice over working methods generally in respect of the appraisal of noise and vibration.
52. A Technical Challenge Group was also established, principally to review elements of the specification for the scheme, but opinions on the approach to the AoS, including the sustainable design aims, were also sought.

### **Reporting the AoS**

53. Comments were sought from the AoS Reference Group on an early draft (or parts thereof) of the AoS report during the second half of 2009. As well as members of the AoS Reference Group, there was consultation with certain regional representatives of the Environment Agency, Natural England and English Heritage to allow for their comment on more localised impacts of the proposals.
54. In addition, completed draft AoS frameworks for the line of route corridors and options for approaches to Birmingham were also submitted to the AoS Reference Group on 20 October 2009 for discussion at the subsequent AoS Reference Group Meeting on 21 October 2009.

55. Following further refinements, an AoS report was issued to the Secretary of State in December 2009. A non-technical summary of the AoS Report formed part of the suite of published material in March 2010 **[DB/4/89/809]** along with the Government Command Paper, *High Speed Rail* **[CJB/1/3/258]**. The non-technical summary described the proposed route at that stage of its development, and how sustainability issues had been considered and incorporated to assist decision making. It also highlighted the key sustainability impacts – both beneficial and adverse - that were envisaged at that stage.
56. On the 17 March 2010 the Secretary of State provided a further remit for HS2 Ltd **[CJB1/4/411]** which recognised the previous work undertaken by HS2 Ltd and provided further guidance to the project for the route between London and the West Midlands. That remit required refinement of the Government’s preferred route taking account of a range of matters, including environmental issues, to prepare for consultation. The remit required that HS2 Ltd:
- “1. In preparation for the formal public consultation in the Autumn, refine aspects of the recommended route, reporting developments and any recommended changes to Government by the end of August. In particular:
- 1.1 Further refine the assessment of, and proposals for, mitigation of impacts of Route 3, especially in respect of noise and other environmental impacts...
- 1.7 Update and develop the Appraisal of Sustainability.”
57. The General Election was announced and following confirmation of HS2 Ltd’s recommended scheme as its preferred scheme, the new Coalition Government in a letter of 11 June 2010 asked HS2 Ltd to “continue the work in items 1.1 to 1.8 in the letter published by the previous Secretary of State [the March 2010 remit] to further develop route 3”<sup>9</sup>, some elements of which I have referred to above:
58. The Secretary of State’s 11 June 2010 letter to HS2 Ltd is presented at **[DB/2/30/1204]**. In response to the revised remit, further work was carried out by HS2 Ltd to refine the proposed route to mitigate environmental impacts.
59. Following the announcement of the route for consultation in December 2010 the AoS Report was finalised principally to reflect the changes in alignment that had been developed in the preceding months, and published as part of the

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<sup>9</sup> “Route 3” is the name of the route HS2 Ltd recommended to Government in 2009.

consultation material on 28 February 2011. I have set out above at paragraph 17 ii) what the AoS Report consisted of for the purpose of consultation.

60. The AoS was refined as required and the AoS Report - Main Report Volume 1, was updated to highlight the changes made to the proposals. These included: a revised alignment of the tunnel between Euston and Old Oak Common; the HS1 link; passive provision to connect the Government's preferred route to Heathrow via a spur arrangement; refinements to the Northolt corridor; green bridges and partial retained cutting between Amersham and Little Missenden; green tunnel in the vicinity of South Heath; revised alignment near Aylesbury/Hartwell House; alignment change at Brackley to avoid local plan aspirations; realignment of the route between Chipping Warden and Southam including a substantial change at Ladbroke; a revised position for the route at Stoneleigh; lower alignment and cut and cover at Burton Green; alignment changes between Hints; and the HS2 connection to the existing railway network (the West Coast Main Line) to the north of Lichfield.

### **Public Consultation**

61. On 26 July 2011 the Secretary of State wrote to HS2 Ltd confirming that the decision whether to proceed would follow after the consultation had been concluded **[DB/6/103b/1956A]**. That decision would be taken in light of that consultation, including advice on the issues raised in consultation regarding the AoS.
62. The public consultation was undertaken between 28 February 2011 and 29 July 2011. As well as the provision of the AoS Report, environmental information was also available at the consultation road show events in the form of information boards and fact sheets, as well as through environmental specialists who were present at these events.
63. The consultation made it clear that, should the proposed line be taken forward, an environmental impact assessment would be carried out as part of the preparations for the process of seeking powers via a hybrid Bill (see page 18 of *High Speed Rail: Investing in Britain's Future – Consultation – February 2011* **[CJB/2/11/500]**).

64. On 10 January 2012, the Secretary of State announced the outcome of the consultation and published the Decisions Document **[CJB/4/18/1384]** along with a number of supporting reports setting out the Government decisions.
65. The AoS Review was published in January 2012 in response to issues raised during consultation relating to the appraisal that had been carried out **[CJB/4/21/1592]**. This records a number of key issues raised during consultation. Broadly speaking, these covered general comments about the approach to environment and sustainability, as well as:
- energy, greenhouse gas emissions, combating climate change and issues of modal shift in relation to the consultation route;
  - air quality;
  - natural and cultural resources, protection and enhancement of the environment in relation to the consultation route;
  - specific impacts to species and habitats;
  - community related route impacts;
  - jobs and regeneration; and
  - monitoring.
66. The consultation resulted in a number of areas being identified for further consideration, and further design and appraisal work was commissioned to examine horizontal and vertical changes to the route alignment to potentially benefit local people and the natural environment; for example movement of the alignment further from the village of Twyford (with reduced noise and visual impacts and reduced impacts on the setting of the listed church); extension of the proposed green tunnel past Burton Green; and a lengthened bored tunnel and reduced cutting near Southam to reduce impacts on local properties. The results (and environmental implications) of this work was published by HS2 Ltd in April 2012 in the *Appraisal of Sustainability - Post Consultation Route Refinements* **[DB/6/106/2047]**.
67. A description of the effects of the changes made to the London to West Midlands route in response to issues raised at consultation was published in January 2012 in the *Summary of effects of HS2 London to West Midlands route refinements* **[DB/3/66/2063]**.

68. In addition, route choice and railway speed considerations were re-examined and conclusions, including sustainability issues, were reported and published in January 2012 in the *Review of HS2 London to West Midlands route selection and speed* [DB/6/105/1978].

### **Response to criticisms made in respect of the SEA Directive**

69. The points I make below should be read on the understanding that the Secretary of State's position is that the Decisions Document is not a "plan or programme" for the purposes of SEA.

#### *Consultation with designated authorities*

70. HS2 Action Alliance argue at paragraph 67 of their Statement of Facts and Grounds that the Secretary of State has acted in breach of Article 7(1), by failing to consult with designated authorities (English Heritage, Natural England and the Environment Agency). Even if, contrary to the Secretary of State's position, the SEA Directive is applicable to the Decisions Document, it is clear from the details I have given in relation to the AoS that these authorities were consulted both in respect of the scoping of the AoS (see paragraphs 36-38 and 51 above) and the AoS Report itself (see paragraph 53 above). It should be noted that as regards the February 2011 consultation, aside from a response from Natural England regarding the need for appropriate assessment under the Habitats Regulations, which I address at paragraphs 118-121, none of these designated authorities made any complaints in relation to the matters addressed in these proceedings, and in particular as regards the absence of consultation.

#### *Transboundary consultations*

71. As regards HS2AA's argument that there has been a failure to undertake transboundary consultations in breach of Article 7(1) of the SEA, transboundary effects refer to environmental effects experienced outside the national boundary where the scheme would be located.

72. These were not addressed explicitly by the AoS because they are deemed to be of negligible consequence. Aside from impacts relating to climate change, which is a global phenomenon and which is addressed by the AoS in terms of carbon emissions, the only possible source of impact would be as a result of HS2 trains travelling to and from the mainland continent via the HS1 link. In London, where

up to three trains per hour in each direction on the proposed HS1 link would pass close to existing residents within an existing rail corridor, no significant effects were predicted. This is reported in the *HS2 London to the West Midlands Appraisal of Sustainability Erratum* published on 15 July 2011 [DB/5/101/1707].

73. The potential for this number of additional trains travelling on the existing HS1 and continental high speed railways, in all probability serving different destinations and so dispersing across different lines, would not result in any significant environmental effects. No other development would be induced and the high speed rail link, HS1, has capacity to accommodate additional train paths as set out in the *Providing Connectivity: HS1 link to HS2* report prepared for High Speed 1 on 20 August 2010 [DB/5/93/1084], the operation of which is permitted through the Channel Tunnel Rail Link Act 1996. It is assumed that similar service enhancements are permitted across the existing Trans European High Speed Rail network and as a consequence the environmental effect of those railways operations has already been accounted for.
74. Since the SEA Regulations (even if they are applicable, which the Secretary of State contends they are not) require consultation with member states likely to experience significant effects, the absence of such effects rendered this consultation unnecessary.

#### *Monitoring environmental effects*

75. The SEA requires the Responsible Authority to monitor the significant environmental effects of the implementation of the plan or programme. Monitoring is addressed in Section 9 of the AoS Report [CJB/2/12/788] and in Section 9 of the AoS Review [CJB/4/21/1622].
76. The Decisions Document has not resulted in any physical interventions in the environment such that predicted environmental effects are manifest. The AoS provided a high level appraisal devised in large part to support the development of scheme options and route refinement. This has enabled the development of proposals to mitigate significant effects on people and the environment, which are now incorporated within the scheme design; for example tunnels (including green tunnels) and locating the lines further from where people live. Further, more specific mitigation proposals will be considered in response to the EIA, our



engagement with local people, authorities and interest groups as the detail of scheme design is developed further.

77. It is important to recognise the AoS and EIA as mutually supportive techniques for an overarching environmental assessment process that commenced at the start of the project and that will continue through hybrid Bill submission, Parliamentary committees, detailed scheme design, construction management and post-scheme management. It is important to remember that environmental assessment and mitigation is inherent in the way that HS2 has been conceived and will be developed and implemented.
78. Ongoing EIA is instrumental in determining the significant effects of a project, in providing a better understanding of the impacts already outlined in the AoS Report and, in particular, establishing where further mitigation is required and what form it might take. As well as serving this crucial function of reviewing those effects already described in the AoS Report, the EIA will also monitor any other changes in the baseline environment and planning regime which may affect the context within which impacts are realised. This is all set out in Section 9 to the AoS Report **[CJB/2/12/788]**.
79. The ES that records the findings of the EIA will report residual, post-mitigation and significant effects. A copy of the ES, in relation to the works to be authorised by the Bill, will be deposited before Parliament.

*Compliance with Article 5 and Annex I of the SEA Directive*

80. HS2AA argue at paragraph 70 of their Statement of Facts and Grounds that the AoS and the AoS Review "fall far short of what is required from an environmental report in accordance with Art. 5 and Annex I of the SEA Directive". The criticisms set out here derive from a detailed review of compliance with the SEA Directive procured by HS2AA from Dr William Sheate **[see pages 21 to 44 of HS2AA's Claim Documentation]**. A full response to this review prepared by Booz-Temple is included at **[DB/7/109/2387]**.
81. In particular, at paragraph 70(1) of their Statement of Facts and Grounds, HS2AA argue that as the Decisions Document is a "plan or programme" for the entire network, including the "Y" to Leeds and Manchester and the Heathrow Spur, the AoS and the AoS Review are flawed in that they assess only Phase 1.

82. The focus of the AoS reflects the original steer from the DfT, set out in *Britain's Transport Infrastructure: High Speed Two* [DB/1/20/306]. HS2 Ltd were asked by Government to "develop a proposal for an entirely new line between London and the West Midlands [and in so doing] to assess the likely environmental impacts and business case of different routes in enough detail to enable the options to be narrowed down". The remit for HS2 Ltd set out in the aforementioned report was to consider and provide advice to the Government on various matters related to the London to West Midlands scheme.
83. In response, the chair of HS2 Ltd wrote on 13 February 2009 to the Secretary of State outlining his views on the objectives and remit [DB/4/82/1]. It was in this that further consideration was proposed to work beyond the West Midlands, but only insofar as this might influence the design and composition of the London to West Midlands route, the thinking being that it would be necessary for any scheme serving London to the West Midlands to be able to effectively link with any future northward extension. The work to look at these wider network issues was proposed to be strategic in nature and not to involve major work on longer term options (i.e. for the wider network).
84. On 9 March 2009, the Secretary of State endorsed the broad objectives and remit of HS2 Ltd. His letter refers largely to the London to West Midlands element of the work [DB/4/83/7]. He also asked for advice "on potential development of a high speed line beyond the West Midlands, at the level of broad corridors."
85. The consideration of HS2 as comprising Phase 1 between London and West Midlands and Phase 2 connecting Phase 1 with Manchester and Leeds is set out in the February 2011 consultation document. However, no detail had been developed at this stage on Phase 2, which comprised only provisional termini within Leeds and Manchester, stations at the East Midlands and South Yorkshire, connections to the classic network and a conceptual 'Y' route referring to the requirement for separate rail lines to Manchester and Leeds respectively. No level of appraisal commensurate with the AoS for Phase 1 was therefore possible or appropriate at that stage.
86. In accordance with the programme of future work set out in the decision document, HS2 Ltd has continued work developing Phase 2 options, with a view to publication in due course.

87. HS2AA also argue that there has been no assessment of transboundary and/or cumulative effects (paragraph 70(2) of their Statement of Facts and Grounds). I have dealt with transboundary effects at paragraphs 71-74. As regards cumulative effects, the work for Phase 2 is now at a stage where a level of detail has been developed that is comparable with that undertaken for Phase 1. The AoS report for Phase 2 will in due course address cumulative effects with Phase 1.
88. HS2AA argue thirdly that the Secretary of State failed to assess alternatives in line with Annex I(h) of the SEA Directive and that contrary to Article 5(1) of the SEA Directive, the AoS and the report entitled *High Speed Rail Strategic Alternatives Study* [CJB/3/13/884] failed to assess reasonable alternatives taking into account the objectives and geographical scope of the plan or programme.
89. As set out above I have described the process HS2 Ltd went through to consider options, how those were sifted and reduced in number and how that lead to a preferred route being defined. HS2 Ltd's consideration of alternatives has been comprehensive and our approach and what was reported in the AoS is substantively compliant with the requirements of SEA in this respect (even if it were applicable, which the Secretary of State contends it is not). Notwithstanding that, and as stated above, we also returned to and challenged our approach following consultation and reported our findings prior to the Government's announcement in January 2012, the results of which, as I have demonstrated earlier, were subsequently published.
90. In addition to scheme alternatives, consideration was also given to strategic alternatives; in other words, options for potentially addressing transport and economic needs through other mechanisms or projects not involving a new high speed railway. This work was commissioned by the DfT from the design and engineering consultancy, Atkins, and is reported separately [DB/1/25/624]. To ensure that the appraisal of strategic alternatives could apply a similar and consistent method to that used for HS2, HS2 Ltd and its consultants initially briefed Atkins at the outset of their work on the AoS approach. The report *High Speed 2 Strategic Alternatives Study, Strategic Outline Case* was published in March 2010 [DB/1/26/653]. It includes in Section 4.2, a description of the methodology applied. It then addresses, in Sections 4.4 to 4.7, the sustainability performance of the strategic alternatives using the same four sustainable

development priorities from *Securing the Future* that are used by the AoS of HS2. The AoS frameworks that detail the findings are presented in Appendix B and C of the Atkins Report **[DB/1/26/735-766]**.

91. I have already dealt with HS2AA's criticism concerning monitoring at paragraphs 75-79 above.

*Heathrow Hub via Heathrow as a reasonable alternative*

92. At paragraph 70 of their Statement of Facts and Grounds, Heathrow Hub Ltd argue that there has been a failure to assess the route which they proposed as a reasonable alternative for the purpose of Article 5(1) and Annex 1(h) to the SEA Directive.
93. As I have set out in paragraph 12 above this Directive is not applicable to the decisions under challenge as these do not themselves constitute a “plan or programme” for the purposes of the SEA. Notwithstanding this, a direct route via Heathrow was considered amongst a range of options. Spur, loop and through configurations were all considered to connect HS2 with Heathrow Airport as well as an interchange with Crossrail at Old Oak Common. For ease of reference our reports and this statement refers to the Heathrow Hub or Arup Hub station as Iver.
94. HS2 Ltd’s work through 2009 examined the demand for such a link. That work was based on its remit and is described in HS2 Ltd’s December 2009 Report at Chapter 3 **[DB/1/24/407]**.
95. At the time our understanding of the Arup/Heathrow Hub proposition for Iver consisted of a notional route for HS2 north of Heathrow (possibly connected via the Chiltern Line near High Wycombe) and two interface options into London in tunnel via the GWML corridor or a tunnel/surface route via the Northolt Chiltern/Central Line Corridor. These were subsequently reported upon in the *Heathrow Hub: The UK’s Global Gateway* report, Arup Submission to HS2 Ltd in December 2009 which was specifically referred to in paragraph 2.2.15 of HS2 Ltd’s December 2009 Report to Government **[DB/1/24/390]**. In Arup’s report they stated:-

*“We also expect that other potential routes identified by HS2 Ltd will be compatible with the Hub proposition. Our illustrative routes would be*

*designed to interoperable European standards.” [see 1217 of Heathrow Hub’s claim documentation, Volume 1 (Part 3)]*

96. It is plain that we considered the case for a Heathrow Station with a through route at Iver and that option was appropriately considered at that stage as a reasonable alternative. At each stage we followed appropriate and consistent appraisal practices in order to determine our conclusions. We concluded that the best way of serving Heathrow directly was by a loop off the main route, rather than routing the HS2 line via Heathrow, with the key issue being the impact that different solutions would have on capacity and journey times. We noted that a station at Iver would require a rapid Advanced People Mover link to the airport, involving additional cost, and would present difficulties for the Colne Valley flood plain. Overall our recommendation in the December 2009 report to Government concluded that initially Old Oak Common was to be preferred, with a loop to Heathrow being a possible subsequent addition, and our arguments were set out.
97. Following our report to Government the Secretary of State commissioned Lord Mawhinney to re-evaluate the demand for a direct connection to Heathrow. That work was subsequently pursued by the Secretary of State following the General Election and HS2 Ltd carried out further appraisal work in response to those findings. That work is set out in the *High Speed Rail London to the West Midlands and Beyond Supplementary Report* presented to Government in September 2010 [DB/2/32/1029].
98. As part of that work, and amongst other options, HS2 Ltd prepared a through route arrangement via Iver Station, known as Route 1.5, that enabled the onward connection to HS2 south of Brackley via the High Wycombe connecting route alluded to in Arup’s report to be defined.
99. I draw on this subsequent work to answer Heathrow Hub Ltd’s contention at paragraph 71 of their Statement of Facts and Grounds that there has been a failure to assess the spur to Heathrow within the HS2 proposals in their own right.
100. We concluded that a through route would provide the potential for more frequent services to Heathrow and that loop and spur options would be better for London bound passengers, who would be the vast majority of HS2 passengers. For a

station at Iver, the considerations between a through route and a loop appeared evenly balanced. For an on airport station, the balance favoured a loop or spur. Loop or spur solutions would offer greater potential for phased implementation of a high speed network as demand developed.

101. Were it to be decided for strategic reasons to link an on airport station at Heathrow to HS2 from the outset, we recommended that the best option would be to minimise the impacts on capacity and journey times into Central London by running additional services from Heathrow along a spur and splitting the train on route to serve a number of destinations to the north. This could be done on day one without displacement of other services on HS2. With a wider high speed network operating at the capacity of the London to Birmingham trunk, operation of a spur would require displacing some services to and from Central London. This could suggest a phased approach to linking Heathrow into HS2, with a link being provided initially via a spur from the main route, but extended into a loop configuration as the network develops.

102. Amongst the options examined at that stage spurs were considered and a spur option via Iver was considered and reported to Government.

103. A station at Old Oak Common would improve access opportunities into London and relieve pressure at Euston with regards to passenger dispersal. This would not be achieved with a Heathrow station alone. We considered that a case remained for an interchange at Old Oak Common in addition to an on airport Heathrow station. The case for Old Oak Common in addition to a station at Iver was considered to be weaker. A through route was not considered any further.

104. On 20 December 2010 the Secretary of State made a statement before Parliament setting out the Government's proposed strategy for high speed rail and the detailed proposals for the London to West Midlands Route that formed part of the public consultation undertaken in 2011 **[DB/2/40/1148]**.

105. The HS2 Iver Station Alternative, a spur arrangement, was considered a main alternative and was included in Chapter 6.5 of Appendix 6 - March 2010 Preferred Scheme and Main Alternatives, of the AoS Report **[DB/5/100/1620]**.

106. I turn to Heathrow Hub Ltd's contention that they were deprived of the opportunity to participate in the decision making process in breach of Article 6(2) of the SEA Directive. In my view this has no merit.

107. Notwithstanding the earlier report provided by Arup Heathrow Hub Ltd has not brought forward a convincing case to demonstrate the merits of their proposals based upon environmental grounds, through the public consultation on the strategy for high speed rail and the preferred route undertaken in 2011.

108. Although Heathrow Hub Ltd assert that their through route would perform better in respect of the environment, as I set out above, they have not defined their through route nor was a route forthcoming in their response to consultation. No persuasive evidence or analysis has been forthcoming and no attempt has been made to justify or systematically undertake sustainability appraisal to demonstrate their case.

109. The Habitats Screening Report at 6.1.8 of Appendix 4 – Associated Assessment Reports of the AoS Report indicates that there are unlikely to be any permanent indirect impacts for stations at Heathrow upon the South West London Waterbodies Special Protection Area (“SPA”) however, it also goes on to say that “There is the potential for flood risk, particularly associated with the Iver station option, to affect habitat associated with the SPA and supporting qualifying species of wildfowl, but not the SPA directly” [CJB/2/12/835]. It appears from our consultants analysis contained within the Habitats Screening Report that there are some greater risks to the environment as a result of an Iver station than has been put forward by the Claimant.

110. As I have described above, since December 2009 when HS2 Ltd first received Arup’s report neither Arup, Heathrow Hub Ltd nor HS2 Ltd have been able to demonstrate a convincing case to support a hub arrangement at Iver either on a through route or a spur. It is not the case that Heathrow Hub Ltd have been deprived of the opportunity to participate, that is evident by the work undertaken to date, it is simply that there is no high speed rail case for such a facility.

**Overview of work undertaken in respect of habitats**

111. Contrary to the submissions made by the Claimants, HS2 Ltd's position is that the Decisions Document is not a "plan or project" for the purposes of Habitats Directive. I set out below an overview of the work undertaken to date in respect of Habitats. I also affirm the factual position in respect of the same set out in the detailed grounds of defence at paragraphs 124 to 139.

112. As part of the AoS an HRA screening report was undertaken on proposed routes from London to the West Midlands, to consider whether in due course there was a need for an Appropriate Assessment under Regulation 61 of the Habitats Regulations. This formed Appendix 4.1 – Associated Assessment Reports of the AoS Report **[CJB/2/12/797]**. All Natura 2000 sites were considered within 10km of routes and commentary was provided in respect of Heathrow connections that were considered at the time where such sites might be affected.
113. The proposed route presented for consultation in February 2011 does not cross any European Sites, that is to say, sites that are protected by the Habitats Regulations. Having considered the wider implications of the proposed route on all European Sites within 10km, the Habitats Regulations Screening Report concluded that it was not likely to cause significant effects on any of the sites.
114. However, for the South West London Waterbodies SPA and Ramsar site, which is 12km from the proposed route, although the effects upon this site were considered unlikely to be significant, the Screening Report indicated that further work would be required prior to completing the screening process to more fully understand the impact on waterfowl, since they may form part of the same populations that also use the SPA/Ramsar site. This would inform a future decision on whether an appropriate assessment was required for this site.
115. The Decisions Document at 6.3.5 says “There is a potential impact on a European designated site; Broadwater Lake”. Broadwater Lake is not a European designated site. The correct position is set out in the AoS Review at 6.4.1, namely that “the consultation route would cross the Mid-Colne Valley SSSI on a viaduct and would be around 400m from Broadwater Lake, which is known to support internationally important numbers of over-wintering birds. It is possible that certain species may also use the South West London Waterbodies Special Protection Area (SPA), around eight miles (13km) further south **[CJB/4/21/1612]**.”
116. The uncertainty of effects was however identified in the screening report for the South West London Waterbodies SPA and Ramsar site and was based on the potential impact on the two SPA qualifying bird species, gadwall and shoveler. These two wildfowl species winter in important numbers within the SPA, and also winter in the Colne Valley Gravel Pits (part of the Mid Colne Valley SSSI, which



is not itself a European designated site), which the proposed route would cross on viaduct.

117. Since the Secretary of State took her decision to proceed with HS2 in January 2012, winter bird surveys were undertaken in February and March 2012. These have helped gain more information on the use of the Colne Valley Gravel Pits by gadwall and shoveler in the vicinity of the proposed crossing. The survey included all of the seven lakes that are nearest to the route. Existing information on waterfowl using the gravel pits was also reviewed.
118. Surveys and data review in a report sent to Natural England in June 2012 **[DB/7/111/2426]** concluded that although some of the lakes in the Colne Valley hold large numbers of gadwall and shoveler, the lakes directly affected by land-take by the proposed route are of low importance for these species. However, the Broadwater Lake, which is 100m from the route at its nearest point, is of higher importance for both species.
119. Observations indicate that waterfowl using Broadwater Lake are able to habituate to the existing high levels of disturbance, which include sailing, fishing, and frequent low overflying by light aircraft and helicopters. Broadwater Lake is a large lake with an area of 80 hectares, and has numerous islands and sheltered bays, which is why it can absorb high levels of disturbance.
120. The wintering bird survey report concludes that the impact of construction and operation of the proposed route would have negligible impact on gadwall and shoveler in the Colne Valley Gravel Pits, and therefore that there is no likely significant effect on the South West London Waterbodies SPA/Ramsar site. This report **[DB/7/111/2426]** was submitted to Natural England for their comments, prior to completing the screening process.
121. Natural England's response in a letter dated 27 June 2012 and attached at **[DB/7/112/2451]** confirmed its agreement that the operation of HS2 Phase 1 is not likely to have a significant effect on the SPA/Ramsar site, but requested further details of construction methods and mitigation to be included in the screening report prior to ruling out the need for appropriate assessment. This action is being taken forward by HS2 Ltd and we expect to resolve the remaining points made by Natural England through the early development stages of the EIA towards the end of 2012. The development of these construction details is

underway as part of the development of the route and a Code of Construction Practice (“CoCP”) for Phase 1 of the project. Those elements of the CoCP that are pertinent to the works across the Colne Valley will be included in an update to the HRA Screening Report in due course, in order to satisfy the requirements of Natural England in this regard.

122. On a wider point, as well as considering the impact on European designated sites, we are aware that the proposed route may affect a number of particular species or groups of species. This includes Bechstein’s bat, which are listed on Annex IV of the Habitats Directive and are therefore subject to special protection measures under the Habitats Regulations.

123. As noted in the AoS Report, Main Report Volume 1 at paragraph 4.7 the AoS is a high level appraisal devised in large part to support the development of scheme options [CJB/2/12/693]. It was always conceived as a first stage in an ongoing process for assessing environmental and wider sustainability impacts, and potential impacts identified by the AoS should be viewed as provisional only. As we have made clear during consultation, EIA would be the next stage, and this is now being undertaken in support of the hybrid Bill for Phase 1 of HS2. The scope of the EIA includes detailed habitat and species surveys along the route with a view to locating the presence of a wide range of different species and groups, including bats. Through the EIA process we will develop mitigation measures in consultation with Natural England to ensure that their favourable conservation status is maintained.

124. Work undertaken to date in this regard is detailed further below.

#### **Work undertaken on environmental issues since January 2012**

125. Early consultation has taken place with relevant authorities on the Phase 1 EIA SMR, the responses for which are being analysed at the time of writing. This SMR will set the framework of the work required to produce an ES to accompany the hybrid Bill to be presented to Parliament.

126. The draft HS2 London to West Midlands SMR was issued on 4 April 2012 [DB/6/107/2095]. This set out the intended approach to undertaking an ES to enable comment and to be informed by consultees.

127. The SMR's main aim is to identify the key issues to be addressed and to focus the ES on the most likely significant effects. The draft SMR formed the basis for consultation, providing a brief description of the scheme and set out the environmental issues to be considered by the ES. It also outlines the approach to the consideration of significant effects and their mitigation.
128. This draft SMR consultation closed on 30 May 2012. Those consulted are listed at [DB/6/107/2095]. Over 160 responses have been received and these are being considered by specialist environmental consultants. The SMR is scheduled to be published in summer 2012 together with a consultation summary report which will provide an analysis of responses to the consultation and will form the basis of the EIA.
129. The ES will contain the information referred to in Part II of Schedule 4 to the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (S.I. 1999, No. 1824), and as much of the information referred to in Part I of that Schedule as is reasonably required to assess the environmental effect of the works and as the promoters, in this case the Department for Transport and its agent HS2 Ltd, can reasonably be expected to compile. In particular, the ES will include consideration of indirect and cumulative effects.
130. The process of developing the EIA and mitigation will include a plan of engagement which is now in progress; a range of forums have been created (see further below) and further consultation is planned for Spring 2013 prior to the deposit of the hybrid Bill.
131. A number of different forums have been established to facilitate discussion with local authorities and local people. These operate along the length of the HS2 route between London and the West Midlands.
132. In addition to the community and planning forum meetings along the line of route, an Environmental Forum is being established that will involve national representatives of government departments and statutory agencies. The Environmental Forum replaces the AoS Reference Group and will be focussed on the next stage of the project's development. It is intended to meet on a quarterly basis and we are planning the first meeting of the group in mid September 2012. The forum will assist the development of environmental policy for the next stage of planning HS2.

133. The Secretary of State, DfT and HS2 Ltd recently met representatives from a range of environmental Non-Governmental Organisations which included organisations such as the National Trust and others who are signatories to the Right Lines Charter. Proposals are currently being considered to strengthen engagement with these groups.

### **Equalities Impact Assessment**

134. As acknowledged by the Claimants, we have provided an EqIA screening report in Appendix 4.2 to the AoS Report [**CJB/2/12/846**]. The function of this report is clearly stated as providing an initial appraisal of the extent to which groups vulnerable to discrimination and social exclusion may be differentially affected by HS2 proposals between London and the West Midlands. The screening stage is undertaken to determine whether, and at what stage, a full EqIA is likely to be required for the Government's proposed route, either as a whole or at any specific locations.

135. As I understand it the duty in section of the 149 Equality Act 2010 is to have regard to equality impacts and not to prepare an EqIA. The EqIA does not represent the only consideration of such impacts. The AoS addressed equality impacts in the context of socio-economic impacts. The following paragraphs provide some examples:

#### *AoS Report - Main Report Volume 1*

- Paragraphs 7.7.3 to 7.7.5 (identifying health and equality issues around Euston and elsewhere) [**CJB/2/12/733**];
- Paragraphs 8.11 to 8.11.11 (identifying impacts on community integrity and noting proportions of those affected as having protected characteristics) [**CJB/2/12/761**]; and
- Paragraphs 8.13.10 to 8.13.14 (identifying impacts on health and well-being) [**CJB/2/12/767**].

#### *AoS Report - Appendix 3 – Socio-economic report*

- Paragraphs 3.1 to 3.1.12 (summary of findings) [**DB/5/98/1394**];

- Paragraphs 4.2.1 to 4.3.2 (identifying the specific socio-economic characteristics of the population around Euston) **[DB/5/98/1405]**; and
- Paragraphs 5.2.5 to 5.2.11(explaining the socio-economic impacts of the scheme including impacts on the population around Euston) **[DB/5/98/1433]**.

136. The EqlA states, in 2.8.2, that where the need for further assessment work is required, the ongoing equality assessment programme would include policy review, impacts mitigation, equality consultation, equality design specifications and area-specific case studies **[CJB/2/12/857]**. The screening report recommends that further more detailed EqlA is undertaken with particular focus on the Euston area in London and the Washwood Heath area in Birmingham.

137. In paragraphs 3.4.3 it states: “[At Euston] it is considered highly likely that the residential and commercial demolitions and loss of public open space could disproportionately affect the Asian population as well as those with low socio-economic status. Preparation of a full EqlA could help to determine the scale of impact on the surrounding population and is therefore recommended” **[CJB/2/12/863]**.

138. The report concludes at paragraphs 4.1.1 and 4.1.2 and states:

“A key recommendation of this screening report is that a more detailed analysis should be carried out across the whole scheme to identify potential for impacts on priority equality groups. To date, however, it has been possible to establish areas within which impacts on priority equality groups are potentially more likely. This should help to focus the scope for any further assessment to ensure that resources are allocated appropriately and the approach defined correctly.

Work to develop the full EqlA would take into account impacts across the route as a whole, but particular attention would need to be focused on the two geographical locations that the screening process identified namely:

- Euston; and
- Washwood Heath and surrounds.” **[CJB/2/12/864]**

139. HS2 Ltd and the Department for Transport recognise the impact upon residential properties and commercial facilities at Euston but also recognise the future potential for re-development in this location that could follow on from HS2. HS2 Ltd are supporting the development of an Opportunity Area Planning Framework ("**OAPF**") that is being prepared by the London Borough of Camden in conjunction with the Greater London Authority and Transport for London.
140. The document will set a planning policy framework for the Euston area and within this it is anticipated that it will include policies that will facilitate the mitigation of the effects of the HS2 works at Euston, in particular in relation to the loss of housing and open space.
141. The OAPF will be published in late 2013 with two stages of public consultation, one in autumn 2012 and the other in spring 2013.
142. The OAPF itself will be subject to a sustainability appraisal which will, amongst other matters, consider the potential effects of the proposed planning strategy on the community. An EqIA will also be undertaken on the emerging OAPF.
143. In parallel to this work HS2 Ltd's Land and Property Team are also discussing possible site specific matters relating to the re-provision of housing lost as a result of construction. This work will, where appropriate, feed into the OAPF work.
144. The project is committed to undertake an EqIA to demonstrate how equality issues are considered in decisions it takes and further work is proposed in parallel to the EIA. The early work example that I have outlined above for Euston demonstrates the importance and commitment HS2 Ltd, the Department for Transport and Government places on such matters in discharging its duties under the Equalities Act and are acting with due regard appropriate to the circumstances.

I believe that the facts and matters set out above are true.

Signed

**PETER MILLER**

Date:

6<sup>th</sup> August 2012