

# deighton pierce glynn

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Mr J Davies  
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Cathays Park  
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CF10 3NQ

Dear Sirs

## **The Friends of The Earth v The Welsh Government**

Thank you for your letter received yesterday. We note what you say regarding there being insufficient time for the Welsh Ministers to consider the responses to the consultation exercise and we understand your concern (and duty) not to pre-empt that consideration. Our clients are also conscious of the assurance in the letter of 17 December 2013 that the Blue Route will be considered by the Welsh Ministers as one of the alternatives to the draft plan. Crucially, we note your observation that our claim would be premature because no decision has been taken not to conduct a further consultation exercise. With these points in mind our clients have taken the view that it is preferable to allow the Welsh Ministers for now to proceed with an open mind and to avoid the need for litigation at this stage. We recognize that as with any consultation exercise it remains open to the Defendant to undertake further consultation hereafter and to correct the flaws in this exercise. That is what our clients wish to achieve. Notwithstanding the work which has gone into getting this claim ready for issue today, we are therefore instructed to assent to your suggestion that the proper course is not to issue a claim at this time.

We do consider that prior to adopting the proposed draft plan it is now legally necessary for the Welsh Government to consider option(s) which do not involve building a road across the Gwent Levels on an equal footing to the options for roads across the Gwent Levels and we cannot for our part see how that can be achieved lawfully without further consultation involving a proper, fair and equal comparison of alternatives.

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It remains our clients' intention to challenge the draft plan if adopted without remediating the deficiencies in the process. With that in mind, and in view of your claimed difficulty in understanding some of the points in our pre-action letter, we adumbrate the concerns as to the legal adequacy of this consultation exercise which we raised by our pre-action letter of 4 December 2013. We would be grateful if in the circumstances these could be drawn to the attention of the Welsh Ministers as part of their consideration of the consultation responses.

Our clients have made specific responses to the consultation on matters concerning the merits. Our concern is different- it is with the adequacy and lawfulness of the Defendant's consultation exercise undertaken purportedly pursuant to the SEA Directive in the period 23 September 2013 to 16 December 2013 concerning a draft plan published on 23 September 2013 to build a new route for the M4 across various Sites of Special Scientific Interest and a Special Area of Conservation known as "the Gwent Levels" South of Newport.

## **FACTS**

1. The following is our understanding of the facts. If any aspect of it is incomplete or incorrect, we would be grateful for clarification in due course.
2. The consultation exercise recently completed ran between 23 September 2013 and 16 December 2013 concerning a proposed new route for the M4 to the south of Newport across the Gwent Levels, an area comprising several sites of special scientific interest and a Special Area of Conservation subject to European level Habitats protection by reason of housing endangered species. The scheme is hoped to resolve problems identified with the capacity, resilience and sustainability of the existing M4 between junctions 24 and 28 predominantly in rush hour.
3. There is a history of proposals relating to this section of the M4 extending back more than twenty years. In 1989 a report identified the need to improve the area around Newport and an M4 Relief Road project was first devised in 1991, and a preferred route published in 1995 and amended in 1997. In 2004 the Minister for Economic Development and Transport announced proposals to widen the M4 north of Cardiff and to develop a new M4 south of Newport<sup>1</sup>.
4. In 2006 a report had recommended that both the New M4 Motorway (also known as the M4 relief road) and a package of "Corridor Efficiency Measures" be taken forward to "stage 2 appraisal for detailed and quantitative assessment". A preferred

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<sup>1</sup> *SEA Environment Report*, page 13

route was identified and a notice called a TR111 Notice was published bringing statutory blight rules into play<sup>2</sup>.

5. However, in July 2009 the Welsh Assembly Government abandoned proposals for an M4 Relief Road project on the grounds that it was unaffordable. In its place it embarked on the M4 Corridor Enhancement Measures ("M4 CEM") programme<sup>3</sup> including, for example, measures to ease congestion around the roundabout at junction 24. In so doing it acknowledged that a range of measures to address safety and capacity issues on the M4 were urgently required<sup>4</sup>.
6. Consultation on these measures is said to have commenced in September 2010. A document dated November 2011 *M4 Corridor Enhancement Measures Alternatives Considered* examined a long list of measures outside the CEM programme; discarded 21 possibilities and selected 15 that could be delivered outside the CEM programme (ranging from car sharing schemes to closure of junction 27).
7. A formal M4 CEM public consultation was held between March and July 2012. This consultation recognised that since July 2009 the M4 relief road or New M4 Motorway had not been seen as affordable. A consultation was therefore held in March 2012 on the M4 CEM options with three aims:
  - i. Make it easier and safer for people to access their homes, workplaces and services by walking, cycling, public transport or road
  - ii. Deliver a more efficient and sustainable transport network supporting and encouraging long-term prosperity
  - iii. To produce positive effects overall on people and the environment<sup>5</sup>
8. Four options were identified. Option A was a package of measures including a high quality road to the south of Newport (not a motorway). Options B and C concerned packages with junction improvements to the existing M4 rather than a new road south of Newport and option D involved widening the existing M4 including an additional tunnel at Brynglas.

#### **November 2012 SEA Environment Report**

9. In November 2012 an environmental assessment report relating to these four options was produced for consultation which purported to be in accordance with the

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<sup>2</sup> *M4 Corridor Around Newport Consideration of the options in relation to the requirements of the Habitats Regulations* page 15

<sup>3</sup> See *M4 Corridor Enhancement Measures (M4 CEM) WelTAG Appraisal Report Stage (Strategy Level)* page 6

<sup>4</sup> *M4 Corridor Around Newport Consideration of the options in relation to the requirements of the Habitats Regulations* page 16

<sup>5</sup> See *M4 Corridor Enhancement Measures (M4 CEM) Easing the Flow Consultation Document 6<sup>th</sup> March 2012* page 6

Strategic Environmental Assessment Directive. This document set out at para 5.6 the following:

### **5.6 Alternatives**

*One Wales: Connecting the Nation - The Wales Transport Strategy (WTS)* was adopted in 2008 and aims to deliver the One Wales commitments that are related to transport. The WTS is a document for which an SEA has already been undertaken.

In turn, the NTP was developed as a plan designed specifically to take forward the delivery of the five strategic priorities of the WTS in all areas of transport over which the Welsh Government has responsibility. It was developed on the basis of the commitments and priorities in existing programmes and has taken into account the high level strategy from the WTS to integrate road and rail with other transport modes.

The NTP has also undergone an SEA. The M4 CEM Programme has been designed to specifically take forward the delivery of elements of the NTP, including EWS15 *“Deliver a package of measures designed to improve the efficiency of the M4 in south-east Wales, including public transport enhancements, making the best possible use of the motorway and improving the resilience of the network.”*

Given this planning hierarchy, within which the M4 CEM Programme has been developed, there has been no scope for consideration of alternative high level strategies within the M4 CEM Programme. Similarly, a “do nothing” scenario has not been considered as the Welsh Government is committed to delivering an M4 CEM package of measures to improve the motorway around Newport. Instead, the M4 CEM development process has considered the most effective ways of achieving the NTP strategic priorities by considering a variety of solutions for tackling the transport-related issues that have been identified.

10. This document identified (table at page 80) that option A (including a high quality road south of Newport) would have major negative effects on biodiversity, soil, water, material assets, cultural heritage and landscape and townscape which were likely to affect the whole, or large part of the M4 CEM Programme area and on nationally or internationally important assets which would be likely to be direct, irreversible and permanent.

### ***Pre-action letters January 2013***

11. Following a letter before action from FoE, the Gwent Wildlife Trust and CALM in or around January 2013 challenging the November 2012 SEA document, the Welsh Government responded, resiling from the claim within the environmental report that it was pursuant to the SEA Directive, stating that the challenge was premature, and that SEA would be carried out once a draft plan had been formulated. It stated that thereafter “the Welsh Ministers would determine whether or not to adopt any plan”. The letter also stated that

“The Welsh Ministers are in the process of preparing a draft plan. They have in fact consulted upon possible options that could be included in that plan. They have in fact carried out an assessment of each of those options. On the particular facts of this case, they have in fact published their environmental assessment of those options and invited comments”

### ***March 2013 WelTAG Appraisal***

12. The Strategy Level WelTAG appraisal of March 2013<sup>6</sup> sets out possible packages of measures encompassing (i) public transport improvements; (ii) four options for highway improvements (one of which is a high quality road south of Newport- but by definition not the M4 Relief Road) and (iii) “common measures” encompassing “additional network improvements, demand management, alternative modes and smarter sustainable choices”<sup>7</sup>. This appears to have built on the options identified in the consultation exercise the previous year. It stated (noting the problems with the purported SEA) that the Welsh Ministers would now need to decide whether to formulate a draft plan and, if so, which options to include within the draft plan. An environment report would be prepared upon announcement of any draft plan.
13. The WelTAG report of March 2013 was produced against the background of the consultation exercise the previous year. The four packages of measures considered reflected the four options in that consultation and in the SEA report. None of the four options considered involved the construction of the New M4 Motorway, although one- Option A- involved construction of a high quality road south of Newport. The Report concluded that Option A offered the best value for money and provided the most relief of the existing M4 (page 63) notwithstanding the environmental impacts on the Gwent Levels. It was recommended that option A be taken forward for further appraisal alongside public transport enhancement and common measures (page 67). The other options including packages focused on junction improvements (options B and C) and widening the existing M4 (option D) were not recommended. The report also stated that studies did not suggest that public transport improvements would result in significant reductions to M4 traffic congestion on their own.

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<sup>6</sup> WelTAG is guidance published by the Welsh Assembly government in 2008 to be applied to all transport strategies to “allow the comparison of schemes on a like-for-like basis so that decision-makers can make funding decisions”. Stage 1 is intended to screen and test options for testing against Transport Planning Objectives.

<sup>7</sup> page 8 of the above

### **24 June 2013 WeITAG appraisal**

14. A further (third) Stage 1 WeITAG appraisal was then published three months later on 24<sup>th</sup> June 2013 which suggested that Option A as previously identified was now “shortlisted” following the previous WeITAG report. It also for the first time in the consultation process over the previous three-years (from September 2010) looked again at motorway options south of Newport. The report concluded that a new section of 3-lane motorway to the South of Newport following the protected TR111 route in addition to complementary work would best achieve the goals and address the problems of the M4 corridor and should be progressed [4-513]. It recommended that the “Red route” advanced three months earlier as the recommended “option A” from the M4 CEM consultation should not be taken forward in further appraisal (page 73). This new report recommended instead that the Black route- i.e. the safeguarded route should be advanced. It said that the Purple Route represented “a new line of investigation” and therefore had more “delivery risks” associated with it. The report also recommended continued consideration being given to public transport and complementary measures. No further public consultation exercise of a kind equivalent to the three-month consultation which preceded the March 2013 report was undertaken before this change in direction was recommended.
15. The process which led to the publication of this ‘U-turn’ from the process of finding non-motorway solutions over the previous two-and-a-half years is not known, but it appears to have emanated from behind-the-scenes negotiations with the UK government between March and June 2013 because two days after the WeITAG report was published, on 26 June 2013, Edwina Hart AM, Minister for Economy Science and Transport published a written statement saying:

“Addressing the capacity and resilience issues on the M4 around Newport is the top transport challenge that we face in ensuring that Wales has an effective economic infrastructure which improves our competitiveness and access to jobs and services.

As a result of ongoing discussions with the UK Government, there has been a significant change in the assessment of the affordability of a major enhancement of the M4.

Building on the extensive developments and consultation work undertaken on the M4 Corridor Enhancement Measures, we will be consulting formally over the summer with Natural Resources Wales in order to go out to public consultation this September with a finalised draft Plan and Strategic Environmental Assessment Report. If implemented, the draft plan would lead to a motorway being built south of Newport”

16. This appears to be the first moment (in conjunction with publication of the WelTAG report) when the idea of a motorway south of Newport was publicly put back on the policy agenda. It is apparent that the central rationale was that such a plan was now considered affordable, contrary to the understanding which had led to the abandonment of that plan in 2009 on the grounds that it was not affordable. This is said to have arisen as a result of discussions between the Welsh Government and HM Treasury and Department for Transport and is related to the work of the Silk Commission considering devolution<sup>8</sup>.

17. In July 2013, a Strategic Environmental Assessment "Scoping Report" on the motorway proposal was issued to statutory consultation bodies<sup>9</sup> for responses over a five-week period.

18. Our clients, together with the RSPB wrote to the Minister on 12 July and 19 August expressing concern about the effect of the new proposals on the Gwent levels (encompassing numerous SSSIs and a SAC). These letters raised the option of an upgraded A48 south of Newport and requested that this option be treated as a "reasonable alternative" in the forthcoming consultation exercises. Our clients' letter of 19 August 2013 stated:

We can state that Professor Cole's research is now focussed on one particular scheme that he feels would meet the criteria of the M4 CEM. That option is an upgrade of the Llanwern steelworks dual carriageway (which is now ready), joining the Southern Distributor Road (A48). This would include facilitating the M4 to handle long distance travel rather than local movements, and upgrading the A48 to allow fast flowing traffic and this is combined with improved access to the M4 west of Newport at either of Junctions 28 or 29.

We think that this option could also have a more positive impact on business and the economy of the city of Newport and feel that this option would be of considerably reduced cost, as well as offering significantly improved sustainability and environmental performance.

We understand that you will shortly be consulting on various alternatives in a Strategic Environmental Assessment. We very much hope that the consultation can be made to include this alternative – even if that regrettably causes a few weeks' delay to the consultation – in order to ensure that reasonable alternatives have been examined by the Assessment.

19. On 4 August 2013 a "participation report" (pursuant to WelTAG paragraph 5.7.8) was published as part of the wider suite of WelTAG stage 1 reports. This document

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<sup>8</sup> *M4 Corridor Around Newport Consideration of the options in relation to the requirements of the Habitats Regulations* page 17

<sup>9</sup> *SEA Environment Report 23 September 2013, page 24 [4-89]*

summarises the engagement with local people since 2010 on the M4 CEM programme. That is to say it summarises engagement in the consultation process that did not include any motorway options. There is no equivalent document reflecting the decision to pursue construction of a motorway- a decision which was appraised following publication of the March 2013 WeITAG report and without public participation.

20. On 23 September 2013 the Welsh Government published a draft plan which is known in the suite of consultation documents as promoting the 'Black Route'<sup>10</sup> which follows the route safeguarded in 2006. The suite of consultation documentation includes:

- a. *M4 Corridor Around Newport: draft Plan Consultation Document*
- b. *M4 Corridor Around Newport Consideration of the options in relation to the requirements of the Habitats Regulations (and Habitats Regulations Assessment)*
- c. A Strategic Environmental Assessment Report
- d. A Health Impact Assessment
- e. An Equality Impact Assessment

21. Each of those documents takes account of two identified "reasonable alternatives" comprising "the Red route", a dual carriageway on a slightly different alignment to the Black route over part of its length which corresponds to the road recommended as a result of the M4CEM consultation concluded in March 2013 and "the Purple Route" (a motorway on a slightly different alignment to the Black route over part of its length). The consultation exercise runs from 23 September 2013 until 16 December 2013 and responses were invited on the draft plan and the identified reasonable alternatives, as well as a "do minimum" scenario.

22. The draft plan and the consultation exercise expressly exclude public transport measures because these are said to be the subject of separate studies<sup>11</sup>.

***M4 Corridor Around Newport: draft Plan Consultation Document***

23. Two points of note about this document are:

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<sup>10</sup> shown inter alia on page 23 of document *M4 Corridor Around Newport Consideration of the options in relation to the requirements of the Habitats Regulations*

<sup>11</sup> *M4 Corridor Around Newport Consideration of the options in relation to the requirements of the Habitats Regulations* page 17



- a. It acknowledges the major adverse impact of the Black route on biodiversity including impacts on the River Usk SAC (page 32), yet
- b. It gives significantly more positive assessments to the impacts of each of the three options considered (including the Red Route) in respect of each of the factors assessed than the November 2012 SEA appraisal gave to the Red Route.

### ***SEA Environment Report 23 September 2013***

24. This Report addresses the two "reasonable alternatives" identified above and the "do minimum" alternative (see page 17 onwards). It gives no reasons for excluding any further alternatives, nor for selecting those which are included.
25. This report contains a cumulative assessment of other plans and programmes including the National Transport Plan, the South East Wales Regional Transport Plan and the Wales Spatial Plan but does not consider the forthcoming plans for public transport improvement. Appendix A sets out the statutory consultees' responses to the scoping report. Appendix B to the SEA report lists and summarises the relationship of the draft plan to each of the identified pieces of legislation and guidance. Appendix C concerns baseline data.
26. In October 2013 a report to the Minister for Economy, Science and Transport entitled *Cardiff Capital Region Metro: Impact Study* was published.

### ***The Blue Route***

27. On 23 October 2013 Professor Cole published his study "*The Blue Route: A Cost Effective Solution to Relieving Congestion Around Newport*" and a copy was submitted to the Defendant on or before 16 December 2013. Professor Cole presented his proposal to the Environment and Sustainability Committee of the National Assembly for Wales on 23<sup>rd</sup> October 2013 and the Committee discussed the proposals on 6<sup>th</sup> November 2013. The Introduction to his paper summarises the proposal and explains it was:

... developed from a Welsh Government plan in 2007, [and] uses a combination of the A48 Newport Southern Distributor Road (SDR) around Newport and the former Steelworks Road to create a dual carriageway to motorway / expressway standard. Referred to as the Blue Route, it involves an upgrade of the A48 and the 'Steelworks Road' - a length of industrial roadway purchased by the Welsh Government in 2010 for building a motorway. It would run on a line to the south of Junction 23a on the east side of Newport to Junction 28 in the west. The roads would be re-

constructed as a two-lane, dual carriageway at motorway standard. The land that has been acquired as Steelworks Road is sufficient for widening to a three-lane motorway at a future date if this is needed. The Blue Route would cost **£380m**. [the report explains this is under half the cost of the Black Route at a projected £930m]

28. The advantages of this option are:

“It would deliver what is needed at a much lower cost and with significantly less impact on the environment. It would have a lower capacity than the option favoured by the government but would be sufficient to cope with the estimated need.”

29. Professor Cole’s report adds:

The Blue Route could solve the congestion issue on the M4 earlier than the Black/Purple route since it could be completed sooner, by 2018. Combined with the Metro and rail electrification it would provide more than adequate relief of traffic congestion over the period to 2035.

Even with the UK Government’s forecasts showing a 20 per cent growth in traffic flow between 2012 and 2030, the Blue Route would satisfy capacity requirements to 2025. However, the more likely change in car usage is a lower percentage increase, with the current plateau continuing for some time. The forecast for growth in the Welsh Government’s consultation document has already been shown to be in excess of actual flows for 2012 and 2013.

### ***Response to Pre-action Letter***

30. The Welsh Government responded to the our pre-action letter on 17 December 2013.

### **Legal Principles**

31. The purpose of the SEA Directive is to complement the environmental protection afforded by the assessment of the effects of projects required by the Environmental Impact Assessment Directive 85/337/EEC . The SEAD applies at an earlier stage when the framework for the consideration of development consent for such projects are being set, and before options for significant change are precluded.

32. Article 3(1) provides that: “An environmental assessment, in accordance with Articles 4 to 9 shall be carried out for plans and programmes referred to in paragraphs 2 to 4 which are likely to have significant environmental effects”.

Paragraph 2 of Article 3(1) , so far as material, requires an environmental assessment to be carried out for “all plans and programmes”:

“(a) which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II to Directive 85/337/EEC , or  
(b) which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of Directive 92/43/EEC .” (The Habitats Directive).”

33. By Article 5 (1) , an environmental report must be prepared which identifies, describes and evaluates the likely significant effects of the plan or programme. The likely significant effects of the plan or programme to be assessed include its secondary, cumulative and synergistic effects. The report must cover “reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme.” Among the many requirements listed in Annex 1 to the SEAD for the content of the environmental report are “(h) an outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties... encountered in compiling the required information”, and “(i) a description of the measures envisaged concerning monitoring...” Article 10 requires the implementation of plans and programmes to be monitored.

34. Ouseley J held in *Heard v Broadland DC* [2012] Env. L.R. 23 [2012] EWHC 344 (Admin) at para 71 that the detail of examination required of the selected alternatives was the same level as that of the plan or programme.

35. Regulation 8 of the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004 prohibits the adoption of a plan before the environmental report and consultation response had been taken into account and regulation 12(2)(b) requires an environmental report to “identify, describe and evaluate the likely significant” environmental effects of implementing the plan, and of “reasonable alternatives taking into account the objectives and the geographical scope of the plan”. The report has to include such of the information set out in Schedule 2 as is reasonably required, including, in paragraph 8, “an outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties ... encountered in completing the information.”

***Reasonable Alternatives***

***Heard v Broadland District Council and others*** [2012] Env. L.R. 23

36. In *Heard*, the claimant sought to challenge a decision to adopt a joint core strategy on the grounds, inter alia, that the joint core strategy was unlawful because the strategic environmental assessment report, required by the Environmental Assessment of Plans and Programmes Regulations 2004 (implementing Parliament and Council Directive 2001/42/EC), did not explain which reasonable alternatives to urban growth in a specific area the defendants had selected and why, or had not examined reasonable alternatives in the same depth as the preferred option which emerged.
37. Ouseley J, allowing the claim, said while options could be rejected as the plan moved through successive stages, and did not necessarily require to be re-examined at each stage, a description of what alternatives were examined and why had to be available for consideration at each stage, even if only by reference back to earlier documents, so long as the reasons there given remained sound. But the earlier documents had to be organised and presented in such a way that they could be readily ascertained and no paper chase was required to find out what had been considered and why it had been rejected: see *Save Historic Newmarket Ltd v Forest Heath District Council* [2011] EWHC 606 (Admin); [2011] JPL 1233, paras 17 and 40 (para 12). Ouseley J held at paragraph 66-7

“66 I conclude that, for all the effort put into the preparation of the JCS, consultation and its SA, the need for outline reasons for the selection of the alternatives dealt with at the various stages has not been addressed...

67...Options can be rejected as the plan moves through successive stages, and do not necessarily require to be re-examined at each stage: the plan-making process permits the broad options at stage one to be reduced or closed at the next stage, so that a preferred option or group of options emerges; there may then be a variety of narrower options about how they are progressed, and that that too may lead to a chosen course which may have itself further optional forms of implementation. It is not necessary to keep open all options for the same level of detailed examination at all stages. But if what I have adumbrated is the process adopted, an outline of the reasons for the selection of the options to be taken forward for assessment at each of those stages is required, even if that is left to the final SA, which for present purposes is the September 2009 SA”

38. In *R. (on the application of Buckinghamshire CC) v Secretary of State for Transport* [2013] EWHC 481 (Admin); [2013] P.T.S.R. D25; Ouseley J considered a number of challenges to the ‘HS2’ proposal. There was a challenge on the grounds that a high level policy decision was a plan or programme requiring SEA. That was rejected (the issue is under consideration by the Supreme Court), but on the

assumption that it was a plan or programme, Ouseley J addressed the requirements in relation to alternatives, holding:

“162 The SEAD requires the environmental report to contain an outline of the reasons for selecting the alternatives dealt with. That selection is made taking into account the objectives of the plan. Alternative objectives do not have to be explained nor, for these purposes, the reasons why the objectives are thought worth achieving. It is alternative ways of meeting the objectives which are the focus of the SEA. The Government concluded that alternative strategies for motorways or a new conventional or enhanced existing rail network were not capable of meeting the plan objectives set for high speed rail. It is obviously a contestable view as to whether those objectives should be met, or can be met to a large extent by means other than a new high speed rail network. These alternative strategies could not, however, have constituted reasonable alternatives to the plan for assessment in the SEA, since they are incapable by their very nature of meeting all the objectives for a new high speed rail network. The sifting process whereby a plan is arrived at does not require public consultation at each sift. This whole process has been set out in considerable detail in the many published documents for those who wished to pursue it, but it did not all have to be in an SEA.

163 The consultation process ranged wider on alternatives than would have been necessary for a consultation limited to what the SEAD required in relation to a plan. Although these were alternatives which the Government was prepared to consider through its non-SEA consultation process, that does not make them reasonable alternatives for the purpose of SEA, when measured against the objectives of the plan. The analysis of the OA in the consultation process does not show what would have happened in an SEA.

165 However, on the basis that the Y network is part of the plan or programme, alternatives to the Y shape, that is the inverted A, the reverse E and S shapes have only been considered and rejected on their economic and business cases. They have not been explicitly rejected as being less than reasonable alternatives. The same applies to the adoption of a lower design speed. They may or may not have been considered as reasonable alternatives to be assessed if the promoters' minds had been applied to the SEAD ; they might have been rejected on the basis that they did not get past the economic case; and there was no obligation either to assess all reasonable alternatives. What is required in the SEA are the reasons for the selection of the reasonable alternatives chosen for assessment. Neither the AoS nor Consultation Document contains any statement about alternatives to the Y network, since the Y network falls outside their scope. But that would not fall outside the scope of an SEA if the DNS were a plan for the Y network. That, taken with the omission of the Y network itself, is substantial non-compliance.

## **Adumbration of Our Concerns as to Legal Adequacy of Consultation**

39. For the reasons below, and each of them individually and in combination, we submit the consultation exercise was unlawful. The substantive question to which the analysis below points are broadly (a) whether the process by which any alternative which does not result in a road being built across the sensitive SSSIs and the SAC of the Gwent Levels has been excluded is a proper one in accordance with common law and European SEA requirements and (b) whether the SEA proceeded from a rational and fair assessment of the reasonable alternatives and sets out adequately the reasons for the selection of the reasonable alternatives

### *1. Failure to Comply with SEA Directive*

40. The SEA Report

(a) unlawfully excludes reasonable alternatives from consideration and in particular irrationally or unlawfully excludes from consideration any alternative involving less environmental harm than the building of roads through the Gwent levels; and/or

(b) unlawfully fails to give the reasons for so excluding alternatives from consideration or for regarding them as not qualifying as "reasonable alternatives". In particular no adequate explanation is given for not considering any alternatives which did not involve building a road through the Gwent Levels. There is no consideration given, or explanation for not considering the "Blue Route" alternative or to any alternatives involving packages of measures short of building through the Gwent levels.

41. That is not to say that such alternatives must be preferred or could not in theory be "sifted" through prior consultation: simply that the purpose of the SEA exercise is to compare reasonable alternatives, and by excluding all possibility of not causing environmental harm, and by failing to explain the rationale for that decision, the SEA exercise is necessarily skewed and unrepresentative. As Ouseley J said in *Heard* at 67:

67 I accept that the plan-making process permits the broad options at stage one to be reduced or closed at the next stage, so that a preferred option or group of options emerges; there may then be a variety of narrower options about how they are progressed, and that that too may lead to a chosen course which may have itself further optional forms of implementation. It is not necessary to keep open all options for the same level of detailed examination at all stages. But if what I have adumbrated is the process adopted, an outline of the reasons for the selection of the options to be taken forward for assessment at each of those

stages is required, even if that is left to the final SA, which for present purposes is the September 2009 SA

**(a) Exclusion of Alternatives**

42. The principal complaint in *Heard* is found in this case also. A close analysis of the history of the documentation suggests that options have been rejected at each stage, in some cases without public consultation. The most important sifting process appears to have taken place in the June 2013 WeITAG report. This report represented a U-turn on the (publicly consulted) direction presented by the March 2013 WeITAG. Yet this, the most significant and important part of the sifting process undertaken was undertaken without public consultation or public scrutiny. That was directly contrary to the intentions of the SEA Directive and implementing regulations and to WeITAG.

***Exclusion of Consideration of Public Transport***

43. Proposals to improve public transport and “common measures” are designed with overlapping objectives in mind to the road building proposals. Public transport improvements- whatever they are- will have a bearing on the levels of congestion felt on the M4. Those measures are material. Some public transport proposals have been set out in an impact study published at the very same time as this consultation is going on. These proposals are not considered alongside the road building proposals. It is a nonsense to pretend they do not even exist or have no bearing at this primary stage of analysing the reasonable alternatives. The analysis of alternatives is not credible where in reality only variations on a single alternative are excluded. This is not a case of having “sifted” out alternatives at a prior stage: it is a case of excluding up-to-date and current thinking on relevant plans in favour of what is essentially a revival of a very out-of-date solution.

44. As Professor Cole explains in his “Blue Route” paper:

The Welsh Government’s case for a new motorway, put forward in its September 2013 consultation paper M4 Corridor around Newport, takes no account of the impact of rail electrification or the Metro. The paper says it does not take account of public transport measures “because the Welsh Government has commissioned a separate study and report on proposals to develop a Metro system for south east Wales”. Yet these separate proposals cannot be considered in isolation. Each will have a significant impact on the other.

Indeed, the Welsh Government’s *A Cardiff Capital Region Metro Impact Study*, published in October 2013, argues that it will help address congestion on the M4. The seriousness of the Government’s intentions

can be gauged from the £63m it has allocated to the Metro scheme in its 2013-14 transport budget. The longer term proposal is an ambitious scheme taking 10 to 15 years to deliver, at an estimated cost of £1.97 billion. Elements of the Metro that are directly relevant to transport congestion around Newport are:

- Four new stations on the M4 corridor, including Llanwern and Caerleon.
- Rapid transit bus solutions around the M4 corridor communities.
- Rail developments such as a direct link between Newport and Ebbw Vale.

Electrification of the South Wales Main Line and the *ValleysVale/CwmFro* rail network has passed HM Treasury's procurement criteria on cost-effectiveness. Work is under way on funding, planning, procurement and some construction. Completion of the electrification of the South Wales Main Line through Newport is expected by 2018, and the Valley Lines by 2019.

Both electrification and the Metro project are within the M4 relief road construction timespan. The South East Wales Transport Alliance (Sewta) Rail Strategy Final Report (2013) proposes over 20 new stations, including at Llanwern and Coedkernew, and increased capacity on the Ebbw Valley line.

45. The failure to take account of these highly significant public transport measures at the stage of *strategic* environmental assessment is not only a failure of common sense, it is a legal failure. As Professor Cole further states:

"The objective [of The South East Wales Transport Alliance (Sewta) Rail Strategy Final Report (2013)] is to attract car commuters away from the M4, A470 and other key routes and onto the railway. As the Report concludes:

"...several of its recommendations should be packaged to form an M4 corridor corporate strategy to provide realistic alternatives to car use in this congested corridor".

46. Thus, on the one hand the Rail Strategy itself suggests that its recommendations should be packaged as "realistic alternatives" while at the same time, the SEA report declines to do so for no good reason than that those alternatives are being considered somewhere else.

### ***Impact on Assumptions underlying the Consultation and SEA Report***

47. The failure to consider these potential measures strikes at the heart of the assumptions made in the consultation and SEA Report. As Professor Cole explains The *M4 Corridor around Newport* consultation paper forecasts a 20 per cent increase in traffic by 2035. However, it is estimated that the Black/Purple motorway proposal would divert up to 40 per cent of traffic



away from the existing M4. This is in excess of the capacity required to address the problem.

48. In other words, the preferred option, when seen in the light of the proposed public transport solutions appears to be offering far too much capacity. That has knock-on implications as to whether the environmental harm is justified; whether it is consistent with an overall strategy to reduce dependence on the car, and whether the expenditure on a three-lane motorway is justified. These are all matters for consultation and consideration which have been artificially excluded from the process.

49. The exclusion of public transport measures manifests not only as a failure to consider alternatives, but as a failure to properly consider the impacts, the pros and cons of the alternatives which have been analysed.

#### ***Why Blue Route is a reasonable alternative***

50. As Professor Cole states, "it would deliver what is needed at a much lower cost and with significantly less impact on the environment. It would have a lower capacity than the option favoured by the government but would be sufficient to cope with the estimated need."

51. No published reasons gainsay this assessment.

#### **(b) Absence of Reasons**

52. Even if the view had been taken that nothing short of building a road across the Gwent Levels can meet the objections (we note your assurance that notwithstanding the SEA alternatives it has not), the SEA needs to show why alternatives have been excluded (without recourse to a paperchase). The purpose of the SEA process is not to make a case for a pre-selected set of alternatives which lead inexorably to a conclusion, but to allow informed comment and understanding of what the true reasonable alternatives are and comparison as between them. The same general point is made by WeITAG at 4.2.3:

"the planner has to consider a diverse range of alternatives and not start from an implicit objective of promoting a particular proposal..."

53. The SEA documents give no adequate reasons for not setting out any reasonable alternatives to roads across the Gwent Levels. An accurate picture of the reasonable alternatives has not been presented, contrary to article 5(1) of the SEA Directive. Further, to exclude all the major alternatives (other than variations of a

road route) at this stage unfairly and unlawfully forecloses any effective opportunity of consultation and comment to those concerned to propose solutions to the identified problems which minimise the environmental impact.

54. In any event it is not possible to discern from the SEA the reasons for selecting the alternatives which are dealt with, in breach of the requirements of Schedule II to the SEAD. See *Heard* above. There is no explanation of the rationale for excluding any number of packages. Yet among the options previously considered were 15 measures outside CEM considered in November 2011; the M4 CEM measures. Nothing is said on any of these. We do not accept that the rationale for the options selected can be discerned from a paper chase around other documents, nor that documents themselves not subject to consultation can contain the rationale.

## **2. No rational basis for the assessment of environmental impacts**

55. The 2012 SEA identified major adverse impacts of building a two-lane road across the Gwent Levels on biodiversity, soil, water, material assets, cultural heritage and landscape and townscape. Indeed the WelTAG report of March 2013 adopted that assessment (page 26).

56. The June 2013 WelTAG assessment was not subject to consultation and participation equivalent to that which preceded the March 2013 assessment. That document however improved on the March document's assessment of the impacts of the Red route as well as the motorway schemes on water and heritage (page 65). The September 2013 SEA report (page 91) in turn adopted this more optimistic view and further upgraded the assessment of impacts on material assets and biodiversity. This creeping relaxation of the negative assessment of the very same project over the course of ten months is not based on any significant change in the scheme itself- or is certainly not explained as such. The net result is a significant improvement in the estimates of the effects between two SEA documents. This at least gives the appearance of skewing the assessment to lean the process in favour of the preferred option rather than objectively evaluating that preference. Given the (rightly) precautionary approach of the 2012 SEA to the likely effectiveness of mitigation measures, it is impossible to reconcile the greatly more optimistic view of the environmental harm now taken on the premise of far greater confidence in the effectiveness of mitigation measures.

57. The upgrading of the impacts on biodiversity from major adverse is probably the single most significant sleight of hand in the process overall because the consequences may be quite significant in the long run. If the assessment is that the impacts on the Usk river SAC may be major, then clearly there must be

considerable focus on whether those impacts can be avoided. One consideration in that process- and certainly if those adverse impacts cannot be avoided- will be to evaluate whether alternatives could achieve the objectives without that environmental harm. In other words, the questions will come full circle to the issue whether there is a means of achieving the objectives without adverse impact on the SAC. That of course will involve evaluation of the options which do not involve a road across the Gwent levels which the process has been designed to exclude.

***Failure to adequately take account of policies regarding reduction in carbon emissions***

58. In preparing the draft plan there has been a failure to lawfully consider the Defendant's own policies concerning the reduction of carbon emissions, and reduction of road transport, and the effect of the Climate Change Act, in breach of their own policies. The Defendants have also accepted at face value the assumption that building a road will reduce greenhouse gas, contrary to the historic statistics on road building available which shows the opposite, and the evidence that vehicles travelling faster emit more greenhouse gas.

***The accuracy of the predictions of an anticipated 20 % increase in the traffic***

59. Furthermore, Welsh Government policy, *One Wales: One Planet* states that within the lifetime of one generation, "we must ... organise the way we live and work so we can travel less by car wherever possible". Accordingly, the stated policy of the Welsh Government is to reduce travel by car over the next generation. Yet the assumption underlying the asserted need for an increase in capacity is that by 2035 there will be a marked increase in car usage. In making this assumption- which is fundamental to the whole rationale for the schemes under consideration (which will themselves involve 20 years of work) no consideration is given to the government's commitment to change the way we live and travel less by car. In essence it is irrational to premise a motorway building scheme on the assumption that there will be an increase in traffic by 2035, without even acknowledging that that entails an assumption that high level national policy will fail- an assumption never expressed or articulated anywhere else within government strategy.

***Failure to follow WelTAG processes***

60. The process up to March 2013 followed the WelTAG process. The WelTAG process has two primary purposes:

"To assist in the development of proposals enabling the most appropriate scheme to be identified and progressed- one that is

focused on objectives, maximises the benefits and minimises the negative impacts

To allow the comparison of competing schemes on a like-for-like basis so that decision-makers can make funding decisions”

61. The latter purpose parallels the intention of the SEA Directive (See *Heard*). The WelTAG stage 1 appraisal of March 2013 considers public transport measures as part of each non-motorway package advanced. It was produced after a full public consultation. The June 2013 WelTAG report which has in the event transpired to be the more important document forming the basis of the SEA report was not subject to any equivalent public participation, contrary to the aspirations of section 11 of WelTAG.
62. This is one component of a process which has failed in numerous respects. The overall effect is a rushed attempt to tilt the process in favour of the preferred option and to prevent evaluation of whether there is any viable alternative to the environmental harm from that process.

### **Conclusion**

We ask that this letter is specifically drawn to the attention of the Welsh Ministers and that conscientious and open-minded consideration continues to be given to this matter. Our clients are concerned not to engage in litigation unless absolutely necessary and to maintain a dialogue openly as long as possible. **Our clients would hope that as part of the consultation process that a meeting could be arranged between the ministers and CALM to enable them to share their concerns in person.**

Yours faithfully



**DEIGHTON PIERCE GLYNN**

December 2013

# Submission to the Welsh Government

in response to

**Consultation Document**

**WG19741:**

**M4 Corridor Around Newport**



**cyfeillion  
y ddaear  
cymru  
friends of  
the earth  
cymru**

## Summary

The consultation is invalid for the following reasons:

- The traffic forecasts which are the sole rationale for the alternatives considered are fundamentally and fatally flawed
- The Welsh Government's modelling fails to take consideration of fuel costs or the impact of major public transport investment, and is therefore invalid
- The Welsh Government has no evidence or data relating to congestion, which is the over-riding reason given for new highway infrastructure
- What little data is made available in support of the case is rife with preferential selection
- The underpinning for the plan or programme is a suite of problems for which no substantive revision has taken place since at least 2007, and which predates the peak in road transport of 2007
- The use of data does not comply with the Directive's requirement for 'current knowledge' to be used
- The appraisal of alternatives is flawed and the 'reasonable alternatives' considered are inadequate, particularly through excluding public transport, junction closures, these measures in combination and the Blue Route
- Sustainable development receives no meaningful consideration
- The selection of environmental objectives is flawed
- There are serious, substantive errors in the prediction of environmental effects
- An apparent routing error exists that underplays the amount of SSSI land lost to the preferred route by 10 ha (14%), and renders the consultation unlawful

The consultation documents are fundamentally and fatally flawed. The consultation must be withdrawn.

Without prejudice to the preceding, there is no justification for building a new motorway-class road south of Newport. The only option of those presented that is rational is therefore the 'do minimum' option.

## Introduction

1. Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment<sup>1</sup> (the SEA Directive) applies to a wide range of public plans and programmes. The Directive is transposed by Regulations<sup>2</sup>. Plans and programmes in the sense of the SEA Directive must be prepared or adopted by an authority (at national, regional or local level) and be required by legislative, regulatory or administrative provisions. The Welsh Government has stated that this SEA is required under the terms of the Directive<sup>3</sup>.

2. The objectives of the SEA Directive are defined, in particular, in Article 1:

“The objective of this Directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment”.

3. Plans and programmes are defined in Article 2(a):

“For the purposes of this Directive:

(a) “plans and programmes” shall mean plans and programmes, including those co-financed by the European Community, as well as any modifications to them:

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

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<sup>1</sup> European Parliament and Council, 27 June 2001, [Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment](#)

<sup>2</sup> Legislation, 2004, [The Environmental Assessment of Plans and Programmes \(Wales\) Regulations 2004](#), 2004 No. 1656 ( W. 170)

<sup>3</sup> Welsh Government, November 2012, [M4 Corridor Enhancement Measures SEA Environmental Report](#), page 4

## Traffic forecasts and actual traffic volumes

1. One of the repeated failures of the Welsh Government's consultations has been the paucity of evidence offered by the Welsh Government to support its assertion that congestion and traffic volumes are a problem in the M4 area around Newport.
2. Critical to this failure has been the Welsh Government's portrayal of traffic around Newport as being of relentlessly increasing scale:  
*"The more congested road conditions become, the greater the risk of incidents and accidents occurring. In the future, the situation is expected to deteriorate further"*<sup>4</sup>.
3. An apparent reason for this misapprehension appeared in an earlier stage of the consultation process:  
*"A current understanding of the transport problems on the M4 corridor is then considered, originating with the problems established in a WelTAG planning Stage workshop held in October 2007"*<sup>5</sup>.
4. The theoretical underpinning of the Welsh Government's reasoning is therefore six or seven<sup>6</sup> years out of date, and pre-dates the decline in traffic numbers seen since 2007. This in itself should not be problematic, because the Welsh Government could simply have updated its modelling as time went by.
5. However the Welsh Government has failed to update its reasoning, presumably because in so doing it would be forced to recognise that the underpinning theory of the programme had been discredited by unforeseen changes in traffic patterns.
6. This lends weight to the contention that the Welsh Government is pre-disposed towards infrastructure interventions.
7. The consultation workshops of 13, 15 and 20 March 2012 were opened by Martin Bates, the Welsh Government's M4 CEM Project Director. His opening remarks are quoted as follows:  
*"To set the scene I am going to repeat a quotation from the Minister with responsibility for Transport, Carl Sargeant, who said "We're all aware that congestion is a problem on this part of the M4, so easing the flow on the M4 between Magor and Castleton is a key priority for the Welsh Government and a commitment in the prioritised National Transport Plan."*<sup>7</sup>
8. The Welsh Government has no congestion statistics or indeed means of measuring congestion. A statistician at the Department for Transport confirmed to Friends of the Earth Cymru that the Welsh Government has no congestion statistics, nor has it made contact with the Department for

<sup>4</sup> <http://m4newport.com/assets/issue-m4-draft-plan-consultation-document.pdf> page 9

<sup>5</sup> <http://www.m4cem.com/downloads/reports/ISSUE%20Report%20Stage%201%20Problems%20and%20Goals.pdf> page 1

<sup>6</sup> <http://wales.gov.uk/about/foi/responses/dl2013/octdec/transport1/atn7891/?lang=en>

<sup>7</sup>

[http://www.m4cem.com/downloads/reports/Consultation%20Workshop%20Report%20Newport%20March%202013th%202012\\_for%20publication.pdf](http://www.m4cem.com/downloads/reports/Consultation%20Workshop%20Report%20Newport%20March%202013th%202012_for%20publication.pdf) page 4



Transport's department that is piloting a scheme for measuring congestion.

9. The apparent priority of the Welsh Government – tackling congestion – has no basis in evidence.
10. The Welsh Government tries to portray traffic numbers as a corollary for congestion. Traffic numbers cannot be a corollary for congestion because it is possible to have very high traffic numbers moving at high speed without congestion. Likewise, very low traffic numbers can cause congestion if there are a few slow-moving vehicles (HGVs overtaking, for example) or a crash.
11. The principal serial uncorrected bias in the Welsh Government's consultation – that of problems relating to congestion (for which the Welsh Government has no data) – occurs extensively throughout the documents and is given as the purpose of making infrastructure investment in the area around Newport thus:  
*"problems with congestion and unreliable journey times have been a fact of life on the M4 around Newport for many years"*<sup>8</sup>.
12. The phrase "fact of life" is a statement of opinion deliberately used to suppress challenge of its baseline assumption and is unsupported by data.
13. In 2007, when the WeITAG planning stage workshop took place, an assumption of increasing traffic would not have been irrational. However, data from recent years have shown the assumption of never-ending increases in road traffic to be a fallacy (Figure 1 in this document)<sup>9</sup>.

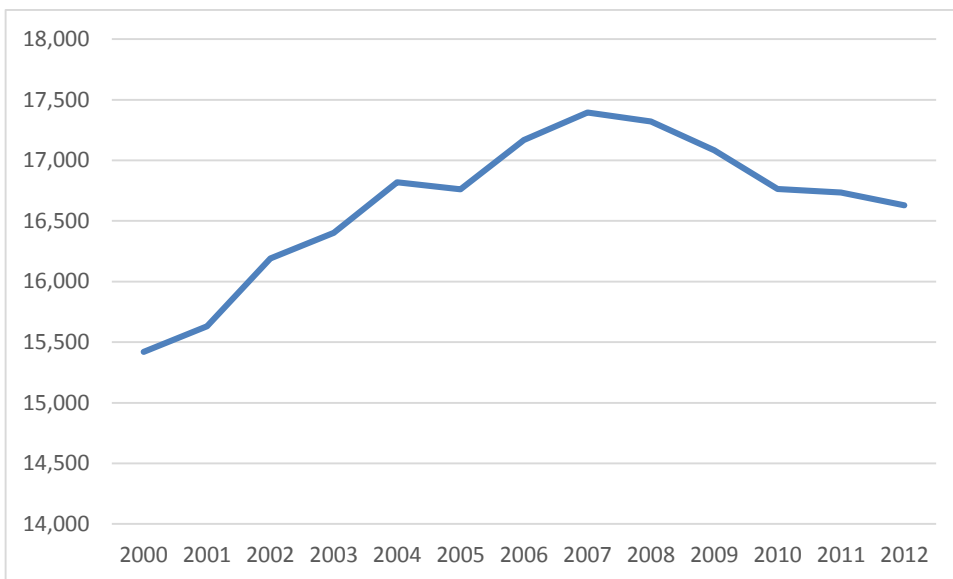


Figure 1. Traffic volumes in Wales (million vehicle miles)<sup>10</sup>

<sup>8</sup> <http://m4newport.com/assets/issue-m4-sea-environment-report---publication---c2.pdf> page 7

<sup>9</sup> Department for Transport, 2012, [Motor vehicle traffic \(vehicle kilometres\) by local authority in Great Britain, annual from 1993](#)

<sup>10</sup> <https://www.gov.uk/government/publications/road-traffic-estimates-in-great-britain-2012> TRA8901.xls

14. There has been a sequential year-on-year decrease in traffic in Wales for the five years since the peak of traffic in 2007. Traffic volumes in Wales are now 4.4% lower than they were in 2007.
15. Motorway traffic has declined even further than overall traffic volumes<sup>11</sup>.
16. The forecast for growth in the Welsh Government's consultation document has already been shown to be in excess of actual flows for 2012 and 2013<sup>12</sup>.
17. Observers will note that the decrease in vehicle traffic volumes predates the recession. Thus, while there may be an additional recessionary component to the decrease in traffic volumes, the decreasing trend itself is independent of the economic fortunes in Wales.
18. The facts outlined above contrast with the Welsh Government's assessment in the consultation document accompanying the SEA, which claims, based on an unspecified 12-hour monitoring period:  
*"The results show that traffic levels on the motorway have remained near constant over the seven year period... Overall traffic levels on the M4 around Newport have remained largely static from about 2006/2007 despite the economic downturn and road works on the M4, with more recent signs of growth"*<sup>13</sup>.
19. This is one of a number of possible conclusions to draw from the data depicted in the consultation document. One might equally say "traffic has decreased year-on-year for five years". The use of this limited data range is a clear example of preferential selection of data by the Welsh Government in order to strengthen the case for infrastructure interventions.
20. The Welsh Government claims that:  
*"Analysis shows that in 2012 during week day peak periods (also known as 'rush hour'), traffic flows approach 100% of capacity along sections of the M4 around Newport"*<sup>14</sup>
21. What the government *means* is that during the busiest times of the day, traffic flows in 2012 were at a maximum of 93.7% of design capacity. At all other times of the day – other than for an hour or so in the morning and in the afternoon – traffic flows were below this figure (although the Welsh Government has chosen not to reveal this information).
22. This is, again, preferential selection of data that is intended to support the case for infrastructure interventions.
23. The Welsh Government preferentially selects its data once again in Figure 4 by comparing an 'average September weekday'<sup>15</sup>. It seems peculiar, to say the least, to use this metric when empirical data on traffic is available from Office for National Statistics (see Figure 1 in this document).

<sup>11</sup> <http://wales.gov.uk/docs/statistics/2012/121220sb1272012en.pdf> page 3

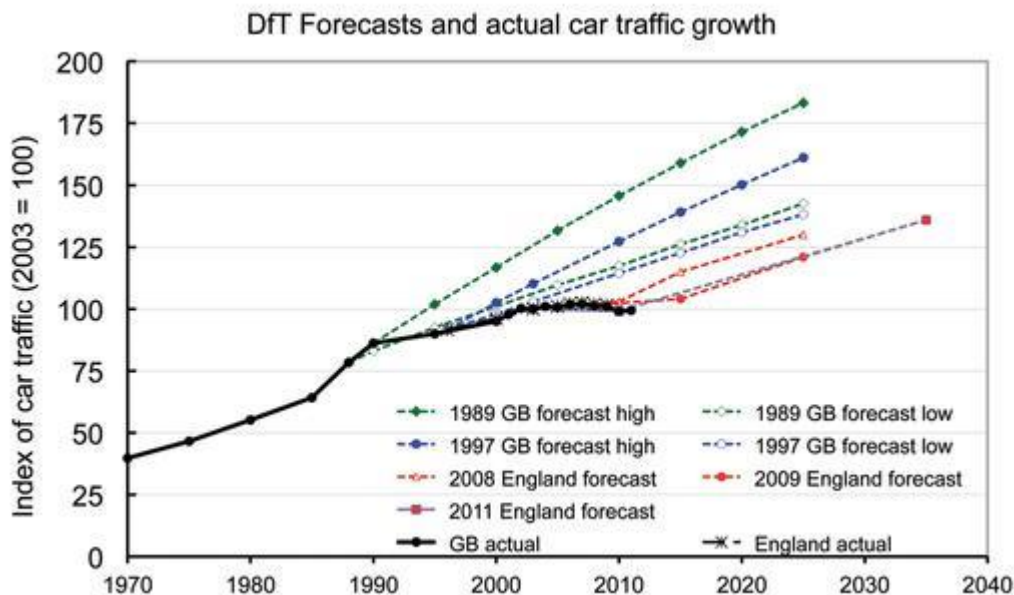
<sup>12</sup> <http://www.iwa.org.uk/en/publications/view/227> page 03

<sup>13</sup> <http://m4newport.com/assets/issue-m4-draft-plan-consultation-document.pdf> page 10

<sup>14</sup> <http://m4newport.com/assets/issue-m4-draft-plan-consultation-document.pdf> page 9

<sup>15</sup> <http://m4newport.com/assets/issue-m4-draft-plan-consultation-document.pdf> page 10

24. Likewise in Figure 6, the Welsh Government uses ‘a typical week in May 2013’<sup>16</sup>, travelling in one direction between two junctions on the M4. This, like Figure 4, is anecdotal evidence unsuited for use in a public consultation document, and the Figure and the subjective interpretation that follows should be excised from the consultation.
25. Likewise, Figure 7 is anecdotal evidence and should be excised. No evidence is presented to justify the statement:  
*“traffic volumes have risen back to the 2005... level”*<sup>17</sup>.
26. No evidence has been presented that the proportion of journeys of greater or less than 20 miles (Figure 8) is unusual. Given that the Welsh Government has no empirical data on congestion, this Figure is in any case irrelevant.
27. The principal reason for the consultation recommending infrastructure interventions to the M4 around Newport – that of congestion and increasing volume of traffic – has no basis in evidence.
28. As we will see below, this lack of evidence has not stopped the Welsh Government from eliminating non-infrastructure options from the consultation.
29. Traffic forecasting by the Department for Transport has been risible<sup>18</sup>:



30. Professor of Transport Policy Phil Goodwin comments:  
*“The figure you see above is the result so far, for car traffic, showing successive downwards revision of the forecasts as for 25 years car traffic stubbornly refused to behave according to expectations. The revisions were of the form ‘growth later’, not ‘less growth... anybody, just anybody, looking at*

<sup>16</sup> <http://m4newport.com/assets/issue-m4-draft-plan-consultation-document.pdf> page 11

<sup>17</sup> <http://m4newport.com/assets/issue-m4-draft-plan-consultation-document.pdf> page 12

<sup>18</sup> <http://www.bettertransport.org.uk/campaigns/roads-to-nowhere/ltt-130412>

*this graph is going to think that there is a downside risk of the long term traffic flows being substantially less than the forecasts, as they have continually been for at least the last quarter of a century*<sup>19</sup>.

31. The Welsh Government does not forecast traffic numbers for Wales<sup>20</sup>. However, the Department for Transport did make such a projection for Wales in 2011<sup>21</sup>.
32. The DfT's projection of growth in traffic is shown in the table below.

	2003	2010	2015	2020	2025	2030	2035
2011 Forecast (billion miles)	16.3	16.5	17.3	19.1	20.5	21.9	23.2
% increase on base year (2011 forecast)		1.2	6.1	17.2	25.8	34.4	42.3
Annual increase needed to meet forecast			1.35	1.86	1.79	1.76	1.72

33. Over the period 1993-2012 the average annual growth rate was 1.11%<sup>22</sup>.
34. Yet again, the Department for Transport forecasts appear to be out of kilter with reality.
35. Actual traffic volumes in Wales are shown in Figure 1 in this document.
36. Friends of the Earth Cymru has calculated a 'back-cast' based on factors that mimic the forecasted growth in traffic volumes by the Welsh Government (Figure 2 in this document).

<sup>19</sup> <http://www.bettertransport.org.uk/campaigns/roads-to-nowhere/ltt-130412>

<sup>20</sup> Personal communication, Henry Small, 27 November 2013

<sup>21</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/4244/road-transport-forecasts-2011-annex-miles.xls](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/4244/road-transport-forecasts-2011-annex-miles.xls)

<sup>22</sup> <https://www.gov.uk/government/publications/road-traffic-estimates-in-great-britain-2012> TRA8901.xls

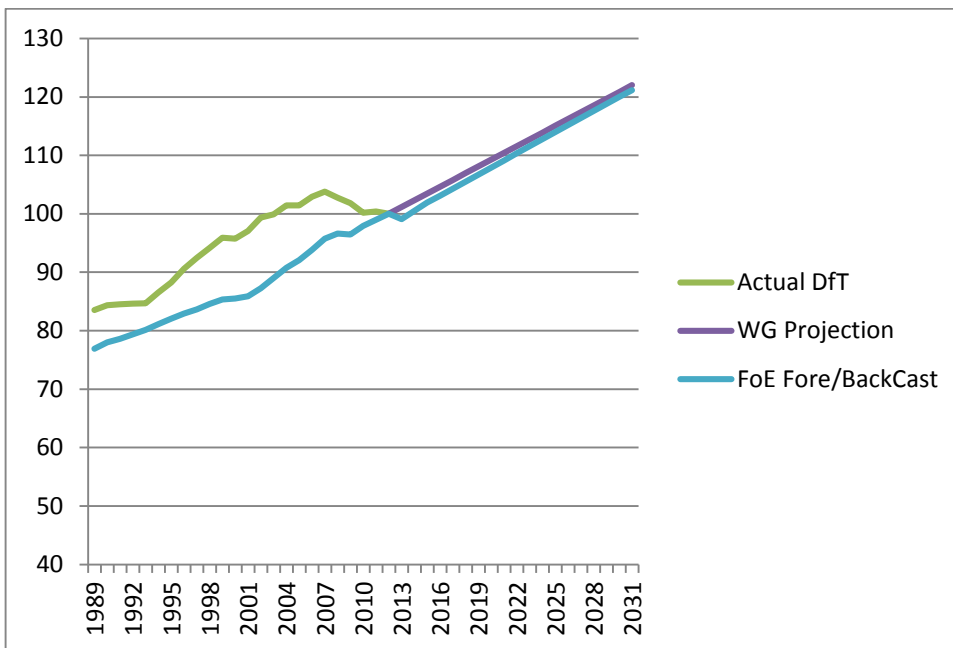


Figure 2. A back-cast using factors that mimic the Welsh Government's forecast for traffic growth

37. The model used by the Welsh Government appears to be seriously deficient, with factors as yet unaccounted for having a major impact on the forecast.
38. By 2012 the distance travelled in a car (as either driver or passenger) had decreased by 9.7% since 2002 to 5,214 miles per person per year<sup>23</sup>. People have now reduced the number of travel trips to fewer than the number they took in 1972/73<sup>24</sup>; at 954 this is the lowest figure on record.
39. The National Travel Survey provides insights into the reasons that people may not wish to drive: *"The NTS monitors the reasons why people are choosing not to drive and the likelihood that non-licence holders will acquire a licence. Overall, the most common reasons mentioned for not learning to drive were 'cost of learning to drive' (32%), 'not interested in driving' (29%) and 'family and friends drive me when necessary' (29%). In younger age groups, cost factors remain the main barrier to learning to drive. Of those aged 17-20, 59% mentioned 'cost of learning to drive' as a reason, 46% said the 'cost of insurance' and 42% said 'cost of buying a car'. When asked for the main reason the majority of 17-20 year olds said 'cost of learning to drive' (35%). Of all non-licence holders the majority (60%) said that they never intend to learn to drive'<sup>25</sup>.*
40. It should be noted that the average number of cars per household has decreased to 1.13 and is now at its lowest level since 2005<sup>26</sup>.

<sup>23</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/35603/nts0309.xls](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/35603/nts0309.xls)

<sup>24</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/200157/nts0101.xls](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/200157/nts0101.xls)

<sup>25</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/243957/nts2012-01.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/243957/nts2012-01.pdf) page 4

<sup>26</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/35586/nts0205.xls](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/35586/nts0205.xls)

41. 24 per cent of households in Wales in 2011/12 own no car or van, up from the lowest figure of 21 per cent in 2009/10<sup>27</sup>.

42. Further:

*“Changes in car usage tend to be affected by wider economic factors, such as the state of the economy and fuel prices, which influence car ownership and the trip behaviour of car owners. Increases to the cost of motoring could be expected to have a negative effect on car use”<sup>28</sup>.*

43. The National Travel Survey conclusions are borne out by recent statistics. In 2012-13 just 59,260 driving tests were conducted in Wales, the lowest figure since records began in 2001-02<sup>29</sup>. The figure is a 32% reduction from the peak of 87,037 in 2006-07.

44. The M4 consultation document makes reference to the ‘global recession’<sup>30</sup>, with the implication that this alone is responsible for the reduction in traffic volumes. GDP in the UK is shown in Figure 3 in this document.

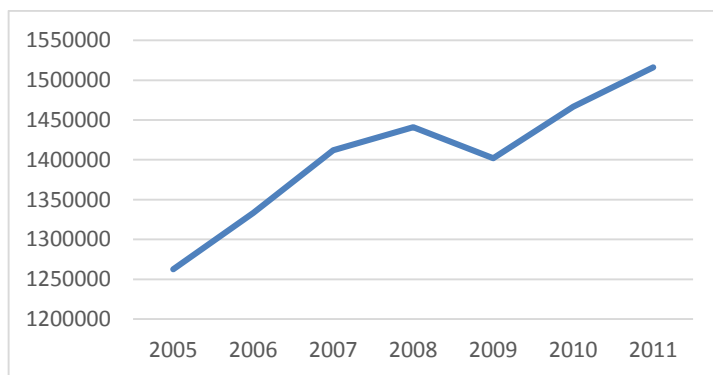


Figure 3. GDP in the UK (£ million at current prices)<sup>31</sup>

45. The UK economy contracted from 2008-09 but increased in every other year from 2005 to 2011.

46. It is impossible to reconcile the continued reduction in traffic with the Welsh Government’s contention that the contracting economy is responsible. Clearly other factors are at play than the ones the Welsh Government is assuming will result in substantial traffic growth.

## Transport modelling

47. The forecasts for growth in traffic used by the Welsh Government are based on the UK Government Department for Transport’s National Trip End Model.

<sup>27</sup> <http://wales.gov.uk/docs/statistics/2013/131022-people-vehicle-licensing-vehicle-ownership-2012-en.xls> Table 1

<sup>28</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/243957/nts2012-01.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/243957/nts2012-01.pdf) page 6

<sup>29</sup> <http://wales.gov.uk/docs/statistics/2013/131022-people-vehicle-licensing-vehicle-ownership-2012-en.xls> Table 5

<sup>30</sup> <http://m4newport.com/assets/issue-m4-draft-plan-consultation-document.pdf> pages 10-11

<sup>31</sup> <http://www.ons.gov.uk/ons/rel/naa1-rd/united-kingdom-national-accounts/the-blue-book--2012-edition/united-kingdom-national-accounts---blue-book--2012-edition.pdf> page 56

48. Guidance for the model makes clear the factors that are not taken into consideration:

*“5.2.1. For any movement where there is a choice of modes, the proportion of travellers choosing each mode ('modal split') is liable to change over time. Within a trip-end modelling framework, there are three possible reasons for such change:*

*a - Changes in the generalised cost of travel for the different modes (whether money cost, parking availability, speed, journey quality, or other factors).*

*b - Changes in the disutility that people attach to different elements of generalised cost, even when those elements do not appear to change. The principal effect here is that as people get richer, a fixed real money cost has a diminishing effect as a deterrent to travel. But this category also potentially includes the impact of changes in "taste". For example, if cycling becomes increasingly fashionable, then the disutility of spending time on a bicycle may reduce, even if all the measurable characteristics of cycling remain unchanged.*

*c - Changes in demographic totals, which will have an effect even if the behaviour of each category of people and the costs that they face remain the same. For example, if elderly people make more use of bus than the general population, then an increase in the proportion of elderly people would be expected, other things being equal, to lead to increasing bus use.*

*5.2.2. The above comprehensive modelling framework is not affected by the existence of a target or declared policy for modal shift. Such a policy can only be effective if it leads to a change in costs or in perception of costs. Although it is important to ensure that models are consistent with observed trends, any observed trend in modal split is likely to be in essence some combination of these three factors.*

*5.2.3. TEMPRO models only the impact of (c), the demographic factors. They can be expressed as being a reference case at constant generalised cost and constant value of time, while allowing for the expected changes in car ownership as people become richer. It is then for local models to take account of:*

- *Generalised cost changes by each mode;*
- *Other impact of rising incomes - represented as increasing travellers' value of time over time, leading to longer trips and a shift towards the more expensive modes;*
- *Any local policy action to influence travellers' "taste" for different modes<sup>32</sup>.*

49. Of the three factors (cost of travel, disutility and demographic change), *“TEMPRO models only the impact of... the demographic factors”*. Changing cost of travel is not covered, and the costs of motoring *“need to be taken into account separately”<sup>33</sup>*.

50. The petrol price in the UK has risen from 77.8p per litre in April 2004 to 141.7p per litre in April 2012<sup>34</sup>, or an increase of 82%. This substantial change in cost of travel is unaccounted for by the

<sup>32</sup> <http://www.dft.gov.uk/webtag/documents/expert/unit3.15.2.php#052>

<sup>33</sup>

[http://webarchive.nationalarchives.gov.uk/20121204115212/https://www.dft.gov.uk/tempo/files/NTEM62\\_Guidance.pdf](http://webarchive.nationalarchives.gov.uk/20121204115212/https://www.dft.gov.uk/tempo/files/NTEM62_Guidance.pdf)  
page 66

<sup>34</sup> [http://www.ons.gov.uk/ons/publications/re-reference-tables.html?newquery=\\*&newoffset=75&pageSize=25&edition=tcm%3A77-267317](http://www.ons.gov.uk/ons/publications/re-reference-tables.html?newquery=*&newoffset=75&pageSize=25&edition=tcm%3A77-267317) Table ENV 0105



Welsh Government. The modelling also takes no account of future fuel price increases. Any further increase would further suppress traffic volumes.

51. It is conceivable that the Welsh Government is taking into account forecast vehicle efficiency in reducing the impact of price on future traffic modelling. However, fuel consumption for cars in real-world driving in 2011 was 21% greater than that assumed from testing (and presumably used by the Welsh Government in its modelling)<sup>35</sup>. Some studies put this discrepancy at 35%<sup>36</sup>. These flaws in testing *vis a vis* real life have major implications for assumptions being made by governments on forecast improvements in fuel efficiency by the vehicle fleet in general.

52. In fact, the assumptions used by the Welsh Government in calculating future improvements in fuel efficiency are so flawed that the European Commission is replacing the current 20-year-old testing procedure with a new one in 2014 which it is hoped:

*“will enable the gap between declared and actual fuel consumption to be reduced thus providing more reliable information to the consumers and legislators”<sup>37</sup>.*

53. Factors causing uncertainty in relation to transport supply in the model include:

- *“New road schemes/road improvements;*
- *New passenger transport schemes/passenger transport improvements;*
- *Road space reallocation (e.g. introduction of bus lanes);*
- *New/improved cycle facilities;*
- *New/improved pedestrian facilities;*
- *Parking supply;*
- *Park and ride schemes; and*
- *Traffic management schemes”<sup>38</sup>*

54. It should be noted that many of these ‘factors causing uncertainty’<sup>39</sup> apply to the proposed M4:

- Additional railway stations, some with Park and Ride facilities, which are likely to have a reductive effect on M4 traffic.
- The South Wales Metro, which is highly likely to have a reductive effect on M4 traffic, and to which funding has been allocated.
- New/improved walking and cycling environment as a result of the Active Travel Act, which is likely to have a reductive effect on M4 traffic, and is highly likely to be commissioned.
- Traffic management schemes in the vicinity of Brynglas Tunnels which smooth traffic flow. It is not clear what effect this has on traffic volumes, although the impact on congestion is highly likely to be reductive.

<sup>35</sup> <http://www.theicct.org/fuel-consumption-discrepancies>

<sup>36</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2013-000307+0+DOC+XML+V0//EN>

<sup>37</sup> <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2013-000307&language=EN>

<sup>38</sup> <http://www.dft.gov.uk/webtag/documents/expert/unit3.15.5.php> section 1.4.15

<sup>39</sup> Some factors have apparently been considered, including dualling of the A465 and electrification of the south Wales mainline – see <http://wales.gov.uk/about/foi/responses/dl2013/octdec/transport1/atn7891/?lang=en> – however the level of consideration received does not appear to be extensive



55. No detailed analysis has been undertaken of these factors. The SEA simply notes that cumulative effects of the proposed plan or programme have already been identified through the SEA of the National Transport Plan:

*“In particular, the following corridor-related effects on the east-west corridor in south Wales were identified in Section 5.3 of the NTP SEA:*

*““The proposals to dual sections of the A465 Heads of the Valleys Road could result in traffic using this route as an alternative to the M4 which coupled with the proposed package of measures to improve the efficiency of the M4 in South East Wales could result in increased long distance traffic flows through this corridor. The electrification of the Great Western Mainline would provide an improved long-distance alternative, whilst improvements proposed for local rail services provide opportunities to reduce commuting related car use in this corridor””<sup>40</sup>.*

56. The paragraph quoted by the Welsh Government in the SEA under current consultation does not exist in the SEA Statement<sup>41</sup>, nor the Addendum<sup>42</sup> to which reference is made in section 5.3 of the SEA Statement. It is conceivable that the quote comes from the SEA that accompanied the draft National Transport Plan, published in August 2009. However an exhaustive search online has failed to reveal the SEA or the Welsh Government quote.

57. No matter: the Welsh Government concludes that:

*“The SEA of the draft Plan has not identified any reason to alter these conclusions and has not identified any additional cumulative effects with the NTP”<sup>43</sup>.*

58. Further:

*“1.5.11 The transport supply aspects of the without-scheme case should be based on the uncertainty log. However, there may be circumstances where it is clear that transport conditions without the project are such that further improvements to the transport system are likely. Where that is the case, these improvements should be included even if they weren't identified in the list of transport changes. However, this kind of without-scheme improvement should not involve large expenditures (up to say 20% of the proposed scheme cost). This would run the danger of severely distorting the appraisal. Where this is an issue, the improvements should be redefined as an alternative with-scheme case”<sup>44</sup>.*

59. So high-cost transport system improvements – such as electrification of the mainline, the south Wales metro, and dualling of the A465, “run the danger of severely distorting the appraisal”.

60. It is unclear from the statement of cumulative impacts referred to above, nor from the information on the Welsh Government’s website<sup>45</sup>, how much analysis has been undertaken of the potential impact of these factors on the proposed plan.

<sup>40</sup> <http://m4newport.com/assets/issue-m4-sea-environment-report---publication---c2.pdf> page 93

<sup>41</sup> <http://wales.gov.uk/docs/det/publications/100329seaen.pdf>

<sup>42</sup> <http://wales.gov.uk/docs/det/publications/100329seaaddendum.pdf>

<sup>43</sup> <http://m4newport.com/assets/issue-m4-sea-environment-report---publication---c2.pdf> page 93

<sup>44</sup> <http://www.dft.gov.uk/webtag/documents/expert/unit3.15.5.php>

<sup>45</sup> <http://wales.gov.uk/about/foi/responses/di2013/octdec/transport1/atish7891/?lang=en>

61. The traffic forecast used by the Welsh Government – which is the sole justification for making infrastructure interventions:
- Uses a model discredited by transport academics
  - Runs the risk of “severe distortions” resulting from a failure to take account of high-cost infrastructure interventions since at least 2009<sup>46</sup>
  - Takes no account of fuel costs, which guidance states “need to be taken into account separately”, and which by some analyses could entirely erode the projected increase in traffic

## Safety

62. No evidence is provided that the M4 around Newport is unsafe, although the consultation document tries to infer that to be the case. This is despite our previous consultation response that pointed out: *“The Welsh Government’s consultants have kindly provided Friends of the Earth Cymru with crash data from 2009 and 2010. These reveal that there were **substantially fewer crashes in 2009 and 2010 than in any other year** for which information is available (i.e. from 2002 to 2008)... Using the most recent crash statistics we have shown that **the junctions under examination are substantially safer than the UK motorway average**, and in some cases stunningly so. This is partially conceded in the Appendix to the consultation document<sup>47</sup>. The safety case is therefore unproven<sup>48</sup>.*

## Problems

63. The Welsh Government has not taken the opportunity to modify the goals and objectives of the M4 Corridor around Newport, using the following rationale: *“17 problems were identified; which encompassed issues of capacity, (network) resilience, safety and sustainable development. It is considered that the problems have not changed since 2012. 15 goals were identified and each one aimed to address one or more of the problems. As the problems have not changed there was no need to revisit the goals<sup>49</sup>.*
64. Even considering just one of the problems identified, namely safety (see above), the Welsh Government is wholly unjustified in stating that “the problems have not changed”.
65. The 15 objectives proposed for the plan or programme were adopted as a result of consultation with a limited number and range of stakeholders in 2007 (not 2012)<sup>50</sup>.

<sup>46</sup> We are unable to judge whether or not sufficient consideration was made due to the 2009 SEA being unavailable

<sup>47</sup> Page 56: “However, in 2010, the first complete calendar year with a 50 mph speed limit and average speed cameras, there were 40 personal injury accidents on the M4 between Magor and Castleton. This compares to an average of 74 personal injury accidents per year for the period 2003-2007.

<sup>48</sup> [http://www.foe.co.uk/sites/default/files/downloads/m4\\_consultation\\_response.pdf](http://www.foe.co.uk/sites/default/files/downloads/m4_consultation_response.pdf) page 12

<sup>49</sup> <http://m4newport.com/assets/issue-m4-sea-environment-report---publication---c2.pdf> page 9

<sup>50</sup> <http://www.m4cem.com/downloads/reports/ISSUE%20Report%20Stage%201%20Problems%20and%20Goals.pdf> pages 2-3

<http://www.m4cem.com/downloads/reports/ISSUE%20Report%20Stage%201%20Problems%20and%20Goals.pdf> page 1

66. Article 5(2) of the SEA Directive requires that “*current knowledge and methods of assessment*” be used in order to determine reasonable alternatives. The SEA consultation has not used statistics that are up to date, nor methods of assessment that are rigorous. These failures have led the Welsh Government to propose a plan that has discounted non-infrastructure alternatives, and together mean that Articles 5(1) and 5(2) have been breached.
67. The original list of problems to be solved by the M4 CEM, and substantively unchanged by the current SEA, was “*outlined for the public in a brochure distributed in April 2006*”<sup>51</sup> and first appears in the M4CEM process in a highway planning workshop held in 2007<sup>52</sup>. It is therefore seven years out of date. Listed below are the problems listed in the SEA, and reasons why they are not based on evidence or are otherwise irrational.

<b>Problem</b>	<b>Concerns</b>
Regular congestion at peak times over extended periods.	Welsh Government has no congestion statistics. Wholly unsubstantiated by evidence; Welsh Government approach partially discredited by Welsh Government <sup>53</sup>
The M4 around Newport is used as a convenient cross town connection for local traffic, with insufficient local road capacity.	No evidence provided that 40% of journeys 20 miles or less is an unusual figure; data date from 2005 and are out of date. Junction closures would appear to be the solution to this problem, and are acknowledged by Welsh Government to be effective at reducing traffic on the M4 <sup>54</sup> .
HGVs do not operate efficiently on the motorway around Newport.	No evidence provided
There is insufficient capacity through some of the Junctions (e.g. 3 lane capacity drops to 2 lane capacity).	Sufficient capacity is related to congestion, of which no measure is available, or traffic numbers, which are declining
The 2-lane Brynglas tunnels are a major capacity constraint.	Sufficient capacity is related to congestion, of which no measure is available
The M4 cannot cope with increased traffic from new developments.	No modelling provided of traffic generated by new developments; no description of what is meant by ‘cannot cope’
Difficulties maintaining adequate traffic flows on the M4 and alternative highway routes at times of temporary disruption; alternative routes are not able to cope with M4 traffic.	The same is true of most roads; alternative routes anywhere in the UK are unlikely to be able to cope with motorway traffic because they are not motorways

<sup>51</sup> <http://wales.gov.uk/about/foi/responses/dl2013/octdec/transport1/atish7891/?lang=en>

<sup>52</sup> <http://www.m4cem.com/downloads/reports/ISSUE%20Report%20Stage%201%20Problems%20and%20Goals.pdf>  
page 1

<sup>53</sup> Extensively discredited by Friends of the Earth Cymru in our July 2012 response. Welsh Government consultation document page 22 “However, traffic congestion will not simply disappear as a result of capacity increase”.

<sup>54</sup> <http://www.m4cem.com/downloads/reports/M4%20CEM%20Stakeholder%20Workbook.pdf> page 33

The road and rail transport system in and around the M4 Corridor is at increasing risk of disruption due to extreme weather events.	The same is true of all roads and railways
When there are problems on the M4, there is severe disruption and congestion on the local and regional highway network.	The same is true of all motorways
The M4 requires essential major maintenance within the next 5-10 years; this will involve prolonged lane and speed restrictions, thus increasing congestion problems.	The same is true of most roads; maintenance of existing highways does not of itself necessitate highway infrastructure development elsewhere; no congestion data available
There is insufficient advance information to inform travel decisions when there is a problem on the M4.	Solution is to provide better advance information, not build new highway infrastructure
The current accident rates on the M4 between Magor and Castleton are higher than average for UK motorway.	Friends of the Earth Cymru research indicates this is untrue; these sections of motorway are safer than average, as confirmed by Welsh Government <sup>55</sup>
The existing M4 is an inadequate standard compared to modern design standards.	This is not a problem if it causes no problems
Some people's driving behaviour leads to increased accidents (e.g. speeding, lane hogging, unlicensed drivers).	Highway infrastructure development is unlikely to change people's driving behaviour for the better
There is a lack of adequate sustainable integrated transport alternatives for existing road users	Highway infrastructure development is unlikely to improve this
Traffic noise from the motorway and air quality is a problem for local residents in certain areas	Highway infrastructure development is unlikely to improve this; or will create a problem for local residents elsewhere
The existing transport network acts as a constraint to economic growth and adversely impacts the current economy.	No evidence provided to back up this assertion

68. Despite Friends of the Earth Cymru having contested – and rebutted – several of the ‘problems’ through our consultation responses of July and December 2012 the Welsh Government appears to have determined that not one of our rebuttals has enough merit to reconsider the objectives. This is despite the Gunning principles<sup>56</sup> requiring the Welsh Government to have “conscientiously” taken account of the product of consultation.

69. If the problems have been discredited it follows that the objectives of the plan or programme are contested. But given that both the objectives of the plan or programme are contested and:

<sup>55</sup> See footnote on page 10 <http://m4newport.com/assets/issue-m4-sea-environment-report---publication---c2.pdf>

<sup>56</sup> <http://www.adminlaw.org.uk/docs/18%20January%202012%20Sheldon.pdf> page 2

*“SEA objectives are used to help show whether the objectives of the plan or programme are beneficial for the environment”<sup>57</sup>,*

it is logical to conclude that the SEA objectives may not be asking the correct questions of the plan or programme. In short, the SEA objectives are invalid because the Welsh Government has failed to substantively update the ‘problems’ and therefore the objectives since at least 2007.

70. Our supposition that the Welsh Government failed to take proper account of consultation responses that contested the government’s application of evidence is strengthened by the participation report published by the Welsh Government in August 2013:

*“90 respondents made comments about the data presented in the Consultation Document. Criticisms related to the age of the data used and... that incorrect assumptions about continuing traffic growth were used”<sup>58</sup>.*

71. We consider that the Welsh Government has failed to take meaningful account of the evidence provided by Friends of the Earth Cymru, and others, throughout this process, and that its insistence that the problems are the same as those raised in 2012, unfettered by our challenges and evidence to the contrary, not least in relation to safety, and by evidence available to the Welsh Government and not previously raised by us and others, is unlawful.

72. The entire basis of problems on which the M4 CEM is based is legitimately disputed, yet the public had no opportunity to challenge the problems because they were generated prior to public consultation.

73. Additional factors that the Welsh Government appears to have failed to consider include:

- The Department for Transport’s 2011 projections of road traffic for Wales suggested an increase of traffic from 16.5 billion miles in 2010 to 17.3 billion miles in 2015<sup>59</sup>. With the information available to the Welsh Government by the publication date of the SEA, it should have been obvious that this projection was unlikely to be met.
- Traffic volumes have continued to decrease while economic growth has occurred, casting further doubt on the assumptions made by the Welsh Government’s modelling of future traffic growth
- A substantial number of other transport schemes in south Wales – including the South Wales Metro – that will have a reductive effect on traffic in the region.

74. Welsh Government SEA guidance provides for a ‘hierarchy of alternatives’:

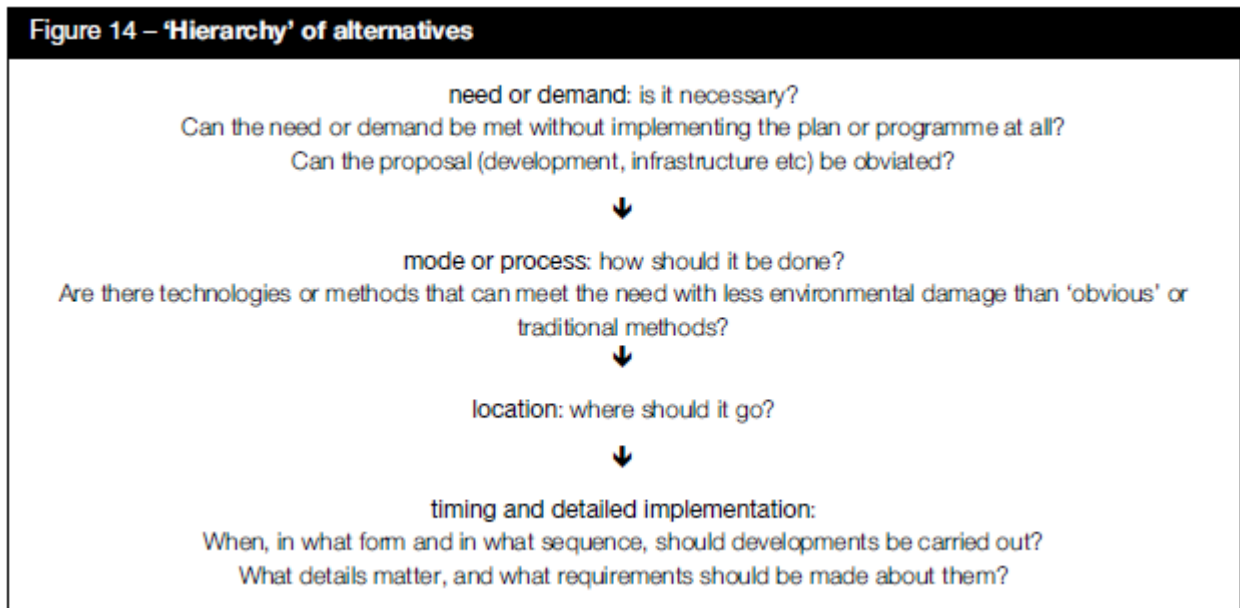
*“Obviation of demand is often environmentally and socially better than providing for demand or rationing consumption through price or limited capacity... Obviation is not the same thing as*

<sup>57</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/7657/practicalguidesea.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7657/practicalguidesea.pdf) page 28

<sup>58</sup> <http://www.m4cem.com/downloads/reports/ISSUE%20FOR%20PUBLICATION%20M4%20CEM%20Participation%20Report.pdf> page 45

<sup>59</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/4244/road-transport-forecasts-2011-annex-miles.xls](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/4244/road-transport-forecasts-2011-annex-miles.xls)

*restricting or thwarting demands which may simply lead to the displacement of a problem: it is better seen as looking for different, more sustainable, means to achieve human quality of life ends*<sup>60</sup>.



- 75. Obviation of the proposal has not been properly considered because the ‘problems’ have not been reassessed and the goals of the plan or programme are therefore invalid.
- 76. We consider the Welsh Government to have failed to take adequate consideration of factors that should have led to a reassessment of the objectives of the plan or programme.
- 77. We also consider that the Welsh Government has failed to take consideration of its own guidance in not making efforts to consider whether or not the preferred plan is necessary through failing to reappraise the problems since at least 2007.
- 78. The significance of this failure of the Welsh Government to reassess the problems cannot be overstated. If there is no evidence for many of the problems, or if they can be alleviated by means other than the proposed motorway, then the whole planning process adopted by the Welsh Government is fundamentally flawed. The SEA is invalid.

**Appraisal**

- 79. We are surprised by some of the assumptions made in the appraisal of the alternatives on their likely economic, social and environmental impacts.

Criterion	Concern – road alternatives
Transport economic efficiency	The Welsh Government has no measure of congestion. The Welsh Government has published no analysis of value for money.

<sup>60</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/7657/practicalguidesea.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7657/practicalguidesea.pdf) pages 68-69



Greenhouse gas emissions	The Welsh Government has published no evidence that reducing congestion reduces vehicle emissions.
Transport safety	The Welsh Government has published no evidence that the existing motorway is unsafe. No evidence as to why reduced congestion and delays would provide benefits to transport safety. No evidence to support the contention that “on completion of the new road it is likely that the total number of accidents on major roads in Newport would fall” <sup>61</sup> .
Personal security	The Welsh Government has published no evidence to indicate that reduced delays are linked to reduced perceptions of vulnerability to crime.
Physical fitness	Unclear how a scheme that “is unlikely to lead to any changes in travel by active modes” <sup>62</sup> will have a positive impact on physical fitness.
Equality, diversity and human rights	The Welsh Government has published no evidence to suggest how equality is improved by massive investment in road transport. Evidence indicates the opposite; expenditure on petrol and diesel is much greater in high-income households, and car ownership much lower in low income households <sup>63</sup> . And people on low incomes are disproportionately dependent on the services that are eroded by interest payments on public debt.

<b>Criterion</b>	<b>Concern – do minimum</b>
Transport economic efficiency	The Welsh Government has no measure of congestion, nor any analysis demonstrating that business performance is impacted as a result.
Greenhouse gas emissions	The Welsh Government has published no evidence that reducing congestion reduces vehicle emissions. Difficult to conceive Welsh Government reasoning that greenhouse gas emissions will be worse under do minimum scenario than under road-building.
Transport safety	The Welsh Government has published no evidence that the existing motorway is unsafe.
Physical fitness	Unclear how physical fitness is worse under ‘do minimum’ than under road building scenarios.
Equality, diversity and human rights	Unclear how equality, diversity and human rights are worse under ‘do minimum’ than under road building scenarios.

80. So, for example, there is no published evidence for coming to any conclusion on Transport Economic Efficiency criterion, yet the road alternatives see major positive ratings while ‘do minimum’ has a major negative rating.

81. Given the propensity for anecdotal evidence – or, indeed, an absence of evidence – the Welsh Government’s assessments must be treated with extreme caution.

### **Strategic Environmental Assessment and sustainable development**

82. The objectives of the SEA Directive include the promotion of sustainable development<sup>64</sup>.

<sup>61</sup> <http://m4newport.com/assets/issue-m4-draft-plan-consultation-document.pdf> page 39

<sup>62</sup> <http://m4newport.com/assets/issue-m4-draft-plan-consultation-document.pdf> page 34

<sup>63</sup> <http://naturiaethwr.wordpress.com/2013/11/11/treth-tanwydd/>

<sup>64</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/7657/practicalguidesea.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7657/practicalguidesea.pdf) page 20

83. The Welsh Government's sustainable development scheme is set out in "One Wales: One Planet"<sup>65</sup>.
84. Within the lifetime of one generation (by 2027)<sup>66</sup>, the Welsh Government says:  
*"we must... organise the way we live and work so we can travel less by car wherever possible"*<sup>67</sup>.
85. A sustainable Wales is one where:  
*"Walking and cycling are much more commonplace. There is greatly enhanced provision for cyclists and pedestrians within towns and cities, with improved walking and cycling networks, as well as better street design and traffic management measures. There are fast, reliable, affordable public transport services connecting major settlements. There are frequent, reliable mass transit services within cities and more heavily urbanised regions. There is a coherent network of sustainable transport options within rural Wales. Travel Plans are part of all new developments. All employers develop and implement Travel Plans. The 'school run' has been replaced by organised school transport or group walking/cycling. Petrol and diesel prices remain high, engine efficiency has increased with the widespread take-up of hybrid vehicles. People buy smaller, more efficient cars, and lift-sharing is a common way of travelling. The carbon content of transport fuels has reduced. The rate of growth in air travel has slowed down and it is no longer regarded as a necessity"*<sup>68</sup>.
86. The SEA consultation document<sup>69</sup> makes no mention of sustainable development, other than as a category of problems to be solved and a recognition that SEA contributes to the promotion of sustainable development.
87. It is difficult to conceive that the Welsh Government genuinely wishes this process to contribute to the promotion of sustainable development, not least because by 2027 government policy requires that we must travel less by car wherever possible.
88. The five shared principles of sustainable development among the governments of the UK are<sup>70</sup>:
- Living within environmental limits;
  - Ensuring a strong, healthy and just society;
  - Achieving a sustainable economy;
  - Promoting good governance; and
  - Using sound science responsibly
89. The infrastructure options presented by the Welsh Government do not help us live within environmental limits.

<sup>65</sup> <http://wales.gov.uk/docs/desh/publications/090521susdev1wales1planeten.pdf>

<sup>66</sup> The lifetime of one generation is defined by the Welsh Government as "by the time our children are grown up". We have taken this to mean a period of 18 years. The One Wales: One Planet document was published in 2009.

<sup>67</sup> <http://wales.gov.uk/docs/desh/publications/090521susdev1wales1planeten.pdf> page 18

<sup>68</sup> <http://wales.gov.uk/docs/desh/publications/090521susdev1wales1planeten.pdf> page 21

<sup>69</sup> <http://m4newport.com/assets/issue-m4-sea-environment-report---publication---c2.pdf>

<sup>70</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/7657/practicalguidesea.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7657/practicalguidesea.pdf) page 21



90. Given the lack of accessibility to private road transport for the poorest in society, and the overwhelming evidence<sup>71</sup> that richer people make more use of private road transport than poorer people, it is difficult to see how the infrastructure options presented contribute to a strong, healthy and just society.
91. The Welsh Government has presented no evidence that the infrastructure options will help achieve a sustainable economy.
92. Good governance depends in part on open consultations that take account of representations made. The Welsh Government's previous SEA consultation was unlawful. We consider this consultation to be so flawed as to be unlawful and the Welsh Government to have failed to conscientiously consider previous consultation responses from ourselves and others that have challenged the case for new infrastructure.
93. Responsible use of sound science includes the use of up-to-date evidence on which to base policy. This SEA singularly fails to do so.
94. We contend that the Welsh Government has failed to consider sustainable development to any meaningful degree in the SEA consultation.
95. The M4 consultation document devotes one page to sustainable development<sup>72</sup>. The Welsh Government considers sustainable development to relate exclusively to economic growth, air pollution and noise. The assertions in the one sentence that mentions carbon emissions have already been contested by Friends of the Earth Cymru in previous consultation<sup>73</sup>.
96. Either the Welsh Government's understanding of sustainable development is not as defined in its own Sustainable Development Scheme<sup>74</sup>, or this consultation does not comply with the Welsh Government's definition.

### **Strategic Environmental Assessment – reasonable alternatives**

97. Regulation 12(2)(b) sets out a requirement for SEA to consider alternatives<sup>75</sup>.
98. Welsh Government guidance states that:  
*“up the hierarchy’ thinking could suggest a wider, and more sustainable, range of alternatives than hitherto considered. Stakeholders may usefully be involved in the generation and assessment of both strategic and more detailed alternatives through consultation. Demonstrating that there are choices to be made is an effective way of engaging stakeholders in the process. The alternatives*

<sup>71</sup> See <http://naturaethwr.wordpress.com/2013/11/11/treth-tanwydd/>, for example

<sup>72</sup> <http://m4newport.com/assets/issue-m4-draft-plan-consultation-document.pdf> page 14

<sup>73</sup> [http://www.foe.co.uk/resource/consultation\\_responses/m4\\_consultation\\_response.pdf](http://www.foe.co.uk/resource/consultation_responses/m4_consultation_response.pdf) pages 8-9

<sup>74</sup> <http://wales.gov.uk/docs/desh/publications/090521susdev1wales1planeten.pdf>

<sup>75</sup> <http://www.legislation.gov.uk/ukxi/2004/1633/regulation/12/made>

*considered throughout the process must be documented and reasons given on why they are or are not taken forward*<sup>76</sup>.

99. The Welsh Government's public transport assessment demonstrated that up to 3% traffic reductions could be realized on the M4 around Newport with a set of public transport improvement measures with a capital cost of £300 million<sup>77</sup>. This assessment does not include the South Wales Metro, which has recently received £62 million of capital allocation<sup>78</sup>, and which will have a reductive effect on M4 traffic.
100. The Welsh Government has excluded public transport from consideration despite conceding that there exists:  
*"Uncertainty as to the success in achieving behavioural changes to result in a modal shift to more sustainable modes of travel"*<sup>79</sup>.
101. The Welsh Government has shown that the *partial* closure of just one motorway junction could result in a 5% reduction in peak traffic through the Brynglas Tunnels (widely regarded as the most restricted point on the M4 around Newport)<sup>80</sup>.
102. Alternative options that relate solely to 'common measures', 'public transport measures' and 'junction closures' (and these measures in combination) should have been included in the SEA, because the objectives of the plan or programme have not been shown to be unachievable using a combination of these measures.
103. The Welsh Government's rationale for failing to include public transport measures is:  
*"because the Welsh Government has commissioned a separate study and report on proposals to develop a metro system for South East Wales"*<sup>81</sup>.
104. This does not appear to be a robust rationale, not least because as discussed previously, the South Wales Metro is of a scale as to be likely to have a significant impact on traffic forecasts.
105. The Welsh Government has also failed to consider the Blue Route<sup>82</sup> promoted by Professor Stuart Cole and endorsed by the Institute of Welsh Affairs and the Chartered Institute of Logistics and Transport.
106. This is despite Professor Cole's contention that the Blue Route would meet all of the objectives of the proposal or plan, with:
- Far less environmental impact
  - Significantly less expenditure (approximately one-third the cost)

<sup>76</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/7657/practicalguidesea.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7657/practicalguidesea.pdf) page 69

<sup>77</sup> <http://www.m4cem.com/downloads/reports/Issue%20Public%20Transport%20Overview%2012.03.12%20revised.pdf>

<sup>78</sup> <http://www.walesonline.co.uk/business/business-news/edwina-hart-gives-backing-south-6225251>

<sup>79</sup> <http://m4newport.com/assets/issue-m4-sea-environment-report---publication---c2.pdf> page 95

<sup>80</sup> <http://www.m4cem.com/downloads/reports/M4%20CEM%20Stakeholder%20Workbook.pdf> page 33

<sup>81</sup> <http://m4newport.com/assets/issue-m4-sea-environment-report---publication---c2.pdf> page 15

<sup>82</sup> <http://www.iwa.org.uk/en/publications/view/227>

- A timeline for completion considerably sooner than the preferred option
- Capacity for upgrades should they prove necessary
- Much broader support in civil society

107. It is also despite a number of NGOs, including Friends of the Earth Cymru, writing to the Minister in August with an entreaty to not proceed with the consultation until such time as the Blue Route could be included in the suite of options under appraisal.

108. The Welsh Government has also closed off any alternatives that are not either motorways south of Newport, or 'do minimum'. In reality the infrastructure alternatives selected are so similar as to be analogous. There are no effective choices for stakeholders to make other than to support or oppose a motorway south of Newport.

109. Welsh Government guidance states that:  
*"In conducting SEA, Responsible Authorities must appraise the likely significant environmental effects of implementing the plan or programme and any reasonable alternatives"*<sup>83</sup>.

110. Further:  
*"At this stage it may be possible to drop some alternatives from further consideration and document the reasons for eliminating them. Justifications for these choices will need to be robust, as they can affect decisions on major developments... Throughout this part of the assessment, it may be necessary to revisit earlier tasks such as the collection of baseline information, as new information and issues emerge"*<sup>84</sup>.

111. Regulation 12(3) of the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004 stipulates that the Environmental Report must contain the information set out in Schedule 2. Clause 8 of Schedule 2 is:  
*"An outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties encountered in compiling the required information"*<sup>85</sup>.

112. The two justifications given in the SEA for the options appraised are:

- The M4 CEM WeITAG Stage 1 (Strategy Level) Appraisal concluded that the options were appropriate
- The consultation resulted in public support for a motorway to the south of Newport<sup>86</sup>

113. It is the opinion of Friends of the Earth Cymru that insufficient reasoning has been provided for selecting the alternatives dealt with.

<sup>83</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/7657/practicalguidesea.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7657/practicalguidesea.pdf) page 30

<sup>84</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/7657/practicalguidesea.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7657/practicalguidesea.pdf) page 31

<sup>85</sup> <http://www.legislation.gov.uk/wsi/2004/1656/made>

<sup>86</sup> <http://m4newport.com/assets/issue-m4-sea-environment-report---publication---c2.pdf> page 14

114. The Welsh Government’s more detailed reasoning for selecting the alternatives it has chosen to subject to strategic environmental assessment appears to be found in an entirely different document, the WeITAG Appraisal Report Stage 1.
115. The assessment is based on previous iterations of option appraisal, which themselves failed to include reasonable alternatives<sup>87</sup>.
116. Furthermore, the assessment was not open to consultation even though its conclusions<sup>88</sup> are based on a highly subjective set of assumptions related to performance of the options appraised, against a suite of transport planning objectives which were themselves not open to consultation.
117. It is also good practice, supported by the Welsh Government, to set out the other alternatives considered and the reason they were rejected<sup>89</sup>. The Welsh Government has failed to do this.
118. It is the view of Friends of the Earth Cymru that the SEA consultation is deficient in:
- Failing to consider reasonable alternatives (including the ‘Blue Route’<sup>90</sup>, and alternatives relating to ‘common/complementary measures’, ‘public transport measures’, ‘junction closures’, and these measures in combination)
  - Failing to provide adequate reasoning for the alternatives the Welsh Government has chosen to subject to strategic environmental assessment
119. The objective of the SEA Directive is:  
*“to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development”<sup>91</sup>.*
120. The SEA consultation undermines this aim, because it is facilitating significant damaging development by excluding reasonable alternatives that could meet the scheme’s objectives without environmental damage of the same scale as the alternatives subject to consultation.

**Strategic Environmental Assessment – environmental objectives**

121. The environmental objectives chosen raise a number of concerns (see Table).

<b>Environmental objective of draft plan</b>	<b>Concerns</b>
General comment	No objective or subjective ranking of objectives. So climate change adaptation is of the same scale of

<sup>87</sup>

[http://www.m4cem.com/downloads/reports/Issue%20M4%20Corridor%20Around%20Newport%20WeITAG%20Appraisal%20Report%20Stage%201%20\(Strategic%20Level\).pdf](http://www.m4cem.com/downloads/reports/Issue%20M4%20Corridor%20Around%20Newport%20WeITAG%20Appraisal%20Report%20Stage%201%20(Strategic%20Level).pdf) pages 25-27

<sup>88</sup>

[http://www.m4cem.com/downloads/reports/Issue%20M4%20Corridor%20Around%20Newport%20WeITAG%20Appraisal%20Report%20Stage%201%20\(Strategic%20Level\).pdf](http://www.m4cem.com/downloads/reports/Issue%20M4%20Corridor%20Around%20Newport%20WeITAG%20Appraisal%20Report%20Stage%201%20(Strategic%20Level).pdf) pages 49-75

<sup>89</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/7657/practicalguidesea.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7657/practicalguidesea.pdf) page 36

<sup>90</sup> <http://www.iwa.org.uk/en/publications/view/227>

<sup>91</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0042:EN:HTML>

	importance as climate change mitigation, even though strong, early action outweighs the costs <sup>92</sup>
General comment	Social objectives over-represented compared to environmental objectives as compared to example given in statutory guidance <sup>93</sup> . Objectives 5, 6, 10 and 11 are primarily social criteria.
Improved air quality in areas next to the existing M4 around Newport	Ignores air quality in areas next to new infrastructure
Reduce GHG emissions per vehicle and/or person kilometre	Does not read across to NTP SEA objective “reduce transport related GHG emissions”. Proposed environmental objective could lead to substantial increase in GHG emissions. Contrary to climate policies <sup>94</sup> and sustainable development policy <sup>95</sup>
Effective adaptation measures to climate change are in place	As described by the consultation, relates almost exclusively to protecting the proposed infrastructure from climate impacts. Ignores potential impacts of infrastructure on adaptation for existing environment.
Reduce disturbance to people from high noise levels... within the existing M4 corridor	Ignores disturbance in areas next to new infrastructure. Aggregate noise and vibration highly likely to increase with increased traffic at faster speeds.
Improved access to all services and facilities	Duplication with the Health Impact Assessment <sup>96</sup> , which is a more appropriate location and covers this issue in more detail
Protect and promote everyone’s physical and mental wellbeing and safety	Duplication with the Health Impact Assessment. The SEA notes “A Health Impact Assessment is being undertaken, which includes an appraisal of health impacts of the Black Route...” <sup>97</sup>
Ensure that diversity, local distinctiveness and cultural heritage are valued, protected, celebrated and enhanced	Difficult to see why this is an SEA consideration rather than some of the other alternatives given in guidance

## Strategic Environmental Assessment – prediction of effects

122. Welsh Government guidance states:

*“quantification is not always practicable, and qualitative predictions can be equally valid and appropriate... However, qualitative does not mean ‘guessed’. Predictions need to be supported by evidence, such as references to any research, discussions or consultation which helped those carrying out the SEA to reach their conclusions. The Environmental Report must document any difficulties such as uncertainties or limitations in the information underlying both qualitative and*

<sup>92</sup> [http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/30\\_10\\_06\\_exec\\_sum.pdf](http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/30_10_06_exec_sum.pdf) page i

<sup>93</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/7657/practicalguidesea.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7657/practicalguidesea.pdf) pages 65-66

<sup>94</sup> <http://wales.gov.uk/docs/desh/publications/101006ccstratfinalen.pdf> page 33

<sup>95</sup> <http://wales.gov.uk/docs/desh/publications/090521susdev1wales1planeten.pdf> page 18

<sup>96</sup> [http://www.m4newport.com/assets/issue-m4-hia\\_publication.pdf](http://www.m4newport.com/assets/issue-m4-hia_publication.pdf) page 37

<sup>97</sup> <http://m4newport.com/assets/issue-m4-sea-environment-report---publication---c2.pdf> page 58

*quantitative predictions. Assumptions, for instance about underlying trends or details of projects to be developed under the plan or programme, need to be clearly stated*<sup>98</sup>.

123. The 2012 Strategic Environmental Assessment considered that a motorway to the south of Newport (Highway Infrastructure Option A) would have ‘major negative’ impacts on biodiversity, soil, water, material assets, cultural heritage and landscape/townscape<sup>99</sup>.
124. Major negative impacts are defined as being:  
*“Likely to affect the whole, or large part of the... Programme area. Also applies to effects on nationally or internationally important assets. The effects are likely to be direct, irreversible and permanent. The magnitude of the predicted effects will also be major”*<sup>100</sup>.
125. The current (2013) Strategic Environmental Assessment considers that the impact of a motorway south of Newport on biodiversity, soil, water and material assets are now ‘minor negative’<sup>101</sup>, defined as being:  
*“likely to be limited to small areas within the M4 Corridor around Newport, or limited to small groups of people and receptors. Option would have a minor adverse effect on the environment but is not considered to be significant”*<sup>102</sup>.
126. There is no apparent justification for this significant shift in reducing the impact of a motorway to the south of Newport. SEA guidance requires mitigation measures to be taken into consideration during the preparation of the plan or programme<sup>103</sup>.
127. This SEA consultation does not give a rational explanation as to why the mitigation measures presented are so superior to those considered during the 2012 SEA that they downgrade many of the predicted effects from *“direct, irreversible and permanent”* to *“not significant”*.
128. The Welsh Government’s rationale for this downgrading is as follows:  
*“no motorway south of Newport was considered as part of the 2012 proposals. The proposals did however include “Highway Option A: additional high quality road to the south of Newport” The 2012 Strategic Environmental Assessment (SEA) type assessment considered this highway option individually with the other alternatives which formed part of M4 CEM at that time. The September 2013 SEA includes the Environmental Report required in accordance with the Regulations. This*

<sup>98</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/7657/practicalguidesea.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7657/practicalguidesea.pdf) pages 31-32

<sup>99</sup> <http://www.m4cem.com/downloads/reports/M4%20CEM%20SEA%20Environmental%20Report%20&%20Appendices.pdf> page 80

<sup>100</sup> <http://www.m4cem.com/downloads/reports/M4%20CEM%20SEA%20Environmental%20Report%20&%20Appendices.pdf> page 56

<sup>101</sup> <http://m4newport.com/assets/issue-m4-sea-environment-report---publication---c2.pdf> page 91

<sup>102</sup> <http://m4newport.com/assets/issue-m4-sea-environment-report---publication---c2.pdf> page 36

<sup>103</sup> As stated on page 41 of the SEA consultation <http://m4newport.com/assets/issue-m4-sea-environment-report---publication---c2.pdf>



*report appraises the environmental impact of all parts of the draft Plan, whose main element is a proposed motorway south of Newport, its reasonable alternatives and a Do-Minimum scenario*<sup>104</sup>.

129. The conclusion that a “high quality road to the south of Newport” has no relationship to a dual carriageway or motorway to the south of Newport is surprising, not least because:

- The dual carriageway (red route) option in the 2013 SEA consultation is referred to as a “high quality road to the south of Newport”<sup>105</sup>
- It follows a very similar, if not identical, route to that outlined in previous iterations of the M4 project, including the M4 CEM

130. The biodiversity impacts outlined in the SEA (“not significant”) also do not concur with those stated in the consultation document (“large adverse impact”)<sup>106</sup>. It could be surmised that the Welsh Government would wish respondents to the consultation to think that it were seriously concerned about biodiversity impact, while the environmental assessment shows otherwise.

131. The Welsh Government has assessed the following environmental impacts of the dual carriageway (high quality road to the south of Newport) alternative as being identical to those of the preferred option (a motorway to the south of Newport)<sup>107</sup>:

- Greenhouse gas emissions
- Climate adaptation
- Biodiversity
- Population
- Human health
- Soil
- Water
- Material assets
- Cultural heritage
- Landscape and townscape

132. However, without prejudice to our case that the preferred option is analogous to Option A in the 2012 SEA consultation, even were we to assume that the Welsh Government had justification for this down-grading in impact, its judgement is highly questionable. It is not credible, for example, that: *“The net benefit [of the preferred option of a motorway south of Newport] for biodiversity is considered to be positive in the long-term”*<sup>108</sup>.

133. The Welsh Government’s conclusions are all the more surprising when it also states that: *“insufficient information is available at this strategic stage to identify and evaluate the risk to biodiversity that the draft Plan, or a reasonable alternative, may pose”*<sup>109</sup>.

<sup>104</sup> <http://wales.gov.uk/about/foi/responses/dl2013/octdec/transport1/atish7891/?lang=en>

<sup>105</sup> <http://www.m4newport.com/assets/issue-m4-habitats-regulations---publication---a1.pdf> page 19

<sup>106</sup> <http://m4newport.com/assets/issue-m4-draft-plan-consultation-document.pdf> page 53

<sup>107</sup> <http://m4newport.com/assets/issue-m4-sea-environment-report---publication---c2.pdf> pages 91-92

<sup>108</sup> <http://m4newport.com/assets/issue-m4-sea-environment-report---publication---c2.pdf> page 57

<sup>109</sup> <http://m4newport.com/assets/issue-m4-sea-environment-report---publication---c2.pdf> page 95

134. The flawed criteria used in the environmental objectives have naturally led to some contested findings. So the fact that the criterion related to air quality is related solely to existing infrastructure means that despite a likely overall increase in air pollution as a result of a new road (because of increased induced traffic<sup>110</sup>), the motorway option receives a highly beneficial rating<sup>111</sup>. The rationale seems to be that air pollution will be reduced as a result of a new motorway, when the reverse is likely to be the case.
135. The Welsh Government gives a positive rating for air pollution while conceding that there is: *“Uncertainty surrounding the changes in air quality and noise nuisance associated with the different measures”*<sup>112</sup>.
136. Likewise, the claim that in the short to medium term *“there could be a reduction in greenhouse gas emissions”*<sup>113</sup> following building of a new motorway to the south of Newport cannot be objectively supported, is unsubstantiated by the Welsh Government, and is flatly contradicted by evidence from the Department for Transport.
137. Evidence supplied by the Department for Transport clearly shows that new road-building is associated with an increase in greenhouse gas emissions<sup>114</sup>.
138. In not one of the cases noted by the Department for Transport has additional road capacity led to anything other than a substantial increase in emissions.
139. Using the A46 Newark-Widmerpool improvement as the nearest approximation to the proposed draft plan, we have an additional 877 tonnes of greenhouse gases per mile of additional lane capacity in the opening year.
140. If we conservatively<sup>115</sup> assume that opening year additional greenhouse gases stay constant over time, and that the proposal is for 6 additional lanes each of length 14 miles then we could calculate the additional greenhouse gas emissions to be 73,668 tonnes per year.
141. The proposed motorway crosses five SSSIs and a Special Area of Conservation, yet is awarded only minor significant impact on biodiversity<sup>116</sup>.
142. The proposed motorway *“would aim to meet the needs of all groups of people”*<sup>117</sup>. Most people in the lowest income quintile do not own cars/vans<sup>118</sup>. It is therefore difficult to reconcile the

<sup>110</sup> <http://www.vtpi.org/gentraf.pdf>

<sup>111</sup> <http://m4newport.com/assets/issue-m4-sea-environment-report---publication---c2.pdf> page 43

<sup>112</sup> <http://m4newport.com/assets/issue-m4-sea-environment-report---publication---c2.pdf> page 95

<sup>113</sup> <http://m4newport.com/assets/issue-m4-sea-environment-report---publication---c2.pdf> page 47

<sup>114</sup> <http://www.highways.gov.uk/foi/increased-road-capacity-and-greenhouse-gas-emissions/>

<sup>115</sup> Making the assumption that induced traffic will not increase as time goes by, or that any increase will be compensated by improved fuel efficiency of vehicles

<sup>116</sup> <http://m4newport.com/assets/issue-m4-sea-environment-report---publication---c2.pdf> pages 56-57

<sup>117</sup> <http://m4newport.com/assets/issue-m4-sea-environment-report---publication---c2.pdf> page 64

<sup>118</sup> <http://naturiaethwr.wordpress.com/2013/11/11/treth-tanwydd/>



assertion that the needs of poorer people will be met (including the significant improvement foreseen in the Equality Impact Assessment for people who are economically inactive, and with high levels of deprivation<sup>119</sup>) with the low levels of car ownership in these groups.

143. The downgrading of impacts from “direct, irreversible and permanent” to “not significant” has been discussed above. Categories it relates to include biodiversity, soil, water and material assets.

### Strategic Environmental Assessment – cumulative impact

144. The Welsh Government has only considered cumulative impacts of the draft plan or programme in conjunction with the National Transport Plan, the South East Wales Regional Transport Plan and the Wales Spatial Plan. The obvious outlier in terms of “other policies, plans and programmes” is the South Wales Metro. This plan, for which partial funding has been allocated, is anticipated to increase by 60% the number of people who can easily access public transport<sup>120</sup> and to:

*“address the region’s existing transport problems – including congestion at key points on the road network (M4 J32-34, Newport and the A470 into Cardiff) and minimise the need for further congestion measures”<sup>121</sup>.*

145. Given that one of the principal achievements of the South Wales Metro will be to minimise the need for further congestion measures, the Welsh Government has unlawfully excluded a major factor in its consideration of means of reducing congestion.
146. Further, given that peak time (rush hour) congestion is the biggest purported problem to be solved by the draft plan or programme, the Welsh Government has been remiss in excluding consideration of this major public transport scheme.

### Strategic Environmental Assessment – route error

147. The line of the M4RR, as set out in the documentation<sup>122</sup>, is different from the legally-protected line (the TR111) in the Newport Local Development Plan (dated April 2012), and the Newport Unitary Development Plan<sup>123</sup>.
148. Newport Council has confirmed the protected route on their plans as that provided by the Welsh Government when serving the statutory notice pursuant to Article 19 of The Town & Country Planning (Development Management Procedure) (Wales) Order 2012.
149. The 2013 consultation version of the map reduces the length of the highway within the SSSI by a distance in the region of 1.5 km as compared to the validated TR111 version.

<sup>119</sup> [http://www.m4newport.com/assets/issue-m4-eqia\\_publication.pdf](http://www.m4newport.com/assets/issue-m4-eqia_publication.pdf) page 46

<sup>120</sup> <http://wales.gov.uk/docs/det/publications/131021metroen.pdf> ES4

<sup>121</sup> <http://wales.gov.uk/docs/det/publications/131021metroen.pdf> ES4

<sup>122</sup> <http://www.m4newport.com/assets/tr-111-plan-2006.pdf>

<sup>123</sup> [http://www.newport.gov.uk/stellent/groups/public/documents/plans\\_and\\_strategies/cont712753.pdf](http://www.newport.gov.uk/stellent/groups/public/documents/plans_and_strategies/cont712753.pdf)

150. The 2013 consultation states that the preferred route is:  
*“A new section of 3-lane motorway to the south of Newport following the protected (TR111) route (Black Route)”*<sup>124</sup>.
151. The 2013 consultation states that 8.5 km of the preferred option crosses SSSI land, resulting in the loss of up to 60 ha<sup>125</sup>. Assuming that the road would follow the TR111 route rather than the mapped route in the documentation, it would cross in the region of 10 km, with a land take of up to 70 ha.
152. It appears that the consultation has misled the public about the scale of SSSI land that will be lost as a result of the preferred route.

## Conclusion

153. The consultation is fatally flawed and must be withdrawn.

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<sup>124</sup> <http://m4newport.com/assets/issue-m4-draft-plan-consultation-document.pdf>

<sup>125</sup> <http://m4newport.com/assets/issue-m4-draft-plan-consultation-document.pdf> page 32