

**Roads (Scotland) Act 1984
The Compulsory Purchase by Public Authorities (Inquiries
Procedure) (Scotland) Rules 1998**

**Public Inquiry into Objections against Draft Road Orders for
Aberdeen Western Peripheral Route and associated
Environmental Statement**

Statement of Case

**On behalf of
*RoadSense***

1. Introduction

This *Statement of Case* is submitted by *RoadSense*. It is founded upon and develops the Objections submitted by *RoadSense* to the Draft Road Orders and the Environmental Statement in February and October 2007.

RoadSense is an organisation that was formed to oppose the proposed Netherley-Milltimber Brae Aberdeen Western Peripheral Route (AWPR) and to promote full and proper evaluation of alternatives. It consists of private individuals drawn mainly from the suburbs and other settlements situated along and close to the chosen route. *RoadSense* is governed by a written constitution and this can be viewed on the internet at www.road-sense.org.

RoadSense was formed in January 2006 shortly after the then Transport Minister selected the Netherley-Milltimber Brae route for the Aberdeen bypass. We have held numerous public meetings with attendances ranging from 300 to 1,200 people. Nearly 10,000 Objections were submitted to Transport Scotland against the chosen route by means of post cards, letters and a *RoadSense* website. Further details about the sources of the various Objections can be found in the Statutory Consultation Objection Analysis Report on the AWPR web site.

In brief, without prejudice to our case at the public local inquiry, *RoadSense* will contend

and contest that Transport Scotland as promoter of the scheme has failed to demonstrate that the preferred route is the most suitable route having regard to considerations of, *inter alia*, financial costs, economic efficiency and environmental impact. *RoadSense* also believes that if there is to be a bypass around Aberdeen then there are superior alternative route options, including tunnels.

This *Statement of Case* is structured as follows:

First, *RoadSense* considers and contends that Transport Scotland has failed to justify the selection of the Netherley-Milltimber Brae route having regard to its own stated transportation objectives as well as those of planning policy, environmental impact, sustainability and so on. *RoadSense* will present evidence examining the route selection process and outcome. This will include evidence on, *inter alia*, the requirements of Scottish Transport Appraisal Guidance (STAG), the transport analysis and associated traffic modelling undertaken by Transport Scotland and their agents and the views of Civil Servants and Ministers as revealed through correspondence obtained under the provisions of the Freedom of Information (Scotland) Act 2002.

Second *RoadSense* considers and contends that Transport Scotland and its agents have failed to have regard to the required environmental appraisal procedures apropos the Environmental Impacts Directive, the Strategic Environmental Assessment Directive and the Habitats Directive.

Third, *RoadSense* considers and contends that the traffic modelling and analysis undertaken by Transport Scotland and its agents to support the case for the AWPR and for the Netherley-Milltimber Brae route is materially deficient.

Fourth, *RoadSense* considers and contends that Transport Scotland and its agents have failed to design a scheme that will be justified in terms of projected volumes of traffic usage and congestion relief, and safe in terms of the gradients of specific links and the configuration of junctions. They have also failed to demonstrate that the proposed Netherley-Milltimber Brae route will not have a materially adverse impact upon the communities and environments through which it will pass. Indeed, it is *RoadSense's* view that this impact will be very significant.

Fifth, *RoadSense* considers and contends that there are more appropriate alternative routes. We will examine the respective merits of the routes put forward by Transport Scotland at the April 2005 public consultation exercise as well as other potentially suitable routes.

RoadSense will be represented at the public inquiry by Stuart Gale QC and Mr. Alasdair Burnet, both of the Terra Firma Chambers at the Faculty of Advocates in Edinburgh. Our preliminary list of expert witnesses is identified at the end of this *Statement of Case* and our list of documents is shown as Appendix 1. *RoadSense* has noted the promoter's list of Core Documents nos. 1-56 and nos. 1-144 appended to the Transport Scotland Statement of Case dated 17th June 2008. To avoid duplication *RoadSense* appends to this *Statement of Case* a list of additional documents to which it intends to refer. We reserve the right to add to this list as a result of further information obtained in preparation of our case. As far as possible, we undertake that any such documents will be lodged by the due date.

2. The Process of Route Selection

Road Sense will argue that Transport Scotland and its agents have failed to meet the necessary tests to justify the selection of the Netherley-Milltimber Brae route for the AWPR. It will argue that the failure in many instances to pursue and apply the correct procedures in a timely, duly sequenced and transparent manner as laid down in documents and protocols such as the Scottish Transport Appraisal Guidelines (STAG), planning policy guidelines, environmental assessment regulations and so on has led to the selection of an unsuitable route having regard to the Government's own transportation, environmental and policy objectives such as, including but not limited to, value for money, relief of vehicular congestion, transport integration, social inclusion, environmental sustainability and environmental impact.

In this section we identify the critical documents and events relevant to the route selection choice in chronological sequence and briefly outline the principal points to emerge from them in order to provide a context for the arguments, which we will develop in more detail later in this *Statement of Case*. *RoadSense* will present evidence drawing upon these materials to demonstrate that proper procedures were not always robustly and rigorously followed.

The relevant context in the decision making process includes, but is not limited to, the following documents and events:

November 1994 - Grampian Regional Council *WPR Summary Report*:

- A large number of routes were identified and analysed
- Routes 12 (Pifodels) and 14 (Murtle) performed best and were taken forward to Environmental Assessment
- Routes west of Murtle were materially less effective
- No tunnel options were identified and analysed.
- The Netherley-Milltimber Brae route was not identified or considered

1996 - Grampian Regional Council Recommendation

- Grampian Regional Council recommended adoption of Route 14 by Aberdeen City Council & Aberdeenshire Council.

1998 - *Sustainable Transport Study for Aberdeen*

- Multi-modal transport study for Aberdeen
- Assessed 20 transport scenarios for Aberdeen.
- Adding AWPR to scenarios had little impact on peak period traffic

August 2000 - *Delivery of an Integrated Transport Study for the North-East of Scotland*

- Report commissioned by North East of Scotland Economic Development Partnership and prepared by Halcrow Fox
- Sought to promote the WPR within a demonstrably integrated transport strategy including CrossRail.

December 2000 - Aberdeen Local Transport Strategy

- Promoted WPR as part of an integrated transport strategy for Aberdeen.
- WPR in form of a reverse-D.
- Each WPR junction linked to proposed park and ride scheme.

December 2001 - North East Scotland Together (Structure Plan)

- No explicit policy provision for an AWPR.
- Passing textual references only.
- Provision for AWPR on Key Diagram in shape of inverted 'D'.
- No provision for a 'Fastlink' connection to Stonehaven.
- All of AWPR shown within Aberdeen Greenbelt.

2003 – Modern Transport System (MTS)

- MTS recommended an overall strategy comprising a *package* of transport measures.
- Package included, *inter alia*, an AWPR together with CrossRail (Stonehaven Inverurie rail link), 5 Park and Ride Sites and Bus Priorities.
- The identified AWPR was based upon Murtle (Route 14) at a cost of £120 million.
- No provision was made for a 'Fastlink' component.
- The Netherley-Milltimber Brae route was not the basis for the Modern Transport System STAG appraisal.

April 2004 – National Planning Framework

- Commitment to principle of AWPR.
- No reference to specific alignment or to a Fastlink.

10th March to 22nd April 2005 - AWPR Public Consultation exercise

- The Murtle Route was advanced as the 'preferred route'
- 4 other possible routes identified: Pitfodels; Milltimber Brae; Peterculter – Charleston; Peterculter - Stonehaven.
- All routes subject to a STAG 1 appraisal.
- The Netherley-Milltimber Brae route was not identified or included in the exercise.
- Only the preferred route, Murtle, was accompanied by visualisations.
- Information on the remaining 4 routes was presented in summary form only.
- Some members of the public were advised by officials against submitting responses to the non-preferred routes.

July 2005 - Report of inquiry into Objections into Aberdeenshire Local Plan (ALP)

- Aberdeen Greenbelt Alliance (AGA) and other parties objected to identification and inclusion of specific (Murtle) route in ALP.
- Reporters note absence of Policy reference in NEST to AWPR.
- Reporters recommend deletion of Murtle route from ALP map.
- Reporters recommend insertion of policy to protect Murtle route from sterilising development.

7th July 2005 – AWPR Preferred Options Study – Workshop

- Route choice process based on comparing inner pair and outer pair.

- Netherley-Milltimber Brae route was not identified for purposes of comparison.
- Murtle route considered to be most suitable.
- Pitfodels route considerably better than Milltimber or Peterculter routes.

October 2005 - Transport Minister meets with Pitfodels Conservation Group (PCG)

- PCG expresses concern to Transport Minister about Pitfodels route.
- Meeting is unminuted.

21st October 2005 - Advice from Chief Roads Engineer (CRE) to Minister

- CRE advises Minister to select Murtle route.

14th November 2005 – Route Selection Meeting

- Transport Minister selects 'hybrid route'.
- Meeting is unminuted (as revealed following subsequent request for Minute by *RoadSense*).
- Transport objectives for the AWPR are changed to include relief of traffic congestion on A90.

17th November 2005 – AWPR Policy Option Appraisal

- Chief Roads Engineer identifies deficiencies of hybrid route.
- Chief Roads Engineer notes need for Minister to persuade Aberdeen City Council leader of scheme merits.

November 2005 MVA - AWPR scheme testing report

- Comparison of Hybrid Route, Murtle Route and Milltimber Brae Route.

1st December 2005 - Transport Minister announces route choice

- 'Hybrid' route chosen. Hybrid route comprises “combination of Milltimber Brae and Peterculter – Stonehaven options”.
- Hybrid route not subject to a STAG1 appraisal.
- Hybrid route has not been subject to any geo-technical investigation or evaluation.
- Hybrid route is not Netherley-Milltimber route.

30th January 2006 - Announcement of route corridor

- Route corridor identified as being up to 3 miles wide in places.

15th March 2006 - Release of map showing possible route options

- 7 options within route corridor identified.
- None of options subject to STAG 1 appraisal.

2nd May 2006 - Publication of finalised Netherley-Milltimber Brae route

- Fastlink now Dual Carriageway.

November 2006 - Publication of Project Development 2005-2006 Consolidation Report

- Attempted justification of proposed routes.

**September 2007 – Report of inquiry into Aberdeen City Local Plan –
*GreenSpaces–New Places***

- Residents had objected to references to development associated with AWPR.
- Reporter concluded that "...WPR is not intended as a development access road..."
- Council Committee accepted Reporter's recommendations.
- Implication is that Tunnel should be acceptable.

October 2007 – Netherley-Milltimber Brae STAG 1 published on AWPR Website

- STAG 1 does not appraise proposed scheme.
- Appraises single carriageway for Netherley Fastlink.

January 2008 – National Planning Framework for Scotland 2 (NPF2)

- AWPR not identified as a 'national development'.
- Textual reference to assumed completion of AWPR.
- Road Sense submitted representations to NPF2 objecting to assumed approval of AWPR.

May 2008 – Revised Scottish Government STAG guidelines

- Very explicit about need to justify the deletion of STAG 1 options.
- Requirement for STAG2's for all options carried forward from STAG1.

As stated in the preamble to this section, detailed analysis of the above documents and sequence of events will show that, notwithstanding a process that might have produced a non-road based solution, Transport Scotland failed to pursue the correct procedures and protocols in promoting the AWPR and in identifying and selecting the route. *RoadSense* will present evidence that will demonstrate that the selection of the Netherley-Milltimber Brae route can not be supported by reference to Transport Scotland's own analysis of how the various route options identified by it at the start of the route selection process performed against its own transportation and policy criteria.

RoadSense will present evidence demonstrating that STAG has not been complied with in the route selection exercise in that there was a failure to carry out the necessary comparative appraisal of viable alternative routes including the "hybrid" route at the STAG 1 appraisal stage. Further, there was a failure to carry forward all viable alternative routes to the detailed STAG 2 appraisal stage. Finally there was a failure to observe the public law requirements of openness and transparency in decision making.

3. Environmental Appraisal Failures

RoadSense contends that Transport Scotland has failed to comply with the requirements imposed by European Union legislation with respect to assessing the potential adverse environmental impacts that the scheme might generate.

The development and approval of plans for the Aberdeen Western Peripheral Route must meet the requirements of, *inter alia*, EU Directive 85/337/EEC (the Environmental Impact Assessment Directive); EU Directive 2001/42/EC (the SEA Directive); and EU Directive 92/43/EEC (the Habitats Directive).

The River Dee is designated a Special Area of Conservation (SAC) under the Habitats Directive. It is a site of European interest and part of the Natura 2000 Network of protected sites. The promoter of a plan or project must make certain that the plan or project will not adversely affect the integrity of a Natura 2000 site. All aspects of the plan or project which can, by themselves or in combination with other plans or projects, affect the site's conservation objectives must be identified in the light of the best scientific knowledge in the field. The burden of proof is upon the promoter to ensure that there are no adverse effects.

In line with the need to prevent undesired impairment to the Natura 2000 network, the thorough revision and/or withdrawal of a proposed plan or project should be considered when significant negative effects on the integrity of a site have been identified. The competent authorities have to analyse and demonstrate first the need of the plan or project concerned. The zero option should be considered at an early stage.

If appropriate, the competent authorities should examine the possibility of resorting to alternative solutions which better respect the integrity of the site in question. All feasible alternatives, in particular, their relative performance with regard to the conservation objectives of the Natura 2000 site, the site's integrity and its contribution to the overall coherence of the Natura 2000 Network have to be analyzed. Such solutions should normally already have been identified within the framework of the initial assessment carried out under Article 6(3) of the Habitats Directive. They could involve alternative locations or routes, different scales or designs of development, or alternative processes.

Under the amended Conservation Regulation the provisions of the Habitats Directive applies to all plans likely to affect such a site. Thus any transport plan which is likely to have an impact upon a Natura 2000 site like the River Dee must be subject to an appropriate assessment. It must be shown that any option put forward is the least damaging for habitats, for species and for the integrity of the Natura 2000 site, regardless of economic considerations, and that no other feasible alternative exists that would not affect the integrity of the site.

The MTS was the transport plan which led to the AWPR project. That plan has never been subjected to appropriate assessment or any other provisions of the Habitats Directive despite the clear effects it would have upon the Dee SAC. The procedure which resulted in the MTS and which led to the formulation of more detailed plans for the AWPR fails to meet the requirements of the Habitats Directive.

Directive 2001/42/EC obliges public authorities to consider systematically whether the plans and programmes they prepare come within its scope of application and hence whether they need to carry out a strategic environmental assessment (SEA) of their proposals.

Article 3(2) of the Directive makes SEA mandatory for plans and programmes which are

