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Our Ref: TWA 21/APP/01  
Your Ref: 123743869.1 \NO0965.07001

27 June 2022

Dear Sirs,

## **TRANSPORT AND WORKS ACT 1992: APPLICATION FOR THE PROPOSED NORTHUMBERLAND LINE ORDER**

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to the report of the Inspector, Richard Clegg BA (Hons) DMS MRTPI, who held an inquiry between 9 and 30 November 2021, into the application by your clients, Northumberland County Council (“NCC”) for;

a) the Northumberland Line Order (“the Order”) to be made under Sections 1 and 5 of the Transport and Works Act 1992 (“TWA”); and

b) a direction granting Deemed Planning Permission, subject to conditions, for the works that are subject of the Order.

2. The Order as applied for would confer powers on NCC to acquire compulsorily land and rights in land, to use land temporarily, to close level crossings, to stop up and divert highways, and carry out works in connection with development required to re-introduce passenger rail services to the existing railway between Ashington and Newcastle-upon-Tyne (“the Order”).

3. The Secretary of State for the Department for Levelling Up, Housing and Communities (“DLUHC”) will be issuing his decision alongside this decision in respect of the associated application for a certificate under Section 19 of the Acquisition of Land Act 1981.

### **Summary of Inspector’s recommendations**

4. The Inspector recommended that the Order should be made, subject to modifications, and that deemed planning permission should be granted subject to conditions.

## **Summary of Secretary of State's decision**

5. For the reasons given in this letter, **the Secretary of State has decided to make the Order with modifications and give the Planning Direction, subject to conditions set out in Annex A to this letter.**

## **Secretary of State's consideration**

6. The application for the Order and deemed planning permission was made on 26 May 2021. There were 29 objections outstanding to it at the commencement of the local inquiry along with 25 supporting responses and 4 representations. Seven objections had been withdrawn by the close of the inquiry. Of the remaining 22 original objections, 14 were from statutory objectors. An additional written representation was received by the Department after the inquiry had opened.

7. The Secretary of State issued a screening decision on 3 March 2021 which stated that an Environmental Impact Assessment was not required in relation to the project which is to be the subject of the Order.

8. Careful consideration has been given to all the arguments by, or on behalf of, the parties. The Secretary of State's consideration of the Inspector's report is set out in the following paragraphs. All other paragraph references, unless otherwise stated, are to the Inspector's Report ("IR").

## **Procedural matters**

9. In making the application NCC is required to comply with the publicity requirements of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 ("2006 Rules"). This includes serving copies of the application and accompanying documents on the persons specified in those Rules and making the documents available for public inspection. As also required by the 2006 Rules, NCC must display and publish notices giving information about the application and how to make representations.

10. The Secretary of State notes that NCC provided a note to the inquiry in which they explained that not all documentation had been received by parties and that some notices had to be re-served which, in turn led to some minor errors with regard to the affidavits of compliance. The Secretary of State notes that the Inspector concluded that these errors do not call into question compliance with the statutory requirements, and NCC undertook to submit a revised affidavit in that regard (IR 11.76) which was received by the Secretary of State on 20 May 2022.

11. The Secretary of State acknowledges the concerns raised by the objectors in paragraphs 11.77 and 11.78 of the report. The Inspector noted concern was raised about the display of site notices and digital exclusion but also noted that notices were published on or close to the site of the proposed works as required by the 2006 Rules and that the application and supporting documentation were available on the NCC website and in hard copy format (IR 11.78). The Secretary of State agrees with the Inspector's conclusions that all the statutory requirements in connection with the application for the Order have been complied with (IR 11.78 and IR 11.79).

## **The aims, objectives and need for the Scheme**

12. The Order will support delivery of the Northumberland Line Scheme (“the Scheme”) which concerns the existing railway between Benton North Junction on the East Coast Main Line. The majority of the route is within Northumberland, with the southern end of the line running through North Tyneside (IR 2.1). The Secretary of State notes NCC’s case for the Scheme set out at (IR 5.1 to IR 5.11) which is designed to stimulate economic activity, create job opportunities and improve transport links across South-East Northumberland. The Secretary of State notes the Inspector considered that the Scheme will address problems related to poor public transport infrastructure in the south-east part of the County and that the objectives of the Scheme to facilitate growth, create mode shift to public transport, and improve public transport accessibility are endorsed by the local authorities, organisations involved in economic development and he also notes the supporting representations received in relation to the application (IR 5.6, IR 5.7, IR 6.2 to IR 6.6, IR 6.9, IR 6.12 and IR 11.5).

13. The Secretary of State notes that many of the individual objectors support the re-opening of the line for passenger services, acknowledging the benefits that would flow from it and that there were no objections to the Order as a whole (IR 11.7). The Secretary of State has had regard to the certain aspects of the Scheme which the Inspector details in paragraph 11.8 of his report and the view that to significantly improve public transport connectivity with destinations in Newcastle and North Tyneside, links with the Metro Light Rail system are important and these would be achieved with the construction of the Northumberland Line station at Northumberland Park and at Newcastle Central Station (IR 3.1, IR 3.4 and IR 11.8).

14. The Inspector noted that the aims and objectives of the Scheme relate directly to the problems of economic decline, social deprivation, and poor connectivity in South-East Northumberland, and that they are appropriate (IR 11.4, IR 11.5 and IR 11.9). The Secretary of State notes that policies in the Development Plans in Northumberland and North Tyneside, the emerging Northumberland Local Plan, provisions in the Local Transport Plan, the Metro and Local Rail Strategy and the Strategic Transport Plan all support the re-introduction of passenger services on the railway for similar reasons to the above (IR 4.2 to IR 4.6). The Inspector set out that implementation of the Scheme involves a number of different processes, including applications for planning permission and works which fall within the scope of permitted development (IR 11.9) and that the Order would be an important contributor to the Scheme securing measures to acquire land and rights and to address safety concerns at level crossings. The Secretary of State notes the Inspector’s conclusion that there is a need for the Northumberland Line Scheme, of which the Order would be an important component (IR 11.9), and is satisfied that the aims of the Scheme and need for the Order are clearly established.

## **The main alternative options, and the reasons for choosing the preferred option**

15. The Secretary of State notes that a number of options have been considered to improve the transport connections to and from South-East Northumberland by NCC in the context of the current scheme (IR 5.12 to IR 5.17, IR 11.10 to IR 11.15). He has taken note that the Inspector concluded that proper consideration has been given to the alternatives

in assessing the approach to adopt in respect of the transport and the economic problems in the area and that the evidence indicates that the Scheme has the best prospect of meeting objectives to address those problems. The Inspector set out that as the Scheme has developed, alternatives have been taken into account in selecting station sites and in the form of replacement of certain crossings identified for closure. The Secretary of State is satisfied that adequate consideration has been given to alternatives.

## **The likely impact of the Scheme on local business, residents and visitors**

### Overall impact of the Scheme

16. The Inspector's considerations on these impacts is set out in IR 3.5, IR 5.6 to IR 5.8, IR 6.2, IR 6.3, IR 6.10 and IR 11.17 to IR 11.19. The Secretary of State has taken note of the Inspector's views that improvement in transport infrastructure and connectivity which would result from the Scheme would benefit businesses in the area and encourage expansion (IR 11.17). He further notes the Inspector's view that local residents would benefit from an improvement in accessibility to places of employment, including in Newcastle and North Tyneside (IR 11.18). He also notes that the Inspector shares the NCC's view that the Scheme would enhance the profile of the area as a place to visit and that the Order will contribute to the overall positive impact of the Scheme on local businesses, residents and visitors (IR 11.19). The Inspector also considered that closure of the level crossings included in the Order would improve safety for users (IR 11.18). The Secretary of State has no reason to disagree with these views.

### The Asda Store and coffee shop at Blyth

17. The Secretary of State notes that an objection was put forward by McLagan Investments Ltd, as they hold the freehold investment for an Asda store, with regard to the impact on a drive through coffee shop from construction on plot 257a and temporary use of plot 256 and 257 (IR 8.10). The Inspector's considerations of this matter are set out in IR 3.3, IR 5.55, IR 8.10, IR 11.20 and IR 11.21. The Secretary of State notes that in respect of land plot 257a, it has been removed from the Order since the application was submitted. In relation to plot 256 and 257, it was the Inspector's view that he has nothing before him to indicate that construction work on this land would interfere with use of the adjacent access road for customers and deliveries. The Secretary of State has no reason to disagree with this.

### The local road networks, parking and communal gardens

18. The Secretary of State notes that the main impact of the Scheme on the local road networks, parking and communal gardens derives from the development of the stations which are subject to separate Planning Permission but for which the Order would grant powers for the acquisition of land to enable them to be provided. The Inspector noted that at the time of the inquiry, planning permission had already been granted for the stations at Northumberland Park, Seaton Delaval, Bedlington and Ashington. The Secretary of State notes that at the close of the inquiry the applications for the stations at Newsham and Bedside had yet to be determined but that they were subsequently granted on 3 March 2022. The Inspector's view was that the effect on communal gardens is not relevant in these locations and the Inspector anticipated that implications for traffic movement and

parking were taken into account as part of the consideration of the separate planning applications (IR 11.22).

19. The Secretary of State notes that the introduction of half-hourly passenger services would result in more frequent closure of the level crossings that will remain on the line which would cause more frequent interruption to traffic movement but that this was only likely to be noticeable on a few routes. It was also highlighted that the construction of a bridge at Newsham would enable a crossing to be removed, removing a source of congestion on a main route into Blyth (IR 11.24).

20. The Inspector also concluded that the carrying out of works within the highway in connection with the provision of access to work sites would inevitably cause some disruption to traffic movement but that this would be localised and temporary. The Secretary of State notes that conditions to be attached to the deemed planning permission would provide the Local Planning Authority ("LPA") with control over the design of such works and a separate condition requiring compliance with a Construction Traffic Management Plan would mitigate the effect of construction traffic on the local highway network (IR 3.3, IR 5.26 and IR 11.25).

21. The Secretary of State notes the concerns raised by the owners and residents of Fenwick Close (IR 7.21 to IR 7.25). This includes concerns regarding noise and disturbance from construction work and loss of parking bays required as a temporary work site during construction of the station at Northumberland Park (plot 50) and that the proposal would result in the loss of trees between the dwellings and the railway. He further notes that garden areas adjacent to the apartments at Fenwick Close are also included in plot 50. The Secretary of State notes that the planning permission would require approval of a Construction Environmental Management Plan which is intended to manage the effects of construction activities. The Inspector concluded that measures to address noise and vibration would mitigate the effect of construction works but that the temporary loss of garden space close to the dwellings would inevitably have a detrimental effect on the living conditions of the occupiers of the apartments (IR 5.45 and IR 11.26 and IR 11.27). With regard to parking, the Inspector concluded that for the duration of the construction period there would be a detrimental effect on existing parking arrangements.

22. The Secretary of State notes that the Scheme would also affect land to the south-west of Fenwick Close and the bank between the car park and railway line, and although these areas do not form part of the communal gardens, they do contribute to the pleasant environment of the apartments. He further notes that land to the south-west is a grassed area which would be acquired to enable an emergency exit route to be provided from the station. The Secretary of State notes that a condition on the planning permission for the station refers to new tree planting but due to the construction of the new platform, the extent of tree cover may be less than at present and for a period of time there would be clear views across the railway to the car park. The Secretary of State notes the Inspector's view that given the distances involved he attaches limited weight to this adverse effect on the outlook for local residents (IR 5.45, IR 7.23, IR 7.24, IR 7.26 and IR 11.27).

23. The Secretary of State notes that communal gardens at Sleekburn House, a block of sheltered accommodation for the elderly on the south-west side of Bedlington Station would also be affected by the Scheme. He further notes that the extent of land sought for acquisition has been significantly reduced and that a mitigation plan has been prepared for

Sleekburn House, resulting in the withdrawal of the objection from Bernicia Group who provide the sheltered housing. The Secretary of State notes the Inspector's consideration that the revised proposal would not have a material effect on the residents' enjoyment of the communal gardens (IR 5.44 and IR 11.28).

24. The Secretary of State notes that to the north-east of Sleekburn House is a row of two-storey flats on Blenheim Drive and an objection was raised about the loss of part of the garden which resulted in the extent of land acquisition to be reduced. The Secretary of State notes that although the Inspector considered the reduction appeared to have satisfied the objector, the formal objection remains, but that the Inspector considered that the revised proposal would not have a material effect on the residents' enjoyment of their gardens at this location (IR 5.44 and IR 11.29). The Secretary of State has no reason to disagree with this conclusion.

#### Location of underpass at Ashington

25. The Secretary of State notes that there is an underpass proposed to replace Hospital crossing (a level crossing) which provides a footpath link across the railway to the south of Ashington town centre and is regularly used by school children (IR 5.41). Whilst there is no objection in principle to the closure of the level crossing the Inspector noted that there is strong local opposition to the proposal for an underpass which is seen as exacerbating problems of anti-social behaviour in the area (IR 7.2, IR 7.34, IR,7.35 and IR.8.3).

26. This proposed underpass is subject to a separate planning application submitted to NCC which is outside of this application. However, the NCC informed the Secretary of State after the close of the inquiry that they had asked NCC, as the Local Planning Authority, to pause consideration of its planning application to allow for further consideration of alternatives for this element of the Scheme (IR 11.13). NCC confirmed on 6 June 2022 that they wished to amend the Order to remove provisions relating to Hospital Crossing and the underpass and that if they decided to proceed with the underpass option, they will seek authorisation for that option through alternative statutory procedures. The Secretary of State has therefore removed all reference to Hospital crossing and the proposed underpass from the Order. The Secretary of State agrees with the Inspector that not proceeding with the underpass should not represent an impediment to the Scheme (IR 11.93) and is satisfied that NCC can seek to close Hospital crossing and gain any necessary powers relating to the delivery of any agreed alternative crossing through other statutory means if it chooses to do so. Given that the amendment is minor, and the effect is that crossing would be unaltered, the Secretary of State agrees to modify the Order.

#### Sheltered accommodation for the elderly

27. The Inspector's consideration of the effects of the Scheme on the communal garden at Sleekburn House (IR 11.28) is set out above. The Secretary of State notes that although noise and disturbance is a relevant consideration given its proximity to Bedlington Station, the Inspector does not consider that the Scheme would materially detract from the living conditions of the residents of Sleekburn House (IR 5.44 and IR 11.33). The Secretary of State agrees with this and notes Bernicia's objections in relation to both Sleekburn House and the Cheviots have since been withdrawn (IR 11.34).

## Development proposals including housing and care homes

28. The Secretary of State notes the Inspector's considerations on these matters as set out in IR 4.5, IR 5.5, IR 5.6, IR 5.31, IR 5.33, IR 7.27 to IR 7.30, IR 10.1 and IR 11.35 to 11.44. The Secretary of State notes that BDW Trading had concerns about the impact of the temporary possession of the plot of land 145 on the delivery of 285 dwellings but that this plot has subsequently been removed from the land and works plans. The Inspector therefore concluded that the Scheme would not be an impediment to the completion of this major housing development.

29. The Secretary of State notes that the Order would authorise the acquisition of land at Ashington to provide a car park at Ashington station and on which one objector, Malhotra Commercial Properties ("Malhotra") has applied for planning permission to build a care home (IR 7.27). He further notes that due to the planning permission for the station, the land plots 323 and 324 would be used to provide parking space, a vehicle egress from the extended car park and pedestrian access to the station. The Secretary of State notes that if that part of the Scheme were to be implemented, Malhotra would not be able to provide the care home there (IR 5.31 and IR 11.37). The Secretary of State notes the Inspector's view that whilst the emerging Local Plan refers to some demand for care home accommodation, no new provision is sought due to vacancies in existing stock and a new large care home under construction (IR 4.5 and IR 5.33).

30. The Secretary of State has had regard to the Inspector's considerations on the need for the level of parking proposed at Ashington and the NCC's detailed explanation of forecasting demand for parking provision (IR 5.32, IR 5.35 to IR 5.38, IR 7.29, IR 7.30 and IR 11.39 to IR 11.43). The Inspector concluded that failure to provide sufficient parking spaces at Ashington would prevent the Scheme fulfilling its potential in encouraging mode transfer from the car to the train and would lead to a risk of impacting parking in nearby streets, causing inconvenience to local residents and acting as a potential threat to highway safety. The Inspector considered that it is necessary to acquire the Malhotra land to achieve an appropriate size of car park, and that the provision in the draft Order aligns with policy in the emerging Local Plan. The Secretary of State notes that construction of the extended car park would prevent Malhotra proceeding with development of the care home and the delivery of the benefits associated with the care home including new jobs (IR 7.30). The Secretary of State agrees with the Inspector that these benefits do not outweigh the need for the car park proposed at Ashington station, which is an integral part of the Scheme (IR 11.44).

## **Statutory undertakers and utility providers**

31. The Secretary of State notes that specific protective provisions have been included in Schedule 10 of the draft Order for the benefit of statutory undertakers generally, Network Rail and Nexus. The Secretary of State notes that Royal Mail withdrew its objection to the application but that objections from Northern Power Grid ("NPG") and National Grid ("NG") remained at the close of the inquiry (IR 5.56, IR 10.1 and IR 11.45).

32. With regard to NPG, the Secretary of State notes that they are concerned that the protective provisions are inadequate, but negotiations between them and NCC have been taking place to establish agreement. The Secretary of State notes that no agreement had been reached at the close of the inquiry, but the Inspector, in the absence of any detailed

evidence to the contrary, considered there was no reason to doubt the ability of protective provisions to safeguard NPG's interests (IR 8.4 and IR 11.45). The Secretary of State notes that no agreement has been reached since receipt of the Inspector's report and the objections remain.

33. With regard to the objection from NG, the Secretary of State notes it is a holding objection to enable the effect of the Scheme on its apparatus to be assessed with regard to high overhead power lines. The NCC has pointed out that it is intended to construct the replacement underbridge 36 at Feather Bed Lane using specialist lifting equipment rather than cranes, and information on this approach was provided to NG. The Inspector was satisfied that this approach should avoid the risk of interference with overhead lines (IR 8.9 and IR 11.46).

34. The Secretary of State notes that the text of the protective provisions for the benefit of Nexus had been agreed (IR 11.47). He further notes that when the inquiry closed, the NCC and Nexus were discussing an agreement to manage the interface between the two railway systems (IR 8.6 and IR 11.47). The Secretary of State notes that no agreement has been reached since receipt of the Inspector's report and the objection remains.

35. The Secretary of State agrees with the Inspector's conclusions that with the protective provisions of Schedule 10 and an agreement between NCC and Nexus in place, the Scheme would not adversely affect the operations of statutory undertakers, statutory utilities and other utility providers. The Secretary of State has no reason to disagree with that view (IR 8.7 and IR 11.48)

### **Effects in relation to noise, vibration, vegetation and wildlife**

36. The Secretary of State notes that the Inspector's consideration of this matter at IR 11.49 to IR 11.55.

37. The Secretary of State notes that concerns about the loss of trees on the bank where the platform for the new Northumberland Park Station would be built were raised by residents and owners of the properties at Fenwick Close. He further notes that the Inspector concluded that given the works proposed, there would be limited scope for replanting, but replacement planting is proposed elsewhere to achieve a biodiversity net gain secured by a planning condition (IR 5.45, IR 11.27 and IR 11.50).

38. The Secretary of State is satisfied with the Inspector's conclusion that the impact on noise will be mitigated through measures in relevant planning permissions (IR 11.49, 11.52).

39. The Secretary of State accepts the Inspector's conclusions that the Scheme would not have a materially detrimental effect on local amenities due to noise and vibration, nor on tree cover and biodiversity interests. The Secretary of State has no reason to disagree with that view (IR 11.55).

### **Article 34**

40. The Secretary of State notes the Inspector's consideration on the inclusion of this article in IR 11.56 to IR 11.63. The Inspector set out that not all the railway corridor is in



the ownership of NR as about 40% of the line is owned separately by Lord Hastings, the Northumberland Estate and the Wellbeck Estate (IR 3.5 and IR 7.16). Wayleave leases provide for the operation of the railway, subject to the payment of rent to the landowners. The Secretary of State notes that under article 34 of the Order the rent obligations to Lord Hastings and the Northumberland Estate would cease to have effect, for which compensation would be payable (IR 3.5) and that both these parties object to this (IR 5.48).

41. The Secretary of State understands that the wayleave leases contain rent provisions which are predicated on the original primary purpose of the railway to serve coal mines and that a formula is used to calculate rent for the transport of coal and coal products. If this is below a set amount, a further rent of 2% of the gross receipts from transporting other goods or passengers is required to be paid. The NCC argued: that those provisions are antithetical to the operation of the modern railway; that freight statistics cannot be readily extracted to identify what has passed over the land; that passenger fares are not received by the owner and operator of the railway, but by the train operating company; that public money is being used to fund the Scheme with no contribution from landowners (IR 5.49 and IR, 5.54). Lord Hastings and the Northumberland Estate argued that the formula remained a workable agreement and that the proposed article 34 impacted on Article 1 of the First Protocol of the European Convention on Human Rights (as incorporated into UK law by the Human Rights Act 1998) for which they considered there to be no compelling case in the public interest for its inclusion (IR 7.10).

42. The Secretary of State notes that the inclusion of article 34 was at the request of NR and that the request was made shortly before submission of the draft Order (IR 7.10) and that the NCC acknowledged that engagement with the objectors on this had been poor (IR 5.52). The Inspector considered that the late addition of article 34 indicates that it was not considered integral to the Scheme. The Secretary of State notes that leases with Lord Hastings and the Northumberland Estate contain forfeiture provisions, meaning that disputes over rent under these provisions could pose a threat to the operation of the railway (IR 5.50). He also notes that Lord Hastings and the Northumberland Estate have stated their intention to give an undertaking not to use the forfeiture provisions (IR 7.8) and the Inspector's view that an undertaking would mean that concern about forfeiture does not support article 34 (IR 11.60). At the inquiry the NCC put forward arguments that it would be contrary to the public interest for the landowners to benefit, because of the rent formula, from the investment of public money in the Scheme. The Secretary of State notes the Inspector's view that the aims and objectives of the Scheme are capable of being achieved irrespective of whether rental payments continue or a capitalised sum is required instead (IR 11.62). The Secretary of State notes that the NCC confirmed on 6 June that Network Rail recently made an offer to Northumberland Estates regarding a payment in lieu of rent under the wayleave leases, but Northumberland Estates had yet to respond.

43. The Secretary of State notes the Inspector's conclusion made with regard to the former Ministry of Housing, Communities and Local Government (now the Department for Levelling Up, Housing and Communities) guidance (Crichel Down Rules) on the compulsory purchase process (as updated in July 2019), that whilst savings of rental payment could be seen to be in the public interest, there are fundamental problems with the approach to article 34, that the interference with the interests of Lord Hastings and the Northumberland Estate has not been put forward as a last resort and that there is not a compelling case in the public interest for the inclusion of article 34 in the Order. The

Secretary of State has no evidence to disagree that the aims and objectives of the Scheme can be delivered without article 34 or that this has been suggested other than as a last resort. If the compulsory acquisition of this interest was required it should have been included in the book of reference and in that part of the Order dealing with those powers. It was not and the Secretary of State therefore agrees with the Inspector that article 34 should be removed. The numbering of subsequent articles and cross-references throughout the Order have been amended accordingly.

### **Other matters**

44. The Secretary of State notes that four crossings which would be in the high-risk category – Palmersville Dairy, Chase Meadows, Newsham and Hospital - are proposed for closure, as is Lysdon Farm where a readily available alternative route would enable the risk to be eliminated (IR 11.65).

45. The Secretary of State notes that several owners of properties at Fenwick Close expressed concern about the loss of value and rental income due to construction work at Northumberland Park Station (IR 7.22, IR 7.26 and IR 8.2). The Secretary of State agrees with the Inspector that compensation would be payable in connection with the temporary possession of land for construction (IR 11.67).

46. Since the close of the inquiry and receipt of the Inspector's report NCC has made a request to amend the proposed stopping up and diversion of Backworth 2 in Schedule 3 of the Order. The request is to enable the NCC to not stop up the public right of way and provide the replacement between points P26 and P27 on sheet 3 of the Rights of Way Plans. NCC has confirmed that the original proposals did not generate any significant local interest at pre-application consultation and that they had contacted the relevant landowner about the proposed change, who have confirmed they have no objection. Given that the amendment is minor and the effect is that the public right of way would remain on the existing alignment on the eastern side of the railway the Secretary of State agrees to modify the Order to provide NCC with the option to divert the footpath or to retain it.

### **Open Space**

47. The Secretary of State notes that four plots included in the draft Order which are small areas of land below the 209 square metre threshold specified in s19(1)(b) of the Acquisition of Land Act 1981, at which replacement provision should be made. He further notes that no objections have been made to this part of the proposal, no material harm would ensue from their inclusion in the Order (IR 5.59 and IR 11.75) and that the Inspector has recommended that the appropriate certificate under section 19 and schedule 3 of the Acquisition of Land Act 1981 be granted by the Secretary of State for Levelling Up, Housing and Communities.

### **Compulsory Purchase Powers**

48. The Secretary of State notes the principal purpose of the Order is to authorise works required for delivery and operation of the Scheme, and land included within the Order limits are required for that purpose.

49. The Secretary of State has taken into account that the Scheme has strong support and there were no objections to the Order as a whole. He further agrees with the Inspector's conclusions that it is important for the future success of South-East Northumberland that the Scheme proceeds and he agrees with the Inspector's view that there is a compelling case in the public interest for the powers of compulsory acquisition (IR 5.6 to IR 5.8 and IR 11.80).

50. The Secretary of State notes that Article 1 of the First Protocol to the European Convention on Human Rights (as incorporated into UK law by the Human Rights Act 1998) is a qualified right where interference may be permissible in the public interest. He further notes the Inspector's view that the Scheme to reintroduce passenger services could only be achieved if the land required for the development works and their construction were available (IR 11.83). The Secretary of State notes the Inspector's conclusions that interference with the rights of those persons whose property would be acquired is necessary to facilitate the implementation of the Order within a reasonable timescale and is proportionate.

51. The Secretary of State notes that a significant proportion of the cost to the Scheme is already committed by the DfT, NCC and NR (IR 5.18 and IR 11.85). He further notes that in view of the high value for money which the Scheme is expected to generate, the Inspector considers that it is reasonably capable of attracting the funds which are necessary for implementation. The Secretary of State has no reason to disagree with this.

52. The Secretary of State is accordingly satisfied, having regard to the former Ministry of Housing, Communities and Local Government guidance on the compulsory purchase process referred to above, that all necessary funding is available, that the use of compulsory purchase is required to allow the NCC to complete the Scheme, that there is no impediment to the Scheme going ahead and that for the reasons summarised in this letter there is a compelling case in the public interest for the compulsory acquisition powers in the Order which justifies interfering with the human rights of those with an interest in the land that would be subject to those powers.

53. The Secretary of State has amended the wording in article 19 (temporary use of land in connection with the development) as he is concerned that the provision would permit the compulsory acquisition of unspecified and undefined rights over land that can only be temporarily possessed. Article 20 (temporary use of land for access) provides the powers to enter land subject only to temporary possession for the purpose of maintaining the works, which the Secretary of State considers is sufficient.

### **Planning conditions**

54. The Secretary of State notes the Inspector's conclusion that the proposed Conditions to be attached to the deemed planning permission meet the tests set out in paragraph 56 of the NPPF and would be necessary, relevant, precise, enforceable and reasonable (IR 11.70 to IR 11.74 and IR 11.94).

55. Overall, the Secretary of State agrees with the revised conditions proposed by the Inspector and included at Appendix 1 of the Report (IR 11.97). The conditions which the Secretary of State intends to attach to the Deemed Planning Direction are set out in Annex 1 to this letter.

## **Secretary of State's overall conclusion and decision**

### **Overall Conclusion**

56. The Secretary of State agrees with the Inspector that the Order is an integral part of the Scheme and restoring passenger services to the Northumberland Line is of considerable importance to securing improvements in public transport and contributing to an improvement in social and economic conditions in South-East Northumberland. The Secretary of State notes there would be localised adverse effects but agrees with the Inspector that these are clearly outweighed by the significant benefits that will be delivered by the Scheme and the Order.

57. The Secretary of State has therefore had regard to all matters set out above and has determined in accordance with section 13(1) of the TWA to make the Order under sections 1 and 5 of the TWA, subject to minor drafting amendments which do not make any substantive change in the proposal such as would require notification to the affected persons under section 13(4) of the TWA.

58. For similar reasons, the Secretary of State has also decided that deemed planning permission should be granted for the development that would be authorised by the Order, subject to the conditions set out in Annex B to the decision letter.

### **Modifications to the Order**

59. Where not already stated in this letter, the Secretary of State agrees to the proposed modifications to the Order as set out in IR 12.1. The Secretary of State is making a number of minor textual amendments to the Order in the interests of clarity, consistency and precision.

60. Further to the textual amendments the Secretary of State also makes the following modifications. He considers that none of these changes materially alter the effect of the Order, nor do they make any substantive changes:

- The Secretary of State has made amendments to provisions referring to compensation and disputes about compensation that are to be considered under Part 1 of the 1961 Act. Disputes to be considered under Part 1 of the 1961 Act are disputes concerning compulsory purchase and the compensation provisions contained within this order are intended to have a wider application.
- Article 8 (stopping up of streets) has been amended with references to the "street authority" being substituted for references to the "highway authority", as NCC's explanatory memorandum ("the EM") provides no indication that the provision is intended to be limited to maintainable highways.
- Article 12(4) (power to execute street works) is inserted to define "apparatus" as per the model clauses.

- In article 19 (temporary use of land in connection with the development), in addition to the amendment referred to in paragraph 53 above, a new paragraph (11) has been inserted (with the previous paragraph (11) being renumbered as paragraph (12)) as it is considered desirable, and is customary in precedents including provision equivalent to paragraph (1)(b), to qualify the rights provided by it.
- Article 22(1) (Set-off for enhancement in value of retained land) has been amended to omit the reference to “or operation”. The inclusion of consideration of any increase in land value arising out of operation of a development is rare in Orders of a similar nature and there is a lack of explanation in the EM for its inclusion.
- Articles 23(9) (extinction or suspension of private rights of way) and 31(4) (consents, agreement, certifications and approvals) are both omitted as the provisions are unprecedented in Orders of a similar nature and there is a lack of explanation in the EM for their inclusion.
- Article 33 (amendment of local legislation) has been amended to identify the specific provisions in local legislation that are disapplied by the Order where they limit or have the effect of limiting the level of tolls, fares or any other charges that can be levied in connection with the operation and use of the railway. A “sweeper” provision has been included at paragraph (2) to disapply any other enactment of local application relating to the railway that has the same effect. This approach is generally taken in Orders of a similar nature as it is preferable to specify the provisions disapplied rather than adopt more general disapplication. It is also noted that the Blythe and Tyne Railway Consolidation and Extensions Act 1854 repealed and replaced the Blyth and Tyne Railway Act 1852 and the Blyth and Tyne Railway Branches Act 1853

### **Notice of determination**

61. This letter constitutes the Secretary of State’s notice of his determination to make the Order for the purposes of section 14(2) of the TWA. Your clients are required to publish a notice of the Secretary of State’s determination in accordance with section 14(4) of the TWA.

### **Challenge to decision**

62. The circumstances in which the Secretary of State’s decision may be challenged are set out in the note to the Annex to this letter.

### **Distribution**

63. Copies of this letter are being sent to those who appeared at the inquiry and to all statutory objectors whose objections were referred to the inquiry under section 11(3) of the TWA but who did not appear.

Yours faithfully,

**Natasha Kopala**

**Annex A**

## **RIGHT TO CHALLENGE ORDERS MADE UNDER THE TWA**

Any person who is aggrieved by the making of the Order may challenge its validity, or the validity of any provision in it, on the grounds that—

- it is not within the powers of the TWA; or
- any requirement imposed by or under the TWA or the Tribunals and Inquiries Act 1992 has not been complied with.

Any such challenge made be made, by application to the High Court, within the period of 42 days beginning with the day on which notice of this determination is published in the London Gazette as required by section 14(1)(b) of the TWA. This notice is expected to be published within three working days of the date of this decision letter.

**A person who thinks they have grounds for challenging the decision to make the Order is advised to seek legal advice before taking action.**

**Annex 1**

**NORTHUMBERLAND LINE ORDER AND DEEMED PLANNING PERMISSION**

**CONDITIONS WHICH THE SECRETARY OF STATE INTENDS TO ATTACH TO THE  
DIRECTION AS TO DEEMED PLANNING PERMISSION**

1. The development hereby permitted shall commence before the expiration of five years from the date that the Order comes into force.

Reason: To ensure that the development is commenced within a reasonable period of time.

2). The parking bays shall be laid out in accordance with the site plans refs 60601435-ACM-07-ZZ-DRG-EHW-005051 rev A01 (Green Lane), 60601435- ACM-05-ZZ-DRG-

EHW-004051 rev A01 (Bebside), 60601435-ACM-04-ZZDRG-EHW-003051 rev A01 (Hartley), and 60601435-ACM-03-ZZ-DRG-EHW002051 rev A01 (Seghill)

Reason: To provide certainty.

3). No part of the development that comprises works to existing highways or works to provide new or temporary highways shall commence until details of the design, layout and construction specification of the works have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Reason: In the interest of highway safety.

4). No part of the development shall commence until a construction environmental management plan (CEMP) has been submitted to and approved in writing by the local planning authority in relation to that part of the development. The CEMP shall include measures to manage the effects of the development including those relating to: lighting, noise, vibration, air quality, biodiversity, surface water drainage, soils, ground conditions, wastes, heritage assets, and visual impact, and arrangements for liaison with stakeholders who would be directly affected by the development. The development shall be undertaken in accordance with the approved CEMP.

Reason: To safeguard the living conditions of nearby residents, and to mitigate the effects of construction activities on nature conservation interests.

5). No part of the development shall commence until a construction traffic management plan (CTMP) has been submitted to and approved in writing by the local planning authority in relation to that part of the development. The CTMP shall include:

i) Details of construction routes including: access and egress points onto the public highway, visibility splays, construction specifications, width, radii, fencing and gates.

ii) Prohibited routes and any time restrictions for construction traffic.

iii) A signage strategy for each construction access route.

iv) Traffic control measures for each construction access route, including details of traffic signal installations.

v) Measures to control mud and dust from construction traffic.

vi) Measures to control parking for site operatives and for managing the impact on the highway network.

viii) Provision and arrangements for turning, loading and unloading of construction traffic. The development shall be undertaken in accordance with the approved CTMP.

Reason: To safeguard the living conditions of nearby residents, to mitigate the effects of construction activities on nature conservation interests, and in the interest of highway safety