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Dear Sirs,

TRANSPORT AND WORKS ACT 1992: APPLICATION FOR THE PROPOSED ROTHER VALLEY (BODIAM TO ROBERTSBRIDGE JUNCTION) ORDER

1. I am directed by the Secretary of State for Transport to say that consideration has been given to the report of the Inspector, I Jenkins BSc CEng MICE MCIWEM, who held an inquiry between 6 July 2021 and 4 August 2021 and 2-3 September 2021, into the application made by your client, Rother Valley Railway ("RVR") for the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order ("the Order") made under sections 1 and 5 of the Transport and Works Act 1992 ("TWA"). Although the decision letter refers to the decision of "the Secretary of State", the decision was taken by the Parliamentary Under Secretary of State Baroness Vere. By law, decisions must be issued in the name of the Secretary of State. It should be noted that Huw Merriman was not involved in the decision on this application because of a conflict of interest following previous statements made on this case.

2. Enclosed with this letter is a copy of the Inspector's Report. All "IR" references in this letter are to the specified paragraph in the Inspector's Report. The names of objectors are accompanied by their reference number in the form of "OBJ/xx".

3. The Order as applied for would allow RVR to reinstate a section of railway track between Udiam and Robertsbridge, linking to existing sections of track which would complete the rail link between Bodiam and Robertsbridge Junction ("the Order scheme"). The Order would provide RVR with statutory authority to construct the new railway and maintain the new and existing lengths of track as a heritage railway from Robertsbridge Junction to Bodiam, where it would join the existing heritage railway to Tenterden and would authorise the crossing of the public highway in a number of locations. It would also authorise the acquisition of land and rights over land and the temporary use of land in connection with the railway in case it is not possible to acquire the necessary interests by agreement.

Summary of Inspector's Recommendations

4. The Inspector recommended that the Order should be made, subject to modifications.

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 his further modifications.**

Secretary of State's consideration

6. The application for the Order was made on 19 April 2018. There were 1,002 objections initially registered. Subsequently, 3 further letters of objection were received, and 3 objections were withdrawn before the Inquiry. During the inquiry 5 further parties withdrew their objections and the Environment Agency withdrew their objection in part. There were 20 other representations received alongside 224 letters of support.

7. Careful consideration has been given to all the arguments put forward by or on behalf of all parties. The Secretary of State's consideration of the Inspector's report is set out in the following paragraphs. Where not stated, the Secretary of State can be taken to agree with the recommendations and conclusions put forward by the Inspector.

Legal and Procedural Matters

8. In making the application RVR is required to comply with the publicity requirements of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 ("the 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, RVR displayed and published notices giving information about the application and how to make representations to the Secretary of State for Transport. The Secretary of State notes the affidavits provided by RVR dated 28 August 2018 and is satisfied that appropriate procedures under the 2006 Rules were followed.

9. In June 2020, the Secretary of State directed RVR to provide further Environmental Information in accordance with rule 17 of the 2006 Rules. This information was submitted on 8 March 2021, placed on the inquiry website and a further 42-day period for representations ended on 19 April 2021. One response was submitted by OBJ/1002 on 19 April 2021 and the Inspector confirms this additional information has been taken into account [IR 1.6.1].

10. The Inquiry was conducted for the most part in virtual format, using Microsoft Teams, due to covid restrictions in place at the time. A one-day session was held on 27 July 2021 at the Woodlands Enterprise Centre, to accommodate a small number of interested parties who wanted to give evidence but indicated they were unable to do so via Microsoft Teams [IR 1.6.2].

11. During the course of the Inquiry, the February 2019 version of the National Planning Policy Framework was replaced by the July 2021 version. Interested Parties were given

an opportunity to comment on whether any associated revisions were relevant to their case. Responses were received from RVR, the Landowners and Robertsbridge Cricket Club. The Inspector considered it would not prejudice the interest of anyone to base his findings on the July 2021 National Planning Policy Framework (“the Framework”) and the Secretary of State agrees with this methodology [IR 1.6.3].

12. Whilst the application does not seek deemed planning permission, it is linked to an application for planning permission that was granted on 22 March 2017 (ref RR/2014/1608P). The Secretary of State needed to be satisfied that planning permission was in place and still extant before making a decision in relation to the TWA application. The Secretary of State deals with this matter further in paragraphs 97 to 99 below.

13. Prior to the close of the Inquiry a costs application was made by the Hoad Family (Parsonage Farm) and the Trustees and Executors of the Noel De Quincey Estate and OBJ/767 – Mrs Emma Ainslie (Moat Farm)(“the Landowners”) against RVR. That application is the subject of a separate Costs Report which was submitted to the Secretary of State, and a separate decision will be issued on that matter [IR 1.6.5].

Equality

14. The Secretary of State is content that the Inspector has had regard to the Public Sector Equality Duty and has had due regard to the matters set out in section 149(1) of the Equality Act 2010 in accordance with section 149(3) to (5) concerning the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. The Secretary of State has considered these issues where relevant below. The Secretary of State agrees with the Inspector that the Order scheme would be unlikely to conflict with the aims of the Equality Act 2010 [IR 12.16.4].

Aims, objectives and need for the scheme

15. The aim of the proposed Order is to enable the restoration of a railway line between Robertsbridge and Tenterden that was closed in 1961 primarily by enabling the completion of a missing section of line between Junction Road at Udiam and Northbridge Street in Robertsbridge. The section of the line between Bodiam and Tenterden has been reinstated and it is operated as a heritage railway and tourist attraction by Kent and East Sussex Railway (“KESR”) [IR 12.2.1].

16. RVR’s case for the Scheme indicates it would deliver a range of benefits many of which are not in dispute. By providing a new connection to the mainline, at Robertsbridge, RVR consider it would open up a direct public transport link to the heritage railway. This would encourage more sustainable means of transport to existing attractions such as the railway itself, Bodiam Castle and Tenterden but it would also open up these destinations to new visitors which in turn would generate economic benefits for the local and wider area [IR 3.2.1 to IR 3.2.29].

17. The Inspector’s conclusions on economic benefits, visitor numbers, and visitor spend are set out in IR 12.2.2.1 – 12.2.2.18 where he acknowledges that the Order scheme would be likely to improve the efficiency and support the viability of KESR, as it would be able to carry the additional passengers at marginal additional cost [IR 12.2.2.19]. He also

notes that the £6.5 million local economic benefits from construction of the Order scheme and support around 34 jobs over the 18 – 24 months construction period are not disputed by the Landowners and that the Inspector considered he had no reason to do so either [IR 12.2.2.20]. RVR acknowledges that there would be journey time disbenefits as a result of the introduction of the proposed level crossings, but it calculates the welfare impact on users of the highway would be small in monetary terms and would be outweighed by welfare benefits related to time savings for visitors who access KESR at Robertsbridge rather than Tenterden and the modal shift from car to rail [IR 12.2.2.21].

18. RVR estimates that the Order scheme would result in additional revenue on the national rail network of around £355,100 per annum. This figure is based on assumptions with respect to increases in rail demand related to KESR, Bodiam Castle and as a result of modal transfer. The Secretary of State notes the conclusions reached by the Inspector that the additional revenue would be likely to be lower, it would nonetheless amount to a notable sum which would contribute towards the viability of the mainline [IR 12.2.2.22]. The Inspector considered that the construction and operation of the Order scheme would give rise to a range of economic and employment benefits. However, while the Inspector considers the operational benefits are likely to be more limited than claimed by RVR regarding visitor spend they still attract significant weight [IR 12.2.2.23]. The Secretary of State agrees with the Inspector's conclusions regarding the range of economic and employment benefits and the significant weight attached to the operational benefits associated with visitor spend.

Inspector's conclusion

19. The Secretary of State agrees with the Inspector's overall conclusions regarding the aims and benefits of the Order scheme, which would give rise to a range of economic and employment benefits, which together attract significant weight. He also agrees that moderate weight can also be attributable to the sustainable tourism benefits [IR 12.2.4.3].

Alternatives

20. RVR have considered several alternative options in the context of the current scheme [IR 3.3.1 to IR 3.3.5]. The Environmental Statement ("ES") (as defined at IR 12.11.1) confirms the aim of the Order scheme is to reinstate the missing section of the KESR line along its original alignment, enabling trains to operate between Tenterden and Robertsbridge, with a connection to the main line network at Robertsbridge. A 'do nothing' option would result in the line remaining split in two parts, with the section operating as KESR continuing to be disconnected from the main station at Robertsbridge [IR 12.3.2]. The Inspector highlights that no party has put forward an alternative geographical route for the proposed line and the Secretary of State agrees with his conclusion that any alternative would not meet the aims of the Order scheme [IR 12.3.3].

21. The Secretary of State notes concerns raised with regards to the route across the A21 and the suggestion from objectors that a grade separated crossing should be considered. The Inspector confirmed a number of alternatives have been considered as set out in *A21(T) Crossing Options Feasibility Report* by ARUP [R 12.3.4]. This options assessment considered the feasibility and industry standard construction charges and the Inspector concluded on that basis, the cost of the proposed crossing would be very significantly less than any of the grade separated options [IR 12.3.5] and that it was

reasonable for RVR to regard the proposed level crossing option as the preferred solution for the A21 [IR 12.3.8]. RVR provided assessments of the proposed Northbridge Street and Junction Road level crossings and a number of alternatives which identified a range of technical reasons why the proposed level crossings offered the most practical solution. The Inspector concluded that it was reasonable for RVR to regard the proposed at grade option as its preferred crossing solution for those highways [IR 12.3.9]. The Secretary of State agrees with the conclusions of the Inspector and is satisfied that adequate consideration has been given to the proposed alternative solutions.

Likely impacts of the Scheme

The impact of three new level crossings on traffic flows, congestion and safety

22. The Order would authorise RVR to introduce three new level crossings across the public highway at the A21 (Robertsbridge); B2244 (Junction Road, Udiam) and Northbridge Street (Robertsbridge). The Secretary of State notes parties' strong concerns about the impact of the three new level crossings, especially in relation to traffic flows, congestion and safety.

Traffic flows and congestion

23. The Inspector highlights that when assessing the impact of the development he was guided by DFT Circular 02/13 – The Strategic Road Network and Delivery of Sustainable Development (paragraph 25) in that existing traffic levels should be considered as well as the impact of likely future development [IR 12.4.2.1]. The Environmental Statement 2021 update ("ESu") included an update to the Traffic data in the ES to take account of more recent data. This and subsequent traffic counts undertaken in April 2019 shows that traffic volumes on the A21, B2244 and Northbridge Street have remained constant or show only minor increases in traffic volumes [IR 12.4.2.2]. The Inspector is of the opinion that as traffic flow levels have remained reasonably stable for a significant period of time and in the absence of any compelling evidence to show that this is likely to change significantly in the future then he considers the ES transport assessment to remain valid [IR 12.4.2.3]. The Secretary of State concurs with this conclusion.

A21

24. The A21 which forms part of the Strategic Road Network is in the vicinity of the proposed railway. The Inspector considered the proposals put forward for a level crossing over this road and its compliance with the Design Manual for Roads and Bridges ("DMBR"). Specifically, the proposed level crossing falls into a category that required a 'Departure from Standards' application which are considered independently by National Highway's (formally known as Highways England) Safety, Engineering and Standards Division. National Highways, following an extensive review of the Departure from Standards submission made by RVR, formally approved the Departure from Standards on 2 August 2022. The Secretary of State notes that National Highway's initial objection to the Order scheme dated 31 May 2018 was withdrawn on 4 August 2022 and that they are satisfied that the queues and delays likely to be associated with the operation of the A21 level crossing are unlikely to adversely affect the free flow traffic on the A21. The Inspector

concludes that the effect of the proposed level crossing on the free flow of traffic and congestion on the A21 would be acceptable and would not weigh materially against the Order scheme and the Secretary of State agrees with this [IR 12.4.2.4 to IR 12.4.2.9].

Northbridge Street and Junction Road

25. Rother District Council as the relevant highway authority did not object to the conclusions in RVR's ES that queues and delays associated with the proposed crossings on Northbridge Road and Junction Road would be small. The Inspector concluded that the effect of the proposed crossings on the free flow of traffic and congestion would be acceptable and insofar as there would be any effects, they would not materially weigh against the Order scheme [R 12.4.2.10]. On this point the Secretary of State agrees.

Safety

Level crossing safety

26. The Secretary of State acknowledges that the proposed introduction of level crossings on the A21, Northbridge Street and Junction Road will introduce new and increased safety risks to both rail and road users [IR 12.4.3.2]. The policy of the Office for Rail and Road ("ORR") is that new level crossings should only be considered appropriate if there is no reasonably practical alternative or if the alternative costs are grossly disproportionate when weighed against the railway safety benefits [IR 12.4.3.3]. Against these criteria the ORR have concluded that in relation to railway safety and costs of potential alternatives its policy tests are met and the three proposed highway level crossings are tolerably safe with no practicable alternatives [IR 12.4.3.4]. The Inspector agrees with the findings of the rail safety regulator (ORR) that the level crossings can be made tolerably safe and under these circumstances the Inspector considers that little weight is attributable to the residual increased safety risk for both rail and road users associated with the use of the three proposed level crossings [IR 12.4.3.6]. The Secretary of State has no evidence before him to dispute these findings.

Level crossing implications for the wider safety of road users

A21

27. The Inspector noted that it was not disputed that the proposed introduction of a level crossing on the A21 will introduce new safety implications. Principally queues that form when the crossing is closed could increase the risks of accidents on the A21 [IR 12.4.3.7], with concerns raised relating to queues extending through the Robertsbridge roundabout [IR 12.4.3.10]. The Inspector is of the opinion that if adequate stopping sight distance ("SSD") is provided and subject to the proposed provisions being included in the draft Order for the protection of National Highways, the scheme is unlikely to have an unacceptable impact on highway safety [IR 6.5.3.6 and IR 12.4.3.21]. The Secretary of State echoes that view and is satisfied that the proposed provisions are included in the Order.

Junction Road

28. The Secretary of State acknowledges the existing safety concerns raised relating to the proposed crossing at Junction Road where a history of accidents related to excessive

speed and highway layout have been recorded in the vicinity. The Inspector's view is that a reduction in the speed limit from the current 60mph to 40mph alongside the provision of warning signs for the level crossing is likely to have a traffic calming effect and would be sufficient to ensure that the proposed level crossing would not add to the existing highway safety issues and may result in an improved road safety record on this section of Junction Road [IR 12.4.3.22]. The Secretary of State agrees with the conclusions of the Inspector.

Northbridge Street

29. The ES confirms there are no existing safety issues in the area of the proposed level crossing at Northbridge Street. The Inspector is of the opinion the current speed limit of 30mph and adequate SSD available to southbound drivers, coupled with warning signals and automatic full barriers with obstacle detection for the proposed level crossing, are likely to satisfactorily safeguard road users and pedestrians and would be unlikely to have an adverse effect on highway safety [IR 12.4.3.23]. The Secretary of State agrees with the conclusions of the Inspector.

Other crossings

Bridleway S&R 36b level crossing

30. The proposed railway would cross bridleway S&R 36b ("the bridleway") which forms part of the network of historic routeways in the area and one of the few local off-road routes for horse riders [IR 12.5.1.1]. The Inspector is of the opinion that it is necessary to maintain a bridleway route in this area and notes that the Order scheme makes provision for this with a level crossing. The construction of a bridge was considered as a possible alternative to the level crossing but the Inspector considered that a bridge would be such an elevated structure and would necessarily incorporate long ramps to maintain access for horse riders and would be likely to cause significant harm to the character and appearance of the Area of Outstanding Natural Beauty ("AONB") and conflict with associated planning policies. In the view of the Inspector a bridge cannot be considered as a reasonably practicable option. This view is supported by Rother District Council who confirmed such a structure would be unlikely to receive planning permission due to the significant harm to the character and appearance for the AONB [IR 12.5.1.2].

31. The Inspector acknowledges the proposed level crossing would introduce a new point of conflict for users of the bridleway, increasing the risk of accidents, and contrary to the aim of the Framework to protect and enhance public rights of way and access. ORR is of the belief that using appropriate technology a tolerably safe crossing could be created, a position accepted by the Landowners, and RVR have confirmed they will work with ORR and the British Horse Society to ensure that suitable, user focussed and reliable protective measures would be installed. The Secretary of State agrees with the conclusions of the Inspector that little weight can be attributed to the residual increased safety risk and that the bridleway would remain a suitable and convenient route for users, who in addition to those on horse, may include a range of other people such as those who are elderly, children or have mobility impairments [IR 12.5.1.3].

Footpath S&R 31 underpass

32. Footpath S&R 31 runs from Church Lane through agricultural land close to its junction with the A21 and crosses a bridged section of Mill Stream to Redlands Lane. The proposed Order includes the provision of a bridge to carry the railway over Mill Stream and the stopping up and diversion of part of footpath S&R 31 [IR 12.5.2]. Section 5(6) of the TWA indicates that *'An order under section 1 or 3 above shall not extinguish any public right of way over land unless the Secretary of State is satisfied – (a) that an alternative right of way has been or would be provided, or (b) that the provision of an alternative right of way is not required.'* The Inspector was of the opinion that an alternative right of way would be required and was satisfied that an alternative route is provided for within the draft Order with the proposal to divert footpath S&R down under proposed bridge no. 12 and re-join the existing footpath route to the south of the railway [R 12.5.2.3 -12.5.2.9]. The Secretary of State agrees with the conclusions of the Inspector that the proposed diversion of footpath S&R 31 would provide a suitable and convenient alternative to the section of the existing route that it would replace and that it would meet the requirements of section 5(6) of the TWA. The Secretary of State further notes that RVR has confirmed that neither the Local Highway Authority nor the Ramblers Association have objected to the diversion, which was included in the Order scheme for which planning permission Ref. RR/2014/1608/P was granted [IR 12.5.2.12].

Other User crossings, Impact on agriculture and access at Quarry Farm

33. The Secretary of State has considered the Inspector's analysis of the user worked accommodation level crossing ("UWCs") at IR 12.5.3 and that the UWCs would introduce a new point of conflict for farm workers and increase the risk of accidents contrary to the aims of the Framework. However, the Secretary of State notes that the Inspector is of the opinion that it is likely that tolerably safe crossings could be created and while a residual risk would still be associated with the use of the proposed at-grade crossings that risk would be small not least as farm workers would be likely to use the crossings routinely and so would be conscious of the risks. The adverse impact attracts little weight [IR 12.5.3.7].

34. RVR's ES estimates that with regard to each farm effected by the Order scheme, that less than 5% of the total area managed would be subject to acquisition in perpetuity and is not expected to comprise 'best and most versatile agricultural land'. The Inspector also noted that there was no dispute that if adequate crossings were in place, the Order scheme would not result in directly affected farm holdings being unviable [IR 12.5.4.1]. The Inspector acknowledged that the use of the crossings would result in some inconvenience for the affected farms but considered that this would likely be minor [IR 12.5.4.3] and that overall, as concluded in RVR's ES and ESu, the impact of the Order scheme on agriculture would be likely to have no more than a slight adverse impact on agriculture [IR 12.5.4.4]. The Inspector also considered the impact on access to Quarry Farm at IR 12.5.5 in that if in the future trains run along the line through the farm it would be necessary to lock the gates leading to the crossing and to the detriment of their camping business. It seemed to the Inspector that the concern could be overcome by the supervision of the crossings during the limited period when both the campsites and the railway are in use and concluded that the Order scheme would be unlikely to have an unacceptable impact on access at Quarry Farm [IR 12.5.5.7]. The Secretary of State has no reason to disagree with these conclusions.

The effects on flood risk, air quality, water and waste discharge and noise

Flood risk

35. RVR's Flood Risk Assessment ("FRA") confirms that the existing KESR line is subject to frequent flooding along certain sections of the track [IR 12.6.1.1]. The Inspector notes that there are current procedures in place involving track inspections in response to flood warnings, ceasing to run trains and inspection of the line and structures following severe weather. The Secretary of State notes that there was no evidence before the Inspector that such approach had failed to satisfactorily safeguard users or operators of the existing railway or to ensure that any flood damage was identified and addressed in a timely manner [IR 12.6.1.1]. The Secretary of State agrees with the conclusion of the Inspector that if the same procedures are put in place for the proposed section of railway, then users would be satisfactorily safeguarded. The Secretary of State also agrees with the Inspector that it is likely to be possible through good design and maintenance to ensure that the proposed section of the railway would be safe for its lifetime and would be suitably flood resilient [IR 12.6.1.2].

36. When considering whether the Order would increase flood risk elsewhere the Inspector concludes that it would be unlikely to materially increase flood risk either within the existing floodplain or elsewhere in keeping with the aims of the Framework [IR 12.6.1.15]. Based on the evidence presented the Secretary of State has no reason to deviate from the Inspector's conclusion.

37. It is noted that the Landowners have argued that condition no. 11 of planning application reference RR/2014/1608/P, which was sought by the Environment Agency to prevent an increased risk of flooding elsewhere as a result of the Order Scheme and requires RVR to demonstrate there will be no loss of floodplain storage, is an impediment to the Order scheme [IR 3.5.2.2]. The Inspector considered this matter at IR 12.6.1.10-12.6.1.14. Both RVR and the Landowners provided estimates of the volume of floodplain storage compensation that could potentially be necessary, but the Inspector considered the Landowners estimates are likely to significantly overstate the potential need for compensation and thus gave greater weight to the RVR estimates. RVR identified 8 areas of potential floodplain storage compensation capacity and despite some of these areas also being identified for ecological mitigation, the Inspector was content that dual use of the land for floodplain storage and habitat creation is likely to be feasible [IR 6.12.5 – 8 and IR 12.6.1.1]. Additionally, it is the opinion of the Inspector that RVR could reduce any potential requirement for compensation by adjusting the vertical alignment and side slopes of the embankment as part of the final design process. Against this background the Secretary of State agrees with the Inspector that it is likely that RVR would be able to satisfy the floodplain storage compensation requirements of condition no. 11 and therefore that requirement is unlikely to be an impediment to the implementation of the Order scheme [IR 12.6.1.14]. Noting that there was no objection on flood risk grounds by the Environment Agency, the local lead flood authority or the local planning authority [IR 3.5.1.13] the Secretary of State agrees with the Inspector that this is a fact that should be given great weight and importance and therefore has no reason to consider that the Order scheme would be likely to materially increase flood risk within the existing flood plain or elsewhere [IR 12.6.5.1].

Air quality

38. RVR's ES air quality assessment indicated that the background pollutant concentrations in the vicinity of the proposed rail line are well below the national air quality objectives and found that the air quality effects as a result of the construction and operational phases of the scheme would be unlikely to be significant. The ESu provided an update to the air quality assessment, focussing in particular on the continued validity of the 2014 ES assessment as well as the impact of: construction dust; level crossings; and railway engines [IR 12.6.2.1].

39. In relation to the impacts of construction dust, the 2104 ES indicates that, having regard to the Institute of Air Quality Management, 2012, "Guidance on the Assessment of the Impacts of Construction on Air Quality and the Determination of their Significance" the sensitivity of the area surrounding the Order site is considered to be low. While it identifies that the area is generally characterised by low density residential and commercial properties, it recognises that there are a number of properties at Northbridge Street and Salehurst which would be within 200 metres of the construction works and those settlement areas may also be affected by "track out" haulage routes. The Secretary of State notes that as set out on the 2014 ES, through the implementation of best practice mitigation measures, the effects of nuisance dust would be minimised and would not be significant and this is confirmed in the ESu. These mitigation measures are secured by condition no. 6 attached to the planning permission Ref. RR/2014/1608/P which reflects the findings of the 2014 ES that nuisance dust effects would not be significant [IR 12.6.2.3].

40. The ESu provides an update to the Temple Final Air Quality Report 2018 and more up to date traffic counts from 2019 with respect to air quality at the proposed level crossings. The air quality assessment is based on modelled queue lengths during the peak 15-minute periods, which are likely to be longer than at other times and which the Inspector considers to be a reasonable approach. The likely air quality impacts (Nitrogen Oxides (NO_x) and particulates (PM₁₀)) associated with the each of the 3 proposed level crossings at sensitive receptors were judged to be negligible, with no risk that annual or short-term air quality objectives would be breached [IR 12.6.2.4].

41. Defra's Local Air Quality Management Technical Guidance 2018, ("TG16") provides screening criteria for whether there is a risk that SO₂ and NO₂ air quality objectives may be breached by diesel or steam locomotives. The proposed engine shed at Robertsbridge, the nearest receptors, users of the public rights of way network or local residents, fall well outside the cordon of concern identified by TG16 in relation to stationary locomotives. The Secretary of State agrees with the conclusion of the ESu that the air quality impacts from the proposed engine shed would be likely to be negligible and would not result in a breach of the relevant air quality objectives and confirmation in the ESu for moving locomotives that air quality impacts would likely to be negligible having regard to air quality objectives and given the relatively low calculated emission rates and the location of receptors relative to the line [IR 12.6.2.5].

42. The findings of the ESu are consistent with the ES that the Order scheme would be unlikely to have a significant adverse effect on air quality. As such the Secretary of State agrees with the conclusion of the Inspector that the impact of the Order scheme on air quality would be likely to be negligible and insignificant [IR 12.6.2.6].

Water and waste-water discharge

43. The ES confirms that the Order scheme has the potential to impact on the River Rother surface water body and Kent Weald Eastern-Rother groundwater body, which fall within the scope of the South East River Basin Management Plan 2015 [IR 12.6.3]. Although the detailed design of the Order scheme has not yet been finalised, the design has progressed since the Water Quality, Hydrology and Hydrogeology chapter of the ES and supporting Water Framework Directive Assessment were written. In common with the ES 2014, the ESu indicates that safeguards are in place to ensure that the Order scheme would not have any significant adverse effects on water quality or groundwater during the construction and operational phases of the Order scheme [IR 12.6.3.3]. The safeguards include conditions nos. 12 and 13 attached to the planning permission Ref. RR/2014/1608/P, and the implementation of an approved CEMP, which will identify mitigation measures required to ensure the protection of relevant waterbodies from the construction of the Order scheme (condition no. 6 of the same planning permission) [IR 12.6.3.4].

44. Consultation in respect of the detailed design, surface water management and delivery programme for the Order scheme is ongoing with the Environment Agency, who through the Environmental Permit regime can seek to ensure that there are no detrimental effects on the River Rother or groundwater in the area. The Secretary of State agrees with the Inspector's conclusion that with these safeguards in place, the Order scheme would be unlikely to cause a deterioration in the status of the identified water bodies or compromise achievement of their status objectives [IR 12.6.3.6].

Noise

45. Although the Secretary of State acknowledges that some objectors raised general concerns regarding the impact of noise of the Order scheme, like the Inspector, he is satisfied that here is no compelling evidence to demonstrate that the impact would be any greater than as set out in the RVR's ES and ESu [IR 12.6.4.1].

46. Regarding noise during construction, while it is noted some construction activity may be closer to some receptors than anticipated by the 2014 ES, the Secretary of State is satisfied that with the mitigation measures as set out in the ESu in place, there is likely to be no change to the residual adverse effects as set out in the 2014 ES and agrees with the Inspector that given the linear nature of the Order scheme, the proportion of the construction period during which activity would be likely to be close to any one receptor would be relatively short, the impact of construction noise is likely to be negligible [IR 12.6.4.3].

47. With regard to operational noise, although it is noted that the 2014 ES did not consider the noise associated with the proposed level crossings, the ESu indicated that due to the relatively short duration and low number of operations, together with the distance to receptors, it would mean that this was unlikely to result in significant noise effects at the level crossings. Consequently, the Secretary of State agrees with the Inspector that the impact of operational noise in both urban and countryside areas would be likely to be negligible [IR 12.6.4.4] and that the impact of the noise environment of receptors is also likely to be negligible [IR 12.6.4.5].

SOM3(c) – Conclusions

48. Overall, the Secretary of State concurs with the Inspector that the Order scheme would be likely to be safe for its lifetime, taking account of the vulnerability of its users, and would be unlikely to materially increase flood risk within the existing floodplain or elsewhere, in compliance with the Framework [IR 12.6.5.1]. Like the Inspector, the Secretary of State agrees that the Order scheme would have a negligible impact on air quality and noise and its overall effect in terms of flood risk, air quality, water and waste discharge and noise would be acceptable and not weigh either for or against the Order scheme [IR 12.6.5.2]

The impacts on heritage assets, the surrounding natural habitats, fauna and flora and the high Weald Area of outstanding Natural Beauty

Heritage

49. RVR's ES identifies that the site of Robertsbridge Abbey, a designated Scheduled Monument, is situated to the south of the River Rother and that several elements of the former Abbey are also designated as Grade II* Listed Buildings. The Secretary of State notes that the ES indicates that whilst the Order scheme would be within around 20 metres of the site of the Abbey at its closest point, the Order scheme would be located to the north of river and that there are no indications that significant remains extend north of the Rother which the ES suggests would have formed a natural limit to the monastic precinct [IR 12.7.1.1 – 12.7.1.2].

50. The proposed route would run along an existing section of embankment, to the northwest of the Order scheme would include reconstruction of a section of the railway embankment, which had been removed, in fields. The Secretary of State notes that RVR's ES indicated that the reconstruction of the new embankment would have a moderate negative effect on the setting of the Abbey site which would continue during its operational phase and due to the value of the heritage asset, the significance of the negative impact is judged as large [IR 12.7.1].

51. The Inspector considers that the significance of effect of construction activity, could reasonably be regarded as moderate/large adverse, it would be temporary in nature. In the operational phase, where the new embankment would rise above existing ground level the Order plans indicate it would comprise a low profile structure. The Inspector considered that views toward the proposed railway would be greatly restricted by planting even accounting for some loss of planting along the existing embankment. The visual impact of the railway line from Salehurst, Moat Farm and nearby rights of way to the Abbey site would also be likely to be limited by intervening planting. The Inspector considered that the likely impact of the reinstated embankment on the setting of the Abbey site has been overstated by the ES although the Inspector recognised that the movement of trains during the operational phase of the Order scheme would also have a negative impact on the setting of the Abbey site. The Inspector agreed with the view set out in the ES that the impact on the setting of the Abbey site would be likely to be negligible and the significance slight [IR 12.7.1.4] and the significance of effect of the Order scheme on the setting of Robertsbridge Abbey Scheduled Monument and associated Listed Buildings in the operational phase would be slight/moderate adverse and that this is consistent with the findings in the ESu [IR 12.7.1.5].

52. The Secretary of State notes that the Inspector considered that the Order scheme, would be likely to encourage more people to visit the Bodiam Castle Scheduled Monument but did not consider that this would amount to the “development within.... the setting of heritage assets, to enhance or better reveal their significance” set out in the Framework and did not agree with RVR that it would offset the harm to the significance of the heritage assets associated with the site of Robertsbridge Abbey and gave no weight to that view [IR 3.7.2 and 12.7.1.6]. The Secretary of State agrees with the Inspector’s overall conclusion that the Order scheme would cause less than substantial harm to the significance of designated heritage assets [IR 12.7.1.7]. The Secretary of State agrees with the Inspector that while the effect of the Order scheme on the significance of designated heritage assets would amount to less than substantial harm, it attracts great weight, given the desirability of preserving a designated heritage asset and its setting as set out in the Framework and the duty under section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The Secretary of State also agrees with the Inspector that, on balance, the benefits of the Order scheme as set out above outweigh the less than substantial harm to designated heritage assets which would be likely to be caused by it (IR 12.10.1.4).

Ecology

53. RVR’s ES includes an assessment of the potential impacts of the Order scheme on ecology and biodiversity. The Secretary of State notes that RVR were denied access to the 3.4km route to undertake ecological survey work by the landowners and as such the ES did not include site surveys within the Order scheme. The ecological impact and mitigation of the Order scheme has been based on a desk based assessment, observations made from public footpaths/roads and professional judgement to determine the likelihood of habitats and species being present on the site. On a precautionary basis, legally protected species which could logically be present have been scoped in as opposed to scoped out [IR 12.7.2.1].

54. The Secretary of State notes that the precautionary approach taken by RVR on the ecological survey work and the proposed mitigation was determined as being appropriate by the Local Planning Authority, and that neither Natural England nor the Environment Agency raised an objection in principle to this approach [12.7.2.3].

55. The Secretary of State notes that without mitigation a number of significant adverse impacts would be likely to result from the construction phase of the Order scheme but no additional significant impacts are considered likely to occur once operational. The Secretary of State notes that the ES identifies a package of mitigation measures to minimise the impact on habitats and species, such as woodland and scrub planting, but it also acknowledges that despite the proposed mitigation measures there is likely to be displacement of/disturbance to some species within the construction corridor and the loss of a limited numbers of mature trees. It is noted that some impacts would remain while the proposed woodland planting becomes established. All of these effects are assessed as significant. The Secretary of State notes that the ES anticipates that with mitigation in place that there would be no residual effect on species by virtue of the creation of suitable alternative foraging and breeding habitat to accommodate species displaced from the proposed route [IR 12.7.2.2].

56. The Secretary of State notes that following the precautionary ES approach, as set out above, RVR have since gained control of the land and completed the requisite ecological survey work for the section of the route between Austen's Bridge and Junction Road. The ecological findings were broadly consistent with the original precautionary ES and Natural England issued the necessary licenses in relation to legally protected species encountered (badgers and dormice). In addition, the ESu has drawn on updated ecology data held by the Sussex Biodiversity Records Centre in the intervening period since the ES was produced and the Sussex Ornithological Society. It indicates that the previously identified mitigation measures remain achievable and the works undertaken on the Austen's Bridge to Junction Road section of the route should be considered as a viable blueprint for future works. The Secretary of State agrees with the Inspector that this outcome validates the approach taken by RVR and indicates that the precautionary approach taken, due to lack of survey permission, is reasonable and robust [IR 12.7.2.4 – 12.7.2.5].

57. The Secretary of State notes that during the inquiry the Inspector has had regard to the ecological matters raised by the Landowners and other individuals but has observed that they are not qualified ecologists. The Secretary of State agrees with the Inspector's summary that greater weight is attributable to the approach, assessments and associated findings of the ES and supplementary evidence provided by RVR's ecologist, which was open to cross-examination at the Inquiry. The Secretary of State agrees that RVR's approach is reasonable and robust in terms of satisfactorily safeguarding ecological and biodiversity interests of acknowledged importance, including in relation to legally protected species [IR 12.7.2.6 - 12.7.2.8].

58 The ES anticipates the provision of replacement planting in order to ensure no net loss in biodiversity and seeking to achieve net gain, which the ecology management condition attached to the planning permission Ref. RR/2014/1608/P seeks to secure. The Secretary of State notes that the Inspector has had regard to the concerns raised by objectors in respect of fragmentation of habitat and that there may be insufficient land available to meet planting requirements. He further notes the Inspector shares the view set out in the ES that where the original embankment remains, it is likely that the majority of existing trees either side of the line would be retained, which together with the proposed line side planting, would satisfactorily address the risk of fragmentation [IR 12.7.2.9 - 12.7.2.10].

59. The Secretary of State notes the Inspector's conclusion that the approach taken by RVR would be reasonable and robust in terms of satisfactorily safeguarding ecological and biodiversity interests of acknowledged importance, including in relation to legally protected species. He further notes that woodland habitat lost to track clearance could not be replaced overnight, but with the proposed mitigation in place, it is unlikely there would be a residual effect on species by virtue of the creation of suitable alternative foraging and breeding habitat to accommodate those displaced from the proposed route. The Secretary of State notes the Inspector's consideration that limited weight is attributable to the adverse impacts of the Order scheme on ecology and biodiversity, which, given the mitigation proposed, would be likely to be time limited for the most part [IR 12.7.2.13]. The Secretary of State has no reason to disagree with that view.

Landscape character, visual amenity and the ANOB

60. The route of the proposed section of railway from Northbridge Street to Junction Road falls predominantly within pasture adjacent to the original alignment of the railway and is sited within the bounds of the High Wealds AONB [IR 12.7.3.3]. The background setting out the origins of the original railway line is summarised at IR 12.7.3.4.

Landscape Character

61. There is no dispute that the reinstatement of embankments where missing along the route of the proposed railway across the floodplain would have an adverse effect on the landscape but the issue is the degree of that effect. The Secretary of State agrees with the Inspector that the effect of reinstating embankments is likely to be slight-moderate negative as opposed to significant not least as the characteristics of the landscape already include embankments within the floodplain and the retained sections of the original embankments at Salehurst and Moat Farm [IR 12.7.3.5].

62. At the eastern end of the Order scheme, the plans associated with planning permission Ref. RR/2014/1608/P indicate that the Order scheme would include a second track, a passing loop, and this would necessitate a wider track bed. As noted in the ES, this would require more extensive tree clearance and cause views to be opened up from a number of nearby public vantage points. The Inspector considered that the same impact would be unlikely along the single track sections of the route where the track bed would be narrower. While the Secretary of State acknowledges the fact that the proposed mitigation planting is unlikely to result in the route running through a 'deeply wooded corridor', he concurs with the Inspector that as the route is not currently 'deeply wooded', this does not weigh against the Order scheme [IR 12.7.3.6].

63. While the Secretary of State notes the objections to RVR's claim that there is a relatively high degree of consensus regarding the positive contribution the heritage railway can make to landscape character and visual amenity, like the Inspector, he is satisfied that this view is reasonably well-founded for the reasons summarised at IR 12.7.3.7.

64. With regard to street lighting associated with the A21 level crossing and Northbridge Street crossing location, the Secretary of State agrees with the Inspector that its effect on landscape character, visual amenity or the AONB would be unlikely to be greater than negligible adverse given that it is located close to an urban area. Although the Secretary of State considers that there is likely to be a greater impact at the proposed Junction Road crossing due to it being situated on an unlit rural road, the Inspector, was satisfied that this impact is likely to be limited due to the existing tree cover around the location and potentially through the use of the proposed 'dark sky friendly lighting' and that associated lighting would be unlikely to have a significant adverse effect on landscape character, visual amenity or the AONB [IR 12.7.3.8]. The Inspector concludes that, overall, that the significance of the effect of the Order scheme on landscape character is likely to be a slight moderate negative effect [IR 12.7.3.9]. The Secretary of State has no reason to disagree with this conclusion.

Visual Impact

65. Although the ESu suggests the worst-case scenario for the Order scheme is that it could cause moderate negative and therefore significant adverse visual effects to the vantage points set out at IR 12.7.3.10, the Secretary of State agrees with the Inspector's

reasoning set out at 12.7.3.11 and his consequent conclusion that the magnitude of the railway's impact would be likely to be minor negligible adverse due to its relatively low profile and the distances involved. In reaching this conclusion, like the Inspector, the Secretary of State has taken into account the grass landscaping of the embankment which he considers is likely to be possible as a minimum and agrees that this would further soften the visual impact of the railway and the visual effect would be likely to be minor [IR 12.7.3.1].

66. With regard to the users of local footpaths, the Secretary of State agrees with the Inspector that while these are very high sensitivity receptors, the magnitude of impact would be likely to be negligible or very low due to the partial screening provided by existing path-side planting and as the proposed track would be likely to be at or slightly below existing ground level, when the railway is viewed from vantage points G and H, there would be no more than a moderate visual effect [IR 12.7.3.12].

67. The Secretary of State acknowledges that some local residents would be able to see parts of the railway from their properties and that these are very high sensitivity receptors, but he agrees with the Inspector that it is likely that there would be only a limited number of properties with clear views of the railway and that the magnitude of effect would likely be small to negligible for the reasons summarised at IR 12.7.3.13 and would result in no more than a moderate visual effect [IR 12.7.3.13].

68. While the Secretary of State notes that trains passing through the open countryside would have a visual impact themselves, he agrees with the Inspector's reasoning set out at IR 12.7.3.14, that trains would cause no more than a minor visual effect [IR 12.7.3.1] and overall, that the Order scheme would have a minor-moderate visual effect falling short of a significant adverse visual effect [IR 12.7.3.15].

The High Weald AONB

69. The Secretary of State notes the conclusions of the ESu with reference to the objectives in the 2014 and 2019, 'The High Weald Area of Outstanding Natural Beauty Management Plan' ("The Natural Beauty Management Plan") [IR 12.7.3.16] and agrees with the Inspector that the Order scheme slightly conflicts with the objectives seeking to maintain the extent of woodland and to secure productive use of fields as part of sustainable land management for the reasons summarised at IR 12.7.3.17. Like the Inspector, the Secretary of State agrees that although the Order scheme would reinstate a historic railway, it does not follow that there would be a major accord with the objective of maintaining the historic pattern and features of routeways as it would not involve any significant alteration to the Beech House Lane/bridleway S&R 36b route which would cross the proposed railway at grade and at a similar level to existing ground level. Accordingly, he agrees with the Inspector that the Order scheme would be neutral with regard to this objective [IR 12.7.3.18].

70. Notwithstanding this, as the Order scheme would provide access to the AONB and links to visitor attractions from surrounding urban areas, the Secretary of State agrees with the Inspector that the Order scheme would strike an acceptable balance between seeking to develop and manage access to maximise opportunities for everyone to enjoy, appreciate and understand the character of the AONB while conserving its natural beauty in compliance with the Natural Beauty Management Plan 2019. Overall, the Secretary of State concurs with the Inspector that, taken in its entirety, the Order scheme would accord with the 2019 Natural Beauty Management Plan [IR 12.3.7.1].

Landscape character, visual amenity and AONB conclusions

71. Like the Inspector, the Secretary of State is satisfied that the ES as supplemented by the ES addendum 2017 (“ESa”) and ESu is adequate for the purpose of identifying the likely significant effects of the Order scheme on landscape character, visual amenity and the AONB [IR 12.7.3.20] and that the Order scheme would have a slight moderate-adverse effect on the landscape character and visual amenity of the AONB. In reaching this conclusion, the Secretary of State has been mindful of the great weight attached to conserving and enhancing landscape and scenic beauty in AONBs under the Framework but is satisfied that the harm which would be incurred would be offset by the improved access to the AONB and visitor attractions within it provided by the Order scheme. Overall, noting the absence of objections from the local planning authority, Natural England and the AONB Unit, the Secretary of State agrees that the adverse effect of the Order scheme on landscape character, visual amenity and the AONB would be sufficiently limited to be regarded as respectful and acceptable [IR 12.7.3.21].

SoM3)d) – Conclusions

72. As set out above, the Secretary of State considers that the harm to designated heritage assets attracts great weight given the desirability of preserving a designated heritage asset. He also agrees with the Inspector’s overall consideration, that the effect of the Order scheme on the surrounding natural habits, fauna, and flora would be acceptable and it does not weigh for or against the Order scheme [IR 12.7.4.1 – 12.7.4.2] and that on balance the effect of the Order scheme on landscape character, visual amenity and the ANOB would be acceptable and it does not weigh for or against the scheme [IR 12.7.4.3].

Impact from changes to parking provision

73. The Inspector’s considerations in relation to parking provision are set out in IR 12.8.1 to IR 12.8.3 where he concludes that the Order scheme would be unlikely to have a material adverse effect on parking conditions or the road network in Robertsbridge. He deems parking associated with the Order scheme would not have an unacceptable impact on highways safety nor would the residual cumulative impact on the road network be severe, in keeping with the aims of the Framework. The Secretary of State notes that the likely impact on landowners, tenants, local residents, businesses and statutory undertakers, with particular reference to the impact of changes to parking provision would be acceptable. The Secretary of State agrees that this does not weigh for or against the Order scheme [IR 12.8.5].

SoM4) - The measures proposed by RVR to mitigate any adverse impacts of the scheme including any protective provisions proposed for inclusion in the Order

74. Specific protective provisions have been included in Schedule 8 of the draft Order for the benefit of statutory undertakers generally, National Highways and the Environment Agency. RVR and National Highways have agreed a Statement of Common Ground with protective provisions incorporated within a revised draft of Schedule 8 of the Order [IR 12.9.1.1].

75. The Environment Agency have agreed the Protective Provisions for Schedule 8, Part 3 – ‘For the Protection of Drainage Authorities and the Environment Agency’ of the draft Order with the exception of one point. RVR are seeking to include deemed approval of ‘specified works’ within this section. The Environment Agency requested that the protective provisions be amended to include ‘deemed refusal’ based on section 5, paragraph 15 of the Environmental Permitting (England and Wales) Regulations 2016 [IR 8.15.2 and 12.9.1.3]. RVR argue that 2 months before consent is deemed as approved is consistent with standard protective provisions. The Secretary of State agrees with the Inspector’s conclusion that 2 months before deemed consent is to be given provides all interested parties, including the Environment Agency, with adequate protection of their interests and modifying the proposed Order to provide for deemed refusal would not be justified in this particular case. [IR 12.9.1.5].

SoM5) - The extent to which the proposals in the TWA Order are consistent with the National Planning Policy Framework, national transport policy, and local transport, environmental and planning policies

76. The Secretary of State has considered and agrees with the ExA’s conclusion of the Order scheme compliance with the Framework at IR 12.10 and further agrees with the Inspector’s conclusions that the Order scheme would be likely to provide a number of benefits, the most significant of which would be its likely contribution to the economy and the facilitation of sustainable tourism and that on balance the Order scheme accords with the Framework taken as a whole [IR 12.10.1.23].

SoM1) Benefits

77. The Secretary of State notes that the proposed extension of the railway between Junction Road, and Robertsbridge Station would provide an opportunity which is not available at present for visitors to reach the heritage railway by mainline train, a sustainable transport mode. He further notes that a connection at Robertsbridge would be likely to increase in visitor numbers who would be likely to travel by mainline trains, other may travel by car which may give rise to a small increase in carbon emissions. The Secretary of State notes the Inspector’s conclusion that overall, it can be regarded as providing for sustainable tourism, in keeping with the aims of the Framework which attracts moderate weight [IR 12.10.1.3].

SoM3)d) Heritage assets, the surrounding natural habitats, fauna and flora and the High Weald Area of Outstanding Natural Beauty

78. The Secretary of State notes that the effect of the Order scheme on the significance of designated heritage assets would amount to less than substantial harm, it attracts great weight, given the desirability of preserving a designated heritage asset and its setting anticipated by the Framework. He further notes that the Framework indicates that where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, the harm should be weighed against the public benefits of the proposal. The Secretary of State notes the Inspector’s conclusion that, on balance, the benefits of the Order scheme identified above, would far outweigh the less than substantial harm to designated heritage assets which would be likely to be caused by it [IR 12.10.1.4].

79. The Secretary of State notes that on the surrounding natural habitats, fauna and flora, the Order scheme would be likely to minimise impacts on and, over time, provide net gains for biodiversity, in keeping with the aims of the Framework. He further notes the Inspector's consideration that the shorter term adverse impact would be offset by the likely longer term gain, such that this matter does not weigh for or against the Order scheme [IR 12.10.1.5].

80. The Secretary of State notes that whilst the Order scheme would have a slight-moderate adverse impact on the landscape character and visual amenity of the AONB, which attracts great weight under the terms of the Framework, it would also improve access to the AONB and tourist attractions within it, consistent with the aims of the Management Plan 2019, offsetting the harm. The Secretary of State notes the Inspector's conclusions that on balance that the effect of the Order scheme on landscape character, visual amenity and the AONB would be sufficiently limited to be regarded as being respectful of the character of the countryside and this matter does not weigh for or against the Order scheme [IR 12.10.1.6].

SoM3)a) Highway level crossings

81. The Secretary of State notes that the Framework indicates that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe. The Secretary of State notes the residual cumulative impacts on the road network of the Order scheme would be unlikely to be severe. He further notes that the proposed level crossings of the A21, Northbridge Street and Junction Road would be likely to be tolerably safe and subject to the safeguards within the agreed provisions for the protection of National Highways, and the Order scheme would be unlikely to have an unacceptable impact on highway safety [IR 12.10.1.7].

SoM3)b) Public Rights of Way

82. The Secretary of State notes the proposed level crossing of the bridleway would introduce a new point of conflict for users of the public right of way with an associated increase to the risk of accidents. He further notes the Inspector's consideration that it would conflict with the aim of the Framework to protect and enhance public rights of way and access but notes the view of the ORR that the risks could be reduced to a tolerable level, and this conflict attracts little weight [IR 12.10.1.8].

SoM3)c) Flood risk

83. The National Planning Practice Guidance ("PPG") confirms that for the purpose of applying the Framework, flood risk is a combination of the probability and the potential consequences of flooding from all sources and having regard the Environment Agency's fluvial flood extents maps the majority of the route of the proposed new railway that is the subject of the Order lies within the functional floodplain, Flood Zone 3b [IR 12.10.1.9]. The Secretary of State notes the Inspector's consideration of the Flood risk – Sequential and Exceptions Test. The PPG indicates that it is only where there are no reasonable sites in Flood Zones 1 and 2 that suitability of sites in Flood Zone 3 be considered taking into account the flood risk vulnerability of land uses and applying the Exception Test if required. The Inspector indicated that on the presented evidence the site was allocated in the

Development Plan for the purpose now proposed through the Sequential Test and there has been no significant changes to the known level of flood risk to the site. The Sequential Test was in place at all material times in the determination of the planning permission Ref. RR/2014/1608/P and neither the local planning authority nor the Environment Agency raised an objection with reference to it. The Inspector formed the view that it was not necessary to apply the Exception Test [IR 12.10.1.10 – IR 12.10.1.19]. The Secretary of State notes the Inspector's consideration that it is likely that the site was allocated in the Development Plan though the Sequential Test. He further notes that the Inspector found in relation to flood risk, the Order scheme would be likely to be safe for its lifetime taking account of the vulnerability of its users and would be unlikely to materially increase the flood risk either within the floodplain or elsewhere. The Secretary of State notes that the Order scheme would be consistent with the aim of the Framework that where development is necessary in areas of highest risk, the development should be made safe for its lifetime without increasing food risk elsewhere. The Secretary of State notes that the wider sustainability benefits of the community of the Order scheme would outweigh flood risk and therefore flood risk does not weigh for or against the Order scheme [IR 12.10.1.20].

SoM3)c) Air quality, noise, water and water waste

84. The Secretary of State notes the Inspector's view that the Order scheme would not give risk to unacceptable levels of air noise or water pollution, in keeping with the aims of Framework. The Secretary of State notes these matters do not weigh for or against the Order scheme [IR 12.10.1.21].

SoM3)e) changes to parking provisions

85. The Secretary of State notes that the Inspector considers that off-street parking capacity at Robertsbridge Station car park would be likely to be sufficient to accommodate the demand for parking associated with the Order scheme. He further notes it would not have an unacceptable impact on highways safety nor would the residual cumulative impact of parking on the road network be severe as a result of the Order scheme, in keeping with the aims of the Framework [IR 12.10.1.22].

National Policy-Conclusions

86. The Secretary of State notes that the Order scheme would be likely to provide a number of benefits, the most significant of which would be its likely contribution to the economy and the facilitation of sustainable tourism. The Secretary of State notes the Inspector's conclusion that on balance the Order scheme would accord with the Framework taken as a whole [IR 12.10.1.23] and he has no reason to disagree with that view.

Local Policy

87. The Secretary of State notes the Inspector's consideration of local policy. The Order scheme would occupy land allocated for that purpose by Rother Valley District Plan, 2006 and it was against this background that planning permission was granted. He agrees with the Inspector's conclusion that on balance the Order scheme would accord with the Development Plan taken as a whole. He further notes that the local planning authority has not objected to the Order scheme nor would the Order scheme conflict with the aims of the East Sussex Local Transport Plan 3, 2011 – 2026 insofar as it seeks to promote more

sustainable transport options and control congestion [IR 12.10.2.1 – 12.10.2.6]. He has no reason to disagree with the Inspector's considerations.

SoM6) - Adequacy of the Environmental Statement

88. The Secretary of State notes the Inspector's consideration of RVR's ES and ESu [IR 12.11.1 – 12.11.3] and agrees with the Inspector's conclusions that the ES and ESu meets the requirements of the Rules 2006, in providing a sufficiently up-to-date environmental impact assessment identifying, describing and assessing effects of the proposed works [IR 12.11.4].

SoM7) - Whether the statutory procedural requirements have been complied with

89. There is disagreement between Nicholas and Anne Eastwood and RVR regarding the ownership of some of the land either side of the existing KESR track where it passes through Quarry Farm to the east of Junction Road. The disputed land does not include that occupied by the track and RVR has confirmed that no compulsory purchase powers have been sought in respect of Nicholas and Anne Eastwood's interests. They have subsequently acknowledged that they do not qualify as statutory objectors and with that in mind the Inspector has concluded that the matter is of no relevance to the consideration of the Order [IR 12.12.1]. The Secretary of State agrees with that view.

90. Nicholas and Anne Eastwood contended that Quarry Farm has a right of way through Udiam Farm onto the B2244 beside and to the south of the existing railway line which has been blocked by the landowner of Udiam Farm. RVR has confirmed that it does not have an interest in Udiam Farm nor is it seeking to acquire an interest under the Order. The Secretary of State agrees with the Inspector's view that the matter is of little relevance to consideration of the Order [IR 12.12.2].

91. RVR confirmed that all relevant procedural requirements have been met and that the Inspector has no compelling reason to conclude otherwise. The Secretary of State is therefore satisfied that the statutory procedural requirements have been complied with [IR 3.12.1 and IR 12.12.3].

SoM8) - The purpose and effect of any substantive changes to the draft Order proposed by RVR or other interested parties, and whether anyone whose interests are likely to be affected by such changes has been notified.

92. For the reasons set out at IR 12.13.1, the Secretary of State agrees with the Inspector's conclusions on the proposed amendments to the Order and makes further amendments as set out below at paragraph 108.

SoM9)a) - Whether there are likely to be any impediments to RVR exercising the powers contain within the Order, including availability of funding.

93. The Inspector noted that a large proportion of the Landowners' case was based on arguments that there were impediments to the Order scheme being delivered particularly with regard to matters relating to the planning permission [IR 3.14.4.1].

Funding

94. Government's Guidance on the Compulsory Purchase Process and The Crichel Down Rules indicates that the acquiring authority will need to be able to show that: all necessary funding is likely to be available within a reasonable timescale; and the scheme is unlikely to be blocked by any physical or legal impediments to implementation, including any need for consent.

95. The anticipated cost of the Order scheme is £5.3 million which RVR confirms would be funded by the Rother Valley Railway Heritage Trust through donations, with no call on the public purse. This is how the railway has been constructed to date from Bodiam to Austen's Bridge and between Robertsbridge Station and Northbridge Street, including the construction of the station at Robertsbridge [IR 12.14.1.2] via two major benefactors (referred to as Donor A and Donor B) who have additionally committed to provide grant funding for the outstanding works. The Secretary of State acknowledges that there is no contractual or other binding commitment to provide the money needed and that delivery of the Order scheme would be entirely dependent upon the good will of donors. However, he agrees with the Inspector that substantive information has been provided as to the sources of funding available for both acquiring the land and implementing the Order scheme for which the land is required. Based on the information available, the Secretary of State agrees the funding necessary to satisfactorily implement the scheme would be made available in a timely manner [IR 12.14.1.5].

Matters to be approved by National Highways

96. At the close of the Inquiry, RVR's Departure from Standards Application to National Highways had not been approved which the Inspector noted would be a significant impediment to the Order scheme (IR 12.14.2.1). Since the close of the Inquiry and as set out above, this has now been approved and National Highways has withdrawn its objection and given its consent for access to the A21 under section 175B of the Highways Act 1980 [IR 12.14.2.1].

Planning Permission

97. The Secretary of State notes that Planning Permission Ref. RR/2014/1608/P, for the reinstatement of the Rother Valley Railway from Northbridge Street to Junction Road, was granted by Rother District Council on 22 March 2017, subject to various pre-commencement conditions and a condition requiring the development to commence within 5 years otherwise the planning permission would lapse [IR 12.14.3.2].

98. While the Secretary of State notes the consideration given by the Inspector to the validity of the planning permission at IR 12.14.3.7 to 12.14.3.14 and his recommendation that the Secretary of State may wish to take advice on whether or not a new planning permission was needed, noting this is a point of law, since the close of the inquiry and prior to the time in which the permission was due to lapse, Rother District Council amended the planning permission to allow a phased approach. The Secretary of State notes that the District Council confirmed by letter dated 28 March 2022 that a material commencement of lawful development had occurred which satisfied the legal requirements in section 56(4) of the Town and Country Planning Act 1990. The Secretary of State is therefore satisfied that the planning permission associated with this scheme remains valid.

99. Overall, the Secretary of State agrees with the Inspector that it is unlikely that there would be any impediments to RVR exercising the powers in the Order [IR 12.14.4.1].

SoM9)b) - Whether the land and rights in land for which powers are sought are required by RVR in order to secure satisfactory implementation of the scheme

100. The Order would authorise the compulsory acquisition of land and of rights over land, including temporary acquisition of land [IR 1.2.2]. The Secretary of State is satisfied that in line with the Government's Guidance the land and rights in land for which the powers are sought are required by RVR in order to secure the satisfactory implementation of the Order scheme [IR 12.15.2].

SoM10) - Any other relevant matters

101. The Secretary of State notes the Inspector's consideration of any other relevant matters as referring to an earlier refusal to make an Order which would have allowed the railway line to run through to Robertsbridge citing concerns on whether the railway would remain sufficiently profitable to sustain its maintenance obligations, the impact on traffic and public expenditure associated with dual carriageway bridges. While not knowing the full details of this previous matter the Inspector indicates that it appears that the circumstances are materially different in that KESR is financially viable and its continued success provides some assurance on the future maintenance of the line and the impact on traffic would likely be acceptable and there remains no confirmed plans yet for the A21 dualling [IR 12.16.1 – 12.16.2]. The ESu indicates that the Order scheme would be unlikely to give rise to any significant adverse human health effects or any significant adverse environmental effects and this position is consistent with earlier findings in relation to air quality and flood risk [IR 12.16.3].

SoM9)c) – Whether there is a compelling case in the public interest for conferring powers on RVR powers to acquire and use land and rights for the purposes of the scheme

102. The Secretary of State notes the Inspector's considerations on SoM1 to SOM10 as set out in IR 12.17.1 – 12.17.9 and that weighing all the harms and benefits, the Inspector concludes on balance that, whilst the Order scheme would cause harm in a number of respects, the adverse impacts would be sufficiently limited to be outweighed by the benefits likely to result from the Order scheme, the most significant of which would be its likely contributions to the economy and the facilitation of sustainable tourism. The Secretary of State agrees with the Inspector's overall conclusion, that there is a compelling case in the public interest for conferring on RVR powers to acquire and use land and rights for the purposes of the Order scheme [IR 12.17.10].

SoM9)d) – Whether the purposes for which compulsory purchase powers are sought are sufficient to justify interfering with the human rights of those with an interest in the land affected

103. In order to justify granting compulsory acquisition powers it is necessary to be sure that the purposes for which the compulsory acquisition powers are made justify interfering with the human rights of those with an interest in the land affected. Particular consideration should be given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights [IR 12.18.1]. The Secretary of State notes that the Order does not seek to acquire residential properties, and RVR has provided details of how each plot would be used for various aspects of the Order scheme. The Secretary of State agrees with the Inspector that no rights or land would be unnecessarily acquired, and the land titles and rights sought by the Order are a proportionate response to the needs of the scheme and there is a compelling case in the public interest for the Order to be made [IR 12.18.2].

104. The Secretary of State acknowledges that the current owners of Moat Farm greatly value the farmland and the contribution they consider it now makes to the biodiversity and the landscape of the area which they feel is worthy of protection. Unsurprisingly they are strongly opposed to the Order for the loss of the farm through compulsory purchase and with concerns regarding farm access [IR 12.18.3]. The Secretary of State also acknowledges that the owners of Parsonage Farm, who are concerned with respect to the impact of the Order scheme to their farming operations, are also strongly opposed to the Order [IR 12.18.4].

105. The Inspector expressed understanding in relation to the strongly held views of the affected landowners but indicated that it is necessary to take a balanced view between the concerns of those with an interest in the land and the wider public interest [IR 12.18.6]. Although RVR is not a public body, there is no dispute that they are able to make an application under the Transport and Works Act for a TWA Order to enable the Order scheme. The Inspector concludes there is a compelling case in the public interest for the Order to be made. The Secretary of State agrees with the Inspector's considerations that it would be reasonable to conclude on balance in this case that the public interest would outweigh the private loss of those people with an interest in the land and the purposes of the Order would sufficiently justify the interference with their Human Rights and would not be disproportionate [IR 12.18.7 and 12.19.1]. The Secretary of State agrees the grant of compulsory purchase powers would be justified in the public interest.

Secretary of State's overall conclusions and decision

106. The Inspector concluded that the Order should be made subject to the modifications set out in IR 13.2. Having considered the Inspector's recommendation at IR 13.3, the Secretary of State has amended the Order to replace all references to Highways England with National Highways to reflect that since the application was made, this body has changed its name.

107. The Secretary of State has 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 changes in the proposal such as would require notification to the affected persons under section 13(4) of the TWA.

Modifications

108. Minor drafting amendments have been made by the Secretary of State to the draft Order proposed by the Applicant. These changes do not materially alter the terms of the draft Order and are:

- article 2(1) (interpretation). Definitions that reference the Highways Act 1980 have had the requisite section of that Act inserted into definition;
- article 2(1). The term “electronic submission” has included a definition of “electronic communications network”;
- article 3(1) (application of other railway legislation, etc.). While it is appreciated that the drafting of the provision regarding “sections 78 to 83 and 85 to 85E” is long standing the provisions refers to information that is normally contained in a footnote. The provision has been reworked to footnote the reference to the Mines (Working Facilities and Support) Act 1923. It will ensure consistent drafting with the other provisions;
- article 3(2). The first reference to “enactment” has been changed to “Order” which is the usual drafting;
- article 8(a) (power to deviate) the words ‘part of the’ have been inserted before ‘Railway’. The term Railway includes both the new and existing railways;
- article 9 (power to alter layout etc. of streets). The Secretary of State as a matter of fairness has inserted a new paragraph (5) requiring the Company to notify the street authority of the effect of paragraph (4) in any application for consent;
- article 17(1)(a) (power to survey and investigate land) has been amended to remove the reference to ‘limits of land for survey and investigation’. While the term has been defined in article 2, it is not clear how it is intended to operate within the land shown within the Order limits. This term has not been used in any other Order that was immediately identified. Further there was no clarification in the Explanatory Memorandum which has simply referred to the power to survey and investigate land within the Order limits. It also seemed not to be a matter discussed in the Inquiry;
- article 17(4)(e) has been amended to refer to the Conservation of Habitats and Species Regulations 2017 and paragraph (5) has been deleted;
- article 18(2) (power to acquire land) has replaced ‘land plans’ with ‘Order plans’.
- article 30 (power to transfer undertaking) was repetitive in the use of paragraphs (1) and (2). Drafting has been suggested in removing paragraph (1) and reworking what is now paragraph (4) (previously numbered paragraph (5));
- article 44 (Crown rights) the heading has been amended from ‘Crown land’, and the provision has been fully set out. A reference to article 44 has been inserted into article 18(2);
- Schedule 2 (acquisition of land for ancillary works) the heading of column (2) has referred to ‘land plans’ but this is not a defined term. It has been amended to show ‘Order plans’;
- Schedule 7 (land of which temporary possession may be take) the word ‘deposited plans’ but this is not a defined term. It has been replaced with ‘Order plans’;

- Schedule 8 (protective provisions). In Part 1, some minor changes have been made. Headings have been inserted. In paragraph 8(1) and (4), 9(1), the reference to paragraph 5(2) has been changed to paragraph 6(2). In paragraph 8(4), the reference to 'paragraphs 1 to 6' has been changed to 'paragraphs 1 to 7'. In Part 2, the definition of 'infrastructure system' has been substituted for 'conduit system'. In Part 3, in paragraph 27, the alternative process to be undertaken by Defra and the Department has been removed as Departments do not have the expertise or resources to undertake this. It would be open to the parties to agree a process along similar lines to that envisaged in paragraph 45 (expert determination). In Part 4, the references to Highways England have been changed to National Highways and HE works to NH works.

Notice of determination

109. This letter constitutes the Secretary of State's notice of his determination to make the Order with modifications 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

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

Distribution

111. 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 sincerely,

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, because;—

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

Any such challenge may 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 3 working days of the date of this decision letter.

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