



# **Report to the Secretary of State for Transport**

**by Alwyn B Nixon BSc(Hons) MRTPI**

**an Inspector appointed by the Secretary of State for Transport**

**Date: 7 March 2018**

---

**TRANSPORT AND WORKS ACT 1992**

**TOWN AND COUNTRY PLANNING ACT 1990**

**Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006**

**NETWORK RAIL (WERRINGTON GRADE SEPARATION) ORDER 201[x]**

**including**

**APPLICATION FOR DEEMED PLANNING PERMISSION DIRECTION**

Dates of Inquiry: 21-24 November 2017

File Ref: DPI/E0535/17/5

---

## TABLE OF CONTENTS

	<u>paragraph</u>
Abbreviations and Glossary	
Case Details	
Preamble	1
Statutory Formalities and Procedural Matters	2
The Scheme, Site and Order	21
Case for the Applicant	
<i>Matter 1: Aims and need for the Scheme</i>	35
<i>Matter 2: Main alternatives considered</i>	44
<i>Matter 3: Consistency with policy</i>	53
<i>Matter 4: Impacts on landowners and tenants, local residents, general public, utility providers and statutory undertakers, including:</i>	
(i) <i>Noise and vibration impacts</i>	
(ii) <i>Impacts on means of access to businesses and car parking</i>	
(iii) <i>Impacts from increased train services on residential properties</i>	
(iv) <i>Impacts on air quality from dust and fumes;</i>	
(v) <i>Impacts on flood risk, water quality and Water Framework Directive requirements;</i>	
(vi) <i>Impacts on ecology;</i>	
(vii) <i>Impacts on landscape and visual amenity and archaeological interests.</i>	68
<i>Matter 5: Adequacy of the ES and whether statutory procedural requirements have been complied with.</i>	125
<i>Matter 6: Measures proposed to mitigate adverse scheme impacts, including:</i>	
(i) <i>the proposed Code of Construction Practice;</i>	
(ii) <i>measures to avoid, reduce or remedy any major or significant adverse environmental impacts;</i>	
(iii) <i>extent of residual adverse environmental impacts following mitigation;</i>	
(iv) <i>protective provisions to safeguard statutory undertaker operations.</i>	133
<i>Matter 7: Justification for Compulsory Purchase</i>	160
<i>Matter 8: Conditions to be attached to Deemed Planning Permission</i>	170

<i>Matter 9: Proposals for funding the Scheme</i>	176
<i>Matter 10: Response to remaining objections/representations</i>	181
Submissions for Supporters	
<i>Written Support - Virgin Trains Limited</i>	207
Submissions for Objectors and Representors	
<i>OBJ/4 Milton (Peterborough) Estates Company &amp; Sir Philip Naylor-Leyland Bt Milton Estates</i>	210
<i>REP/6 Werrington Neighbourhood Council</i>	212
<i>REP/3 Environment Agency</i>	220
Conditions	229
Inspector's Conclusions	236
<i>Matters on which the Secretary of State wished to be informed</i>	237
<i>Remaining objections and representations</i>	293
<i>Overall Conclusions</i>	305
Recommendations	309
Appearances	
Documents	
ANNEX of Conditions	

## **ABBREVIATIONS AND GLOSSARY**

Applicant	Network Rail Infrastructure Limited
At grade	At the same level
CoCP	Code of Construction Practice
Connectivity fund	An approved collection of projects funded up to £247m in order to deliver two additional train paths per hour in each direction on the East Coast Main Line
CP	Control period - Network Rail receives funding in Control Periods, which are five year blocks
CP4	Control Period 2009-2014
CP5	Control Period 2014-2019
CP6	Control Period 2019-2024
CRN	Calculation of Railway Noise, Department of Transport (1995)
Crossing moves	Trains crossing from one track to another
CS	Core Strategy
DPD	Development Plan Document
DPP	Deemed Planning Permission
EA	Environment Agency
ECML	East Coast Main Line
EDP	Enhancements Delivery Plan
EIA	Environmental Impact Assessment
ES	Environmental Statement
FOCs	Freight Operating Companies
GNGE	Great Northern Great Eastern Line
GNGE Improvement Scheme	Maintenance and railway improvement works on the existing GNGE undertaken between 2009 and 2014
GNGE Line	The rail corridor at the eastern end of the scheme

Grade separated	At different levels
GRIP	Governance for Rail Investment Projects
HLOS	Network Rail's CP5 High Level Output Statement, July 2012
LDHS	Long Distance High Speed
LOAEL	Lowest Observed Adverse Effect Level - the noise level above which adverse effects on health and quality of life can be detected
LTP	Local Transport Plan
The Network	The rail infrastructure network of Great Britain
Network Rail	Network Rail Infrastructure Limited
NIRR	Noise Insulation (Railways and Other Guided Transport Systems) Regulations 1996
North Ramp	Deep earth cutting rising from the dive under structure to grade on the north-east side of the ECML
NPPF	National Planning Policy Framework
NPSE	Noise Policy Statement for England (2015)
NPSNN	National Policy Statement for National Networks
NSIP	Nationally Significant Infrastructure Project
NVMP	Noise and Vibration Management Plan
the Order	the Network Rail (Werrington Grade Separation) Order
ORR	Office of Rail and Road
ROGS	Railways and Other Guided Transport Systems (Safety) Regulations 2006
the Scheme	The Werrington Grade Separation Scheme
Slew	Horizontal movement of track alignment from one position to another
SOAEL	Significant Observed Adverse Effect Level – the noise level above which significant effects on health and quality of life occur
South Ramp	Deep cutting formed of sheet piles and bored piles rising

	from the dive under structure to grade on the west side of the ECML
Stamford Lines	Two tracks to the west of the ECML running between Peterborough and Stamford/the Midlands
Stamfords drainage Accommodation	New bridge on realigned Stamford lines to access the Bridgesump and dive under structure
TOCs	Train Operating Companies
tph	train paths per hour
TWA	Transport and Works Act 1992
TWA Rules	Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (S.I. 2006 No. 1466
TW Inquiries Rules	Transport and Works (Inquiries Procedure) Rules 2004 (S.I. 2004 No. 2018
Werrington Lines	the new tracks to be constructed linking the Stamford and GNGE lines
WFD	Water Framework Directive
Wide-way	Section of barren ground between ECML and Stamford Lines
WNC	Werrington Neighbourhood Council

## **CASE DETAILS**

### **File Ref: DPI/E0535/17/5**

### **Network Rail (Werrington Grade Separation) Order 201[x]**

- The Order would be made under sections 1 & 5 of the Transport and Works Act 1992.
- The Order application also seeks a Direction under section 90(2A) of the Town and Country Planning Act 1990 that planning permission shall be deemed to be granted subject to conditions.
- The application was made on 22 December 2016 under section 6 of the Transport and Works Act 1992.
- The purpose of the Order and deemed planning permission is to give the Applicant, Network Rail Infrastructure Limited ("Network Rail"), the necessary powers to construct, maintain and operate a grade separated junction in the form of a dive under beneath the East Coast Main Line at Werrington junction.
- The aim of the proposed Werrington Grade Separation scheme is to allow trains to transfer between the Stamford Lines and the Great Northern Great Eastern (GNGE) Line without crossing the East Coast Main Line (ECML) on the level. The scheme is required, in combination with other schemes, in order to increase capacity on the ECML to allow for up to two extra train paths per hour in each direction for long distance high speed trains.
- The application for the Order was advertised in the appropriate manner and a number of objections, letters of support and other representations were received. 16 objections were submitted, of which 10 were withdrawn prior to the Inquiry opening.
- The inquiry sat for 4 days on 21-24 November 2017.

**Summary of Recommendations: That the Order be made, subject to modifications, and a direction given that planning permission is deemed to be granted subject to conditions.**

---

## **Preamble**

1. This report includes brief descriptions of the works and other matters covered by the proposed Order; the site and surrounding area; the case for the Scheme, having regard to the matters on which the Secretary of State particularly wishes to be informed; the gist of the representations made; and my conclusions and recommendations. Document references are shown in brackets, and in my conclusions the numbers in square brackets indicate relevant earlier paragraphs of the report. Details of those who took part in the public inquiry and a comprehensive list of documents are attached at the end of the report. Document numbers are prefixed CD for core documents, INQ for Network Rail inquiry documents; other prefixes indicate the parties involved.

## **Statutory Formalities and Procedural Matters**

2. Appropriate procedures have been followed in making the application for the Order and for deemed planning permission, as described and confirmed in the Compliance Pack (Document INQ/NR/1). In particular, the application was advertised in the London Gazette and the Peterborough Telegraph in December 2016, and a period for making objections and representations was allowed up to 9 February 2017. Site notices were also displayed as required, including notices in relation to the various footpath, bridleway and street works required by the Scheme.

3. A total of sixteen<sup>1</sup> objections to the scheme were received, from:

- Victoria Collinson (OBJ/1);
- Mr & Mrs M & Mr J Barber & Mrs S Rowe (OBJ/2);
- Paul Marsh (OBJ/3);
- Milton (Peterborough) Estates Co & Sir Philip Naylor-Leyland Bt (OBJ/4);
- A.L Carter (OBJ/5);
- Royal Mail Group (OBJ/6);
- PS47 Limited (OBJ/7);
- Stephen Ormerod (OBJ/8);
- Michael & Linda Howard (OBJ/9);
- Thomas Cook Limited (OBJ/10);
- D & K Property Holdings Ltd & Reboot Leisure Ltd (OBJ/11);
- National Grid (OBJ/12);
- Kerry Ingredients (UK) Limited (OBJ/13);
- Boyer Investments Limited (OBJ/14) (objection subsequently maintained by Jubilee Industrial Investments Limited);
- Natalie Dyson (OBJ/15);
- Lloyds Banking Group (OBJ/16).

4. Ten objections were withdrawn before the Inquiry:

- Victoria Collinson (OBJ/1) – letter dated 20 February 2017;
- Mr & Mrs M & Mr J Barber & Mrs S Rowe (OBJ/2) – letter dated 9 August 2017;
- Paul Marsh (OBJ/3) – email dated 28 March 2017;
- A.L Carter (OBJ/5) – email dated 1 March 2017;
- PS47 Limited (OBJ/7) – letter dated 20 November 2017;
- Stephen Ormerod (OBJ/8) - letter dated 17 November 2017;
- Michael & Linda Howard (OBJ/9) - letter dated 17 November 2017;
- D & K Property Holdings Ltd & Reboot Leisure Ltd (OBJ/11) – email dated 17 May 2017;
- Jubilee Industrial Investments Limited (OBJ/14) - letter dated 17 November 2017;

---

<sup>1</sup> OBJ/16 Lloyds Banking Group was originally registered as a representation (REP/5), but was subsequently re-numbered as OBJ/16 following the Pre-Inquiry Meeting.

- Natalie Dyson (OBJ/15) - letter dated 17 November 2017.
5. Five other<sup>2</sup> representations were also received, from:
    - Anglian Water (REP/1);
    - Natural England (REP/2);
    - Environment Agency (REP/3);
    - Peterborough City Council (REP/4);
    - Werrington Neighbourhood Council (REP/6).
  6. Two representations were withdrawn before the Inquiry:
    - Anglian Water (REP/1) – letter dated 22 June 2017;
    - Natural England (REP/2) – letter dated 2 March 2017.
  7. One letter of support was received, from:
    - Virgin Trains East Coast.
  8. Following the receipt of objections, the Secretary of State decided to hold a public local inquiry into the Order application and subsequently issued a statement of matters, identifying the matters on which he particularly wished to be informed<sup>3</sup> (issued by TWA Orders Unit, June 2017).
  9. These matters are listed as follows:
    - (1) The aims and the need for the proposed Network Rail (Werrington Grade Separation) Scheme (“the Scheme”).
    - (2) The main alternative options considered by Network Rail and the reasons for choosing the proposals comprised in the scheme.
    - (3) 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 local planning policies.
    - (4) The likely impacts of constructing and operating the Scheme on land owners and tenants, local residents, the public, utility providers and statutory undertakers, including any adverse impact on their ability to carry on their business or undertaking. Consideration under this heading should include<sup>4</sup>:
      - (a) the impacts of noise and vibration including the effects of construction traffic on the local road network;
      - (b) the impacts on means of access to businesses and car parking;
      - (c) the impacts from increased train services on residential properties;

---

<sup>2</sup> Excluding Lloyds Banking Group submission originally recorded as REP/5.

<sup>3</sup> This did not preclude me from hearing evidence on other matters.

<sup>4</sup> The list of considerations includes a number of matters arising from objections which were subsequently resolved and withdrawn; in such instances detailed evidence was not presented.

- (d) impacts on air quality from dust and fumes;
  - (e) impacts on flood risk, water quality and the Water Framework Directive requirements;
  - (f) impacts on ecology; and
  - (g) impacts on landscape and visual amenity and archaeological interests.
- (5) The adequacy of the Environmental Statement submitted with the application for the TWA Order, having regard to the requirements of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006, and whether the statutory procedural requirements of the Transport and Works (Applications and Objections Procedure) Rules 2006 have been complied with.
- (6) The measures proposed by Network Rail to mitigate any adverse impacts of the Scheme including:
- (a) the proposed Code of Construction Practice;
  - (b) any measures to avoid, reduce or remedy any major or significant adverse environmental impacts of the scheme;
  - (c) whether, and if so, to what extent, any adverse environmental impacts would remain after the proposed mitigation; and
  - (d) any protective provisions proposed for inclusion in the draft TWA Order or other measures to safeguard the operations of statutory undertakers.
- (7) Having regard to the criteria for justifying compulsory purchase powers in paragraphs 12 to 15 of the DCLG Guidance on the "Compulsory purchase process and the Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion" (published on 29 October 2015):
- (a) Whether there is a compelling case in the public interest for conferring on Network Rail powers compulsorily to acquire and use land for the purposes of the Scheme; and
  - (b) Whether the land and rights in land for which compulsory acquisition powers are sought are required by Network Rail in order to secure satisfactory implementation of the Scheme.
- (8) The conditions proposed to be attached to the deemed planning permission for the Scheme, if given, and in particular whether those conditions satisfy the six tests referred to in Planning Practice Guidance, Use of Conditions (Section 1D:21a).
- (9) Network Rail's proposals for funding the Scheme.
- (10) Any other matters which may be raised at the inquiry.

10. I held a pre-inquiry meeting on 26 September 2017, at which the arrangements for the inquiry and other procedural matters were discussed. Following the meeting I issued a note to all parties confirming these matters.
11. The public inquiry took place over four days during 21 – 24 November 2017 at the Noel Cantwell Suite, ABAX Stadium, Peterborough. I carried out an inspection of the site and its surroundings on 22 November 2017, including the locations of the proposed dive under and the various ancillary and accommodation works required, and locations relating to objections and representations.
12. Graham Groom acted as the independent Programme Officer during the inquiry process, assisting me with the procedural and administrative aspects. He helped greatly in ensuring that the proceedings ran efficiently and effectively but has played no part in my consideration of the Order application and writing of this report.
13. In addition to Network Rail (the applicant and Scheme promoter), Werrington Neighbourhood Council (REP/6) also gave evidence at the public inquiry.
14. At the start of the inquiry Peterborough City Council (REP/4) confirmed that it had reached agreement with Network Rail in respect of the conditions that should be attached to a grant of deemed planning permission, and that it had therefore withdrawn its representation and did not wish to give evidence<sup>5</sup>. The Council participated in the inquiry session at which conditions were discussed.
15. Lloyds Banking Group (OBJ/16) prepared detailed evidence in support of its position, but in the event the Group's objection was resolved and it did not call this evidence. It confirmed the withdrawal of its objection by letter dated 22 November 2017.
16. Other objectors, representors and supporters did not appear, but instead chose to rely on their written submissions.
17. The hearing of evidence was completed on 24 November 2017. At this point it was apparent that some objectors had resolved the substance of their objections through negotiation with Network Rail, and would be in a position to formally withdraw the objection upon completion of legal agreements which required more time to be executed. In the circumstances I agreed to hold the inquiry open until 15 December 2017, to give time for these outstanding matters to be completed.
18. Letters confirming formal withdrawal of objections were submitted, in advance of the inquiry closing, by:
  - Royal Mail Group (OBJ/6) – Letter dated 12 December 2017
  - Thomas Cook Limited (OBJ/10) – Letter dated 14 December 2017
  - National Grid (OBJ/12) – Letter dated 6 December 2017
  - Kerry Ingredients (UK) Limited (OBJ/13) – Letter dated 15 December 2017
  - Lloyds Banking Group (OBJ/16) – Letter dated 22 November 2017

---

<sup>5</sup> See Document PCC/1

19. Before the inquiry closed, minor omissions and inconsistencies in the Order documentation concerning the proposed replacement of Cock Lane footbridge were also corrected<sup>6</sup>.
20. I closed the inquiry in writing at 1700 hours on 15 December 2017. When the inquiry closed there was just one outstanding objection, from Milton (Peterborough) Estates Company & Sir Philip Naylor-Leyland Bt (OBJ/4); and two outstanding representations, from Werrington Neighbourhood Council (REP/6) and the Environment Agency (REP/3).

### **The Scheme, Site and Order** (Doc CD/NR15)

21. The Scheme concerns Werrington junction, which is situated on the East Coast Main Line (ECML) at the northern edge of Peterborough's urban area. In this location the Great Northern Great Eastern Line (GNGE) comes into the ECML from the direction of Spalding to the east and the Stamford Line runs alongside the ECML on its western side.
22. An Explanatory Memorandum<sup>7</sup> was submitted at the time of the application which identifies the proposed scheme and the scope of the Order. The purpose of the Order is to give Network Rail the necessary powers to construct, maintain and operate a grade separated junction in the form of a dive under beneath the East Coast Main Line at Werrington junction ("the Scheme"). The aim of the Scheme is to remove a key rail bottleneck in the Peterborough area by allowing trains to transfer between the Stamford Line and the GNGE without crossing the ECML on the level. Implementation of the Scheme would, in combination with other schemes, increase capacity on the ECML to allow for up to two extra train paths per hour in each direction for long distance high speed (LDHS) trains.
23. The new tracks comprising the dive under would closely follow the arc of the GNGE on its northern side as it deviates from the ECML. At its southern end the new tracks would sit predominantly within the existing ECML/Stamford Line railway corridor, which would be widened slightly to accommodate the new tracks. In this location development bounding the ECML/Stamford Line corridor principally comprises industrial units and business uses, except for the Whiteley Park Homes residential development east of Cock Lane footbridge. The land on the western side of the railway north of the footbridge is open and undeveloped.
24. The GNGE is bounded on its southern side by industrial and business development to where it passes beneath the A15; thereafter the GNGE runs close to areas of housing on its southern side. Hereabouts the new tracks would lie on the far side of the GNGE from these groups of dwellings as they run towards and then merge with the GNGE. Land use on the northern side of the GNGE is predominantly agricultural, save for a handful of dwellings on Hurn Road. Three residential properties would need to be demolished due to the Scheme's impact; the owners of these properties have withdrawn their earlier objections to the Order<sup>8</sup>.

---

<sup>6</sup> See Documents INQ/NR/12-15

<sup>7</sup> Document CD/NR3

<sup>8</sup> As recorded at para 4 of this report - withdrawal of OBJ/8; OBJ/9; OBJ/15

25. The Order Land comprises the envelope of railway and adjoining land required for the provision of the new dive under tracks together with additional areas needed for associated highways/rights of way, drainage, utilities, mitigation, access, construction compound and soil storage purposes.
26. The Scheme is summarised in the Statement of Aims<sup>9</sup> and the works involved are set out in more detail in the Statement of Case<sup>10</sup>. The Scheme involves creating a twin track dive under at Werrington Junction by constructing a new length of double track from the Stamford Line (located on the west side of the ECML) to the GNGE some way east of the latter's intersection with the ECML. The new double track ("the Werrington Line") (Work No. 2 in the Order) would have a total length of some 2,982 metres. It would leave the existing track some 650m south of Cock Lane footbridge, initially following the present alignment of the Stamford Line and descending from existing track level into a cutting (the South Ramp). The new line would then pass under the ECML via the dive under structure - a precast concrete box structure to be installed beneath the ECML.
27. East of the ECML the new line would continue in a cutting and rise via the North Ramp towards the GNGE. Here the route crosses an area of agricultural land and the garden of a residential property known as Monkams (agreed to be acquired and to be demolished as part of the scheme). It would then follow the course of the existing Hurn Road under the A15 dual carriageway and under a new bridge span added to the existing Lincoln Road bridge before passing Nos 1551 and 1549 Lincoln Road (both also agreed to be acquired and demolished) and crossing more agricultural land to meet the GNGE.
28. The provision of the new dive under would entail realignment, or slewing, of the existing Stamford Line (Work No. 1). The Up and Down Stamford lines would be moved to the west of their current position, with embankments relocated to the west of the existing railway corridor, to enable the dive under to be constructed. Once completed, the Stamford Up line would be relocated to the east side of the North Ramp. The realignment of the Stamford Line allows for the creation of a wider corridor between the existing lines, within which the South Ramp section of the dive under would be built.
29. Various other works associated with the new dive under are identified by the Order. These are conveniently shown on the Deemed Planning Consent Key Plan<sup>11</sup>, and comprise:
  - (Work No. 3) – replacement of the existing Cock Lane footbridge with a new footbridge over the ECML and Works Nos. 1 and 2.
  - (Work No. 3A) – A temporary footbridge over the ECML in the vicinity of the Werrington Drain, required for access purposes during the Scheme's construction.
  - (Work No. 4) – a new watercourse, being a repositioning and increase in capacity of the existing Brook Drain North as a result of Works Nos. 1 and 2.

---

<sup>9</sup> Document CD/NR6, Section 3

<sup>10</sup> Document CD/NR15, Section 5

<sup>11</sup> Drawing No. 140365-JAC-WER-0-DR-000081

- (Work No. 5) – A new length of 3.7m width single carriageway road with passing places approximately 800m in length on the west side of the A15, being a diversion of Hurn Road necessitated by Work No. 2.
- (Work No. 6) – A new multi-purpose bridge alongside the A15, to carry utility apparatus and a footpath, bridleway and cycleway over the GNGE together with associated access arrangements.
- (Works Nos. 7A and 7B) – Temporary access bridges over the Marholm Brook.
- (Work No. 8) – A bridge, being an extension to the existing Lincoln Road Bridge over the GNGE, to carry that road over the new Werrington Line formed by Work No. 2.

30. The Scheme also involves various other works, as follows:

- Marholm and Glington Junctions – provision of new switches and crossings associated with the new tracks for the dive under.
- Covering over of a length of Brook Drain South to form a buried culvert (as part of Work No. 1)<sup>12</sup>.
- Stamford Accommodation Bridge – provision of a bridge under the realigned Down Stamford line to provide access to the drainage sump and dive under structure.
- Modification of Marholm Brook East and removal of Dukesmead Penstock<sup>13</sup> (as part of Work No. 1).
- Realignment of the existing Werrington Drain (as part of Work No. 2).
- Diversion of numerous utilities in the area.
- New auxiliary power supply points at Helpston and Werrington Junction.
- Areas for the storage of excavated materials and for construction compounds.

31. If the Order is made, all of the above works would be undertaken contemporaneously as part of the Scheme.

32. The Order application includes a Rule 10(6) request for deemed planning permission under section 90(2A) of the Town and Country Planning Act 1990 by means of a Direction from the Secretary of State<sup>14</sup>. Such permission would be subject to a set of appropriate planning conditions.

33. The Order would include powers for the compulsory acquisition of land and rights in land, including temporary possession where appropriate. The Order would also provide for various associated street works and for the permanent and temporary stopping up of various streets or parts of streets. The areas of land concerned and the powers that the Order would confer in each case are summarised in the

---

<sup>12</sup> See Sections 4.9.3-4.9.7 and Figs 29.1 & 29.2 of Document NR/PoE/2.2

<sup>13</sup> See Fig 27.1 of Document NR/PoE/2.2

<sup>14</sup> Document CD/NR11

Order Schedules and detailed in the Book of Reference<sup>15</sup> and on the Deposited Plans and Rights of Way Plans<sup>16</sup>.

34. During the course of the inquiry various amendments were proposed to the draft Order as initially submitted, to reflect more accurately its scope and purpose and the relevant legislative framework. The final version of the draft Order (clean copy together with copy showing track changes from earlier submitted versions) is attached as Documents INQ/NR/14 and INQ/NR/15. Departures from the model clauses are explained in the Explanatory Memorandum<sup>17</sup> submitted in accordance with Rule 10(2)(b); subsequent changes introduced to reflect updated legislative provisions are explained in the Network Rail Inquiry Note dated 24 November 2017<sup>18</sup>.

### **Case for the Applicant (Network Rail)**

This summary of the Applicant's case is structured to reflect the matters identified in the Secretary of State's Statement of Matters. Document INQ/NR/7 indicates the various sources of Network Rail's evidence on each matter.

*The material points are:*

#### **Matter 1: Aims and Need for Scheme** (CD/NR15, NR/PoE/1.2 Sections 3 & 6)

35. The Scheme must be seen in the wider context of the recent rapid growth in rail use across the UK. The national railway has seen a 59% increase in passenger numbers from 1.04 billion people in 2004/05 to 1.65 billion in 2014/15. The ECML is a key element of the national rail passenger network. In the High Level Output Statement 2012 (HLOS)<sup>19</sup> the Secretary of State recognises the importance of the ECML in linking Scotland, the North East, Yorkshire and Eastern England with London and seeks further improvement in capacity and reduction in journey times and believes there are good business cases for both. To accommodate continued traffic growth it is necessary to operate both passenger and freight trains at an increased frequency on the ECML between King's Cross and Edinburgh and between Doncaster and Leeds.
36. The ECML Connectivity Fund has been established with responsibility for interventions to further increase ECML capacity. Following work in Governance for Railway Investment Projects (GRIPs) 1 and 2 to review all locations and constraints on the ECML and identify best value enhancements, six separate infrastructure improvement projects have been identified with total allocated funding of £247m over the period 2014-2024. In combination these will enable an increase in the capacity of ECML long distance high speed (LDHS) trains from the current 6 train paths per hour (tph) to 8 tph in each direction. One of the 6 projects (Doncaster Station enhancements) is now complete. The Order Scheme is one of the two largest projects in the ECML Connectivity Fund, the other being the four tracking of the railway between Huntingdon and Woodwalton. These two

---

<sup>15</sup> Document CD/NR10

<sup>16</sup> Document CD/NR8

<sup>17</sup> Document CD/NR3

<sup>18</sup> Document INQ/NR/9

<sup>19</sup> Document CD/NR18

- projects are identified as the key projects to delivering the two additional train paths an hour.
37. Currently the ECML provides 6 tph in each direction for long distance passenger services between London and Doncaster, calling at various stations on the route. Of these 6 tph, 4 continue to Edinburgh, via stations in Yorkshire and the North East. The remaining 2 are services to Leeds and Wakefield. Other non-main line locations link to London by utilising the ECML and train paths available via branch lines. Locations so served include Lincoln, Hull, Bradford, Harrogate and Skipton.
  38. The aim of the Scheme is to remove a key rail bottleneck on the ECML at Peterborough caused by slower trains transferring between the Stamford Line and the GNGE. At present these trains have to cross the ECML on the level, via the track "ladder" just south of Werrington Junction to gain access to the GNGE. This imposes a significant constraint on the use of the ECML, because the fast line train paths have to be limited to allow the crossing slow train movements. The construction of the dive under would remove this conflict point and capacity constraint, allowing movement between the Stamford Line and the GNGE without affecting service capacity on the ECML. Implementation of the Scheme, in combination with the other schemes in the ECML Connectivity Fund, would increase capacity on the ECML to allow for 2 extra tph for LDHS passenger trains.
  39. As part of the ECML Connectivity Fund CP5 (2014-2019) enhancements, Network Rail is tasked with delivering capacity on the ECML for an additional 2 LDHS passenger tph. The two extra paths will help rail operators serve new locations and serve existing locations more frequently. Many of these locations are in the north of England, and so the additional services will contribute towards the Government objective of creating a stronger North and providing better links between the North and London/the South, helping to bridge the economic divide between regions.
  40. The resulting capability for freight and passenger trains to travel between the GNGE and Stamford Line in both Up and Down directions without having to cross the ECML will benefit Train Operating Companies (TOCs), Freight Operating Companies (FOCs) and Network Rail alike, creating greater timetabling flexibility as the number of freight trains requesting to cross the ECML in this location will be reduced by around 75%. An incidental benefit will be that fewer freight trains will need to be held at signals at the junction, increasing train efficiency and reducing the number of trains braking/accelerating at this location.
  41. The Scheme is central to the delivery of the ECML Connectivity Fund programme as a whole, removing a significant operational constraint and conflict point on the line. The programme will deliver much-needed additional capacity to the ECML, with the following benefits:
    - An increase in LDHS passenger train capacity from 6 tph to 8 tph, further increasing train and passenger seat numbers between London and the North;
    - Improved reliability as a result of the separation of different types of rail traffic (particularly relevant to the Order Scheme);
    - More peak time seats and less crowded services;
    - Shorter end to end journey times;

- Improved operational flexibility.
42. A further benefit will be that the new modern signalling of the dive under will be able to meet future signalling requirements, arising from the development of Network Rail's Digital Railway programme to upgrade technology and adopt modern digital signalling and train control.
43. There is thus a clear and pressing need for the Scheme, to remove a key operational constraint on the ECML and enable the overall objectives and benefits of the ECML Connectivity Fund to be delivered. There are no submissions from other parties which question the need for the Scheme.

**Matter 2: Alternatives Considered** (CD/NR15, NR/PoE/1.2 Section 7, NR/PoE/2.2 Sections 4.2 & 4.3)

44. For the required output of the ECML Connectivity Fund of an additional 2 LDHS tph it is necessary to remove the physical conflict that currently exists between freight and passenger services just north of Peterborough station. Operational changes to timetabling/signalling cannot deliver this outcome.
45. Potential options to remove the majority of conflicting crossing moves across the ECML from the GNGE were examined as part of the work to define the scope of the recently-completed GNGE Improvement Scheme (2009-2014). The investigations included assessments of at-grade versus grade-separated schemes, and also considered locations to the south of Werrington Junction at South Chord and New England<sup>20</sup>.
46. A "South Chord" option south of Peterborough Station would facilitate better access to the March Lines to Felixstowe and East Anglia, but would need to be combined with a single track northbound and a grade-separated link at Werrington providing the required GNGE access in any event. An improvement scheme at South Chord alone would not address the principal capacity issue and requirement for grade separation north of Peterborough Station, and a grade separation scheme would still have to be installed at Werrington Junction. For this reason the South Chord option was deemed to be economically and environmentally unfeasible.
47. Various grade separation options were considered at New England, between Werrington Junction and Peterborough Station:
- A freight flyover or dive under (keeping the ECML fast lines at their present levels and taking freight traffic over or under the ECML);
  - A fast lines dive under (putting the ECML in a dive under with the freight movements to/from the GNGE continuing at present track levels);
  - A fast lines flyover (putting the ECML on a flyover with the freight movements to/from the GNGE continuing at present track levels).

However, the work showed that the New England alternatives were much more costly than those at Werrington, and also would involve long duration closures to the ECML together with large-scale temporary alignments for the ECML to create the working space required and major compensation payments to affected TOCs

---

<sup>20</sup> See document NR/PoE/1.2 p.17 fig.5

- and FOCs. However, at the study level concerned the New England options did appear to raise fewer environmental issues than those at Werrington Junction.
48. There was an initial examination of both flyover and dive under grade-separated options at Werrington Junction in connection with the GNGE Improvement Scheme. This concluded that both options would deliver the required remit in terms of segregating freight and passenger services, and when considering cost, operational and environmental considerations together both were preferred over the options considered in other locations. The Werrington Junction options were significantly cheaper and less disruptive to existing rail operations during construction. Environmentally the Werrington Junction option was favourable compared to the South Chord.
  49. In the event, a grade-separated solution at Werrington Junction was not considered necessary to deliver the 2009-2014 GNGE Improvement. However, the work undertaken then and subsequently for the ECML Connectivity Fund has demonstrated that the provision of a grade-separated junction at Werrington Junction is the only feasible option when it comes to operation, maintenance, cost and ability to resolve the issue of conflicting moves across the ECML. In the light of this such provision was endorsed by Network Rail and the DfT and taken forward to Governance for Rail Investment Projects stage 3 (GRIP3).
  50. Having established that a grade-separation scheme at Werrington Junction is the only feasible option, Network Rail has undertaken a rigorous selection process to determine the most appropriate form and optimum location for such a scheme. Initial work identified 3 alignment options – 2 dive unders and one flyover. One of the dive under options was on the same horizontal alignment as the flyover. Following assessment, the flyover option was discounted, primarily on the basis of cost, size and visual impact. The dive under on the flyover alignment was discounted due to the significantly greater land-take compared to the other dive under option. Public consultation indicated that the preferred option would be a dive under.
  51. The proposed Scheme does require the demolition of three dwellings. In order to try and avoid the need to demolish properties, 3 further track alignments were investigated. However, whilst these met grade and radius design requirements, all either still required property demolition; resulted in substantial areas of farm land and residential properties to be marooned between the resulting sets of railway tracks; would have required additional under- and over-bridges and taken more land; or would have clashed with the nearby Gas Compressor Site. These other alternatives were therefore rejected in favour of the Order Scheme.
  52. In selecting the final option Network Rail has had close regard to constructability, cost, environmental factors, public feedback and operational disruption considerations. The selected option is clearly the preferable choice taking these factors into account. No other party has suggested any alternative scheme or alignment.

**Matter 3: Consistency with Policy** (CD/NR15; NR/PoE/5.2)

53. Transport and Works Act (TWA) Order guidance advises that relevant national, regional and local planning policies are to be taken into account when considering an application for a TWA Order. The request for deemed planning permission within the Order application is to be determined having regard to the

- development plan and any other material planning considerations. The determination must be made in accordance with the development plan unless material considerations indicate otherwise.
54. At the national policy level, it is relevant in this case to consider the Order application in the context of national transport policy as well as the National Planning Policy Framework (NPPF), since the latter contains limited detail concerning rail infrastructure. The National Policy Statement for National Networks (NPSNN) sets out the need for development of nationally significant infrastructure projects (NSIPs) on the national road and rail networks in England, and the Government's policies to deliver these. Although consent for this Scheme is sought through a TWA Order application and request for deemed planning permission rather than through the NSIP process, section 1.4 of the NPSNN states that the NPSNN may nonetheless be a material consideration, depending on the case concerned. Here, the reason for the Scheme is to deliver a key improvement to part of the national rail network.
55. Section 2 of the NPSNN sets out the compelling need for development of the national rail network<sup>21</sup>, noting the need to improve its capacity, capability, reliability and resilience. It points out that relatively modest infrastructure interventions can deliver significant capacity benefits by removing pinch points and blockages. The economic and environmental benefits of rail improvements are confirmed, since modal shift from road and aviation to rail can help to reduce transport's carbon emissions as well as providing wider transport, social and economic benefits.
56. For these reasons, Government policy is to seek to accommodate an increase in rail travel and rail freight where it is practical and affordable by providing for extra capacity. The Scheme fully accords with the overall objective of a transport system which delivers economic, social and environmental benefits in an environmentally sustainable way.
57. The High Level Output Specification (HLOS) sets out information for the Office of Rail and Road (ORR) and for the rail industry about what the Government wants to be achieved by railway activities during railway control period 5 (CP5) April 2014-March 2019. As stated in the HLOS, the Secretary of State recognises the importance of the ECML in linking Scotland, the North East, Yorkshire and Eastern England with London and seeks further improvements in capacity and reduction in journey times, and believes that there are good business cases for both. The Scheme is a key component in delivering this improvement.
58. Whilst the NPPF says little directly about rail infrastructure provision, the Scheme is nonetheless consistent with the development principles that it sets out. By facilitating an increase in the number of train paths on the ECML, the Scheme will increase the connectivity between the North and South and support economic growth.
59. The Scheme accords with the overarching principle at NPPF paragraph 14 that there is a presumption in favour of sustainable development. It satisfies the 12 land use planning principles (where applicable) identified at NPPF paragraph 17 and accords with the NPPF's economic, social and environmental policies. In

---

<sup>21</sup> NPSNN paras 2.28-2.41

- particular, the Scheme will deliver sustainable development, through its contribution to building a strong, competitive economy, promoting sustainable transport and contributing to combating climate change. The Scheme also follows principles of good design, takes account of the health and amenity of local communities and has full regard to the natural environment.
60. The Scheme fits with the Local Transport Plan (LTP), which supports improvements to the rail network as being in line with Peterborough's sustainable growth agenda, recognising the economic and social benefits to be gained from increased passenger and freight capacity and improved connectivity with other locations along the ECML corridor.
  61. As regards local planning policy and the development plan, the Peterborough City Council Core Strategy (CS) was adopted in 2011 and is supplemented by the Peterborough Planning Policies Development Plan Document (DPD) (2012) and the Peterborough LDF Planning Policies Map and Site Allocations DPD (2012).
  62. The Scheme is consistent with the vision and objectives of the CS. Although the development lies largely outside the city's settlement boundary in open countryside, policy CS 1 allows for development in such locations in association with essential transport requirements. Policy CS 10 judges new developments in relation to their contribution to sustainability. Policy CS 14 refers to the need to ensure an effective and efficient transport system to support the city's growth, including through the improvement of existing infrastructure. Policies CS 19 (Open Space and Green Infrastructure), CS 20 (Landscape Character), CS 21 (Biodiversity and Geological Conservation) and CS 22 (Flood Risk Management) also bear on the Scheme.
  63. The Peterborough Planning Policies DPD translates the CS policies into more detail and is used to decide whether or not planning permission should be granted for development. Policy PP1 (presumption in favour of sustainable development) covers proposals where there are no specific policies dealing with the development (as is the case here) and states that such proposals will be judged against the guidance in the NPPF. Policy PP2 (design quality) seeks that development makes a positive contribution to the built and natural environment. PP3 (impacts of new development) sets out where development would be rejected due to its impact on neighbouring uses. PP12 (transport implications) states that schemes should not have any unacceptable impact on the transport network. PP16 (landscaping and biodiversity implications) seeks to safeguard and enhance the landscape and biodiversity as appropriate.
  64. The Scheme design has paid full regard to all of these policy requirements, and includes appropriate mitigation together with enhancements where opportunities arise. The local planning authority has assessed the proposal against planning policy requirements and does not object, subject to the imposition of conditions which have been agreed with Network Rail.
  65. The Scheme is not identified by the LDF Planning Policies Map and Site Allocations DPD. The land between the A15 and the GNGE is designated as Green Wedge and so is subject to policy SA17 of the Site Allocations DPD. The new line would encroach upon the Green Wedge. However, the railway is already present as an appropriate feature in this urban fringe landscape; the new line will be an unobtrusive feature largely below surrounding ground level and alongside the existing line, and will widen the existing rail corridor by another 20 metres at

most. The effect upon the Green Wedge purpose of maintaining separation between Glington and the city's built-up area will be minimal. The impact upon the Green Wedge would thus not be significant.

66. The Scheme also lies within a minerals safeguarding area (sand and gravel). However, in view of the small extent and footprint of the permanent works the Scheme would not significantly compromise the below-ground sand and gravel resource.
67. There have been no specific objections to the Scheme in relation to its consistency with planning policy or principles. It is clear that the Scheme will contribute to the economic, environmental and societal benefits associated with improvements to one of the country's key transport arteries. There is strong policy support for the Scheme in terms of economic, planning and transportation considerations. Delivering new heavy rail infrastructure investment requires a balanced approach. It is clear from the evidence that the Scheme will not have any unacceptable adverse impact on accessibility, will be of an appropriate design and will not give rise to any unacceptable environmental effects. Overall, the Scheme accords with the development plan and the NPPF.

***Matter 4: Impacts on Landowners and Tenants, Local Residents, General Public, Utility Providers and Statutory Undertakers***

*Noise, vibration and air quality impacts, including impacts from increased train services (Docs NR/PoE/3.2 & NR/PoE/4.2)*

68. The impact of noise and vibration from the construction and operation of the Scheme has been assessed thoroughly as part of the Environmental Impact Assessment (EIA) and is fully reported in the Environmental Statement (ES). The noise and vibration assessment was undertaken in accordance with national and local planning policy and the environmental requirements of the Transport and Works (Applications and Objections) Procedure (England and Wales) Rules 2006 ("the Rules"). Impacts of construction and operation have been quantified using best practice methods, including consideration of relevant British Standards.
69. The assessment meets the requirements of the EIA Directive and the Rules. It identifies the likely significant noise and vibration effects of the Scheme. Where significant effects are identified, it describes the mitigation measures envisaged to avoid, reduce and, if possible, remedy significant adverse effects.
70. The baseline for the assessment of the noise and vibration impacts of the Scheme is defined as the existing railway in July 2016 with the current trains and current levels of freight and passenger traffic operating on the ECML, Stamford Lines and GNGE. Baseline sound levels within the study area have been established by a combination of calculated road traffic noise, calculated rail noise and measured existing sound levels. Road noise is an important factor at properties near the A15.
71. Temporary effects from construction noise have been assessed from the planned commencement of construction in September 2018 until the opening of the Scheme in 2021. Potential effects have been assessed at the closest noise sensitive receptors to the proposed major construction activities. No likely significant direct effects are predicted from construction noise on residential or non-residential receptors. The applicable potential adverse effect thresholds are

- not predicted to be exceeded at any location for a period of more than one month. At all residential assessment locations the predicted levels do not exceed the Significant Observed Adverse Effect Level (SOAEL) for daytime construction noise at any point during construction.
72. The Scheme incorporates embedded mitigation in the form of temporary hoardings to protect properties on Hurn Road, at Whiteley Park Homes and at Gascoigne, David's Close and Sunnymead from construction noise. The CoCP requires a Noise and Vibration Management Plan (NVMP) to be approved before construction starts, and includes requirements that Best Practicable Means (BPM) to minimise noise and vibration at neighbouring residential properties is identified and applied during construction. The CoCP would also, as a last resort, provide for mitigation in the form of noise insulation and/or temporary rehousing where the relevant airborne noise trigger levels are met. Dwellings qualifying for noise insulation and/or temporary rehousing according to the CoCP would be identified three months in advance of the start of the works. Through all of these measures the effect of construction noise on residents within their homes would be minimised and kept to acceptable levels.
73. From the prediction of the upper range of noise levels at each receptor when the construction activity is at its closest to that receptor, it is predicted that the levels at any location are not predicted to exceed the SOAEL for daytime construction noise at any point during construction. Although the highest noise level is sometimes predicted to exceed the relevant noise threshold criteria in particular locations at Mead Close, Whiteley Park, Gascoigne and Sunnymead, construction noise levels at those locations fall below the threshold by more than 10dB within one month, as the works move along the line. In the light of this, no likely significant effects resulting from construction noise have been identified on residential receptors.
74. The construction noise assessment also identifies noise levels exceeding the proposed noise impact criteria for some offices on the Werrington Parkway industrial estate that overlook the work sites. However, again the threshold criteria for identifying a significant effect will again be exceeded for a period of not more than one month, producing no likely significant effects in terms of construction noise.
75. Vibratory compaction of earthworks and vibratory sheet piling will generate high levels of vibration for short periods during construction. No sensitive receptors are located close enough to this activity for there to be a risk of building damage. However, approximately 13 weeks of sheet piling is anticipated for the construction of the South Ramp and, at its closest points, piling may take place within 20m of properties on Whiteley Park. As the piling operation will move linearly, different properties will be most impacted at different points in the process. The sheet piling activities are expected to last for 13 weeks and will be within 120m of properties at Whiteley Park Homes for approximately one month. Approximately 40 properties at Whiteley Park Homes within 120m of the piling are potentially impacted, giving rise to a potential significant adverse effect.
76. At Gascoigne approximately 30 properties within 120m of the proposed piling activity comprised in the North Ramp construction works will be adversely affected, although the duration of sheet piling here is expected to be shorter than

- for the South Ramp. A potential significant adverse effect is therefore identified at Gascoigne as well.
77. The predicted temporary vibratory construction impacts for the most severely affected Whiteley Park Homes and Gascoigne properties are assessed as major for the days of most pronounced effect, but minor when assessed on the basis of the typical predicted monthly vibration dose value.
  78. The Scheme construction process would be controlled by the Code of Construction Practice (CoCP), which would require that contractors control vibration levels during construction so that they do not exceed the Vibration Dose Values defined in the ES and recognise the presence of vibration-sensitive receptors.
  79. The nearby Lloyds Data Centre has been identified as a sensitive non-residential receptor in the vicinity on a precautionary basis. Lloyds Banking Group initially objected, raising concerns primarily about the potential effects of vibration and dust from the Scheme on the operation of the data processing facility. The activities occurring closest to the Data Centre would relate to works compounds and watercourses; the Data Centre is located over 200m from the nearest proposed railway works.
  80. A subsequent baseline survey has shown appreciable levels of existing ambient vibration within the Data Centre, suggesting a lower sensitivity to vibration than previously assumed. Discussions between Network Rail and Lloyds Banking Group about the concerns raised and how these might be overcome have ultimately led to a private legal agreement between the parties and the withdrawal of Lloyds Banking Group's objection on 22 November 2017<sup>22</sup>.
  81. The Air Quality Management Plan required as part of the CoCP will ensure that air quality is fully safeguarded at all locations.
  82. Construction compound locations and construction traffic impacts on access routes have been considered as part of the EIA process; no likely significant indirect effects from construction traffic noise are identified. All workforce and HGV traffic would enter and leave the 3 compounds via access points leading directly to dual carriageway highways with design capacities well in excess of the base traffic conditions plus the Scheme construction traffic. The maximum daily levels of construction traffic would represent a 1% increase in the number of HGVs using the A15 and a 1.5% increase in relation to Bretton Way. Baseline traffic flows on these roads are such that the construction traffic would cause negligible increases in noise and vibration levels.
  83. The construction traffic associated with the Scheme will be regulated via the implementation of the CoCP required as a condition of planning permission to be granted in connection with the Order. The use of a CoCP to manage environmental risk is a tried and tested method for TWA Order schemes. The CoCP will include a traffic management plan, which must be produced in accordance with the provisions outlined in the CoCP and the incorporated mitigation described in the ES.

---

<sup>22</sup> Document LB/11

84. Turning to the operational noise and vibration effects of the scheme, a likely beneficial noise effect is identified at 7 residential properties at Whiteley Park Homes, because the properties are predicted to be exposed to noise levels above the daytime and night time SOAELs without the Scheme, and a reduction in night time train noise is predicted with the Scheme<sup>23</sup>. This is because the Scheme would reduce at-grade track crossing movements and result in a proportion of freight trains passing at greater distance from these properties. For other identified properties there would be either a negligible or a neutral direct noise effect.
85. The forecast increase of up to two additional high speed trains per hour on the ECML during the day would result in a negligible daytime noise increase at properties in the vicinity of the ECML, of less than 1dB. Forecast operational noise levels are also slightly lower with the scheme at Noise Improvement Area locations on the ECML at the north and south ends of the Scheme.
86. Although with the Scheme up to 7 additional passenger trains a night would be planned on the ECML, this represents a proportionally small increase over the 68 total train night time movements that currently run past Whiteley Park Homes. The night time increase at these properties is forecast as 1.5dB and is therefore assessed as negligible. The SOAEL for maximum train noise is unlikely to be exceeded; the number of trains exceeding 80dB  $L_{AFMax}$  at the façade of properties on the ECML is unlikely to increase to 20 or more trains.
87. Although there is a forecast slight increase in daytime operational noise levels for properties alongside the GNGE at Gascoigne, David's Close, Redbridge and Sunnymead, the predicted effect is not significant. Three properties in Sunnymead are forecast to experience a minor adverse daytime noise increase of just over 3dB; however, the resulting level would be below the SOAEL, and given the minor order of increase and small number of properties affected is therefore assessed as no significant effect. The forecast daytime effect at all other properties is less than 3dB, and is therefore assessed as negligible<sup>24</sup>.
88. There is no planned increase in night time use of the GNGE as a result of the Scheme. No significant change in night time noise levels has been identified at residential properties adjacent to the GNGE on the basis that the number of trains during the night time period is unlikely to rise appreciably from the current level of up to 13 per night.<sup>25</sup>
89. The forecast change in daytime noise at offices on Papyrus Road as a result of Scheme operation is less than 1dB (negligible); there is therefore no significant effect at this location.
90. The Scheme includes two auxiliary power supply points, within Network Rail land near Werrington Junction and within a Network Rail compound at Helpston level crossing on the ECML. These stationary sources will be designed and operate so as to avoid adverse noise effects for residential receptors.

---

<sup>23</sup> Document NR/PoE/3.2, Appendix 6

<sup>24</sup> Document NR/PoE/3.2, Appendix 9

<sup>25</sup> Document NR/PoE/3.2, Appendix 9

91. No significant vibration effects for sensitive receptors in the vicinity of either the ECML or the GNGE are predicted as a result of the altered pattern of train movements expected from the Scheme.
92. In summary, a noise and vibration assessment has been carried out for the Scheme, which meets the requirements of the EIA Directive. The assessment identifies the likely significant noise and vibration effects of the Scheme and, where significant effects are identified, it describes the mitigation measures envisaged to address these. The CoCP regime provides appropriate safeguards and mitigation where necessary for occupiers in the vicinity of the Scheme. The assessment satisfies the aims of Government. It demonstrates that steps have been taken to avoid significant impacts on health and quality of life resulting from the scheme; it proposes measures to mitigate and minimise such impacts; consideration has been given to additional mitigation which would contribute to the improvement of health and quality of life.
93. In terms of impacts on air quality from dust and fumes, the construction-related activities, including demolition of properties, would have the potential to generate dust. Measures to control dust-generating activities would be included within the CoCP, such as dust suppression by water sprays and wheel washing, and planning the site layout so that critical machinery and dust-generating activities are sited as far away from receptors as practicable. With the implementation of these measures, the risks to receptors such as residential properties and offices would be low and the residual risk not significant.
94. Emissions from construction vehicle movements during the construction phase have been assessed in the EIA and are predicted to have a negligible impact on local receptors.
95. It is not envisaged that there would be any significant air quality effects from the operation of the completed Scheme.

*Impacts on land owners and tenants (Doc NR/PoE/6.2)*

96. The Order, if approved, will grant Network Rail the powers to acquire the land and rights over land to construct, operate and maintain the Scheme. Network Rail seeks to acquire and use no more land and rights than are reasonably required for this purpose. Land within the limits of the Order may be acquired or used in several different ways, including temporary rights over land; temporary occupation and use of land; permanent acquisition of rights over land; imposition of restrictive covenant over land; and permanent acquisition of land.
97. In designing the Scheme Network Rail has had regard to impact on land owners and has sought to minimise the land and rights acquired. However, some land is needed in addition to that on which the new railway works will take place, to access various elements of the overall Scheme and to accommodate construction compounds and stockpiled material during the course of the works.
98. In those instances where land is required on a temporary basis land will be returned to the owner within the time limits set out in the Order. In the case of certain plots, powers to acquire rights are sought only for the provision of construction and maintenance access to the works authorised by the Order.
99. The powers sought within the Order will enable Network Rail, upon the service of appropriate notices, to enter on and take possession of land to carry out the

Scheme works. The Order applies Part 1 of the Compulsory Purchase Act 1965 which, through its application, has the effect of requiring Network Rail to pay compensation to qualifying parties. Where land is used temporarily the Order provides for compensation to be paid for any loss or damage that arises from the possession.

100. Fifty-four separate interest owners are included in the Book of Reference (CD/NR10). Although compulsory purchase powers are required to facilitate the Scheme and provide certainty that the Scheme can be delivered, Network Rail has contacted all affected parties who own, lease or occupy land with a view to seeking a negotiated agreement for the permanent or temporary acquisition of the land or rights concerned. Most interest holders did not seek to object to or make representations in relation to the Order.
101. Of the sixteen objections and five representations<sup>26</sup> initially lodged in relation to the draft Order, ten objections and three representations were withdrawn before the Inquiry opened; a further five objections were withdrawn as a result of negotiations concluded and agreements reached by the close of the Inquiry. The few outstanding points of contention concern individual matters of discrete detail; they do not call into question the overall justification for the Scheme and Order or the case for the interests and rights in land that are sought. The outstanding points of objection and representation, and Network Rail's response to these, are dealt with in a later section.
102. Approximately 35ha of agricultural land will be required temporarily for the construction of the Scheme; about 8ha is required permanently for railway use or habitat mitigation. The land is classified as grades 3a and 3b. Three farm holdings (Manor Farm, Werrington Farm and Hereford House Farm) will be impacted by temporary and permanent loss of agricultural land. The land required is located on the edge of all 3 farm holdings and will not result in the fragmentation or severance of land during construction. Following construction, the agricultural land not required permanently will be restored and returned to landowners, with less than 2% of land from each holding required permanently. There would be no significant residual permanent effect on farm holdings.
103. Three dwellings will need to be demolished in order to construct the Scheme. Whilst the occupiers of these properties each initially lodged an objection to the draft Order, in essence questioning the robustness of the process leading to the selection of the dive under proposal as the preferred scheme, Network Rail has subsequently successfully negotiated an agreed settlement with each of these parties. These objections to the Order were all withdrawn by letters dated 17 November 2017.
104. Various parties with interests in commercial land and property subject to the Order lodged objections questioning the need for Network Rail to acquire the interests and rights sought and raising concerns about the effect of the Order on the satisfactory operation of the premises concerned, including means of access to businesses and car parking. Network Rail has maintained a dialogue with these parties, explaining the basis of the interests and rights sought and seeking to secure mutually acceptable arrangements by way of agreement so as to address

---

<sup>26</sup> Amended from 15 objections and 6 representations following the re-classification of Lloyds Banking Group's submission from representation to objection

the concerns raised and enable the objections to be withdrawn. There are no outstanding objections in relation to these matters.

*Effects on utility providers and statutory undertakers (Docs NR/PoE/2.2, NR/PoE/4.2, NR/PoE/6.2, INQ/NR/3)*

105. Any scheme of this nature has the potential for impacts on utility providers and statutory undertakers. In this case the objectors included National Grid and Royal Mail Group; representations were also made by Anglian Water and the Environment Agency (EA).
106. The objection lodged by National Grid was made on account of concerns about a lack of adequate protective provisions within the draft Order in relation to works proposed in the vicinity of National Grid's assets. However, during the course of the Inquiry negotiations took place between National Grid and Network Rail concerning the form of a mutually acceptable separate asset protection agreement. By the close of the Inquiry the form of such an agreement had been settled and an undertaking provided by Network Rail that the agreed form of agreement would be sealed and completed by Network Rail prior to 15 December 2017. On the basis of the position reached between the parties National Grid withdrew its objection to the Order on 6 December 2017<sup>27</sup>.
107. Royal Mail Group initially objected to the draft Order on the basis of concerns that the temporary traffic regulations to be applied to Werrington Parkway and Lincoln Road would hamper its ability to undertake deliveries and collections, and concerns relating to the maintenance of access at all times to its mail centre located off Papyrus Way. However, Royal Mail Group has now confirmed that it has reached a satisfactory agreement with Network Rail on these matters, and withdrew its objection on 12 December 2017<sup>28</sup>.
108. Anglian Water made representations concerning the provisions of the draft Order in relation to a number of its assets. However, after further discussions with Network Rail Anglian Water confirmed on 22 June 2017 that it has no objections to the wording of the Order as proposed by Network Rail, and that its earlier objection to the Order can be treated as withdrawn.
109. The Scheme directly affects a number of watercourses, including the interrelated drainage systems of Brook Drain and Marholm Brook (both designated main rivers), in respect of which the Environment Agency (EA) has statutory responsibility. The Environment Agency (EA) does not object in principle to the Scheme, but is concerned to ensure that the proposals do not increase flood risk either as a result of the works themselves or by preventing the EA from using its statutory powers relating to flood risk management. Detailed discussions between Network Rail and the EA have resulted in agreement on all matters concerning the Scheme design, watercourse maintenance and access and protective provisions, save for one outstanding point. The EA's representation is addressed in more detail later.

*Flood risk, water quality and the Water Framework Directive (Docs CD/NR14, NR/PoE/2.2, NR/PoE/4.2)*

---

<sup>27</sup> Document NG/1

<sup>28</sup> Document RM/1

110. The Scheme's construction requires the realignment and culverting of watercourses including Brook Drain North, Brook Drain South, Marholm Brook and Werrington Drain. The Scheme has been designed to minimise adverse impacts on surface and groundwater resources and to improve water quality where possible, in accordance with the requirements of the Water Framework Directive.
111. Network Rail has engaged and worked with the EA and Peterborough City Council to better understand their wider objectives in terms of improving water quality within Marholm Brook and Folly River. As a result, the Scheme has incorporated enhancement measures that will improve water quality within Marholm Brook, by separating it from Brook Drain.
112. General construction activities pose a risk to surface watercourses, groundwater aquifers and flood risk from the release of sediments, accidental spillage of pollutants such as oils or chemicals and surface water runoff, which if they were to occur could have a significant effect. These construction risks will be controlled and minimised through the pollution prevention and incident control and waste, materials and soil management provisions of the CoCP. As a result there will be no significant residual effect in these terms.
113. The EIA has identified no significant adverse effects on surface watercourses, groundwater or flood risk as a result of the operation of the Scheme. In addition, a number of permanent beneficial residual effects are identified. The separation and reconfiguration of the Marholm Brook and Brook Drain South flows, including the removal of the existing Dukesmead Penstock, will have a permanent significant beneficial effect in terms of water quality and flood risk associated with the Marholm Brook. The diversion of Brook Drain North and its enhanced channel will have a permanent significant beneficial effect on the physical characteristics and shape of the watercourse.

*Ecology (Docs CD/NR14, NR/PoE/4.2)*

114. The EIA included an assessment of the Scheme's effects on biodiversity. The Scheme will result in the loss of existing habitats including broadleaved trees, scrub, hedgerows, tall ruderal vegetation and one pond which, without mitigation, would have adverse impacts on habitats and the species they support. However, the Scheme design avoids impacts to ecological features where possible. Where impacts cannot be avoided, mitigation and/or compensation measures have been incorporated to reduce residual impacts to a level where they are not significant.
115. Whilst about 700m of hedgerows will be removed by the Scheme, this will be replaced by 1,200m of new species rich hedgerow planting to serve as visual screening and wildlife habitat. Enhanced species-rich neutral grassland and watercourse habitats will be created near the Marholm Crossing and Brook Drain North County Wildlife Site, supporting four-spotted moth and grizzled skipper butterfly populations. The diverted and enhanced Brook Drain North watercourse will attract a range of species, resulting in significant beneficial residual effects. A specially prepared receptor site will be created for great crested newts to be translocated from the works area. The receptor site will result in a residual beneficial effect on the great crested newt population and for other species.

116. Replacement of the Dukesmead Penstock with a new section of culvert within the Marholm Brook will have a beneficial residual effect on fish migration within the watercourse.
117. The ecological mitigation and compensation measures will be delivered through the Ecological Management Plan within the CoCP. When established, the new Brook Drain North and the additional lengths of species-rich hedgerow will deliver biodiversity net gains and contribute positively to local biodiversity targets.
118. Natural England made representations concerning the detailed implementation of environmental safeguards. Following explanation that the effects on ecology would be mitigated through the CoCP, that there would be a standalone condition requiring an Ecological Management Plan and that the ES includes a commitment to compliance with Defra advice concerning the sustainable use of soils on construction sites, Natural England has withdrawn its representation.
119. There are no anticipated significant operational effects on biodiversity.

*Landscape and visual impact and archaeology (Docs CD/NR14, NR/PoE/4.2)*

120. The Scheme will have a limited impact on landscape and visual amenity and archaeological interests. An assessment of the effects of construction and operation on landscape and visual receptors has been undertaken within the EIA.
121. Construction of the scheme, as typically will occur with almost any engineering operation of this nature, will introduce construction activities, soil and material stockpiles and large construction machinery and vehicles which may be visible and give rise to temporary effects. The ES concludes that there will be no significant effects on important landscape receptors such as Registered Parks and Gardens or areas of particular landscape character. No significant landscape effects have been identified in terms of other areas impacted by the Scheme.
122. The assessment of visual effects concludes that there will be significant temporary visual effects at viewpoints around Lincoln Road and Hurn Road, due to the presence of construction works, vehicles and temporary soil and material stockpiles. However, relatively few high sensitivity receptors will be significantly affected. These effects will be temporary in duration and will be mitigated through the CoCP framework which will regulate the detailed design and operation of site compounds and materials stockpiling. Network Rail has engaged with those residential occupiers who would be most closely affected, in order to reduce the temporary significant effects arising from the construction phase as far as possible.
123. The operation of the Scheme will not result in any residual significant effects on landscape or visual receptors. The Scheme will result in a modest widening of the existing railway corridor at Werrington Junction, but the dive under will be mostly below surrounding ground level. Hedgerows and trees removed during construction will be replaced and additional planting carried out.
124. Neither the construction nor the operation of the Scheme will result in any significant effects on known archaeological remains. Whilst there is potential for undiscovered archaeological remains within the area where excavation is required, trial trenching will take place prior to the main construction works so that any archaeology can be located and recorded.

**Matter 5: Adequacy of the Environmental Statement (ES) and whether statutory procedural requirements have been complied with** (Docs CD/NR15, ES Main Statement Volume 2 ss1.1-2)

125. The procedures for applications for Transport and Works Act Orders are set out in the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (TWA Rules). Rule 7 requires that unless the Secretary of State has provided a screening decision stating that an ES is not necessary, the applicant must submit an ES for any works likely to have significant effects on the environment, in accordance with the details set out in Rule 11 and Schedule 1.
126. The submitted ES records the environmental effects of the proposed works. It has been prepared in accordance with the requirements of EC Directive 2011/92/EC (the Directive) as set out in the TWA Rules. In addition, in order to embrace best practice, the following aspects of the 2014 amendments to the Directive have also been considered: climate change, greenhouse gases and human health.
127. The Scheme does not fall under Annex I of the Directive, where EIA is mandatory, but it does fall within Annex II, where projects must be subject to EIA whenever likely to have significant effects on the environment. Network Rail considered that the Scheme had the potential to have a significant effect on the environment and therefore decided to undertake an EIA without seeking a screening decision from the Secretary of State.
128. In accordance with Rule 8 of the TWA Rules, Network Rail formally requested the Secretary of State's opinion as to the information to be provided in the ES. The request was accompanied by an Environmental Scoping Report. In accordance with the scoping opinion the ES considers the following topics:
- Agriculture and soils;
  - Air quality;
  - Archaeology and cultural heritage;
  - Biodiversity;
  - Contaminated land, waste and resources;
  - Greenhouse gases;
  - Landscape and visual;
  - Noise and vibration;
  - Socio-economics;
  - Traffic and transport;
  - Water resources.
129. The ES report structure is compliant with the TWA Rules. Each technical chapter within the ES provides details of the assessment and survey methodology; sets out the baseline conditions; outlines any limitations and assumptions; assesses the impacts and effects of the scheme, both during

construction and (where relevant) operation and provides an overview of how environmental mitigation has been incorporated into the scheme; outlines the proposed mitigation of effects during Scheme construction and (where relevant) operation; identifies the residual and cumulative effects of the Scheme during construction and (where relevant) operation.

130. All relevant statutory procedural requirements of the TWA Rules have been complied with. In addition to the confirmation of statutory compliance contained within the submitted ES, Network Rail has provided a folder confirming compliance with statutory procedures<sup>29</sup>.
131. There are no remaining objections or representations which challenge the ES or the accuracy of the EIA findings.
132. There is thus no question that an adequate ES has been submitted with the application for the Order, and that the statutory procedural requirements of the TWA Rules have been complied with.

**Matter 6: Measures to Mitigate any Adverse Impacts** (Docs CD/NR15, NR/PoE/4.2 ss3 & 12)

133. An Environmental Management System will be put in place to manage all required incorporated mitigation and environmental risk.
134. The CoCP is the mechanism that ensures all construction-related mitigation is implemented. The use of the CoCP to manage environmental risk on site is a tried and tested method for TWA Order schemes and has been implemented successfully on current schemes such as the Ordsall Chord in Manchester.
135. The CoCP must be approved by Peterborough City Council, as required by condition 7 in the request for Deemed Planning Permission for the Scheme. The documents required under this condition are:
- Code of Construction Practice Part A
  - An external communications programme (including complaints procedure)
  - A pollution prevention and incident control plan
  - A waste management plan (including materials management and soil management plans)
  - A traffic management plan (including a travel plan)
  - A nuisance management plan (including air, light and dust but excluding noise)
  - A noise and vibration management plan.
136. All plans and programmes must be produced in accordance with the provisions outlined in Part A of the CoCP and the incorporated mitigation in the ES.
137. Table 17.1 in the ES<sup>30</sup> summarises the various potential adverse environmental effects that would arise from the Scheme without mitigation, describes the

---

<sup>29</sup> Document INQ/NR/1

<sup>30</sup> Document NR14 ES Volume II Chapter 17 (Folder 8)

- mitigation proposed to address these and the mechanisms by which mitigation will be secured. Finally, the significance of any residual effect is estimated.
138. Taking the various environmental topics in turn, the ES identifies a potential moderate to major adverse effect on soil resources, through the disturbance to soils that will occur as the Scheme is carried out. However, adopting good practice in handling and restoring soils, in accordance with requirements written into the Soil Resources Plan within Part B of the CoCP, will reduce this effect, resulting in a residual minor to moderate adverse effect.
139. There is a possibility of damage to underdrainage of agricultural land during construction, giving rise to a potential minor to moderate adverse effect on the farms concerned. However, requirements for reinstatement of agricultural land and replacement where necessary of agricultural underdrainage will be written into Part A of the CoCP. Accordingly, there would be a negligible to minor adverse residual effect on farms.
140. Construction impacts would give rise to a medium to high risk of significant adverse effects on air quality. However, the dust control measures described in the ES, which will be written into the Nuisance Management Plan within Part B of the CoCP, will result in a negligible adverse effect on air quality.
141. In locations where the Scheme would require earthwork excavation there would be a risk of direct impact on possible unknown below ground archaeological remains. However, trial trenching will be undertaken in targeted locations to enable any such remains to be identified and recorded, in accordance with a proposed condition to this effect. Overall, the significance of the residual effect on archaeology and cultural heritage is evaluated as slight adverse.
142. On biodiversity matters, the Scheme without mitigation would cause damage to adjacent broad-leaved semi-natural woodland at Belham Wood, together with the permanent loss of a 0.4ha area containing trees and the permanent loss of 2.5ha of scrub which is significant at parish level. There would also be permanent loss of 700m of hedgerows, assessed as significant at district level.
143. However, the Ecological Management Plan required by the proposed conditions would include the installation of demarcation fencing to ensure that construction activities are at least 30m from the ecologically significant Belham Wood. This will also serve as a construction buffer around badger setts. Other mitigation elements of the Scheme design include replacement native broad-leaved woodland planting following construction works and allowing the natural establishment of replacement scrub on railway land not part of the Ecological Management Plan. Following mitigation the residual effects in respect of these matters would be not significant. The 700m of hedgerows lost would be replaced by approximately 1200m of species-rich hedgerows within the new rail corridor boundary, secured by the Ecological Management Plan and landscaping conditions. This mitigation would result overall in a beneficial environment effect which would be significant at parish level.
144. The Scheme would involve the temporary loss of 2.3ha of unimproved neutral grassland, which also provides suitable grasshopper warbler habitat. These effects are assessed as significant at district level. However, soil strip, storage and reinstatement requirements written into the Ecological Management Plan

- would ensure that this loss is not permanent, and the residual effect therefore not significant.
145. Beyond this, the ES assesses the construction and operational effects of the scheme on bird species as not significant.
146. There would be permanent loss of 1ha of four-spotted moth habitat and 0.8ha of grizzled skipper habitat, both significant effects at county level. However, these effects would be mitigated under the terms of the Ecological Management Plan condition by the provision of 1ha of species-rich grassland providing suitable new habitat for these species. The residual effect of the Scheme in these terms therefore would be not significant.
147. There would be permanent loss of a breeding pond and 1ha of surrounding terrestrial habitat used by a medium-sized population of great crested newt. Great crested newt is a European protected species of principal importance which is common in eastern England. The breeding population within the Scheme is of parish value and the loss is therefore assessed as significant at parish level. Under the Scheme proposals a new great crested newt receptor site containing two ponds and hibernation mounds will be created near the proposed Scheme boundary, and a licence obtained from Natural England to translocate the newt population from the existing pond to the new site. As with other mitigation, this would be secured by the ecology condition. With this mitigation, the residual effect of this aspect of the Scheme would be not significant.
148. The Scheme would also involve the loss of 1ha of common lizard habitat, again of significance at parish level. The proposed mitigation, again secured by the ecology planning condition, would ensure that common lizards present would be transferred from the lost habitat to appropriate other habitat nearby. The resulting residual effect would be not significant.
149. The works involving removal of trees and other vegetation associated with the Scheme will result in loss of foraging areas and navigation features used by a number of bat species recorded in the area. However, this will be compensated by the new planting and habitat creation within the scheme design; overall there will be no significant effect on the bat population in these terms. Potential temporary disruption of bat activity due to construction lighting is assessed as significant at up to district level. Mitigation secured via planning condition and the Ecological Management Plan would ensure that lighting is arranged to avoid illumination of regularly used bat commuting routes and foraging areas. The risk of bat mortality as a consequence of operation of the proposed Scheme would not be exacerbated from the baseline. Overall, with mitigation, the effect on bats is assessed as not significant.
150. The Scheme involves the culverting of 400m and infilling of 900m sections of the Brook Drain. The resulting loss of open water and associated habitat will have an adverse effect on watercourse conservation objectives assessed as significant at district level. However, this will be replaced within the Scheme design by approximately 840m of new open water channel comprising the realigned Brook Drain North, which will be configured to provide enhanced habitat features to create additional ecological value and support increased biodiversity. With this mitigation, secured by condition and the Ecological Management Plan, there will be an overall beneficial ecological effect that is significant at parish level.

151. As regards effects relating to contaminated land, waste and resources, all potential contamination/pollution effects in these terms have been assessed and measures to ensure the minimisation and avoidance of the risks and effects embedded within the Scheme design through the CoCP requirements and the associated Pollution Prevention and Incident Control Plan. With these mitigation measures the related residual effects are all assessed as not significant.
152. The main landscape and visual effects of the Scheme are assessed as visibility of the construction area from public viewpoints during the works, combined with loss of landscape components during construction. Overall, the landscape and visual effects are assessed as moderate adverse, and therefore not significant in EIA terms. The Scheme design includes the reinstatement of those areas needed only temporarily to enable the Scheme to be carried out and also incorporates the replacement of lost landscape components including new woodland, trees, hedgerows, other vegetation and water features. These measures, which would be secured and regulated by conditions, will reduce the residual visual and landscape effects, although the residual effect remains assessed as moderate adverse.
153. The construction noise assessment considered all residential and sensitive non-residential noise receptors (such as offices) in the vicinity of the Scheme. The embedded mitigation in the Scheme design of temporary hoarding to screen construction noise from residential properties at Whiteley Park Homes, Hurn Road and Gascoigne, David's Close and Sunnymead has been assumed in estimating the severity of construction noise effects. The assessment also assumes the implementation of the principles and management processes set out in the CoCP which will be a condition of planning permission and will include a Noise and Vibration Management Plan enforceable by the local planning authority. Where residential properties are, despite the foregoing, still predicted to be exposed to noise exceeding defined airborne construction noise trigger levels, they will qualify for noise insulation mitigation or temporary rehousing as measures of last resort.
154. Although the ES identifies no significant adverse operational railway noise or vibration effects for sensitive receptors, it is nonetheless clear that in some instances there will be minor increases in noise and vibration effects as a result of the Scheme. Whilst no specific mitigation measures within the Scheme are proposed to address these minor increases, a wider ongoing programme of enhancements pursuant to the Government's Noise Policy Statement for England will continue to address rail noise and vibration issues. In particular, Network Rail's rail grinding regime on main lines including the ECML is demonstrably reducing rail noise, and the new IEP passenger trains are expected to be quieter than the existing HST sets.
155. The Scheme also involves the creation of two auxiliary power supply points, at Helpston Level Crossing and Werrington Junction. The location at Helpston is close to residential properties. However, ambient noise levels at this location are dominated by existing road and rail noise. To mitigate any noise nuisance from these sources, in both locations the plant will be designed and installed so that the rating level of the stationary installations in normal operation at the worst affected residential receptors is at least 5dB below the existing background noise level.

156. A risk of contamination of below-ground water resources as a result of piling activities and removal of a borehole during construction is identified in the ES, giving rise to a moderate adverse effect. However, these risks will be mitigated by writing requirements for how these works are undertaken into the Pollution Prevention and Incident Control Plan within part B of the CoCP. Identified risks of contamination of surface waters from construction areas including haul roads and from accidental fuel oil spillages will also be mitigated against by writing best practice measures into the Pollution Prevention and Incident Control Plan.
157. The mitigation embedded within the design of the modifications to the local drainage system arising from the Scheme will ensure that flood risk within the surrounding area will not be increased. Localised flood risk to local receptors arising from construction of the haul road and the new access road to Hurn Road properties will be avoided by ensuring that adequate drainage measures are included within the Scheme design.
158. Chapter 17 of the ES summarises the extent to which adverse environmental impacts would remain, after Scheme mitigation. The tabulation of effects shows that any residual adverse environmental effects would be minor, and that there would be no residual significant adverse effects.
159. Schedule 12 of the draft Order sets out the proposed provisions to protect the operations of statutory undertakers, namely electricity, gas, water and sewerage undertakers, electronic communications code network operators and drainage authorities and the Environment Agency. The provisions generally reflect standard provisions in relation to these matters, but amendments have been made to clarify the provisions and re-order them in a more logical way. These amendments are explained in the note on the filled-up Order submitted during the Inquiry.<sup>31</sup> There are no remaining objections or representations from statutory undertakers concerning the protection of their operations and interests in relation to the Scheme, save for one specific unresolved matter concerning the Environment Agency. This matter is addressed later<sup>32</sup>.

**Matter 7: Justification for Compulsory Purchase** (Docs CD/NR15, NR/PoE/6.2)

160. Network Rail has had due regard to paragraphs 12 to 15 of the DCLG Guidance on the Compulsory Purchase Process and the Crichel Down Rules. Acting in accordance with that Guidance, Network Rail has sought to restrict the land and rights to be acquired or used to the minimum extent necessary for the construction and operation of the Scheme.
161. The aims and need for the Scheme are set out above<sup>33</sup>. The last decade has seen a huge growth in rail use across the UK, with a 59% increase in passenger numbers from 2004/5 to 2014/15. Britain's railways play an essential role in supporting economic growth by enabling the safe, fast and efficient movement of passengers and goods into and between major economic centres and international gateways in an environmentally sustainable way.

---

<sup>31</sup> See Documents INQ/NR/8 Filled-up Order showing track changes to provisions and INQ/NR/9 Notes on Filled-up Order 24.11.17

<sup>32</sup> See paragraphs 197-206

<sup>33</sup> Paragraphs 35-43

162. The ECML is a vital part of the national main line network, linking much of the north of England with London and the South. There are currently 6 tph for long distance high speed (LDHS) passenger services on the ECML; Network Rail is tasked with delivering additional capacity on the ECML for a further 2 LDHS tph in each direction. The extra train paths are needed to help rail operators serve existing locations more frequently and serve new locations, helping to deliver Government objectives of creating a stronger North and bridging the physical and economical gap between the North and the South.
163. The Scheme is one of a number of projects programmed within the ECML Connectivity Fund, all of which are needed to deliver this additional capacity. It is required to remove the existing constraint to rail capacity on the ECML at Werrington, where the number of LDHS tph is restricted by the need for trains moving between the Stamford Lines and the GNGE to cross over the ECML on the level. The dive under Scheme will reduce the conflicting train movements that currently exist, enabling the required number of LDHS tph to be provided at this point on the ECML.
164. The public benefits of providing this additional rail capacity through the Scheme are therefore plainly evident and very substantial. Although some of the land required for the works is already owned by Network Rail, additional land is needed to accommodate the Scheme and further land is required temporarily to enable it to be constructed in a way that meets all relevant environmental and regulatory requirements.
165. The amount of land to be acquired or used for the proposed Scheme is defined in the Order by the Limits of Deviation and the Limits of Land to be Acquired or Used. These Order Limits are shown on the Deposited Plans and Sections and Rights of Way Plans (Doc CD/NR8, Folder 3(i)). Only land necessary to accommodate the construction, operation and maintenance of the Scheme is included in the Order application, and the areas of land included are the minimum required. Where only certain rights in an area of land are needed, or land is needed only for a particular purpose while the Scheme is carried out, the Order seeks to acquire only those rights in land and/or the use of the land only for the temporary period in question.
166. There are 54 separate interest owners involved; only 16 parties lodged objections to the draft Order, with a further 5 parties submitting representations (excluding the single representation in support). None of those objections or representations challenged the underlying case for a Scheme to remove the ECML train path capacity restriction at Werrington. By the close of the Inquiry, there was only 1 unresolved objection and 2 unresolved representations, with the outstanding matters all concerning particular points of detail. None of the remaining objections or representations seeks to suggest that the Scheme is not the best available alternative or that another solution should be pursued; nor does any remaining objection or representation provide evidence that any of the land included in the draft Order is not in fact needed for the purpose stated.
167. Although 3 dwellings are required to be acquired and demolished in order to implement the Scheme, the owners/occupiers of all 3 properties no longer object to the Order and the powers sought. In all 3 cases the initial objections raised to acquisition have been resolved through discussion and negotiation. Human rights

issues in relation to compulsory purchase provisions in respect of these homes thus no longer arise.

168. Agricultural land forming parts of 3 different farm holdings is required for the Scheme. However, the amount of such land permanently needed for the operation and maintenance of the Scheme is comparatively small. There would be no significant residual permanent effect on the farm holdings. Similarly, there would be no significant residual permanent effect on any commercial property affected by the Order and its compulsory purchase provisions.
169. There is a compelling case in the public interest for conferring on Network Rail powers compulsorily to acquire and use land for the purposes of the Scheme. The land and rights in land for which compulsory acquisition powers are sought are all required by Network Rail in order to secure satisfactory implementation of the Scheme. To the extent that there would be interference with human rights as a result of the compulsory acquisition of land or rights in land, such interference would be necessary and proportionate in view of the overriding public interest in carrying out the Scheme and the limiting of the extent of acquisition to that which is necessary for the Scheme to take place. Application of the Land Compensation Code and compensation provisions in the Order will ensure fair compensation is paid to the affected landowners and tenants.

***Matter 8: Conditions to be attached to Deemed Planning Permission*** (Doc NR/PoE 5.2 s15, INQ/NR/2, INQ/NR/11, PCC/1)

170. Network Rail Limited has put forward a set of proposed planning conditions to be attached to the deemed planning permission. The conditions have been the subject of consultation with Peterborough City Council, who would be the local planning authority tasked with overseeing conditions monitoring and compliance, and were discussed at the public inquiry. The finalised schedule of proposed conditions, as agreed between Network Rail and the City Council and following the joint discussion during the inquiry, is at Document INQ/NR/11. The 6 tests for planning conditions specified in national guidance have been taken into account and the conditions meet these tests.
171. The proposed schedule of conditions is preceded by an Interpretation section setting out the meaning of various terms employed in the conditions, in accordance with Network Rail's normal practice. Conditions are proposed as follows:
- Condition 1 setting out a time limit for commencement, to ensure that development is commenced within a reasonable time;
  - Condition 2 requiring compliance with the relevant approved plans and documents, to ensure adherence to the consented design;
  - Condition 3 requiring approval of, and adherence to, a written scheme setting out the stages of the development, in order to provide a sensible timescale for the approval of various Scheme details;
  - Conditions 4 and 5 to control the details of tree removal and de-vegetation and to ensure that trees to be retained shall be protected from damage during the construction period, in order to safeguard the visual appearance and biodiversity of the area;

- Condition 6 requiring a detailed landscaping scheme for each stage of the development, incorporating the landscaping mitigation proposed in the ES and the implementation and proper establishment of the landscaping details as approved, in the interests of the visual appearance and biodiversity of the area;
  - Condition 7 requiring the formulation of and adherence to an approved Code of Construction Practice, incorporating the various construction impact mitigation measures identified in the ES and to include the following plans and programmes:
    - An external communications programme;
    - A pollution prevention and incident control plan;
    - A waste management plan;
    - A materials management plan including a separate soils mitigation plan;
    - A nuisance management plan concerning dust, wheel wash measures, air pollution and temporary lighting;
    - A noise and vibration management plan including a construction methodology assessment;
    - A road condition survey for all construction routes into and out of the project area;
    - A traffic management plan,in order to mitigate construction impacts arising from the development;
  - Condition 8 requiring approval and implementation of an ecological management plan, including the ecological mitigation and enhancement measures set out in the ES, in order to mitigate against development impacts on species and habitats.
  - Condition 9 requiring a programme of archaeological work including a written scheme of investigation, to ensure that the potential impact of the scheme on unknown archaeological remains is adequately mitigated;
  - Condition 10 requiring approval of details of all permanent means of enclosure, in the interests of public safety and visual amenity;
  - Condition 11 requiring approval of details, including specification and detail of surfacing, of the links between the termination points of the existing footpath and the eastern and western ends of the new Cock Lane Footbridge, in the interests of the safety and integrity of the rights of way network.
172. Werrington Neighbourhood Council (WNC) requests consideration of an additional condition requiring measures to mitigate adverse operational noise effects on residential occupiers close to the Scheme. However, such noise mitigation is already addressed and regulated through the Noise Insulation (Railways and Other Guided Transport Systems) Regulations 1996 (NIRR). NIRR requires new or altered schemes to assess the eligibility for the provision of noise insulation to properties in the vicinity of the scheme. The guidance provides the

eligibility criteria for noise insulation; it is a requirement of NIRR to use The Calculation of Railway Noise<sup>34</sup> (CRN) to identify properties in the vicinity of the railway that are eligible for noise insulation. This methodology has also been used in the ES. It is a statutory requirement under NIRR for any new or modified railway scheme to carry out a detailed assessment of the eligibility for noise insulation of properties within 300m of the scheme within six months of it becoming operational.

173. Under these circumstances it is inappropriate and unnecessary to duplicate controls in a planning condition that are already covered by a statutory regulatory framework in the form of NIRR. Such a condition would fail to meet the necessity test for planning conditions and would be out of line with the intentions of parliament to avoid duplication of controls adequately and more appropriately provided for under other legislation. It would be unreasonable, unduly onerous and improper to impose by condition a requirement for Network Rail to provide noise insulation for properties that would not qualify for such insulation under the established regulatory framework for this matter.
174. Network Rail's witnesses have explained that it would not be operationally feasible to leave in place permanently the temporary acoustic fencing proposed to mitigate construction noise impacts. In any event, such fencing would not be designed and positioned with mitigation of operational rail noise sources in mind. WNC's submissions show that the primary concern is about increased night time freight movements on the GNGE. However, the existing frequency of such movements is a consequence of the 2009-14 GNGE improvement project, which was implemented utilising permitted development rights and forms no part of the Order Scheme. The Scheme is forecast to give rise to a night time operational noise increase of just 1.5dB in the most significantly affected location, with the resulting level remaining below the SOAEL. In these terms the predicted impact of the Scheme is negligible.
175. Even if potentially justified as a measure to mitigate operational noise, trackside acoustic barriers would need to be excessively tall, and therefore highly visually intrusive, in order to provide an effective barrier between engine noise sources up to 4m above track level and the upper floor windows of nearby dwellings.

**Matter 9: Proposals for Funding the Scheme** (Docs CD/NR4, CD/NR5 and NR/PoE/1.2)

176. The Estimate of Costs (CD/NR5) assesses the costs of the Scheme at £97m (2016/17 3<sup>rd</sup> quarter prices). The Scheme will be funded from the ECML Connectivity Fund, of which the project forms a part. The ECML Connectivity Fund, which is overseen by the East Coast Programmes Board and is intended to improve capacity and journey times on the ECML over the 10 years starting 2014/15, was included in the High Level Output Specification (HLOS), July 2012. The Connectivity Fund was subsequently included in the London North East Strategic Business Plan (January 2013) and CP5 Enhancements Delivery Plan (March 2014) with a total fund allocation of £247m. Subsequent funding decisions mean that there is now £197m available for spend in CP5 (2014-19)

---

<sup>34</sup> Department of Transport, 1995 *Calculation of Railway Noise*

and a further £50m in CP6 (2019-2024). The Werrington Grade Separation project is allocated funding within this total.

177. Construction of the Scheme will continue beyond March 2019. While the programme of railway upgrades will continue to be subject to ongoing and investment decisions to ensure that maximum value is derived for passengers and taxpayers, there is reasonable prospect that funding will continue to be available for the Scheme.
178. The allocated funds will meet the capital cost of implementing the Scheme in accordance with the Order and funds already allocated are sufficient to pay for acquisition of blighted land as identified within section 149 of the Town and Country Planning Act 1990.
179. The Scheme does not have an individual business case as its benefits are linked with the delivery of the ECML Connectivity Fund projects in combination. The business case used to establish the cost benefit ratio of the works therefore relates to all projects of the Connectivity Fund.
180. The socio-economic appraisal sets out the estimated benefits of the Scheme and other Connectivity Fund projects, with the current capital cost of £247m at GRIP Stage 1. It has a Net Present Value of £2,459m and a Benefit Cost Ratio of 3.8, representing a good value for money option when assessed in accordance with the Department for Transport's value for money assessment guidance.

#### ***Matter 10: Response to Remaining Objections and Representations***

##### **OBJ/4 Milton (Peterborough) Estates & Sir Philip Naylor-Leyland Bt (Docs NR/PoE/6.2, INQ/NR/6)**

181. As already noted, there is only one remaining objection to the Order. Milton (Peterborough) Estates Company and Sir Philip Naylor-Leyland Bt continue to object, although nothing has been submitted in relation to the objection since the original letters nor did the objectors give evidence at the inquiry. Network Rail has discussed the Scheme proposals with the objectors and explained the nature of the works proposed and the commitments to land reinstatement and compensation code provisions within the draft Order. Spoil on the west side of the ECML will be stored on the Milton Estates land and then largely re-used to fill in the former channel of Brook Drain North. Once the stored spoil is gone the land will be restored to its former condition. To achieve this, the topsoil on the land has to be stripped and stored for re-use in the restoration.
182. Discussions have continued with the objectors up to the present. Network Rail understands the impact of the proposed construction-related activities on existing land drains to be the principal remaining point of contention. Network Rail has proposed undertaking a survey of the existing drainage, to enable it to plan the works so as to minimise any damage and to determine the best way of resolving this issue (See Doc INQ/NR/6). Pursuant to the Order any land temporarily taken has to be fully restored before being returned to its owner. If the works undertaken result in damage to land drains then they will be rebuilt; Network Rail remains committed to protecting drainage infrastructure and ensuring that land is returned to stakeholders in materially the same condition as before.

183. Network Rail has agreed matters concerning temporary hoarding and permanent boundary treatments, and has explained to the objectors the position concerning compensation for any losses associated with entitlements.

**REP/6 Werrington Neighbourhood Council** (Docs NR/PoE/3.2 11.1-20, NR/PoE/4.2 s.5, NR/R/4)

184. Werrington Neighbourhood Council has raised concerns about the noise from freight movements on the GNGE since the recent GNGE improvement. However, the issue Network Rail is required to address is whether mitigation is necessary in respect of any change to current noise levels arising from the Werrington Grade separation scheme. The noise increase arising from the previous GNGE line upgrade does not relate to this Order. Those impacts arise from the lawful use of an existing railway, and as such form the proper and appropriate baseline for any consideration of impacts arising from the Order Scheme.

185. The ES describes the effects of changes in train noise arising from the Scheme. No significant adverse effect from additional train noise is identified at any individual property so no mitigation is proposed for any aspect of operational noise arising from the Scheme.

186. In terms of absolute noise level (as distinct from change in noise level) the ES assessment is that as regards properties where baseline noise levels are currently above the SOAEL the Scheme will lead to a small reduction in noise, due to the extra distance between these properties and some train movements. There are some dwellings where a small increase in noise levels due to the Scheme is predicted; however, at these dwellings the current noise level is between the Lowest Observed Adverse Effect Level (LOAEL) and the SOAEL<sup>35</sup>.

187. Government policy, in the Noise Policy Statement for England (NPSE) states that between LOAEL and SOAEL "all reasonable steps should be taken to mitigate and minimise adverse effects on health and quality of life while also taking into account the guiding principles of sustainable development". Railway noise is conventionally calculated using the *Calculation of Railway Noise (1995)* (CRN) method developed by the then Department of Transport and used in assessments for provision of noise insulation requirements in the *Noise Insulation (Railways and Other Guided Transport Systems) Regulations 1996* (NIRR). Both documents rely on the equivalent continuous sound level  $L_{Aeq}$  (referred to by WNC as the "average noise level").

188. The assessment reported in the ES considers not only the  $L_{Aeq}$  but also the maximum ( $L_{Amax}$ ) noise levels, used to assess noise effects on sleep. Sleep disturbance assessment considers the maximum noise levels and the number of times per night that the criterion level is exceeded. As noted in the ES, no significant adverse effect resulting from maximum train noise levels during the night is identified at properties adjacent to the GNGE, on the basis that the current number of trains during the night on the GNGE does not exceed 13. The number of night-time train movements following the Scheme is not predicted to increase, and therefore the threshold of 20 or more trains exceeding 80dB  $L_{pAFMax}$  at the façade of properties will in any event not be reached.

---

<sup>35</sup> These results are summarised at Doc NR/R/4 para 1.2.3 Table 1

189. There is no predicted increase in freight movements during the night as a result of the Order Scheme. There is no obvious reason why there would be an increase at night, given that at that time there is much less capacity constraint on the ECML (the preferred route in most cases).
190. The only increase in predicted noise over 3dB is at 3 properties at Sunnymead during the daytime; this therefore does not impact on sleep disturbance. Increases in night time noise are all under 3dB, which is the level below which a change in noise level is not generally noticeable to the receptor.
191. The correct process for determining whether noise insulation should be provided is via the application of the NIRR, employing the calculation method contained in CRN. This assessment will be undertaken in due course, in accordance with NIRR requirements. Since the same methodology was employed for the EIA reported in the ES, Network Rail does not anticipate that the results will be significantly different. However, this is the correct approach to determining whether insulation measures are necessary.
192. In the light of the noise assessment already undertaken and the existing NIRR provisions it is neither necessary nor appropriate to impose a planning condition concerning protection of residential properties.
193. The noise assessment results reported in the ES do not justify a requirement to provide a trackside acoustic noise barrier. In any event, the barrier would need to obstruct the line of sight to the noise source, which on a freight train is at the top of the traction unit. The barrier would need to be more than 4m high in order to screen the line of sight from upper floor level where occupants of dwellings would be sleeping. This would have major visual and amenity impacts.
194. WNC have suggested that the temporary acoustic barriers erected for the construction works could be retained. That is not possible as they would intrude into the operational area and impede the operation and maintenance of the track<sup>36</sup>. In any event the barrier erected for noise mitigation in relation to the North Ramp piling operations would not be in the right place to screen many of the properties referred to by WNC from train noise.
195. The protection for residents that WNC seek during scheme construction will be secured via the condition requiring approval of the CoCP, which will include a noise and vibration management plan and an external communications programme. The latter will set out the process for dealing with enquiries or complaints that are made to the 24-hr helpline. The construction impacts of the Scheme have been fully assessed in the ES, and the CoCP will ensure that all of the identified mitigation measures will be undertaken to minimise any adverse effects. Adherence to these matters will be enforceable by Peterborough City Council as local planning authority.
196. There has been extensive liaison with the occupants of Jalna on Hurn Road, who are highlighted by WNC as being particularly affected by the proposed construction works. The occupants of Jalna no longer object to the Scheme. The proposed construction mitigation measures include temporary hoardings in the Hurn Road area, including around the boundary of Jalna to provide protection

---

<sup>36</sup> See Doc NR/PoE/2.2 para 5.5.12

from construction activity, together with the organisation of construction compounds and temporary storage areas so as to minimise nuisance.

**REP/3 Environment Agency** (Docs NR/PoE/2.2 s4.9, NR/PoE/4.2 s.8, INQ/NR/3)

197. The Environment Agency (EA) raise a single issue about the terms of the Order, namely whether failure by them to respond to an application for prior approval should result in a deemed refusal of the consent or a deemed approval.
198. Network Rail has provided a full response (Doc INQ/NR/3) to the EA's submission on this matter. The EA state that deemed refusal is the regulatory position under the Environmental Permitting Regulations (EPR) 2016, which are disapplied by article 5 of the Order. However, it is also the case, as the EA accept at paragraph 4.4 of their statement, that deemed approval is the established precedent in TWA Orders (including Orders made after the EPR came into force), and that it reflects sections 109 and 110 of the Water Resources Act 1991.
199. Although the protective provisions do replace the EPR here, their purpose is to provide a bespoke regime for the authorised works, not merely to replicate it. There are essential differences between the EA consenting to an application made to it for consent for a scheme, and (as will be the case with the Order) the EA approving detailed plans relating to a scheme that has already been consented by the Secretary of State, where matters such as environmental impacts and controls have already been fully considered by an independent body.
200. In summary the Network Rail position is as follows. The protective provisions provide for approval of detail: the in-principle decision on whether the works in a TWA Order should proceed rests with the Secretary of State in deciding whether to make the Order (and grant planning permission). At the time the protective provisions are implemented that in-principle decision will already have been made.
201. The EA's position misses the point of protective provisions being a streamlined process in place of any normal arrangements. It is usual in protective provisions (including those for Network Rail and those for the EA) to provide for deemed approval. The EA's own draft Boston Barrier Order provides for the Port of Boston's deemed plan approval of the EA's authorised works; that order post-dates the 2016 environmental permitting regulations.
202. Importantly, the EA is not able to cite a made TWA Order which includes deemed refusal; there is no precedent for that approach.
203. The EA relies on the terms of Development Consent Orders (DCOs) for its stance. However, there are significant differences between the regulatory process of DCOs and TWA Orders; the legislative position in respect of DCOs is different. The form of protective provisions in TWA Order cases which include a deemed approval provision are the standard that is found since the inception of TWA Orders in 1993 and continuing through to the present day.
204. On a practical level, deemed refusal would create potential for unreasonable Scheme delay, with impact on costs to Network Rail and to passengers. It would allow the EA to do nothing in response to an approval application and then delay the construction of the Scheme whilst the parties go to arbitration to resolve a deemed refusal. Timing with railway schemes is often critical for cost, because possessions of the railway have to be very carefully timed. Deemed refusal is

inconsistent with the rest of the Schedule 12 wording on plan approval, and arguably robs of any practical effect the requirements not to withhold consent unreasonably (Sch. 12 para 17(3)(a)) and to use reasonable endeavours to respond within 2 months (Sch. 12 para 17(4)).

205. The effect of the deemed refusal provision sought by the EA would also mean either that the powers of the local authority (as lead local flood authority) would be increased, by extending the deemed refusal to them, or that the protective provisions would have to have different arrangements for each category of body. This would be inconsistent and likely to be awkward in practice.
206. The appropriateness of a deemed approval arrangement in relation to further details for railway schemes has recently been confirmed by Parliament in the High Speed (London-West Midlands) Act 2017<sup>37</sup>. It is notable that HS2 had a deemed approval provision even though the level of detail in the Bill process was far less than is the case with the Werrington TWA Order. Moreover, that was a case involving sensitive sites, which is not the case here; nonetheless, that was not taken as a reason to change the precedent of the earlier Crossrail Act 2008. As to policy, the policy of deemed approval in that case was accepted by Parliament and was proposed by the Secretary of State for Transport as the Minister responsible for the Bill. As regards EU law, the HS2 Act post-dated the EPR, so any argument that those Regulations require a deemed refusal process is plainly incorrect.

## **Representations in Support**

### ***SUPP/1 Virgin Trains East Coast*** (Doc VTEC/1)

207. There is one letter of support for the Scheme, submitted by Virgin Trains East Coast (VTEC) and dated 8 March 2017. VTEC fully supports the Scheme, which it sees as critical to increased capacity for high speed passenger trains on the ECML. The ECML is a key strategic route, where increase in capacity and performance needs to be delivered. VTEC is a member of the East Coast Programme Board, comprising rail industry leaders, which has endorsed the Werrington Scheme to realise the significant economic benefits that it, along with other projects, brings.
208. Without addressing the current at-grade crossing constraint at Werrington, capacity increase on the ECML will be unrealistic. VTEC considers that the dive under is the best way of providing a grade-separated junction at this location.
209. Construction of the dive under will have a short-term impact on VTEC's ability to run train services, but this is far outweighed by the long-term benefits of resolving the existing issue.

## **Remaining Objections**

### ***OBJ/4 Milton (Peterborough) Estates Company & Sir Philip Naylor-Leyland Bt*** (Doc ME/1)

---

<sup>37</sup> See Annex 2 attached to Document INQ/NR/3

210. The objection was lodged by way of duplicate letters dated 25 January 2017. No further submissions have been made to either enlarge upon the objection letters or to provide an update as to the outcome of any negotiations with Network Rail.
211. The objection letters state that negotiations had commenced with Network Rail, but that formal objection was being made to the Order on the grounds of disruption to the Estate's farming practices and sporting interest. The objection voices particular concern about the proposal for use of the land around the existing railway and its effect on the estate's existing long term tenants. The letters state that the objection stands until all accommodation works and compensation matters are satisfactorily agreed.

### **Other Representations**

#### **The Case for Werrington Neighbourhood Council (REP/6) (Docs WNC/1-WNC/4)**

The material points are:-

212. Werrington Neighbourhood Council (WNC) supports the dive under proposal. However, the residents of north Werrington close to the proposal have, since 2014, suffered the impact of a significant increase in rail traffic due to the upgrading of the GNGE. A household-by-household survey has been undertaken of those residents' current experience, and the results show that the impact is significant for a great many of them. Sleep disturbance is probably the most important impact, due to night-time freight traffic. Levels of concern are greatest at the Gascoigne and Redbridge locations, possibly because these larger plots have less shielding from adjacent properties. This is evidence that noise disturbance is experienced in different ways, perhaps not truly reflected in the spot measurements undertaken.
213. Whilst Network Rail say that the GNGE line upgrade is a separate matter and does not form part of the current Scheme, for residents the two elements are perceived as part of a single change to their living conditions, occurring since 2014. WNC considers that the baseline conditions for measuring any noise impacts should be the conditions in 2014, not those following the GNGE upgrade.
214. Although Network Rail's noise and vibration modelling indicates that the post-scheme impact would not be materially worse, a substantial growth in freight traffic can be expected and residents expect the impact to get worse because of this. Network Rail acknowledges that the utility of the route will be increased, including as an alternative to the ECML. The use will be higher than it would have been without this junction improvement. Trains could also be longer as a result of increased demand. The cumulative effect of this growth in freight traffic on the route justifies taking mitigating measures in line with national policy to protect residents from noise and vibration.
215. WNC asks that the consent, should it be granted, contains conditions which:
- (a) Ensure that proper control of the construction protects the environment and well-being of residents as far as is practical and that they are kept fully informed on the progress of the works, with direct contact provided with those in charge;

- (b) Require additional measures to reduce the impact on residents of the noise and vibration from the future operation of the railway, including consideration of an acoustic fence and other measures for individual properties.
216. It is noted that the road traffic growth predictions to 2024 mask the rail noise contribution to the predicted change at Sunnymead (location OP19). If rail only is considered the predicted change would be 4.6dB rather than 3.2dB, and there are three other measuring points where the rail only increase exceeds 3dB. These rail noise increases are considerable, given that +3dB represents a doubling of the measured noise energy. Residents would like to see a requirement for a more detailed assessment of the noise impact post-scheme.
217. WNC welcome efforts to reduce noise at source, but are not confident that Network Rail is able to ensure the upgrades of operators' locomotives and rolling stock which it does not directly control.
218. WNC recognises that the temporary acoustic barriers erected during the construction phase will not protect all residents from all train noise. However, they would screen up to 75% of the train movements once the scheme is operational. If the operational constraints can be overcome, making it permanent should be considered as part of the mitigation measures provided. WNC remain of the view that an acoustic barrier between all train movements and affected residents should be provided if feasible.
219. Some residents, particularly in the Hurn Road area, would also be greatly impacted by the construction of the Scheme. It is important that effective protection is given to these and other affected residents through clearly identified working methods and public liaison arrangements to be adhered to.

**REP/3 Environment Agency** (Docs EA/1-EA/3)

220. The Environment Agency (EA) did not appear at the inquiry, but instead submitted a written position statement (Doc EA/1). The EA does not object in principle to the proposed Order. It is content that the proposed Scheme, incorporating the following design features and principles as set out within the Flood Risk Assessment and modelling report, satisfies the NPPF and the EA's flood risk management requirements at this location:-
- Brook Drain south of the Dukesmead Penstock is converted from open channel to a single 5.4m x 2.1m box culvert
  - Marholm Brook and Brook Drain watercourses are separated, achieved by lowering part of the above box culvert under the existing Marholm Brook watercourse in a syphon type design
  - The Dukesmead Penstock is removed and replaced by a 0.3m diameter pipe under the railway with no control structure
  - Marholm Brook is connected to Brook Drain via a weir structure and link channel to enable high flows to discharge into Brook Drain
  - Brook Drain is relocated to the west using a new two stage open channel that connects to an extended Hurn Road syphon.
221. It is essential that flood risk to the Stirling Way Business Park is not increased as a result of the proposals. Whilst the basic principles of the works have been

- agreed between the EA and Network Rail, and are reflected in the development drawings, the Order does not provide the full design detail.
222. To ensure that flood risk does not increase as a result of the proposals it is necessary to ensure that Network Rail obtains the EA's approval of the constructional details of the work to these watercourses. Detailed long-term maintenance arrangements for all aspects of the works to Brook Drain and Marholm Brook also need to be established, including where works are on operational railway land.
223. Productive discussions on these matters continued between Network Rail and the EA after the EA position statement was submitted. The EA did not appear in person at the Inquiry, but wrote on 23 November 2017 (Doc EA/2) confirming that it wished to withdraw its objection except for one remaining disputed point concerning the deemed approval position proposed by the Order in the event of the EA failing to determine an application for approval of detailed works within the prescribed period. The EA considers that in such an eventuality the outcome should be a deemed refusal, not a deemed approval.
224. The EA's argument on this matter is that Network Rail seeks to disapply certain legislation (set out in Article 5 of the draft TWA Order), including the EA's environmental permitting regime for works in rivers etc. and also its byelaws. It is the EA's usual practice to agree to disapplication for the construction period if satisfactory protective provisions are included within the Order. The protective provisions put forward in the draft Order provide<sup>38</sup> that where Network Rail has sought consent under the provisions and the time period for decision has elapsed without a decision by the EA, permission is deemed to have been given. The EA does not agree with this provision.
225. The EA accepts that historically the protective provisions it has agreed to within TWA Orders have provided for deemed consent. This reflected the relevant legal provision (s. 109-110 of the Water Resources Act 1991). In 2016 the flood defence consenting regime was transferred to the environmental permitting regime, becoming flood risk activity permits under the Environmental Permitting (England and Wales) Regulations 2016 (EPR). Under the EPR, if a decision on a permit application is not made within the relevant period the application is deemed refused. Part of the rationale for this is to comply with European Directives, including Regulation 9(3) of the Habitats Regulations. Deemed approval could place the EA in breach of its duty as a competent authority if the works for which consent is sought would infringe any of the prohibitions in Article 12 of the Habitats Directive, e.g. if the development proposal would cause deterioration or destruction of breeding sites or resting places of European Protected Species.
226. The protective provisions are for the purpose of replacing the EA's consenting regime. It is important to bear in mind that the purpose of the regime is to protect against flood risk. The EA therefore seeks a deemed refusal position, to be consistent with the EPR.
227. The EA also draws attention to accepted practice in relation to protective provisions as part of development consent orders (DCOs) made under the

---

<sup>38</sup> See at Article 38: Schedule 12 paragraph 18(3)(b)

Planning Act 2008. Although these are under different legislation, the principle is the same. In the 2014 Thames Tideway Tunnel Order deemed refusal was accepted as appropriate by the Secretary of State. Since flood defence consents became flood risk activity permits under the EPR the EA has sought a deemed refusal provision as a matter of course in draft DCOs. In the Silvertown Tunnel DCO application, currently awaiting a decision by the Secretary of State, the applicant Transport for London accepted a deemed refusal position. In the M20 Junction 10A DCO application, also currently awaiting the Secretary of State's decision, whilst Highways England disputed the EA's request for deemed refusal the Examining Authority's report has agreed with the EA's position.

228. In summary, the EA's stance is that the protective provisions for the benefit of the Environment Agency should be consistent with the provisions of the EPR. Network Rail has set out its position in its response dated 20 November 2017. The EA asks the Secretary of State to decide whether deemed approval or refusal is appropriate for inclusion within the protective provisions in the Order.

### **Conditions**

229. Network Rail Limited has submitted a set of proposed planning conditions to be applied to the deemed planning permission sought; the matters to which the suggested conditions relate have already been summarised at paragraphs 170 - 175 of this report. These conditions have been subject to consultation with Peterborough City Council, and their purpose, application and detailed wording considered during the course of the Inquiry, including an open conditions session at which other parties present were able to comment.
230. There was no disagreement from other parties over the thrust of the 11 conditions suggested by Network Rail Infrastructure Limited, submitted to the Inquiry as Document INQ/NR/2. Following the open conditions discussion, the final form of these conditions was submitted, reflecting minor drafting matters raised (Document INQ/NR/11).
231. The conditions proposed satisfy all of the tests for conditions. Conditions 1 and 2 are normal requirements, to define the development for which permission is granted and to ensure that the permission is acted upon within a reasonable period. Condition 3 is necessary to enable the development to proceed in a phased manner and to allow sensible timescales for approval of details to be determined. Conditions 4, 5 and 6 provide the necessary control over matters of tree removal, tree protection and landscaping details.
232. Condition 7 establishes the necessary requirement for approval of a Code of Construction Practice (CoCP) and stipulates the matters to be included within it. Condition 8 is needed to ensure that an ecological management plan is produced and followed, incorporating the measures set out in the ES, so that the identified appropriate ecological mitigation is carried out. Condition 9 is needed to ensure that appropriate recording of any archaeology takes place. Condition 10 is necessary to ensure that the Scheme includes appropriate permanent means of enclosure. Condition 11 is needed to ensure that there is a satisfactory interface between the old and new footpath routes at the location of the replacement Cock Lane Footbridge over the ECML.
233. WNC request conditions to ensure that there is proper control of construction, so as to protect the environment and well-being of residents; ensure direct

contact between contractors and residents; and to provide additional measures to reduce the impact on residents of the noise and vibration from the future operation of the railway. Network Rail confirmed that, on the first of these matters, the CoCP required by proposed condition 7 would include a noise and vibration management plan, including a construction methodology assessment, and an external communications programme which would include a protocol for liaison and complaint resolution between contractors and local residents, including a 24hr helpline service.

234. On the second matter, Network Rail stated that the correct process for determining whether noise insulation should be provided as a result of the operational noise impacts of the dive under project is via the application of NIRR, employing the calculation method contained in CRN. This assessment will be undertaken in due course, in accordance with NIRR requirements. However, a detailed assessment of the predicted operational noise impacts had already been undertaken as part of the EIA, using the same methodology and the results reported in the ES. The assessment did not predict any significant noise impact for nearby residents, including at night time which is the aspect residents are most concerned about. Network Rail considers that it would not be appropriate to impose a planning condition relating to the provision of additional measures to reduce the impact on residents of future operational railway noise and vibration arising from the Scheme, since this is explicitly regulated by the NIRR/CRN regime and in any event there is no evidence that significant adverse impacts in these terms will arise.
235. Although Werrington Neighbourhood Council suggested that consideration should be given to leaving acoustic hoarding proposed to reduce construction noise permanently in place, Network Rail stated that this would not be operationally feasible, and in any event the construction hoarding would be largely ineffective in preventing locomotive noise from propagating to bedroom windows of properties facing the GNGE. Lineside acoustic fencing would need to be excessively high (over 4m) in order to provide such attenuation; and as previously stated, there was no evidential justification for requiring such provision given that the Scheme was unlikely to result in any significant increase in night time train movements on the GNGE.

## **Inspector's Conclusions**

[Numbers in square brackets indicate the relevant paragraphs of the report.]

236. I have considered the issues relevant to the Transport and Works Act Order application and the deemed planning permission application contained within it together as they overlap. None of the remaining submissions contest the principle of the dive under proposal or raise fundamental issues concerning the Scheme's acceptability overall. Rather, the unresolved matters raised by other parties relate to matters of detail concerning the effects of temporary possession and use of land in connection with the Scheme's construction; the extent of measures and provisions to secure adequate noise mitigation for nearby residential properties; and the form of one particular aspect of the protective provisions proposed in relation to the subsequent approval of drainage works details. In my conclusions I therefore first consider the matters on which the Secretary of State particularly wishes to be informed, followed by the matters raised by the remaining objection and representations.

### ***Matters on which the Secretary of State wishes to be informed***

#### *Matter 1: Aims and Need for the Scheme*

237. The need for the Scheme arises from the significant restriction on high speed passenger train capacity on the ECML that currently exists at Werrington Junction. The existing at-grade crossing-over point from the Stamford Line to the GNGE currently restricts long distance high speed (LDHS) passenger train paths on the ECML to a maximum of 6tph. [36, 37]

238. There has been a rapid growth in rail use in the UK in recent years – a 59% increase in passenger numbers from 2004/5 to 2014/15. The ECML is a key element of the national rail passenger network, linking cities and towns in the north of England and beyond to London and the south east. Government objectives seek to promote increased rail travel and transport, for environmental, social and economic reasons. In particular, it is a Government objective to create a stronger North and provide better links between the North and London/the South, helping to bridge the economic divide between regions. To accommodate continued rail traffic growth on this part of the national network it is necessary to operate trains at an increased frequency on the ECML. [35, 39, 55-57]

239. The ECML currently provides 6 long distance passenger services per hour in each direction between London and Doncaster, which then continue either to Leeds and Wakefield or to North Yorkshire, the North East and Edinburgh. Local links connect other centres to these services. Providing additional train paths on the ECML would enable rail operators to meet the rising travel demand, by serving existing locations more frequently and effectively and by serving new locations. [37, 39]

240. The ECML Connectivity Fund has been established with responsibility for interventions to increase ECML capacity. As part of the Fund arrangements, Network Rail is tasked with delivering capacity on the ECML for two additional LDHS trains per hour in each direction. It has identified six separate infrastructure improvement projects providing best value enhancements, with allocated funding over the period 2014-2024. In combination the Connectivity Fund projects will increase the long distance high speed carrying capacity of the

ECML from the current 6tph to 8tph. The Order Scheme is one of the six projects within the fund, and one of two identified as key to delivering the additional tph required. One of the six projects (Doncaster Station enhancements) is now complete. [36, 39, 55-57]

241. The Order Scheme aims to remove a key rail bottleneck on the ECML, caused by slower trains transferring between the Stamford Lines and the GNGE, and thus having to cross the ECML on the level. This significantly constrains the use of the ECML, because the number of fast line train paths is limited by having to allow for the slow movements across the line. The proposed dive under Scheme would remove this conflict point and capacity constraint, allowing movement between the Stamford Line and the GNGE without affecting service capacity on the ECML. The number of freight trains requesting to cross the ECML in this location would reduce by about 75%. This would benefit train and freight operating companies alike, through increased line capacity, greater timetabling flexibility and fewer signal hold-ups. [22, 38, 40]
242. The Scheme is central to the delivery of the ECML Connectivity Fund programme as a whole. Removal of the ECML capacity constraint at Werrington Junction is essential if the overall benefits of the programme are to be realised. As such, the Order Scheme is a crucial component of delivering the much-needed additional capacity on the ECML, thereby enabling increased train and passenger seat numbers between London and the North, improved service reliability (both passenger and freight), more peak time seats and less crowded services, shorter journey times and improved operational flexibility. The Scheme will also contribute to meeting modern digital signalling and train control requirements. [41, 42]
243. The submission from Virgin Trains East Coast confirms the serious capacity constraint on the ECML at Werrington Junction and the critical importance of addressing this if more and better high speed passenger services on the ECML are to be provided. No parties make submissions questioning the need for the Scheme. The aims of the Scheme are plain and significant in terms of delivering enhancement of the national rail network and associated socio-economic benefits, and there is a clear and pressing need for the Scheme. [43, 207-209]

#### *Matter 2: Alternatives Considered*

244. Network Rail, the applicant for the Order, has explored a range of potential options for overcoming the capacity constraint on the ECML at Werrington Junction and delivering the capacity increase to 8 high speed passenger tph required by the ECML Connectivity Fund. Operational changes to signalling and timetabling cannot deliver this. [44]
245. Options involving changes to at-grade track alignments, including line changes south of Peterborough Station, were examined at the time of the GNGE Improvement Scheme (2009-2014). However, such an approach would not deliver the required capacity improvements by themselves and would still require a grade-separated junction solution at some location to achieve this. [45, 46]
246. It is clear that a scheme involving a grade-separated interchange (either a flyover or dive under) is necessary to achieve the elimination of conflicting rail movements to the required extent. A range of flyover or dive under options at New England, between Werrington Junction and Peterborough Station, were

considered alongside such options at Werrington Junction in connection with the GNGE improvement project. However, whilst potentially raising fewer environmental issues than the Werrington Junction options, the schemes mooted at New England would have been considerably more costly and more disruptive to existing rail operations during construction. [47, 48]

247. The options work undertaken in connection with the GNGE improvement project and subsequently for the ECML Connectivity Fund demonstrates that provision of a grade separated junction at Werrington is the only realistic option in terms of operation, maintenance, cost and effectiveness. A grade separation solution at Werrington is preferable to any other location when considering cost, operational and environmental considerations together. Such provision has been endorsed by the Department for Transport and taken forward to GRIP3. [48,49]
248. Having established clear preference for some form of grade separation at Werrington Junction, Network Rail has investigated different dive under and flyover options, leading to the selection of the Order dive under Scheme as the best alternative. Public consultation over alternatives indicated a preference for a dive under rather than a flyover. Before making a final choice, 3 further track alignment variations were examined, to try to avoid the demolition of properties. However, these alternatives would have had significant other drawbacks, and in some cases would still have involved property demolition. [50, 51]
249. I conclude that Network Rail has systematically and thoroughly considered possible alternatives to the Order Scheme. In doing so it has had regard to constructability, cost, environmental factors, public feedback and operational disruption considerations. I am satisfied that the Order Scheme is the preferable choice taking these factors into account. No alternative scheme or alignment has been put forward by any other party. [52]

*Matter 3: Consistency with Policy*

250. Relevant national, regional and local planning policies must be taken into account when considering an application for a TWA Order. National transport policy is relevant in this case as well as the NPPF at the national policy level. Regard must be had to the development plan, and any other material planning considerations, in determining the application for deemed planning permission; and the determination made in accordance with the development plan unless material considerations indicate otherwise. [53, 54]
251. Although the National Policy Statement for National Networks (NPSNN) concerns the Government's policies for NSIPs on the national rail and road networks, and this Scheme is proceeding through the TWA Order and application for deemed planning permission route, it nonetheless concerns the delivery of a key improvement to part of the national rail network. As such, I consider that the NPSNN is a material policy consideration here, in line with the advice at section 1.4 of the NPSNN. The NPSNN sets out the compelling need for development of the national rail network and to improve its capacity, capability, reliability and resilience. The advice that relatively modest infrastructure interventions can deliver significant capacity benefits by removing pinch points and blockages is especially pertinent here. The Order Scheme fully aligns with the policy thrust of accommodating increases in rail travel and rail freight where practical and affordable, and the overall objective of a transport system which delivers

- economic, social and environmental benefits in an environmentally sustainable way. [54-56]
252. The High Level Output Specification (HLOS) identifies the importance of the ECML in linking Scotland, the North East, Yorkshire and the east of England with London. HLOS seeks further improvements in capacity on the ECML and a reduction in journey times; the Order Scheme is a key component in delivering this. [57]
253. The Scheme is consistent with the development principles of the NPPF. By increasing capacity on the ECML, the Scheme will improve connectivity between the North and South and support economic growth. The Scheme accords with the NPPF principle, at paragraph 14, of supporting sustainable development; satisfies the 12 land use planning principles (where applicable) at paragraph 17; and accords with the thrust of its economic, social and environmental policies. The Scheme will deliver sustainable development, contributing to building a strong competitive economy, promoting sustainable transport and helping to combat climate change. The Scheme adheres to principles of good design and takes account of the health and amenity of local communities and the natural environment. [58, 59]
254. The Scheme accords with the Local Transport Plan, which supports improvements to the rail network as fitting with Peterborough's sustainable growth agenda. [60]
255. Turning to the development plan, the Scheme is consistent with the Core Strategy's vision and objectives. Policy CS 1 allows for essential transport-related development in locations outside the city's settlement boundaries. The Scheme meets the various requirements of Core Strategy policies CS 10 (sustainability), CS 14 (transport), CS 19 (open space and green infrastructure), CS 20 (landscape character), CS 21 (biodiversity and geological conservation) and CS 22 (flood risk management), where applicable. [61, 62]
256. The Scheme has been thoroughly assessed and its design details developed through the EIA process. The Scheme design has paid full regard to the detailed development policy requirements in the Peterborough Planning Policies DPD, in particular the requirements of policies PP1 (sustainable development presumption), PP2 (design quality), PP3 (impacts of new development), PP12 (transport implications) and PP16 (landscaping and biodiversity implications). Appropriate mitigation measures are incorporated where needed. Whilst the Scheme would affect part of an allocated Green Wedge and a minerals safeguarding area, the extent of effect would be minor and the integrity of these features/assets would not be significantly compromised. The local planning authority has assessed the proposal against planning policy requirements and does not object, subject to the imposition of conditions which have been agreed. [63-66]
257. No objections have been raised in terms of the Scheme's consistency with planning policy or principles. The Scheme will bring economic, environmental and societal benefits through its improvement of a key part of the rail transport network, and there is strong policy support for the Scheme in these terms. Whilst inevitably a Scheme of this nature will have some level of local impact, no significant environmental effects are identified and mitigation is incorporated

where necessary and practicable. Overall, the Scheme is in accordance with the development plan and the provisions of the NPPF. [67]

*Matter 4: Impacts on Landowners and Tenants, Local Residents, General Public, Utility Providers and Statutory Undertakers*

258. The Order would grant powers to Network Rail to acquire the land and rights in land to construct, operate and maintain the Scheme. Land and rights needed only temporarily in order to construct the Scheme would be acquired on that basis and the land reinstated and returned post-construction. [96-99]
259. Network Rail has undertaken discussions and negotiations with the 54 separate owners of interests in the Order lands. Most have not raised objections to the Order. Discussions have continued with all those parties who lodged objections. At the close of the inquiry only one objection (OBJ/4 Milton (Peterborough) Estates/Sir Philip Naylor-Leyland Bt) and one representation (Environment Agency) from land/interest owners remained. I deal with those specific matters later. [2-9, 18, 20, 100]
260. The majority of the land required for the Scheme is agricultural land, comprised within 3 different farm holdings. Approximately 35ha of grade 3a/3b agricultural land in total is subject to the Order, but only 8ha of this is required permanently. Whilst there will plainly be some impact on the holdings through temporary and permanent loss of agricultural land, the land required is on the periphery of each holding and will not result in fragmentation or the severance of land during construction. Following construction, the agricultural land not required permanently will be restored and returned to landowners, with less than 2% of land from each holding required permanently. There would be no significant residual permanent effect on farm holdings. The objection by Milton (Peterborough) Estates/Sir Philip Naylor-Leyland Bt (OBJ/4) appears to concern details of land and compensation; issues of operational viability of the unit are not raised. [102, 181-3, 210-1]
261. The Scheme involves the demolition of 3 dwellings. Network Rail has reached agreement with all of the parties involved, and no objections to the Order remain in relation to these properties. [4, 103]
262. As can be expected for a Scheme of this nature lying partly within a major built-up area, the Order impacts upon various commercial premises and operations. However, the Order does not seek to acquire land or rights in land to an extent that would fundamentally compromise any commercial premises or operations. Network Rail has discussed operational concerns with the parties concerned, including means of access and car parking, and has addressed these where appropriate through private agreement. No objections remain in relation to these matters. [4, 15, 17-18, 20, 104, 107]
263. Being located on the edge of a major urban area, the Scheme unsurprisingly would have implications for a number of statutory utilities and service providers. However, Network Rail has engaged with utilities providers and statutory undertakers where necessary. Mutually acceptable protective agreements have been negotiated with National Grid and with Royal Mail Group, enabling both to withdraw their earlier objections to the Order. Similarly, Anglian Water's initial concerns about the Order have been withdrawn following further discussions concerning its provisions. Schedule 12 of the proposed Order sets out the

- proposed provisions to protect the operations of statutory undertakers, namely electricity, gas, water and sewerage undertakers, electronic communications code network operators and drainage authorities and the Environment Agency. [6, 18, 105-9, 118, 159]
264. The Scheme involves works to a number of watercourses in the vicinity, including works to the Brook Drain and Marholm Brook designated main river systems. However, the principles and design of these works have been established in sufficient detail to demonstrate that the works proposed would not result in increased flood risk in the area, and that there would be no significant adverse impacts on the water environment. Indeed, the separation and reconfiguration of the Marholm Brook and Brook Drain South flows would benefit water quality and flood risk associated with the Marholm Brook, whilst the new channel created for Brook Drain North would also have an enhanced design. The Scheme is designed in accordance with the requirements of the Water Framework Directive; the Environment Agency is now content on all matters concerning the Scheme design principles, watercourse maintenance and access and protective provisions, save for one remaining point concerning the process for approving the final constructional details. I deal with this matter later. [109-113, 117, 157, 220-2]
265. Construction of a scheme of this kind located on the edge of an urban area will inevitably have some impact on residents in the locality, occupants of commercial premises and the general public. However, the EIA has comprehensively assessed the construction impacts of the Scheme and the mitigation measures available to reduce such temporary impacts. The ES indicates that, with adoption of appropriate best practice and mitigation measures, the construction impacts of the Scheme would be comparatively minor in most cases. Whilst certain individual dwellings, such as some properties at Whiteley Park Homes and Gascoigne, and Jalna on Hurn Road, would be more closely affected by construction activity than others, I consider that the CoCP framework embedded in the recommended planning conditions represents an effective means of minimising adverse construction impacts so far as reasonably practicable. [71-6, 81-3, 92-4, 128-9, 133-7, 152-3, 171, 195-6]
266. The noise and vibration impacts of the Scheme are assessed in detail in the EIA and reported in the ES and addressed in detail in Network Rail's evidence. The assessment was undertaken in accordance with national and local planning policy and relevant procedural requirements, and impacts have been quantified using best practice methods. Construction and subsequent operational impacts are assessed separately. The findings of the technical assessments are not in dispute. [68-69]
267. Temporary construction noise and vibration effects have been assessed for the whole construction period at the closest sensitive receptors to the major construction activities. No likely significant direct effects arising from construction noise are forecast for residential or non-residential receptors, as the applicable potential adverse effect thresholds are not predicted to be exceeded at any one location for a period of more than one month. At all residential assessment locations the predicted levels do not exceed the Significant Observed Adverse Effect Level (SOAEL) for daytime construction noise at any point during construction. Significant adverse vibration impacts are predicted at some residential properties at Whiteley Park and Gascoigne, arising from the piling and

compaction works to construct the North and South Ramps of the dive under. [71-78]

268. Construction noise and vibration impacts would be minimised through the Noise and Vibration Management Plan (NVMP) forming part of the Code of Construction Practice (CoCP) required as a condition of permission. The NVMP would require that Best Practicable Means to minimise noise and vibration at neighbouring residential properties is identified and applied during construction, including temporary hoardings to protect properties from construction noise. Noise insulation and/or temporary rehousing measures would be employed as a last resort where the relevant airborne noise trigger levels are met. [72, 78]

*Matter 5: Adequacy of the Environmental Statement and statutory procedural requirements*

269. The Environmental Impact Assessment was undertaken following the preparation of an Environmental Scoping Report and a formal request as to the information to be provided in the ES, in accordance with TWA Rules. The ES has been prepared in accordance with the requirements of EC Directive 2011/92/EC as set out in the TWA Rules, with consideration additionally being given to climate change, greenhouse gases and human health. The ES considers all of the construction and operational impacts of the scheme and meets all of the requirements of the EIA Regulations. The ES report structure complies with the TWA Rules. Each technical chapter within the ES provides details of the assessment and survey methodology; sets out the baseline conditions; outlines any limitations and assumptions; and, in respect of both construction and Scheme operation, assesses the impacts and effects of the scheme; provides an overview of how environmental mitigation has been incorporated into the scheme; outlines the proposed mitigation of effects during Scheme construction and (where relevant) operation; and identifies the residual and cumulative effects of the Scheme. The work has been carried out by suitably qualified consultants, and I consider that the Environmental Statement is thorough and adequate for its purpose. [125-129]
270. All relevant statutory procedural requirements of the TWA Rules have been complied with. Network Rail has provided a folder confirming compliance with statutory procedures. [130]
271. Whilst Lloyds Banking Group lodged an objection to the order application on the basis that the EIA had failed to acknowledge the particular vibration and air quality sensitivities of its data processing facility, subsequent discussions between the Group and Network Rail concluding with the agreement of protective provisions have successfully resolved Lloyds Banking Group's concerns. Earlier objections by other parties asserting that the consultation process over alternatives was flawed have also been withdrawn. There are no remaining objections or representations which challenge the ES or the accuracy of the EIA findings. [4, 79-80, 103, 130-1]
272. I am satisfied that the statutory procedures for the preparation of the Environmental Statement have been followed, and that all relevant statutory procedural requirements have been complied with.

*Matter 6: Measures Proposed to Mitigate Adverse Impacts [133-159, 172]*

273. The ES identifies the various potential adverse environmental effects that would arise from the Scheme without mitigation, and describes the mitigation proposed to address these and the mechanisms by which mitigation would be secured. All construction-related mitigation would be secured and regulated through the CoCP process, which is a tried and tested method for TWA Order schemes. The CoCP would include a pollution and incident control plan; waste management plan; traffic management plan; nuisance management plan (including light, air and dust); and a noise and vibration management plan. All plans and programmes would be produced in accordance with the incorporated mitigation identified in the ES. [133-136]
274. Adverse effects on soil resources and agricultural land would be minimised by adopting good practice in relation to handling and storing soils, and through requirements for reinstatement of agricultural land and replacement where necessary of agricultural underdrainage. [138-9]
275. Measures to mitigate risks and potential adverse effects relating to contaminated land, waste and resources, including below-ground water resources, would be written into the pollution prevention and incident control plan forming part of the CoCP. Dust control measures described in the ES would be included in the nuisance management plan forming part of the CoCP, reducing the adverse effect on air quality to "negligible". [140, 151, 156]
276. The potential effect of construction noise on residential properties at Whiteley Park Homes, Hurn Road, Gascoigne, David's Close and Sunnymead and nearby commercial premises would be mitigated through the temporary acoustic hoarding incorporated in the Scheme design. The Noise and Vibration Management Plan within the CoCP would establish process and management principles aimed at minimising noise and vibration nuisance to sensitive receptors during construction. Where residential properties would, despite the foregoing, still be exposed to noise exceeding defined airborne construction noise trigger levels, they would qualify for noise insulation mitigation or temporary rehousing as a last resort. [153]
277. The operation of the Scheme is not predicted to give rise to any significant adverse noise or vibration effects for sensitive receptors. Whilst there would be a small increase in night time passenger train movements on the ECML, there is no planned increase in night time use of the GNGE as a result of the Scheme. No specific mitigation measures within the Scheme are proposed to address the minor increases expected in some locations; however, wider initiatives such as Network Rail's main line rail grinding regime and the planned introduction of quieter new passenger train sets will lower future operational railway noise levels generally. The Scheme would be governed in any event by the Noise Insulation (Railways and Other Guided Transport Systems) Regulations 1996, which would require a detailed assessment of the eligibility for noise insulation of properties within 300m of the scheme within six months of it becoming operational. [154, 172]
278. To mitigate any noise nuisance from the auxiliary power supply points at Helpston Level Crossing and Werrington Junction, the plant will be designed and installed so that the rating level of the stationary installations in normal operation at the worst affected residential receptors is at least 5dB below the existing background noise level. [155]

279. The landscape, visual and biodiversity impacts of the Scheme would be mitigated by the various measures to reinstate or replace features lost as a result of scheme construction, providing enhancements where opportunity arises. The Scheme mitigation incorporates a net increase of 500m of new species-rich hedgerows, and new broadleaved woodland planting and scrub areas to replace those lost. Unimproved neutral grassland affected by the works would be reinstated after construction. Loss of four-spotted moth and grizzled skipper habitat would be compensated by provision of new suitable species rich grassland habitat. Permanent loss of the great crested newt breeding pond and terrestrial habitat would be mitigated by the creation of two new ponds and suitable habitat and translocation of the affected newt population. Measures are also included to mitigate harm to common lizard habitat and to minimise disruption to bat foraging and flight patterns in the area. New watercourse features would be designed so as to enhance water quality and ecological potential. [142-150, 152]
280. The mitigation embedded within the design of the modifications to the local drainage system arising from the Scheme will ensure that flood risk within the surrounding area will not be increased. [157]

*Matter 7: Justification for Compulsory Purchase*

281. The aims and need for the Scheme are summarised at paragraphs 237-243 above. The ECML is a vital part of the national main line network, and there is a pressing need to increase the line's capacity to carry long distance high speed (LDHS) passenger services, in order to meet rising passenger demand, enable train operators to serve existing locations more frequently and serve new locations, and to help create better connectivity between the North and the South and a stronger Northern economy. [161-2]
282. The Scheme is a key project within the Connectivity Fund programme which is designed to deliver the required increase in ECML LDHS passenger service capacity from 6tph to 8tph. The public benefits of providing this additional rail capacity through the Scheme are therefore plainly evident and very substantial. [163-4]
283. Additional land outside that already owned by Network Rail is required to construct and operate the Scheme. The amount of land to be acquired or used is defined in the Order by the Limits of Deviation and the Limits of Land to be Acquired or Used. Only land necessary to construct, operate and maintain the scheme is included in the Order application, and the areas of land included are the minimum required. Where only certain rights in an area of land are needed, or land is needed only temporarily while the Scheme is constructed, the Order seeks to acquire only those rights and/or temporary possession. [164-5]
284. There are no maintained objections to the effect that the Order would involve land that is not needed for the construction, operation and maintenance of the proposed scheme. Network Rail has reached agreement with almost all of the landowners concerned. Objections initially raised in relation to the Scheme's need to acquire 3 dwellings have been resolved through discussion and negotiation and have subsequently been withdrawn. There would be no significant residual permanent effect on the integrity of farm holdings, nor on any commercial property affected by the Order. The compensation provisions in the Order will ensure fair compensation is paid to affected landowners and tenants. [166-9]

285. To the extent that there would be interference with human rights as a result of the compulsory acquisition of land or rights in land, such interference would be necessary and proportionate in view of the overriding public interest in carrying out the Scheme. I conclude that there is a compelling case in the public interest for the Order.

*Matter 8: Conditions to be attached to Deemed Planning Permission*

286. Network Rail Limited has put forward a set of planning conditions which were the subject of discussion and refinement during the Inquiry, and with which Peterborough City Council (as local planning authority) agree. The finalised conditions are appended to my report. I am satisfied that the proposed conditions satisfy the tests for planning conditions, and in particular are necessary and reasonable requirements if deemed planning permission is granted for the Scheme. [170-1, 231-2]

287. As regards the requests by WNC for provisions in the conditions to protect local residents from excessive noise and vibration impacts, I consider that condition 7 requiring a CoCP, including a noise and vibration management plan and an external communications programme to be approved by the local planning authority and thereafter enforceable by it, provides a robust and appropriate safeguarding mechanism in respect of construction noise and vibration. [153, 171, 195]

288. In respect of the Scheme's operational effects, the technical evidence does not predict a significant increase in noise or vibration as a result of the dive under proposal; moreover, the NIRR/CRN regime provides an established regulatory framework for dealing with excessive operational noise arising from railway projects, should it occur. It is an established principle that planning conditions should not duplicate controls more appropriately applied through other regulatory regimes. Permanent retention of the acoustic fencing to be provided to mitigate noise from construction activities is impractical from a railway operations standpoint, and would in any event be of limited effect in attenuating operational railway noise. Effective trackside acoustic fencing would be excessively high and disproportionately visually intrusive. For these reasons I consider that a planning condition requiring measures to reduce operational noise and vibration effects would be neither necessary nor reasonable in the circumstances of the case. [172-5, 184-194]

289. In conclusion, I consider that the conditions annexed to my report meet the tests prescribed for planning conditions and are necessary and appropriate conditions to be imposed on the deemed planning permission, if granted.

*Matter 9: Proposals for Funding the Scheme*

290. The Scheme would be funded from the ECML Connectivity Fund, of which the project forms a part. The Connectivity Fund was included in the London North East Strategic Business Plan (January 2013) and CP5 Enhancements Delivery Plan (March 2014) with a total fund allocation of £247m. Subsequent funding decisions mean that there is now £197m available for spend in CP5 (2014-19) and a further £50m in CP6 (2019-2024). The Werrington Grade Separation project is allocated funding within this total. The Estimate of Costs assesses the costs of the Scheme at £97m (2016/17 3<sup>rd</sup> quarter prices). The allocated funds will meet the capital cost of implementing the Scheme in accordance with the

Order. Allocated funds are sufficient to pay for acquisition of blighted land as identified within section 149 of the Town and Country Planning Act 1990. [36, 176-180]

291. The business case used to establish the cost benefit ratio of the works relates to all projects of the Connectivity Fund. The Connectivity Fund programme represents a good option when assessed in accordance with value for money assessment guidance. [176-180]
292. Funding is therefore currently available for the Scheme, and I conclude that there is reasonable prospect that funding will continue to be available for the Scheme's implementation if the Order is made.

#### *Remaining Objections and Representations*

293. The single remaining registered objection to the Scheme is made by Milton (Peterborough) Estates Company & Sir Philip Naylor-Leyland Bt (OBJ/4). The objection raises a generalised concern about disruption to the Estate's farming practices and sporting interest, arising from the use of the land around the railway in connection with the Scheme's construction. Network Rail has engaged fully with the objectors, explaining the nature of the activities proposed on the land and seeking to ensure that any damage to the condition of the land is minimised. [181-3, 210-1]
294. It is clear that the land in question is needed to enable the Scheme to be constructed, mainly in order to enable excavated material to be stored for later re-use. Pursuant to the Order any land temporarily taken has to be fully restored before being returned to its owner; in particular, Network Rail is aware of the concern raised about possible damage to land drains, and is committed to protecting drainage infrastructure and ensuring that land is returned in materially the same condition as before. The compensation code provisions within the Order will ensure that the objectors are fairly recompensed for loss of utility as a result of the Scheme. [181-3]
295. The representation by Werrington Neighbourhood Council (WNC) (REP/6) raises concerns about the extent to which nearby residents might be affected by noise and vibration, and requests that planning conditions are imposed to reduce the Scheme's impact in this respect. WNC does not oppose the Scheme itself, or the proposed Order. [212-9]
296. So far as noise and vibration arising from the construction of the Scheme is concerned, I am satisfied that proposed condition 7, requiring the approval of a CoCP before construction begins and adherence to the CoCP throughout the construction phase, provides a satisfactory protection mechanism for local residents. The condition specifically requires the CoCP to include a noise and vibration management plan to ensure that measures are taken so far as reasonably possible to minimise adverse noise and vibration impacts during scheme construction. The construction mitigation measures identified in the ES include the erection of acoustic barriers to provide protection from the operations involved in constructing the North and South Ramps to the dive under. The condition also requires an external communications programme, which will establish a process for enquiries or complaints. [171-2, 195]

297. As regards the matter of operational noise, WNC points out that there has been a significant increase in the number of trains using the GNGE, following recent improvements. This has given rise to increased disturbance for residents close to the line, especially at night. However, the GNGE line improvement was completed in 2014. It forms no part of the Order Scheme. It follows that the appropriate baseline against which to measure the predicted change in operational railway noise arising from the Werrington Grade Separation project is the situation after the GNGE line improvement, not before it. [174, 184, 212-3]
298. The technical assessment of the predicted change in operational noise as a result of the Scheme has been carried out using the approach and methodology as set out in established guidance on railway noise and which meets the requirements of the EIA Directive. The resulting predicted increases in operational noise as a result of the Scheme are minor, and not significant. Although WNC point out that +3dB represents a doubling of the measured noise energy, this does not equate to a perceived doubling of the noise level; +3dB is generally regarded as the order of increase at which the change in noise level becomes noticeable. In particular, the Scheme is predicted to give rise to a negligible increase (+1.5dB in the most significantly affected location) in night time train noise on the GNGE, since there is no planned increase in night time use of that line as a result of the Scheme, and no evident reason why increased LDHS passenger train capacity on the ECML should lead to additional night-time use of the GNGE. [185-192]
299. For the reasons given at paragraph 288 above, including that the NIRR/CRN regime provides an established regulatory framework for dealing with operational noise arising from railway projects, I do not consider that a planning condition to address operational railway noise arising from the Scheme is appropriate in this case.
300. The Environment Agency (EA) does not object in principle to the Order. It is content that the proposed Scheme satisfies the NPPF and the EA's flood risk management requirements at this location, subject to full constructional details of the works first being approved by the EA. The single remaining point of contention relates to the protective provision proposed in the Order at Article 38 Schedule 12 paragraph 18(3)(b). In short, the provision as proposed by Network Rail says that, in the event that the EA fails to determine an application for approval of details within the prescribed period, the EA's permission is deemed to have been given. The EA contend that the position in such an eventuality (albeit unlikely) should be that permission is deemed to be refused. [197-206, 220-3]
301. Both sides cite various legislative provisions in support of their respective stances. However, I am convinced by the points made by Network Rail on this matter. Deemed approval is the established precedent in relation to a failure to determine details submitted pursuant to TWA Orders. In such a circumstance the protective provisions provide for approval of detail; at the time they are implemented the principle of the Scheme's acceptability will have already been determined, by the decision to make the Order. The EA is therefore being asked to approve detailed drawings for a scheme that has already been given consent by the Secretary of State, where matters such as environmental impacts and controls have already been fully considered by an independent body. This is a quite different situation to the regulatory position under the Environmental

Permitting Regulations where the EA is asked to give consent to an application made to it at first instance. [198, 200, 224-6]

302. The form of protective provisions in TWA Order cases which include a deemed approval provision has been consistently adopted since the inception of TWA Orders in 1993 through to the present. There is no instance of a made TWA Order which includes deemed refusal. Although the EA relies on the terms of Development Consent Orders (DCOs) for its stance, DCOs are considered and made under a significantly different legislative and regulatory process. [202-3, 227]
303. The protective provisions are a streamlined process in place of any normal arrangements. Their purpose is to provide a bespoke regime for delivery of the authorised works, not merely to replicate the regulatory provisions to be disapplied. Deemed refusal would create potential for delay in the construction of the Scheme through no fault of the applicant, with impact on costs to Network Rail and to passengers, whilst the parties go to arbitration. Avoiding unforeseen delay in the construction process is particularly important because possessions of the railway require careful planning and timing. Given the level of agreement that has already been reached between the EA and Network Rail as to the form that the drainage works should take, I consider it appropriate that the EA should be expected to determine any subsequent application to it for approval of details of the works within the prescribed period, and for potential for delay to the Scheme through a failure to do so to be avoided. [201, 204]
304. I conclude that the wording of the disputed protective provision clause should remain as proposed in the submitted draft Order.

### **Overall Conclusions**

305. In reaching my conclusions I have taken into account the Environmental Statement and the environmental information submitted. I have concluded above on the matters particularly identified by the Secretary of State. Overall, I conclude that the Order is justified on its merits and that there is a compelling case in the public interest for making it.
306. The Scheme accords with planning and transport policy at all levels, and there is general acceptance of the need for the dive under. The Scheme is a key part of the Connectivity Fund programme, and as such would help to deliver clear public benefits that would far outweigh the minor residual environmental effects after identified mitigation is taken into account and the limited private losses. The proposed development accords with the development plan and is consistent with the NPPF. There are no considerations which indicate a determination other than in accordance with the development plan in relation to the deemed planning permission direction sought.
307. Funding is available for the scheme and there is no evidence of any impediments to its timely implementation. Amendments to the draft Order submitted with the application have been proposed to improve clarity, provide consistency and to reflect recent legislative and regulatory provisions; these have not been disputed and appear to be reasonable. [19, 34]

308. In the light of all of the above, I conclude that the Order as modified should be made and that the deemed planning permission sought should be granted, subject to appropriate conditions as identified earlier.

**Recommendations**

309. I recommend that:

- (a) The Network Rail (Werrington Grade Separation) Order 201[x] be made, subject to the modifications as incorporated in the revised draft Order and accompanying amended Order Plan sheet 02 at Documents INQ/NR/15 and INQ/NR/12.
- (b) A Direction be made granting deemed planning permission for the works authorised by the Order, subject to the conditions set out in the Annex to this report.

*Alwyn B Nixon*

**Inspector**

## APPEARANCES

### FOR THE APPLICANT (NETWORK RAIL):

Ms Natalie Lieven QC She called:	Instructed by Winckworth Sherwood.
David Vernon BA, PGDipTP, MRTPI NIPA Peter Hodkin	Partner, Carter Jonas ( <i>evidence on the needs case</i> ). Director of Operations, Jacobs Engineering UK ( <i>evidence on design, construction and engineering matters</i> ).
David Hiller BSc MSc PhD CEng MIA MIMMM FGS	Associate Director, Arup ( <i>evidence on noise and vibration</i> ).
Jim Pearson BSc	Network Rail Environment Manager ( <i>evidence on environmental management</i> ).
Andrew Prowse BSc RICS	Associate, Bruton Knowles ( <i>evidence on property matters</i> ).
Tony Rivero BSc MRTPI	Town Planning Manager, Network Rail ( <i>planning evidence</i> ).

### OBJECTORS AND INTERESTED PARTIES:

#### FOR LLOYDS BANKING GROUP (OBJ/16):

Mr Richard Sagar Partner, Walker Morris LLP.

(Did not call evidence)

#### FOR WERRINGTON NEIGHBOURHOOD COUNCIL (REP/6)

Alan Smith MRTPI(Ret'd)

#### FOR PETERBOROUGH CITY COUNCIL (REP/4)

Theresa Nicholl (Present for discussion of planning conditions)

## DOCUMENTS

NETWORK RAIL CORE DOCUMENTS	
CD/NR1	Copy Application ( <i>Folder number 1</i> )
CD/NR2	Draft Order ( <i>Folder number 1</i> )
CD/NR3	Explanatory Memorandum ( <i>Folder number 1</i> )
CD/NR4	Funding Statement ( <i>Folder number 1</i> )
CD/NR5	Estimate of Costs ( <i>Folder number 1</i> )
CD/NR6	Statement of Aims ( <i>Folder number 1</i> )

CD/NR7	Consultation Report ( <i>Folder number 2</i> )
CD/NR8	Deposited Order Plans and Sections and Traffic Regulation Plans ( <i>Folder number 3(i)</i> )
CD/NR9	Deposited Planning Direction Drawings ( <i>Folder number 3(ii)</i> )
CD/NR10	Book of Reference ( <i>Folder number 4</i> )
CD/NR11	Request for Deemed Planning Permission & Statement of Proposed Conditions and Planning Application Drawings ( <i>Folder number 4</i> )
CD/NR12	Planning Statement ( <i>Folder number 5</i> )
CD/NR13	Design and Access Statement ( <i>Folder number 5</i> )
CD/NR14	Environmental Statement ( <i>Folders 7- 13</i> ):
<i>Folder 7</i>	<i>Environmental Statement, Non-Technical Summary (Volume I)</i>
<i>Folder 8</i>	<i>Environmental Statement: Impact Assessment (Main Statement) (Volume II)</i>
<i>Folder 9</i>	<i>Appendix A: Glossary of Terms (Volume III)</i>
<i>Folder 9</i>	<i>Appendix B: Draft Code of Construction (Volume III)</i>
<i>Folder 9</i>	<i>Appendix C: Scoping Opinion (Volume III)</i>
<i>Folder 9</i>	<i>Appendix D: Development Data from Peterborough City Council (Volume III)</i>
<i>Folder 9</i>	<i>Appendix E: Agricultural Land and Soils (Volume III)</i>
<i>Folder 9</i>	<i>Appendix F: Air Quality (Volume III)</i>
<i>Folder 9</i>	<i>Appendix G: Archaeology and Cultural Heritage (Volume III)</i>
<i>Folder 10a</i>	<i>Appendix H: Biodiversity (Volume III)</i>
<i>Folder 10a</i>	<i>Appendix H: Biodiversity (continued) (Volume III)</i>
<i>Folder 11.1</i>	<i>Appendix I: Contaminated Land and Waste Resources (Volume III)</i>
<i>Folder 11.1</i>	<i>Appendix J: Greenhouse Gases (Volume III)</i>
<i>Folder 11.1</i>	<i>Appendix K: Landscape and Visual (Volume III)</i>
<i>Folder 11.2</i>	<i>Appendix K: Landscape and Visual (continued) (Volume III)</i>
<i>Folder 11.3</i>	<i>Appendix L: Noise and Vibration (Volume III)</i>
<i>Folder 11.3</i>	<i>Appendix M: Traffic and Transport (Volume III)</i>
<i>Folder 11.4</i>	<i>Appendix M: Traffic and Transport (continued) (Volume III)</i>
<i>Folder 12</i>	<i>Appendix N: Water Resources (Volume III)</i>
<i>Folder 12</i>	<i>Appendix O: Climate Change (Volume III)</i>
<i>Folder 13(i)</i>	<i>Engineering Drawings (Volume IV)</i>
<i>Folder 13(ii)</i>	<i>Environmental Discipline Figures (Volume IV)</i>
CD/NR15	Network Rail Statement of Case (May 2017)
CD/NR16	<i>Number not used</i>
CD/NR17	Network Specification 2012 - London North Eastern
CD/NR18	Network Rail CP5 High Level Output Statement (HLOS) July 2012
CD/NR19	Strategic Business Plan for England and Wales, July 2013
CD/NR20	CP5 Enhancements Delivery Plan (March 2014)
CD/NR21	Hendy Review Report (draft)
CD/NR22	Town and Country Planning Act 1990
CD/NR23	Railways Act 1993
CD/NR24	ECML Route Utilisation Strategy (February 2008)
CD/NR25	Yorkshire and Humber Route Utilisation Strategy (July 2009)
CD/NR26	National Planning Policy Framework (NPPF)
CD/NR27	National Policy Statement of National Networks (NPSNN)
CD/NR28	Peterborough Core Strategy Development Plan Document

CD/NR29	Peterborough Policies Development Plan Document
CD/NR30	Peterborough Site Allocations Development Plan Document
CD/NR31	Peterborough and Cambridgeshire Joint Minerals and Waste Core Strategy
CD/NR32	Peterborough Policies Map December 2012 - Key
CD/NR33	Peterborough Policies Map December 2012

#### **ADDITIONAL INQUIRY DOCUMENTS SUBMITTED BY NETWORK RAIL**

INQ/NR/1	Dossier of Compliance with Statutory Procedures
INQ/NR/2	Amended Schedule of suggested Planning Conditions submitted on 21 November 2017
INQ/NR/3	Network Rail Response to Environment Agency Position Statement
INQ/NR/4	Opening Statement on behalf of Network Rail
INQ/NR/5	Plan showing proposed changes to Werrington Drain (Drg B22380CA/DRA/004)
INQ/NR/6	Network Rail position letter (sent by Bruton Knowles) to Milton Estates (OBJ/4), dated 3 November 2017
INQ/NR/7	Table cross-referencing sections of Network Rail evidence to Statement of Matters
INQ/NR/8	Filled Order (24 November 2017) showing track changes to initial draft Order
INQ/NR/9	Explanatory Note to 24 November 2017 track changes
INQ/NR/10	Closing submissions for Network Rail
INQ/NR/11	Final draft planning conditions schedule dated 12 December 2017
INQ/NR/12	Amended Order Plan Sheet 02, submitted on 12 December 2017
INQ/NR/13	Amended Deemed Planning Consent Layout Plan Sheet 4 (Rev A04 dated 12 December 2017)
INQ/NR/14	Final filled Order as submitted 15 December 2017, showing all track changes
INQ/NR/15	Final filled Order as submitted 15 December 2017 – Clean version

#### **NETWORK RAIL INQUIRY EVIDENCE** [NB: *Witness evidence listed in italics was not called at the inquiry*]

NR/PoE/1.1	Summary Proof of Evidence of David Vernon
NR/PoE/1.2	Proof of Evidence of David Vernon – Needs Case
NR/PoE/2.1	Summary Proof of Evidence of Peter Hodkin
NR/PoE/2.2	Proof of Evidence of Peter Hodkin – Construction and Engineering
NR/PoE/3.1	Summary Proof of Evidence of David Hiller
NR/PoE/3.2	Proof of Evidence of David Hiller – Noise and Vibration, with Appendices 1-13
NR/PoE/4.1	Summary Proof of Evidence of Jim Pearson
NR/PoE/4.2	Proof of Evidence of Jim Pearson – Environmental Management, with Appendices 1-3
NR/PoE/5.1	Summary Proof of Evidence of Tony Rivero
NR/PoE/5.2	Proof of Evidence of Tony Rivero - Planning
NR/PoE/6.1	Summary Proof of Evidence of Andrew Prowse

NR/PoE/6.2	Proof of Evidence of Andrew Prowse
NR/PoE/7.1	<i>Summary Proof of Evidence of James Bellinger</i>
NR/PoE/7.2	<i>Proof of Evidence of James Bellinger – Air Quality</i>
NR/PoE/7.3	<i>Appendix to Proof of Evidence of James Bellinger</i>
NR/R/1	<i>Rebuttal Proof of David Vernon relating to Proof of Evidence of Richard Brown for Lloyds Banking Group</i>
NR/R/2	<i>Rebuttal Proof of Peter Hodkin relating to Evidence of Lloyds Banking Group</i>
NR/R/3	<i>Rebuttal Proof of David Hiller relating to Proof of Evidence of Matthew Barlow for Lloyds Banking Group</i>
NR/R/4	Network Rail Combined Rebuttal Proof to Proof of Evidence of Werrington Neighbourhood Council
NR/R/5	<i>Rebuttal Proof of James Bellinger relating to Proof of Evidence of Graham Harker for Lloyds Banking Group</i>

<b>MILTON ESTATES DOCUMENTATION (OBJ/4)</b>	
---	--

ME/1	Original objection letter dated 25 January 2017
------	---

<b>ROYAL MAIL GROUP DOCUMENTATION (OBJ/6)</b>	
---	--

RM/1	Objection withdrawal letter dated 12 December 2017
------	--

<b>THOMAS COOK LIMITED DOCUMENTATION (OBJ/10)</b>	
---	--

TC/1	Objection withdrawal letter dated 14 December 2017
------	--

<b>NATIONAL GRID GAS PLC DOCUMENTATION (OBJ/12)</b>	
---	--

NG/1	Objection withdrawal letter dated 6 December 2017
------	---

<b>KERRY INGREDIENTS (UK) LIMITED DOCUMENTATION (OBJ/13)</b>	
--	--

KI/1	Objection withdrawal letter dated 15 December 2017
------	--

<b>LLOYDS BANKING GROUP (OBJ/16) DOCUMENTATION [NB: Evidence not called, as objection eventually withdrawn]</b>	
---	--

LB/1	<i>Proof of Evidence of Richard Brown with Appendices (Planning)</i>
LB/2	<i>Summary Proof of Evidence of Richard Brown</i>
LB/3	<i>Proof of Evidence of Andrew Shaw with Appendices (Operational and Security)</i>
LB/4	<i>Summary Proof of Evidence of Andrew Shaw</i>
LB/5	<i>Proof of Evidence of Matthew Barlow with Appendices (Vibration)</i>
LB/6	<i>Summary Proof of Evidence of Matthew Barlow</i>
LB/7	<i>Proof of Evidence of Graham Harker with Appendices (Air Quality)</i>
LB/8	<i>Summary Proof of Evidence of Graham Harker</i>
LB/9	<i>Proof of Evidence of Paul Jenkin (Flood Risk)</i>
LB/10	<i>Summary Proof of Evidence of Paul Jenkin</i>
LB/11	Letter dated 22 November 2017 withdrawing Lloyds Banking Group objection

<b>ENVIRONMENT AGENCY DOCUMENTATION (REP/3)</b>	
EA/1	Environment Agency position statement
EA/2	Letter dated 23 November setting out updated position
EA/3	Extract from M20 Jn 10A Examining Authority's Report dated 1 December 2017

<b>PETERBOROUGH CITY COUNCIL DOCUMENTATION (REP/4)</b>	
PCC/1	Email dated 21 November confirming agreement of conditions and withdrawing representation

<b>WERRINGTON NEIGHBOURHOOD COUNCIL DOCUMENTATION (REP/6)</b>	
WNC/1	Proof of Evidence submitted by Werrington Neighbourhood Council
WNC/2	Appendices 1-6 submitted by Werrington Neighbourhood Council
WNC/3	Appendices 2A submitted by Werrington Neighbourhood Council
WNC/4	Supplementary statement to Proof of Evidence, submitted on 23 November 2017

<b>VIRGIN TRAINS EAST COAST DOCUMENTATION (SUPP/1)</b>	
VTEC/1	Original support letter dated 8 March 2017

## **ANNEX of Conditions**

### **CONDITIONS PROPOSED TO BE ATTACHED TO THE DEEMED PLANNING PERMISSION SOUGHT BY THE RULE 10(6) REQUEST FOR A DIRECTION TO THAT EFFECT MADE BY NETWORK RAIL**

**Interpretation:** In the following conditions -

“the Applications Rules” means the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (S.I. 2006 No. 1466);

“the COCP” means the code of construction practice to be submitted to and approved by the local planning authority under condition 7 (code of construction practice);

“the development” means the development authorised by the Order, but does not include preliminary works;

“the ES” means the Environmental Statement submitted following the scoping opinion for the development made by the Secretary of State for Transport under rule 8 of the Application Rules on 25th August 2016;

“the local planning authority” means Peterborough City Council;

“Network Rail” means Network Rail Infrastructure Limited;

“the Order” means the Network Rail (Werrington Grade Separation) Order 201[x];

“the Order limits” has the same meaning as in article 2 (interpretation) of the Order;

“the planning direction drawings” means the drawings listed in Schedule 2 to the request for planning permission submitted under rule 10(6) of the Applications Rules;

“preliminary works” means—

- i. environmental (including archaeological) investigations, site or soil surveys and the erection of fencing to site boundaries or the marking out of site boundaries;
- ii. site clearance and de-vegetation, except for the purposes of condition 8 (ecology); and
- iii. the erection of contractors’ work compounds and site offices where such works do not require excavations and/or the construction of foundations and/or piling works;

“the site” means the land within the Order limits; and

“stage” means a defined section or part of the development (excluding preliminary works) the extent of which is shown in a scheme submitted to and approved by the local planning authority pursuant to condition 3 (stages of development); and reference to a numbered stage is to the stage of that number in the approved scheme.

## **CONDITIONS**

### **Time limit for commencement of development**

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

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

### **Development in accordance with the planning direction drawings**

2. The development shall be carried out in accordance with the drawings listed in Schedule 2 of the Rule 10 (6) Request for Deemed Planning Consent.

**Reason:** *To ensure that the development is carried out in accordance with the consented design.*

### **Stages of development**

3. No development (save for preliminary works) shall commence until a written scheme setting out all the stages of the development, including timescales, has been submitted to and approved in writing by the local planning authority. The development shall thereafter proceed in accordance with the approved written scheme unless variations are agreed in writing by the local planning authority.

**Reason:** *to control the timescale for the approval of details.*

### **Tree Removal**

4. No tree removal or de-vegetation shall take place until a scheme has been submitted to and approved in writing by the local planning authority which identifies the trees to be removed and trees to be retained. Best practicable means shall be demonstrated in the plan to minimise tree loss. No tree removal shall take place except in accordance with the approved scheme, unless variations are agreed in writing by the local planning authority.

**Reason:** *In the interests of the visual appearance and biodiversity of the area in accordance with the Peterborough Core Strategy policies CS16 and CS20 and policy PP16 of the Peterborough Planning Policies DPD. This is a pre-commencement condition because it relates to tree removal which shall take place during preliminary works or at the start of the development.*

### **Tree Protection**

5. No preliminary works or development shall commence until details of tree protection measures have been submitted to and approved in writing by the local planning authority. The details shall include root protection and other arrangements to be made in accordance with BS 5837:2005 to protect the trees to be retained (in accordance with condition 4 (tree removal)). The approved details shall be adhered to throughout the period of de-vegetation and tree removal and throughout the construction period in the area to which the works relate.

**Reason:** *In the interests of the visual appearance and biodiversity of the area in accordance with the Peterborough Core Strategy policies CS16 and CS20 and policy PP16 of the Peterborough Planning Policies DPD. This is a pre-commencement condition because it relates to tree protection which shall take place during preliminary works and throughout development.*

### **Landscaping**

6. (i) No stage of the development shall commence until a written landscaping scheme for that stage has been submitted to, and approved in writing by, the local planning authority.
- (ii) The landscaping scheme shall include details of mitigation as proposed in chapter 17.2 and shown cross-hatched brown and as a dark green line on figure 17.1 (sheets 1 to 3) in the Environmental Statement and must contain details of hard and soft landscaping including;
- (a) the number, species, size and planting density of any proposed planting;
  - (b) details of cultivation, importing of materials and other operations to ensure plant establishment;
  - (c) details of hard surfacing materials of any new footpath, bridleway or road;
  - (d) details of the landscape management and maintenance regime; and
  - (e) an implementation timetable.
- (iii) The approved scheme shall be implemented in accordance with the approved details and as set down in the implementation timetables or any subsequent revisions that have been approved in writing by the local planning authority.
- (iv) Should any trees or plants die, become seriously diseased or seriously damaged, or be destroyed or removed, within a period of five years from planting, they shall be replaced with species of a similar size and type in the next available planting season.

**Reason:** *In the interests of the visual appearance and biodiversity of the area in accordance with the Peterborough Core Strategy policies CS16 and CS20 and policy PP16 of the Peterborough Planning Policies DPD. This is to secure the correct implementation of the measures identified in the Environmental Statement.*

### **Code of Construction Practice**

7.(a) The development shall not commence until a Code of Construction Practice (CoCP), including the relevant plans and programmes referred to in (b) below (which incorporates the means to mitigate the construction impacts identified by the Environmental Statement), has been submitted to and approved in writing by the local planning authority. The CoCP shall be in two parts; Part A shall provide a general overview and framework of environmental principles and management practice to be applied to the scheme along with all construction-led mitigation identified in the ES.

(b) Part B of the CoCP shall include the following plans and programmes:-

- i. An external communications programme, including a protocol for dealing with any complaints;
- ii. A pollution prevention and incident control plan;
- iii. A waste management plan;
- iv. A materials management plan including a separate soils mitigation plan;
- v. A nuisance management plan concerning dust, wheel wash measures, air pollution and temporary lighting;
- vi. A noise and vibration management plan including a construction methodology assessment;
- vii. A road condition survey for all construction routes into and out of the project area, including a road condition survey of agreed sections of the following streets: Lincoln Road, Hurn Road, Gasworks Road, Stirling Way and Coningsby Road; and
- viii. A traffic management plan.

(c) The CoCP shall be implemented in full throughout the period of the works.

**Reason:** *To mitigate construction impacts arising from the development in accordance with Peterborough Core Strategy policies CS14 & 16 and Policies PP3 & 12 of the approved Planning Policies DPD. This is a pre-commencement condition because the CoCP, due to its nature, must be implemented from the outset of the development.*

### **Ecology**

8. No preliminary works or development shall commence until an Ecological Management Plan has been submitted to and approved in writing by the local planning authority. The development and preliminary works shall only take place in complete accordance with the approved Ecological Management Plan and/or any subsequent revisions as may be approved in writing by the local planning authority. The Ecological Management Plan shall reflect the survey results and ecological mitigation and enhancement measures set out in the Environmental Statement, including the measures illustrated in figure 17.1 (sheets 1 to 3) of the ES, and must also include an implementation timetable and a five year post-completion monitoring schedule and measures to be taken if mitigation is found to be failing during this period.

**Reason:** *To mitigate against the effects the development will have on species and habitats and to enhance local bio-diversity in accordance with policy CS21 of the Peterborough Core Strategy and policy PP16 of the Peterborough Planning Policies DPD. This is a pre-commencement condition because the ecological management plan must be deployed from the preliminary works onwards.*

### **Archaeology**

9. No preliminary works or development shall commence until a programme of archaeological work including a written scheme of investigation has been submitted to, and approved in writing, by the local planning authority. Preliminary works and development shall take place in accordance with the approved scheme. The approved scheme shall be implemented in full including any post development requirements, e.g. archiving and submission of final reports.

**Reason:** *To secure the obligation on the planning applicant or developer to mitigate the impact of the scheme on the historic environment when preservation in situ is not possible, in accordance with paragraphs 128 and 141 of the National Planning Policy Framework (2012), policy CS17 and the Peterborough Core Strategy DPD (2011) and policy PP17 of the Peterborough Planning Policies DPD (2012). This is a pre-commencement condition because the archaeological work programme must be deployed from the preliminary works onwards.*

### **Means of Enclosure**

10. Within 6 months of the commencement of stage one of the development (as defined by condition 3), details of all permanent means of enclosure shall be submitted to and approved in writing by the local planning authority. The details shall include a timetable for the erection of the means of enclosure. The approved means of enclosure shall be erected in full in accordance with the approved timetable and retained as such thereafter.

**Reason:** *In the interest of public safety and visual amenity in accordance with policy CS16 of the Peterborough Core Strategy and policy PP2 of the Peterborough Planning Policies DPD.*

### **Details of footpath at Cock Lane Footbridge**

11. Details, including specification and detail of surfacing, of the footpath link from point P1A to point P5 at the east end of the new Cock Lane Footbridge, and from the end of the new ramp on the western side of the new Cock Lane Footbridge to the existing footpath (as shown on planning drawing 140365-JAC-WER-0-DR-MD-000085 Revision A03) shall be submitted to and approved in writing by the local planning authority prior to the commencement of the demolition of the old Cock Lane Footbridge. The development shall be carried out in accordance with these approved details.

**Reason:** *In the interests of the safety and integrity of the rights of way network and to be consistent with Policy PP12 of the Peterborough Planning Policies DPD.*