

# TransPennine Route Upgrade – Transport and Works Act Order Statutory Objection Update

Date: 29 January 2024

Report of: Head of Station Development

Report to: Director of City Development

Will the decision be open for call in?  Yes  No

Does the report contain confidential or exempt information?  Yes  No

Appendices B, C and D are commercially sensitive and therefore confidential under Access to information 10.4 (3)

## Brief summary

On 18<sup>th</sup> August 2023 the Council submitted a ‘holding objection’ to the Secretary of State in response to the draft TWAO, pursuant to Rule 21 of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (“Rule 21”).

Notwithstanding the Council’s support in principle for TRU and the associated benefits, in order to meet the statutory procedural requirements a ‘holding objection’ was submitted to the Secretary of State in order to address key points of detail.

On 15<sup>th</sup> November 2023 Full Council approved the submission of a formal objection to specific elements of the TWAO pursuant to s239 of the Local Government Act 1972 and delegated authority to the Director of City Development, in consultation with the Executive Member for Sustainable Development and Infrastructure, to continue negotiations with relevant stakeholders to seek to agree the withdrawal of the objection should sufficient agreement on the issues raised be reached.

Following negotiations with Network Rail, with the exception of the objection at Peckfield Level Crossing and a small number of matters that remain unresolved as per the Statement of Common Ground at appendix A, the Council is in a position to withdraw the original objection in line with the aforementioned delegation.

## Recommendations

In accordance with the Full Council resolution of 15<sup>th</sup> November 2023 approval is sought from the Director of City Development

- a) To withdraw the formal objection on the agreed matters in the Statement of Common Ground (as per Appendix A)

- b) To note the issues that have not been resolved, held within the Council's Statement of Common Ground (Appendix A) and may be identified as 'matters' by the Inspector to be determined at the public inquiry scheduled to commence on 27<sup>th</sup> February 2024.
- c) To endorse the Statement of Common Ground.
- d) To approve entering into the Environmental Agreement (appendix C) and Highways Agreement (appendix B) on the terms set out in the report.
- e) To approve the revised Deemed Planning Conditions (appendix D)
- f) To enter into a Funding Agreement with Network Rail to meet the cost of officers supporting the implementation of the TWAO.

## **What is this report about?**

- 1 The Transpennine Route Upgrade (TRU) is a multi-billion pound programme by Network Rail improving connectivity between Manchester, Huddersfield, Leeds and York. It aims to deliver a high-performing, reliable railway, bringing more frequent, more reliable, faster and greener trains to the region. The overall benefits of the TRU include improved journey times, improved passenger experience, more seats, more freight capacity, and reduced emissions, as well as added social and economic value by providing opportunities such as apprenticeships and working with local businesses. Given the forecast benefits that will accrue from TRU, the Council supports the strategic intent of the scheme.
- 2 In order to deliver elements of the scheme Network Rail submitted the TWAO to the Secretary of State for Transport on the 17<sup>th</sup> July to seek permission to construct components of TRU east of Leeds, which extends from Kirkgate to Micklefield.
- 3 The TWAO seeks authorisation to carry out upgrades and reconstruction to the existing railway and electrification works between Leeds and Micklefield. The TWAO also permits Network Rail to acquire land, and to take responsibility for a number of highway and planning powers affecting the Council's statutory functions.
- 4 Although the Council recognises and supports, in principle, the benefits of TRU, the strategic importance, and the ongoing partnership working with Network Rail, and notwithstanding the detail submitted as part of the TWAO, there are a number of specific matters where the Council required further information or mitigations in order to be satisfied that the scheme can be implemented in a way that mitigates the impact on local communities and on the Council and its statutory functions.
- 5 On 21 June 2023 Executive Board approved the approach to the Council's response to the TWAO and submitted a holding objection under s239 of the Local Government Act 1972, which requires a Full Council resolution to ratify a full objection to the TWAO. Submission of the holding objection was considered to be the appropriate mechanism to allow the Council to continue negotiations until such ratification could be provided by Full Council. This was a statutory procedural requirement to ensure the Council complies with its statutory duties and to ensure that the Secretary of State can properly consider the Council's objection.
- 6 On 15<sup>th</sup> November 2023 Full Council approved the submission of a formal objection to specific elements of the TWAO pursuant to s239 of the Local Government Act 1972 and delegated authority to the Director of City Development, in consultation with the Executive Member for Sustainable Development and Infrastructure, to continue negotiations to seek to agree the withdrawal of the objection should sufficient agreement on the issues raised be reached.

- 7 The Council has worked with Network Rail to make changes to the Order where there were inaccuracies, negotiate mitigations in respect of environmental and highways objections and revise the deemed planning permissions / conditions to resolve and minimise the impact of the scheme.
- 8 The Order has been amended to mitigate the Council's objection on grounds of inaccuracy the Council has until 5<sup>th</sup> February to respond to confirm that the amendments are acceptable, however no immediate concerns have been raised by the multidisciplinary review team.
- 9 The Council and Network Rail have negotiated an Environmental Agreement (Appendix C) which mitigates the objections the Council raised in respect of biodiversity net gain, protection of protected species and veteran trees, appropriate controls for habitats and trees prior to and during site set up as well as land restoration.
- 10 The Council and Network Rail have negotiated Deemed Planning permissions as set out at Appendix D and recommended by the Council's Planning Officers.
- 11 The Council and Network Rail have negotiated a Highways Agreement (Appendix B) which mitigates the objections the Council raised in respect of highways issues including establishing a joint Highways Working Group which will be responsible for reviewing programme of approvals, detailed designs, review and approvals of requests for access to the highway and traffic management.
- 12 The Council has, in accordance with the resolution of full council continued to work with Network Rail the promotor to now reach a position to withdraw in part its objection on many issues raised. This is now noted in the Statement of Common Ground at appendix A. However, two matters remain unresolved those being Peckfield Level Crossing and Leeds Minster conservation area to which the objection is narrowed and evidence is to be presented to the Inspector at the forthcoming public Inquiry.
- 13 The inspector has requested that the Council put forward witnesses to speak on the merits of the scheme in regard to planning policy and conservation/heritage.
- 14 On taking legal advice, it is considered given the narrow issues now in dispute, the Council proposes to submit evidence regarding its concerns for Peckfield Level Crossing and present this by way of Proofs of Evidence to allow the Inspector to be able to consider the issues of concern for the Council; namely
  - a) The safety of the alternative diversion routes for users taking into consideration the recent amendment to the Highway code in respect of horse riders, the conflict of vehicles and pedestrians on a narrow access road
  - b) The lack of detail in respect of the construction of the alternative diversion across the Recreation Ground which it is understood would result in maintenance obligations for the Council.
- 15 The Council remains open to discussions regarding mitigations that could be provided at Peckfield Level Crossing.
- 16 The Inspector may call forward witnesses to speak at the Public Inquiry and depending on progress the Council may seek a roundtable discussion on the technical issues.

### **What impact will this proposal have?**

- 17 The TWAO will impact on a number of the Council's statutory functions including highways and planning as well as physical impact on the Council's land and further information and negotiation is required in order to mitigate these impacts as far as possible.

- 18 TRU and the works proposed as part of the TWAO will have impacts on communities, particularly during the construction of the scheme and associated works and Network Rail has already commenced regular communications with residents to explain what they are doing when and the impact that the work will have in terms of noise, light and vibration.
- 19 It is recognised that the whole TRU Project will deliver wider benefits to Leeds City Region by providing improved connectivity, more frequent, faster, greener trains and running on a better, cleaner, and more reliable railway. Only 26% of the rail network in West Yorkshire is currently electrified.
- 20 It is envisaged that the Council will continue to work collaboratively with Network Rail to support the implementation of the TWAO and has agreed with Network Rail that a Funding Agreement will be entered into to enable Network Rail to meet the cost of the Council officers time supporting this work.

### How does this proposal impact the three pillars of the Best City Ambition?

- Health and Wellbeing       Inclusive Growth       Zero Carbon

- 21 It is acknowledged that TRU will deliver against the Best City Ambition providing benefits for the wider region.
- 22 TRU's planned outcomes by the Department for Transport are:
- better punctuality: infrastructure to support a 50% reduction in average minutes late for passenger services (compared with service performance before the COVID-19 pandemic).
  - enhanced passenger capacity: one additional fast or semi-fast passenger service and one additional stopping passenger service per hour between Manchester and Leeds.
  - faster journeys: a 63- to 66-minute planned journey time between Manchester and York on the end-state route, down from 74 minutes on pre-COVID-19 services (saving up to 11 minutes).
  - improved environment: up to 87,000 tonnes a year possible reduction in carbon emissions from electrification and a shift from other modes of transport to rail.
  - facilitation of Northern Powerhouse Rail: works to facilitate the future Northern Powerhouse Rail Programme.
- 23 It is recognised how investment in rail infrastructure will positively impact the Best City Ambition promoting active travel, improved public transport connectivity and help to connect people with opportunities. The Council has supported the development of the TRU over the last decade and the investment is welcomed to address the existing constraints on the route both in terms of capacity and performance.
- 24 Investment is essential to encourage mode shift from road to rail by improving performance and electrification of the line will result in low carbon transport infrastructure.

### What consultation and engagement has taken place?

Wards affected: Hunslet & Riverside, Little London & Woodhouse, Burmantofts & Richmond Hill, Cross Gates & Whinmoor, Garforth & Swillington, Harewood, Kippax & Methley, Temple Newsam

Have ward members been consulted?       Yes       No

- 25 Network Rail carried out their own consultation in October/ November 2022, with both statutory consultee and wider public stakeholders. Network Rail additionally carried out a ward member

briefing inviting affected ward members in December 2022 and consultation with Kippax and Methley Ward Members and Executive Member for Infrastructure and Climate on 22nd May relating to specific issues at Micklefield.

- 26 All Ward Members whose wards are impacted by the proposals were consulted on 12 May 2023 regarding the latest position as part of the Executive Board process.
- 27 Affected Ward Members were also contacted on 17<sup>th</sup> July 2023 to notify them of the submission of the TWAO.
  - a) On the 9<sup>th</sup> August 2023 affected Ward Members were consulted advising them on our proposed response. No comments were received.
  - b) Subsequently Ward Members have sought additional information and meetings with Network Rail have been arranged or responses from Network Rail provided on specific issues such as the potential impact of the scheme on residents at Austhorpe Lane.
- 28 Comments previously received from Ward Members were reflected in our response to the Secretary of State for Transport TWAO.
- 29 The Executive Member for Sustainable Development and Infrastructure was consulted on 30<sup>th</sup> January 2024 in respect of the content of this report and supported the approach.
- 30 The Chief Officer for Highways and Consultation has been consulted on overall approach to responding to the TWAO including the Highways Agreement and has confirmed his support.
- 31 The Chief Planning Officer has been consulted on the overall approach to responding to the TWAO including the amended Deemed Planning Permissions and Environmental Agreement and has confirmed his support.

### **What are the resource implications?**

- 32 A multidisciplinary team across the Council has responded to the TWAO including officers from Planning, Highways, Flood Risk Management, Public Rights of Way, Parks and Countryside, Contaminated Land, Asset Management and Regeneration, Building Conservation, Nature Conservation, Arboriculture, Legal Services, Environmental Health, and this team will continue to work with Network Rail.
- 33 External legal advisors and chartered surveyors have also been appointed to advise council officers and assist with negotiations.
- 34 The Council's Legal advisor costs for both the Environmental Agreement and Highways Agreement will be met by Network Rail under the agreements. The Council's officer costs associated with negotiating the agreements are being met through the Planning Performance Agreement for TRU East between the Council and Network Rail.
- 35 When and if the TRU TWAO from Kirkgate to Micklefield is ratified Network Rail and the Council will enter into a Funding Agreement to cover the Council's officer and advisor costs supporting the implementation of the TWAO. The Funding Agreement is the standard Network Rail Funding Agreement and reflects the approach taken by Network Rail to Kirklees Council for the TRU programme where Network Rail covers the cost of officer time.
- 36 The Council will be required to meet the cost of developing Proofs of Evidence and the cost for this is £5,000 plus VAT to be met from the Station Development budget.

### **What are the key risks and how are they being managed?**

- 37 The key risks are:
  - a) Agreements not entered into resulting in a weakened position for the Council. The Council has agreed a Statement of Common Ground with Network Rail which will be shared with the Planning Inspector and therefore protects the Council's position.

- b) If agreement cannot be reached with Network Rail on the issues submitted as part of the Council's representation to the TWAO prior to public inquiry it could require the Council to make representation at an inquiry, resulting in resource implications. This particularly applies in respect of the Peckfield Level Crossing closure and alternative solution. The Council proposed to submit Proofs of Evidence in respect of this issue but does not propose providing an officer to speak at the Public Inquiry unless required by the Planning Inspector in which case the Council proposes to seek a roundtable discussion on the issue.
- c) The Planning Inspector has requested that Planning Policy and Conservation officers appear at the public inquiry to set out their evidence from the Council's Statement of Case in respect of the heritage impact on the Minster of the proposed TRU works and the proposed treatment of the demolition and rebuilding of listed bridges along the route. There is a risk in respect of resourcing this that other work has to be postponed.
- d) There is a risk that the Council will not be successful in its objection to the alternative footpath and bridleway diversionary routes to replace the Peckfield level crossing. If this is the case the agreed deemed planning conditions require Network Rail to gain approval from the Council in respect of the width and surface of the diversion route across the Micklefield Recreation Ground.

### **What are the legal implications?**

- 38 Once made, the TWAO will be a secondary piece of legislation (i.e. "a Bill" for the purposes of section 239 of the Local Government Act 1972.) It is for that reason that the procedure set out in section 239 Local Government Act must be followed for a formal objection to be submitted in response to the application.
- 39 As Full Council endorsed the Council's holding objection with a full resolution, and therefore submitted a formal objection to specific elements of the TWAO pursuant to s239 of the Local Government Act 1972 then the Secretary of State will deem the response as an objection to the TWAO and on that basis the Council will have the right to present written or oral evidence at a public inquiry to be held in February 2024. As per the resolution, officers have sought to reach agreement on all aspects of the areas of concern. The issues have now narrowed and written evidence will be presented to the Inquiry for the Inspector to consider.
- 40 Appendices B, C and D are confidential under Access to Information paragraph 10.4 (3) as they reflect ongoing commercial negotiations between the parties which would prejudice the Council's position were they made public.

### **Options, timescales and measuring success**

#### **What other options were considered?**

- 41 Informal consultation and negotiation has continued with Network Rail since Autumn 2022 in order to negotiate on issues prior to the 42 day statutory period for responses.
- 42 The option not to respond to the TWAO or work collaboratively with Network Rail would expose the Council to risks of greater disruption to communities and less mitigation where there are negative impacts associated with the works.
- 43 The option to simply make representation to the TWAO would not protect the Council's statutory functions and ensure the Council's concerns are further negotiated upon.

- 44 The option to not negotiate prior to the Public Inquiry would have resulted in a weakened position for the Council as well as additional cost and resource implications.
- 45 The option to negotiate mitigations with Network Rail through the formal TWAO process and through the development of Environmental, Highways agreements as well as changes to the Order and Deemed planning consents and a Funding Agreement mitigates the risk of the impact of the works on the Council's statutory processes and the communities impacted.

#### **How will success be measured?**

- 46 Negotiation with Network Rail resulting in the majority of the Councils objections being withdrawn prior to public inquiry.
- 47 Collaborative working to ensure minimal impacts and disruption to local communities as well as avoiding conflict with other committed works.
- 48 Working with Network Rail to ensure the benefits of the scheme are realised.

#### **What is the timetable and who will be responsible for implementation?**

- 49 Network Rail are responsible for the implementation of this scheme. It is anticipated that works utilising the TWAO powers will begin in 2024. However, these timescales are currently indicative, and Network Rail will also require access to site compounds ahead of this.
- 50 The Senior Project Officer, Station Development will coordinate the implementation of the TWAO from the Council's perspective ensuring that the Council and Network Rail meet the commitments set out in the various agreements.

#### **Appendices**

- Appendix A – Statement of Common Ground
- Appendix B – Highways Agreement - confidential
- Appendix C – Environmental Agreement - confidential
- Appendix D – Deemed Conditions - confidential
- Appendix E – Equality diversity cohesion and integration screening form

#### **Background papers**

None.