

# Transpennine Route Upgrade – Transport and Works Act Order Representation

Date: 15 November 2023

Report of: Director of City Development

Report to: Full Council

Will the decision be open for call in?  Yes  No

Does the report contain confidential or exempt information?  Yes  No

## Brief summary

On the 17th July 2023 Network Rail formally submitted a Transport and Works Act Order application (The Network Rail Leeds to Micklefield Enhancements Order) (TWAO) to the Secretary of State for Transport, for part of the Transpennine Route Upgrade (TRU) east of Leeds. The TWAO seeks authorisation to construct, enhance, operate, and maintain elements of works on the Transpennine line between Leeds and Micklefield.

If granted, the TWAO will be a piece of secondary legislation that will provide a range of powers to Network Rail to construct and operate the development. The powers provided by the TWAO will override other relevant legislative provision relating to a number of planning and highways powers as a result of the disapplication of legislative provisions including but not limited to deemed planning permission, listed building consents, felling and lopping of trees, altering of streets, temporarily and permanently stop up and/or divert, footpaths and highways and power to execute works.

Following the submission of the TWAO by Network Rail, the Council had a statutory 42-day period to submit its response to the Secretary of State for Transport.

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 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").

In order to meet statutory timescales set out in Rule 21 ), the Executive delegated authority to the Director of City Development to submit a "holding objection") to the application to ensure the timescales of Rule 21 are met, until the objection can be considered by Full Council in accordance with the requirements of section 239 of the Local Government Act 1972 and a decision to submit a formal objection if approved.

In light of Network Rail's TWAO submission to the Secretary of State on 17<sup>th</sup> July 2023, this item is to enable Council to debate the endorsement of the Council's response to the TWAO submission, in order for the objection to be ratified and for Officers to best represent and uphold the Council's interests, if necessary at public inquiry, as required by statutory requirements.

## Recommendations

Members of Full Council are requested to:

- a) Note the Council's overall strategic support for the outcomes proposed from the Leeds to Micklefield element of the TRU.
- b) Note the contents of the report and the 'holding objection' (as per Appendix A) submitted by the Council to the Secretary of State in response to Network Rail's application for the TWAO and justifications for this.
- c) Note the recommendation of Executive Board of 18<sup>th</sup> October 2023 for Full Council to approve the submission of a formal objection pursuant to s239 of the Local Government Act 1972.
- d) Approve the submission of a formal objection to specific elements of the TWAO pursuant to s239 of the Local Government Act 1972.
- e) Delegate 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.

## 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 On 18th November 2021 the Integrated Rail Plan for the North and Midlands was published. One of the commitments in the Plan was for the delivery of the Transpennine Route Upgrade (TRU). Since the Plan was published Network Rail has been remitted to deliver the programme of investment and has developed a consenting strategy which provides for a series of discrete Transport and Works Act Orders (TWAO) to secure delivery of the wider TRU programme. It is understood that the only part of the IRP to be cancelled is HS2 Phase 2. The commitment to deliver TRU remains and Network North document confirms the commitment to deliver the core Northern Powerhouse Rail proposals which were referenced in the IRP.
- 3 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.
- 4 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.
- 5 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 requires 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.

- 6 The Council's key concerns and response to the Secretary of State for Transport submitted on 18<sup>th</sup> August 2023 can be found in Appendix A.
- 7 The response was submitted as a holding objection due to the requirement under s239 of the Local Government Act 1972, that a Full Council resolution would be required 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 is 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.
- 8 The procedure for dealing with TWAO's is explained in Appendix D. A briefing to Members explaining the procedural elements will be held on 15<sup>th</sup> November, with a subsequent virtual meeting taking place on 21<sup>st</sup> November.
- 9 Approval from Full Council to submit a full objection to the Secretary of State for Transport will allow the Council to:
  - a) Continue negotiations with Network Rail in respect of any outstanding issues set out the holding objection, with a view to reaching agreement ahead of a public inquiry, in line with delegated authority to the Director of City Development
  - b) Enable officers to continue to best represent and uphold the Council's interests.
  - c) If a public inquiry is held, it will allow Officers to participate in that process, if required, to ensure the Council's interests are upheld.
- 10 The Council has a number of specific concerns in relation to the draft TWAO which are set out below. These also summarised in detail in Appendix A and in the Executive Board report [v0.8](#) of 18<sup>th</sup> October 2023.
- 11 Specific concerns in relation to the draft TWAO which are summarised below:
  - i. Town planning implications
  - ii. Highways implications
  - iii. Land acquisition
  - iv. Public Rights of Way stopping up and diversions
  - v. Communications
- 12 Town planning implications – The TWAO seeks several planning powers/consents from the Secretary of State for transport which have the ability to override the Council's statutory functions. Specific areas of concern are listed below.
  - a) Network Rail are applying for Listed Building Consent in parallel to the TWAO application. The decision on these proposed works is to be made by the Secretary of State's Planning Inspector, therefore eliminating the Council's statutory duties.
  - b) A final position is still to be reached with Network Rail regarding the Environmental Agreement, which addresses issues such as a commitment to 10% bio-diversity net gain within Leeds. Protocols and mitigations regarding land restoration following associated works also requires further agreement to ensure impacts can be minimised wherever possible.
  - c) The Planning Statement that Network Rail has prepared omits any reference to the Aire Valley Leeds Area Action Plan, and also makes errors when identifying the relevant policies of other Local Plan documents.

- i. Network Rail also need to ensure they are working to current standards in terms of planning proposals and any additional planning permission required. A holding objection is required to ensure any material differences between current Adopted Local Plans and those referenced by Network Rail can be addressed where required.
- ii. Deemed planning permission – This means that for certain areas and works the TWAO will effectively provide planning permission with planning conditions having been discharged or limited consultation being undertaken with the Planning Authority. Network Rail are requesting planning permission from the Secretary of State for elements of the scheme as part of the TWAO. Further negotiation is required in relation to the conditions and mitigations attached to these works and the holding objection is the appropriate mechanism to allow these negotiations to take place.
  - (1) For associated works that fall outside of the deemed conditions, the same or equivalent mitigations are required to ensure a holistic approach across the scheme. The holding objection will allow Council Officers to continue negotiation with Network Rail regarding additional conditions to be attached to the deemed planning permission to ensure mitigation wherever possible.
- d) There is currently no requirement for Network Rail to supply land contamination reports to the Council for review and approval under the TWAO.
  - i. However, the Council requires this information to ensure that land contamination risks have been adequately assessed and remediated where required prior to scheme areas becoming operational to ensure that there is no risk to operational end-users (principally members of the public).
  - ii. Network Rail have confirmed that where remediation is required for any part of the scheme, the Council shall be consulted with to agree the remediation strategy. All Remediation Strategies and Verification reports shall be sent to LCC as well.
  - iii. However, Network Rail have not confirmed that they will provide reports for all supplementary ground investigations proposed to be undertaken. The Council will need copies of these ground investigation reports so that the Council can review them to be assured that the appropriate land contamination risk assessment has been undertaken for each supplementary ground investigation.
  - iv. Further negotiation is required in order to ensure the Council is provided with the appropriate information.

### 13 Highways implications

- i. The TWAO results in the disapplication of legislative powers, and therefore the process for approval of works such as, to highways, land and structures needs to be agreed to ensure appropriate mitigation as far as is practicable. As well as ensuring that Network Rail carry out works to current standards where feasible.
- ii. Network Rail has agreed to enter into a Highways Agreement which endeavours to address these issues, but as yet the agreement has not been fully developed thus requiring the holding objection to ensure ongoing negotiation.
- iii. Additional negotiation and clarity is required regarding maintenance and ownership of structures and ancillary structures to be addressed in the Highways Agreement. Issues regarding highway condition surveys and making good any damage also needs to be negotiated to prevent unnecessary liability and costs for the Council.
- iv. A number of the proposed accesses to works and compounds proposed by Network Rail appear to be inappropriate. Further negotiation is required regarding these and concerns surrounding works that would usually fall under a s278 agreement. Such effects are also likely to be addressed within the Highways Agreement.

- v. Clarification has been sought from Network Rail regarding the definition of stopping up used within the documentation. There is also a lack of detail regarding proposed diversions and traffic management plans. Without this the Council is not able to properly access the impacts of the proposals Network Rail are putting forward.
- vi. A number of sites were identified as potential flood risk sites. The process for agreeing mitigations is likely to be dealt with in the side agreement. A holding objection allows the opportunity for such negotiations on mitigations to take place.

#### 14 Public Rights of Way –

- i. Further negotiation is required regarding the proposed diversions following the closure of level crossings. There is a further need for appropriate diversions to meet current standards from a legal and accessibility perspective and in particular the Council has concerns about the closure and proposed diversion for the Peckfield Level Crossing. The TWAO documentation to date does not satisfy this requirement and further negotiation is required with Network Rail.

#### 15 Impacts and Interfaces with other schemes

- i. There are a number of locations which conflict with a number of LCC proposed schemes. The holding objection allows for negotiations to take place to ensure mitigations are put in place where required. Those identified to date include:
  - (1) Kirkgate and Penny Pocket Park – Works have potential to conflict with City Centre Loop scheme planned for 2024/2025.
  - (2) Wykebeck Avenue/ Waterloo Sidings – Network Rail have proposed a compound on this land which conflicts with planning permission for the development of 147 houses. No consideration of the temporary impact has been made in the Planning Statement or other supporting documents by Network Rail.
  - (3) Green Park – This site is pending transfer to LCC ownership and further negotiation and legal advice is required on the impact to LCC.
  - (4) Manston Lane – Access to a Road Rail Access Point is required by Network Rail. This has potential to conflict with future proposed use of this land.
  - (5) Crawshaw Woods/ Brown Moor - This site is proposed for allocation for employment uses through the Site Allocations Plan (and examination hearings on this are ongoing) and a planning application for employment uses on the site is also pending consideration.
    - (a) This TWAO is already resulting in a loss of general employment land at Phoenix Avenue and cumulative impact of this needs to be considered. Whilst the temporary loss of land at Phoenix Avenue is not being specifically objected to, following the receipt of further clarification/justification on this proposal, it remains that this will further reduce the supply of general employment land available for development in the Leeds District. This needs to be taken into account as context to the potential further loss of land proposed here. The Council requires further information from Network Rail to ensure other works and schemes are not unduly impacted.

#### 16 Land acquisition

- i. The TWAO does not yet account for all land required to carry out the necessary works nor does it reference all relevant sections of highway required for elements such as temporary stopping up and in some instances such as New Market Approach it is not clear why TRU would have a permanent land take requirement and discussion is ongoing to this regard. There is also a lack of detail in the TWAO regarding the timeframes for temporary compounds. This makes assessing the impact (and any

concerns arising from this) challenging as it is not clear whether it will be a short term or long-term impact and a commitment is being sought by Network Rail to provide this information at regular intervals.

- ii. A number of compounds also impact green belt land and restoration of the land on completion of the works is unclear. Without the above information the Council is not able to correctly assess the impacts of the scheme.
- iii. A holding objection was therefore submitted to preserve the Council's position pending further negotiation.

#### 17 Communications

- i. There remains a lack of detail regarding Network Rail's approach to communication before and during the works. Further information has been requested following feedback from Ward Members and meetings with Network Rail. However, additional information is yet to be provided. Such information is required to ensure matters such as highways diversions, works, impacts on residents is disseminated appropriately and that residents will have clear communication routes to raise concerns.

#### 18 Equality

- i. Network Rail has a statutory duty to ensure works comply with the Equality Act 2010. The TWAO documentation does not currently meet these requirements in some areas and further clarity is required to ensure this requirement is met.

19 It is envisaged that the Council will work collaboratively with Network Rail in the run up to the public inquiry with a view agreeing as many of these issues as possible. Where that is not possible in advance of the public inquiry, the Council will collaborate with Network Rail to produce a Statement of Common Ground to address many of these issues. Any remainder of the issues that have not been resolved will remain within the Council's Statement of Case and may be identified as 'matters' by the Inspector to be determined at the public inquiry. It should be noted that the inquiry timetable has not yet been issued by the Secretary of State.

20 Future opportunities to reach agreement with Network Rail are considered to be;

- a) Working with Network Rail's legal representatives to negotiate any side agreements outside of the TWAO process in order to protect the operational capability of affected Council functions.
- b) Consider Network Rail's response to the Council's "holding objection" and work with Network Rail to ensure issues and concerns are dealt with expediently and effectively to reduce the necessity for attendance at the public inquiry which is in the best interests of the Council and Network Rail.
- c) Working with Network Rail to agree additional planning conditions to be attached to any deemed consent including details of what to include in any specific management plans as part of a planning condition. In respect of this point, Network Rail may be required to obtain Council agreement to a Construction Traffic Management Plan and Code of Construction Practice. Officers are keen to seek agreement in respect of the specific content of any such plans to ensure issues raised are addressed and rectified. In addition to this, Officers will work with Network Rail to produce any other technical reports and assessment that may be required.

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

21 The TWAO will impact on a number of the Council's statutory functions and further information and negotiation is required in order to mitigate these impacts as far as is possible.

- 22 TRU and the works proposed as part of the TWAO will have impacts on communities, highways, planning, and Council land, particularly during the construction of the scheme and associated works.
- 23 It is recognised that the wider 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.
- 24 It is envisaged that consultation and negotiation with Network Rail will continue as we jointly work through the outstanding issues to mitigate the disruption of the works on communities.

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

Health and Wellbeing

Inclusive Growth

Zero Carbon

- 25 It is acknowledged that TRU will deliver against the Best City Ambition providing benefits for the wider region.
- 26 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.
- 27 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.
- 28 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.
- 29 Further negotiation is required relating to Network Rail's commitment to Biodiversity within Leeds. Mitigations with regards to ecological and arboricultural impacts, such as land restoration proposals also needs further clarification to ensure its alignment with the Best City Ambition.

### 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

- 30 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.
- 31 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.
- 32 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.
- 33 Comments previously received from Ward Members have been reflected in our proposed response to the Secretary of State for Transport.

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

- 34 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 negotiate with Network Rail.
- 35 External legal advisors and chartered surveyors have also been appointed to advise council officers and assist with negotiations.

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

- 36 Primary risks and concerns are further outlined in appendices A.
- 37 The key risks are:
- a) If Full Council does not endorse the holding objection as a formal objection, it will be classified by the Secretary of State as a representation. There would then be a risk that the Council will not be in a strong position to negotiate with Network Rail on the issues set out in Appendix A.
- 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.
- c) That there are issues which have not yet been identified due to errors in the TWAO and the short timescales for reviewing and providing representation. There are also elements of the works to the TWAO that fall outside of the TWAO. Therefore, the holding response has been worded to enable, wherever possible, additional issues to be raised by the Council, as required, as negotiations progress.

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

- 38 As this is a decision of Full Council, the matter is not eligible for Call In.
- 39 Pursuant to Rule 21 of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006, the Council has submitted a 'holding objection' to Network Rail's application for the TWAO for the Leeds to Micklefield section of the Transpennine Route Upgrade.

- 40 In order to meet the timescales set out in Rule 21 Executive Board delegated authority to the Director of City Development to submit a holding objection to the application to ensure the timescales of Rule 21 are met, until the objection can be considered by Full Council at its next meeting in accordance with the requirements of section 239 of the Local Government Act 1972.
- 41 The 'holding objection' was submitted in accordance with the Executive Board resolution of 21 June 2023, further information is provided in Executive Board Report 21st June 2023 - Transpennine Route Upgrade East - TWAO [v1.5](#). This was submitted due to very tight timescales set out in the legislation and recognising that if agreement could not be reached, there is a requirement of Full Council to discharge its governance obligations pursuant to section 239 of the Local Government Act 1972 and for a decision to submit a formal objection which requires approval by Full Council.
- 42 Section 239 of the Local Government Act 1972 provides that where a local authority resolve to an objection to a Bill, that any resolution shall be passed "by a majority of the whole number of the members of the authority at a meeting of the authority", which was also noted in correspondence the council received from the DfT dated 29<sup>th</sup> August 2023. Therefore 50 or more votes in favour of the resolution are required.
- 43 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.
- 44 The 'holding objection' made it clear that a formal objection, if approved by Full Council, will be submitted as soon as the necessary approval has been secured.
- 45 Where an authority is opposing a bill, it is a legislative requirement of section 239 of the Local Government Act 1972 to provide notice of the meeting and its purpose. Advertisement is required in one or more local newspapers 10 days prior to ratification from Full Council. The requisite notice was published on 19<sup>th</sup> October 2023.

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

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

- 46 Informal consultation and negotiation has been ongoing with Network Rail since Autumn 2022 in order to negotiate on issues prior to the 42 day statutory period for responses.
- 47 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.
- 48 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.
- 49 If Full Council decides to endorse the Council's holding objection with a full resolution, 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 oral evidence at a public inquiry to be held in the New Year and other associated benefits as listed above.

- 50 If Full Council is minded not to endorse the holding objection, the Secretary of State will treat the Council's response as a representation but will not afford the ability to attend the public inquiry and provide evidence in person or afford the other benefits as listed above. The detail of the holding objection would, however, still be considered by the inspector for the inquiry.
- 51 The public inquiry is predicted to take place in January 2024, however, the Secretary of State has not published the formal inquiry timetable to date.

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

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

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

- 55 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.
- 56 Coordination of the Council's response will be managed by the Senior Project Officer, Station Development.

### **Appendices**

- Appendix A – LCC Holding Objection
- Appendix B – Equality diversity cohesion and integration screening form
- Appendix C – Executive Board Report 18<sup>th</sup> October 2023
- Appendix D – TWAO Procedure

### **Background papers**

None.