

Transpennine Route Upgrade – Transport and Works Act Order Representation

Date: 18 October 2023

Report of: Director of City Development

Report to: Executive Board

Will the decision be open for call in? Yes No

Does the report contain confidential or exempt information? Yes No

Brief summary

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.

On the 17th July 2023 Network Rail formally submitted a Transport and Works Act Order (TWAO) to the Secretary of State for Transport, for TRU east of Leeds. The TWAO seeks authorisation to construct, enhance, operate, and maintain works on the Transpennine Line between Leeds and Micklefield. The TWAO also allows for the demolition, reconstruction and construction of overbridges and highways as well as, interests in and rights over land, extinguish rights and rights to use land temporarily for the purposes of the works authorised by the Order and associated works.

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, in addition to "deemed planning" consent. 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.

The Council had a statutory 42-day period to submit its response to the Secretary of State for Transport in relation to the TWAO.

Notwithstanding the Council's support in principle for TRU and the associated benefits, a 'holding objection' was submitted to the Secretary of State in response to the draft TWAO. A holding objection is the appropriate mechanism for continuing negotiations and to address specific and local issues that require resolution. Additionally, the holding objection allows the council to reserve its position on specific issues until a resolution has been sought on the outstanding issues.

Recommendations

Members of Executive Board are recommended to;

- a) Note the Council's overall strategic support for the outcomes proposed from the Transpennine Route Upgrade.
- b) Note the contents of the report and the 'holding objection' submitted by the Council to the Secretary of State in response to Network Rail's application for a Transport and Works Act Order (TWAO) and justifications for this.
- c) Recommend to Full Council to approve the submission of the formal objection to specific elements of Network Rail's Transport and Works Act Order (TWAO) for the Leeds to Micklefield part of the Transpennine Route Upgrade pursuant to s239 of the Local Government Act 1972.
- d) Recommend to Full Council to delegate authority to the Director of City Development to continue negotiations with relevant stakeholders to seek to agree the withdrawal of the objection should sufficient agreement on the issues raised be reached, in consultation with the Executive Member for Sustainable Development and Infrastructure.
- e) Approve that this decision is exempt from Call In pursuant to paragraph 5.1.3, Part 4 of the Constitution on grounds of Urgency.

What is this report about?

- 1 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.
- 2 In order to deliver elements of the scheme Network Rail submitted a Transport and Works Act Order (TWAO) to the Secretary of State for Transport on the 17th 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 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.

- 5 This report sets out the Council's key concerns and response (see appendix A) to the Secretary of State for Transport submitted on 18th August 2023.
 - a) 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.
- 6 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 speak participate in that process, if required, to ensure the Council's interests are upheld.
- 7 The Council has a number of 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
- 8 Further details regarding these concerns are set out below:

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) Public Open Space – The TWAO states that there is no requirement to provide exchange land at Penny Pocket Park as the acquisition does not exceed 250 square yards. Therefore, the provision of land in exchange is unnecessary and that a request for a certificate under the Acquisition of Land Act 1981 will be made to the Secretary of State (by Network Rail) to confirm acquisition of the open space land that is proposed. LCC's original calculations demonstrated the agglomeration of land to be taken to exceed this threshold. Since then, further negotiation has taken place on this matter and clarity has been provided regarding the calculations of the area required, along with confirmation that the threshold is not exceeded. The holding objection allowed the time for this clarification to be sought and the original objection on this specific issue will be withdrawn once Network Rail's formal response has been received.
- b) 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.
- c) To date no written commitment to 10% bio-diversity net gain within Leeds has been made by Network Rail. Protocols and mitigations regarding land restoration following associated works also requires further agreement to ensure impacts can be minimised wherever possible.
- d) 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.
- e) 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.
- f) 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 side 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 side 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 side 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.

9 Public Rights of Way –

- a) 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.

10 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.

b) 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. There is 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.

- 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.

c) 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.

d) 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.

11 Further information regarding specific and additional matters where further negotiation is required can be found in appendix A and 1.

What impact will this proposal have?

12 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 feasible.

13 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.

14 It is recognised that TRU 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.

15 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

16 The Transpennine Route Upgrade will deliver against the Best City Ambition providing benefits for the wider region.

17 The Transpennine Route Upgrade planned outcomes by the Department for Transport are:

- a) better punctuality: infrastructure to support a 50% reduction in average minutes late for passenger services (compared with service performance before the COVID-19 pandemic).
- b) enhanced passenger capacity: one additional fast or semi-fast passenger service and one additional stopping passenger service per hour between Manchester and Leeds.

- c) 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).
 - d) 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.
 - e) facilitation of Northern Powerhouse Rail: works to facilitate the future Northern Powerhouse Rail Programme.
- 18 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.
- 19 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.
- 20 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

- 21 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 Micklegate.
- 22 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.
- 23 Affected Ward Members were also contacted on 17th July 2023 to notify them of the submission of the TWAO.
- a) On the 9th August 2023 affected Ward Members were consulted advising them on our proposed response. No comments were received.
- 24 Comments previously received from Ward Members have been reflected in our proposed response to the Secretary of State for Transport as per appendix 1.

What are the resource implications?

- 25 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.

26 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?

27 Primary risks and concerns are further outlined in appendices A and 1.

28 The key risks are:

- a) If Full Council does not endorse the holding objection resulting in a weakened position for the Council to negotiate with Network Rail. A Full Council approval will need to be sought to object and allow further negotiations to take place.
- b) Agreement cannot be reached prior to Full Council or a public inquiry and the objections withdrawn beforehand under the City Development delegation scheme.
- c) 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. Therefore, requiring Council representation at an inquiry resulting in resource implications.
- d) Risk 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 TRU 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 negotiations progress.

What are the legal implications?

29 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.

30 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.

31 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 is due to the requirement of Full Council to discharge its governance obligations pursuant to section 239 of the Local Government Act 1972 and a decision to submit a formal objection requires approval by Full Council.

32 Section 239 of the Local Government Act 1972 provides that where a local authority resolve to 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 29th August 2023.

33 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.

- 34 The 'holding objection' made it clear that a formal objection, if needed, will be submitted as soon as the necessary approval has been secured.
- 35 This decision of the Executive Board is considered to be exempt from Call In pursuant to paragraph 5.1.3 of Part 4 of the Constitution (Exemption from Call In) on the basis that the decision is considered to be urgent and that "any delay would seriously prejudice the Council's or the public's interests".
- 36 The Council cannot formally approve the objection to the TWAO without the objection being fully considered and ratified by Full Council in accordance with S239 of the Local Government Act 1972. That process can only happen at the next meeting of Full Council on 15 November 2023, which is the next available Full Council meeting following submission of the Councils "holding objection".
- 37 Due to the statutory deadline of 29th August 2023 for representation to the Secretary of State for Transport and allowing time to discuss the Council's submission with Network Rail, it was not possible to present this item at an earlier Executive Board due to governance processes.
- 38 The ground of urgency is that the resolution from Full Council is required before the Public Inquiry for the TWAO begins, which is estimated to be January 2024. If the decision were to be subject to the Call In procedure and delayed by the operation of the Call In mechanism, it may mean that the Council is not able to participate in the Public Inquiry, or continue negotiations with Network Rail and other Stakeholders to endeavour to reach agreement on outstanding matters.

Options, timescales and measuring success

What other options were considered?

- 39 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.
- 40 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.
- 41 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.

How will success be measured?

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

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

45 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.

Appendices

- Appendix A – LCC Holding Objection (with 3 additional appendices 1, 2 and 3)
 - Appendix 1 – Detailed concerns
 - Appendix 2 – Planning Policies
 - Appendix 3 – TWAO vs designated green space
- Appendix B – Equality diversity cohesion and integration screening form

Background papers

None.