

PLANNING & ENVIRONMENTAL PROTECTION COMMITTEE	AGENDA ITEM No. 6
1.30 pm Tuesday 21 st FEBRUARY 2017	PUBLIC REPORT

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RESPONSE OF PETERBOROUGH CITY COUNCIL LOCAL PLANNING AUTHORITY TO NETWORK RAIL'S SUBMISSION OF AN ORDER UNDER THE TRANSPORT AND WORKS ACT 1992 TO THE DEPT. FOR TRANSPORT FOR THE WERRINGTON GRADE SEPARATION (OF THE RAILWAY LINES)

RECOMMENDATIONS	
<p>That Committee approve this report as the formal consultation response of the Local Planning Authority to the Dept. for Transport in respect of Network Rail's proposed Werrington Grade Separation Order, and; that Members delegate responsibility to officers to have further discussions with the Dept. for Transport and Network Rail throughout the Order process with a view to resolving any outstanding issues, drafting conditions and the subsequent discharge thereof, should the Order be approved.</p>	

1. ORIGIN OF REPORT

- 1.1 This report is being brought to the Planning and Environmental Protection Committee because of the major nature of the proposal and the public interest in the scheme in Werrington and the surrounding area. Peterborough City Council is not the determining authority in this instance but, it is considered that the response of the Local Planning Authority to the Department for Transport (the determining authority) should be endorsed at Committee level.

2. PURPOSE AND REASON FOR REPORT

- 2.1 The purpose of this report is to explain the main aspects of the proposals, explain the procedure under which the draft Order has been submitted to and will be determined by the Secretary of State. It also sets out the officer's response and comments on the key issues which will form the Local Planning Authority response to the consultation.

3.0 BACKGROUND

3.1 Description of the Proposal and its Function

- 3.1.2 Network Rail has submitted a draft works Order under the Transport and Works Act 1992 to the Secretary of State which, if granted, will enable Network Rail to construct a new section of twin track railway line of approximately 2.7 km in length. It would stretch from a point 650m to the south of Cock Lane footpath through an area of primarily agricultural land to rejoin the Great Northern/Great Eastern (GNGE) line to the east of Lincoln Road. The new track would come off the Stamford lines and will move over to the west. The tracks will run in parallel to the East Coast Main Line (ECML) and will "dive under" the ECML (and as a consequence the A15 and Lincoln Road) before rising to join the GNGE lines.

The aim of the proposal, as set out by Network Rail, is to increase capacity on the ECML. This will be achieved by removing conflicts that arise with trains heading to/from the GNGE route crossing the ECML at a flat junction (Werrington Junction). The works are in association with other projects i.e. the four track between Woodwalkton and Huntingdon, will create capacity for two additional high speed trains an hour by 2021 (currently 6paths so increasing to 8). In addition, ECML and GNGE trains will have fewer delays in times of perturbation. The benefits include a more robust timetable operation with reduced delays, allowing for better “pathing” of trains and better recovery from delays. This leads to a more efficient and effective service, in turn increasing its attractiveness and producing a wider economic benefit. The project is identified as being funded in Network Rail’s Delivery Plan for the ECML. The proposed works needed to achieve the new section of railway are described further below.

3.2 Effect of the Order and role of Peterborough City Council (PCC)

3.2.1 If the Secretary of State for Transport grants the Order it will not only enable Network Rail to construct and operate the proposed scheme but it will grant the majority of the other necessary “permissions” required to carry out the scheme. This includes compulsory purchase of all third party interests required (including the purchase of the three residential properties described below), granting of planning permission for the works and necessary footpath closure/diversion orders. The Order would also grant consents needed under Sections 38 and 78 of the Highways Act although Peterborough Highways Services would be consulted on works which would otherwise have fallen to be dealt with under these provisions. The site boundary includes all of the land necessary for Network Rail to undertake the development.

3.2.2 Peterborough City Council is a consultee on the proposals and not the decision maker. To be clear this report represents the views of planning officers and our internal colleagues on matters relating to the planning aspects of the proposals only. We are not commenting on proposed compulsory purchases nor are we representing the views of other third parties (including PCC as landowner) who will need to submit their own comments to the Secretary of State. Local residents and businesses have been consulted direct by Network Rail and are able to make their comments direct to the Secretary of State. As such it is not for the Local Planning Authority to undertake external consultation and we have not done so. The deadline for all consultees to make comments is 9th February 2017. We have emailed the Secretary of State on behalf of the Local Planning Authority and requested an extension of time to Friday 24th February 2017 to take account of this Committee Meeting and call in procedures. The Secretary of State required a draft of this report to be forwarded as a holding response by the deadline of 9th February 2017 and this had been done. Members of the public are also required to forward their own responses to the Secretary of State by the 9th February 2017. Therefore, if Members accept this report it will be forwarded to the Secretary of State as the formal response of the Local Planning Authority. Should the Secretary of State decide to hold a Public Inquiry, any objections made by the Local Planning Authority would need to be capable of being defended by the officer concerned (e.g. highway safety issues by the local highway officer, ecology issues by the Wildlife Officer etc.)

3.2.3 Network Rail has submitted a draft Order, draft planning conditions, other formal documents such as a Funding Statement and Estimation of Costs (as required by the Order process), plans and engineering drawings and an Environmental Statement (ES).

3.2.4 The submission has been assessed by officers against the following relevant development plan policies;

1. Peterborough Core Strategy

- Policy CS10 Environment Capital
- Policy CS14 Transport
- Policy CS16 Urban Design and the Public Realm
- Policy CS17 The Historic Environment

Policy CS20 Landscape Character
Policy CS21 Biodiversity and Geological Conservation
Policy CS22 Flood Risk

2. Peterborough Planning Policies DPD

Policy PP1 Presumption in Favour of Sustainable Development
Policy PP2 Design Quality
Policy PP3 Impacts of New Development
Policy PP12 The Transport Implications of Development
Policy PP16 The Landscaping and Biodiversity Implications of Development
Policy PP17 Heritage Assets
Policy PP19 Habitats and Species of Principal Importance

3. Peterborough Site Allocations DPD

Policy SA17 Green Wedges

4. Cambridgeshire and Peterborough Minerals and Waste Core Strategy

Policy CS26 Minerals Safeguarding Areas

3.2.5 The Local Planning Authority has also had regard to its duties under Sections 66(1) and 72(1) of the Listed Buildings and Conservation Areas Act 1990 as to the desirability of preserving or enhancing the character or appearance of Conservation Areas and the setting of listed buildings.

3.2.6 The Local Planning Authority has also weighed the national policies and guidance contained within the National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG) alongside the development plan policies set out above.

3.3 The Proposed Scheme

3.3.1 The proposed scheme is for the creation of the new grade separated junction at Werrington involving the laying of new tracks including the “dive under” as set out above. The dive under will be constructed by hydraulic “jacking” of a three sided concrete portal structure into position and creating the approach and exit ramps. Additional works include the following;

- (a) Earthworks, landscaping, temporary structures, utility diversions, drainage ponds and all associated track engineering, overhead line equipment and signalling works;
- (b) Demolition of three residential properties located on Hurn Road and Lincoln Road due to the alignment required for the track;
- (c) Relocation and realignment of Brook Drain slightly to the west, including a culverted section of the Brook Drain South adjacent to the Thomas Cook Business Park;
- (d) Diversion of Werrington Drain over the dive under structure in an open channel;
- (e) Separation of Marholm Brook and Brook Drain so that Brook Drain no longer flows into Marholm Brook;
- (f) A bridge over the new dive under for utilities and to maintain public access between the A15, Davids Close and Lincoln Road;
- (g) Closure of Hurn Road under the A15 and diversion of Hurn Road along an upgraded Gas Works Lane, providing a single track access with passing places parallel to the A15, and maintaining access for vehicles, pedestrians, cyclists and equestrians;
- (h) Three new access roads for maintenance of the infrastructure:
 - (1) Access to the new railway, from Lincoln Road, to the north where it joins the GNGE
 - (2) Access to the dive under from Hurn Road to the south, along the western side of the new railway, and
 - (3) An access running along the south west side of the existing ECML corridor, including access to the new Stamford Lines and Brook Drain North, from near Bretton Way to Hurn Road.

- (i) Reconstruction of Cock Lane Footbridge;
- (j) Provision of a cycle/bridleway link under the A15;
- (k) Works to divert or protect buried services and overhead cables (utilities);
- (l) Signalling power supply units at Helpston level crossing (approximately 4km north west of the dive under and Hurn Road);
- (m) Creation of two new ponds and suitable habitat at land east of Foxcovert Road, to provide mitigation for the loss of one breeding pond for great crested newt as a result of the proposed scheme; and
- (n) Potential protective works at Lloyds Data Centre are included on a precautionary basis, but the nature of any works, if needed at all, is not yet known.
- (o) Insertion of signalling power supply from the substation on Hodgson Avenue along the footpath between Sunnymead and Redbridge

(It should be noted that at a meeting with officers on 31 January 2017, Network Rail confirmed that the draft Order includes all potential works. If the Order is granted, further surveys and detail to be worked up may result in lesser works in some instances e.g. tree removals. Once the Order is granted, works cannot go beyond the scope of the Order granted hence Network Rail have to take a “belt and braces” approach)

3.3.2 The Environmental Statement sets out the proposed temporary and permanent measures that Network Rail propose to mitigate against the aspects of the development where there will be significant effects of a negative nature. Permanent mitigation measures include;

- (a) Provision of an area of grassland and creation of a pond in the area of Foxcovert (subject to a separate planning application). If further surveys show that great crested newts will need to be moved to a new site, it is Network Rail’s intention to progress this at the end of 2017 ahead of the Order. If no newts are found in Spring 2017 surveys it will not be necessary to do this.
- (b) Water quality and wildlife habitats will be further improved through the separation of flows between Marholm Brook and Brook Drain- providing suitable habitat for the grizzled skipper butterfly and four spotted moth. There will be a replacement of the 1 hectare of habitat that will be lost due to the scheme.
- (c) The impact on rights of way is mitigated through retention of an existing access along the former Hurn Road, the safe crossing of the railway on a separate bridge parallel to the A15, the construction of a new public road to allow access to the remaining Hurn Road properties and the replacement of Cock Lane footbridge.
- (d) A landscape planting plan to mitigate for tree loss will be provided for by condition

3.3.3 Construction works are programmed to commence in Autumn 2018 and last approximately 30 months. The duration, intensity and scale of works will vary over this period. Core working hours will be 08:00 to 18:00 Monday to Friday and 08:00 to 13:00 on Saturday with an hour either side for set up and close down. Non disturbing repairs or maintenance may need to be undertaken on Sundays. There will be short periods where 24/7 working will be required such as for the installation of the guide tunnels under the ECML which will have to be closed when this operation takes place. There will be two main works compounds serving each side of the ECML, one on the western side of the railway accessed off Stirling Way and one serving the eastern side (the jacked portal compound) accessed off the A15 along a temporary haul road towards Hurn Road. The two areas will be linked by a temporary bridge across the railway line for workers only. There will be stockpile areas for topsoil and subsoil within the scheme boundary. The compounds will need to be lit at night for safety purposes but the lighting will be such that it avoids illumination of nearby properties and bat commuting and foraging areas. Network Rail proposes to develop a detailed Code of Construction Practice (CoCP) which will include obligations, guidelines and measures (to be implemented by the contractors) to mitigate or reduce environmental effects during the construction phase. This CoCP is the subject of a proposed planning condition.

4.0 Local Planning Authority Comments on the Proposed Scheme

4.1 The following internal officers/services were consulted on the submission; Peterborough Highway Services (the local highway authority), public rights of way officer, archaeologist, conservation officer, wildlife officer, tree officer, and drainage officer. The comments below are those of the planning officer taking into account those made by internal consultees. At the time of writing this report, discussions are on-going with Network Rail, therefore any changes to these comments which occur between publishing this report and the Committee meeting will be reported in an update to Members. The comments are divided into the following headings which reflect the topic areas in the ES and the submission documents e.g. the wording of the draft Order and the draft conditions;

- (a) Agricultural Land
- (b) Air Quality
- (c) Archaeology and Cultural Heritage
- (d) Biodiversity
- (e) Contaminated Land, Waste and Resources
- (f) Greenhouse Gases
- (g) Landscape and Visual
- (h) Noise and Vibration
- (i) Socio-economics
- (j) Traffic and Transport
- (k) Water Resources
- (l) Wording of the Order
- (m) Draft conditions

4.2 **Agricultural Land**

The ES sets out that approximately 35 hectares of subgrade 3a and 3b agricultural land will be required temporarily to fulfil the project. Approximately 8 hectares of agricultural land will be required permanently for railway use or habitat mitigation.

Officer Comment: The Local Planning Authority raises no comments or objections in this regard because the scheme is of national importance and in this context the loss of 8 hectares of agricultural land is not significant.

4.3 **Air Quality**

The ES contains an assessment of the effects of the construction phase on air quality and sets out generic measures for mitigating effects such as dust control. Network Rail proposes to deal with potential effects to air quality through condition i.e. the submission of a site specific CoCP. It is also proposed to submit a formal Section 61 application(s) (Pollution Act 1974) to the Council's Pollution Control Team and agree how the contractors will deal with issues such as sensitive work locations, plant and equipment to be used, proposed hours of operation, duration of works and delivery schedules and routes, through this mechanism. A Section 61 Notice is a "living document" that forms an agreement between the developer and the Pollution Control Authority (PCA) as to what practices and limitations will be employed during construction to minimise nuisance and disturbance. The PCA can only take enforcement action should the Section 61 notice be breached (thus creating a nuisance to a degree that action is necessary).

The Council's Pollution Control Officer has raised no objections but has requested that prior to any formal submission of Section 61 notices, the authority be supplied with drafts for comment one month in advance of the formal application. Network Rail has agreed this.

Officer Comment: The Local Planning Authority considers that air quality mitigation can be adequately dealt with by condition and by the submission of S61 applications as set out above.

4.4 Archaeology and Cultural Heritage

The ES concludes that there will be no significant effects on designated and undesignated heritage assets (e.g. Conservation Areas, listed buildings etc.). There is potential for undiscovered archaeological remains within the areas of undeveloped land required for the project within the scheme boundary (agricultural land). The ES sets out that trial trenching will take place prior to the commencement of the main construction works and that where archaeology is encountered, further targeted excavation will be undertaken and all findings recorded.

The Council's Archaeologist has stated that in principle, the ES reflects the requirements outlined during consultation with PCC and that the proposed archaeological mitigation reflects that agreed in discussions with PCC. However, the ES does not include an archaeological management plan as agreed during discussions but this is dealt with in the proposed archaeology condition. Revisions and amendments to the programme of work may be required in consideration of further scheme details and fieldwork results and although unlikely, the need for preservation in situ should not be discounted.

The Council's Conservation Officer has stated that from a heritage consideration the proposed works will not have an adverse impact on the setting of listed buildings and would accord with Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 and is in accordance with the relevant development plan policies and the National Planning Policy Framework (NPPF). The work will preserve the character and appearance of the Werrington Conservation Area in accordance with Section 71(1) of the above Act and is in accordance with development plan policies and the NPPF (Heritage considerations).

Officer Comment: It is considered that the archaeological requirements can be adequately dealt with by condition. The condition suggested by Network Rail requires amendment to that set out below. Subject to this the Local Planning Authority raises no objections with regard to archaeology and cultural heritage..

4.5 Biodiversity

The proposed scheme will result in the loss of approximately 1 hectare of Marholm Crossing and Brook Drain County Wildlife Site (CWS). Approximately 700 metres of hedgerow will be removed. In mitigation, a hectare of species rich grassland to attract the Grizzled Skipper butterfly will be created. The works around the realignment of Brook Drain will create habitat suitable to attract the Four Spotted Moth. 1.2km of species rich native hedgerows will be created. Should Great Crested Newts be found and require translocation, an area of land near to Foxcovert Road will be compulsorily purchased in order to create two newt ponds. If the ponds are required a separate planning application would be submitted to the Local Planning Authority for determination.

The Council's Wildlife Officer has advised that an Ecological Management Plan should be provided to the LPA in advance of the commencement of any works. Such Plan should set out the details of all the works, mitigation and enhancements proposed and details of associated monitoring and reporting. Post development monitoring should be undertaken for a five year period. The proposed mitigation in relation to the nationally scarce Four Spotted Moth appear adequate. Overall the scheme is likely to result in significant disturbance to the relevant affected species and habitats, therefore it is recommended that the ecological enhancements suggested in Section 9.9 of the ES are also fully implemented to include the establishment of 4 hectares of suitable habitat south of the new Stamford lines. The details could be provided by a suitably worded condition.

Officer Comment: At a meeting with Network Rail on 31 January 2017, it was accepted by the Wildlife Officer that as long as 1 hectare of new habitat is provided in mitigation, PCC could not insist on an additional 3 hectares. However, this is desirable and hopefully could be worked towards and provided on the land to be acquired for the Brook Drain works adjacent to Lloyds Data Centre. An Ecological Management Plan is proposed to be provided by imposition of a condition. Officers

consider the condition suggested by Network Rail requires amendment to the wording set out below. Subject to this condition, the LPA raises no objections with regard to biodiversity/ecology. When making the decision the SOS will need to take into account the relevant statutory regulations such as the Habitats Regulations.

4.6 Contaminated Land, Waste and Resources

The ES sets out how risks from contamination will be managed through the imposition of the CoCP to be submitted via a condition. All top soil will be stored on site according to best practice. Some sub soil will need to be retained and the remainder will be removed off site, the receptor of which is yet to be established. The submitted plans show the position of the soil storage bunds within the project area. It is recognised that the scheme will result in a loss of mineral resource through loss of some of the mineral safeguarding area. There is potential to extract sand and gravel from the affected areas to avoid its sterilisation. The developer will implement a Site Waste Management Plan and Materials Management Plan to minimise waste and manage the re-use of excavated materials.

The Council's Pollution Control Officer has not made specific comments about contamination and has not raised objections in this regards.

Officer Comment: As Mineral and Waste Planning Authority, PCC would prefer to see sand and gravel being extracted and used on site where possible rather than sterilisation. However, the needs of the project would outweigh the loss of the safeguarded area. There are no objections regarding contaminated land, waste and resources subject to the imposition of the condition requiring a CoCP.

4.7 Greenhouse Gases

The ES has assessed the impact of the construction and operational phases of the project.

Officer Comment: The Local Planning Authority has no comments or objections to raise in this regard. This matter may be commented on by other parties.

4.8 Landscape and Visual

The ES has evaluated the effects of both construction and operation upon the landscape and visual receptors. There is a tree survey which indicates trees and wooded areas which are likely to need removal to facilitate the scheme. There are no significant effects upon important landscape receptors including Milton Hall Grade II* Registered Park and Garden or Werrington Conservation Area. Once completed the scheme will not result in any significant effects on landscape or visual receptors. There will be temporary effects throughout the construction period and visually these will be significant e.g. large spoil mounds within the project area of up to 4 metres in height and mobile plant such as cranes. Mitigation will include considerate placement of site compounds, lighting etc. but nonetheless the temporary effects will be significant in the short term.

The ES has included consideration of the impacts from several views in and around the project area.

The Council's Tree Officer has commented that where tree loss can be minimised it should be especially to trees falling within TPO 37/1989 in the area of the Hurn Road/Lincoln Road bridge works and in the Hodgson Road area. There will be a loss of trees owned by PCC and further discussion should take place about this regarding compulsory purchase or temporary access rights to land (with the Council as landowner). There will be a large amount of tree loss to accommodate the project especially in the area where the Lincoln Road/Hurn Road works will take place. Most of this tree loss will involve planting that was put in place when the A15 bypass was constructed. Significant mitigation planting will be needed and this should be submitted prior to the commencement of development. Trees to the south of the railway line adjacent to Belham Wood will be protected by a buffer which is to be welcomed. Tree protection has been outlined on the plans which appears to be

appropriate and reasonable. Overall impact on high amenity and valuable trees is low. Clarification on impact on TPO trees, PCC owned trees, mitigation and tree protection should be secured through conditions.

Officer Comment: It is considered that subject to amended conditions concerning submission of a landscaping scheme (to include further clarification on tree removal) and a tree protection scheme, there are no objections regarding landscape. The large amount of tree loss is weighed against the benefits of the scheme and proposed mitigation planting and it is considered that the overall benefits outweigh the harm. It is accepted that once the scheme is complete there will be very little impact or change to medium to long distance views towards the project area. In this respect the proposed dive under scheme as opposed to a “bridge over” scheme is to be welcomed.

4.9 Noise and Vibration

An assessment has been undertaken of the likely significant noise effects of construction and operation. The starting point/baseline condition is the operation of the ECML and GNGE lines as of 2016. There will be impacts on some residential properties during the construction period and particularly from vibration associated with sheet piling works for a limited period. The affected properties are at Whiteley Park and Gascoigne and a commercial property near the Stirling Way compound. The vibration is assessed as not causing any structural damage to property. Property on Hurn Road will be protected by temporary hoardings through the construction period. There will be impacts from construction noise on residential properties nearest to the construction works for periods through the construction phase and this will cause a degree of disturbance. This will be mitigated to ensure that the impacts are within the acceptable ranges set out in the applicable standards applied to measuring noise associated with national network construction. It is noted that higher noise thresholds are applicable for this type of construction. Noise thresholds are permitted to be exceeded for temporary periods. The assessment concludes that there are no periods where the noise level is so great or prolonged to warrant Network Rail moving people to other temporary accommodation whilst certain works take place. Discussions are on-going between Network Rail and the Lloyds Data Centre concerning possible noise and vibration impacts their business (it is for Lloyds to make any representations about this).

The Council's Pollution Control Officer has not commented directly on noise impacts on particular properties and has not challenged the methodology employed in the noise assessment. It has been accepted that noise levels will form part of the suite of agreements between the operator and the Pollution Control team through the submission of Section 61 applications (explained above)

Officer Comment: No objections subject to the imposition of a condition requiring a CoPA to be submitted and approved by the Local Planning Authority.

4.10 Socio Economics

Impact of the development on socio economics of the area has been assessed in the ES.

Officer Comment: No objections in this regard. The Local Planning Authority would welcome Network Rail offering local jobs and training opportunities for local people including local students of engineering and those seeking employment.

4.11 Traffic and Transport

The Local Highway Authority has advised that the majority of previous concerns have been dealt with at the meeting held with representatives of Network Rail and PCC Planning Services on Monday 6th February 2017. The Highway Authority makes the following comments;

General

It is noted that typing errors and corrections will be addressed at the next detail design stage. It is noted that matters relating to site compound layouts / works access layouts - access, parking, turning, loading/unloading, storage, wheel wash facilities, etc. will be dealt with in Part 2 of the Code of Construction Practice, which is expected to be conditioned.

Diversion of footway/cycleway/bridleway

It is now understood that the permanent diversion of the pedestrian/cyclist/equestrian route along Lincoln Road to a new structure adjacent to the A15 will be in addition to the existing route over WEB1 (Lincoln Road) after the bridge extension works to WEB1 are complete. It is the view of the LHA that the diversion route would not be desirable, given the option of two routes, therefore the LHA would question the reasoning behind retaining the diverted route. That said, the LHA would not raise any formal objection to it.

Hurn Road (new route)

I understand that Network Rail wish to retain the configuration of a 3.7m carriageway (with passing bays), 1.8m hedge and 3m wide hard surfaced footway/cycleway/bridleway. The LHA remain to be concerned about the lack of natural surveillance afforded to the pedestrians as a result of the existing/proposed hedge. The LHA would prefer to see a configuration of a 3.7m carriageway (with passing bays), 2m hard surfaced footway (a reduction to 1.8m could be considered if land constraints are an issue) and a 3m wide grassed bridleway. The LHA would also like to make the point that it may be unlikely that the stems of the hedgerow are located within the 1.8m strip of soft landscaping. In terms of adoption of the proposed new routes, the LHA would suggest that the carriageway element is adopted as public highway maintained at public expense and the footway/cycleway/bridleway is processed as a Right of Way, with the land owner being responsible for its future maintenance together with the adjacent hedge.

Construction Traffic

Further detailed information has now been provided regarding traffic generated during each phase of the construction period, which will result in a negligible impact on the surrounding road network. As such, the LHA raise no concerns about the impact or require any mitigation.

Summary

Whilst the LHA remain concerned about the configuration of the realigned section of Hurn Road and would still question the need for the diverted pedestrian route to be permanent, on the whole we are in support of this proposal subject to the addition of conditions concerning submission of a Construction and Demolition Management Plan, wheel cleansing, details of the permanent replacement Hurn Road, pre-commencement surveys and remote signage. A number of informatives are also recommended.

Officer Comment: It is agreed by Network Rail that if the proposed access routes at Lincoln Road/Hurn Road were to be reduced from that shown on the submission that further public consultation would need to take place as this is not a minor amendment to the scheme. Whilst one route would be more desirable, there are no objections to this element of the scheme as submitted. With regard to the construction detail of the new Hurn Road leading from Gasworks lane, it is considered that this can be agreed directly with the Local Highway Authority and does not need to form part of a planning condition. There is a balance between retention of the hedge in this location for visual and biodiversity purposes and highway safety/construction issues. The Local Planning Authority raises no objections to the retention and incorporation of the existing hedge into the scheme as submitted. We would prefer the hedge to be retained if possible. However it is accepted that if this is not possible at the detailed design stage the removal of the hedge would not be a material amendment to the scheme. The requirements for details of haul routes, dust and mud mitigation, noise management, wheel cleaning, road surveys etc. will be agreed as part of the CoCP to be submitted by condition and in the opinion of the Local Planning Authority do not need to form part of a

separate condition. With regard to agreements under Sections 38 and 278 of the Highways Act, Network Rail confirmed that these will be dealt with under the Order and not on application to the Local Highway Authority, however the LHA will retain certain consultative rights. Issues such as signage and future adoption of highways and structures are matters that can be dealt with outside of the planning process i.e. directly with the Local Highway Authority. Therefore the Local Planning Authority raises no objections in this regard subject to the imposition of the condition requiring submission of the CoCP.

4.12 Water Resources

Significant works to Brook Drain and the surrounding and associated water courses is required to enable the Stamford lines to be moved to the west to enable the dive under to be constructed. Network Rail has been discussing and agreeing these works with the Environment Agency.

The Council's Drainage Team has sought clarification on who will be managing and maintaining the newly diverted watercourses including the new culvert. The Drainage Team also wish to see detailed design when it comes forward. Network Rail has confirmed that if the Order is granted it will dis-apply the requirement to seek formal consent but the Lead Local Flood Authority (PCC) holds protective provisions and must be consulted on any formal and detailed design.

Officer comment: No objections subject to the timing of works to the watercourses taking full account of the impacts on biodiversity and protected species (see "biodiversity/ecology" above). This can be dealt with through the proposed ecology condition.

4.13 Wording of the Order

Part 7 of the Order under the heading "Power to deviate" states that Network Rail may deviate upwards from the levels shown on the sections by no more than 3 metres and to any extent downwards as may be necessary or convenient. The LPA raises no objection to this. Part 7 (a) states that Network Rail may deviate laterally from the lines or situations shown on the deposited plans to the extent of the limits of deviation for this work. The LPA comments that the limits for proposed lateral deviation are not clear and so we have asked Network Rail to clarify this.

4.14 Conditions

Network Rail has provide a draft of proposed conditions they think appropriate for the planning permission they seek to secure from the Secretary of State as part of their Order consent. The Local Planning Authority has reviewed this part of the submission as follows;

Folder 4 - Rule 10 (6) Request for Planning Permission
Schedule 1 Proposed Planning Conditions

Interpretation (for the purpose of the conditions)

"preliminary works"

(ii) condition 7 should read condition 6

(iii) As written this is ambiguous and should read "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 Draft Conditions

Network Rail's conditions are set out in Folder 4. The Local Planning Authority's recommended changes are set out below;

Condition 1 is acceptable

Condition 2 should be amended to read;

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

Reason: To clarify what is hereby approved

Condition 3 Landscaping should be amended to read;

- (i) No tree removal or de-vegetation shall take place until a written landscaping scheme has been submitted to and approved in writing by the Local Planning Authority.
- (ii) The landscaping scheme to be submitted shall include a tree removal plan which identifies any trees which are to be retained or lost which are not identified as such on the submitted plans and documents. Best practicable means shall be demonstrated to minimise tree loss. The landscaping scheme shall also include details of mitigation as shown in (NR to provide complete reference here including volume) and must contain details of soft landscaping including:
 - (a) The number, species, size and planting density of any proposed planting;
 - (b) The cultivation and importing of materials and other operations to ensure plant establishment;
 - (c) Details of hard surfacing materials
 - (c) Details on landscape management and maintenance regime; and
 - (d) An implementation timetable
- (iii) The approved scheme must 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 diseased, 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 Council 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 and retention which shall take place during preliminary works or at the start of the development.

Condition 4 Tree Protection should be amended to read;

Prior to the commencement of the preliminary works or any development, details of tree protection measures shall be 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 3). The approved details must be implemented 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 Council 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 and retention which shall take place during preliminary works or at the start of the development.

Condition 5 Code of Construction Management is largely acceptable but should be amended at (c). The condition should read as follows;

The development must 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 must include (but not necessarily exclusively) the following plans and programmes:-

- (i) An external communications programme;
- (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; and
- (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
- (viii) A traffic management plan including routes, off road parking for all construction vehicles and management of the proposed site compounds

(c) The CoCP must 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 and CS16 and policies PP3 and PP12 of the Peterborough 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.

Condition 6 Ecology is largely acceptable but should be amended to read as follows;

No development or preliminary works shall take place 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 must reflect the survey results and ecological mitigation and enhancement measures set out in the Environmental Statement (NR to provide full reference) of the Environmental Statement 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 biodiversity 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 stage onwards.

Condition 7 Archaeology should be amended to read as follows;

No preliminary works or development shall take place/commence until a programme of archaeological work including a Written Scheme of Investigation has been submitted to, and approved by, the Local Planning Authority in writing. No preliminary works or development shall take place unless in complete 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 their 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 of the Peterborough Core Strategy DPD (2011) and Policy PP17 of the Peterborough Planning Policies DPD (2012). This is a pre-commencement condition because archaeological investigations will be required to be carried out before development begins.

Condition 8 Means of Enclosure is largely acceptable but should be amended to read as follows;

Within 6 months of the commencement of the development, 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.

Condition 9 – not necessary if each condition requiring submission states that approval must be obtained by the Local Planning Authority (LPA) in writing. The condition can't be enforceable on the LPA because the LPA is not the developer or in the majority of the case not the landowner. Conditions are enforceable against the persons with the interest in the land and not the LPA. The current provisions under the town and country planning secondary legislation and government guidance require LPAs to respond to discharge of condition applications, S73 applications and non-material amendments in writing and within specific timeframes. The condition is therefore unnecessary and unenforceable. We consider that the LPA can't be lawfully bound by conditions in such circumstances. The LPA can't take enforcement action against itself.

5.0 CONCLUSION

Taking all of the above into account, the Officer recommendation is that Local Planning Authority raise no objections to the proposed scheme subject to the imposition of the conditions set out by the Local Planning Authority in this report on any planning permission that may be granted by the Secretary of State.

It is further recommended that Members delegate responsibility to officers to have further discussions with the Dept. for Transport and Network Rail throughout the Order process with a view to resolving any outstanding issues, drafting conditions and the subsequent discharge thereof, should the Order be approved.

Copies to Councillors: Judy Fox, John Fox and Stephen Lane

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