

**THE NETWORK RAIL (LEEDS TO MICKLEFIELD ENHANCEMENTS) ORDER**

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**OPENING STATEMENT ON BEHALF OF NETWORK RAIL**

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**Overview**

1. The case for making the Transport and Works Act Order that is before this public inquiry rests on a simple but compelling proposition. The North TransPennine railway line is in urgent need of improvement. The Order Scheme – and the wider Scheme which it would enable - is critical to meeting that need.
2. The North TransPennine rail route (“NTPR”) is one of the key East-West arteries across the Northern economy. It forms the most direct existing rail link between Manchester and Leeds; it is used as a ‘spine’ to link wider economic centres, including Newcastle, Hull and Liverpool; and connects city centres to smaller towns, commuting areas and key sites such as Manchester Airport.
3. The NTPR is subject to Network Rail’s TransPennine Route Upgrade (“TRU”): a series of projects whose objective is to improve journey times and capacity between key destinations on the NTPR and to improve overall reliability and resilience, as well as providing environmental benefits, including a contribution to the Government’s objective of reducing carbon emissions.
4. The NTPR does not currently meet the needs of passengers or train operators because it lacks the capacity and resilience to enable it to do so. As a result, it does not fulfil its role as a key rail transport artery serving the great cities and towns of Greater Manchester, West and North Yorkshire. The railway used to fulfil that role. Indeed, this section of the NTPR – the Leeds to Selby line – began to do so as long ago as the pioneering period of rail transport in this country in the mid 1800s. During the second half of the twentieth century, however, the railway fell victim to the prevailing transport policy of the same. The capacity of the railway was reduced and disinvestment followed.

5. That historic disinvestment and reduction in capacity means that the NTPR is not currently well-placed to deliver a key enabling role in levelling-up the Northern conurbations. Indeed, it currently acts as a constraint, rather than an enabler, in building back the Northern economy, as was recognised by the Secretary of State for Transport in confirming the TWAO for another Scheme within the TRU programme - the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022.<sup>1</sup>
6. The time has come to reverse that historic disinvestment, and to restore the railway to the capacity that will enable it to play its proper part again in meeting the transport needs of the Northern region, both now and in the future. That is not merely the judgment of Network Rail as applicant for this Order. There is clear support to the project from Government, regional and local transport and planning authorities.<sup>2</sup> It is the clear position adopted in transport planning policy at national, regional and local level.<sup>3</sup>
7. The Order, if made, would authorise Network Rail to remove a number of existing constraints to the upgrades planned for this section of the NTPR, and enable the carrying out of other enhancement works that are required to be undertaken if the proposed electrification of this section of the route and the timetable change planned for 2028 are to take place, with the faster and more frequent services and the greater resilience and reliability that those enhancements would deliver.
8. Much of the land needed to deliver these vital improvements to the NTPR is already within Network Rail's ownership or control. However, in order to secure the land that is required for the installation of new or replacement infrastructure, or to enable other improvement works to be delivered, there is a need for some further land (or rights) to be permanently acquired, or possessed temporarily, as provided for under the draft Order.
9. As I have noted above, the NTPR - and in particular that part most directly affected by the Order Scheme, the Leeds to Selby line – traces its lineage back to the early years of railway construction – the so-called “pioneering age”. The Order Scheme seeks to revitalise that railway – to make it fit for operation in and through the 21<sup>st</sup> century and to serve the needs

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<sup>1</sup> Para 17 of the Secretary of State's decision letter of 27 June 2022 (**CD 3.05**). See also the recent decision in respect of a second order, the Network Rail (Church Fenton Level Crossing Reduction) Order 2023, in particular paras 12-14 of the Secretary of State's decision letter of 27 November 2023 (**CD 3.06**).

<sup>2</sup> See, e.g. Appendix 2 to David Vernon's Proof of Evidence (**CD 7.03**); Table 1 point 1 of the Revised Statement of Common Ground dated 24 February 2024 (**CD 6.02**); **CD 4.Sup/02** and **CD 4.Sup/03**.

<sup>3</sup> See Section 7 of Network Rail's Statement of Case (**CD 1.19**)

of a resurgent local and regional economy on both sides of the Pennines. In order to achieve that purpose, it is inevitable that changes are needed to the historic fabric of the railway line. Network Rail recognises that those changes inevitably affect the significance of that historic fabric and, in respect of the four listed bridges, that those effects, measured in policy terms, are harmful. They are, however, necessary in order to achieve the functional and operational improvements that must be secured if the NTPR is to continue to fulfil the purpose for which those early railway engineers had as their objective: to meet the needs of its passengers and other users, to serve the needs of the local and regional economy, and to connect communities large and small across the northern region.

10. The strategic case for the Order is straightforward. The importance of public transport networks, and improving current infrastructure, to achieving the Government's levelling-up agenda is well-recognised. The TRU is a pressing national, regional and local objective. If levelling up is to happen, the TRU must be delivered. For the TRU's full benefits to be delivered, the Order Scheme must be delivered. The case for the Order (and the other applications which fall to be considered at this Inquiry) thus rests on three simple yet compelling propositions:

- (i) The NTPR is in urgent need of improvement;
- (ii) The TRU, of which the Order Scheme forms part, is key to realising the early delivery of some of those much needed benefits; and
- (iii) The Order Scheme is an integral part of the TRU and the TRU's full benefits cannot be realised without it.

11. The case for the Order is both clear and compelling.

### **The purpose of the Order**

12. The purpose of the draft Order is to provide Network Rail with the necessary powers to construct, operate and maintain an improved railway, including works to renew or improve existing rail infrastructure and railway electrification works on the NTPR between Leeds and York.

13. As Mr Vernon explains in his Proof of Evidence (**CD 7.02**), in order to facilitate an increase in line speeds and enhancements to resilience and reliability of the NTPR, a number of works are required between Leeds and York. These works are not only those applied for under the applications currently before this Inquiry, but works consented under other consent regimes. The Order (and other applications) will bring together all remaining works, rights and consents required to ensure that the benefits required across this section of the NTPR can be delivered in full.

14. There are the following applications before this Inquiry:

- (i) The proposed Network Rail (Leeds to Micklefield Enhancement) Order (“the draft Order”)<sup>4</sup>;
- (ii) A request for deemed planning permission for development<sup>5</sup>;
- (iii) Four applications for Listed Building Consent<sup>6</sup> for works to Austhorpe Lane Bridge,<sup>7</sup> Crawshaw Woods Bridge,<sup>8</sup> Brady Farm Bridge,<sup>9</sup> and Ridge Road Bridge<sup>10</sup>; and
- (iv) Two certificates relating to the acquisition of public open space land.<sup>11</sup>

15. If granted, the draft Order and associated consents would:

- (i) Authorise the demolition and reconstruction of two bridges (Austhorpe Lane, Ridge Road), the demolition of a third<sup>12</sup> (Brady Farm Bridge) and works to raise a fourth (Crawshaw Woods), which currently have insufficient clearance above track to enable the installation of the overhead line equipment required for

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<sup>4</sup> Pursuant to ss.1 and 5 of the Transport and Works Act 1992. **CD 1.02 & 1.02.02**

<sup>5</sup> Pursuant to s.90(2A) of the Town and Country Planning Act 1990. **CD 1.12**

<sup>6</sup> Under Chapter II of the Planning (Listed Buildings and Conservation Areas) Act 1990

<sup>7</sup> Application ref: 23/04387/LI. **CD 1.18.01 & CD 1.18.04-1.18.12.**

<sup>8</sup> Application ref: 23/04388/LI. **CD 1.18.01 & CD 1.18.20 – 1.28.28.**

<sup>9</sup> Application ref 23/04389/LI. **CD 1.18.01 & CD 1.18.13 – 1.18.19**

<sup>10</sup> Application ref: 23/04390/LI. **CD 1.18.01 & CD 1.18.29 – 1.18.37**

<sup>11</sup> Pursuant to s.19 of the Acquisition of Land Act 1981. **CD 1.18.28 & CD 1.18.29.**

<sup>12</sup> Authorisation for the demolition of Brady Farm Bridge is not provided for in the Order, the demolition of that bridge being able to be undertaken pursuant to Part 11 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015.

electrification of this part of the NTPR, together with the diversion of utilities (in particular, two high pressure gas mains), the acquisition or use of land associated with those works, and, in respect of Brady Farm Bridge, the extinguishment of any private rights subsisting over the bridge;

- (ii) Authorise Network Rail to temporarily take possession of land required for three strategic compounds (Manston Lane, Wykebeck Avenue and Phoenix Avenue) which are required to enable upgrade works, including track renewal and electrification, along this section of the route;
- (iii) Authorise Network Rail to temporarily take possession of land required for compounds to support the replacement of existing bridges/underbridges at Kirkgate and Marsh Lane in Leeds City Centre and at Osmondthorpe Lane, the works to those bridges being required to accommodate the increased dynamic load of proposed line speed increases in the case of the bridges at Kirkgate and Marsh Lane, and as a result of modifications to track layout at Osmondthorpe Lane;
- (iv) Authorise the closure of 5 level crossings (Barrowby Lane, Barrowby Foot, Garforth Moor, Peckfield and Highroyds Wood), with the extinguishment of public and/or private rights of way over them and creation of new rights of way to replace them,<sup>13</sup> together with associated works at Garforth Moor<sup>14</sup> and Peckfield<sup>15</sup> and construction of the new Barrowby Lane Bridge;

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<sup>13</sup> New replacement public rights of way in substitution for those carried over Barrowby Lane Level Crossing, Barrowby Foot Level Crossing, Peckfield Level Crossing and Highroyds Level Crossing: see Article 17 and Schedule 8 of the draft Order. No new public right of way is proposed at Garforth Moor Level Crossing, with definitive footpath Garforth 7 being stopped up without replacement between points P21, P22 and P23 under Article 10 read with Schedule 4 of the draft Order. New private rights over a replacement route are to be provided at Garforth Moor Level Crossing: see Article 10 and Schedule 9 of the draft Order.

<sup>14</sup> Schedule 10 to the (amended) draft Order which (with Article 25(2)) authorises Network Rail to acquire new rights over plots 10-001, 10-002, 10-003 and 10-004 including, for the avoidance of doubt, the right to upgrade the existing access track (**CD 1.02.02**). The works associated with the closure of Garforth Moor would otherwise be carried out under a separate planning permission (application ref: 22/03144/FU/E - determination awaited) and recovery of level crossing equipment under Part 8 Class A of Schedule 2 to the GDPO.

<sup>15</sup> Works associated with the closure of the level crossing, including the construction of the public right of way diversion through Micklefield Recreation Ground and the highway improvement works and creation of parking spaces along Lower Peckfield Lane (aka Pit Lane) on the northern side of the railway.

- (v) Authorise the installation of electrification and signalling infrastructure works to be carried out alongside the existing railway track at Penny Pocket Park;
- (vi) Authorise the construction, operation and maintenance of a new Track Sectioning Cabin (TSC) at Micklefield, required to safely regulate the power supply to overhead lines in the local area and thus to enable electrification of the line; and
- (vii) Authorise Network Rail to acquire a strip of land off Newmarket Approach in order to enable the provision of a new access from existing highway (Newmarket Approach) to the Neville Hill Railway sidings; and
- (viii) Undertake various ancillary or incidental acts required to facilitate the delivery of works or the use of land which Network Rail is authorised to acquire or use under the Order, such as the stopping up of streets, highway alterations and improvements, traffic regulation or protective works.

16. As set out in Network Rail's Statement of Case (**CD 1.19**) whilst the Order would authorise a number of works which form part of the Order Scheme (i.e. works authorised under the Order and/or the associated consents) it is also required to undertake other works which are being undertaken along this section of the NTPR pursuant to permitted development rights or other consents. At Appendix 2 to the Statement of Case there is a table which sets out (inter alia), for each of the 17 principal elements of the Order Scheme, what it is required for and whether it is subject to the request for deemed planning permission or can be / is to be carried out pursuant to permitted development rights or separate planning consents. Further details of which works are subject to the request for deemed planning permission and which are to be carried out under permitted development rights or separate planning consents is provided in section 4 of the Statement of Case and in section 3.1 of Mr Rivero's Proof of Evidence (**CD 7.14**). Importantly, the draft Order would enable Network Rail to acquire or use land needed to deliver the wider Scheme of which the Order forms part. As Mr Vernon explains in his Proof of Evidence (para 3.2.3 **CD 7.02**), unlike bodies such as Highways England, Network Rail does not have a separate compulsory purchase avenue available to it, so if land is required from third parties to deliver enhancements, Network Rail will need to rely on a TWAO to secure the powers to acquire the same.

17. An issue had previously been raised by Leeds City Council regarding the fact that the Order contains powers to acquire or use land for works not included within the Order, or that certain works / elements of the Order Scheme are not included within Schedule 1 of the Order,<sup>16</sup> although it is understood that those concerns have now fallen away.<sup>17</sup> As set out above, not all of the works or compounds which would be enabled or facilitated by the draft Order are themselves required to be authorised by means of the Order. For example, the temporary compounds at Kirkgate and Marsh Lane fall would be permitted under Part 4 Class A<sup>18</sup> of Schedule 2 to the Town and Country (General Permitted Development) Order 2015 (“the GDPO”), and the works to create the new access road off Newmarket Approach would be consented pursuant to a separate planning permission, which application is currently pending determination by Leeds City Council. Not all works that would be facilitated or enabled by a draft Order must be included within the Order, let alone listed as Scheduled Works. Whilst a TWAO may commonly be used for larger all-encompassing projects, there is no requirement where a TWAO is sought that it be inclusive of all works, land uses or consents that might be required for a particular project. As Mr Rivero explains in his Proof (at paras 3.1.8 & 3.1.13), the consenting approach taken by Network Rail, with its mix of a TWAO, request for deemed planning permission, and reliance on permitted development rights, is no different to the approach Network Rail has taken on other TWAOs. It is a tried and trusted approach.

### **The Case for the Scheme: Aims, Objectives and Need**

18. The need for, aims and objectives of the Order Scheme, and the wider Scheme which it would enable, are set out in detail in Section 6 of Network Rail’s Statement of Case (**CD 1.19**), the Statement of Aims and Objectives (**CD 1.04**), and the evidence of David Vernon (**CD 7.02**).

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<sup>16</sup> Most recently in their comments on Changes to the Draft Order (**CD 7.39**)

<sup>17</sup> See the Statement of Common Ground at Table 1 entry 3 (**CD 6.02**) and Leeds City Council’s letter of 26 February 2024, withdrawing its objection in respect of all matters save those issues relating to Peckfield Level Crossing.

<sup>18</sup> *The provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land.*

19. The TransPennine Route is a key strategic route. It is one of the busiest lengths of rail at peak times on the national rail network. It is identified for significant growth in the future, but has not seen significant infrastructure investment to increase capacity for many years. The network is becoming increasingly crowded and congested; journeys are slow and unreliable; and there is limited capacity to accommodate growth on the existing infrastructure.
20. In order to address current challenges on the TransPennine Route and support the objectives of supporting economic growth and “levelling up opportunities” across the North of England, Network Rail is promoting a series of projects as part of the TRU programme. This is a series of railway upgrade projects between Manchester, Huddersfield, Leeds and York, the purpose of which is to improve journey times and capacity between key destinations on the NTPR; to improve the overall reliability and resilience of the NTPR; and to promote environmental benefits from modal shift to rail and the part electrification of the NTPR.
21. Each project will bring its own benefits, but all must be delivered if the full benefits of the TRU are to be achieved.
22. The TRU aims to deliver:
- (i) An improved journey time for Leeds – Manchester Victoria of 43-44 minutes;
  - (ii) An improved journey time for York – Manchester Victoria of 67-69 minutes;
  - (iii) Capability to operate 8 ‘express’ services an hour on the route;
  - (iv) Capability to operate 6 ‘local’ services an hour on the route;
  - (v) Performance of the TransPennine Route of 92.5% (Public Performance Measures)<sup>19</sup>;
  - (vi) Retention of freight paths / rights as existing; and
  - (vii) A contribution to Network Rail’s Decarbonisation Strategy and climate policy.

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<sup>19</sup> A measure of punctuality.

23. The Order Scheme is a key contributor towards delivery of the TRU and the full realisation of the aims of the overall TRU programme of works. In particular:

- (i) The removal and reconstruction of Austhorpe Lane and Ridge Road bridges, the removal of Brady Farm bridge, and the raising of Crawshaw Woods bridge will remove a key constraint to the electrification of this section of the NTPR;
- (ii) The provision of land for temporary compounds to support works to the railway viaduct at Kirkgate and Marsh Lane, and Osmondthorpe Lane, and to the wider TRU enhancement works at Wykebeck Avenue, Manston Lane and Phoenix Avenue will enable the delivery of works within the operational rail corridor including track realignments which allow trains to run faster and journey times to be reduced as well as the installation of infrastructure needed for electrification of the line;
- (iii) The 5 level crossings included within the Order are a significant constraint on the proposed upgrades to this part of the NTPR. The additional risks which the enhancements to be delivered by the TRU would import to users of the level crossing need to be addressed before those enhancements could be implemented if risk is to remain as low as reasonably practicable, and if Network Rail is to comply with its statutory obligations and Licence Conditions. Level crossings are also the largest single contributors to train accidents and risks on the railway network, and incidents at level crossings (including where there is a technology failure) can cause significant delays and disruption across the wider network.
- (iv) The closure of the 5 level crossings, together with the installation of electrification infrastructure (including the Micklefield TSC), modern signalling (including the infrastructure to be provided at Penny Pocket Park) and general rail improvements, all of which would be enabled or facilitated by the Order will therefore improve the resilience and reliability of the NTPR, as well as enabling journey time improvements and increased capacity.
- (v) The closure of the 5 level crossings, and diversion of users to routes that do not involve an at-grade crossing of the railway, will also deliver an important safety

benefit, removing the risk to those currently using the level crossing (and to trains passing through them) in line with Network Rail and ORR policies and objectives.<sup>20</sup>

(vi) The NTPR is currently a diesel operated railway. The design of the TRU has been informed by an aspiration to electrify as much of the NTPR as is not currently electrified as possible. The installation or modification of infrastructure with sufficient clearance to enable the installation of overhead line equipment (OLE), and the powers to acquire or use land to provide compounds to support electrification works, will thus support the electrification of the Leeds-York section of the NTPR, with its corresponding environmental benefits.

24. I repeat: without the Order Scheme, the full benefits of the TRU programme will not be realised. In particular, the proposed electrification of the section of the NTPR between Neville Hill West and Church Fenton (due by 2027) and proposed 2028 timetable change would at, at the very least, be severely jeopardised.

25. The aims of the TRU and the benefits and contributions which would be made by the Order Scheme to achieving those objectives are set out in more detail in section 6 of David Vernon's Proof of Evidence (**CD 7.02**). The strategic and safety case for closure of the level crossings is addressed more particularly in the evidence of Jerry Greenwood (**CD 7.20**) read with the Proof of Evidence of Andrew Cunningham (**CD 7.23**) which details the current risk associated with each of the crossings, sets out how that is estimated to be affected by the TRU enhancements on this section of the NTPR, and confirms that the means of closing each of the crossings proposed under the Order Scheme is separately supported by Network Rail's level crossing risk assessment process.<sup>21</sup> The evidence of Paul Harrison (**CD 7.05**) sets out how the Order Scheme works interact with and are required to improve the existing railway operations on this part of the NTPR. Michael Westwood provides that evidence in respect of the level crossings (**CD 7.26**).

26. There is, notably, no challenge from objectors as to the need for, of benefits that would be achieved by, the Scheme. Nor, realistically, could there be. The TRU, and the Order Scheme, command strong support both in national, regional and local transport policy and from key stakeholders. Leeds City Council agrees with and supports the stated need

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<sup>20</sup> On ORR's position, see (inter alia) **CD 4.Sup/01**.

<sup>21</sup> His evidence also addresses Network Rail's approach to risk assessment and user surveys: **SOM 4(d)**.

for and benefits of TRU as an essential component part of the TRU project.<sup>22</sup> It is “welcomed” by North Yorkshire Council, which “fully recognises and supports the aims of the Scheme”.<sup>23</sup> It is supported by West Yorkshire Combined Authority, which “supports Network Rail in its work to deliver the [TRU] in full”, is “acutely aware of the importance of rail investment, and the delivery of the right interventions, in the right locations” and “is fully committed to the successful, efficient and timely delivery of TRU. It is one of the key priorities identified and supported by our emerging Rail Strategy which is now in public consultation”.<sup>24</sup> It is enshrined in local and local transport policies.<sup>25</sup> Funding has been committed by Government.<sup>26</sup> The position is clear. The Order Scheme (and wider Scheme which it would facilitate) is needed - and is needed now.

### **Alternatives to the Order Scheme and reasons for its selection**

27. The alternatives considered by Network Rail, design development, and reasons for choosing the preferred options now included in the Order are addressed in Section 8 of the Statement of Case (**CD 1.19**), in the Design and Access Statement (**CD 1.15**), in the Alternative Options Evaluations Studies for Austhorpe Lane Bridge (**CD 1.18.12**), Crawshaw Woods Bridge (**CD 1.18.28**), Brady Farm Bridge (**CD 1.18.19**), and Ridge Road Bridge (**CD 1.18.37**) and in the evidence of David Vernon (**CD 7.02**), Paul Harrison (**CD 7.06**), Ged Stamper (**CD 7.08**), Michael Westwood (**CD 7.26**) and Suzanne Bedford (**CD 7.29**).
28. The remit of the TRU is to address performance issues relating to the existing services, to increase the capacity on the NTPR and to decrease journey times. There are no high level strategic alternatives that would deliver those benefits without investing directly in the infrastructure.
29. In terms of scheme development, the options considered for the various elements included in the Order Scheme and the reasons for selecting the preferred options included in the Order Scheme, this is addressed in section 8 of Network Rail’s Statement of Case (**CD 1.19**); the Design and Access Statement (**CD 1.15**); section 4 of the Planning

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<sup>22</sup> See Table 1 point 1 of the Revised Statement of Common Ground dated 24 February 2024 (**CD 6.02**)

<sup>23</sup> **CD 4.Sup/02**

<sup>24</sup> **CD 4.Sup/03**

<sup>25</sup> See Section 7 of the Statement of Case (**CD 1.19**) and Section 6 of the Planning Statement (**CD 1.14**).

<sup>26</sup> See **CD 1.05** and section 5 of David Vernon’s Proof of Evidence (**CD 7.02**).

Statement (**CD 1.14**); the Alternative Option Evaluation Study for each of the listed bridges (**CD** and in the evidence of Paul Harrison (**7.05**), Ged Stamper (**CD 7.08**), Michael Westwood (**CD 7.27**) and Suzanne Bedford (**CD 7.29**).

30. The scheme development and optioneering process has been informed by consultation and engagement with key stakeholders (including landowners). Careful consideration has been given to (inter alia) impacts on those using existing infrastructure,<sup>27</sup> to on impacts on affected landowners, and the importance afforded to heritage assets in designing and developing the Order Scheme, as well as to the operational needs of the railway, constructability and cost.<sup>28</sup> Whilst there are objectors who disagree with the options that Network Rail has selected, Network Rail maintains that the proposals it has taken forward into the Order Scheme are the appropriate options for achieving the Order Scheme's objectives, and will be demonstrated through its evidence.

### **The closure of level crossings**

31. The Order (and associated consents) would confer powers on Network Rail to close 5 level crossings, to extinguish the public and (where applicable) private rights of way passing over them, and to create new public or private rights of way in substitution for the same.
32. As set out above, the level crossings within the Order limits are a significant constraint on the proposed upgrades to this section of the NTPR. They are a constraint which must be addressed if the improvements to this section of the NTPR which would be authorised or enabled by the Order Scheme are to be brought forward. Andrew Cunningham explains in his evidence (para 2.2.4, **CD 7.23**) that where an increase in train capacity is proposed, Network Rail's regulator, the ORR, requires Network Rail to review the implications of the risk at existing level crossings and to make any required upgrades/interventions to ensure that the risk at the crossing is not materially increased. Thus, to the extent that the improvements that would be realised or enabled by the Order Scheme would introduce a

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<sup>27</sup> As a public body, Network Rail is subject to the public sector equality duty in s.149 of the Equality Act 2010. This is addressed, inter alia, in the Proof of Evidence of Jerry Greenwood (**CD 7.20**) and Suzanne Bedford (**CD 7.29**). See also sections 4 and 4 of the Design and Access Statement (**CD 1.15**).

<sup>28</sup> As a publicly funded body, Network Rail is obliged to demonstrate that the TRU programme, and each of the projects included within it, provide Value for Money (VfM). See para 5.1.2 of David Vernon's Proof of Evidence (**CD 7.02**) and section 5 of Jerry Greenwood's Proof of Evidence (**CD 7.20**).

higher level of risk to those using them (through, for example, an increased frequency of trains passing over them) that risk must be addressed before those improvements can be implemented if that risk is to be mitigated so far as is reasonably practicable.<sup>29</sup>

33. Level crossings also represent a key constraint on improving the operational efficiency and resilience of the railway. As Mr Greenwood sets out in his evidence ( paras 3.17 – 3.31, **CD 7.20**) incidents at level crossings, such as temporary closure or slowing of the line due to a train striking a level crossing user, a near miss or incidence of misuse or trespass, can not only cause delays and disruption to the NTPR but can have considerable effects on the efficient running of the wider network.
34. It is widely acknowledged that the closure of level crossings is the most effective way to remove the risk that they pose to the safety of those using them. It is also the most effective way to remove the risks to operational efficiency that they present.
35. Michael Westwood (**CD 7.27**) and Suzanne Bedford (**CD 7.29**) set out in their evidence the options which were considered and reasons for taking forward the Order Scheme proposals in respect of Barrowby Lane, Barrowby Foot and Peckfield, and of Garforth Moor and Highroyds Wood respectively. Andrew Cunningham has separately assessed the options which would ordinarily be considered by a level crossing manager as part of Network Rail's level crossing risk assessment process, which also concluded that the options taken forward in the Order Scheme are the most appropriate means of managing increased risk at the crossings. There is no real – or at least, substantiated - challenge to the need to close each of these crossings. It is clear, when considering the evidence of those witnesses, together with that of Jerry Greenwood and David Vernon, why that is the case.
36. In terms of the rights that would be affected by the closure of the level crossings, the Order (if made) would authorise the extinguishment of public rights of way over each of the level crossings, and private rights of way over Garforth Moor level crossing.

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<sup>29</sup> See also, in that regard Jerry Greenwood's Proof of Evidence at 3.3.3 – 3.3.35 (**CD 7.20**).

37. S.5(6) provides that:

“An order under section 1 or 3 above shall not extinguish any public right of way land unless the Secretary of State is satisfied –

- (a) that an alternative right of way has been or will be provided, or
- (b) that the provision of an alternative right of way is not required.”

38. Creation of new public rights of way, to provide an alternative route for members of the public crossing the railway, are provided for in the draft Order for Barrowby Lane and Barrowby Foot level crossings (via a new bridleway bridge – Scheduled Work No 4); Peckfield level crossing (a new footpath or bridleway – the draft Order would provide for either – through Micklefield Recreation ground) with users then crossing the railway via an existing public highway underbridge on the Great North Road; and at Highroyds Wood, with users crossing the railway through an existing (listed) underpass. No new right of way is proposed for the closure of Garforth Moor, for the reasons explained in Suzanne Bedford’s Proof of Evidence (**CD 7.29**). The draft Order does, however, provide for the acquisition of new rights of way over an access track to the north of the railway, to provide a right of access for third parties including users of the Garforth Bank Row Allotments. None of those public or private rights of way can be extinguished (and the level crossings permanently closed) unless and until the new right of way specified in Part 1 of Schedule 8 (public rights of way) or accommodation facility specified in Part 1 of Schedule 9 (for the private rights) have been provided. With respect to public rights of way, those must be provided to the reasonable satisfaction of the highway authority: see Article 17(4).

39. Save for what is stated in s.5(6), the Act is silent on any test to be applied, or factors to be considered, when an Order seeks to extinguish a public right of way.<sup>30</sup> The extant guidance - ‘a Brief Guide to TWA procedures’ – does not contain any guidance specifically on this point.

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<sup>30</sup> Guidance previously published by the DfT - A TWA Guide to Procedures Guidance on the procedures for obtaining orders under the Transport and Works Act 1992, relating to transport systems, inland waterways and works interfering with rights of navigation” (2006) - previously indicated that the Secretary of State would wish to be satisfied that where an alternative route was to be provided, it would be a suitable and convenient replacement for existing users. That Guidance is no longer available on the DfT’s website. See further Network Rail’s Response to Legal Submissions on behalf of Leeds City Council and legal issues raised by the Peak and Northern Footpath Society (**CD 8.06**).

40. To the extent that the current guidance provides any assistance or guidance as to the matters which the Secretary of State would wish to consider on an application for TWAO, this is most clearly encapsulated in paragraphs 3 and 4:

*“3. The kinds of scheme that may be authorised by a TWA order can have a very important role to play in improving the country’s infrastructure. Better public transport services, for example, can help reduce congestion, help people get to their destination more quickly, and generally give people a better quality of life.*

*4. But schemes that are sent for approval under the TWA can also give rise to objections from people whose property or business is affected, or who may be concerned about the effect on the local environment. The purpose of the procedure is to allow the Secretary of State, or the Welsh Government, to come to an informed view on whether it is in the public interest to make the TWA order.”*

41. There are three points which Network Rail would submit should be borne in mind when considering the alternative routes proposed under the Order Scheme.

42. Firstly, that the purpose of the Act is to enable orders to be made relating to, or matters ancillary to, the construction or operation of (inter alia) railways, including the alteration of railways.<sup>31</sup> The power to make such an order, in s.1, is the principal power to which the other powers in the Order are mainly incidental. To the extent that the proposed alternative route at Peckfield, and the decision not to provide a new right of way at Garforth Moor, are disputed by those objecting to the Order, those objections must necessarily be considered against the backdrop of the purpose of the Order being to effect alterations to the railway which are required to improve the NTPR and deliver better transport services.

43. Secondly, that where new rights of way are to be created under the Order, those new rights of way are replacements for those currently passing over the crossings. This is not a public right of way (PROW) improvement project. It is about considering what provision is to be made by way of alternative for the PROW which is to be extinguished.

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<sup>31</sup> See the Introductory Text, s.1 and Sch 1 para 1 to the Act (**NR63**).

44. Thirdly, each of PROW of way at issue either form part of a longer footpath/bridleway or the wider PROW network. The alternative routes therefore need to be considered in the context of those wider routes, including use, usability and existing features or constraints. It would not be appropriate to consider the short section of PROW to be extinguished, and the section which is to replace it, in isolation.
45. In Network Rail's submission, it thus follows that when considering the proposed replacement route, it is appropriate to focus, at least in the first instance, on how the PROW to be extinguished is used and able to be used today. That, in turn, needs to be considered against the overarching context of an Order which is sought for the purpose of a railway project, being the much needed improvements to the NTPR, and the wider considerations discussed by Jerry Greenwood in sections 6, 7 and 8 of his Proof of Evidence **(CD 7.20)**.
46. The proposed diversion routes are addressed by Suzanne Bedford in her evidence **(CD 7.29)**. Road safety issues raised in respect of the Peckfield proposals are addressed in the evidence of Ged Stamper **(CD 7.08)**.

### **Highway impacts**

47. The upgrades and improvements to be effected by the Order Scheme (and wider Scheme) will require changes to be made to a number of highway and other infrastructure assets. Network Rail has been working closely with Leeds City Council to resolve the concerns it had raised regarding highway matters, and a Statement of Common Ground has been submitted which refers (inter alia) to a side agreement that have been entered into in respect of highways matters, a summary of which is provided in section 5 of Paul Harrison's Proof of Evidence **(CD 7.05)**. Leeds City Council has now withdrawn its objection in respect of all matters save for issues relating to Peckfield Level Crossing.<sup>32</sup>
48. Construction of the Order Scheme (and wider Scheme it would enable) will inevitably result in traffic impacts. With regards to those elements of the Order Scheme which are the subject of the request for deemed planning permission, those impacts and measures proposed to mitigate them have been assessed in the Transport Technical Note in Volume

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<sup>32</sup> Letter of 26 February 2024.

3 Appendix 11 of the Environmental Report (**CD 1.16.02**), and summarised in Chapter 14 of the Environmental Report (**CD 1.16**). There are specific Transport Assessments regarding the works to Austhorpe Lane Bridge and Ridge Road Bridge in Appendix 11A and Appendix 11B respectively (**CD 1.16.02**). Delivery of the Order Scheme will be controlled under the requirements of a comprehensive Code of Construction Practice<sup>33</sup> and of a Construction Traffic Management & Travel Plan to be submitted and approved to Leeds City Council under the proposed conditions to the attached to the deemed planning permission. The requirement for, and matters to be included within, a Construction Traffic Management & Travel Plan are also provided for through the side agreement on highways matters: see sections 4.3 and 4.4 of Paul Harrison's Proof of Evidence (**CD 7.05**). The impacts of particular works on highways and traffic are addressed in section 3 of his Proof.

49. Protective provisions for statutory undertakers (including utilities) are contained in Schedules 14 and 15 of the draft Order (**CD 1.02.02**). It is anticipated that the works to divert the high pressure gas mains at Austhorpe Lane (Scheduled Work No 2) and Ridge Road (Scheduled Work No 6) would be carried out by Northern Gas Networks utilising the powers conferred on Network Rail under the draft Order (on which, see Article 34(4)).

### **Environmental considerations**

50. The Transport and Works (Applications and Objection Procedure) (England and Wales) Rules 2006 require an applicant for a TWAO to submit an Environmental Statement in relation to any proposed works that constitute a project of a type outlined in Annex I or II of the EIA Directive.<sup>34</sup> On 5 April 2023, Network Rail requested a screening decision from the Transport Infrastructure Planning Unit as to whether an environmental impact assessment (EIA) was required for the project which is the subject of the proposed order. On 17 May 2023, the Unit issued its decision, confirming that an EIA was not required in relation to the Order scheme (**CD 1.10**).

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<sup>33</sup> See draft condition 6 of the agreed list of suggested conditions is at Appendix 2 to the Revised Statement of Common Ground (**CD 6.02**) and the environmental agreement at Appendix 2 to Jim Pearson's Proof of Evidence (**CD 7.12**).

<sup>34</sup> Directive 2011/92/EU of the European Parliament and of the Council on the assessment on the effects of certain public and private projects on the environment, as amended by Directive 2014/52/EU.

51. Despite there being no requirement for an Environmental Statement, Network Rail has prepared and provided with its application an Environmental Report (**CD 1.16**) which summarises its appraisal of the environmental effects of the works which are the subject of the request for deemed planning permission and the associated temporary construction compounds and accesses required to deliver those components. This includes a detailed appraisal of (inter alia) landscape and visual impacts, ecology, trees and traffic and transport impacts.
52. The design of the engineering aspects of the Order Scheme has sought to avoid, reduce and compensate for the environmental impacts of the project wherever possible. Environmental and sustainability considerations have been important criteria throughout the decision-making process. Control of potential impacts, and mitigation for the Order Scheme, are also secured through the proposed planning conditions: in particular, draft conditions 5 (Landscaping & ecology), 6 (Code of Construction Practice), and 10 (Biodiversity Net Gain).<sup>35</sup> Those conditions have been agreed with Leeds City Council, as the local planning authority for the vast majority of the Order Scheme for all works encompassed within the request for deemed planning permission.
53. An issue had previously been raised by Leeds City Council as to the fact that the Environmental Report did not consider development consented other than through the request for deemed planning permission, and/or that the conditions would not attach to development other than that included within the request for deemed planning permission.
54. As to the former, prior to submitting its request for a screening decision to the Transport Infrastructure Planning Unit, Network Rail had previously submitted a request to Leeds City Council for a screening opinion under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 for the wider E2-E4 project.<sup>36</sup> On 13 April 2022, Leeds City Council confirmed that it did not consider that that wider project constituted

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<sup>35</sup> See Appendix 2 to the Revised Statement of Common Ground (**CD 6.02**)

<sup>36</sup> "...proposed upgrades to the TransPennine Railway Route, between the areas from Leeds City Centre (east of Leeds Station) (known as project E2) through to land to the east of Micklefield Station (known as project E4) up to the boundary with Selby District Council"

EIA development requiring an EIA under the 2017 Regulations (**CD 1.22**). It is understood that Leeds City Council is now content on this issue.<sup>37</sup>

55. As to the latter, as Jim Pearson explains in his Proof of Evidence (**CD 7.11**), whilst those environmental protections would usually be secured through Network Rail's Contract Requirements – Environment (CR-E), in respect of works to be undertaken under permitted development rights which are facilitated by provisions included in the Order application, Network Rail has voluntarily entered into an environmental agreement with Leeds City Council extending specified mitigation measures and control (including the COCP Parts A and B) to those works. A copy of the environmental agreement is provided at Appendix B to Jim Pearson's Proof of Evidence (**CD 7.12**). Leeds City Council has confirmed it is content with this approach.<sup>38</sup>

56. With regards to the specific matters raised in the Statement of Matters, these are addressed in the Proof of Evidence of Jim Pearson (**CD 7.11**).

### **The historic environment**

57. Network Rail's case in relation to the effects of the Order Scheme on the historic environment is set out in Section 11 of the Statement of Case (**CD 1.19**). Amy Jones gives expert evidence in support of that case (**CD 7.32**). Network Rail has made 4 applications for Listed Building Consent to listed structures required as part of the Order Scheme. Those applications have been referred to the Secretary of State for Levelling Up, Housing and Communities pursuant to section 12(3A) of the Planning (Listed Buildings and Conservation Areas) Act 1990. Each application is accompanied by a detailed Heritage Assessment which appraises the significance of the asset, the impact of the Order Scheme and mitigation or compensation proposed (**CD 1.18.01**). A series of proposed conditions have been provided for each of the applications, including, for Crawshaw Woods bridge, a requirement for a Conservation Implementation Management Plan (CIMP), a mechanism which has been used on previous schemes involving works to listed buildings, including for works to the Grade I listed Huddersfield Station on the listed

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<sup>37</sup> See Table 3 entry 4 in the Revised Statement of Common Ground (**CD 6.02**) and Leeds City Council's letter of 26 February 2024.

<sup>38</sup> See Table 3 entry 5 in the Revised Statement of Common Ground (**CD 6.02**).

building consent associated with the Network Rail (Huddersfield to Westtown (Dewsbury) improvements) Order 2022.<sup>39</sup>

58. Network Rail has consulted closely with Historic England and with Leeds City Council during the development of the Order Scheme. Neither raises any objection to the making of the Order (insofar as it affects the works to those structures) or to the grant of Listed Building Consent.
59. Each of the listed buildings affected by the Order Scheme deserves careful and sensitive consideration. That has been the case throughout the development of the Order Scheme, as will be clear from the evidence of Paul Harrison, Amy Jones and the Alternative Options Evaluation Study prepared for each of the structures. In recognition of the importance of those assets, once it was recognised that it was not feasible to retain three of the structures (Austhorpe Lane Bridge, Brady Farm Bridge and Ridge Road Bridge) a bespoke structure which seeks to reflect the historic ‘basket arch’ feature specifically associated with James Walker is to be provided for the two structures which are to be replaced (those carrying public carriageways - Austhorpe Lane Bridge and Ridge Road Bridge). In respect of Crawshaw Woods Bridge, the only surviving cast iron bridge on the Leeds to Selby Line (and indeed, the oldest cast iron bridge still in use and in situ over an operational railway in the world today) an engineering solution has been identified which will enable the bridge to be partly deconstructed and reassembled at sufficient height for the OLE equipment to be installed underneath it, thus retaining this historic structure as part of the operational railway.
60. Network Rail recognises that for three of the structures – Austhorpe Lane Bridge, Brady Farm Bridge and Ridge Road Bridge – the loss of each of those structures would result in substantial harm under Chapter 16 of the NPPF. That substantial harm cannot be avoided if the Order Scheme is to proceed. It is Network Rail’s appraisal – an appraisal shared by Leeds City Council - that the substantial public benefits which would be delivered by the Scheme would outweigh that harm.<sup>40</sup> Similarly, with regards to Crawshaw Woods, where the harm would be less than substantial, it is Network Rail’s

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<sup>39</sup> See Appendix E to the Inspector’s Report, a copy of which is appended to David Vernon’s Proof of Evidence at Appendix A (**CD 7.03**).

<sup>40</sup> See, for example, section 7 of the Heritage Assessment for Austhorpe Lane, Brady Farm Bridge and Ridge Road Bridge (**CD 1.18.1**) & para 7.5.27 of the Statement of Case (**CD 1.19**). For Leeds City Council’s position, see the Delegated Reports (**CD 4.Report/1, CD 4.Report/2 & CD 4.Report/ 4**).

appraisal, again shared by Leeds City Council, that that harm would be clearly outweighed by the public benefits that would be realised by the Scheme.<sup>41</sup>

61. The harm to those assets also needs to be viewed in its context. Each of the 4 structures affected are railway assets. Their significance is inextricably linked with the railway which they were built to serve. The purpose of the Order Scheme – and wider Scheme which it would facilitate – is to ensure that that railway can continue to meet the needs of the travelling public, and of freight, in the 21<sup>st</sup> century. It is difficult to conceive of a more obvious example of a development proposal which is designed to conserve and enhance the significance or ensure a viable use of heritage assets than a scheme which seeks to restore a critical part of the TransPennine Route to the functional, strategic and economic status that it originally enjoyed.
62. The wider effects of the Order Scheme on the historic environment are considered within Chapter 5 of the Environmental Report **(CD 1.16)** and Section 11 of the Statement of Case **(CD 1.19)** The applications, the potential impacts on other heritage affected by the Order Scheme, and how they accord with national and local policy are addressed in the evidence of Amy Jones **(CD 7.32)**, and, in a planning context, by Tony Rivero **(CD 7.14)**.

### **The compulsory purchase tests**

63. Compensation and relevant proprietary matters are addressed in the evidence of Benjamin Thomas **(CD 7.17)**, whose Appendix A contains more detailed information as to the specific land parcels affected and the nature of the rights or powers sought over third party land. The details of any compensation which may be payable to an individual landowner is not a matter for consideration at this Inquiry.
64. For the reasons summarised in this Opening Statement and stated in far more detail both in Network Rail's Statement of Case and in the evidence given by Network Rail's witnesses, it is and will be Network Rail's submission that there is a clear and compelling case in the public interest for compulsory purchase of the lands and rights summarised

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<sup>41</sup> See, for example, section 7 of the Heritage Assessment for Crawshaw Woods Bridge **(CD 1.18.1)**. For Leeds City Council's position, see the Delegated Report on the application **(CD 4.Report/3)**.

in Appendix A to Benjamin Thomas's Proof and shown in the Book of Reference (**CD 1.08**) which justifies the interference with the human rights of the landowners affected.

### **Public Open Space**

65. The Order Scheme requires the use of a number of areas of public open space which lie alongside the existing rail corridor. Special rules apply to the compulsory purchase of public open space, by virtue of section 19 of the Acquisition of Land Act 1981. Network Rail has made requests for two certificates under s.19 of the 1981 Act.
66. The first, in respect of land at Penny Pocket Park for a certificate under s.19(1)(b) (acquisition of land without giving of exchange land) was made on the basis that the land proposed to be acquired does not exceed 250 square yards in extent, and that the giving in exchange of other land is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public.<sup>42</sup>
67. The second, in respect of land at Austhorpe Lane, was made under s.19(1)(b) of the 1981 Act in respect of Plots 7-010 and 7-016B (on the same basis as for Penny Pocket Park) and under paragraph 6(1)(a) of Schedule 3 of the 1981 Act in respect of Plots 7-017A and 7-016 where rights only were sought (on the basis that the land, when burdened with the right, will be no less advantageous to those persons in whom it is vested and other persons, if any, entitled to rights of common or other rights, and to the public, than it was before).<sup>43</sup>
68. On 25 September 2023, the Secretary of State stated his intention to issue the certificates sought by Network Rail in respect of Penny Pocket Park.<sup>44</sup> On 9 January 2024, the Secretary of State stated his intention to issue the certificates sought by Network Rail in respect of Austhorpe Lane.<sup>45</sup>

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<sup>42</sup> **CD 1.18.38.**

<sup>43</sup> **CD 1.18.39.**

<sup>44</sup> **CD 1.18.38.06**

<sup>45</sup> **CD 1.18.39.06.**

69. There is one outstanding objection to the application for the certificate relating to Austhorpe Lane (**CD 4.Obj/60**). It is understood that that objector intends to attend the Inquiry. The applications are addressed in the evidence of Ben Thomas (**CD 7.17**) and a response provided to the objector in the Rebuttal Proof of Jim Pearson (**CD 8.04**) and Paul Harrison (**CD 8.01**).

**Conclusion**

70. At the conclusion of the Inquiry, Network Rail will invite the Inspector to recommend that the Order be made, and associated consents granted, to ensure that this much needed upgrade to this vital section of the North TransPennine railway can proceed.

JACQUELINE LEAN

27 February 2024