

Proposed Rother Valley Railway (Bodiam to Robertsbridge Junction) Order

Transport and Works Act 1992

Transport and Works (Inquiries Procedure) Rules 2004

Public Local Inquiry

Department for Transport Reference: TWA/18/APP/02/OBJ/1002

Statement of Case

- (i) Mr Andrew Hoad, Mrs Lynn Hoad, Mr Thomas Hoad and Mr William Hoad of Parsonage Farm, Church Lane, Salehurst, Robertsbridge, East Sussex TN32 5PJ; and**
- (ii) The Executors and Trustees of the Noel de Quincey Estate (Miss Vanessa de Quincey, Mrs Cherida Michell and Mr Michael Conroy) and Mrs Emma Ainslie c/o Moat Farm, Salehurst, Robertsbridge, East Sussex, TN32 5PR**

1. INTRODUCTION

1.1. This Statement of Case is submitted jointly by:

(i) Mr Andrew Hoad, Mrs Lynn Hoad, Mr Thomas Hoad and Mr William Hoad of Parsonage Farm, Church Lane, Salehurst, Robertsbridge, East Sussex TN32 5PJ; and

(ii) The Executors and Trustees of the Noel de Quincey Estate (Miss Vanessa de Quincey, Mrs Cherida Michell and Mr Michael Conroy) and Mrs Emma Ainslie c/o Moat Farm, Salehurst, Robertsbridge, East Sussex, TN32 5PR

(for the purpose of this Statement of Case known together as “the Landowners”)

in respect of the proposed Rother Valley Railway (Bodiam to Robertsbridge Junction) Order (“the Order”) and is made pursuant to Rule 7 of the Transport and Works (Inquiries Procedure) Rules 2004 (“the Rules”).

1.2. The Landowners submitted a full and detailed objection to the Order on 31 May 2018. The Order, if confirmed, would amongst other matters authorise the compulsory acquisition of land owned by the Landowners. The Landowners are therefore “statutory objectors” to the Order for the purposes of Rule 23 of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006.

1.3. By way of letter dated 28 June 2018, the Secretary of State for Transport gave notice to the Landowners:

1.3.1. of his intention to hold a public inquiry in respect of the proposed Order under Rule 4 of the Rules; and

1.3.2. requiring the Landowners to submit a Statement of Case under Rule 7 of the Rules by 20 September 2018.

1.4. This Statement of Case repeats and expands upon the matters raised in the Landowners’ objection dated 31 May 2018 and sets out the case the Landowners will put forward at the public inquiry.

1.5. In summary the Landowners object to the Order for the following reasons:

- The Order will introduce unnecessary and potentially catastrophic safety risks on the local and strategic highway network through the proposed addition of three new level crossings, in particular across the A21 Trunk Road;
- The Order will significantly and detrimentally impact upon traffic flows adding to existing delays and congestion to the detriment of local and wider tourism and other industries;
- The Order would jeopardise the long-held aspiration to dual the A21 from London to Hastings and the economic benefits such improvements would provide;

- The Order will increase flooding risk to surrounding properties and agricultural land with no compensatory mitigation identified;
 - The Order will destroy an existing ecological environment of exceptional value jeopardising the habitats of a wide variety of rare flora and fauna;
 - The Order will result in the removal of hundreds of trees causing significant harm to the Area of Outstanding Natural Beauty and harm to the setting of Robertsbridge Abbey;
 - The Estimate of Costs submitted with the application is inadequate and fails to set out the true cost of designing, constructing, operating and maintaining the rail, road and flood defence infrastructure. No satisfactory evidence has been produced to demonstrate that the applicant has the resources to fund this considerable burden;
 - The application documentation (and in particular the Environmental Statement) is inadequate and out of date, with many important design details and accompanying assessments missing – as evidenced by the representations made by Highways England, East Sussex County Council, Office and Rail and Road and the Environment Agency. The applicant has failed to properly undertake any meaningful pre-application consultation with a number of key statutory consultees;
 - The Order, on the applicant's own analysis, will give rise, at best, to only negligible to moderate socio-economic benefits; and
 - The Order will have a materially detrimental impact on two longstanding farming businesses who purchased the land from the Government in good faith on the explicit understanding that the railway would never be re-instated.
- 1.6. In order to make the Order, the Secretary of State will need to be satisfied that there is a compelling case in the public interest to justify the compulsory acquisition of the Landowners' land. This is a necessarily high threshold to justify the interference with the Landowners' human rights. The Secretary of State will need to weigh the numerous significant detrimental risks and impacts caused by the Order against the, at best, negligible public benefits. In these circumstances the Landowners consider there is no case whatsoever, let alone a compelling one, to justify the compulsory acquisition.
- 1.7. The Landowners reserve the right to amend or add to the case they put forward at the public inquiry and to refer to or put additional documents in evidence to the public inquiry or request additional documents from Rother Valley Railway Limited ("RVRL") or the Department for Transport.
- 1.8. In particular, in correspondence with the Department of Transport, the Landowners have requested copies of all representations received in respect of the application. At the time of submission of this Statement of Case, some, but not all, of these representations have been provided. The Landowners will continue to request copies of all representations made and reserve the right to add to or amend their case following receipt of this information.
- 1.9. Likewise, as explained in more detail below, the Landowners have, in correspondence requested information and documentation from RVRL relating to its

proposals. As yet, not all the requested information and documentation has been provided. The Landowners reserve the right to add to or amend their case following receipt of this information.

2. INVALID APPLICATION – TECHNICAL ERRORS AND OMISSIONS

- 2.1. In their objection to the application for the Order, the Landowners identified that the application was in breach of the statutory requirements and was therefore invalid.
- 2.2. Pursuant to Rule 10 (4) RVRL was required to submit a plan and book of reference in accordance with requirements of Rule 12.
- 2.3. Rule 12(8)(a) required the book of reference to contain “the names of all owners, lessees, tenants (whatever the tenancy period) or occupiers of any land which it is proposed” (our emphasis) shall be subject to compulsory purchase.
- 2.4. Rule 12(10) provides that the requirements of Rule 12(8) only extend to including those names, “which have been ascertained by the applicant, after making diligent inquiry” (our emphasis).
- 2.5. Rule 12 (11) provides that where an applicant has made diligent inquiry, “the application shall not be invalidated by reason only of any error in, or omission of information from, the book of reference”.
- 2.6. Rule 15 required RVRL to serve written notice of the application in the prescribed form on all parties named in the book of reference.
- 2.7. The book of reference submitted with the application did not meet the requirements of Rule 12 in that it omitted the names of owners of land proposed to be compulsorily acquired.
- 2.8. Prior to making the application, on 17 March 2018 RVRL wrote to some (but not all) of the Landowners. The purpose of the letter was to request confirmation that RVRL’s analysis of the ownership of the land proposed to be compulsorily acquired was accurate. The letters were accompanied by a poorly printed A4 plan and a summary appendix purporting to identify all parties with an interest in the identified plots. The letter did not request a response within a stated timeframe.
- 2.9. On 29 March 2018, Richard Max & Co, on behalf of the Landowners, wrote to RVRL to explain that due to the scale and quality of the plans provided and the nature of the description of the individual plots, it was impossible for the Landowners to provide the requested confirmation. The letter requested A1 copies of the plans and expressly confirmed that the Landowners would respond substantively on receipt of this information.
- 2.10. No response was received to Richard Max & Co’s letter until 19 April 2018 – the day the application was submitted to the Secretary of State. The letter advised that RVRL believed the plans provided were adequate and confirmed that the application would be made that same day. Against this background the Landowners maintain that RVRL failed to undertake diligent inquiry prior to making the application for the purpose of Rule 12(11).
- 2.11. The requested A1 plans were only made available after the application had been submitted following further requests made of RVRL’s surveyor from one of the Landowners’ surveyors.

- 2.12. On 11 July 2018 (three months after the application had been submitted to the Secretary of State), Winckworth Sherwood (on behalf of RVRL) wrote to Richard Max & Co to request clarification as to the errors and omissions in the book of reference.
- 2.13. On 25 July 2018 Richard Max & Co replied to Winckworth Sherwood to explain that the book of reference had erroneously identified the owners of Plot 62 (being the main plot proposed to be compulsorily acquired through Parsonage Farm). The letter confirmed that registered owners of the land comprised within this Plot were Andrew Hoad and Thomas Hoad, and that the land was also held in trust for William Hoad.
- 2.14. On 29 August 2018 Winckworth Sherwood wrote again to Richard Max & Co to confirm that the book of reference had been updated and enclosed addition notices for Thomas Hoad and for Andrew Hoad and Thomas Hoad as trustees for William Hoad. No notice was issued to William Hoad and no copy of the updated book of reference was supplied.
- 2.15. For completeness, since this correspondence Mrs Michell has gifted her interest in part of Moat Farm to her daughter, Mrs Emma Ainslie. Mrs Ainslie is therefore an additional statutory objector and one of 'the Landowners' for the purpose of this Statement of Case.
- 2.16. In their representations to the application both the Salehurst and Robertsbridge Parish Council and UK Power Networks also identified errors in the book of reference. In turn Highways England has raised concerns about Plots 30, 34 and 35 which are not included in the draft Order. The Landowners also understand that other third parties whose rights will be overridden by the proposed Order have not been included within the Book of Reference and have therefore not been duly notified.
- 2.17. At the time the application was made it was clearly invalid as it did not comply with the requirements of Rules 10 and 12.
- 2.18. RVRL has, belatedly, sought to rectify these basic errors and omissions after the submission of the application. The Landowners have not been provided with a copy of the updated book of reference to check the amendments. However, notice has not yet been served on William Hoad or Emma Ainslie in accordance with the requirements of Rule 15.
- 2.19. RVRL's casual and imprecise approach to land referencing matters is illustrative of its overall attitude to the project and discussions with the Landowners generally. RVRL's failure to prepare an accurate book of reference should cause the Secretary of State to question its competency to construct, manage and run the proposed railway (in particular the proposed level crossing over the A21 Trunk Road) notwithstanding any issues over the validity of the application itself.

3. ENVIRONMENTAL IMPACT ASSESSMENT ISSUES

- 3.1. The Landowners note that the Secretary of State issued a Scoping Opinion dated 22 June 2017 in contemplation of the application for the Order being made.
- 3.2. The Scoping Opinion confirms the Secretary of State's view that the Environmental Statement dated June 2014 (together with the addendum dated November 2016)

submitted in support of RVRL's application for planning permission were appropriate to serve as the Environmental Statement for the purpose of the application for the Order (subject to the requirement for further information to be provided in respect of landscape against the High Weald AONB Management Plan).

- 3.3. The Landowners note that notwithstanding the June 2017 Scoping Opinion, Rule 8(8) enables the Secretary of State to require additional information to be provided in connection with the applicant's Environmental Statement.
- 3.4. The Landowners consider that many of the surveys and assessments underpinning the Environmental Statement (and the associated Addendums) are demonstrably out of date. This conclusion is not only supported by the advice of RVRL's own consultants but also by the representations made by Highways England, ORR and the Environment Agency.
- 3.5. By way of illustration:
 - The baseline in the Environmental Statement methodology (para 4.3.4) assumed the start of construction in 2015. It is now unlikely that construction will start until late 2019 at the very earliest;
 - The noise assessment is based on monitoring undertaken in November 2013;
 - The air quality assessment assumed a baseline assessment year of 2013 and completion of the project 2017;
 - The survey data for the ecological assessment was collected in July 2013 – the November 2016 Addendum acknowledged that this data (even at that time) was “on the limit of what might be considered as suitably up to date”. In September 2018, it is clearly beyond that limit.
 - The Flood Risk Assessment even as updated still dates from 2016. It is not clear whether it has taken into account the EA's revised allowances for climate change published in that year;
 - The traffic data informing the various Highways reports is derived from surveys undertaken between April and August 2010;
 - The reports from Manchester Metropolitan University underpinning the Socio-Economic Assessment are dated from 2007 and 2013;
 - The Environmental Statement in numerous places records that the Landowners did not provide access to enable surveys to be undertaken. However, no request to access the land for this purpose has been made since planning permission was granted in March 2017.
- 3.6. One consequence of the continued reliance on out of date assessments is that the analysis of the cumulative effects of the proposal is likewise out of date.
- 3.7. In its representations to the application for the Order Highways England stated that “The Environmental Statement accompanying the application is out of date and deficient in respect of traffic and transport matters”. They further explain that “It is clear therefore that the baseline conditions considered by the ES are now in excess of seven years old” and “...the Applicant must review the Traffic and Transport impacts of the proposed development taking into account current flows on the A21 Trunk Road

and the current programme for implementation of the proposal. Similarly, the Personal Injury Accident Data at Section 3.3.3 of the 2011 Traffic Impact Study is in need of updating.”

- 3.8 On 30 August 2018, RVRL wrote to Richard Max & Co purporting to respond to the points made in the Landowners’ objection to the application. The letter confirmed that notwithstanding the concerns raised by the Landowners and Highways England, RVRL does not propose to update the Environmental Statement. The letter stated that:

“Given the small scale of the development that is the reinstatement of this single track railway, and the detailed work that has been carried out over a period of years, the submission of further information at this stage of the application would be both unnecessary and disproportionate”.

- 3.9 This response fails to acknowledge the requirements of the EIA Regulations and the legal importance of the EIA process as a whole to the Secretary of State’s consideration of the application. The development will give rise to significant environmental effects – in terms of its impact on the highway network, flooding and ecology amongst others. The “detailed work” submitted to date is inadequate and out of date as pointed out not just by the Landowners but also by Highways England, the Office of Road and Rail (“ORR”) and the Environment Agency in their representations on the Order.
- 3.10 Furthermore, in respect of highways matters both Highways England and ORR in their representations to the Order identified that RVRL had failed to establish whether other options to the level crossing are cost effective or viable. These alternative options need to be fully explained and assessed in the Environmental Statement.
- 3.11 Given the lapse of time since the original surveys and assessment were undertaken, the Landowners maintain that they are no longer sufficiently reliable to enable the Secretary of State to properly and lawfully assess the environmental effects of the Order – a position now endorsed by Highways England and the Environmental Agency.
- 3.12 The Landowners request that the Secretary of State reviews the submitted Environmental Statement and Addendums again, and where necessary, requires the submission of further updated information on all topic areas pursuant to Rule 8(8).
- 3.13 **In correspondence with the Department for Transport, Richard Max & Co has requested that the Secretary of State consider the adequacy of the Environmental Statement as a preliminary issue as soon as possible. It will lead to considerable wasted time and costs for all parties if this matter is only considered at the beginning of the inquiry and the Inspector or Secretary of State at that point consider that the Environmental Statement should be updated.**

4 FUNDING MATTERS

- 4.1 RVRL has estimated the cost of the project at £5.3m. The Funding Statement confirms that the project will be funded by The Rother Valley Railway Heritage Trust (“RVRT”) – a registered charity. In contrast, elsewhere in the application documentation, it is suggested that the project is to be funded by anonymous private benefactors.

- 4.2 The Landowners consider that the cost estimate is wholly inadequate – in particular in respect of the proposed cost of the necessary highways works (see comments below). Likewise, no allowance has been made in the costs estimate for ongoing costs of maintenance of the track, the level crossings and the associated flood defence infrastructure, as well as the ongoing operation of the railway. It is likely that the costs of installation and ongoing maintenance will far exceed those estimated by RVRL.
- 4.3 The Landowners note that Highways England, ORR and East Sussex County Council in their representations have identified significant additional design and associated work that RVR will be required to undertake before the railway is operational. It is not clear whether the costs of this work has been included within RVRL's estimate of costs.
- 4.4 Highways England in its representations has advised that RVRL will be required to indemnify them against any liability arising from the construction of the works or operation or maintenance of the level crossings and likewise to maintain unlimited public liability insurance in respect to the operation and maintenance of the level crossing. In turn Highways England have advised that RVRL will be required to provide a performance bond to be lodged in perpetuity to reimburse the Secretary of State's costs should it be necessary to close the railway in the event it falls into disrepair and/or disuse. The costs of these indemnities and performance bond has not been included within RVRL's Estimate of Costs.
- 4.5 In the Manchester Metropolitan University Report 2013 as to the economic benefit of the proposals, it is acknowledged that in order to reach the contemplated 200,000 annual visitors significant capital expenditure would be required in the Kent and East Sussex Railway. On RVRL's own analysis, it is only with 200,000 visitors that the alleged wider economic benefits will be delivered. This capital expenditure is not included within the Estimate of Costs.
- 4.6 The Secretary of State's guidance "A Guide to TWA Procedures" explains at paragraph 1.32 onwards that:
- "the applicant should be able to demonstrate that the proposals are capable of being financed in the way proposed.....*
- the applicant may need to provide a financial appraisal of the scheme for the purpose of any public inquiry.....*
- the Secretary of State's concern is to establish that the scheme is reasonably capable of attracting the funds required to implement it..... An applicant should be able to provide evidence (whether at inquiry or otherwise) to enable the Secretary of State to consider this matter"*
- 4.7 The charitable objects of RVRT are stated to be:
- "To preserve for the benefit of the public of Kent and East Sussex and of the nation the historical, architectural and constructional heritage that may exist in and around Kent and East Sussex in buildings or structures of particular beauty or historical architectural or constructional interest" (our emphasis)*
- 4.8 The Order specifically seeks authorisation for a "new railway" (as set out in the draft Order and Statement of Aims). It does not relate to an "existing railway". On this basis the funding of the Order appears to be outside the charitable objects of RVRT and would therefore be unlawful.

- 4.9 The latest publicly available accounts of RVRT (for the year ended 31 December 2014 – it is not clear why more recent accounts are not in the public domain) indicate that total unrestricted funds available to RVRT at that date were only £2.8m. There is no information in the public domain that demonstrates there is any reasonable prospect of RVRT being able to fund the costs of the project even on RVRL's inadequate estimate of the likely costs.
- 4.10 If any funding is to be provided by private benefactors it is incumbent upon RVRL to make clear who the benefactors are and to provide evidence that they have necessary resources to meet any shortfall. Absent such information the Secretary of State can place no reliance on unspecified promises from anonymous alleged benefactors.
- 4.11 Further, the Secretary of State will need to be satisfied that the future maintenance of the level crossings and the associated flood defence infrastructure will continue to be funded, in perpetuity. Unless it is properly secured, by binding legal agreements, it is inappropriate that such funding should be dependent upon the goodwill of private benefactors.
- 4.12 In this regard, the Landowners note that this was one of the reasons why, in 1967, the Secretary of State refused to make a Light Railway Order extending the line to Robertsbridge. In her letter dated 16 October 1967, Barbara Castle noted that she was:

“not convinced ... that the Light Railway Company would be sufficiently profitable to be able to sustain in perpetuity the heavy statutory obligations in respect of bridging and drainage which attach to the line” (our emphasis)

and that:

“it would clearly not be possible to regard the personal financial resources of a single supporter however generous as overcoming the considerable doubts which emerged during the inquiry about the financial resources of the Company, and their likely ability to build up adequate reserves not only in the short term but in perpetuity. Protective clauses ... would of course be valueless if the Company went into liquidation.”

- 4.13 The Landowners consider that these observations are as relevant today as they were when written. There is no evidence that, in the absence of funding from private benefactors, RVRL is itself sufficiently viable or profitable to fund the necessary works not only in the short term but in perpetuity.
- 4.14 In its response to the Landowners' objection, RVRL simply asserts that there is no legal or other requirement for individual donors to be identified before the Order can be made. This is an unsatisfactory and inadequate response which ignores the Secretary of State's own guidance as set out above.
- 4.15 Even on RVRL's own analysis there is a significant shortfall between its estimate of the costs of the project and the funds it currently has available. Once the true costs of the project and future maintenance obligations are taken into account this shortfall will significantly increase.
- 4.16 In these circumstances the compulsory acquisition of the Landowners' land should not be authorised unless and until RVRL identifies the currently anonymous private benefactors proposed to fund the shortfall; demonstrates that these individuals have both the means and intention of providing such funds; and provides a legally binding

mechanism which guarantees that the future maintenance of the level crossings and the associated flood defence infrastructure will continue to be funded, in perpetuity.

5 IMPACT UPON PARSONAGE FARM AND MOAT FARM

Parsonage Farm

- 5.1 Parsonage Farm is a long-established family run farming business growing hops, arable crops and rearing cattle. The proposed railway would run through the heart of the farm and disrupt every aspect of the farming business.
- 5.2 The Order will have a significant detrimental impact in the operation of Parsonage Farm in a number of ways including:
- The permanent material loss of productive acreage;
 - It would result in smaller less commercially viable plots of land;
 - It would remove all access to two fields at the Robertsbridge end of the farm, leaving them incapable of being farmed;
 - It would cause considerable harm and disruption during the course of the construction given the proposed access roads through the middle of the farm. This is a particular concern as given the proposed funding strategy there is a genuine risk that construction will extend over a protracted period; and
 - The raised railway embankment would give rise to a number of detrimental impacts during flood events and to long term localised higher groundwater levels that will impact upon both the arable and cattle parts of the farming business.
- 5.3 The previous line was closed in the 1950s. The railway line was subsequently purchased from British Rail in 1981. In order to eliminate problems associated with having land trapped between the railway line and the River Rother, the embankment was removed at considerable time and cost to the Hoad family.
- 5.4 These works improved the efficiency of the farming business by reinstating commercially sized arable fields. The effect of the Order will be to undo these benefits. This is important given the development of farming technology and machinery since the embankment was removed. The Landowners have invested in such technology to complement their investment in the removal of the embankment. Modern larger tractors and associated machinery are designed to be used on large commercial arable fields. A return to smaller irregular shaped isolated fields between the embankment and the river will lead to considerable reduction in efficiency and therefore income.
- 5.5 Following the construction of the A21 bypass in 1988 the land immediately adjacent to the trunk road has been left as pasture as the road rendered it unsuitable for arable production. In 2002 these fields were also subject to the building of flood defences. When a threat of flood arises, there is a need to move the stock to higher ground. The railway would not only increase the risk of such flood events but also make it considerably harder to move the stock quickly in rising flood water.
- 5.6 Since the submission of their objection, the Landowners have sought clarity regarding the proposed access to the fields to the west of the A21. In its letter of 30 August RVRL advised that “the existing access off the A21 North of Mill Stream will remain, and an extended access off Northbridge Street to the North of the railway will provide access to the land between the railway and the river Rother.”

- 5.7 This again demonstrates RVRL's lack of understanding of the operation of Parsonage Farm. The Landowners' do not enjoy any rights of access to these fields from the A21 North of Mill Stream – a fact that has been repeatedly made clear to RVRL and its advisors over many years. The Landowners have access to these fields from Northbridge Street. Whilst this access is to be maintained the location of the railway embankment and proximity to the existing flood defences outside the neighbouring residential property "Aquarius" mean that it will be impossible for any farm machinery to access the vast majority of these fields. RVRL have consistently either misunderstood or ignored this impact of the proposed railway embankment.
- 5.8 Following the removal of the railway embankment, the land at the Salehurst end of the farm is currently used for arable crop production due to the alluvial soil. Again, in flood events, the Landowners are concerned that the embankment will impede water flow and increase the time taken for the water to recede. Any such delay will cause potentially fatal damage to any crops planted at that time, leading to a complete loss of harvest. In contrast without the embankment water will recede quickly which the crops are able to withstand.
- 5.9 In recent years the farm has invested heavily in its hop enterprise to cater for the increased demand from the craft beer industry. The Landowners have active plans to expand this operation, which for all the reasons set out above will be jeopardised by the proposed railway.

Moat Farm

- 5.10 Moat Farm was purchased by Mr and Mrs de Quincey in 1946. At that time the railway was still open but very run down. It was shut down shortly thereafter and the old derelict line was offered to and purchased by Mr de Quincey. This purchase completed the farm and returned it to what it had been prior to the construction of the railway at the turn of the 20th Century.
- 5.11 The railway bed and embankment were not removed, but were allowed to return to nature. This acts as a shelter for animals in wet, windy and hot weather. It is now covered by varied vegetation and hundreds of now mature trees including oaks and aspens.
- 5.12 The majority of Moat Farm falls within Natural England's Higher Stewardship scheme. This includes that part of the farm to the south of the old railway track bed known as the Water Meadows (used for grazing cattle and sheep) and the part to the north known as the Flower Meadows (used to grow a meadow hay crop and grazed by sheep).
- 5.13 Moat Farm is of exceptional ecological value. There has been no nitrogen or chemical interference on the farm for over thirty years. As a result, it is a habitat for a wide variety of unusual and significant flora and fauna including, bats, barn owls, nightingales, dormice, moths (including the Blue Underwing moth) and extremely rare mosses.
- 5.14 As set out in the objection from the Environment Agency, RVRL has yet to demonstrate that the Order will not have an unacceptable impact on local ecology. The true and full impact on the current ecological environment needs to be considered before the Secretary of State can authorise the compulsory acquisition of the Landowners' land. It is entirely inappropriate for this to be deferred to Grampian conditions under the planning permission. Amongst other matters absent full

understanding of the ecological impact it is impossible for the Secretary of State to assess the adequacy of the proposed mitigation arrangements. This impact is particularly important given the Government's proposals to re-orientate farming subsidies towards preservation of ecosystems for important habitats, managing flood risk and protecting sensitive areas.

- 5.15 The provision of the railway embankment would result in the loss of the existing habitats along the old track bed. In turn future maintenance of the track will inevitably involve weed killers and associated pollution, as well as pollution from sulphur and carbon arising from the operation of the trains (including diesel trains). This will have a considerable harmful impact on the many species of flora in the fields either side.
- 5.16 Operationally when the railway was previously running six crossing points were provided. The Order only proposes the provision of a single crossing way with an access road running parallel along the southern length of the track. This arrangement will make it impossible to continue to farm the water meadows to the south of the railway as driving stock long distances in order to use the single access bridge and along unfenced orchards is impractical.
- 5.17 RVRL have failed to investigate and therefore take account of the terms of Mrs De Quincey's Will. Under the terms of the will, the western part of the farm is to be left in trust for Miss Vanessa de Quincey with eastern part left to Mrs Michell (as set out above now gifted in Mrs Ainslie). At this point in time the farm will effectively be sub-divided and the failure to provide more than one bridge means Mrs Michell (and now Mrs Ainslie) will have no access to the land south of the railway line.
- 5.18 In its letter 30 August 2018 RVRL assert that "the existing access has been maintained in the Order plans". This is wholly incorrect. There are currently four operational accesses across the former embankment, whereas only one is to be retained in the event the Order is confirmed.
- 5.19 RVRL has failed to engage meaningfully in respect of either Parsonage Farm or Moat Farm to seek to understand the operational impact to both businesses.
- 5.20 This is illustrated in the Environmental Statement paragraph 15.7.2 which identifies that in order to adequately mitigate the proposals, they should avoid unnecessary severance of fields and disruption to operation movements of agricultural vehicles and equipment as well as the provision of alternative means of access to the land where necessary.
- 5.21 As set out above the Order would result in severance of two fields forming part of Parsonage Farm and following the grant of probate prevent access to part of Moat Farm. These issues were drawn to RVRL's attention a number of years ago but have not been addressed in the application. The conclusion in paragraph 15.8.2 of the Environmental Statement that "the provision of access arrangements has ensured that no parcels of land that can reasonably be accessed will be left isolated" is simply untrue.
- 5.22 In its letter 30 August, RVRL maintain that the Environmental Statement remains accurate – this again demonstrates their failure to understand the effect of the proposals particularly on Parsonage Farm where no reasonable access to the fields to the west of the A21 is proposed.

6 IMPACTS ON HIGHWAY SAFETY

- 6.1 The Order if confirmed will have a significant detrimental impact on the highway network both in terms of safety and traffic flows, in particular due to the provision of three level crossings, including one across the A21 Trunk Road.
- 6.2 The A21 is part of the Strategic Road Network being the main road link between London and Hastings on the south coast. At the Northbridge roundabout in Robertsbridge (approximately 150m from the proposed location of the level crossing) the A21 already suffers from regular congestion with traffic building up in both the northerly and southerly direction on a daily basis. The current number of traffic movements through Robertsbridge is in excess of 18,000 per day (AADT) – significantly in excess of starting point for assessing the capacity of a rural single carriageway at 13,000 movements AADT (TA46/97).
- 6.3 In 2017 the Road Safety Foundation published a report entitled “Cutting the cost of Dangerous Roads”. This report identified the A21, not far from the location of the level crossing as, one of Britain’s 10 most persistently higher risk roads. At Robertsbridge itself, cars on the A21 consistently travel above the speed limit (see below).
- 6.4 The A21 in this location is already significantly over-capacity and high risk in safety terms. It is against this background that the proposed imposition of a level crossing falls to be considered.
- 6.5 Nationally, Network Rail are currently undergoing a programme for the removal of level crossings. By way of example a public inquiry is currently ongoing in respect of an application by Network Rail for a Transport and Works Act Order to remove a large number of existing level crossings in Essex.
- 6.6 In its Statement of Case for the inquiry into that application Network Rail states “Level crossings are the single biggest source of catastrophic risk on the railway. The ORR agrees with Network Rail that the closure of level crossings is the most effective way of reducing risk, removing the interface between trains and highway users entirely”. The Statement acknowledges that almost half of non-suicide deaths (or injury equivalents) on the railway network are attributable to level crossings.
- 6.7 The Statement goes on to highlight the consequences of this risk as follows:
- “When someone dies at a level crossing, the emotional impacts on those directly and indirectly involved can be far reaching. Those affected include friends and families of the victim, the train crews, emergency services, Network Rail operations and maintenance staff, and passengers on the train. Network Rail has worked with the Samaritans to discourage suicides on the railway network, but the distress of an accidental fatality at a level crossing can be even greater.”
- 6.8 It is acknowledged that these statements relate to trains on the national network but the same inherent tension between rail and road users applies equally to heritage railways. There is a very real risk of an accident causing serious injury or fatality, leading both to considerable distress to those involved and also hours of delay on the strategic road network whilst all necessary investigations are carried out.
- 6.9 It is for this reason that ORR’s stated policy is to only consider the creation of new level crossings where exceptional circumstances can be demonstrated. In its “Strategy for regulation of health and safety risks – 4: Level Crossings” ORR acknowledges that every single incident has the potential for significant human and economic loss. It makes clear that the risks associated with heritage railways are significant and its overall strategy and policy applies.

6.10 In turn, in its guidance for the application of the exceptional circumstances test, ORR states that:

“ORR’s policy is that new level crossings should only be considered appropriate in exceptional circumstances.....This remains ORR’s starting position when given an opinion on a new level crossing because level crossings introduce risk to the railway and to those using the crossing, and we support the closure of level crossings as part of our drive to reduce risk on the railway. This is consistent with the principle of eliminating risk as the priority in a hierarchy of risk control.”

6.11 There is no justification whatsoever for introducing a significant and inherent risk to an already overcapacity road on the Strategic Road Network suffering from endemic levels of speeding.

6.12 By way of comparison, there are currently only four level crossings across trunk roads in the whole of England. None of these sites have traffic flows even comparable with the A21 at Robertsbridge. The busiest of the four is the A259 at East Guldeford which has 7641 traffic movements per day. In contrast to the A21 which, as set out above, has an AADT in excess of 18,000 (see below). The introduction of the level crossing in these circumstances would be unprecedented.

6.13 The Landowners, following advice from WSP, have identified the following issues:

- The traffic survey to support the application was undertaken in 2010 and is now significantly out of date (amongst other matters it does not therefore take into account the dualling of the A21 further north between Tonbridge and Tunbridge Wells);
- Since 2009 Network Rail has undertaken a process to create a safer railway – this has led to the closure of 1100 level crossings throughout the country;
- the Mott MacDonald report omits consideration of the trend of accidents occurring at level crossings with approximately 30% of accidents linked to the closure of barriers;
- WSP has undertaken a high-level review of accidents in the proximity of level crossings on A roads in the South East of England. The review confirms that accidents commonly increase around level crossings and that the implementation of the level crossing is likely to induce a continuation of this trend leading to an increased level of accidents along the A21;
- Mott MacDonald assessed a maximum closure time of 112 seconds (notwithstanding that the closures at Bodiam and Newenden on the existing railway exceed this timeframe), which would lead (on their analysis) to a maximum queue in the southbound direction of 27 vehicles. Assuming a PCU length of 5.75m per vehicle the queue will be over 150m long and will extend through the A21/Northbridge Street roundabout on a daily occurrence causing additional road safety and capacity concerns;
- The Mott MacDonald report fails to recognise the impact of the closure of the level crossing and the interaction this will have on queuing through the roundabout and associated road safety issues;
- The Mott MacDonald analysis does not appear to have taken any account of the fact that due to the irregular crossing closures drivers will not be expecting queuing traffic; and

- The assessment of the economic cost of delay has only taken account of half of the proposed crossing closures – therefore the cost will be at least double that stated.
- 6.14 The Landowners note ORR’s position in 2015 in respect of the proposed application for the Cambrian Railways Order, which amongst other matters contemplated the introduction of level crossings across the A5 and A483. ORR objected strongly in that case. Their letter of objection stated:
- “Given that the proposed level crossing sites are on high volume/high speed carriageways. There would be significant (and potentially catastrophic) risks to the railway and we cannot envisage a situation where level crossings would be appropriate or permissible whatever protective arrangements were put in place”
- 6.15 In the case of the Cambrian Railways Order this led to the removal of the provision for Level Crossings in the Order. In RVRL’s letter to Richard Max & Co 30 August 2018 they assert that the Cambrian Order did contemplate a level crossing over an A road in the future with the consent of ORR. However, ORR’s representation (as quoted above) makes absolutely clear that they could never envisage a situation where level crossings would be appropriate or permissible. The Landowners note that ORR’s letter to RVRL was sent three and a half years before their objection to the Cambrian Railways Order.
- 6.16 WSP consider that the material presented by Mott MacDonald to date does not adequately address the concerns raised by Highways England (previously the Highways Agency) and the local highway authority, East Sussex County Council.
- 6.17 WSP note that the Highways Agency (as then was) initially issued three successive holding objections and requested additional information to fully assess impacts on traffic flows and road safety matters in December 2013 and May 2014.
- 6.18 In their e-mail 27 March 2015 the Highways Agency noted that following the re-organisation to Highways England they were no longer permitted to issue holding directions. This e-mail specifically records that they had still not at that date received all the information previously requested. This correspondence indicates that Highways England’s clear preference would have been for options other than the level crossing to be considered.
- 6.19 WSP consider that RVRL has still not provided Highways England with the information and data it has repeatedly requested to allow an in-depth review of the scheme. They conclude that the lack of a holding direction resulted purely from a change in status of the Highways Agency to Highways England and was not based on a sound and robust technical analysis following consultation.
- 6.20 It is instructive that there is no further correspondence with Highways England included in the Consultation Report accompanying the application for the Order – and Highways England has subsequently confirmed that they were not consulted prior to the making of the application. Despite repeated requests over many years RVRL has never provided the requested information to Highways England.
- 6.21 Similarly, from the correspondence from East Sussex County Council (as local highway authority) dated 14 April 2015 it is clear officers felt they had no choice but to follow Highways England’s lead and could not object in isolation.

- 6.22 WSP conclude that at the planning stage RVRL fortuitously benefited from the change in status of Highways Agency/Highways England which has resulted in the local highways authority feeling that it was unable to object. Critically, that conclusion was not based on any sound or robust technical analysis, because (notwithstanding the Highways Agency's repeated requests) the information needed to conduct that analysis has never been provided by RVRL. WSP do not consider that sufficient evidence has been presented to demonstrate that all necessary technical and safety concerns have been addressed.
- 6.23 The Landowners consider that the proposals will give rise to significant adverse impacts to both traffic flows on the major trunk road between London and Hastings and highways safety – a position now endorsed by Highways England.
- 6.24 In respect of the Estimate of Costs, WSP have advised that they would ordinarily expect to see the following additional matters specifically identified:
- Preliminaries and contingencies;
 - Optimum bias;
 - Commuted Sums for maintenance;
 - A breakdown of costs for civils works; and
 - A specification and costs for each level crossing.
- 6.25 WSP consider a number of the cost estimates are too low – for example only £15,000 has been allowed for ground investigation. Given the number of bridges and culverts along the route WSP ground investigation is more likely to be in the region of £50,000.
- 6.26 Based on a civils works costs of £5m WSP estimate professional fees will be at least £250,000. Likewise depending upon the specification WSP anticipate the cost of a single level crossing to be between £0.25m and £0.75m. The total costs for all the highways works estimated at £700,000 is therefore too low. No allowance has been made for any traffic management costs.
- 6.27 Since the submission of the Landowners' objection, they have been provided with and reviewed the strong objection from Highways England, and the representations by ORR.
- 6.28 Highways England make clear that the application has been inadequately prepared and that there are compelling reasons to believe that the works proposed may result in severe harm to the safe and effective operation of the Strategic Road Network. In particular Highways England's objection states that:
- RVRL's failure to supply relevant information suggests a clear case to prohibit connection of the proposed railway to the A21 trunk Road on the basis of safety and/or economic impacts;
 - Highways England has withheld consent under Section 175B of the Highways Act 1980;
 - RVRL did not consult Highways England on the wording of the Order prior to submitting the application;
 - The Environmental Statement is out of date and deficient in respect of traffic and transport matters;
 - A full economic benefit analysis of the railway has not been provided;
 - The proposed level crossing of the A21 Trunk Road has not been subject to the safety assessment processes operated by ORR;

- The state of preparation of the design works to the A21 Trunk Road is insufficient to enable Highways England to be satisfied that the proposed level crossing would not result in a severe adverse impact. Many matters relating to the design, construction and operation of the level crossing remain to be agreed;
- The Order should provide for agreements for RVRL to indemnify Highways England from any liability from the construction, operation or maintenance of the level crossing and for RVRL to maintain unlimited public liability insurance;
- The Order should provide for a performance bond to be lodged in perpetuity by RVRL sufficient to reimburse the costs of the Secretary of State in stepping in to remove and reinstate the A21 Trunk Road in the event the level crossing falls into disrepair or disuse;
- RVRL does not appear to have made any submission to ORR's expert panel to consider whether exceptional circumstances exist to justify the provision of a level crossing;
- The information within the application about road traffic is not of suitable quality for use by ORR's expert panel and no full economic benefit analysis for the railway to provide quantitative assessment of options such as bridges and underpasses has been provided, including a 60-year assessment period;
- RVRL has made no submission to Highways England for a Departure from Design Manual for Roads and Bridges standards;
- The baseline conditions of the Environmental Statement are now in excess of seven years old and latest flow information indicates an AADT flow increase 15.6% north of Robertsbridge and 22.3% south of Robertsbridge – significantly in excess of the increases anticipated by RVRL in the Environmental Statement
- RVRL should review the traffic and transport impacts taking into account current flows on the A21 and the current programme for implementation of the railway. Likewise, the Personal Injury Accident Data is in need of updating
- No costings are provided to demonstrate why a bridge could not be provided;
- The ES is contradictory when explaining how the level crossing of the A21 will be constructed. The construction method should be clarified, and the consequent construction impacts assessed in the Environmental Statement;
- A Walking Cycling and Horse Riding Assessment should be carried out;
- The Level Crossing across the A21 should be redesigned so that the railway and the A21 Trunk Road cross on the same plane; and
- RVRL should provide a plan demonstrating that it is possible to provide at least one layout conforming with DMRB.

6.29 The comments from Highways England accord and fully endorse the concerns which have consistently been raised by the Landowners in their objection with regards to the highways impacts of the proposals.

6.30 ORR's representation dated 29 May 2018 explains that its policy is that new level crossings should only be proposed where there is no reasonably practicable alternative and the circumstances that require the crossing present an exceptional case. The letter advises that:

- New level crossing should be created "only in the most exceptional circumstances";
- Even in the case of heritage railways an at-grade crossing will always present a higher level of risk than a grade separated crossing or not having a crossing at all;

- There will always be a residual risk that would not otherwise exist if there were no crossing;
- It is for RVRL to demonstrate that it is not feasible for the railway to bridge the A21, or conversely for the A21 to be reconstructed over the new railway;
- The costs of alternative proposals need to be weighed against the value of preventing a fatality and the potential numbers of incidents over the life of the infrastructure;
- A level crossing will always present a level of risk to both rail and road users;
- The continuing occurrence of incidents at level crossings on both the mainline railway and heritage lines, including fatalities, reinforces to ORR that its exceptional circumstances policy is now the correct position to take notwithstanding its response to the planning application in 2011 in an attempt to reduce risk and harm in the long term;
- It is for the Secretary of State to balance the potential benefits of the proposal against the potential safety risk of at-grade crossings; and
- It is for the Secretary of State to consider carefully whether the “inevitable risks” inherent in the level crossings aspect of this Order are outweighed by wider public interest in the extension of this railway and whether the applicant has provided sufficient evidence that is not reasonably practicable for grade separated crossings to be constructed. (our emphasis)

- 6.31 ORR’s letter makes clear that, notwithstanding RVRL’s assertions to the contrary, the risks to both rail and road users are “inevitable” as a result of the proposed level crossings. By way of example in support of ORR and Highways England’s comments on 7 September 2018, an accident took place at the nearby level crossing in the A2100 where a speeding lorry drove through the level crossing barrier, damaging both the barrier and causing hours of delay and disruption on the road and railway.
- 6.32 On behalf of the Landowners, WSP undertook an automatic traffic count (ATC) survey at the location of the proposed level crossing on the A21 for a week between 24 and 30 May 2018.
- 6.33 The results of the WSP survey indicated an average daily flow of 18,254 vehicles, representing a 14% increase in comparison to the 2010 figures used by RVRL in the Environmental Statement, indicating that the daily traffic profile has changed considerably with increased demand.
- 6.34 The results of the WSP survey indicate a year on year traffic growth of 1.75% in comparison with the maximum 1% increase forecast by RVRL in the Environmental Statement up to 2021. Highways England, in its objection, confirms that Department of Transport traffic counters identify year on year growth of 2.6% on the northern counter and 3.7% on the southern counter. The results of the survey reinforce the Landowners’ earlier concerns that the Environmental Statement (and associated underlying studies) fail to properly assess the current and future traffic flows along the A21 and that further assessment is required.
- 6.35 As part of its traffic survey, WSP undertook a queue length survey at the Northbridge Street Roundabout on the approaches from the A21. The existing maximum queue northbound was assessed as 20 PCUs (equivalent to 115m) and the existing maximum southbound queue was assessed as 27 PCUs (equivalent to 155m).
- 6.36 This demonstrates that the northbound queue will extend through the proposed location of the level crossing. This would result in additional vehicles queuing and

increased delay as a result of the level crossing implementation. Any queues caused by the level crossing itself will be in addition to the existing queues at the roundabout.

- 6.37 The cumulative increase in queuing and delays is likely to increase the number of accidents along this section of the A21. The additional traffic flows and associated queuing indicate that RVRL's assessment of the economic impact of traffic delays is wholly inadequate and underestimates the likely full impact.
- 6.38 The WSP traffic survey also considered the speed of traffic approaching the roundabout and location of the level crossing. It was observed that 38.1% of users travel over the speed limit northbound and 28.6% southbound during a typical day.
- 6.39 Whilst RVRL proposes to extend the 40mph speed limit on this section of the A21 as a result of the crossing this is highly unlikely to be adequately enforced especially when considering current speed data. This will likely lead to further safety concerns as vehicles rise and fall over the level crossing hump at speed, potentially causing consequential incidents. The Landowners are also concerned about the potential safety impacts arising from the lack of visibility to northbound traffic (which currently approaches the site of the proposed level crossing at speed) of vehicles which will queue back from the level crossing. RVRL has failed to demonstrate how they will maintain and enforce the lower speed limit.
- 6.40 In January 2013 (when considering the planning application) Highways Agency (as then was) appointed Parsons Brinkerhoff review the highways and traffic assessment. At that time, they raised concerns that the introduction of the new level crossing and associated reduction in speed limits would inhibit the free flow of traffic and increase the road safety risk, stating:
- “the risk is further increased if the queue interacts with the Northbridge Street roundabout which it is forecast to do during peak flow days. Given that the above changed to the spreadsheet model are likely to result in greater forecast levels of queuing and the frequency of queue interaction with the roundabout the road safety risk is likely to increase”
- 6.41 Table 3 of DMRB TD9/93 Highway Link Design provides a stopping sight distance depending upon the vehicle speed. The speed limit at the location of the proposed level crossing is 40mph which corresponds to a sight stopping distance of 120m. Due to approximately 35% of A21 users speeding, a sight stopping distance of 160m (equivalent to 50mph) is considered to provide a more robust assessment, which would extend through the Northbridge Street roundabout.
- 6.42 The A21 by its nature has a mixed group of users, including non-local traffic as well as commuters. With the reinstatement of the level crossing operation would come a period of adjustment which could detrimentally impact highway safety. Non-local traffic may also fail to obey or notice the level crossing warnings increasing the likelihood of accidents if they are unfamiliar or unaware that a crossing is in place.

Prejudice to future dualling of the A21

- 6.43 The Landowners note that Greg Clark (MP for Tunbridge Wells) and Amber Rudd (MP for Hastings) both objected to RVRL's planning application on the basis that it would jeopardise their aspiration to dual the A21 from Sevenoaks to Hastings. Mr Clark, Mrs

Rudd (and Mrs Sally-Ann Hart (Cabinet member for Tourism at Rother District Council)) have also recorded their objection to the Order on the same basis.

- 6.44 On 7 February 2018 Greg Clark, Sir Michael Fallon, Huw Merriman, Tom Tugendhat and Amber Rudd (being the MPs along the route of the A21) wrote to the Minister of Roads. The letter noted their aspiration to see the A21 dualled all the way to Hastings. It stated:

“..the rush hour or public holidays can see journey times from Tunbridge Wells to Hastings almost double on the twenty-five mile stretch, which takes an hour even in good conditions. This is quite simply absurd for what is a trunk road.

In November 2017, a report by the Road Safety Foundation cited the A21 from Hurst Green to Hastings as on the highest risk road on England’s Strategic Road Network.....This is sobering and should be cause alone for an upgrade to be approved but there is a practical impact on others too – the March 2017 South Coast Central Route Strategy recognized this stating “the lack of viable alternative routes means this corridor has limited resilience to disruption”. Accidents sadly can and do bring a halt to one of the country’s most important roads.

Our ambition is to see a modern dual carriageway which befits the main link between the M25 and south coast.....We have every confidence the case for dualling the A21 from top to toe satisfies the five key aims of RIS2 as well as the four goals in the Transport Investment Strategy.

Ten years ago the A21 Reference Group was formed to bring together all the business, economic and political representatives down the route. Both we and the Group, of which we are part, would like to see the dualling of the A21 included in RIS2...”

- 6.45 On 29 May 2018 Greg Clark wrote to the Department of Transport to record his objection to the Order. He concluded that:

“I am extremely concerned about the proposed installation of a crossing across the A21 as it would not only risk further congesting an already busy road (particularly during the peak tourist periods, such as public holidays when motorists are driving to the South Coast and the railway would presumably run most frequently) but also jeopardise the potential for dualling the road in the future, this putting at risk the economic development of the South East”

- 6.46 Whilst dualling of the A21 through to Hastings has been discussed for many years (it was one of the reasons why, in 1967, the Secretary of State declined to extend the Light Railway Order to Robertsbridge) it is now increasingly likely. In particular, the opening of the A21 Lamberhurst Bypass in 2005 and the A21 Tonbridge to Tunbridge Wells last year, represent significant steps towards the fulfilment of this long held strategic goal, which will complement the recently opened Hastings-Bexhill bypass in bringing much needed regeneration to the Hastings area.
- 6.47 The proposed level crossing across the A21 contemplated by the Order would present a significant impediment to the completion of this programme, with associated detrimental impacts on the economic benefits that dualling would deliver. In particular, RVRL has recognized that it would not be possible for either the train line or the A21 to be placed in a tunnel beneath the proposed crossing, and that gradients would not permit trains to pass over the A21 on a newly constructed railway bridge. The only

solution which is technically possible, therefore, would be for the A21 to pass over the proposed railway line on a flyover. However, that would have very significant effects on the High Weald AONB, on the setting of Robertsbridge and on the amenity of local residents, none of which have been assessed.

- 6.48 In the Landowners' view, those impacts would be unacceptable, in which case the impact on the regeneration of Hastings would significantly outweigh any economic benefits which might flow from the present proposal (as to which, see below). However, even if that were not the case, the public purse would have to carry the additional costs of construction, which would be significant.

Car Parking at Robertsbridge

- 6.49 RVRL estimate that the extension of the railway to Robertsbridge will generate anywhere between an additional 50,000 to 100,000 new visitors per annum. For reasons set out below the Landowners consider this estimate to be wholly unrealistic.
- 6.50 However, equally unrealistic is RVRL's suggestion that all, or even a majority, of these visitors will arrive by train on the National Rail infrastructure. No analysis or assessment is provided to justify this conclusion. The Landowners consider it is inevitable that a majority of visitors will arrive in Robertsbridge by private car (particularly given the regularity of engineering works or bus replacement to national rail services on weekends and bank holidays). This is important as the scheme proposes no new car parking at the station in Robertsbridge.
- 6.51 Robertsbridge is a small village with extremely limited car parking provision. This situation will only be made worse following the grant of planning permission for an additional 150 houses in the village. No assessment has been undertaken of the impact on the already extremely limited car parking provision in Robertsbridge of this magnitude of visitors. Little weight should be given to the proposed use of the National Rail car park as that is already frequently full and outside RVRL's legal control.
- 6.52 The Landowners note that the Salehurst and Robertsbridge Parish Council, Robertsbridge Cricket Club and other local business and residents have all raised concerns about the lack of car parking proposed and the likely impact on the village.

7 FLOODING IMPACTS

- 7.1 The Order proposes the introduction of a railway track on a raised embankment into Zone 3 Flood plain in immediate proximity to the River Rother.
- 7.2 RVRL's own Flood Risk Assessment ("FRA") concludes that the scheme will give rise to significant flood risk due to an increase in flood water levels as a consequence of the loss of flood plain and restriction of flood water flows. In any event the FRA only considers impacts up to the edge of B2244. No assessment is made regarding flooding impacts further downstream.
- 7.3 The FRA goes on to acknowledge that a number of properties could be flooded more frequently and at greater depth than they currently experience.
- 7.4 The Modelling Report prepared by Capita on behalf of RVRL identified various shortcomings in the hydraulic model prepared by the Environment Agency. Capita raised concerns about the accuracy and stability of the Environment Agency model within their reporting. However, notwithstanding that these issues were identified by

Capita in respect of the Environmental Agency model, they, critically, were not addressed or corrected by Capita in the preparation of its own model. As a result the Capita model simply replicates the shortcomings in the Environment Agency model. It is therefore considered that that the model is not fit for purpose and the conclusions that have been reached based on the model are unreliable.

7.5 There are a number of issues that do not appear to have been assessed by Capita and which have not been considered by the Environment Agency or Rother District Council when granting planning permission:

- The Capita modelling plans show large areas potentially benefiting from the introduction of the railway. This is misleading and does not accord with the text of the Flood Risk Assessment. More detailed resolution on the mapping is required to confirm that the mapping represents the findings of the tabulated “reductions”. Similarly, the areas subject to increases in flood levels are not clearly identified;
- No assessment has been made of the likelihood and impact of blockage events on any of the bridge structures (either proposed or existing);
- There is no qualification or explanation for the level information used to build the flood model. In particular, consideration has not been given to the presence of trees at some of the key locations either along the route or within the flood zone in general. This is particularly important, given that (although it has yet to identify where this will be done) RVRL proposes to replace 1000 trees that will be felled in order to make way for the railway track. This may result in inaccuracies in the levels, potentially in excess of 150mm, well above the stated beneficial changes in flood depths;
- The original 2013 FRA states that a climate change allowance of 20% has been used. The late 2016 report does not clarify whether account has been taken of the EA’s revised allowances published in 2016. The revised climate change allowances are considerably more than the 20% considered and accepted by the EA in 2013;
- The FRA does not address the proposed lifetime of the scheme. The revised EA allowances (2016) are based not only on the scheme type but also on how long it is likely to be in place;
- The FRA does not address the impact of the movement and mobilization of the track ballast and other materials during a flood event. The proposed “designed” overtopping will increase the risk of structural failure of the track and its embankments. This also has the potential to lead to blockages and disruption to the watercourse flows. The access requirements for repairs could be significantly different from those proposed for construction;
- The impact of surface water and groundwater flooding on the viability of the farmland adjacent to the route has not been considered. The report acknowledges that some changes may be expected but no analysis has been carried out to determine if more regular storm events will render the areas of farmland unusable or inaccessible – for example by virtue of raising groundwater locally and becoming waterlogged;
- During a flood event safe access will not only be required for emergency vehicles but also for the management and movement of livestock. The scheme significantly reduces the number of crossing points. No assessment has been made of this detrimental effect;
- The FRA does not include a clear management or access programme for the majority of the 27 culvert/bridges along the route. It is unclear whether the Landowners are expected to maintain these structures or whether they will be required to allow free access to RVRL to maintain them;

- The Environmental Statement, which sets out a number of mitigation measures in respect of impacts on water quality, states that petrol oil and chemicals will be stored out of the floodplain. However, no indication is given of the location of this store. The distance from the works to any area outside the flood plain is considerable. The Site Compound shown in the ES Vol 4 fig 2.4 is at the eastern end of the scheme within Flood Zone 3 and immediately adjacent to the River Rother. This is an inappropriate location, but no other storage locations are included or shown within the scheme; and
 - The Environmental Statement suggests that the construction of the railway will be carried out in a single construction operation whereas elsewhere in the application it is indicated that it will be carried out by volunteers over a protracted period. It is therefore unlikely that the site management activities and measures proposed by the EA to control pollution and protect the environment will be familiar to the volunteers. This presents an increased and on-going risk to the environment not fully assessed or commented upon within the submitted documentation.
- 7.6 In its letter 24 May 2018 the Environment Agency registered its objection to the Order. In its letter reported that RVRL had yet to demonstrate that flood risk would not be increased in agricultural land and that insufficient evidence has been produced in order to demonstrate that the proposed works will not create or exacerbate flood risk.
- 7.7 The letter noted that it is essential that further work is undertaken in the form of an appropriate flood storage compensation scheme to ensure no adverse impact compared to the baseline scenario. The FRA carried out in 2016 reported a number of locations where predicted flood levels post-railway were anticipated to rise.
- 7.8. Condition 11 attached to the Planning Permission records that amongst other matters “the applicant must demonstrate that there will be no loss of floodplain storage post development with any loss of floodplain storage to be compensated for on a volume by volume, level by level basis and in suitable location”.
- 7.9 As yet no steps have been taken by RVRL to discharge Condition 11 and importantly no land is proposed within the Order for flood plain compensation. Compensation land is usually located in areas extending beyond the existing flood zones in order to effectively re-align the flood outline and continue to provide the required storage without raising floodwater levels. In this case this will require land that is currently remote from the route of the railway.
- 7.10 The provision of compensation land is a critical issue and a significant obstacle to RVRL’s ability to carry out its proposals. It is therefore incumbent upon RVRL to demonstrate that Condition 11 can be satisfied, and the Environment Agency’s concerns are addressed in full before the Secretary of State can authorise the compulsory acquisition of the Landowners’ land.
- 7.11 The Environment Agency advise that all the flood risk related conditions attached to the planning permission must be met in full before any FRAPS associated with the proposals can be properly assessed.
- 7.12 There is no evidence that the FRAPS process has begun and there is insufficient information in the application documentation to enable a FRAPS to be obtained. This would include detailed design of the relevant structures and works and a detailed methodology for each of the stages of construction.

- 7.13 The Environment Agency letter confirms that “Given the number of structures that are integral to the scheme but have yet to be fully assessed in the context of a site wide FRA, we are not in a position to approve the disapplication of FRAPS as this could lead to an increase in flood risk to adjacent land and property and have a significant impact on ecology”.
- 7.15 It is normal practice when assessing culverts within a FRA to include blockage scenarios in accordance with BS 8533 2017. There is no evidence in the application documentation that this analysis or sensitivity testing has been carried out.
- 7.16 The Environment Agency confirms that they will need to maintain access to the watercourse as well as access to the Flood Zone 3 area as a whole. Such access rights are usually based on the Water Resources Act 1991 and associated byelaws commonly requiring a minimum of 8m from the top of the bank of the watercourse. In addition, there are active monitoring stations within or close to the route of the railway. There are a number of locations where the proposed works will impinge upon the 8m buffer which will create issues in the long-term maintenance and monitoring of the river.
- 7.17 In summary the Landowners agree with the Environmental Agency that it is has not yet been demonstrated that the proposals will not give rise to any flood risk on their (and other) agricultural land and RVRL has not demonstrated that sufficient compensatory flood plain is available nor has provision for such mitigation been made in the Order.

8 ECOLOGICAL AND LANDSCAPE IMPACTS

- 8.1 The Order land is situated within the High Weald Area of Outstanding Natural Beauty (“AONB”) which is to be given the highest status of protection in relation to landscape and scenic beauty in accordance with the requirements of the NPPF.
- 8.2 As set out above the Order would authorise the removal 50% of all woodland and scrub along the route. This will have dramatic impact upon the landscape and scenic beauty of the AONB. Likewise, these areas are currently the existing habitat for varied and highly unusual flora and fauna including European protected species, currently within the Natural England Higher Stewardship scheme. After the initial removal of woodland and scrub any remaining habitats will continue to be harmed by the ongoing operation of the railway and its future maintenance requirements.
- 8.3 The submitted Environmental Statement has concluded that the construction of the railway will result in both temporary and permanent loss of habitats and that a number of protected species including European Protected Species, bats, dormouse and great crested newts as well as other species, namely badger, birds, water vole and invertebrate fauna could be affected.
- 8.4 The Landowners have a number of concerns regarding the ecological impacts as follows:
- The biodiversity baseline underpinning the Environmental Statement and associated Addendums was drawn from information collected and collated in 2013/14 from readily available sources including Sussex Biodiversity Information Centre, Natural England and the Environment Agency; through consultation with local councils, wildlife trusts and relevant conservation groups; and from an Extended Phase 1 Habitat Survey of the accessible areas of the proposed Scheme impact corridor and surrounding area. No field survey apart from the Phase 1 Habitat Survey was undertaken due to access

restrictions. This information is now several years old and requires review and updating. This particularly applies to EPS such as bat species, dormouse and great crested newt, as well as badger;

- The Environmental Statement is based on a worse-case scenario and precautionary approach. As a result, it is uncertain how the value and level of importance of specific ecological receptors has been arrived at without detailed (Phase 2 type) information. It has been noted by the County Ecologist that as a result, it is difficult to assess the level of confidence in the conclusions;
- The reliance on the above information and the lack of field surveys has led the County Ecologist to propose and the District Council to impose a Grampian condition when granting planning permission. This prevents the start of a development pursuant to the planning permission until the ecological surveys have been completed on land not controlled by the applicant. However, no request to access the land for this purpose has been made since planning permission was granted in March 2017;
- An extensive period of survey will be required as a result of the above approach. In this respect, it is important to reiterate the conclusions of the Environmental Statement ecology chapter and note that ecological surveys are seasonally and time constrained and this particularly applies to great crested newts, dormouse and bats. For example, in relation to dormouse the acknowledged approach involves a significant survey effort during the period April to November with monthly visits being required throughout this time. For great crested newt the prime survey time is restricted to the breeding period March to June inclusive. It would be expected that full survey information will be required on which to base the update of the Environmental Statement and the mitigation package proposed, as well as for any EPS mitigation licence applications to Natural England;
- The lack of detailed information is a particular constraint to satisfying the requirements of the Habitats Directive when a EPS mitigation licence is applied for. The three tests required under the Habitats Directive cannot be properly applied unless appropriate survey information is included in the application;
- There is limited biodiversity baseline information on the aquatic elements of the River Rother apart from riparian mammals. The potential impact on the aquatic ecosystem of the River Rother, which flows alongside and underneath the route of the scheme, has not been considered in the Environmental Statement. Aquatic macro-invertebrate and fish surveys would ordinarily be a minimum requirement;
- The loss of wetland (Floodplain grazing marsh) habitat has only been briefly addressed in the Environmental Statement and associated Addendums; and
- It is understood that the construction of the railway will be carried out by volunteers over a protracted time period. No consideration of this construction period and the potential consequences of prolonged impacts on species has been made in the Environmental Statement. This is critical in determining the nature and magnitude of effects and the necessary mitigation measures.

8.5 The documents record that by way of mitigation it is proposed, amongst other matters, that RVRL will plant a minimum of 1.5ha of native broadleaved woodland and 1 ha of scrub habitat in a linear block alongside the railway line. However, no provision for this mitigation appears to have been made in the Order documentation.

- 8.6 In its letter 30 August to Richard Max & Co 2018, RVRL advise that the company has undertaken ecological and arboreal surveys along the stretch of the railway embankment from Austins Bridge to Junction Road. They advise that results of these surveys have fed into detailed management and maintenance plans for that part of the route and that the surveys have confirmed that no significant damage to the environment will occur.
- 8.7 At present the results of these surveys and associated analysis do not form part of the application documentation and therefore no weight can be attributed to them. If they are available, they should be incorporated within a revised Environmental Statement as set out above.
- 8.8 Furthermore, the Environment Agency in its objection on ecology grounds confirmed that RVRL had yet to demonstrate that ecology will not be adversely affected. In turn Rother District Council in its representation to the application advised that RVRL has taken no steps to seek to discharge any of the pre-commencement conditions attached to the planning permission.

9 ECONOMIC BENEFITS OF THE ORDER

- 9.1 RVRL places great weight on the alleged economic benefits the new railway will provide. On its website and associated press-releases it refers to a report prepared by Steer (previously Steer Davies Gleave) ("SDG") which it is said identifies benefits to the economy of 75 jobs.
- 9.2 However, this report does not form part of the application for the Order and has not been made publicly available. The Landowners have requested sight of the report from RVRL but to date have not been provided with a copy.
- 9.3 In its letter 30 August 2018 to Richard Max & Co, RVRL assert that this report "is not a document required by the Applications Rules, but nevertheless the final report will be shared with you, and other interested parties as soon as it is available".
- 9.4 It is tantamount to an abuse of process for RVRL to publicly and repeatedly refer to the SDG report in its press releases and on its website but not make the whole report available. The report has been heralded for over a year but is said to still be unavailable. The Landowners note that a number of the representations in favour of the Order have referred to the report and relied upon its conclusions to justify their support. If the report is available to RVRL's supporters it should be made publicly available to all parties to the inquiry at the very earliest opportunity. The Landowners shall be writing to the Secretary of State directly on this issue.
- 9.5 We note, as set out above, that Highways England and other stakeholders likewise await sight of the report in order to consider whether exceptional circumstances exist to justify the level crossing.
- 9.6 However, on the basis that the SDG report does not form part of the application for the Order and is not in the public domain no weight can be attributed to it by the Secretary of State in his consideration of the Order.
- 9.7 Absent the SDG report, the only documents relating to the economic impacts of the railway are those set out in the studies of Manchester Metropolitan University ("MMU") and the Socio-Economic chapter of the Environmental Statement.

- 9.8 The Landowners have commissioned Volterra (economic consultants specialising in the economic benefits of infrastructure and development) to review RVRL's economic case for the Order. Volterra consider that based on the information publicly available the benefits appear to have been significantly overstated.
- 9.9 Volterra have identified the following relevant points:
- The MMU Study identifies that passenger numbers have been in decline from 2000-2012. The most recent figures for the existing railway show 86,000 annual passengers – see the Steam Railway Magazine 5 January 2018. However, a baseline figure of 100,000 of current passengers is taken forward in the analysis. This figure has only been exceeded twice between 2000 and 2012;
 - The existing Kent and East Sussex Railway currently supports 50 FTEs and the MMU Study suggests this includes a significant number of volunteers. The Socio-Economic chapter of the Environmental Statement states that the proposed link would only support an additional 14 FTEs, but acknowledges that it is conjectural whether these jobs would be taken by residents of Rother. The planning application form states that the proposal would support just 7 FTEs;
 - The MMU Study estimates that in the future passenger numbers could rise to 150,000. It acknowledges that to reach 200,000 visitors significant capital investment in KESR would be required. However, it is only with 200,000 visitors that the alleged £10m economic benefits will be generated. This would require an increase from the latest published figures of 86,000 to 200,000 – an increase in visitor numbers of 132%;
 - By way of comparison Volterra have examined benchmarks of other railways (which are also referred to in RVRL's own case so are considered to be fair comparisons) – including the Bluebell railway, the North Norfolk Railway and the North Yorkshire Moors Railway. Each has been extended within the last 11 years – including the provision of linkage to the Network Rail infrastructure. The restored links at these three railways increased passenger number by between 14% and 33% as a result of their extensions. This suggests the RVRL estimates for likely passenger increases are grossly over-optimistic;
 - The MMU Study confirms it is only with 200,000 visitors that the railway will generate the top end £10.8m of economic benefit. Even the MMU Study acknowledged that this is only a possibility;
 - In any event the £10m figure reflects the current operation as well as any potential increases. A maximum of £6m (on RVR's assessment of a doubling of passenger numbers) would be additional benefit deriving for the new railway;
 - From the brief extracts of the SDG report in the public domain they claim that 75 additional permanent jobs will be added as a result of the extension of the railway. Given that the existing railway supports 50 FTE's this seems extremely high. In reality the figure is likely to be significantly lower given the seasonality of the proposals and the proposal to rely on volunteers;
 - The multipliers used in the assessments appear high by comparison to industry standard;
 - There is no assessment of additionality. To the extent to which users are attracted from a wider catchment, their associated economic activity needs to be fully additional in order to claim the scale of benefits included; and
 - In conclusion Volterra consider that the economic benefits are likely to have been at least threefold overstated.

- 9.10 In this regard, the conclusions of the Socio-Economic chapter of the Environmental Statement are highly informative. In particular, the Landowners note the conclusions of the following paragraphs:

14.4.9 – there is no clear evidence that the majority of local tourist attractions will directly benefit from the extension;

14.4.11 – the scale of employment generation is only a small positive in the context of the very robust local market and very low local unemployment numbers. Increased visitor numbers and the introduction of level crossings may have negative economic impacts;

14.6.2 – “the clear neutrality of the Scheme...”

14.7.2 – “the local socio-economic impacts of the Scheme would be minimal...though very marginally positive.....in terms of additionality this increase in employment is insignificant”; and

17.7.4 – “Overall the Scheme in terms of socio-economic impacts is neutral to minimal positive”

- 9.11 On RVRL’s own analysis, therefore the proposals will have a neutral to minimal positive impact. This is extraordinary, since the socio-economic impact of the proposal is the primary (if not the sole) “benefit” relied upon by RVRL to justify the adverse impact of its proposals, and interference with the Landowners’ rights under Article 1, 1st Protocol of the European Convention of Human Rights.

10 CONCLUSION

- 10.1 The proposals will give rise to a multitude of negative or detrimental impacts, which are not in any way outweighed by the alleged “neutral to minimal” positive benefits. The application has attracted unprecedented level of opposition demonstrating the strength of local feeling against the Order. The Landowners understand that over 1000 parties have written in to object raising the same issues as those set out above.

- 10.2 The Secretary of State’s guidance “A Guide to TWA Procedures” at paragraph 1.39 makes clear that before confirming the Order the Secretary of State will need to be satisfied that:

“there is a compelling case in the public interest for taking away someone’s land or rights in land”

- 10.3 Reference is made to Circular 06/2004 – now superseded by the MHCLG guidance “Guidance on Compulsory Purchase Process and Crichton Down Rules” (February 2018).

- 10.4 Section 12 of this Guidance repeats that “a compulsory purchase should only be made where there is a compelling case in the public interest”. It goes on to state:

“An acquiring authority should be sure that the purposes for which the compulsory purchase is made justify interfering with the human rights of those with an interest in the land affected”

- 10.5 The Order will provide negligible public benefits at best (even on RVRL’s own analysis) which will be heavily outweighed by the negative effects of the proposals in terms of

highway safety, flooding, ecology as well as the impact on the continued operation of Parsonage Farm and Moat Farm.

- 10.6 There is no case whatsoever (let alone a compelling one) to justify the forced acquisition of the Landowners' land and interference with their Article 1 human rights.
- 10.7 The Landowners therefore respectfully request that the Secretary of State refuses the application and declines to make the Order.

APPENDIX 1:

Documents the Landowners intend to refer to or put in evidence

The Landowners will refer to the documents included within the application for the Order (including the Environmental Statement, its addendums and supporting reports) as well as the objections and representations made in respect of the Order. To avoid unnecessary duplication these are not repeated in the list below.

1.	National Planning Policy and Guidance
1.1.	National Planning Policy Framework https://www.gov.uk/government/publications/national-planning-policy-framework-2
1.2.	Planning Practice Guidance https://www.gov.uk/government/collections/planning-practice-guidance
1.3.	DEFRA and Environment Agency guidance: Flood Risk Assessment for Planning Applications https://www.gov.uk/guidance/flood-risk-assessment-for-planning-applications

2.	Transport and Works Act/Compulsory Purchase legislation and guidance
2.1.	Transport and Works (Inquiries Procedure) Rules 2004 (SI 2004/2018) http://www.legislation.gov.uk/uksi/2004/2018/contents/made
2.2.	Transport and Works Act (Applications and Objections Procedure) (England and Wales) Rules 2006 (SI 2006/1466) http://www.legislation.gov.uk/uksi/2006/1466/article/10/made
2.3.	Transport and Works Act orders: a brief guide (2013) https://www.gov.uk/government/publications/transport-and-works-act-orders-a-brief-guide-2006

2.4.	A guide to Transport and Works Act procedures (2006) https://www.gov.uk/government/publications/transport-and-works-act-orders-a-brief-guide-2006
2.5.	Guidance on Compulsory Purchase Process and Criche Down Rules (2018) https://www.gov.uk/government/publications/compulsory-purchase-process-and-the-criche-down-rules-guidance

3.	Highways policy, guidance and other documentation
3.1.	Design Manual for Roads and Bridges (TD9/93)
3.2.	Design Manual for Roads and Bridges (TA46/97)
3.3.	ORR Level Crossing: A guide for managers, designers and operators (2011)
3.4.	ORR Strategy for regulation of health and safety risks – 4: Level crossings http://orr.gov.uk/_data/assets/pdf_file/0019/6427/2016-03-31-strategic-Chapter-4-Level-Crossings-RJK-version.pdf
3.5.	ORR Internal Guidance RIG-201-06 New Level Crossings “How ORR applies its policy of no new crossings unless there are exceptional circumstances” http://orr.gov.uk/_data/assets/pdf_file/0003/16527/rig-2014-06-new-level-crossings-orrs-policy-and-approach-to-handling-requests-for-new-or-reinstated-crossings-on-the-mainline-or-heritage-networks.pdf
3.6.	Network Rail Level Crossing Design Guidance – Level Crossing risk reduction
3.7.	Network Rail Level Crossing Design Guidance – Safety and user guides
3.8.	Network Rail Level Crossing Design Guidance – Safety performance
3.9.	Network Rail Statement of Case – the Network Rail (Essex and others level crossing reduction) Order http://bailey.persona-pi.com/Public-Inquiries/Essex/NR%20Dox/NR26%20Statement%20of%20Case.pdf

3.10.	Road Safety Foundation: Cutting the Cost of Dangerous Roads 2017 https://roadsafetyfoundation.org/cutting-cost-dangerous-roads/
3.11.	Letter from ORR to Transport and Works Act Orders Unit in respect of proposed Cambrian Railways Order dated 23 April 2015
3.12.	Letter from Barbara Castle dated 16 October 1967
3.13.	Letter from Greg Clark MP, Michael Fallon MP, Huw Merriman MP, Amber Rudd MP and Ton Tugendhat MP to Minister for Roads, Local Transport and Devolution dated 7 February 2018
3.14.	Advance Transport Research Queue Length Survey Northbridge Street Roundabout 23 May 2018 to 29 May 2018
3.15.	Advance Transport Research A21 Automatic Traffic Count Survey May 2018

4.	Flooding policy, guidance and other documentation
4.1.	BS8533 2011 – Assessing and Managing Flood Risk in development
4.2.	BS8533 2017 – Assessing and Managing Flood Risk in development
4.3.	Environment Agency – Requirements for completing computer river modelling for Flood Risk Assessments Guidance for Developers – version 7
4.4.	Capita Rother Valley Railway Modelling Report June 2016

5.	Correspondence between the Landowners, its advisors, RVRL and its advisors
5.1.	Letter RVRL to Landowners dated 17 March 2018
5.2.	Letter from Richard Max & Co to RVRL dated 29 March 2018
5.3.	Letter from RVRL to Richard Max & Co dated 19 April 2018
5.4.	Letter from Winckworth Sherwood to Richard Max & Co dated 11 July 2018
5.5.	Letter from Richard Max & Co to Winckworth Sherwood dated 25 July 2018

5.6.	Letter from Winckworth Sherwood to Richard Max & Co dated 29 August 2018
5.7.	Letter from RVRL to Richard Max & Co dated 30 August 2018

6.	Other documents
6.1.	Rother Valley Railway Heritage Trust Trustees Report and Financial Statements for the year ended 31 December 2014
6.2.	Manchester Metropolitan University Rother Valley Railway Local Impact Study September 2007 and 2013