

Agenda Item No:

THE PROPOSED NETWORK RAIL (CAMBRIDGESHIRE LEVEL CROSSING REDUCTION) ORDER

To: Highways and Community Infrastructure Committee

Meeting Date: 11th July 2017

From: Camilla Rhodes, Asset Manager - Information

Electoral division(s): Burwell, Ely North, Ely South, Fulbourn (Six Mile Bottom) Sawston & Shelford, Littleport, March North & Waldersey, Melbourn & Bassingbourn, Soham North & Isleham, Soham South & Haddenham, Sutton, Waterbeach, Whittlesey South, Woodditton

Forward Plan ref: **Key decision:** **No**

Purpose: To update Members on Network Rail's project to reduce level crossings affecting the highway network, and to seek approval of the County Council's proposed full response to the legal Order.

Recommendation: Committee is asked to:

- a) Agree the proposed full response to the draft Network Rail (Cambridgeshire Level Crossing Reduction) Order
- b) Recommend to Full Council that it approves this response, in accordance with statutory requirements
- c) To agree that officers should continue negotiations with Network Rail, and that any changes to the Council's position prior to the Public Inquiry should be delegated to the Executive Director ETE in consultation with the Chair or Vice Chair of HCI Committee

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1. BACKGROUND

- 1.1 This matter has been well-rehearsed through recent Committee papers, and the following is a summary of events. In June 2016 Network Rail (NR) initiated a major project to close or downgrade over 30 public rights of way (PROW), road and private level crossings across Cambridgeshire as part of a wider strategy to reduce the number of crossings in East Anglia. NR's objectives include improving the safety of crossing users and reducing NR's asset liability. The proposals are available on NR's website at <http://www.networkrail.co.uk/anglialevelcrossings/>. There has been much concern about the proposals, and a public inquiry will be held towards the end of 2017. Further information on the project, the timescale and a link to an online map of the local public rights of way network can be found at Appendix 1.
- 1.2 NR intends to implement its proposals via an order granted by the Secretary of State for Transport (SoS) under the Transport & Works Act 1992 (the 'TWA'). The relevant legal framework is set out at Appendix 2. In summary, the TWA provides that the SoS can make an order for an applicant relating to 'the operation of a railway' and authorising the stopping up and alteration of roads and footpaths, and the compulsory creation of rights across land to achieve this. The only legal test with regard to public rights of way is that extinguishment cannot take place without provision for a satisfactory alternative right of way, unless the SoS is satisfied that the provision of an alternative is not required. The Department for Transport's *Guide to TWA Procedures* advises that the SoS will need to be satisfied that any alternative will be a convenient and suitable replacement for users.
- 1.3 NR held two public consultations in June and September 2016, with a further, limited, consultation in December 2016. Officers have liaised with stakeholders including County Councillors, Parish Councils, Public Health, user groups and members of the public to understand local concerns and to assess each proposal against the relevant legal tests and policies. The discussions have informed ongoing negotiations to agree solutions with NR.
- 1.4 Following reports to Highways & Community Infrastructure (HCI) Committee in December 2016, January and February 2017 to resolve Member concerns and to deal with changes arising from ongoing negotiations, a pre-Order response was sent to NR on 21st March 2017 setting out the County Council's ('CCC's') initial position, as approved by Members.
- 1.5 On 14th March 2017 the SoS published *The Network Rail (Cambridgeshire Level Crossing Reduction) Order* for formal consultation. This can be seen online at <https://www.networkrail.co.uk/running-the-railway/our-routes/anglia/anglia-level-crossings/>. As this consultation coincided with the local election purdah period, the Executive Director ETE in consultation with the HCI Chair was given delegated authority to make a holding response¹. This was made on 19th April 2017 (Appendix 3) on the basis that a full response be made through the democratic process, via the HCI Committee, culminating in Full Council, as required by statute. This is the purpose of this paper.
- 1.6 New members have been apprised of the work undertaken to date, and their comments have been incorporated into the latest proposed response. Draft orders have also been made in Suffolk and Essex, Hertfordshire and Southend. Public inquiries will also to be held into these orders. CCC has objected separately to the closure of the S22 Weatherby crossing in Newmarket, which is in the Suffolk Order but affects the communities of Cheveley and Woodditton.

¹ This can be done under s239 Local Government Act 1972

2. MAIN ISSUES

- 2.1 CCC remains supportive of Network Rail's overall strategic ambition to improve the transport network in the region and the safety of all users. However, CCC is concerned about NR's approach to its project and the adverse impact of its proposed Order for the following reasons:
- i. The lack of a joined up approach across administrative boundaries arising from 3 separate orders in Cambridgeshire, Suffolk and Essex/Hertfordshire;
 - ii. The appropriateness of a TWAO rather than the usual s118A/119A Highways Act 1980 and relevant legal tests and maintenance provisions;
 - iii. The severing of the PROW network and a lack of suitable, safe alternative routes;
 - iv. The adverse impact on communities and implications for their physical and mental well-being;
 - v. A material impact upon three promoted routes, potentially affecting tourism;
 - vi. The substantial transfer of, and increase in, asset liability to CCC;
 - vii. The significant cost to CCC arising from non-compensated officer time (in excess of 600 hours and £40,000 to date, and likely to be more than £100,000 by the end of the scheme)
- 2.2 The proposed full response is at Appendix 4. A list of the crossings, affected highway, proposed position and summary of grounds is at Appendix 5. It is proposed to object to 15 of the 29 proposals. Key reasons for objecting include: lack of a safe alternative route; diminution of the connectivity of the network; diminution of enjoyment or access to green space for physical and mental well-being; an unreasonable increase in liability for the Highway Authority; and significant adverse impact on promoted routes.
- 2.3 Objections to eight proposals remain as before. It is now also proposed to object to seven further proposals because the final proposals do not provide satisfactory alternative routes (C04 FP4 Harston; C29 FP1 Brinkley; C27 Willow Row Drove Littleport), or because the proposals would result in unacceptable increased maintenance liability.
- 2.4 In addition, it is proposed to make holding objections to four proposals either because no information has been made available to enable analysis of the implications despite repeated requests for information, or because further information is now required (C31 Littleport station).
- 2.5 HCI Committee is asked to agree the proposed full response to the Secretary of State. The resolution will then be presented to Full Council on 18th July, for approval, in accordance with statutory requirements. HCI Committee is also asked to agree that officers should continue to negotiate with NR to resolve as many of the objections as possible before the inquiry. Whilst, the three months following the Full Council decision will allow further negotiation, it will not accommodate further papers to be taken to Committee., Therefore Committee is also asked to agree the delegation of any changes to the Council's position prior to the Public Inquiry to the Executive Director ETE in consultation with the Chair or Vice Chair of HCI Committee. Local Members will continue to be consulted in discussions materially affecting crossings in their areas.

3. ALIGNMENT WITH CORPORATE PRIORITIES

3.1 Developing the local economy for the benefit of all

There are no overall significant implications for this priority. However, some crossing proposals could have significant implications in those areas. In the Ely area, it is proposed to close five footpath crossings. Three of these (C08, C09 and C24 at Appendix 5) give direct access to the countryside and river to the north-east of the city, and were cited during the planning process for the major Ely North development as being important facilities for the health and well-being of

the new community. An additional link has been secured to mitigate the loss of C09 and C24; it is important to achieve this as part of the Order.

The paths along the River Ouse at Ely are popular promoted routes called the Fen Rivers Way and the Ouse Valley Way, which support the local economy through tourism. Closure of crossings C21 and C22 will affect this if it is not possible to agree suitable mitigation for flood events on the alternative routes. 'A Furlong Drove', Littleport, which is part of the long distance route the 'Hereward Way' would also be diverted by the closure of crossing C11.

3.2 Helping people live healthy and independent lives

There are no overall significant implications for this priority. However, some individual crossing proposals could have significant implications in those areas, as detailed at 3.1 above. In addition, at Soham, new housing is planned in the area near the proposed closure of footpath crossing C20 Leonards. There are also a number of routes used by local heart watch walking groups, such as C25 Clayway, FP11 Littleport. The alternative routes for closures proposed in Meldreth and Harston could significantly deter users. Closure of these routes could limit the scope for people to live healthily and independently. Solutions must recognise the importance of these paths in engendering the physical and mental well-being of communities through access to the wider network and common land.

3.3 Supporting and protecting vulnerable people

There are no overall significant implications for this priority. However, some individual crossing proposals could have significant implications in those areas. NR produced a Diversity Impact Assessment Scoping Report (DIA) in August 2016. CCC considered that this was fundamentally flawed in a number of ways in respect of its duties under the Equalities Act 2010. In particular, it did not adequately assess the impact of the closures and the alternative routes on users, communities, and vulnerable groups. CCC made a detailed response to NR on 09.11.2016. NR's consultant responded on 15.12.2016 and, whilst they acknowledged that full DIAs were necessary, these have not yet been received, and concerns remain over the methodology used and the implications for determining closures.

4. SIGNIFICANT IMPLICATIONS

4.1 Resource Implications

Sections 2.1, 3.2 and 3.3 above and paragraphs 2.9-2.13 of the full response at Appendix 4 set out the cost to the Authority resulting from NR's decision to use a blanket TWAO instead of Highways Act applications; the consequence of an inadequate approach to consultation; and of having to make representation at a major public inquiry.

4.2 Statutory, Legal and Risk Implications

There are potentially significant implications within this category. As a whole the TWAO will have a significant effect, as it will permanently alter the local highway network. A number of detailed issues (highlighted at sections 2.1) concerning maintenance liability of the highway authority will need to be resolved through the public inquiry. These issues are set out at 3.1-3.7 and 3.17-3.24 of the full response at Appendix 4. There is also a potential increased safety risk to users and reduced health in the community, as noted at 2.1 iii-iv and 3.3 above and detailed in the full response at 2.2-2.8 of Appendix 4.

4.4 Equality and Diversity Implications

There are no significant implications within this category. However, the points at 3.1-3.3 above should be noted. These are expanded upon at 2.2-2.7.

4.5 Engagement and Communications Implications

There are no significant implications in this category. However there may be publicity which will need careful handling.

4.6 Localism and Local Member Involvement

There are no significant implications within this category. There are some implications on specific proposals which are noted in Appendix 5, but these have been mitigated through engagement with members and local communities as set out at 1.3-1.6 above.

4.7 Public Health Implications

There are no significant implications within this category. However, the points at 2.1 3.1-3.3 above should be noted.

Implications	Officer Clearance
Have the resource implications been cleared by Finance?	Yes Name of Financial Officer: Sarah Heywood
Have the procurement/contractual/ Council Contract Procedure Rules implications been cleared by Finance? N/A	
Has the impact on statutory, legal and risk implications been cleared by LGSS Law?	Yes Name of Legal Officer: Mike Kelly
Have the equality and diversity implications been cleared by your Service Contact?	Yes Name of Officer: Tamar Oviatt-Ham
Have any engagement and communication implications been cleared by Communications?	Yes Name of Officer: Sarah Silk
Have any localism and Local Member involvement issues been cleared by your Service Contact?	Yes Name of Officer: Tamar Oviatt-Ham
Have any Public Health implications been cleared by Public Health	Yes Name of Officer: Iain Green

SOURCE DOCUMENTS GUIDANCE

Source Documents	Location
Network Rail proposals including maps	http://www.networkrail.co.uk/anglialevelcrossings/
Department for Transport <i>Guide to TWA Procedures</i>	https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/4502/procedures-guide.pdf
Cambridgeshire Rights of Way & Improvement Plan	http://www.cambridgeshire.gov.uk/info/20006/travel_roads_and_parking/66/transport_plans_and_policies
Cambridgeshire Health & Well Being Strategy	http://www.cambridgeshire.gov.uk/info/20004/health_and_keeping_well/548/cambridgeshire_health_and_wellbeing_board