

TRANSPORT AND WORKS ACT 1992

THE TRANSPORT AND WORKS (INQUIRIES PROCEDURE) RULES 2004

**ROTHER VALLEY RAILWAY (BODIAM TO ROBERTSBRIDGE
JUNCTION) ORDER**

PROOF OF EVIDENCE ON ECOLOGY MATTERS

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CONTENTS

1.0	INTRODUCTION	3
2.0	PROOF OF EVIDENCE – POST PLANNING CONTROL OF ECOLOGICAL IMPACTS	7
3.0	PROOF OF EVIDENCE – RESPONSE TO OBJECTIONS.....	9
4.0	PROOF OF EVIDENCE – UPDATED DATA SEARCH	18
5.0	CONCLUSION	22
6.0	REFERENCES.....	23

1.0 INTRODUCTION

Qualifications and Experience

- 1.1 My name is Giles Coe. I am an ecological consultant with 18 years commercial experience, a BSc in Environmental Management from the University of North London and full membership of the Chartered Institute for Ecology and Environmental Management (CIEEM) which I have held for over 11 years. I have been retained by Rother Valley Railway (RVR) in a consultative capacity since 2013, providing guidance to representatives from RVR and also to Alex MacDonald the ecologist from Complete Land Management (CLM) contracted to carry out baseline surveys and the ecology element of the Environmental Statement (ES).
- 1.2 My input to the ES included working with Alex MacDonald on the drafting of the assumptions used within it and as Quality Assurance, proof reading and amending the ES chapter as required. Once the planning application had been submitted I assisted RVR by attending and inputting into a meeting with Dr Kate Cole, East Sussex County Council's ecologist, and subsequent to that drafting an addendum to the ES. Once planning had been granted, my (previous) company was contracted by RVR to provide additional support to comply with the ecology related planning conditions. This included the production of all post planning ecology documents (as listed below), additional surveys, obtaining consent from Natural England in relation to badgers and dormice, and the implementation of those consents (Species Mitigation Licensing).
- 1.3 I have been a Registered Consultant on Natural England's Badger Class License scheme since 2018 and since 2011 have annually held and implemented multiple licences to disturb badgers for reasons of development and/or agricultural damage. I am a Registered Consultant on Natural England's Bat Mitigation Class Licence scheme (BMCL - previously Bat Low Impact Class Licence, BLICL), since 2015, and since 2010 have acted annually as named ecologist on multiple bat EPSM licences. My other professional certifications include a great crested newt survey licence which I have held since 2005 and acting as named ecologist on great crested newt European Protected Species Mitigation licences (EPSM) for a range of schemes and levels of impact. This includes, since 2012, overseeing the compilation and delivery of a suite of EPSM licences for the London Gateway Logistics Park and Port developments for Dubai Ports World.

- 1.4 I am experienced in the survey and assessment of sites in a wide range of situations that encompass single dwellings, through to large scale housing and infrastructure schemes. Having worked through my career in posts from field assistant, to suitably qualified ecologist and subsequently then greater levels of seniority and responsibility, I have gained a solid understanding and appreciation of the practical application of ecological principals in development scenarios.
- 1.5 Much of my project work requires an in-depth working knowledge of the National and International legislative framework surrounding nature conservation and wildlife. This involves working within the interface between the legislation and the planning system, interpreting the nuances of the National Planning Policy Framework (NPPF), the Circular from the Office of the Deputy Prime Minister (ODPM), the Natural Environment and Rural Communities Act (NERC) act and local plans and policies. For a large proportion of project work, this role extends to a detailed understanding of the species licensing system and applying that knowledge to advise clients on consent applications.
- 1.6 At the time of my main involvement with the scheme I was working for The Ecology Consultancy and in my own office in Sussex, I had a team of 28 technical and support staff working under me and delivering the ecological surveys, assessments and mitigation measures for approximately 200 projects per annum. We covered a wide suite of ecological receptors and I was called on by senior and principal grade ecologists to guide and direct them on complex ecological issues, often surrounding legislation, policy and licensing.
- 1.7 As Executive Director for The Ecology Consultancy, I had board level responsibility for our five regional offices (Devon, Sussex, Norfolk, Midlands and North) ensuring not just the commercial success of these locations but that the teams work to consistently high technical standards. From 2015 to 2019, on behalf of the CIEEM I have co-delivered a training course: Preliminary Ecological Appraisal – An Applied Approach.
- 1.8 I am currently employed by my own company, Co-ecology Ltd and remain involved in the scheme to deliver this proof of evidence and to advise on any ecology matters arising through the inquiry.
- 1.9 I confirm that the evidence presented below in relation to the TWA Order application for RVR is a true and accurate representation of my professional opinion and of the ecology work carried out on this project to date.

Scope and structure of evidence

- 1.10 This proof provides additional statements and evidence above that already submitted to the inquiry in the ecology section of the updated environmental statement (**RVR 70-01**). The updated ecology section provides commentary and supporting information which answer the statement of matters items as follows:
- *The measures proposed by RVR to mitigate any adverse impacts of the scheme including any protective provisions proposed for inclusion in the draft TWA Order or other measures to safeguard the operations of utility providers or statutory undertakers.*
 - *The extent to which the proposals in the TWA Order are consistent with the National Planning Policy Framework, national transport policy, and local transport, environmental and planning policies.*
 - *The adequacy of the Environmental Statement (including the data underpinning it) submitted with the application for the TWA Order, having regard to the requirements of the Transport and Works (Applications and Objections Procedure) Rules 2006.*
- 1.11 In light of the above my proof of evidence concentrates primarily on responding to concerns raised by objectors to the scheme and provides some additional updated background information. This includes a comparison with data provided by the SxBRC and the SOS respectively in March and May 2021 and the data search carried out for the original environmental statement in 2014. The full data search is provided as an appendix to this proof (RVR/W6/2-1).
- 1.12 In Chapter 2 which starts my proof of evidence, I provide a brief overview of how impacts to ecology are being dealt with through the framework of post planning documents and species mitigation licenses issued by Natural England.
- 1.13 In Chapter 3, I offer a commentary on the main objections to the scheme as they relate to ecology. Including counter arguments or explanation where required and referencing the materials produced for the ES and also those produced for the planning conditions and the mitigation licences.
- 1.14 Chapter 4, provides some additional information from updated searches with the Sussex Biodiversity Records Centre (SxBRC) and the Sussex Ornithological Society and an assessment for any implications that may arise.

1.15 Chapter 5 – provides a concluding statement.

Documents considered

1.16 This proof of evidence is based on information set out in the following documents;

1.16.1 **Inquiry documents;**

- RVR25 Temple ES volume 2
- RVR 26 Temple ES volume 3
- RVR 27 Temple ES volume 4
- RVR 28 Temple ES volume 5
- OBJ/1002 - on behalf of Mr & Mrs A Hoad of Parsonage Farm & The Executors and Trustees of the Noel de Quincey Estate

1.16.2 **Documents relating to the planning permission and enacted mitigation consents** (as appended to this proof as **RVR/W6/2-1 to 2-8**)

- 1 Sussex Biodiversity Records Centre (2021) – *Ecological Data Search SxBRC/20/989, Land at Robertsbridge to Bodiam*
- 2 Sussex Ornithological Society (2021) – *Additional Bird Records for Land at Robertsbridge to Bodiam*
- 3 Rother District Council (9 April 2019) Town and Country Planning Act 1990, Confirmation of compliance with conditions, 3, 5, 6 and 7 (ecology)
- 4 The Ecology Consultancy (2019). *Method Statement for a Dormouse European Protected Species Mitigation Licence*. Unpublished
- 5 The Ecology Consultancy (2019c). *RVR Protected Species Plan*. Unpublished
- 6 The Ecology Consultancy (2019d). *RVR Construction Environment Management Plan*. Unpublished
- 7 The Ecology Consultancy (2019f). *RVR Landscape Ecological Management Plan*. Unpublished
- 8 Indicative Future Ecology Schedule for the Austen's Bridge to Robertsbridge Section of the Rother Valley Railway

2.0 PROOF OF EVIDENCE – POST PLANNING CONTROL OF ECOLOGICAL IMPACTS

- 2.1 This chapter provides a brief overview of the framework of supporting ecological information, assessment and mitigation produced post the granting of planning consent for the scheme.

Planning Documents and Compliance

- 2.2 The ecology related Grampian conditions for the scheme have been predicated on the compilation of a specific series of documents that are drawn from the British Standard for Biodiversity BS42020. They relate specifically to the collection of data, the interpretation of that data and the implementation of the subsequently devised mitigation, compensation and enhancement measures.
- 2.3 The data and later following documents have so far been gathered and produced to inform the Junction Road to Austen's Bridge section for which all of the relevant and necessary ecology surveys were carried out in 2016/17 once access was obtained. Three post planning reports were prepared dealing solely with this section and submitted to the LPA for approval prior to any works being carried out on the ground.
- 2.4 The post planning investigations have covered the main species groups: breeding birds, bats, badgers, dormice, reptiles and great crested newts. The planning documents to inform the various conditions have included: a Protected Species Plan (RVR/W6/2-5), a Landscape and Ecological Management Plan (RVR/W6/2-7) and a Construction and Environment Management Plan focussed on biodiversity (RVR/W6/2-6).
- 2.5 For the next stages of the scheme it is anticipated that there will be one further iteration of each of these documents that takes into account the activities to date and the species and habitats present between Austen's Bridge and Robertsbridge. Those documents will be underpinned by surveys for those species mentioned above and are also likely to be expanded to include; riparian mammals, targeted Schedule 1 birds and habitats.
- 2.6 The impacts on those ecological receptors identified within the ES are being assessed and managed through the surveys and the framework of post planning documents and succeeding species mitigation licences. The latter will be accompanied by a master plan for

each species that will provide an assessment and compilation of impacts and remedial measures over the lifetime of the construction schedule.

- 2.7 The surveys carried out for the remainder of the line will in addition to the post planning documents, be designed to be suitably robust to allow Natural England to issue Mitigation Licences for those species already encountered and great crested newts should they be found to be present. Equally, the presence of other species such as otter and water vole will be determined through surveys which will be sufficiently robust to adhere to the requirements of the various planning conditions and any licensing that may be required.

3.0 PROOF OF EVIDENCE – RESPONSE TO OBJECTIONS

- 3.1 This chapter considers each of the main objections raised on ecology grounds within the Statement of Case from the Hoad family and the Noel de Quincy Estate and provides a response to the key points raised.
- 3.2 Whilst other objectors to the scheme provided submissions to the inquiry regarding impacts on ecological receptors, they were broadly targeted and, therefore, my evidence below also covers third party concerns. The key themes relating to ecology that are mentioned by objectors with no interest in the land affected by the scheme may be categorised as follows:
1) Value of the developable area for wildlife. 2) Value of adjacent land (Moat Farm) for wildlife. 3) Unacceptable impacts.

Environmental impact assessment issues

- 3.3 Paragraph 5.13 – *“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.”*
- 3.4 Paragraph 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.”*
- 3.5 The lack of survey data constrained the ability of the ES to determine the value of the receptors and consequently the exact details of any mitigation and compensation requirements. However, professional judgement was exercised and reasonable worst case assumptions were used to determine likely presence and the value of receptors. Those assumptions are of course open to further evidence and revision, but they are not necessarily time limited, and would not therefore go out of date or reduce in their reliability simply due to the passage of time.

Impact upon Parsonage Farm and Moat Farm

- 3.6 **Moat Farm**

Paragraph 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”.*

- 3.7 It should be noted that Moat Farm has not been designated for its value to wildlife as either a Statutory (SSSI) or non-statutory (LWS) site and none of the habitats within the farm appear on the National inventory for important or priority habitats, whilst there is an area listed as Priority Grassland in close proximity.
- 3.8 Certainly, in the absence of chemical inputs and NPK fertilisers the potential for a diverse flower and invertebrate rich grassland sward being present is far greater than for grasslands that have been subject to any degree of modification. In order to best provide functional and robust habitat and species improvements within the confines of the layout of any scheme, detailed ecological and planting design works better if created in sympathy with the surroundings. Therefore, if there are some areas of land within and surrounding the railway corridor that are of particular ecological value, especially if some less common species or communities are present, this opens up opportunities to tailor the design and layout of compensation habitats within the planning boundary to make the most of the ecological assets. Planting specifications can then reflect the species composition of adjacent land with the aim of providing a supporting function to those species. An example could be the planting of blackthorn as part of a species rich hedgerow to complement this habitat where it exists on adjacent land, forming an ecological corridor, an additionally strong enhancement if brown hairstreak butterfly were also recorded in the local area. In short, it is welcomed as an opportunity rather than a constraint and such enhancements can be secured through incorporating biodiversity design into the appropriate post planning documents. The revision and expansion of the existing LEMP (RVR/W6/2-7) can be used for just such purpose and/or could be augmented through an Ecological Design Strategy.
- 3.9 **Paragraph 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."

- 3.10 It should be noted that the two statutory organisations concerned with nature conservation have both been consulted, the Environment Agency withdrew its holding objection whilst Natural England has not raised any objections to the scheme. In addition, that Natural England has issued derogation licences for two different species for the works in the Junction Road to Austen's Bridge section, and that those consents have been implemented, clearly demonstrates that the impacts to the local ecology can be adequately addressed. This is evidenced in the post planning documentation and the consent licences.
- 3.11 As the local planning authority, Rother District Council determined that sufficient information was presented within the ES and post planning documentation both to grant full planning permission and subsequently to approve details submitted to it pursuant to the relevant planning conditions (RVR/W6/2-3). Thus, relevant Grampian conditions have been used, and have worked, for this purpose already. The scheme has made a robust assessment of ecological status and impact in the absence of any significant direct access which was blocked specifically by those objecting to the scheme. Had access been permitted the full and true impact could have been assessed. If the landowners' objection on this point was to succeed, it would mean that any landowner could effectively thwart development by the simple means of refusing access for survey.
- 3.12 **Paragraph 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."*
- 3.13 That the habitats along the top of the track bed (i.e. not the entirety of the railway corridor) would be lost is neither in dispute nor is it avoidable if the line is to re-open. What is in contention is the relative ecological value of those habitats, and if they could be adequately compensated for elsewhere within the design of the scheme. For the 500m section that has been re-surveyed, it was evident that woodland and scrub habitats were broadly consistent with the assumptions of habitat type within the ES. The woodland/scrub mosaic being

relatively young and likely not of a high intrinsic value. In response to operational impacts referenced above, the ES is clear that these would represent a negligible adverse effect. The line is only proposed for limited train movements and would be nowhere close to the levels of environmental contaminants that would have been evident when the line was originally in operation. I don't believe there is any suggestion that habitats along the route were significantly reduced in value during rail operation pre-1961.

Ecological and Landscape Impacts

- 3.14 **Paragraph 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 bat species, dormouse and great crested newt, as well as badger;

- 3.15 As with preceding comments, it is not in dispute that the ES (and addendum) was developed not from direct survey information but used whatever sources were available at the time of the original draft, adopting a precautionary approach. A similar approach was followed when drafting the ES re-validation report in 2021, whilst in addition that report was able to also draw on the additional ecology data that had been gathered in the intervening period. This is essentially following an iterative process as and when any new data is gathered in subsequent phases, until such time as full suite of directly gathered information can be used. As stated in the ES and elsewhere within this proof, prior to final design and subsequent start of construction, a very full and comprehensive suite of surveys (and assessments) will be required, of all likely important receptors, as defined within the ES but not limited to those receptors. Surveys will be carried out to all best practise methodology as published at that time (2020 onwards).

- 3.16 *“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.”

- 3.17 The ES was not predicated on absolute worst case but reasonable worst case. It adhered to the precautionary principle but applied that with a degree of caution so as not to over-compensate, ensuring that the proposed measures were proportional to the perceived impact. The ES ecology chapter laid out its methodology and approach, the presence (as opposed to absence) and value used within the table of assumptions being based on a combination of professional judgement, species distribution in Sussex, and published studies. The methodology followed the standard for biodiversity impact assessment as published at the time by the CIEEM (2006). The comment referenced above is of course broadly correct, it is not possible to accurately assign a high level of confidence to the conclusions but a degree of confidence is possible as the assumptions are all based on the very well understood ecology of the receptors concerned.
- 3.18 *“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;”*
- 3.19 *“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;”*
- 3.20 *“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;”

- 3.21 This proof provides a detailed (although indicative) schedule (RVR/W6/2-8) to which the surveys could be conducted, whilst needing to be comprehensive, this scheme is not unusual or overly demanding in terms of the complexities around surveying. For the purposes of informing this inquiry the full seasons suite of surveys are not required as the current data available, particularly for the detailed work for Austen’s Bridge section, clearly demonstrates a sufficiently robust assessment to satisfy mitigation licensing. In comparison to The Ecology Consultancy’s longstanding involvement in the delivery of complex and extensive survey scheduling for HS2 (Phase 1 and Phase 2b) over 200km of linear route, the RVR project of (now) 2.9km to survey is of an easily deliverable scale.
- 3.22 As demonstrated previously in this proof, the evidence gathered to date for the Junction Road to Austen’s Bridge section, and the devised mitigation and compensation measures have been sufficient to gain EPSM consent from Natural England. The information provided, including the planning consent, was sufficiently robust to meet the three tests.
- 3.23 In determining whether or not to grant a licence Natural England is obliged to apply the requirements of Regulation 55 of the Regulations (2017) and, in particular, the three key tests set out in sub-paragraphs Regulation 55 (2)(e), (9)(a) and (9)(b). The former two of these are set out in the “reasoned - statement – iropi” document that must be completed for the majority of EPSM applications. The third test on Favourable Conservation Status is
- (1) Regulation 55(2)(e) states: a licence can be granted for the purposes of “preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment”.*
- (2) Regulation 55(9)(a) states: the appropriate authority shall not grant a licence unless they are satisfied “that there is no satisfactory alternative”.*
- (3) Regulation 55(9)(b) states: the appropriate authority shall not grant a licence unless they are satisfied “that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.”*

- 3.24 In respect of survey information, this is used only in the assessment of the third test, that of maintaining favourable conservation status. For the section already licensed, this test was satisfied by the underpinning survey data and also crucially the habitat compensation measures, much of which were created both on and off-site. The method statement for the existing 500m section included direct reference to the wider scheme (see below) and made an unambiguous statement regarding the need for a master plan to guide all future impact to dormice. The text below is an extract from the method statement submitted as part of the EPSM licence for the Junction Road to Austen's Bridge section (RVR/W6/2-4).
- 3.25 *"This EPSM application is for the reinstatement of a single section of the disused rail line between Junction Road B2244 and Austen's Bridge (approx.0.5km (50 ha). In total a further 3.7km (370ha) of line will be reinstated to the west of the site leading up to currently live track by Robertsbridge. Suitable dormouse habitat is present across the overall scheme and dormice are assumed present in all potentially suitable habitats across the scheme, However, due to access constraints, only land within the current site boundary covered by this EPSM has been subject to a formal dormouse survey. Therefore, to ensure dormice are retained at the site at a favourable conservation status, each phase of works will be subject to survey, an EPSM application (where required) obtained and mitigation will be provided to ensure there is no net loss of suitable dormouse habitat across the overall scheme. A dormouse EPSM masterplan has been drafted and considers the in-combination accumulative impacts upon the local dormouse population. The masterplan will be updated for each new EPSM submitted."*
- 3.26 **Paragraph 8.4 –**
- 3.27 *"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;*
- 3.28 The requirement to carry out studies of river fauna as part of assessing the ecological impacts of development activities is driven both by the likely presence of specific species or assemblages that may have a high level of protection or high biodiversity value; coupled with the relative impact of the scheme were those species later found to be present. The standard approach to data gathering is to request fish data from the Environment Agency,

the key species include those on Schedule 5 of the Wildlife and Countryside Act (1981) as amended, species listed on Annex 2 of the Conservation of Habitats and Species Regulations (2017) as well as spawning salmonids. Species of concern including;

- Bull head;
- Brook and sea lamprey;
- European eel;
- Spined loach;
- Twait shad; and
- White clawed crayfish.

3.29 As a part of any future studies that may be undertaken a River Invertebrate Prediction and Classification System (RIVPACS) survey would be carried out at suitable reference sites. The aim of this exercise would be to determine the current ecological health of the river and assess any likely impacts that could arise from construction.

3.30 *“The loss of wetland (Floodplain grazing marsh) habitat has only been briefly addressed in the Environmental Statement and associated Addendums”;*

3.31 In the absence of direct survey information, the ability for the scheme’s ecologists to fully determine habitat type and conservation status was significantly curtailed and so a precautionary approach to determining value was taken. Where doubt existed, then the higher rather than lower value habitat was assumed to be present. This includes the area of Coastal and Floodplain Grazing Marsh which is a Priority habitat under the NERC Act. This was noted within the ES as the route runs through an area of this habitat which is captured in the National habitat inventory which is broad and not necessarily fully reliable to determine the actual habitat present. It is anticipated that were full access to be allowed, a comprehensive suite of dedicated habitat surveys would be carried out alongside those for protected species. This would include surveys in spring of wet grassland, hedgerows and woodland with other grassland surveys scheduled for the early summer months.

3.32 *“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.”

- 3.33 By far the largest potential impact to protected species during either construction or operational phases will result from the clearance of vegetation along the route and the advance ecological mitigation program. This will be achieved in stages in advance of construction activities and likely split down into manageable sections of up to 1km. The construction of the track bed is a relatively quick process and irrespective of whether volunteers are used or construction professionals, the processes remain the same with machinery used to level ground, import materials and make good for the addition of ballast and tracks.
- 3.34 With the vegetation cleared in advance and the various ecological mitigation measures being completed for a section prior to construction starting, the construction process itself would be highly unlikely to cause anything other than a very minor adverse impact to faunal species residing in retained habitats outside the construction footprint. All disturbing construction activities in any case will be subject to a revised CEMP that would guide and inform construction so as to avoid and then minimise disturbance, as evidenced by the implementation of the CEMP (RVR/W6/2-6) for the Junction Road to Austen’s Bridge section. Due to the presence of ecological receptors which have breeding seasons which do not full coincide, the fully mitigated vegetation clearance in this section took two full seasons to implement to conclusion.

4.0 PROOF OF EVIDENCE – UPDATED DATA SEARCH

- 4.1 This section provides a list of any pertinent biological records within 2km of the route of the proposed line re-opening and that were recorded since the previous data search was provided by the Sussex Biodiversity Records Centre (SxBRC) in 2013 (RVR/W6/2-1). The records referenced below are those returned by a repeat data search with the SxBRC that was provided in March 2021 to carry out the revalidation exercise for the ES. In addition, records were also obtained from the Sussex Ornithological Society (RVR/W6/2-2) covering the same search area but for records that were not submitted by them to the SxBRC.
- 4.2 Some commentary is also provided on implications of any new records available since the environmental statement was originally drafted in 2014.

Data Search: Species records

- 4.3 **Invertebrates** - The environmental statement stated that the previous search did not provide any recent records for notable of BAP species, although no definition of recent was provided. The current search identified *Andrena labiata* Red-girdled Mining Bee (Notable, Sussex Rare) and *Lasioglossum pauxillum* Lobe-spurred Furrow Bee (Notable, Sussex Rare) both from Mayfield Farm in 2019. Six records for the small heath butterfly (NERC S41, UK Bap Priority, Red List) in Bodiam, Robertsbridge and Mayfield between 2018 and 2020.
- 4.4 Other records included: *Limnephilus politus* a Caddis Fly (Nat Scarce) from 2017, *Sympetrum striolatum* Common Darter (Red List GB post 2001) from 2018, *Trematocephalus cristatus* a Spider (Nat Scarce, Sussex Rare) from 2019. And of the true flies - *Atrichops crassipes* Least Water-snipefly (Nat Rare, Sussex Rare) from 2017, *Ibisia marginata* Black-legged Water-snipefly (Nat Scarce) from 2017 and *Volucella zonaria* Hornet Hoverfly (Sussex Rare) from 2019.
- 4.5 **Implications** –These records can be utilised primarily as an informative to help provide the detail for the habitat compensation and enhancement measures that will be included in the revision of the post planning ecology documents. Habitat design being targeted to provide where practicable, appropriate habitat creation for specific species locations in close proximity to where they have been recorded.

- 4.6 **Amphibians** - Records for common toad (NERC S41, UK BAP) from Moat Farm in 2015, palmate newt from Robertsbridge in 2014 and great crested newts (W&CA, Habitat Regulations) from pond surveys carried out on waterbodies 1.7km to the north in 2014 and 1.8km to the east at Bodiam Castle in 2019.
- 4.7 **Implications** –The two new records for great crested newts are too distant from the route to have any implications for the proposals, the widely accepted working assumptions for this species is that there is a very much reduced risk of their presence in terrestrial habitat that is beyond 250m from a breeding pond. Any distances further than 500m are not considered to be viable.
- 4.8 **Reptiles** - A small number of additional records in 2014 and 2016 for slow-worm *Anguis fragilis*, common lizard *Zootoca vivipara*, and grass snake *Natrix natrix*.
- 4.9 **Implications** –The working assumption of the environmental statement is that reptiles of these species will be present along the route wherever there is suitable habitat. Additional records do not alter that assessment.
- 4.10 **Birds** - A suite of new records were returned by the search, the most pertinent of which are: Turtle dove (NERC, UK Bap, Red, Notable) one record in an area of scrub 1km south and two around Robertsbridge all from 2019, Kingfisher (Schedule 1 W&CA, NERC S41) from 2015 and three records from 2018 and 2020 1.5km to the south. Barn owl (Schedule 1 W&CA) in the Robertsbridge area from 2017 and 2018. Three separate sightings of white stork were returned within the Robertsbridge area and one additional sighting closer to Bodiam, all likely to have come over from the Knepp Estate in West Sussex.
- 4.11 **Implications** –The records for turtle dove is of note due to the relative scarcity of this species, the record is from within the last three years and is provided at a six figure accuracy. Turtle doves are associated with scrub habitats as can be found along the proposed route and are particularly sensitive to impacts that reduce breeding habitats and food availability. Further surveys for this and other Schedule 1 surveys will be carried out once access is allowed to fully inform a revised base-line and assess impacts to notable bird species.
- 4.12 **Bats** - Within the 2 km search area, the data search gives a number of results for *Chiroptera spp* (bats) as summarised below.

Table 3.1 – Results of Data Search for Local Bat Records from 2021

Common Name	Latin Name	Number of records	Type of record
Brown Long-eared bat	<i>Plecotus auritus</i>	6 from 2014/16	D, UR
Common pipistrelle	<i>Pipistrellus pipistrellus</i>	2 from 2019	FO
Daubenton's bat	<i>Myotis daubentonii</i>	23 from 2014/19	FO/MR (Bodiam Castle)
Natterer's bat	<i>Myotis nattereri</i>	21 from 2014/19	FO/MR (bodiam and Robertsbridge)
Noctule bat	<i>Nyctalus noctula</i>	1 from 2014	FO
Pipistrelle sp	<i>Pipistrellus sp</i>	1 from 2014	FO
Serotine	<i>Eptesicus serotinus</i>	2 from 2014/19	FO
Soprano pipistrelle	<i>Pipistrellus pygmaeus</i>	3 from 2014/18/19	FO
Unidentified bat	<i>Myotis</i>		

Key to type of record	
M/S	Mating/swarming
H	Hibernaculum
FR	Feeding roost
FO	Foraging
MR	Maternity roost
UR	Unspecified roost
D	Droppings

Implications –The new records do not include any new species to the area although the maternity roosts for Daubenton's and Natterer's are of note, although both roosts are from Bodiam and not along the route itself. As with the Junction Road to Austen's Bridge section, dedicated activity and roost location survey for the remainder of the route will be used to determine the status of this species group and provide the further detail in regards impact assessment and mitigation.

4.13 **Dormice** - Six additional records were returned for 2014-2016, the closest being four records all approximately 70m due south of the route in contiguous habitat including one in close proximity to Austen's Bridge.

4.14 **Implications** –As the on-site surveys have already demonstrated this species are resident within the scrub and woodland habitats between Junction Road and Austen's Bridge and are certainly resident in all other areas of suitable contiguous habitat along the route. Mitigation measures to date have followed accepted best practise and seen a subsequent creation of extensive new habitat. An overarching master plan will be devised to manage the impact to this species group in later phases of the project. The additional records in this area just provide additional confirmation that the assessment is correct.

- 4.15 **Otter** - The SxBRC do not display records for Otter as they are confidential but the Sussex Otter and Rivers Project (SORP) officer reports that there have been a number of recent sightings in the Bodiam area (within 2km).
- 4.16 **Implications** –The recent sightings of otter indicate that the working assumptions of the environmental statement in regard to this species should still stand. Further dedicated pre-construction surveys for this species will be carried out once the Order is made.
- 4.17 **Badger** - The SxBRC report does not show badger records as a matter of policy.
- 4.18 **-Implications** –The absence of records does not have implications for the assessment of impact and Any subsequently devised mitigation measures for this species. As with some of the other ecological receptors and in line with statements already made to Natural England a species specific master plan will be devised once the whole of the route has been surveyed. This master plan will map the locations of any main and socially linked badger setts and facilitate the targeted creation of any new artificial setts that may be required.

5.0 CONCLUSION

- 5.1 The statement of case submitted by OBJ/1002 has in terms of objections to the ecological assessment to the scheme been presented under three key areas. However, the points raised fall largely under two key themes, 1) inadequacy of data underpinning the impact assessment, and 2) that impacts to biodiversity are perceived to be too high to be considered acceptable.
- 5.2 In countering the first of these themes I have sought to demonstrate that the approach taken by the environmental statement was both reasonable and robust and has ample precedent. It is the applicant's case that the environmental information is sufficient for the purposes of determining the Order application.
- 5.3 On the second theme, the environmental statement was precautionary and adopted a reasonable worst case, with revisions able to be made to this once data becomes available after the Order is made and powers to enter land for survey purposes can be exercised. A case now in point being the population for both dormouse and badgers being revised up once surveys had been completed for a single section, with sufficiently rigorous assessment provided for the granted consent applications to Natural England. With full access the full picture of the status of species and habitats along the route can then be assessed and, fully informed and functional mitigation and compensations measures subsequently devised.
- 5.4 Whilst the survey and mitigation of the whole route is not without its challenges, it is within the established norms of ecological best practise implemented by consultants and developers throughout the UK.

6.0 REFERENCES

British Standards Institution (2013) Biodiversity. Code of practice for planning and development: 42020. BSI, London.

CIEEM (2016) Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater and Coastal, 2nd edition. Chartered Institute of Ecology and Environmental Management, Winchester