



Rother Valley Railway (Bodiam to Robertsbridge Junction) Order

Statement of Common Ground between Rother Valley Railway & Highways England

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## Statement of Common Ground between Rother Valley Railway & Highways England

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## SECTION 1 Introduction

### Purpose of this document

- 1.1 This Statement of Common Ground (SoCG) has been prepared in relation to the application by Rother Valley Railway Limited (RVR) to the Secretary of State for Transport for the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order under the Transport and Works Act 1992.
- 1.2 This SoCG between RVR and Highways England (HE) provides a clear record of engagement between the parties, including of the issues discussed between the parties and the current status of those discussions. It explains where agreement has been reached and which issues in HE's Statement of Case remain outstanding as at the date of this document.

### Structure of this Statement of Common Ground

- 1.3 The structure of this SoCG is as follows:
- Section 1 – Introduction
  - Section 2 – Consultation to date
  - Section 3 – Summary of topics covered by the SoCG
  - Section 4 – List of matters agreed
  - Section 5 – List of matters under discussion
  - Section 6 – List of matters not agreed

### Overview of the proposals

- 1.4 The purpose of the Order is to confer on RVR the necessary powers to construct, maintain and operate a re-instated railway along the route of the former Rother Valley Railway between Bodiam and Robertsbridge, thereby completing the "Missing Link" and enabling the Kent and East Sussex Railway to operate steam trains along the entirety of the historic route between the town of Tenterden and the main line railway at Robertsbridge. The proposed route includes an at-grade crossing of the A21, a single carriage way trunk road in the ownership of Highways England.

### **Introduction to Highways England**

- 1.5 Highways England is a strategic road authority appointed by the Secretary of State for Transport as highway authority, traffic authority and street authority for the strategic road network. For the RVR proposals Highways England interest is the strategic road network comprising the A21 to the north and south of the proposed level crossing location.

## **SECTION 2      Consultation to Date**

**2.1**      A summary of the engagement between RVR and Highways England that has taken place between the submission of the Order application on 19 April 2018 and the submission of proofs is set out in Appendix A.

**2.2**      Since the submission of proofs the following engagement has taken place to date:

- Meeting between RVR and HE 9 June to discuss SES request for further information on the DMRB Departures submission;
- Submission of revised draft Statement of Common Ground to HE 25 June 2021;
- Meeting between RVR and HE to discuss revised draft Statement of Common Ground 30 June 2021; and
- Submission of revised draft Statement of Common Ground to HE 1 July 2021.
- HE comments on revised draft Statement of Common Ground 9 July 2021
- Submission of revised draft Statement of Common Ground to HE 9 July 2021
- HE comments on revised draft Statement of Common Ground 12 July 2021

## **SECTION 3      Summary of Topics Covered by SoCG**

**3.1**      The following topics discussed between RVR and HE are commented on further in this SoCG:

- Policy and legal compliance
- Road Safety
- A21 Traffic Flow
- Highway Design & Departure
- Land & Draft Order



## SECTION 4 HE Statement of Case List of Matters Agreed

Ref	Description of Matter	Details of Agreement	HE Statement of Case Reference
<b>4.1 Policy Compliance</b>			
4.1.1	National Planning Policy Framework (February 2019)	Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. (paragraph 109)	Paragraph 2
4.1.2	DfT Circular 02/13 "The Strategic Road Network and the Delivery of Sustainable Development"	<p>Operating an effective and efficient strategic road network makes a significant contribution to the delivery of sustainable economic growth, helping to create the conditions that support the realisation of the aspirations of businesses and communities, and is a key deliverable for the Highways Agency in meeting its remit of delivery partner to national economic growth. (paragraph 2).</p> <p>If the level crossing constitutes an access, paragraph 43 applies to the A21 in the vicinity of the proposed level crossing. The Highways Agency will adopt a graduated and less restrictive approach to the formation or intensification of use of access to the remainder of the strategic road network [i.e. not motorway or near-motorway standard]. However, the preference will always be that new development should make use of existing junctions. Where a new junction or direct means of access is agreed, the promoter will be expected to secure all necessary consents, and to fund all related design and construction works. (paragraph 43).</p>	Paragraph 1, 2, 11, 4 (d), 23

Ref	Description of Matter	Details of Agreement	HE Statement of Case Reference
4.1.3	ORR RIG-2014-06 "New level crossings How ORR applies its policy of no new crossings unless there are exceptional circumstances	<p>ORR policy is that new level crossings should only be considered appropriate in exceptional circumstances.</p> <p>The ORR have confirmed their test of exceptional circumstances has been met as stated in their Statement of Case (REP/017-0, paragraph 36).</p> <p>ORR note in their Statement of Case that there are wider highway safety issues that they are not competent to comment on.</p> <p>ORR RIG-2014-06 pre-dates the ORR publication "Principles for managing level crossing safety" (2021).</p>	11, 17, 24, 25, 26
4.1.4	Highways England: Licence Secretary of State for Transport statutory directions and guidance to the strategic highways company (2015)	<p>Paragraph 5.36 of the Highways England Licence states:</p> <p>(i) In the case of sections of the network designed for highspeed traffic, with partially or comprehensively limited access, there should be a presumption against connection, except where it can be provided safely and where there is a demonstrable benefit to the economy;</p> <p>(ii) On all other sections of the network there should be a presumption in favour of connection, except where a clear case can be made to prohibit connection on the basis of safety or economic impacts.</p> <p>If the level crossing constitutes a connection item (ii) applies to the A21 in the location of the proposed level crossing</p>	10
4.1.5	ORR: Level Crossings: A guide for managers, designers and operators (2011)	<p>The use of guidance in design of A21 level crossing is applicable.</p> <p>The guidance has not been withdrawn but is superseded by the ORR publication "Principles for managing level crossing safety" (2021).</p>	23, 24, 25
<b>4.2 Road Safety</b>			

Ref	Description of Matter	Details of Agreement	HE Statement of Case Reference
4.2.1	Existing Road Safety Record	The existing road safety record of the A21 in the vicinity of the proposed level crossing has been appropriately evidenced.	Paragraph 4(a), 12, 16
4.2.2	Effect of Proposed Level Crossing	HE and RVR accept ORR's comments that introducing a level crossing on the A21 will introduce a new and therefore increased safety risk. (REP/017-0, paragraph 34).	Paragraph 12
4.2.3	Walking, Cycling and Horse Riding Review	It is agreed that a WCHAR has been prepared in accordance with GG142 of DMRB. The WCHAR has been accepted by HE.	Paragraph 28, 31
4.2.4	Road Safety Audit Brief & Team	It is agreed that a draft RSA Stage 1 brief has been prepared in accordance with GG119 of DMRB. It is agreed that the proposed audit team members currently meet GG119 requirements.	6, 8, 34
<b>4.3 A21 Traffic Flow</b>			
4.3.1	Existing A21 Traffic Flows	The traffic flow data collected for the A21 (RVR/W3/2, Appendix E, Traffic Assessment Note ITL14477-007c and Response to Atkins Review of Traffic Assessment ITL14477-012a) provide an appropriate and up to date basis to assess the impact of the proposals on the SRN.	13, 15, 16
4.3.2	Operation of A21 Level Crossing	For the purposes of assessing the impacts of the level crossing on the A21 a barrier closure time (from the initial amber signal to the lifting of the barriers) of 72 seconds is appropriate.	27

Ref	Description of Matter	Details of Agreement	HE Statement of Case Reference
4.3.3	Impact arising from A21 level crossing	Subject to any further comments in the context of the departure submission, the time periods and days used to assess the impact of the level crossing on the SRN represent a robust assessment. The queues and delays would not adversely affect the free flow of traffic on the A21 taking into account the effects of platooning.	4(b), 13
4.3.4	Environmental Statement	Traffic flows on the A21 have not materially changed from those in the original Environmental Statement.  Highways England is satisfied with the options assessment provided by RVR in respect of the relative costs of bridge and tunnel alternatives to the level crossing.  Construction of the level crossing will require full closure of the A21, likely for one or more weekends. Details will be agreed in a construction management plan  Highways England will not pursue the issue of air quality adjacent to the A21	4(c), 15, 16  17  18  19
<b>4.4 Highway Design &amp; Departure</b>			
4.4.1	Stage of Design	The Transport and Works Act requires a centre line and limits of deviation to be included in the legislation.  The requirements for EIA require a sufficient degree of design to allow the SoS to make a decision on likely significant effects.	3
4.4.2	Design Departure	The DMRB does not contain design requirements for a level crossing and RVR have submitted an application for a Departure through Highways England's Departure Approval System.	23, 24, 25

Ref	Description of Matter	Details of Agreement	HE Statement of Case Reference
4.4.3	Geotechnical	In accordance with CD622 of DMRB HE has: - accepted RVR's proposed Designer's Geotechnical Adviser; - certified RVR's Statement of Intent;	
4.4.4	Preliminary Design Drawings	The preliminary highway design drawings of modifications to the A21 listed below provide a sufficient level of detail to form the basis for a DMRB departure submission : <ul style="list-style-type: none"> <li>– Robertsbridge Bypass General Arrangement 23905-ARP-XX-XX-DR-CH-0001;</li> <li>– Robertsbridge Bypass Road Markings 23905-ARP-XX-XX-DR-CH-0002;</li> <li>– Robertsbridge Bypass Traffic Signs 23905-ARP-XX-XX-DR-CH-0003</li> </ul> Further design modifications can be expected to arise from the departure and Stage 1 Road Safety Audit processes and subsequent design stages.	4(d), 29, 30, 31
4.4.5	Culvert AIP	Any measures necessary to protect the culvert beneath the A21 immediately south of the proposed railway (to be resolved following the approval of any Order).	33
4.4.6	Retaining Structure AIP	The design of the retaining structures to either side of the A21 adjacent to the level crossing (to be resolved following the approval of any Order).	33
<b>4.5 Land &amp; Draft Order</b>			
4.5.1	Construction Accesses	Accesses will not be provided at locations A1 and A2.	30

Ref	Description of Matter	Details of Agreement	HE Statement of Case Reference
4.5.2	Plot 29	That the inclusion of plot 29 in Schedule 7 to the Order (Temporary possession) was an error. HE is no longer pursuing any legal point about the powers that would be conferred by the Order and agrees that its interests are adequately protected by the protective provisions. Plot 29 will not be used as a worksite.	
4.5.3	Plots 30, 34 and 35	The Applicant's powers over plots 30, 34 and 35 are limited to survey in accordance with article 17 of the draft Order.	32
4.5.4	Land owned by Highways England where the proposed railway crosses the A21 Trunk Road	In the event that the Order is made, HE will co-operate with the Applicant to ensure that the Applicant has the necessary licences or interests in HE's land to enable the works to be fully implemented and operated.	33
4.5.5	Temporary stopping up	HE is no longer pursuing any legal point about the temporary stopping up powers that would be conferred by the Order and agrees that its interests are adequately protected by the protective provisions,	4f, 36
4.5.6	Protective Provisions and Side Agreement	<p>The applicant and HE have reached agreement on the form of the protective provisions for HE and other matters relevant to the implementation of the Order scheme. A formal side-agreement to give effect to these arrangements has been completed.</p> <p>The parties will enter into a further agreement or vary the existing agreement to give effect to any necessary arrangements that arise out of the departures submission or Stage 1 Road Safety Audit that are not already covered by the existing agreement or protective provisions.</p>	-

## SECTION 5 List of Matters under Discussion

Ref	Description of Matter	Details of Discussion	HE Statement of Case Reference
<b>5.1 Policy Compliance</b>			
5.1.1	DfT Circular 02/13	Whether the information submitted in respect of works to the A21 satisfies the requirements set out at Paragraph 11 of the Circular.	Paragraph 1,3, 11, 4(d), 23
5.1.2	Highways Act 1980 and Highways England Licence	Whether the proposed level crossing constitutes a connection for the purposes of HA 1980 S175B and paragraph 5.36 of the HE Licence	
5.1.3	DfT Circular 02/13 Paragraph 43	Whether the level crossing constitutes an access for the purposes of paragraph 43 of the Circular	
<b>5.2 Road Safety</b>			
5.2.1	Effect on Road Safety of A21 (including queueing vehicles)	<p>Assessed as part of Departure submission and under review by HE:</p> <ul style="list-style-type: none"> <li>Whether there would be an unacceptable impact on highway safety on the A21 as a result of the level crossing, including within the extent of the maximum queues arising from the level crossing operation.</li> <li>Whether queueing arising from the level crossing would have an unacceptable effect on road safety at the Robertsbridge roundabout.</li> <li>Whether queueing arising from the level crossing would have an unacceptable effect on road safety of the existing A21 pedestrian crossing (north of Robertsbridge roundabout).</li> </ul>	4(a), 12

Ref	Description of Matter	Details of Discussion	HE Statement of Case Reference
5.2.2	Safety Risk Assessment	Assessed as part of Departure submission and under review by HE: <ul style="list-style-type: none"> <li>Whether the SRA demonstrates the risk to road user/workers/others is following mitigation tolerable and as low as reasonably practicable</li> </ul>	4 (a), 12,
5.2.3	Road Safety Audit	To be completed following determination of the Departure submission: <ul style="list-style-type: none"> <li>Whether the RSA Stage 1 process has been completed in accordance with the requirements of DMRB.</li> </ul>	6, 8, 34
<b>5.3 A21 Traffic Flow</b>			
5.3.1	Impact arising from A21 level crossing	Subject to any further comments in the context of the departure submission whether or not queuing arising from the level crossing would have a severe residual cumulative impact (in terms of capacity and congestion) on the Robertsbridge roundabout.  Subject to any further comments in the context of the departure submission whether or not queueing arising from the level crossing would have a severe residual cumulative impact (in terms of capacity and congestion) on the A21 pedestrian crossing (north of Robertsbridge roundabout).	
<b>5.4 Highway Design &amp; Departure</b>			



Ref	Description of Matter	Details of Discussion	HE Statement of Case Reference
5.4.1	Stage of Design	<p>Whether DfT Circular 02/2013 requires developers to conform with DMRB and whether para 5.17 of DMRB GG119 requires a Stage 1 RSA to be undertaken at completion of preliminary design and before publication of draft orders.</p> <p>Whether DfT Circular 02/2013 is additional to the requirements of the Transport and Works Act and the EIA as referred to at 4.4.1 above for Transport and Works Act Orders that affect the Strategic Road Network.</p>	3
5.4.2	Preliminary Design	<p>Assessed as part of Departure submission and under review by HE:</p> <ul style="list-style-type: none"> <li>Whether RVR's current preliminary design provides a tolerably safe level crossing of the A21 and, if so, whether the risks are as low as reasonably practicable.</li> </ul>	4(d), 23, 29, 30
5.4.3	Geotechnical Advisor	<p>HE are reviewing the final required submission from RVR (Preliminary Sources Study Report).</p> <p>Whether the requirements of CD 622 of DMRB at this stage have been satisfied.</p>	33
5.4.4	Safety Risk Assessment	<p>Assessed as part of Departure submission and under review by HE.</p> <p>That the SRA demonstrates the risk to road user/workers/other parties is following mitigation as low as reasonably practicable</p>	4(d)

Ref	Description of Matter	Details of Discussion	HE Statement of Case Reference
5.4.5	Departure Submission	<p>Re-work submitted 25 June.</p> <p>The parties have formally agreed that, in its approval of the contractor pursuant to the protective provisions, Highways England shall be entitled to take into consideration the experience and expertise of the proposed contractor, including previous experience of level crossing installation over the public highway and that Highways England shall not be acting unreasonably if, in Highways England's reasonable opinion, the proposed contractor does not have sufficient experience and expertise, but shall not be entitled to refuse to approve a contractor merely on grounds that the contractor is providing services to the Company in a volunteer capacity, or intends to use suitably experienced volunteer workers to carry out all or part of the HE works. RVR does not propose to use volunteers to carry out works in, on or under the A21.</p> <p>Whether the proposed level crossing Departure is approved.</p>	4(d), 23, 24, 25
<b>5.5 Land &amp; Draft Order</b>			

## **SECTION 6      List of Matters not Agreed**

6.1      None at present.

## SECTION 7 Section 7 HE Statement of Case

7.1 For completeness this section provides a position statement (for each paragraph) in respect of Highways England Statement of Case (20 September 2018)

Para	HE Statement of Case	Position
1	On 1 April 2015 Highways England was appointed by the Secretary of State for Transport as a strategic highway company under the provisions of the Infrastructure Act 2015 and is the highway authority, traffic authority and street authority for the Strategic Road Network (SRN). The SRN is a critical national asset and as such Highways England works to ensure that it operates and is managed in the public interest, both in respect of current activities and needs as well as in providing effective stewardship of its long term operation and integrity. In the vicinity of the Proposed Development the SRN comprises the A21 Trunk Road.	Noted
2.	Highways England operates under a Licence 'the Licence' granted by the Secretary of State for Transport which is available at: <a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/431389/strategic-highways-licence.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/431389/strategic-highways-licence.pdf</a> In conformity with Section 5.29 of the Licence, Highways England is directed by the Secretary of State to have due regard to relevant Government policy. Of particular relevance to the proposed development is Department for Transport Circular 02/2013 "The Strategic Road Network and The Delivery Of Sustainable Development" 'the Circular': <a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/237412/dft-circular-strategic-road.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/237412/dft-circular-strategic-road.pdf</a> Prior to 1 April 2015 our predecessor organisation the Highways Agency was responsible for the safe and effective operation of the SRN including the A21 where it would be crossed by the proposed railway.	Noted. Refer to Matter 4.1.2

Para	HE Statement of Case	Position
3	A significant issue with the application is the lack of information and evidence which ought to be provided to support a scheme of this sort. This lack of information is one reason why the Order cannot be made, as its effects cannot be ascertained and assessed with an appropriate level of accuracy and certainty. Highways England has done the best it can to consider the impacts of the scheme, and has set out its position in this statement of case, but it reserves the right to add or amend to its case as necessary if and when further information is provided by the Applicant.	<p>It is agreed that by HE that the Applicant has continued to engage closely with HE.</p> <p>It is the Applicant's case that, since deposit of the HE Statement of Case, it has provided all the information and assessments requested by HE so the effects can be assessed accurately and with certainty.</p> <p>It is agreed by HE that the Applicant has provided a significant amount of additional design material but it is not yet agreed whether sufficient documentation has been provided.</p>
4a	Highways England considers that the installation of a level crossing on the A21 will be detrimental to safety on the A21;	Refer to Matters 4.2 and 5.2.
4b	Highways England considers that the installation of a level crossing on the A21 will adversely impact the free movement of users along the A21;	Refer to Matter 4.3.3.
4c	The Environmental Statement (ES) accompanying the application is out-of-date and deficient in respect of traffic and transportation matters.	Refer to Matter 4.3.4.
4d	The design of the proposed railway where it crosses the A21 Trunk Road does not conform to the Design Manual for Roads and Bridges (DMRB) contrary to the policy in paragraph 11 of Circular 02/2013 which states: "Local authorities and developers will be required to ensure that their proposals comply in all respects with design standards. Where there would be physical changes to the network, schemes must be submitted to road safety, environmental, and non-motorised user audit procedures, as well as any other assessment appropriate to the proposed development. DMRB sets out details of the Secretary of State's requirements for access, design, and audit, with which proposals must conform." More generally, the state of design of the proposals is such that there can be no certainty about the cost and deliverability of the proposals and the land required for them, and the impacts of the scheme.	Refer to Matters 4.4.1, 5.4.1.

Para	HE Statement of Case	Position
4e	There are no protective provisions in the draft Order to protect the reasonable and legitimate interests of Highways England were the Order to be made.	The parties have agreed protective provisions (Inquiry document ref)
4f	Also, the draft Order provides that the A21 would be temporarily stopped up, thus denying the right of the public to use it and for utilities to retain their plant in it.	Refer to Matter 4.5.5
5	Rother Valley Railway (RVR) initially approached the Highways Agency about the proposed level crossing on 21 March 2012 and on 23 March 2012 provided documents including a report dated October 2011 titled 'Rother Valley Railway Proposed Level Crossings Traffic Impact Study' prepared by Mott Macdonald and a letter dated 20 January 2012 from ORR.	Noted
6	On 5 November 2013 RVR provided a Stage1 Road Safety Audit (RSA) to the Highways Agency. The Audit Report noted a number of pieces of information were not provided to the Audit Team including Departures from Standard and road accident history. Furthermore, the Audit Brief and Audit Team were not approved by the Highways Agency. As a consequence the RSA is deficient and does not comply with the requirements of DMRB.	Noted refer to Matters 4.2.4, 5.2.3
7	On 18 November 2013, RVR wrote to the Highways Agency on a number of matters. The letter included an undertaking that: "The full economic benefit analysis for the railway, which will include evaluation of the minimal traffic delay, will form part of the supporting information submitted as part of our Transport & Works Act Order"	Refer to Matter 5.4.4
8	On 30 May 2017 Highways England received an approach from safety auditors appointed by RVR to carry out a Stage 2 RSA and asking for approval of the Audit Team. On 1 June 2017 Highways England responded noting that the audit was premature in the absence of an agreed Departure from Standard for the proposed level crossing. Also a brief for the RSA had not been provided.	A Stage 2 RSA is not required at this stage of the design process.
9	On 1 April 2015 the Highways Agency ceased to exist as an executive agency of the Department for Transport. At the same time Highways England was established as a public company owned by the Secretary of State for Transport and acting as a strategic highway company under the terms of a Licence from the Secretary of State	Noted

Para	HE Statement of Case	Position
10	The Infrastructure Act 2015 amended the Highways Act 1980 to introduce section 175B which provides that "access to or from a trunk road in England must not be constructed, formed or laid out without the consent of the highway authority for the trunk road." This consent is required from Highways England but had not previously been required from the Highways Agency. The Licence sets out at paragraph 5.36 how Highways England must respond to requests for access. These requirements should be read in conjunction with the Circular, and in particular its paragraphs 37 to 44, but broadly the Licence requires Highway England to specifically take into account safety and economic impacts. Highways England is not prepared to provide this consent.	Refer to Matter 4.1.4
11	Paragraph 8 of the Office of Rail and Road (ORR) Internal Guidance at <a href="http://orr.gov.uk/_data/assets/pdf_file/0003/16527/ri-g-2014-06-new-levelcrossings-orrs-policy-and-approach-to-handling-requests-for-new-orreinstated-crossings-on-the-mainline-or-heritage-networks.pdf">http://orr.gov.uk/_data/assets/pdf_file/0003/16527/ri-g-2014-06-new-levelcrossings-orrs-policy-and-approach-to-handling-requests-for-new-orreinstated-crossings-on-the-mainline-or-heritage-networks.pdf</a> notes that: "Network Rail also has a general "no new crossings" policy. The heritage Page 4 of 10 sector is encouraged to publish details of crossings on its network and any planned closures. The Highways Agency has a policy of no new accesses on the strategic road network other than in exceptional circumstances where it can be sufficiently demonstrated that there is a net benefit to the network."	Refer to Matter 4.1.1, 4.1.2, 4.1.3 .
12	Highways England has concerns over the safety implications of installing a level crossing on the A21. The addition of a level crossing will undoubtedly have a negative impact on the safety of persons travelling on the A21. Highways England considers that the installation of a level crossing on the A21 will be detrimental to safety on the A21 and regards these negative safety impacts as unacceptable.	Refer to Matter 4.2.1, 5.2.1,
13	No adequate assessment of the impact of the level crossing on vehicle movement on the A21 has been undertaken. The Mott Macdonald Traffic Impact Study is dated 2011 and is out of date, this is discussed further below. Highways England considers that the installation of a level crossing on the A21 will adversely impact the free movement of users along the A21. Highways England regards these impacts as unacceptable.	Refer to Matters 4.3.1, 4.3.3.

Para	HE Statement of Case	Position
14	Until 19 September 2018 no economic assessment had been provided to Highways England to demonstrate the case for the level crossing. Highways England is now reviewing the document provided but it is too early to say whether it provides evidence to support the claimed benefits of the scheme.	Refer to Matter 4.3.4
15	The Scope and Methodology Report for the EIA in Volume 3 of the ES is dated October 2013. Pages 63 to 66 deal with Traffic and Transport. Appended to the Report is a letter from our predecessor organisation the Highways Agency dated 29 November 2013. The letter states that "The transport chapter of the EIA is likely to be influenced by the outcome of our ongoing discussions ...." and that "The scope indicates that the baseline conditions for the EIA will in part be based on the 2011 Mott Macdonald Traffic Impact Study" and "we recommend that the latest TRADS data for the A21 is interrogated within the EIA to help inform the baseline and provide the most up to date picture for the SRN." Section 13.2.4 of ES Volume 2 acknowledges "The Highways Agency have requested that the latest TRADS data for A21 is included within the EIA to provide the most up to date picture for the SRN."	Refer to Matter 4.2.1, 4.3.1.



Para	HE Statement of Case	Position
16	<p>The '2011 Mott Macdonald Traffic Impact Study' is not on the Applicant's website but we take it to be the same document as provided to the Highways Agency on 23 March 2012. Section 2.2.1 of the Report sets out that traffic data for the A21 Trunk Road is based on 2010 TRADS data. It is clear therefore that the baseline conditions considered by the ES are now in excess of seven years old. DfT traffic count information is available at <a href="http://www.dft.gov.uk/traffic-counts/cp.php?la=East+Sussex">http://www.dft.gov.uk/traffic-counts/cp.php?la=East+Sussex</a>. Two sites are relevant, Count Point ID 46261 just to the north of Robertsbridge and Count Point 26262 some distance south of Robertsbridge. ID 46261 has a 2010 24hr AADT flow of 15,626 vehicles. The latest flow available (2016) is 18,053, an increase of 15.6%. ID 26262 has a 2010 AADT flow of 10,454 vehicles. The latest flow available (2016) is 12,842, an increase of 22.3%. It is noted that Section 5 of the 2011 Traffic Assessment Report states in the final bullet of the first section "Traffic is forecast to grow by 5-6% between 2010 and 2016 and a further 8-11% up to 2021." The Applicant ought to have assessed 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 out-of-date.</p>	Refer to Matter 4.3.1.
17	<p>The ES provides a qualitative explanation as to why a bridge cannot be provided as an alternative to the proposed level crossing of the railway over the A21 Trunk Road, but no costings are provided. Highways England notes that the letter from ORR dated 20 January 2012 referred to above states "Any proposal to build a crossing would have to be shown to the most practicable option which means demonstrating that constructing a bridge, either for road or rail, would be disproportionately expensive compared to the benefit achieved."</p>	Refer Matter 4.3.4

Para	HE Statement of Case	Position
18	The ES is contradictory when explaining how the level crossing of the A21 will be constructed. Section 2.9.5 first says that construction of the crossing would be undertaken without a full closure of the highway, but then says that there will be "a short night time closure to drop in the full length rails. However, Section 2.9.8 then states that "The level-crossings would be constructed utilising pre-cast concrete blocks with the running rail already installed". The Applicant should clarify the construction method to be used and the ES should reflect the consequent construction impacts including those relating to traffic diversions for periods of full closure.	HE is satisfied that its interests will be protected by the implementation of the agreed protective provisions.
19	The ES at Volume 2 paragraphs 7.3.5 and 7.3.6 invokes DMRB as justifying that the effects of the proposed development on air quality can be considered to be 'neutral' or of 'insignificant' effect. However DMRB does not envisage level crossings being provided on the SRN and their impacts on air quality should not be assumed to be 'neutral' or of 'insignificant' effect	HE is now satisfied that there are no likely significant impacts on air quality as a result of the level crossing.
20	The Order cannot lawfully be made when the ES is so fundamentally defective.	HE agrees that, insofar as relates to its own interests, the Applicant has provided the up to date information it has requested and that there is no impediment to the making of the Order.
21	The ORR's 2014 'policy and approach to handling requests for new or reinstated crossings on the mainline or heritage networks' is available at: <a href="http://orr.gov.uk/data/assets/pdf_file/0003/16527/ri-g-2014-06-new-levelcrossings-orrs-policy-and-approach-to-handling-requests-for-new-orreinstated-crossings-on-the-mainline-or-heritage-networks.pdf">http://orr.gov.uk/data/assets/pdf_file/0003/16527/ri-g-2014-06-new-levelcrossings-orrs-policy-and-approach-to-handling-requests-for-new-orreinstated-crossings-on-the-mainline-or-heritage-networks.pdf</a> ("the Policy")	Noted

Para	HE Statement of Case	Position
22	The letter from the ORR dated 24 August 2011 at Appendix 13 of the Report on Consultation accompanying the Application predates the 2014 ORR policy. As noted elsewhere in this statement of case, the traffic and transport analysis is outdated and the 'full economic benefit analysis for the railway' promised by the Applicant has not been provided. Paragraph 24 of the Policy sets out the information that the Applicant is expected to provide to the expert panel. This includes: (a) a description of what other options have been considered, such as bridges and underpasses, and why these have been discounted; and (b) information about the road and rail traffic at any proposed crossing including the results of censuses.	Refer to Matter 4.3.1
23	Separately from an assessment by the ORR, DMRB does not contain design requirements for level crossings on the SRN and therefore the Applicant must apply for a Departure from the DMRB in accordance with para 1.31 of GD 01/15 Introduction To The Design Manual For Roads And Bridges (DMRB) <a href="http://www.standardsforhighways.co.uk/ha/standards/dmr/vol0/section1/gd01_15.pdf">http://www.standardsforhighways.co.uk/ha/standards/dmr/vol0/section1/gd01_15.pdf</a> .	Refer to Matters 4.4.2, 4.4.4, 5.1.1, 5.4.1.
24	Paragraphs 1.32 to 1.35 of GD 01/15 set out the information and analysis that are required to justify a Departure. Paragraph 1.32 states "The justification for a Departure or Relaxation shall include an assessment of the benefits, adverse impacts, hazards and risks associated with the design incorporating the Departure or Relaxation when compared with a design fully in accordance with requirements." In the context of the proposed level crossing, a 'design fully in accordance with requirements' would be a structure carrying the proposed railway over or under the A21 Trunk Road (ie not a level crossing).	Refer to Matters 4.4.2, 4.4.4, 5.1.1, 5.4.1.
25	The Applicant has made no submission to Highways England for a Departure and there is no evidence of a case being made to ORR's expert panel that exceptional circumstances apply that would justify the proposed level crossing on the A21.	Refer to Matters 5.1.1, 5.1.2, 5.4.4.

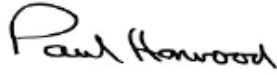

Para	HE Statement of Case	Position
26	<p>Following our objection to the draft Order we met with the Applicant on 23 August 2018. On 12 September 2018 we received some further information from the Applicant which is currently being assessed. The Applicant has also promised further information in particular:</p> <p>a. an analysis of level crossing options; and</p> <p>b. an economic assessment. The analysis of level crossing options has not yet been provided.</p>	HE agrees that the Applicant has provided it with the information at (a) and (b).
27	The precise impact of the proposed level crossing on the A21 will depend upon how the level crossing will operate. This is not clear from the application. Without information such as this the Order cannot be made as the impacts of the scheme cannot be ascertained and assessed.	Refer to Matter 4.3.2
28	It is a requirement of DMRB that a Walking, Cycling and Horse Riding Assessment should be carried out in accordance with HD 42/17. The Applicant has not provided one.	Refer to Matter 4.2.3.
29	A long section of the proposed railway is provided in the Land Plans at Drawing RVR-S-001 (Sections CH 0-2100). This shows the proposed railway on embankment to either side of the A21 Trunk Road. At the proposed A21 Trunk Road level crossing (Ch 1122.431) the railway drops in level in the opposite direction to the camber on the A21 Trunk Road. This has the potential to create a hump and/or dip in the carriageway where the proposed railway crosses the A21 Trunk Road, which could cause drivers of road vehicles to lose control and crash. If the scheme was to be safe, it would be necessary for the railway and the A21 Trunk Road cross on the same plane, with the requirements of DMRB being satisfied for the alignment and profile of the A21 Trunk Road.	Refer to Matter 4.4.1

Para	HE Statement of Case	Position
30	Article 13 of the draft Order seeks powers to form and lay out means of access etc to the A21 Trunk Road at locations marked A1 and A2. No layouts are provided for these accesses with the Order documents. It is noted that Article 13 (1)(b) requires the approval of the highway authority. However, Highways England doubts that an acceptable layout will be possible. There is nothing to demonstrate that it is possible to provide at least one layout conforming with DMRB which permits vehicles to freely leave and enter the A21 in a forward gear whilst providing space within the working area for wheel washing to take place.	Refer to Matter 4.4.1
31	In Schedule 7 of the draft Order it is proposed to take temporary possession of plot 29 as a Worksite and access for construction of the authorised works. This plot does not appear large enough to be used for this purpose whilst maintaining visibility splays necessary to protect the safety of those using the A21 Trunk Road. Also the Walking, Cycling and Horse Riding Assessment referred to above should assess the impact of the proposed use on these users.	HE is content with the arrangements discussed with the Applicant and that its interests will be adequately protected by the protective provisions. Also refer to Matter 4.2.3
32	Plot 34 is shown on the Land Plan and referenced in the Book of Reference but not in the draft Order. Similarly, Plots 30 and 35 are shown on the Land Plan and referenced in the Book of Reference but not in the draft Order. There is nothing to show the impact of the proposed development on Plots 30 and 35.	The parties agree that the Applicant's powers over these plots are limited to survey in accordance with article 17 of the draft Order.
33	On the Land Plans there is an unshaded area where the proposed railway crosses the A21 Trunk Road. The land in this area is owned by Highways England and comprises both highway and non-highway. Within this land and immediately south of the centre line of the proposed railway is a structure beneath the A21 Trunk Road. It is entirely unclear how the proposed railway could affect this land and the structure beneath the A21 Trunk Road. To assess the impact would require detailed engineering drawings showing what is proposed by way of earthworks and structures but these are not provided by the Applicant.	HE has since received and agreed detailed engineering documents and has provided an assurance to the Applicants that, in the event that the Order is made, HE shall co-operate with the Applicant to ensure that the Applicant has the necessary licences or interests in HE's land to enable the works to be fully implemented and operated. Refer to 5.4.1, 5.4.2.

Para	HE Statement of Case	Position
34	When the design of the A21 works is complete the Applicant should carry out a Stage 1/2 RSA. In compliance with DMRB, the Audit Brief and Audit Team must be approved by Highways England's Project Sponsor and Highways England's Project Sponsor must direct the conduct of the RSA	Refer to 4.2.4, 5.2.3
35	For the reasons given above, the Order proposals do not comply with the design requirements of Highways England and the ORR. The application documents are also inadequate and unreliable. The Order should not therefore be made to authorise the scheme.	Refer to 4.4 and 5.4.
36	There is a relationship between the temporary stopping up for which powers are sought under Article 12 of the draft Order and temporary possession of parts of the A21 Trunk Road under Article 22 of the draft Order. Temporary possession of land constituting a highway cannot take place unless the highway is stopped up. Highways England does not consider that temporary possession or stopping up of part of the SRN is necessary or acceptable. Such powers would transfer responsibility of the A21 to the Applicant and require adoption of the section as a highway maintainable at public expense when the closure ended. Statutory undertakers would lose the right to retain their plant in the section. Temporary Traffic Regulation Orders should be used.	The Applicant has explained to HE that the inclusion of plot 29 in Schedule 7 to the Order (Temporary possession) was an error. HE is no longer pursuing any legal point about the powers that would be conferred by the Order and agrees that its interests are adequately protected by the protective provisions,
37	In order to protect the interests of Highways England Articles 14(1) and 15(4) of the draft Order should provide that no streetworks shall commence until an agreement has been entered into between the highway authority and the Company for the construction and maintenance of those works or the highway authority has advised the Company in writing that it does not require such an agreement.	HE is content that its interests are adequately protected by the agreed protective provisions.
38	In order to avoid any dispute as to whether requirements of the highway authority are reasonable the draft Order should provide that agreements for the construction and maintenance of works may provide for: a. The Company to indemnify the highway authority against any liability arising from the construction of works; b. The Company to indemnify the highway authority against any liability arising from the operation and maintenance of level crossings; c. The Company to maintain suitable public liability insurance in respect to the operation and maintenance of the level crossing of the A21 Trunk Road.	HE is content that its interests are adequately protected by the agreed protective provisions.

Para	HE Statement of Case	Position
39	The draft Order should provide reserve powers for the Secretary of State to close the railway and the level crossing where it crosses the A21 Trunk Road and remove the level crossing and reinstate the A21 Trunk Road in the event of the level crossing falling into disrepair or disuse or the Company failing to maintain unlimited public liability insurance in respect of the operation and maintenance of the level crossing.	HE is content that its interests are adequately protected by the agreed protective provisions.
40	The draft Order should provide for a performance bond to be lodged in perpetuity by the Company sufficient to reimburse the costs of the Secretary of State in exercising the reserve powers referred to above.	HE is content that its interests are adequately protected by the agreed protective provisions.
41	It is normal practice for Orders of this nature to contain protective provisions to safeguard the interests of authorities affected. Protective provisions should be included to protect Highways England's interests in the event of the Order being made.	The parties have agreed protective provisions, which the Applicant will request the Secretary of State to include in the Order.
42	Without all the above matters being addressed, the Order should not be made due to the prejudice which would be caused to Highways England.	Refer to all matters in section 4, 5 and 6.
43	N/A	
44	The draft Order as submitted and the works it proposes to the A21 Trunk Road are inadequately prepared such that there are compelling reasons to believe that the works proposed in the draft Order would result in severe harm to the safe and effective operation of the SRN. Therefore, Highways England continues to object to the proposed development on the grounds stated in this Statement of Case. The Order should not therefore be made by the Secretary of State.	Refer to all matters in section 4, 5 and 6.

## SECTION 8 Agreement

<b>Signed</b>	
<b>Name</b>	Paul Harwood
<b>Position</b>	Regional Lead Spatial Planning
<b>Organisation</b>	Highways England
<b>Date</b>	12 July 2021
<b>Signed</b>	
<b>Name</b>	Phil Hamshaw
<b>Position</b>	Partner
<b>Organisation</b>	i-Transport LLP for Rother Valley Railway
<b>Date</b>	12 July 2021



## **APPENDIX A.**Correspondence Record

<b><u>Date</u></b>	<b><u>Action</u></b>
23/08/2018	RVR meeting with HE
18/09/2018	RVR provide updated Steer Economic Benefits Report to HE
20/09/2018	HE issued Statement of Case
14/11/2018	RVR issued letter to HE
04/12/2018	HE responded to letter dated 14th November
31/01/2019	HE provide template protective provisions to RVR
25/02/2019	Meeting with HE and ORR
01/03/2019	Email from RVR (Mike Hart) to HE (Nicola Bell) re consistency of HE approach(& HE response of 7/3)
11/03/2019	HE (Atkins) send example Departure submission to RVR (iTransport)
31/01/2020	Meeting with HE re protective provisions
14/02/2020	HE wrote to RVR confirming that HE's objection is substantive
14/02/2020	RVR Meeting with HE introducing iTransport
21/02/2020	Letter from RVR to HE
11/03/2020	Issued an initial Traffic Assessment Note (ITL14477-007a TN) and Accident Analysis Note (ITL14477-008 TN)
12/03/2020	Meeting with HE
12/03/2020	Received details on A21 culvert
18/03/2020	Received land ownership information pertaining to the A21 Robertsbridge
20/03/2020	Received land ownership information pertaining to the RVR Railroads
24/03/2020	Issued a revised Traffic Assessment Note (ITL14477-007B TN)
24/03/2020	Meeting with HE
26/03/2020	Received the As-built drawings for the A21 culvert
26/03/2020	HE send revised PPs to RVR
07/04/2020	Letter RVR to HE on legal matters
09/04/2020	Letter RVR to HE on legal matters
14/04/2020	Issued RSA team CVs to HE

16/04/2020	Received a rejection of the RSA team from David Bowie at HE
17/04/2020	Meeting with HE
23/04/2020	HE advice on DMRB application to Geotechnics and Structures to RVR
24/04/2020	Issued revised RSA Team CVs to David Bowie at HE
28/04/2020	Received acceptance of RSA Team from David Bowie at HE
04/05/2020	Issued another revision of the Traffic Assessment Note (ITL14477-07C TN), Railway Operations Note (ITL14477-004), Vertical Alignment Drawings (Drawings 201, 202 and 210-216), Construction Access Drawing and an Update Programme
07/05/2020	Meeting with HE
19/05/2020	Issued draft Approval in Principle: A21 Level crossing, draft Safety Risk Assessment (SRA) and details of works to the embankment in relation to the culvert
22/05/2020	Received review of Traffic Assessment Note from HE
22/05/2020	HE letter to RVR on legal matters
28/05/2020	Received response from HE in relation to Railway Operations Note (ITL14477-004), temporary accesses and programme.
28/05/2020	Meeting with HE
09/06/2020	Received further clarification with regard to the review of Traffic Assessment Note from HE
15/06/2020	Email from HE to RVR on design matters
17/06/2020	Received review of Approval in Principle of A21 Level Crossing from HE
18/06/2020	Issued Response Note to Atkins Review of Level Crossing Timings (ITL14477-011 TN), revised programme (w/c 15th June 2020) and Note on RVR project management under CDM2015
18/06/2020	Received review of GG104 Safety Risk Assessment (SRA) from HE
18/06/2020	Meeting with HE
19/06/2020	Received a letter from HE lawyer
23/06/2020	RVR Lawyer issued a letter to HE lawyer
26/06/2020	HE letter to RVR on protective provisions etc
10/07/2020	RVR provide NMU survey information to HE

14/07/2020	Issued Response to Atkins Review of Traffic Assessment (ITL14477-012a TN) with LINSIG file
15/07/2020	Received a response (in the form of a Technical Note) following our response note to Atkins Review of Level Crossing Timings
16/07/2020	Meeting with HE
17/07/2020	Further HE advice on DMRB application to Geotechnics and Structures to RVR
17/07/2020	Advice from HE to RVR on previous NMU Audit and need for WCHAR
19/08/2020	Received from HE a Technical Note in response to the wider impacts assessment to RVR and comments on response note to Atkins Review of Traffic Assessment (ITL14477-012a TN)
19/08/2020	Meeting with HE
22/09/2020	Issued KESR Railway Operations Note (ITL14477-014 TN) and Traffic Assessment Update Note (ITL14477-016 TN)
23/09/2020	Meeting with HE
23/09/2020	Issued Linsig files used for updated Traffic Assessment
25/09/2020	RVR Letter to HE on draft Order
20/10/2020	Issued RVR note A21 Level Crossing - HE Position Update
20/10/2020	Issued RVR HE programme from Oct 2020
21/10/2020	Issued Revised RVR HE programme from Oct 2020
21/10/2020	Meeting with HE
23/10/2020	RVR issued a letter confirming their position on gritting
09/11/2020	RVR issued revised GG104 Safety Risk Assessment (SRA)
11/11/2020	Received clarification as to what is required to complete the AIP submission, Atkin's Review of Traffic Assessment Update Note and Atkins Review of Railway Operations Note
11/11/2020	Meeting with HE
19/11/2020	HE letter to RVR on draft Order
23/11/2020	HE letter to RVR on Protective Provisions
29/11/2020	Issued CVs for RSA team again
30/11/2020	RVR issued draft departure document

01/12/2020	Received rejection of RSA team CVs
02/12/2020	Issued updated CV information for RSA Team
02/12/2020	Meeting with HE
04/12/2020	Email from RVR to HE re SoCG and side agreement
09/12/2020	Received Technical Note in response to the RVR Safety Risk Assessment (SRA)
15/12/2020	Received acceptance of RSA team and comments on draft Departure Document
15/12/2020	RVR issued updated WCHAR assessment
21/12/2020	RVR issued updated culvert AIP following HE comments along with a comments log
21/12/2020	Issued summary of findings regarding queuing south of the pedestrian crossing
23/12/2020	Meeting with HE
29/12/2020	Received comments back on WCHAR assessment
07/01/2021	Issued revised WCHAR Assessment following HE comments
15/01/2021	Issued revised RVR Safety Risk Assessment and Risk Assessment Comments Register
20/01/2021	Meeting with HE
27/01/2021	Received confirmation that HE have no further comments on the WCHAR assessment
05/02/2021	RVR issued response to HE on maintenance of the level crossing on the A21
06/02/2021	RVR issued a letter from the Police re. extending the 40mph limit on the A21 to south of level crossing
09/02/2021	Issued Road Safety Audit Brief with layout drawings
10/02/2021	Issued note summarising the appraisal of queueing arising at the proposed level crossing (ITL14477-018 TN) with ped crossing LINSIG file
14/02/2021	Issued .DWG file of A21 visibility drawing
17/02/2021	Meeting with HE
17/02/2021	Received feedback on GG119 issues from HE
16/03/2021	Received feedback on safety risk assessment including conclusion of the Safety Control Review Group (SCRG) and actions required
17/03/2021	Received comments back on the Queuing Technical Note (ITL14477-018 TN) and associated Linsig modelling and on the RSA1 Brief
17/03/2021	Meeting with HE

28/03/2021	Asked for further clarification from HE on last SRA comments
31/03/2021	Meeting with HE
13/04/2021	Arup issued CV of proposed Designer's Geotechnical Advisor (DGA)
14/04/2021	Received approval of DGA CV
14/04/2021	Meeting with HE
20/04/2021	Submitted Departure from Standards via online system
27/04/2021	Meeting with HE
28/04/2021	Received further comments on AIP and some supplementary guidance on completion of AIPs
03/05/2021	Email from RVR (Mike Hart) to HE (Nicola Bell) re SoCG (& HE response of 7/5)
11/05/2021	Meeting with HE
18/05/2021	First draft SoCG to HE
24/05/2021	Revised Geotechnical Statement of Intent submitted
25/05/2021	Meeting with HE

