



Mrs Joanna Vincent  
Programme Officer  
on behalf of the Inspector

Telephone: 0148 323 0164  
Mobile: 07483 133 975  
Ext: 2305  
E-mail:  
joanna.vincent@gateleyhamer.com

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Ms Jane Wakeham  
Senior Associate  
Winckworth Sherwood LLP  
Minerva House  
5 Montague Close  
London  
SE1 9BB

Your Ref:

Our Ref: DPI/U1430/18/21  
(TWA/18/APP/02)

Date: 08 June 2020

**Sent by email:**

[jwakeham@wslaw.co.uk](mailto:jwakeham@wslaw.co.uk)

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Dear Ms Wakeham

**THE TRANSPORT AND WORKS ACT 1992 (the 1992 Act): PROPOSED ROTHER VALLEY RAILWAY (BODIAM TO ROBERTSBRIDGE JUNCTION) ORDER**

**THE TRANSPORT AND WORKS (APPLICATIONS AND OBJECTIONS PROCEDURE) (ENGLAND AND WALES) RULES 2006 (the 2006 Rules)**

**Application by: ROTHER VALLEY RAILWAY LIMITED (RVR)**

**Site Address: THE FORMER ROTHER VALLEY RAILWAY BETWEEN BODIAM AND ROBERTSBRIDGE**

**REQUEST FOR FURTHER ENVIRONMENTAL INFORMATION**

On 19 April 2018, Rother Valley Railway Limited (RVR) applied to the Secretary of State for Transport for the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order (the Order) under the 1992 Act.

The Applicant's Statement of Case indicates that the purpose of the Order is to confer on RVR 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 (K&ESR) to operate steam trains along the entirety of the historic route between the town of Tenterden and the main line railway at Robertsbridge.

The Environmental Statement (ES) accompanying the Order application was prepared under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 ('The 2011 EIA Regulations') to support a planning application to Rother District Council (RDC) for the Proposed Development, which was granted planning permission on 17 March 2017. By virtue of section 13A of the 1992 Act, the Applicant has submitted the ES to support the making of an EIA Order.

On 22 June 2017 the Secretary of State for Transport issued a Screening Opinion to the effect that, subject to qualifications, the environmental information incorporated in the ES would provide an ES of sufficient scope for the purposes of an application under the 1992 Act. An Environmental Statement Addendum, October 2017, was subsequently published to address the identified qualifications.

A significant period of time has now passed since the ES was prepared. Furthermore, there have been a number of changes to relevant Regulations and guidance, and in support of the application RVR now seeks to rely on additional environmental information that does not form part of the ES. The content of the ES has been considered, having regard to Rule 11 and Schedule 1 of the 2006 Rules and to The Environmental Impact Assessment (Miscellaneous Amendments Relating to Harbours, Highways and Transport) Regulations 2017 (the 2017 EIA Regulations).

Following examination of the ES in accordance with the 2006 rules and the 1992 Act, the Secretary of State notifies you by this letter, pursuant to Rules 17(1), 17(2) and 17(5) of the 2006 Rules and in accordance with Section 13A(3)(b) of the 1992 Act, that the Applicant's statement of environmental information should contain additional information in order to constitute an ES for the purposes of the application; that the further information specified below should be provided; and, that evidence is required to verify the findings of the ES and in order to enable the Secretary of State to reach a reasoned conclusion. The Applicant is required to supply the following further information, which is set out under the headings in the Applicant's ES:

### **Description of the scheme**

- An updated construction and operation programme along with an updated commentary supporting the assessment chapters to reflect the changes in programme where relevant. Reason: The programme assumptions underpinning the ES assessment of construction and operational effects are at least five years out of date, therefore limited reliance can be placed on the assessment of effects;

### **Noise and vibration**

- Updated baseline noise monitoring and assessment, or a detailed description explaining why the 2013 noise monitoring data and assessment remains representative of the current baseline position. Reason: The Secretary of State may determine to make an EIA order only if satisfied that the reasoned conclusion is up to date;

### **Air quality**

- An updated construction dust assessment using a relevant assessment methodology such as the Institute of Air Quality Management (IAQM) Guidance on the assessment of dust from demolition and construction 2014. Reason: The assessment method for construction dust in the current ES refers to the Greater London Authority, 2006 Best Practice Guidance on the Control of Dust Emissions from Construction and Demolition. This document sets out how to approach the control of emissions at different sites but does not provide a method for the assessment of significance. The Applicant's assessment of construction dust significance references Institute of Air Quality Management (IAQM) 2012 'Guidance on the Assessment of the Impacts of Construction on Air Quality and the Determination of their Significance'. However, the Applicant's assessment does not

reference the full IAQM criteria such as identifying receptors within 500m of haul routes. The 2012 guidance was also superseded by IAQM 2014 'Guidance on the assessment of dust from demolition and construction';

- An updated assessment of emissions to air arising from traffic at level crossings, unless otherwise robustly justified. This should include calculations and an assessment of the potential increases in concentrations at relevant receptors due to the development. The Applicant should ensure that the updated assessment utilises the most recent and relevant data and tools available, such as the Emissions Factor Toolkit (EFT), DfT traffic count data and TEMPRO growth factors. Any justification in support of the current approach from the Applicant should be fully explained and confirm why the DMRB Screening Tool was not used as suggested in paragraph 7.3.7 of Volume 2 of the ES. Reason: Whilst indicating in paragraph 7.3.5 that changes in vehicle speeds may signal a significant change, the ES does not consider the likely impact of the level crossings in that respect. The more recent 2018 Air Quality Statement (AQS)<sup>1</sup> provides an assessment of the likely effects of emissions from vehicles at level crossings and from steam and diesel locomotives, which were only dealt with in a cursory manner in the ES. Traffic data is derived from a 2011 traffic impact study, incorporating baseline traffic data from 2010. The average level crossing closure time of 51 seconds rather than a worst case 112 seconds has been used to calculate emissions in the AQS. Traffic growth forecasts are made for 2010-2016 and 2010-2021. The Applicant provided an update to the traffic impact study to the Office for Rail and Road (ORR) in 2018, which assumes a closure time of 55 seconds with a sensitivity test of 110 seconds closure. Section 5.3 of the AQS states that changes in pollution levels in areas with low concentrations are likely to be negligible if they are 5% or less. Table 4.1 of the AQS indicates that increases of greater than 5% are expected on the A21 but does not explain the significance of these increases in terms of standard significance criteria, such as the 2017 IAQM/EPUK guidance ('Land-Use Planning & Development Control: Planning for Air Quality');
- A detailed explanation of the level of significance assigned to the estimated emission of an additional 525 kg/km/per annum of SO<sub>2</sub> and 206 kg/km/per annum NO<sub>x</sub> in the AQS. The explanation should include reference to significance criteria applied to NO<sub>x</sub>, NO<sub>2</sub>, SO<sub>2</sub> and PM<sub>10</sub> at relevant receptors. Reason: The AQS and ES lack justification for the conclusion that emissions from steam/diesel engines are insignificant;
- Please provide further details regarding the potential effects at identified receptor points surrounding the proposed engine shed. Consideration should also be given to short term receptors including Public Rights of Ways (PRoW). Reason: The AQS identified in section 4.2 that the Great Central Railway (GCR) AQMA was declared due to short-term exposure to high levels of SO<sub>2</sub>. The Applicant has not described how it will mitigate against and monitor the potential exceedances in short-term concentrations of SO<sub>2</sub> surrounding the engine shed in Robertsbridge;

## **Landscape and visual**

- A detailed description of the lighting required at level crossings and any effects arising from the operation of such lighting (e.g. on night-time views from residential receptors or on bat flight paths), signposting to where such information is presented

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<sup>1</sup> RVR/60

in the ES or ES addendums or robust justification that such lighting would not give rise to likely significant effects. Reason: The operation of the railway is primarily a daytime activity, although ES Volume 2, Chapter 2 indicates that a diner service will operate until 23.00 hrs. It is noted that the draft Order identifies that protective equipment may be placed at level crossings and that the definition of protective equipment includes lights. It is unclear what scale of lighting is proposed or how lighting will operate. Reference is made to warning lights in ES Volume 2, paragraph 2.9.9 and paragraph 9.5.28 suggests that only very limited amounts of new lighting are proposed and that this *"is not anticipated to disadvantage any species such that no specific mitigation is proposed. Lighting specification will follow BCT guidance"*. Given that the extent or scale of lighting in operation is unclear, particularly at level crossings, it is necessary to explain how the assessment of significance has been made;

- Details of the actual landscape screening mitigation to be secured in respect of Robertsbridge Abbey. Reason: ES paragraph 8.7.12 suggests that mitigation will include minimising damage and 'gapping up' breaks in vegetation, whereas ES Section 12.6 implies that screening will be difficult or limited and ES paragraph 12.8.4 considers that the removal of vegetation could be beneficial to views. Paragraph 2.7.3 of the 2017 ES addendum suggests that planting will only be provided 'where compatible with the operation of the railway'. The further information is required to provide clarity regarding the mitigation proposals and to aid understanding of the efficacy that screening mitigation has to findings of significance;

## **Ecology and Nature Conservation**

- Updated baseline data searches and surveys and an updated assessment of effects where relevant. The assessment should be conducted using a recognised methodology such as the most recent methodology published by the Chartered Institute for Ecology and Environmental Management (CIEEM). Sensitive species data should be provided in a redacted and non-redacted form. Reason: ES baseline data searches and survey are considerably out of date mostly from 2013. The search data is not included in the 2013 Phase 1 habitat survey presented in ES volume 3, although a placeholder is provided at Appendix 7. An attempt to update the baseline information is explained in section 4.5 and section 4.9 of the 2016 ES addendum, however the associated data searches are not provided. Since baseline datasets from ecological recorders are updated over time and given the additional time elapsed, the Secretary of State considers that updated information is required to ensure that the assessment of significant effects and any mitigation measures proposed remain appropriate. In some cases, rather than assuming species are present, as a worst case, the missing search data is relied on to indicate that species are not present, e.g. Schedule 1 birds;
- The Applicant should provide the targeted species survey information recommended in the 2013 Ecological assessment or an expanded explanation as to why access was not available/has not become available in respect of each of the species referenced for further survey work. Reason: The ES should make reasonable efforts to include a description of the relevant aspects of the current state of the environment. Where access is possible, the ES should be informed by up to date survey information rather than a hypothetical worst case. Section 10 of the Applicant's Phase 1 Habitat Survey in ES Volume 3 highlights a series of further surveys that are required and makes reference to having full access to one area.

Appendix 2 of that report indicates the extent of access for surveys. Some surveys e.g. Great Crested Newt Surveys are clearly ruled out on the basis of inaccessibility, however bat surveys indicated as necessary at TN11 appear to be within the accessible footprint. The Applicant also explains in its Statement of Case that it now has increased access to the railway line, which has enabled extensive surveys to be completed from Junction Road to Austen's Bridge;

## **Water quality, hydrology and hydrogeology**

- An updated flood risk assessment (FRA) making appropriate allowance for climate change in accordance with the Planning Practice Guidance on Flood Risk assessments, which incorporates the revised UKCP18 climate projections and gives specific guidance in relation to Flood Zone 3b-Functional Floodplain. The updated FRA should include detailed justification relating to the Exception Test. Reason: Subsequent to the 2016 Flood Risk Assessment submitted in the ES Addendum, the Met Office has published the higher resolution UKCP18 projections. The updated assessment is required to ensure that the flood model takes into account the most up to date river flow allowances, ensuring that any flood mitigation is of sufficient scope (for example, whether flood plain storage compensation is required and if it is, where it would be provided). An update to the Exception Test is required that demonstrates that the Proposed Development will provide wider sustainability benefits to the community that outweigh flood risk, that it will be safe for its lifetime, without increasing flood risk elsewhere and where possible reduce flood risk overall;
- A justification in support of the worst case assessment of likely significant effects to water quality. Reason: ES Chapter 10 provides a qualitative assessment of emissions to water and groundwater during construction and operation. ES Chapter 10, paragraph 10.5.23 regarding mitigation states that "*Surface water runoff management of the scheme and the potential water quality impacts from surface water leaching through potentially contaminated embankments and holt should to be discussed with the Environment Agency*" and in relation to residual effects in paragraph 10.6.4 that "*Further consultation with the Environment Agency with regards to the Scheme drainage design is required*". The summary of residual effects concludes that there are no residual effects during the construction phase. It is unclear, in light of the requirement for further consultations, how the conclusions address the worst case scenario for the Proposed Development;
- An updated Water Framework Directive (WFD) assessment taking into account design changes, such as reductions in culvert size (e.g. for otters). Where possible, the assessment should present evidence that the assessment has been agreed with the Environment Agency. Reason: The 2016 ES addendum provided commentary on effects on ecology due to design changes, no update to the WFD analysis was provided in respect of the revised designs. The Applicant is reminded that the Secretary of State must exercise its relevant functions so as to secure compliance with the requirements of the WFD as outlined in the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017;
- An updated description of the methodology and approach used to collect baseline data used to inform the water quality, hydrology and hydrogeology baseline, including confirmation of the study area. Reason: ES paragraph 4.2.1 states that individual study areas have been defined for each environmental discipline. The ES does not clearly identify the study area and basis for baseline data collection;

## **Land Quality**

- Provide the appendices to ES volume 3, section 6. Reason: The cover page to ES volume 3, section 6 states that "*Appendices are available on request*". The reports are EnviroInsight reports and GeoInsight reports that should be provided to enable an informed understanding of the baseline ground conditions at the site;

## **Transport**

- An update to the transport assessment chapter, incorporating the results of the 2018 addendum to the Traffic Impact Study submitted in January 2020 to the ORR. Reason: The transport chapter relies on baseline data from 2010, which may no longer be representative;

## **Socio-economics**

- An update to the socio-economic analysis, where relevant incorporating the findings of the Steer Economic Impact Report<sup>2</sup>, or robust justification as to why the assessment conclusions remain representative. Reason: The socio-economic chapter includes analysis that was originally prepared in 2007 and updated in 2013. It is likely that baseline conditions have evolved since 2013. The Steer Economic Impact Report includes data from 2018 regarding the economic effects of the proposed development;

## **Land-use and agriculture**

- A detailed justification explaining why the conclusion of no residual significant effects in relation to construction or operation remains representative e.g. with reference to a worst case assessment of effects on landholdings. Reason: ES paragraph 15.5.21 states that further assessment is required to fully understand impacts and mitigation measures – therefore the current assessment of impacts on farm holdings is incomplete and it is unclear how conclusions of negligible impacts on viability have been drawn;

## **Cumulative effects**

- An updated cumulative effects assessment with other relevant developments agreed with RDC where possible. Reason: The original assessment refers to now withdrawn guidance and identifies only one other relevant development applicable to the cumulative assessment. Having regard to the time that has elapsed, the cumulative effects assessment may no longer be representative (e.g. baseline conditions may already have changed);

## **Other**

- An assessment of the significant effects resulting from the proposed development with respect to climate change, human health and major accidents or disasters, unless otherwise robustly justified. A summary of any required monitoring measures and remedial action to be taken in the event that monitoring identifies a requirement for corrective action. A reference list detailing the sources used for the descriptions and assessments included in the ES. Any other matters that the Applicant deems

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<sup>2</sup> RVR/09

may be required. Reason: To take into account the revision to Schedule 1 of the 2006 Rules, introduced by the 2017 EIA Regulations;

- An explanatory note, detailing the documents that now comprise the Applicant's ES or a conformed ES document. Reason: To ensure clarity regarding the documents that comprise the Applicant's 'EIA Information';
- A revised non-technical summary (NTS) incorporating all of the elements referred to above. Reason: Required by Schedule 1 of the 2006 Rules.

We would draw your attention to court cases which have stressed the need for all the relevant environmental information in an ES to be comprehensive and easily accessible.

You can access Rule 17 of the 2006 Rules at the following direct link:

<http://www.legislation.gov.uk/uksi/2006/1466/contents/made>

The Applicant shall publicise the environmental information in accordance with the requirements of Rule 17(4) of the 2006 Rules. Please can you advise the Inquiry Programme Officer when the environmental information is publicised.

We would be grateful if you could inform us, **within 2 weeks** of the date of this letter, the reasonably practicable date by which you will prepare the environmental information, so that an expected submission date can be identified. Please send your response for the attention of the Inquiry Programme Officer using the contact details at the head of this letter. Due to the current COVID-19 situation, please ensure that any hard copy submissions are accompanied by an electronic copy, submitted to the email address details above.

A copy of this letter will be placed on the inquiry website:

<http://rother-valley.gateleyhamer-pi.com/docs>

Yours sincerely,

*Ian Jenkins*

**Inspector  
(Signed with the authority of the Secretary of State)**

cc. The Transport Infrastructure Planning Unit, Department for Transport