

A66 Northern Trans-Pennine Project

Written Representation of Network Rail Infrastructure Limited

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Name and unique reference number of any person/organisation that you are representing Network Rail Infrastructure Limited - URN 20032019

1. Network Rail's status and statutory responsibilities

- 1.1 We are instructed by Network Rail Infrastructure Limited ("**Network Rail**") in relation to the development consent application made by National Highways ("**the Applicant**") for improvement works on the A66 between the M6 at Penrith and the A1(M) at Scotch Corner ("**the DCO Scheme**"). This written representation is made on behalf of Network Rail ahead of the 18th December 2022 deadline.
- 1.2 Network Rail is the statutory undertaker responsible for maintaining and operating the country's railway infrastructure and associated estate. Network Rail owns and operates Great Britain's railway network and has statutory and regulatory obligations in respect of it.
- 1.3 Network Rail aims to protect and enhance the railway infrastructure and therefore any proposed development on, over or under the railway network or which is adjacent to and interfaces with the railway network or potentially affects Network Rail's land interests will be carefully considered. Network Rail therefore objected to the DCO Scheme on 25th August 2022.

2. Objection

- 2.1 Network Rail maintains its objection to the DCO Scheme at the present time as Network Rail's statutory duty compels it to object to the exercise of compulsory acquisition powers over Network Rail's operational railway land but it is noted that Network Rail does not object to the DCO Scheme in principle. Network Rail has the following principal issues with the application at present:
- 2.1.1 the proposed operation of powers contained in the draft DCO authorising the Applicant to construct, operate and maintain works on, across, under, above or adjacent to Network Rail's operational railway which may impede Network Rail's ability to ensure the safe, efficient and economical operation of the railway network;
- 2.1.2 the proposed operation of powers contained in the draft DCO authorising the Applicant to compulsorily acquire land, to compulsorily acquire rights in or over land, extinguish rights in land or take temporary possession of land which forms part of Network Rail's operational railway land and which Network Rail relies upon for the carrying out of its statutory undertaking; and
- 2.1.3 the absence in the current draft DCO of protective provisions for the protection of Network Rail and Network Rail's operational railway and associated railway infrastructure.

3. **Principal requests**

3.1 Network Rail has the following principal requests in order to consider removal of its objection:

- 3.1.1 a requirement for the Applicant to enter into a Framework Agreement to address the application of the Protective Provisions, maintenance and operation of the DCO scheme, provision for the use of asset protection agreements to ensure safe operation of the railway and to manage the interface between the proposed development and Network Rail's operational land;
- 3.1.2 a requirement for the draft Order to include Network Rail's standard form of its Protective Provisions for the protection of Network Rail's operational railway and associated infrastructure in relation to the operation of powers contained in the draft Order authorising the Applicant to compulsorily acquire land, to compulsorily acquire rights in or over land, extinguish rights in land or take temporary possession of land which forms part of Network Rail's operational railway land; and
- 3.1.3 a requirement for the Applicant to engage with Network Rail for the purposes of entering into such agreements as are required by Network Rail to manage and regulate the construction, operation and maintenance of works affecting the operational railway and the use of operational railway land for such purposes.

4. **Assurance received from the Applicant**

Significant progress has been made as a result of meetings between the Applicant and Network Rail, resulting in an Assurance being provided by the Applicant on Friday 25th November 2022 in the terms specified in italics below. We have provided commentary on the significance of each aspect of this Assurance below.

1. *National Highways will include Network Rail's Protective Provisions in the next draft of the Order to be submitted into the Examination;*

Protective provisions were provided to and accepted by the Applicant's solicitors and the Assurance refers to these specific provisions (appended to these written representations). This will manage the interface between the proposed development and Network Rail's operational land as well as protecting Network Rail in its compliance with its statutory duties and protect the operational railway and associated railway infrastructure.

2. *National Highways agrees not use any compulsory acquisition powers conferred by the Order over any of Network Rail's land or interests otherwise than in accordance with the Protective Provisions; and*

This will protect Network Rail in relation to the operation of powers contained in the draft Order authorising National Highways to compulsorily acquire land, to compulsorily acquire rights in or over land, extinguish rights in land or take temporary possession of land which forms part of Network Rail's operational railway land and will thereby protect the safe and efficient running of the railway.

3. *National Highways will enter into a Framework Agreement on reasonable terms to collate and govern the required protective provisions and asset protection agreement.*

The Applicant has agreed to engage with Network Rail for the purposes of entering into these agreements to manage and regulate the construction, operation and maintenance of works affecting the operational railway and the use of operational railway land.

For the purposes of the Assurance:

"the Order" means the proposed development consent order for the A66 Northern Transpennine Project as applied for by National Highways;

"Protective Provisions" means the enclosed form of Network Rail's Protective Provisions accepted by Pinsent Masons on 21 November 2022; The accepted form of Network Rail's Protective Provisions is appended to these written representations.

4.1 Network Rail is appreciative of the provision of this Assurance and as a result of this, did not consider it necessary to attend and be heard at Issue Specific Hearing 2 and Compulsory Acquisition Hearing 1 on 1 December and 2 December 2022 respectively.

4.2 Network Rail reserves the right to attend future hearings and, in particular, Compulsory Acquisition Hearing 2 (CAH2) currently scheduled for Wednesday 1st March 2023 and Issue Specific Hearing 3 (ISH3) currently scheduled for Thursday 2nd March and Friday 3 March 2023 (if required).

5. **Application to make changes**

5.1 Following attendance at the Preliminary Hearing on Tuesday 29th November 2022, Network Rail understands that the Applicant intends to imminently submit to the Examining Authority a notice of intention to submit a proposed changes application. It was also noted that submission of the Applicant's Proposed Changes Application (including a 'Proposed Provision' should the CA Regs be engaged in relation to the proposed acquisition of additional land) is expected by 24th January 2023.

5.2 A request for clarification on the proposed changes and whether the changes are expected to affect Network Rail's land and interests in land was made to the Applicant's solicitors on 29th November 2022 but no response has been received to date.

5.3 Network Rail is interested to understand the changes proposed and wishes to comment further (if necessary) once the Applicant has submitted its Proposed Changes Application.

6. **Framework Agreement and Asset Protection Agreement**

7. The first draft of Network Rail's required the Framework Agreement was sent to the Applicant's solicitors on 9th December 2022.

8. **Current position**

8.1 If the Applicant operates in accordance with the Assurance and a Framework Agreement (and any other necessary agreements) are negotiated and concluded promptly, Network Rail considers that its objection could be resolved swiftly.

9. **Procedural Matters**

Network Rail requests the following going forward in respect of the Examination of this application:

9.1.1 To be kept fully informed of the progress of the examination so that it can engage where relevant to its infrastructure and operational railway land;

9.1.2 To be given adequate time to respond and prepare representations where necessary;

9.1.3 To be given reasonable time to prepare and respond to questions received from the Examining Authority;

9.1.4 To be provided with adequate time to agree a Statement of Common Ground and/or a Principal Areas of Disagreement Summary Statement if it is determined at any stage in the examination that this required from Network Rail;

9.1.5 To be given reasonable time to prepare for and be heard at future hearings in the examination timetable if it is considered necessary for Network Rail to attend any future hearings (i.e. if the progress made between National Highways and

Network Rail on concluding the Framework Agreement stalls for any reason);
and

- 9.1.6 Network Rail requests that the Applicant continues to promote the application in accordance with the Assurance given and engage and negotiate to conclude a Framework Agreement as soon as practicable.