

## **THE PROPOSED NETWORK RAIL (SUFFOLK LEVEL CROSSING REDUCTION) ORDER**

### **OPENING SUBMISSIONS ON BEHALF OF NETWORK RAIL**

1. By this application, Network Rail seeks powers to reduce, and to rationalise its level crossing estate across the Anglia route, by diverting, extinguishing and downgrading rights of way currently enjoyed at 23<sup>1</sup> crossings within Suffolk.
  
2. Specifically, Network Rail seeks powers to:
  - a. Close 17<sup>2</sup> level crossings, following provision of a new right of way on a diversionary route;
  - b. Close 3 level crossings without provision of a new route, the existing highway and/or PROW network providing a sufficient diversionary route and/or no diversionary route being required;
  - c. Extinguish private rights of way over 1 crossing<sup>3</sup>;
  - d. Downgrade the rights of way over 1 crossing, from BOAT (currently subject to a Prohibition of Driving Order) to bridleway<sup>4</sup>;
  - e. Upgrade one footpath to bridleway<sup>5</sup>;
  - f. Close one crossing not subject to public right of way or known private rights of way, use being permissive only;<sup>6</sup>
  - g. Carry out works necessary to facilitate the proposed closures and creations of new public rights of way (a request for planning permission for necessary works has been made pursuant to r.10(6) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (“the Application Rules”); and
  - h. Temporarily use and/or take rights of access over land to facilitate the exercise of powers within the draft Order.

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<sup>1</sup> Originally 24, S05 Pannington Hall has been withdrawn from the draft Order since the application was made

<sup>2</sup> Originally 18, S05 Pannington Hall has been withdrawn from the draft Order since the application was made.

<sup>3</sup> S21 Abbots (Mellis)

<sup>4</sup> S18 Cowpasture Lane

<sup>5</sup> At S25, Cattishall. (This is a change to the draft Order, reflected in the amended draft Order submitted today, and responds to the point raised in Suffolk County Council’s objection (discussed at paragraph 8 of Mr Woodin’s PoE for S25 Cattishall (Obj/29/W2/S25) that the section between points A and P022 shown on the original Order plans is already recorded highway.

<sup>6</sup> S22 Weatherby

3. The application is made under s.1 (read with s.5) of the Transport and Works Act 1992, the matters contained within the draft Order being matters ancillary to the operation of a transport network: specifically, the operation of the railway within the Anglia region.

#### *The case for the Order*

4. The case for pursuing this Order is a strategic one. Through the Order, Network Rail is looking to reduce and rationalise level crossings across the Anglia network.
5. Network Rail owns and operates the rail infrastructure of Great Britain. It is responsible for the maintenance, repair, renewal and safe operation, and has a duty to enhance and improve the railway network in operational terms.
6. Part A1 (Network Management) under Part III of the Licence sets out Network Rail's responsibilities in respect of management of the network. The material sections are set out at paragraph 4.9 of Mark Brunnen's PoE (NR27/1), and include the following provisions:

#### ***"1 Network Management***

##### *Purpose*

##### *1.1 The purpose is to secure:*

- (a) The operation and maintenance of the network;*
- (b) The renewal and replacement of the network; and*
- (c) The improvement, enhancement and development of the network,*

*In each case in accordance with best practice and in a timely, efficient and economical manner so as to satisfy the reasonable requirements of persons providing services relating to railways and funders, including potential providers or potential funders, in respect of:*

- (i) the quality and capability of the network; and*
- (ii) the facilitation of railway service performance in respect of services for the carriage of passengers and goods by railway operating on the network."*

### *General Duty*

*1.2 The licence holder shall achieve the purpose in condition 1.1 to the greatest extent reasonably practicable having regard to all relevant circumstances including the ability of the licence holder to finance its licensed activities.”*

7. Managing risk, of the railway system, its users, and those who interact with it is clearly material to securing the objectives set out in para 1.1 of the Licence (see §4.8 & 4.11 of Mark Brunnen’s PoE).
8. Mr Brunnen will explain in evidence that the strategic case for seeking this Order (and rationalising the at-grade crossing points on the railway) is threefold:
  - a. Operational efficiency of the network;
  - b. Safety of rail users and of those interacting with the railway by reason of the crossing points over the railway; and
  - c. Efficient use of public funds in accordance with the obligations imposed on Network Rail, as arms-length Government Body, under “Managing Public Money”.
9. As set out in the Statement of Aims (NR4), the Order is pursued with a view to securing the following benefits:
  - a. Creating a more efficient and reliable railway;
  - b. Facilitating capacity and line speed increases on the network in the future;
  - c. Improving the safety of level crossing users, railway staff and passengers;
  - d. Reducing delays to trains, pedestrians and other highway users; and
  - e. Reducing the ongoing operating and maintenance costs of the railway;
10. The case for the Order – and for closure of the crossings contained within it – is not based on any one of those objectives individually, but on a culmination of those factors. It is also critical to understand that level crossings are but one part of the wider railway system – and the proposals contained within the Order must be considered in that context.
11. Mr Brunnen and Dr Algaard will explain the constraints which level crossings introduce to the network, both in terms of current operations and as restraints on future enhancement.

12. In terms of current constraints on the operational railway, quite aside from the problems arising from a collision at a level crossing these include (1) 'cautioning' or stopping of trains in the event of misuse of the crossing - with consequent impacts for journey times and knock-on effects across the wider network; and (2) temporary speed restrictions where sighting at a crossing is insufficient to allow safe crossing which, again, impacts on journey times, operational efficiency and resilience of the network. Level crossing infrastructure (specifically, the deck) also impacts on the ability to maintain the track over which it passes: and such maintenance work necessarily involves interfering with rights of way over the crossings whilst it is undertaken.
13. Dr Algaard will address, in evidence, how level crossings act as a constraint to future enhancement of the network, and proposals, and need, for the same across the Anglia region.
14. Dr Algaard will also speak to the costs associated with maintaining the 771 level crossings on the Anglia Route, and the opportunity costs associated with not reducing that number, as proposed by the Order. Mr Brunnen will explain how reducing the number of crossings across the network accords with the obligations imposed on Network Rail under "Managing Public Money" and under its licence conditions.
15. Safety – and the management of risk – is clearly a key consideration for Network Rail. As Mr Brunnen sets out at §5.10 of his PoE, safety is at the heart of Network Rail's strategy for operation of the railway network. Network Rail is committed to reducing risk at level crossings where reasonably practicable.
16. Safety is not, however, the sole objective sought to be achieved through the proposals contained within the draft Order.
17. Mr Brunnen will explain that Network Rail has developed a Level Crossing Policy (PoE Appendix 1 NR27/2) and long term strategy – "Transforming Level Crossings 2015-2040" (NR17) - with a view to reducing risk across the network and better managing the level crossing estate in line with its general obligations relating to network assets. He will explain how Network Rail is seeking to pro-actively manage the level crossing estate – and risks associated with those assets – as opposed to continuing the historic, reactive approach.
18. He will also explain how Network Rail's strategy (NR17) aligns with the ORR's 'Strategy for regulation of health and safety risks – 4: Level Crossings' (NR14). Network Rail will highlight,

in particular, (1) that ORR's strategy includes encouraging crossing closure; (2) that the ORR identifies (§6 of NR14) that "[t]he removal of crossings is always the first option to be considered in a risk control strategy by the duty holder, in line with the general principles of prevention in European and UK law"; (3) and that additional funding which has been made available to Network Rail to reduce the risk at level crossings by (*inter alia*) enabling the closure of more crossings.<sup>7</sup>

19. Mr Brunnen will speak to the risks presented by level crossings – both to those seeking to use the crossings, and to the operational railway. His evidence sets out (*inter alia*) that:

- a. Collectively, level crossings form the largest contributor to train accident risk on the railway network (PoE §7.2);
- b. That, over the past 10 years, 77% of all accidental level crossing fatalities have involved pedestrian users (PoE §7.7); and
- c. The number of 'near misses' with non-vehicular users over the last 3 years shows a gradually worsening trend (PoE §7.8).

20. He will explain that it is, therefore, Network Rail's policy to seek to eliminate at-grade traverses across the railway, wherever possible, and that the reduction of the number of level crossings across the network is an important strategic priority, consistent with the regulatory duties under which Network Rail must operate (PoE §6.2).

21. Dr Algaard will explain in evidence how Network Rail's wider strategy has been applied to the Anglia region. She will discuss how, in addition to continuing to focus on the highest risk crossings, the Anglia Route has developed a strategy to reduce – and rationalise – the level crossing estate across the Anglia Region: documented in the Anglia Crossing Reduction CRD (NR18). The current Order seeks to remove level crossings which primarily fall within Phase 1 of that strategy<sup>8</sup>; namely:

- Crossings on main lines where users could be diverted to alternative crossing points through use of existing nearby infrastructure, or which could be closed or downgraded due to extremely low usage (Phase 1).

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<sup>7</sup> ORR "Periodic Review 2013: Final determination of Network Rail's outputs for funding for 2014-19" extracted at §5.9 of Mark Brunnen's PoE. Extracts can also be found at NR/15

<sup>8</sup> Mr Kenning explains at §3.19 of his PoE that a decision was taken not to take forward proposals for Suffolk branch lines at the end of GRIP 1 (February 2016) due to funding constraints.

22. Mr Brunnen will confirm, in evidence, that this approach is consistent with Network Rail's wider strategy (NR17). Dr Algaard will explain how seeking to upgrade, or improve, the crossings contained within the Order (e.g. by making 'passive' crossing 'active') would not achieve the objectives which this Order is intended to realise.

*The crossings contained within the draft Order*

23. Mr Kenning will explain in evidence how the crossings contained within the Order were identified, and the proposals progressed as the project developed. He will explain how the level crossing estate within Anglia was looked at with a view to identifying opportunities for:

- a. Rationalising the level crossings on the Anglia Route – for example, by reducing the number of at-grade crossings where opportunities existed for diverting users to an existing alternative crossing point;
- b. Removing level crossings which were either dormant, or the route was not usable;
- c. Regularising the status of existing level crossings; and
- d. Downgrading rights enjoyed over a specific crossing with a view to facilitating any further action which might need to be taken in the future.

24. As will be clear from his evidence, Network Rail has been alive to the needs of those using the current level crossings throughout the project: it has not, as has been suggested by some objecting to this Order, focussed only at the needs of the railway.

25. Mr Kenning will explain how consideration of 'desire lines' of users of the crossings has been a key consideration from the outset of the project. He will also explain how the proposals contained within the Order have been informed by consultation with the highway authorities, landowners, other stakeholders (such as Local Access Forums) and members of the public. Mr Nigel Billingsley will explain the engagement undertaken with affected landowners during the development of the Order proposals. Ms Susan Tilbrook will give evidence as to how the feedback received from that process from has informed the development of the proposals for specific crossings – including consideration of alternatives put forward by consultees and/or Network Rail.

26. Mr John Prest, the Route Level Crossing Manager responsible for West Anglia section of the Anglia Route, details the characteristics and status of each of the crossings, and his PoE (NR/31/1) contains photographs of each crossing, looking in all directions from the 'safe' crossing points. He will discuss how the Level Crossing Manager responsible for each crossing assesses risk, and considers options for reducing risk following that assessment, together with general maintenance activities associated with crossings on the Anglia route. In respect of each crossing, he provides its All Level Crossing Risk Model (ALCRM) score attributed to each crossing (Mr Brunnen's evidence addresses the use and development of ALCRM as a risk assessment tool); highlights any history of known incidents or misuse; and identifies the options considered for reduction of risk at the crossing following risk assessment as part of the general assessment and optioneering work<sup>9</sup> carried out by LCMs in respect of each crossing for which they are responsible.
27. The evidence of Mr Prest is provided to assist the inquiry in understanding the nature and particular features of the crossing contained within the Order. However, as Mr Brunnen makes clear in his evidence (PoE §8.24) the decision as to whether a particular crossing has been included within the Order is not based on its ALCRM score, or risk characteristics. This Order is not promoted on the basis that there is an imperative need to close an individual crossing on the grounds that it presents a clear and immediate danger to the safety of those using it. Two of the crossings contained within the Order are currently closed for that reason, pursuant to powers contained within other legislation.<sup>10</sup> Nor is it appropriate to focus on the 'case' for closure of any particular crossing in isolation. As has already been made clear, this Order is pursued to fulfil the wider strategic objectives discussed by Mr Brunnen and Dr Algaard, the crossings being one part of the wider system of the railway in this region.

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<sup>9</sup> Mr Prest makes clear at §5.2 of his Proof that the evidence contained within his Proof as to the optioneering exercise, and associated CBA costs, are based on generic costs used by LCMs to carry out that exercise, and not based on the specific diversions proposed within the Order.

<sup>10</sup> Network Rail has noted the concern raised by Suffolk County Council that S23 is not the subject of a current TTRO, and is taking steps to remedy the position: as set out in John Prest's Rebuttal Proof of Evidence NR/31/4

*Use of the Transport and Works Act procedure*

28. It is perhaps helpful to address at this point the contentions raised by the Ramblers in their Statement of Case that it is inappropriate for Network Rail to be seeking closure of level crossings by means of an Order under the TWA 1992 and/or that it is somehow seeking to 'bypass' specific statutory regimes which provide for closure of level crossings.
29. As set out at the outset of these submissions, this Order is pursued under s.1 of the Act, the matters contained within the draft Order being matters ancillary to the operation of a transport network: specifically, the efficient and safe operation of the railway network within the Anglia region.
30. Reducing the number of level crossings across the network is a key, strategic priority for Network Rail, both generally and across the Anglia region. As will be explained in evidence, every level crossing represents a constraint on the operational network – an effect which is both individual and cumulative. Those constraints both impact on the operational efficiency – and resilience – of the existing network, and provide barriers to future opportunities to enhance the capacity and efficiency of the network. That is in addition to the 'risk' which each crossing introduces to the railway system – both in terms of risk to users of the level crossing, and risks to the operational railway.
31. It is simply unarguable, therefore, that an Order, the effect of which would be to reduce those constraints – and thus enhance the operational efficiency and resilience of the network – is not a "matter ancillary to the operation of a transport network", within the meaning of s.1 of the Act.
32. Clearly, the reduction of risk – which is not limited to safety of users of the crossing – is a material objective, and benefit, which would be realised by the Order. It is not, however, the 'key' justification for the Order.
33. Nor could the Order proposals be pursued through the other statutory regimes referred to by the Ramblers in their Legal Submissions: specifically, the provisions contained in Part VIII of the Highways Act 1980. I consider those provisions, briefly, below.

34. Firstly, s.118A of the Highway Act 1980. This provides (so far as material for present purposes) that:

“(1) This section applies where it appears to a council expedient in the interests of the safety of members of the public using it or likely to use it that a footpath, bridleway or restricted byway in their area which crosses a railway, otherwise than by tunnel or bridge, should be stopped up.

(4) The Secretary of State shall not confirm a rail crossing extinguishment order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that it is expedient to do so having regard to all the circumstances, and in particular to—

(a) whether it is reasonably practicable to make the crossing safe for use by the public, and

(b) what arrangements have been made for ensuring that, if the order is confirmed, any appropriate barriers and signs are erected and maintained.”

35. This procedure may only be used, therefore, where it appears to the highway authority that the crossing should be closed on the grounds of safety of those using the PROW. That is not the basis on which this Order is pursued. Nor could this power be used to stop up a PROW for the objectives pursued by this Order: the power conferred by s.118A can only be used in considering the safety of users of the PROW, not, “risk” to the railway, or the current – or future - operational needs of the railway. It is also in the discretion of the highway authority whether such an order should be pursued.

36. Secondly, s.119A of the Highway Act 1980. This provides that:

“(1) This section applies where it appears to a council expedient in the interests of the safety of members of the public using it or likely to use it that a footpath, bridleway or restricted byway in their area which crosses a railway, otherwise than by tunnel or bridge, should be diverted (whether on to land of the same or of another owner, lessee or occupier).

...

(4) The Secretary of State shall not confirm a rail crossing diversion order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that it is expedient to do so having regard to all the circumstances, and in particular to—

(a) whether it is reasonably practicable to make the crossing safe for use by the public, and

(b) what arrangements have been made for ensuring that, if the order is confirmed, any appropriate barriers and signs are erected and maintained.”

37. The same problems apply as with s.118A. Moreover, although it provides for a PROW to be diverted onto other land, nothing in the Act would empower Network Rail to acquire such land or rights as might be necessary to effect the proposed diversion (for example, if rights of access were required to remove the level crossing infrastructure, or construct works to facilitate the proposed diversion) or grant planning permission for any physical works, such as construction of steps or ramps.

38. Thirdly, in respect of s.116 of the Highways Act 1980, whilst this power extends to roads (unlike s.118A & s.119A) it is even more limited as to the basis on which an order can be made.

S.116 provides as follows:

“(1) Subject to the provisions of this section, if it appears to a magistrates' court, after a view, if the court thinks fit, by any two or more of the justices composing the court, that a highway (other than a trunk road or a special road) as respects which the highway authority have made an application under this section—

(a) is unnecessary, or

(b) can be diverted so as to make it nearer or more commodious to the public,

the court may by order authorise it to be stopped up or, as the case may be, to be so diverted.

39. The focus, in s.116(1) is thus on whether the PROW is “unnecessary” for the highway user, or whether the diversion would, essentially, be “more commodious” for those using the highway – the focus is not on the needs of (or risks to) the operational railway.

40. Thus, none of the other statutory procedures which the Ramblers contend should be used instead of the TWAO procedure could, in fact, be used to achieve the strategic objectives which underlie the current application. The proposals contained within this Order are simply not proposals which could be dealt with under existing, statutory procedures.

41. Nor is the use of the TWAO procedure to effect closure, or amend the status, of level crossing unprecedented: see, e.g., The Network Rail (Abbots Ripton Level Crossing) Order 2017/1074, The Network Rail (Northumberland Park Level Crossing and Coppermill Lane Level Crossing Closure) Order 2017, The Chiltern Railways (Bicester to Oxford Improvements) Order 2012/2679; and The Railtrack (Ammanford Level Crossings) Order 1997. The principle of using

TWAO to effect level crossing closures is thus both well precedented, and accepted by the Secretary of State for Transport.

42. This inquiry may, therefore, properly proceed on the basis that the TWAO procedure is the appropriate procedure for Network Rail to use to seek to reduce the level crossing estate across the Anglia region.

*The tests to be applied*

43. In considering the proposals for each crossing, the test which needs to be considered is that set out in s.5(6) of the TWA 1992, namely, whether the Secretary of State is satisfied (a) that an alternative right of way has been or will be provided; or (b) that no alternative right of way is required.
44. The Act is silent as to any further qualifications that attach to s.5(6)(a). The TWA guidance<sup>11</sup> provides, in Annex 2, that “If an alternative is to be provided, the Secretary of State would wish to be satisfied that it will be a convenient and suitable replacement for existing users.” It should be noted that these words are being used in the context of guidance, and are not a statutory test.
45. It is Network Rail’s position that s.5(6), read with the TWA Guidance, requires the Secretary of State to be satisfied that the proposed alternative is suitable and convenient having regard to the purpose served by the route to be extinguished, and use made of it by existing users – not any person who might be legally entitled to use the route, or who might, theoretically, do so in the future (e.g. following construction of a new development in the area).
46. Network Rail would highlight, in particular:
  - a. Section 5(6) anticipates that an alternative may not be required at all. Where an alternative is found to be required, the statute does not say anything about the form of that alternative;

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<sup>11</sup> DfT ‘A Guide to TWA Procedures (June 2006)

- b. The language used by the Secretary of State in the TWA guidance focusses on *existing* users of the public right of way. That language indicates, also, that the Secretary of State is not seeking *enhancements* to the PROW network in applying s.5(6);
- c. Importantly, the guidance does not invite a comparative exercise between the extinguished right of way and the proposed alternative (if required). It can clearly be differentiated, therefore, from the language used in, e.g. 119 of the Highways Act 1980;
- d. Similarly, the guidance does not suggest any overarching requirement to take account of the “public enjoyment of the footpath as a whole”: cf the test in s.119 of the Highways Act 1980;
- e. A closer analogy (although, the test is again not the same as s.5(6)) is that contained in s.14(6) HA 1980, where “another reasonably convenient route” is required where side roads may be stopped up for trunk road developments; or s.18(6) HA 1980 where such a route is required where side roads may be stopped up for a “special road” (i.e. a motorway); or where footpaths are temporarily diverted for dangerous works under s.135A HA 1980.

47. There is simply no proper basis for importing the additional tests which the Ramblers contend in their Statement of Case should be applied, reading across from s.118A and s.119A of the Highways Act 1980.

48. If the Inspector (and, subsequently, the Secretary of State) is satisfied that Network Rail has made out its strategic case for the Order, then it follows that the only basis on which the Order could either not be confirmed, or confirmed with modifications (removing specific crossings from the Order) is if the Inspector considers either that an alternative route has not been provided but is required (s.5(6)(b)) or that the alternative route is not “suitable and convenient”. There is simply no basis for reading into the TWA 1992 a further requirement that the Inspector must be satisfied that it is “expedient” to close each individual crossing having regard to all the circumstances including those specified in s.118A(4) or s.119A(4) of the Highways Act 1980. Not least, as if that was what Parliament had intended, this would have been written into s.5(6), or otherwise made clear that the amendments to the 1980 Act, made by s.47 & Schedule 2 of the 1992 Act, applied equally when considering extinguishment of a PROW under s.5(6).

49. Network Rail would highlight, at this point, that where an alternative route is being provided, Article 13(3) of the draft Order [NR2] provides that the route across the level crossing is not to be closed (and relevant PROWs extinguished) *“until, in respect of each level crossing in that Part [Part 1 of Schedule 2], the new highway specified in column (4) has been constructed and completed, to the extent specified by reference to the numbers and letters shown on the deposited plans, to the reasonable satisfaction of the highway authority in accordance with article 15 (creation and maintenance of new highway) and is open for use.”*
50. Mr Kenning explains in his evidence how Network Rail’s consideration of whether an alternative route is “required” has been strongly informed by the views of the relevant highways authorities, having regard (inter alia) to the wider PROW network in the area and their respective policies regarding the same. Ms Tilbrook will explain why the diversion proposed in respect of each crossings is suitable and convenient. She will also discuss the comparative merits of alternatives considered by Network Rail during the development of the Order; those proposed by others during development of the Order and/or proposed by an objector to the Order. Ms Tilbrook will also address concerns that have been raised with safety of users on the proposed alternative routes, by reference to the Road Safety Audits (RSAs) which have been carried out where the proposed diversion involves the use of existing roads, and explain how the needs of all existing users have been taken into account in selecting the proposed diversionary route.

*Proposed amendments to the Order*

51. Network Rail has submitted an amended copy of the draft Order to the inquiry this morning, which reflects changes made since the application was made. In particular, the amendments given effect to:
- a. the withdrawal of the proposals for crossing S05 Pannington Hall, following the audit of the Book of Reference, as notified to the TWO Unit on 30<sup>th</sup> November 2017;
  - b. The withdrawal of proposed powers over plot 5 in the Parish of Finningham (S16 Gislingham) and over plot 26 in the Parish of Elmswell (S30 Lords No.29) following the audit of the Book of Reference, as notified to the TWA Unit on 30<sup>th</sup> November 2017;
  - c. The reduction of the extent of the proposed powers over plot 2 in the Parish of Gislingham (S17 Paynes) to mean that Network Rail is only seeking a right of access over the extent of Coldham Lane that is not publically maintainable by the highway authority (as notified to the TWA Unit on 30<sup>th</sup> November 2017);

- d. The withdrawal of plot 7 in the Parish of Mellis (S21 Abbotts) (as notified to the TWA Unit on 30<sup>th</sup> November 2017);
- e. The withdrawal of plot 25 in the Parish of Elmswell (S30 Lords No 29);
- f. Amendment to Schedules 2, 3, 4 & 5 to reflect the re-designation of existing highway to bridleway as opposed to creation of a new PROW at S25 Cattishall;
- g. Amendments to articles 19-21 and Schedule, which amended model clauses in light of the provisions contained within the Housing and Planning Act 2016, to reflect the provisions contained within the Network Rail (Buxton Sidings Extension) Order 2017/1150;
- h. Amendment to article 33 and Schedule 11 (protective provisions for drainage boards/the Environment Agency) to reflect discussions with the Environment Agency;
- i. Insertion of a new sub para (1) to article 27, omitted in error;
- j. Correction of typographical errors / cross references.

52. By letter dated 11 December 2017, Suffolk County Council notified Network Rail, and the Programme Officer, of a request to amend its Statement of Case to (1) maintain a “holding” objection to all level crossing closures dependent upon the provision of an alternative route until such time as the Council had been provided with access to enable them to “walk the route” of the proposed alternative; and (2) to maintain a general “holding” objection until amendments had been made to the Order to reflect its concerns, as set out in that letter, regarding the certification process under draft Article 16; a requirement that widths and grid references of proposed new PROW be specified in the Order to assist in the LEMO process; the payment of commuted sums; and compensation for time and money spent in respect of the proposed changes to the PROW network from the date the TWAO application was lodged.

53. Network Rail’s position in respect of those matters is set out in the letter from Winckworth Sherwood dated 30<sup>th</sup> January 2018<sup>12</sup> a copy of which is appended to the Susan Tilbrook’s Rebuttal to the Proofs of Evidence of Suffolk County Council [NR/32/4/2] at Appendix A.

54. Network Rail’s position remains that the matters relating to the certification process, commuted sums and widths/grid references of new PROW are not matters which should be included in the Order and can more properly be addressed by way of agreement between

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<sup>12</sup> These matters are also addressed in Network Rail’s response of 22<sup>nd</sup> December 2017 to Suffolk County Council’s letter of 11<sup>th</sup> December 2017, which letter was copied to the Programme Officer.

Network Rail and the County Council. Further, that the suggestion that the Order should provide for Suffolk County Council to be compensated in respect of time and costs expended in connection with the Order, from date of application through certification of new PROW (if the Order is approved) is unprecedented and unjustified. Network Rail remains hopeful of resolving these issues with the County Council prior to conclusion of the inquiry, but will address any outstanding issues by way of legal submissions (alternatively in closings), it being Network Rail's position that matters relating to the drafting of the Order, and its mechanics, are properly matters for submission rather than for evidence.

#### *Compelling case in the public interest*

55. Mr Billingsley will explain, in evidence, the limited nature of the powers and rights sought by Network Rail under this Order. He will also explain the compensation provisions which will apply where land is affected by exercise of powers under the Order, and address the impact on individual landholdings.

56. The public interest which would be secured by the Order is addressed in the evidence of Mr Brunnen and Dr Algaard. Given the benefits which would accrue from the Order, if confirmed, the limited nature of the rights sought by Network Rail, and the compensation provisions contained within the draft Order, it is Network Rail's submission that the Secretary of State may properly be satisfied that there is a compelling case in the public interest to confirm the draft Order.

#### *Objections to the Order*

57. A significant number of objections have been received to the Order. Most relate to proposals for specific crossings, and will be addressed, as appropriate, during the course of the inquiry.

58. In terms of more general objections, these will be addressed by Network Rail's witnesses as appropriate. However, Network Rail would emphasise the following matters at the outset.

59. Firstly, it is suggested by a number of objectors that the effect of this Order would be to transfer risk from the level crossings and from Network Rail to the highway and the County Council as highway authority, where the diversionary route involves use of the existing road

network. That proposition is not accepted. Firstly, whilst Network Rail has a responsibility to ensure the safety of those using, or interacting with, the railway, that does not absolve other bodies of their responsibilities: specifically, it does not absolve the highway authority of its responsibility for the safety of the highway. It is therefore wrong to suggest that Network Rail is somehow seeking to ‘transfer’ its risk and responsibilities to another body. Secondly, where Network Rail has proposed use of the existing road network, that diversion has been subject to a stage 1 RSA<sup>13</sup>, and Network Rail has only pursued that proposal where it is satisfied that the alternative route would not present any problems in terms of road safety. Thirdly, Network Rail has also made clear that it is prepared to agree and pay commuted sums to the relevant highway authorities to reflect any additional maintenance responsibilities which may arise as a result of the exercise of the Order powers. This is not a case of Network Rail simply seeking to pass a problem to someone else.

60. Secondly, a number of complaints are made as to Network Rail’s approach to the Order proposals, and assertions that there has not been any effective consultation.

61. Mr Kenning and Mr Billingsley set out in their evidence the substantial engagement and consultation with the highway authorities, landowners, other stakeholders and members of the public which has been carried out during the development of the Order proposals. Ms Tilbrook discusses how the feedback received from those exercises has informed the development of the Order proposals. What, in reality, lies at the heart of many of these complaints is that changes have not been made which consultees would wish to have seen be made. That is not what is required for a lawful consultation exercise. Further, as Mr Billingsley sets out in his evidence (PoE § 5.20), it must be remembered that in this case, Network Rail has had to balance the often competing interests the users of the existing PROW network (and proposed diversion routes), and landowners affected by the proposed diversion routes – and that the proposed routes have to connect, coherently, to the wider PROW network, at times across more than one parcel of land (PoE §5.20).

62. Whilst it is anticipated that a number of objectors may wish to raise complaints about consultation, it is respectfully suggested that the focus should, instead, be the substance of what is proposed, and any changes objectors would wish to see made, rather than the events leading up to the draft Order itself.

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<sup>13</sup> Stage 2 RSAs will be carried out, as required, following detailed design

## Summary

63. By way of conclusion, Network Rail maintains that the TWAO procedure is the appropriate procedure to pursue in order to meet the strategic objectives it seeks to achieve by this Order. The Order, if confirmed, would bring a number of benefits to the operational railway within the Anglia region:

- a. Improving the safety of level crossing users, railway staff and passengers;
- b. Creating a more efficient and reliable railway;
- c. Reducing the ongoing operating and maintenance costs of the railway;
- d. Reducing delays to trains, pedestrians and other highway users; and
- e. Facilitating capacity and line speed increases on the network in the future.

64. There is a clear, and compelling, public interest in the Order being confirmed, and the Inspector will be invited, at the close of the inquiry, to so recommend to the Secretary of State.

JACQUELINE LEAN

13<sup>th</sup> February 2018

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