Dear Mr Jenkins

**Transport and Works Act 1992**

**Proposed Rother Valley Railway (Bodiam to Robertsbridge Junction) Order**

**Request for Further Environmental Information dated 8 June 2020**

1. Thank you for your letter dated 8 June 2020, signed with the authority of the Secretary of State. I have consulted with Rother Valley Railway Limited (“RVRL”) regarding the information referred to in your letter, and the timescale within which it would be reasonably practicable to prepare a Rule 17 submission.

2. The first point that I must raise is about the assessment of matters introduced by the EIA Directive 2014, as set out in the paragraph of your letter entitled “Other”. The reason given for your direction was to take into account the revision to Schedule 1 to the Applications Rules introduced by the Environmental Impact Assessment (Miscellaneous Amendments Relating to Harbours, Highways and Transport) Regulations 2017.

3. As stated in your letter, the Environmental Statement accompanying the Order application was prepared under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 to support a planning application to Rother District Council for the reinstatement of the railway. Consent for the development was granted on 17 March 2017.

4. A request for a Scoping Opinion in respect of the application for Transport and Works Act Order was submitted to the Secretary of State for Transport on 12 May 2017 in accordance with the Transport and Works (Applications and Objections Procedure)(England and Wales) Rules 2006 (“the Applications Rules”). The date of the Scoping Request is important because it predated the transposition into UK legislation of the 2014 EIA Directive, with the effect that the transitional arrangements in paragraph 8 of Schedule 6 to the 2017 Regulations (requests for a scoping opinion made before the commencement date) apply to this application.
5. My understanding of the position is that it is not open to the Inspector to seek to apply the 2014 Directive by means of a Rule 17 direction. I should also add that the scope of the assessment required to support the application for the Transport and Works Act Order was agreed by the Secretary of State at a time when, had the 2014 Directive applied, the same rationale for requiring these topics to be covered could have been given by the Secretary of State, but was not. It is also fair to say that, had the 2014 Directive applied, the applicant would certainly have requested that the new topics relating to climate change, human health and major accidents or disasters be scoped out of the environmental impact assessment for the development. Accordingly, the applicant’s position is that these topics cannot fall within the scope of what is required in this instance to constitute an environmental statement. I have not, therefore, included any assessment of these topics in the timescale for production of the further environmental information. I would be grateful for your consideration of this issue and confirmation that information in respect of these matters is not required.

6. The second point I must raise relates to the requirement for an updated flood risk assessment. RVRL has sought advice from its consultant, Capita, on the content of the paragraphs of your letter headed “Water quality, hydrology and hydrogeology” together with the cost and timescale of carrying out the work that it would entail. The question is not whether further information can be provided, but the scope of that information.

7. I am instructed that there are two options:

A. to re-run Capita’s existing model utilising the latest UKCP18 climate projections, producing new flood extent maps and explaining the conclusions in an addendum to the Flood Risk Assessment; or

B. to provide the fully updated flood risk assessment described in your letter.

8. I am instructed that Option A would provide the key information necessary to enable conclusions to be drawn about the likely significant effects of flooding taking into account the latest climate change projections; in particular, demonstrating any flood change effects and outcomes as a result of peak river flow allowances plus 45%. This report would take approximately 8 weeks to prepare at an additional cost to the applicant of approximately £5000.

9. Option B would comprise a new flood risk assessment and would involve the stages described in the appendix to this letter. This assessment would take approximately 18 weeks to complete from formal order being placed by RVRL with Capita, allowing for (and assuming fairly prompt) consultation responses/input from the Environment Agency, at an additional cost to the applicant in excess of £20,000.

10. It is the work from Capita that will drive the timescale for the delivery of the Rule 17 information as a whole, because the results will need to be reviewed and incorporated into the revalidation/updating of other elements of the environmental statement by RVRL’s environmental consultants, Temple. Once the information is submitted, and published, there will, of course, be a further six week period for any objections or representations to be made. This will all serve to delay an Inquiry that was due to commence in May.

11. This is a case where the development already has live planning consent and the implementation of the development is subject to planning conditions, including a Flood Risk condition, a Flood Defence integrity condition and a Flood Plain Storage Compensation condition, all of which are expressed as pre-commencement conditions. Hence, the submission of an environmental statement in respect of the application for Transport and Works Act Order is a technical requirement for compliance with the Applications Rules rather than being necessary to establish the impacts of the development (as these have already been established, and it was determined by the relevant statutory body that such impacts could be controlled by planning conditions). I also respectfully suggest, given the background to this matter including:
• the scoping exercise in 2017;
• the involvement of the Environment Agency in the preparation for the original flood risk work and the withdrawal of its holding objection to the making of the proposed Order; and
• that the matter has been raised previously by objectors to the scheme and the Secretary of State has not chosen to require a further flood risk assessment to be carried out;
• that this application is made by a charity and privately funded by donors with no call on the public purse;

that option A above would be a proportionate approach to updating the existing work so as to allow appropriate and proper consideration of the likely significant impacts of the reinstatement of the railway for the purposes of this application, having regard to the latest climate change allowance. This would be a proportionate exercise having regard to the time and cost involved in producing an (effectively) entirely new flood risk assessment at this late stage.

12. I would be grateful if you would confirm whether, in the particular circumstances of this case, the applicant may submit updated flood risk information using its existing model rather than undertaking a very much longer and considerably more expensive update, which we consider would be disproportionate in all the circumstances.

Yours sincerely

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Partner

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cc Colin Dunn, Department for Transport
Option B – four stage flood risk assessment

Option B would be a full updated flood risk (FRA), and would require four hydrology stages using the FEH stats method.

**Stage 1**
Stage 1 would include:
- export and checking catchment descriptors
- identify donor sites for QMED and calculate QMED
- create pooling groups using the latest NRFA data
  1. Produce a hydrology pro-forma documenting the analysis undertaken
  2. Compare the results to the original Hyder study

**Stage 2**
Stage 2 would include
  1. ReFH2 calculations with catchment descriptors and generate new inflow hydrographs for the model
  2. Update hydrology pro-forma documenting the analysis undertaken

**Stage 3**
Stage 3 would include
  1. Undertake ReFH2 event calibration (8 events at each gauge) to generate new inflow hydrographs for the model
  2. Update hydrology pro-forma documenting the analysis undertaken

**Stage 4**
Stage 4 modelling would include
  1. Run the hydraulic model for the baseline and with railway scenarios for the new 5%, 2%, 1.33%, 1% and 1% with climate change (45% and 105% increase) design events (Guidance states that if the development is considered appropriate when not in accordance with flood zone vulnerability categories, use the upper end allowance. The development is within Zone 3b)
  2. Produce different grids

**Stage 5**
Stage 5 - the new FRA Addendum Report would include:
- Hydrology updates
- Latest Model results
- Discussion of results identifying any additional properties at risk
- Review of latest surface water flooding maps
- Exception Test updates

The anticipated timescales above for the work are from a formal order being placed by RVR. In preparing the above, Capita would need to contact the Environment Agency to request flow and stage data for Udiam and Burwash, plus any nearby 15 min raingauges. This request will go through the Environment Agency’s external relations team. The current guidelines on the gov.uk web page would be used to define the climate change adjustments to flows. (Noting that it is not clear if the EA has as yet updated this information to reflect UKCP18 for fluvial flows.)