

**THE FELIXSTOWE BRANCH LINE AND IPSWICH YARD  
IMPROVEMENT ORDER**

**PROOF OF EVIDENCE**

of

**Ian Gilder MA, MRTPI, FRSA**

**Planning & Transport Policy and Conditions**



**Port of Felixstowe**



# 1 INTRODUCTION

## 1.1 QUALIFICATIONS AND EXPERIENCE

1.1.1 My name is Ian Gilder. I am Head of Planning at Environmental Resources Management (ERM), a leading environmental management and planning consultancy. I hold a Master of Arts degree in Geography, from the University of Cambridge, a Postgraduate Diploma in Town Planning, from Anglia Polytechnic University and have been a Member of the Royal Town Planning Institute since 1978. I am a Fellow of the Royal Society of Arts.

1.1.2 I have been Head of Planning at ERM since April 1998. From 1990, I was an Associate with Halcrow Fox, another planning, transportation and environmental consultancy. Before that I worked for local authorities in Suffolk and was a Chief Officer in a local planning authority, St Edmundsbury Borough Council, from 1986 to 1990.

1.1.3 In addition to the Felixstowe Branch Line, I have been involved in the planning and environmental assessment of numerous other heavy and light rail projects, including the Heathrow South West Rail Access, all of the recent and proposed Docklands Light Railway Extensions and Capacity Enhancements, Merseytram, Nottingham Express Transit, Midland Metro and South Hampshire Rapid Transit. On most of these, I led the planning, regeneration, historic buildings, socio-economic and landscape/townscape evidence at public inquiry. I have also prepared environmental and economic assessments for a wide range of other development and transport infrastructure projects, including the Kingsway Business Park, Rochdale,

Brent Cross Cricklewood Development and the East Thames River Crossings Appraisal Framework. I have also been responsible for the preparation of strategic environmental assessments, development plans, retail and town centre studies, urban design, conservation and landscape projects.

1.1.4 In addition to the Felixstowe Branch Line and other rail schemes, I have given evidence at many other public inquiries on planning, transport, economic and environmental issues.

## **1.2** *INVOLVEMENT IN THE FELIXSTOWE BRANCH LINE*

1.2.1 I have visited all parts of the Felixstowe Branch Line and am fully aware of the principal documents and of the planning, economic and development context of the proposed construction and operation of the Felixstowe Branch Line and Ipswich Yard Improvement ('the Scheme').

1.2.2 I have been advising Hutchison Ports/ Felixstowe Dock and Railway Company (FDRC), 'the Promoters', on the scheme since early 2004. This has included providing advice on the land use, planning, landscape and visual impact, design and archaeology issues. This included preparing the relevant sections of the Environmental Statement (CD/5) and planning direction application (CD/4) and draft planning conditions, which accompany the draft Order.

## **1.3** *SCOPE OF EVIDENCE*

1.3.1 My evidence is directed, in particular, to the following in the Secretary of State's Statement of Matters for the Inquiry with cross-references to the relevant sections of this Proof given in brackets:

- 1.3.2 'The extent to which the proposals are consistent with national, regional and local planning and transport policies' [**Section 2**].
- 1.3.3 'The conditions proposed to be applied to deemed planning permission for the scheme, if given, and in particular whether those conditions meet the tests in DOE Circular 11/95 of being necessary, relevant, enforceable, precise and reasonable' [**Section 3**].
- 1.3.4 My evidence considers the planning and environmental aspects of the Scheme and is divided into the following sections:
- (i) Section 2, the national and regional planning, transport sustainable development and environmental policy context.
  - (ii) Section 3, the application for a Planning Direction, including the draft Planning Conditions, Code of Construction Practice and other measures proposed to secure delivery of the environmental mitigations.
  - (iii) Section 4, responses to objections; and
  - (iv) Section 5, my conclusions, particularly in relation to whether the application for deemed planning permission should be granted.
- 1.3.5 My **Appendices IMG1 to IMG5** are bound separately and are referred to at appropriate points in my Proof of Evidence.

## 2 *NATIONAL, REGIONAL AND LOCAL PLANNING AND TRANSPORT POLICY*

### 2.1 *INTRODUCTION*

2.1.1 The draft Order is accompanied by a Request for Direction, under Section 90 (2A) of the Town and Country Planning Act 1990, which, if granted, will create a deemed planning permission for the scheme. In this section of my evidence, I set out the relevant national policy guidance and development plan policies to which the Secretary of State should have regard in relation to the Order and the Request for Direction.

2.1.2 The Felixstowe South Reconfiguration Section 106 Agreement (**CD/1**) includes a commitment by the Promoters, which was accepted by the Secretary of State, to upgrade the Felixstowe Branch Line between Trimley and Nacton as an integral part of the permission to expand the capacity of Felixstowe Port. This is detailed in section 8.250 of the Felixstowe South Terminal Inquiry Inspector's Report (**CD/9**).

2.1.3 Felixstowe South Reconfiguration was approved by the First Secretary of State and the State for the Department of Transport in February 2006. The Inspector and the Secretary of State stated that the port expansion was essential in national interest and in accordance with national, regional and local policy. Securing greater rail capacity for the onward transport of containers is also crucial to avoid the adverse impacts of road transport and is itself fully in accordance with policy. Andrew Harston in his proof of evidence sets out the full package of rail improvements of which this application is only a part.

## 2.2 *EUROPEAN TRANSPORT POLICY*

### *White Paper on European Transport Policy, 2001 (CD/12)*

- 2.2.1 The White Paper European Transport Policy for 2010: Time to Decide, adopted by the European Commission on 12 September 2001, sets out the Commission's response to the transport problems faced by the European Union.
- 2.2.2 The White Paper depicts the present situation with regard to transport and sets out clearly the measures that the Commission considers necessary to solve these transport problems. It proposes an Action Plan aimed at bringing about substantial improvements in the quality and efficiency of transport in Europe by 2010.
- 2.2.3 The Paper serves as the European Commission's transport programme for the present decade and, amongst other things, outlines proposals to shift the balance between modes of transport through actions such as transport pricing.
- 2.2.4 Among some 60 recommendations is a policy (Part 1.II, p41-48) to encourage the linking of the different modes of transport and to promote rail, maritime and inland waterway transport of freight. Rail transport is promoted as the key strategic sector on which the success of the efforts to shift the balance between modes will depend.
- 2.2.5 Among the initiatives proposed in the White Paper is a programme to promote intermodality (known as the Marco Polo programme). One of the objectives is to deliver measures which will lead to substantial shifts of freight from road to other modes.

2.2.6 The White Paper acknowledges (Part 2.IA, p53) that, whilst it will not be possible to establish a complete rail network reserved for freight, investment must encourage the gradual development of Trans-European corridors for priority or even exclusive use for freight trains. It further acknowledges that local rail access to ports is essential to create the link from mainline rail networks to ports in order to create priority for freight in multi-modal corridors and allow short-sea shipping.

Summary

2.2.7 The Scheme will make a distinct contribution to securing the objectives of the White Paper on European Transport Policy, in particular, by reinforcing the Trans-European routes from Felixstowe to the Midlands, Northern England and Scotland, promoting the shift of freight to rail.

2.3 **NATIONAL PLANNING POLICY**

***Modern Ports: A UK Policy, 2000 (CD/16)***

2.3.1 Overall Government policy for the UK's ports is set out in Modern Ports: A UK Policy, issued in November 2000. The aims of the ports policy are reiterated in the document, as being to promote:

- (i) UK and regional competitiveness;
- (ii) high nationally agreed standards; and
- (iii) the best environmental practice.

2.3.2 The policy notes that pressure for expansion is greatest at container and Ro-Ro (roll on roll off traffic) ports.

2.3.3 It is noted that many shipping companies use UK ports for transshipping goods en route to or from other ports, which increases the range of markets available to UK customers and brings competitive benefits to industry. The document highlights Felixstowe as a port where over 30% of containers handled have been in trans-shipment, thus reducing the amount of goods that have to be moved inland.

2.3.4 The policy recognises that port expansion will inevitably generate inland traffic and it is a stated objective to improve access by forms of transport other than road vehicles. It is also recognised that it is in a port's interest to minimise congestion and delays on the surrounding road network so as not to detrimentally affect their customers' businesses.

2.3.5 The importance of port freight to the railways is noted, and the policy describes the factors important for customers using rail services. These are:

- (i) good access to port facilities;
- (ii) clear connections to the main network; and
- (iii) means of avoiding congestion and bottlenecks on the network.

2.3.6 Modern Ports stresses the Government's aim for more freight to be moved by rail and notes that not only are ports successfully moving in this direction but that rail freight operators are keen to win more rail business. The ability of the rail network to meet growing demand is highlighted as a challenge. A programme of priority freight routes linked with the deep-sea ports is described.

2.3.7 National ports policy is under review, but it is too early to draw any specific conclusions in relation to prospective changes to policy. A summary of

responses to the Department for Transport's discussion document for the Ports Policy Review, May 2006, was published on 16 November 2006, but contains little directly relevant to this inquiry.

### Summary

2.3.8 The Scheme is clearly in accordance with national ports policy, providing extra capacity to make rail freight quicker and more competitive and by removing the bottleneck on a key port freight route that the existing single track branch line represents.

### *Transport White Papers, 1998 and 2004*

2.3.9 The Transport White Paper, *A New Deal for Transport: Better for Everyone*, in July 1998, (CD/70) noted the importance of ports as a link in the supply chain and sets out four key policies:

- (i) to promote UK and regional competitiveness by encouraging reliable and efficient distribution and access to markets;
- (ii) to enhance environmental and operational performance by encouraging the provision of multi-modal access to markets;
- (iii) to make the best use of existing infrastructure, in preference to expansion wherever practicable; and
- (iv) to promote best environmental standards in the design and operation of ports, including where new development is justified.

2.3.10 The Future of Rail White Paper (CD/13) and The Future of Transport: A Network for 2030 White Paper (CD/14) were both published in July 2004.

These White Papers once again set out the Government's commitment to increasing rail freight, viewing its growth as an important contribution to a national sustainable development strategy.

2.3.11 The Future of Rail White Paper recognises that the *"use of rail rather than roads for freight transport can in some cases bring environmental and societal benefits"* (paragraph 4.4.5). The White Paper also confirms that: *"rail freight plays an important part in the nation's logistics. To compete effectively with road haulage, freight operators need certainty about their longterm access rights and what they will cost. The Government will therefore ensure that long-term access agreements are put in place to provide the stability needed to secure commercial contracts, and the ORR will facilitate this. In addition, a group of key routes will be identified on which freight operators will have more assured rights of access, for which an appropriate price will be set by the ORR."* (paragraph 4.4.7)

2.3.12 The Future of Transport: A Network for 2030 sets out investment plans to 2014/15 and provides a policy framework for the longer term. It reiterates the Government's strategy to achieve more sustainable distribution of goods. The strategy includes two elements that relate to rail freight:

- (i) Access to infrastructure – rail freight operators will be given greater certainty about their rights on the existing network, and a group of key rail routes will be identified on which freight will enjoy and pay for more assured rights of access.
- (ii) Modal-shift programmes – rail and water. The Government will continue to encourage freight traffic to be shifted from road to rail or water where this makes sense, and where appropriate the Government will offer financial support (paragraph 8.9).

2.3.13 The White Paper notes that the Government is committed to supporting industry by helping to ensure that goods can be moved freely, reliably and efficiently. The strategy outlined in the document is intended to provide a framework within which the freight industry can continue to underpin economic prosperity.

2.3.14 The White Paper also notes that, should ports be given permission to expand, the Government expects promoters to contribute to the costs of surface access improvements required to service new developments (paragraph 7.12).

2.3.15 Following decisions on the major container port proposals, the White Paper anticipated the Government review of ports policy, now in progress and indicated that it would address key issues such as:

- (i) how we should respond to global growth in shipping traffic by providing new port capacity?;
- (ii) how the pressures on capacity are set to vary at the aggregate national level across key sub-sectors such as containers and ro-ro, and the ease with which such pressures might be addressed?; and
- (iii) how to ensure that road and rail improvements needed to serve future major port developments are brought on stream effectively (paragraph 7.28)?

***Transport 2010: The 10 Year Plan, 2000 (CD/15)***

2.3.16 The 10 Year Plan was published in July 2000 and picks up a number of the themes described in the 1998 Transport White Paper. Put simply, its stated

aim was to transform the UK's transport infrastructure over the period to 2010.

- 2.3.17 One of the Plan's objectives is to increase the use of the railway by freight with the aim of increasing rail freight's share of the market to 10% by 2010. This represents an increase of 80% in the total amount of freight carried by rail, or, in other words, a reduction of around 1 billion annual lorry trips.

*Rail freight: market growth and support from Government –Statement to Parliament by Transport Secretary Alistair Darling on the Government's objectives for rail freight, 19 July 2005 (CD/80).*

- 2.3.18 Alistair Darling's Statement to Parliament on 'Rail freight: market growth and support from Government' sets out the Government's up to date position in regards to rail freight and replaces the Strategic Rail Authority's 2001 Rail Freight Strategy.

- 2.3.19 The Statement supports the Ten Year Plan for Transport (2000) and the potential of rail freight growth. The Statement shows its support for this growth, stating that the *"Government welcomes this growth and wishes to see it continue. Our clear policy aim is to see goods being moved in a sustainable way, which maximises benefits to the economy and to society. For instance, because they generally have less impact on society than road transport, rail and water freight can bring substantial benefits"* (p1, para 4).

- 2.3.20 The Government will ensure that their policies and regulations *"do not put unnecessary obstacles in the way of future growth"* (p1, para 7). To achieve this, the Government will:

*“Work to ensure that regional and local planning decisions reflect Government priorities relating to the sustainable movement of goods.*

*We wish to see private sector investment in major rail freight facilities, such as intermodal terminals, continue. It is not appropriate for the Government to promote individual schemes - it is for the private sector to develop proposals and progress them through the necessary approvals including planning consent. But the Government does want due account to be taken of our policy goals for the sustainable movement of goods. This does not imply an active role in individual cases, but if necessary we will be ready to act to ensure decision makers are better informed particularly in the application of planning guidance. We will also be ready to consider changes to planning guidance where appropriate.*

*Work with the industry and Network Rail to establish how freight growth can be accommodated on the network” (p2, para 6-8).*

### Summary

2.3.21 The Scheme will make a positive contribution to delivering national transport policy objectives, by the enhancement of environmental and operational performance, making the best of existing infrastructure, promoting UK competitiveness and access to markets, and maximising the use of rail rather than roads for long distance freight transport.

*Planning Policy Statement 1: Delivering Sustainable Development, 2005*

*(CD/72)*

2.3.22 PPS1 provides overarching national policies to deliver sustainable development via the planning system. The policy seeks to ensure that sustainable development is pursued in an integrated manner to promote and achieve environmental, economic and social objectives via high quality inclusive designs and access proposals. An integral aim of the policy is to break-down social barriers, encourage community involvement and improve the character and quality of an area.

2.3.23 The Planning System: General Principles, further sets out the requirements for sustainable development. The document outlines how planning applications will be considered when development plans and policies are emerging and the requirements of planning conditions and obligations.

*Planning Policy Statement 7: Sustainable Development in Rural Areas, 2004*

*(CD/73)*

2.3.24 PPS7 seeks to ensure that decisions on development proposals are based on sustainable development principles, controlling the location of development in rural areas to prevent urban sprawl and ensure ease of access for residents. The policy focuses on raising the quality of life through the promotion of social inclusion; effective protection and enhancement of the environment; prudent use of natural resources; economic growth, diversification and employment.

***Planning Policy Statement 9: Biodiversity and Geological Conservation, 2005  
(CD/74)***

- 2.3.25 PPS9 focuses on sustaining, conserving and enhancing resources taking into account the interests of biodiversity and geological conservation to prevent harm.

***Planning Policy Guidance Note 13: Transport, 2002 (CD/17)***

- 2.3.26 PPG13 provides guidance on the integration of land use planning and transport with the particular aims of promoting more sustainable transport choices and reducing the need to travel by road.

- 2.3.27 PPG13 states, in particular, that:

*“In preparing their development plans and in determining planning applications, local authorities should ... promote opportunities for freight generating development to be served by rail or waterways by influencing the location of development and by identifying and where appropriate protecting realistic opportunities for rail or waterways connections to existing manufacturing, distribution and warehousing sites adjacent or close to the rail network, waterways or coastal/estuarial ports.”*

(paragraph 45).

- 2.3.28 Annex B of PPG13 describes how local authorities “*should aim to promote the role of ports in sustainable distribution, by encouraging good access by rail, shipping and waterways as well as road where possible...*”.

***Planning Policy Guidance Note 15: Planning and the Historic Environment,  
1994 (CD/75)***

- 2.3.29 PPG15 deals with those aspects of conservation policy which are relevant to applications for planning permission or listed building consent where works affect listed buildings or other historic environments, the planning authority

must pay special regard to certain matters, including the desirability of preserving the setting of historic buildings and areas.

*Planning Policy Guidance Note 16: Archaeology and Planning, 1990 (CD/37)*

2.3.30 PPG 16 sets out the Government's policy on archaeological remains on land, and how they should be preserved or recorded both in an urban setting and in the countryside. It advises on the handling of remains and discoveries and the weight to be accorded to archaeological issues in the planning system.

2.3.31 PPG 16 states, in particular, that:

*“Archaeological remains should be seen as a finite and non-renewable resource, in many cases highly fragile and vulnerable to damage and destruction. Appropriate management is therefore essential to ensure that they survive in good condition. In particular, care must be taken to ensure that archaeological remains are not needlessly or thoughtlessly destroyed”* (paragraph 6).

*“Where nationally important archaeological remains, whether scheduled or not, and their settings, are affected by proposed development there should be presumption in favour of their physical preservation”* (paragraph 8).

2.3.32 However, it also says that:

*“If physical preservation in situ is not feasible, an archaeological excavation for the purposes of ‘preservation by record’ may be an acceptable alternative”* (paragraph 13).

2.3.33 Assessment of archaeological resources at the application stage normally involves desk-based evaluation of existing information and site walkovers,

including museum and SMR data, records of previous excavations and historic maps. All of these have been done for the scheme.

***Planning Policy Statement 23: Pollution Control, 2004 (CD/45)***

2.3.34 PPS23 considers the quality of land, air and water in regards to potential impacts arising from development and possible impacts on health. The aim of the policy is the control, mitigation and removal of pollution as far as it is possible and feasible to do so.

***Planning Policy Guidance Note 24: Planning and Noise, 1994 (CD/49)***

2.3.35 The guidance contains advice on how the planning system can be used to minimise the adverse impacts of noise, without placing unreasonable restrictions on development, and sets out the considerations to be taken into account in determining applications for noise-sensitive developments.

2.3.36 It acknowledges that, in general, development that is necessary for the creation of jobs and the construction and improvement of essential infrastructure generates noise. Paragraph 10 states that:

*“the planning system should not place unjustifiable obstacles in the way of such development”.*

2.3.37 In relation to construction, PPS24 recommends the use of the detailed guidance on assessing noise, contained in BS5228, parts 1 to 4 (paragraph 21).

2.3.38 Noise Exposure Categories given in PPG24 do give an indication of the relative acceptability of railway noise as compared to road traffic noise. This more general acceptability of railway as compared to road traffic noise is also reflected in result of research on noise perception. For example, at a level of

70 dB LAeq, 18 h, around 30% of the exposed population would be annoyed by railway noise as compared to some 42% of the population for road traffic noise.

2.3.39 With respect to any operational noise from the proposed changes to Ipswich Yard, PPG24 states:

*“Local noise from station activities, freight distribution depots, and marshalling yards should be treated in the same way as noise from industrial and commercial sources”*

(Annex 3, paragraph 2).

#### Summary

2.3.40 The Scheme will contribute to the objectives of Planning Policy Statements 1 and 13, and conforms fully with the requirements of Planning Policy Statements 7, 9 and 23, and Planning Policy Guidance Notes 15, 16 and 24.

#### ***Public Rights of Way***

2.3.41 Articles 8 and 10 of the draft Order allow the Promoters to stop-up specified streets (including footpaths and byways), which are listed in Schedule 4 of the draft Order.

2.3.42 The specified streets cannot be stopped up unless a substitute street has been completed and is open for use, or a temporary alternative route is provided between the commencement and termination points for the street that has been stopped-up, which will continue to be available until the completion and opening of the permanent substitute street.

2.3.43 These powers are, in essence, the same as those which local authorities have under Sections 118 to 121 of the Highways Act, 1980 (as amended by the

Countryside and Rights of Way Act, 2000). Section 118 allows Councils to stop-up and thereby extinguish a footpath or bridleway which is *“not needed for public use”*. Section 118A provides specifically for rail crossing extinguishment orders, which can be made in the interests of the safety of highway users. The Council has expressly to take into account whether *“it is reasonably practicable to make the crossing safe for the public”* or *“whether a diversion would be more appropriate”*. Highway authorities have the powers also to create rights of way or, more commonly, under s119 to divert footpaths or bridleways. The tests to be met are those in Section 119(6) of the Highways Act, essentially the same as those in para 34 of Circular 2/93.

2.3.44 Local planning authorities also have powers, under section 257 of the Town and Country Planning Act, 1990, to make orders to stop-up or divert footpaths in order to enable development for which planning permission has been granted.

2.3.45 Circular 2/93 provides advice and guidance on recording, maintaining, protecting and modifying the rights of way network. In particular, para 1 notes that:

*“Local Authorities (may) stop up or divert a footpath or bridleway in their area which crosses a railway, otherwise than by tunnel or bridge, where this is considered expedient in the interest of public safety”*.

The circular is relevant to this inquiry in so far as the Order contains powers which are similar to those in the Highways Act and the Town and Country Planning Act.

2.3.46 Paragraph 23 of Circular 2/93 states that footpath closures have to be considered on their merits and cannot merely be presumed as a result of any grant of planning permission. In reaching a decision there is a need to weigh up the disadvantages or loss likely to arise as a result of stopping up or diversion to the public or the persons whose properties adjoin the street against the advantages to be obtained from the proposed stopping-up.

2.3.47 Before a footpath order, under the Town and Country Planning Act, is made, the local planning authority (and the Secretary of State if the order is subject to unresolved objections or representations) must *"be satisfied that the diversion does not alter the point of termination of the path"* and that it is *"substantially as convenient to the public"* (para 34). Any diversion decision must also take into consideration *"the public enjoyment of the path as a whole"* (para 34).

#### Summary

2.3.48 The Promoters have included, in the draft Order, powers to stop-up and divert footpaths, byways and other streets. These powers will only be exercised in accordance with draft planning condition 13. In the case of each highway to be closed, the Promoters have proposed a satisfactory diversion or alternative. The details of the footpath and other closures proposed are discussed in detail in Andrew Cann's proof of evidence. In my view, the closures proposed are necessary to meet the operational and safety requirements of the railway once it has been dualled. As far as is possible, diversions or alternatives are being provided which meet the tests in the Highways Act and in para 34 of Circular 2/93. The procedure which the Promoters have put in place, through the Order and the planning condition, will ensure that closures only take place at the last practicable date and that

the requirements to ensure that satisfactory temporary and/or permanent diversions or alternatives are in place will be observed. The proposals essentially follow the same procedural requirements that local planning and highway authorities would have to follow if seeking to extinguish or divert rights of way which cross railways.

#### **REGIONAL PLANNING POLICY**

##### ***Regional Planning Guidance 6: East Anglia to 2016, November 2000 (CD/18)***

2.3.49 The Regional Planning Guidance (RPG6) for East Anglia was approved in November 2006. It was made by the Secretary of State for the Environment, Transport and the Regions and covers the period to 2016, setting the framework for the longer term future. The primary purpose of this guidance is to set the regional framework for development plans in East Anglia.

2.3.50 Policy 30 of RPG6 set out the guidelines for freight policies in local development plans:

*“In advance of the strategic advice in the full regional transport strategy, local transport plans and development plans should:*

- *encourage greater use of the rail freight network by developing opportunities for the movement of goods by rail, encouraging businesses to use rail freight, and supporting the development of national and international rail networks;*
- *identify and protect, where appropriate, existing and potential sites and facilities for rail and water-borne freight.”*

2.3.51 Paragraph 6.27 of RPG6 also recommended that:

*“local transport plans should include integrated measures (urban and rural) to manage demand and provide sustainable choices at the local level. Investment decisions at local level will need to take into account the availability of finance, and be prioritised to support and promote integrated and sustainable strategies which recognise the attractiveness of the different modes of travel in the following priority sequence:*

- *walking and cycling;*
- *bus and rail based public transport and rail freight;*
- *taxis and car pooling;*
- *essential motor vehicles to support business activity and everyday needs where there is no reasonable alternative (as will often be the case in rural areas);*
- *heavy goods vehicles and powered two-wheel vehicles, and*
- *other motor vehicles.”*

2.3.52 Policy 36: Rail Investment Priorities sets out the rail projects which are either committed to, or capable of being implemented subject to satisfactory appraisal, the completion of statutory processes and the availability of finance, including:

- (i) an East-West rail link through London, such as Crossrail (which would improve the accessibility of Ipswich and Norwich to London and beyond); and
- (ii) the upgrade of the line from Felixstowe to Ely, Peterborough and Nuneaton to provide extra capacity for rail freight from Felixstowe to the North and Midlands so avoiding London.

*Draft East of England Plan, December 2004 (CD/20) and The Secretary of State's Proposed Changes to the Draft Revision to the Regional Spatial Strategy for the East of England and Statement of Reasons, December 2006 (CD/77)*

- 2.3.53 The East of England Regional Assembly (EERA) published the East of England Plan draft revision to the Regional Spatial Strategy (RSS) for the East of England, in December 2004 (otherwise the 'Draft Plan').
- 2.3.54 The Government published the Proposed Changes to the Draft East of England Plan on 19 December 2006. Public consultation runs from then until 9 March 2007 on the Government's Proposed Changes. Where the Government has proposed changes to the Consultation Document the recommendations are outlined alongside the relevant policies below.
- 2.3.55 The Regional Transport Strategy seeks to "*promote the carriage of freight by rail and water and encourage environmentally sensitive distribution*" (Policy T1 'Regional Transport Strategy Objectives') and to safeguard well-located wharves and facilities for rail and water freight interchange (Policy T3 'Strategic Freight Interchange').
- 2.3.56 New policy T1 in the Proposed Changes will replace policy T1 in the Draft Plan, however there is no change to the particular policy objective reported in para 2.3.55.
- 2.3.57 Policy T10 will replace policy T3 in the Draft Plan. T10 still covers the safeguarding of well-located wharves and facilities for rail and water freight interchange.

2.3.58 Policy T4 in the Proposed Changes remains basically unchanged, covering Ports and Water Transport, and states that:

*“Access to the region’s ports, particularly by rail and inland waterway, will be managed and enhanced to support development as it is approved and enable the ports to contribute to national and regional objectives in relation to economic growth, regeneration and sustainable transport.”*

2.3.59 Relevant supporting text in paras 8.22 and 8.26 of the Proposed Changes, which also remains virtually unchanged, states that:

*“Access to the ports has been an important component of the definition of the network hierarchy (see Policy T6) and investment and management required to fulfil this role for the existing major ports (Felixstowe, Harwich, London, Tilbury) and currently approved expansion has been identified in the overall investment priorities. Provision of adequate rail access to these ports and onwards to destinations across the country is critical to the achievement of targets for increasing rail freight. Because port traffic is such an important component of freight movement in the region and much is travelling long distances, the RTS has set the target of increasing the proportion of rail freight carried by rail by 2010 to 25% by 2010 and 30% by 2020. A number of priority schemes will improve access to the region’s main ports, but in particular the Haven Gateway to Nuneaton freight route (phases 1, 2 & 3) and the proposed study of the A14 corridor” (paragraph 8.22).*

*“In principle the best use should be made of existing ports before new ports are contemplated (in line with Government policy) and where new development is proposed the ability to provide access (particularly by rail and water) should be a factor in the decision. The developer should also be expected to contribute to the provision of the necessary infrastructure. If and when permission is given for any of*

*the published port expansion plans (which will be a decision for Government) it will be necessary to re-consider regional and sub-regional investment priorities”* (paragraph 8.26).

*Our Environment, Our Future: the Regional Environment Strategy for the East of England, July 2003 (CD/21)*

2.3.60 Our Environment, Our Future (2003) was produced by a joint working group representing the East of England Regional Assembly and the East of England Environment Forum. It forms part of an overall integrated strategy for the region. Many actions and aims set out in the Regional Environment Strategy are addressed through the policies of the RSS. Conversely, other actions in the Regional Environment Strategy will support and complement the policies of the RSS.

2.3.61 One of its strategic aims is to “*reduce the need to travel and achieve a switch to more sustainable modes of transport*” (SA2). It recognises the importance of major ports, such as Felixstowe, and recommends that “*major improvements...be made to the rail network, especially east-west links*” (p 35).

Summary

2.3.62 The Scheme will make a positive contribution to meeting regional planning objectives by removing a bottleneck on the rail freight network, better access to the region’s principal port and will also contribute to national and regional objectives to promote economic growth, regeneration and sustainable transport.

## 2.4 LOCAL PLANNING POLICY

### *Overview*

2.4.1 The scheme is located within the administrative areas of two local planning authorities, Suffolk Coastal District Council and Ipswich Borough Council.

The scheme is also within the jurisdiction of Suffolk County Council.

2.4.2 I have provided, in **Appendix IMG 1**, two maps showing all of the key environmental designations along the route.

### *Suffolk Structure Plan, 2001 (CD/22)*

2.4.3 The Suffolk Structure Plan, adopted in 2001, is a statement of strategic policies for the protection of the environment and the control of development up to 2016. It provides a basis for investment decisions by local authorities, businesses and individuals, and for the plans and programmes of other organisations. It will, in due course, be replaced by the local development frameworks prepared by Ipswich Borough Council and Suffolk Coast District Council together with the regional spatial strategy.

2.4.4 The Plan has a key role in delivering sustainable development, setting out an environmentally sustainable strategy secured through systematic appraisal.

### *Rail Freight*

2.4.5 Policy T6 of the Suffolk Structure Plan sets out the County Council's policy towards rail freight:

*"The County Council will encourage:*

*(a) a shift of road borne freight to rail, water and pipeline;*

*(b) suitable proposals for transshipment and rail served depots.*

*Sites for these uses including existing rail sidings and rail access will be safeguarded unless their use can be shown to be operationally unnecessary in the longer term.*

*Following consultation with the Strategic Rail Authority, Railtrack, freight operators and potential customers, Borough and District Councils should include in local plans proposals for additional depots to meet new demands and to replace existing inappropriately located facilities. Where such needs are demonstrated and suitable sites cannot be found within existing settlements, proposals may be identified outside existing built up areas, subject to no material conflict with environmental and other transport policies."*

#### Environmental Protection

- 2.4.6 Policy ENV1 identifies the need to protect the character and landscape setting of conservation areas and listed buildings and states that *"new developments in conservation areas or affecting their setting must be in harmony with their surroundings"*.
- 2.4.7 Policy ENV4 relates to the need to protect landscape quality and character for their own sake and states that *"proposals for prominent structures will only be acceptable if the local planning authority is satisfied that they are essential in the countryside, and that the location, siting and design minimises adverse impacts on the environment"*.
- 2.4.8 Policy ENV5 identifies the need for new development, including transport development, to be located and designed to minimise air, noise land and light pollution.
- 2.4.9 Policy ENV7 relates to the protection of the Area of Outstanding Natural Beauty (AONB) and states that *"development that would have a material adverse*

*impact on... AONBs... will only be acceptable where an overriding national need for development in the particular location can be demonstrated and there is a lack of an acceptable alternative site”.*

2.4.10 Policy ENV12 relates to the use of agricultural land and woodland for development purposes and states that *“full recognition will be given to the need to minimise the irreversible loss of best and most versatile agricultural land and woodland”*. Furthermore Policy ENV13 states that *“the retention and management of existing trees, hedgerows and woodland will be encouraged for their economic, landscape and ecological and historic value”*.

2.4.11 Policy ENV22 deals with the protection of Scheduled Ancient Monuments (SAMs) or other sites of national archaeological importance, or their landscape setting. The policy also states that *“on other sites of archaeological importance or potential, provided there is no overriding case against development, planning permission will be subject to satisfactory prior arrangements being agreed including one or more of the following:*

*a) the preservation of remains within a development;*

*b) the recording of remains by archaeological excavation before development commences;*

*c) a watching brief during development”*.

2.4.12 Under Policy ENV22, the Council seeks to conserve a representative sample of archaeology sites. Development will not be acceptable if it would have a material adverse effect on SAMs or other sites of national importance, or their settings. On other sites of archaeological importance or potential, planning

permission will be subject to satisfactory prior arrangements being agreed, which may includes:

- (i) preservation of remains within a development;
- (ii) recording of remains by archaeological excavation before development commences; and/or
- (iii) a recording (watching) brief during construction.

2.4.13 There is no specific policy relating to rights of way, but, the Plan does state that *“in making local plan allocations or considering development proposals, local planning authorities should ensure the protection or the suitable diversion of existing rights of way”*.

Summary

2.4.14 The Scheme will make a contribution to the Structure Plan rail freight policy and is fully in accordance with the environmental protection policies in the Plan.

***Suffolk Local Transport Plan, 2006-2011, March 2006 (CD/23)***

2.4.15 The Local Transport Plan 2006-2011 is the second Local Transport Plan for Suffolk, adopted 20 March 2006.

2.4.16 The plan outlines the Council’s objectives which are to *“improve the flows on existing corridors for strategic movements and provide better direct links across the region and between urban centres”*. The Suffolk components of the strategic network include specifically the Felixstowe branch line.

2.4.17 The Plan recognises the need for providing additional rail capacity within the county in order to reduce congestion. The Council will work with stakeholders, including the Port of Felixstowe, to deliver rail freight improvements with *“the intention is to achieve a significant transfer of freight movements from road to rail, and reduce the overall level of heavy goods vehicles”* (page 61).

2.4.18 The Suffolk LTP also recognises that Ipswich is a Regional Interchange Centre and in the next 15 years will encounter major growth through development. The LTP 2001-2006 recognised that Ipswich is the main constraint on capacity and the 2006-2011 LTP has focused growth on Ipswich and states that *“there are substantial east-west movements of freight from the ports of Felixstowe and Ipswich to the Midlands”* (page 8).

#### Summary

2.4.19 The Scheme meets the rail freight objectives of the Suffolk LTP.

#### ***Suffolk Coastal Adopted Local Plan, 2001 (CD/24)***

2.4.20 The District Council regards the Felixstowe branch line as a vital part of the District’s transport infrastructure, both for passenger and freight movement. The paragraph 5.29 of the adopted Local Plan states that the *“District Council welcomes the investment in upgrading the Felixstowe line and hopes this will assist in the transfer of heavy freight from road to rail”*.

#### Rail Freight

2.4.21 Policy AP84 of the Suffolk Coastal Local Plan shows strong support for new and existing rail services and facilities:

*“Rail Services*

*The District Council will actively encourage the enhancement of local rail infrastructure and services and will support measures designed to integrate rail services with other forms of public and private transport including the wider use of existing station facilities.*

*The District Council will seek to protect the sites of existing and potential rail freight terminals from development that would hinder or preclude their use as such, unless it is satisfied that the site, or part thereof, is surplus to requirements, offers no other uses related to sustainable transport, and a planning benefit could be gained through permitting an alternative use”.*

*Landscape and Visual*

- 2.4.22 Policy AP8 identifies the need to protect landscape character and quality of the countryside for its own sake by generally restricting development to that essential for the efficient operation of agriculture, forestry and horticulture or that which is otherwise permitted by other policies in the local plan.
- 2.4.23 Policy AP10 sets out the Council’s commitment to the implementation of the Suffolk Coast and Heaths Management Plan.
- 2.4.24 Policy AP11 identifies the need to minimise irreversible loss of commercial woodlands and the best and most versatile agricultural land and states that, *“development of such land will only be allowed, exceptionally, if there is an overriding need for development”*.
- 2.4.25 Policy AP12 seeks to safeguard the quality of the landscape of the Suffolk Coast and Heaths AONB through strict control of development, unless there is a national need and no alternative site is available.

2.4.26 Policy AP17 identifies the need to retain, improve and manage trees, hedgerows and woodlands and the need to encourage this for their economic, landscape and ecological value, and historic or conservation interest.

2.4.27 Policy AP19 recognises the need to ensure good design and site layout to prevent development proposals detracting from the character of their surroundings.

#### Environment

2.4.28 Policy ENV5 states that:

*“new development, including transport development, should be located and designed to minimise or avoid air, noise, water, land and light pollution. The polluting effects of a development, the presence of other existing or proposed sources of pollution which may affect it, and any cumulative pollution impacts arising, should all be taken into account. Development which would result in a significant pollution impact, and in particular development which would introduce a significant source of light which is not required for safety reasons, will not be acceptable”*

#### Archaeology

2.4.29 Policy ENV22 states that

*“development will not be acceptable if it would have a material adverse effect on Scheduled Ancient Monuments or other sites of national archaeological importance, or their settings. On other sites of archaeological importance or potential, provided there is no overriding case against development, planning permission will be subject to satisfactory prior arrangements being agreed including one or more of the following:*

*(a) the preservation of remains within a development;*

*(b) the recording of remains by archaeological excavation before development commences; or*

*(c) a watching brief during development”.*

Footpaths

2.4.30 The Suffolk Coastal Local Plan Policy AP107 provides protection of existing public rights of way throughout the District. The policy states that rights of ways which traverse proposed development sites should be safeguarded wherever possible and additionally proposes that new developments should include provision for pedestrian links throughout the site and to adjacent routes and facilities.

Summary

2.4.31 The Scheme will make a contribution to the enhancement of local rail infrastructure and services and otherwise conforms to the policies in the adopted Suffolk Coastal Local Plan.

*The Suffolk Coast and Heaths Area of Outstanding Natural Beauty Management Strategy, 2002 (CD/78)*

2.4.32 The strategy seeks to integrate management of the Area of Outstanding Natural Beauty (AONB) across the boundaries of various authorities, based on defined management objectives. The plan is a requirement under the Countryside and Rights of Way Act 2000 (CRoW Act). It has been created through the work of the Suffolk Coast & Heaths Partnership and has been adopted by all of the relevant planning authorities. While the existing railway line is on the boundary of the management plan area, a narrow strip within the temporary land take at Trimley St Mary is just within the AONB.

Policies are objectives as set out within the plan under 'theme aims'. The relevant theme aims are set out below:

- (i) Countryside Theme Aim 3 on Development which emphasis the retention of local character with the priority objectives to:
  - A. *"The protection of the landscape from unnecessary and intrusive development*
  - B. *Settlements to retain their local character"* (p29).
- (ii) Out and About Theme 3 on Transport recognises the need for realistic alternatives to private car and reduction in road use by lorries in order to minimise adverse environmental impacts. The priority objectives of the theme are set our as:
  - A. *"A strategic approach to transport planning for the AONB*
  - B. *Managing route and road corridors in a way that enhances the AONB character and objectives"* (p33).

#### Summary

2.4.33 The Scheme meets the policy objectives set out in the Suffolk Coast and Heaths Management Strategy. Since the land area being used within the AONB is very small, and only for a temporary period, the scheme will have no discernible adverse physical impacts on the AoNB. An increase in train movements will be seen and heard in a corridor within the AoNB, but will have no permanent impact on the landscape of the AoNB.

#### *In Step with Suffolk, Rights of Way Improvement Plan 2006-2016[CD/94]*

2.4.34 The Rights of Way Improvement Plan (ROWIP), October 2006, has been prepared to meet the requirements of the Countryside and Rights of Way Act

by the County Council. It is intended to identify changes that will improve provision for walkers, cyclists, horse riders and those with mobility problems. The Plan recognises the value of Public Rights of Way in maintaining and improving quality of life in the county and the links to issues such as sustainable transport, local economy, recreation, tourism and health.

2.4.35 The ROWIP consists of a summary of the assessment as well as a Statement of Action. The Statement of Action sets out how Suffolk County Council will work with others to address the demands identified in the assessment to secure an improved network. The Plan is, in effect, part of the SCC Local Transport Plan, 2006 – 2011.

2.4.36 Specifically, in regards to the railway crossings, the Plan states that:

*“The improvement of the Felixstowe to Ipswich railway line requires changes to the public crossing points along the length of the line. Negotiations are on going to produce safer crossings and improvements in the local rights of way as part of this development” (p33).*

2.4.37 The Plan also notes that Suffolk has one of the highest densities of rights of way in England.

***Ipswich Local Plan, 1997 (CD/25)***

2.4.38 The Ipswich Local Plan is the adopted plan. The Ipswich Local Plan First Deposit Draft is also a material consideration. Ipswich Borough Council is currently preparing a new Local Development Framework, which is expected to be complete by April 2009. The Core Strategy is presently at the pre-submission public participation, ‘The Preferred Options Consultation’ stage, and is expected to be adopted in October 2008.

2.4.39 The adopted Ipswich Local Plan does not contain specific policies on the transport of freight via rail relevant to the scheme. However, it does recognise that rail can provide an important alternative to the movement of freight by road that has environmental benefits and can help to relieve pressure on roads, and that the movement of freight by rail will increase in the Ipswich area.

*Ipswich Local Plan First Deposit Draft, 2001 (CD/79)*

2.4.40 The Ipswich Local Plan First Deposit Draft did not proceed as the Council has moved on to progress the Ipswich Local Development Framework. There are however a number of policies relevant to the scheme which are material considerations when planning applications are being considered.

2.4.41 Policy NE1 states that the Council will seek to safeguard and enhance landscape settings and views when considering development proposals.

2.4.42 Policy NE22 states that when considering development proposals, regard will be had to the impact of noise, air and light pollution. Development which may lead to negative impacts on amenity or environment will not be permitted unless suitable ameliorative measures are included.

2.4.43 Paragraph 11.28 of the Plan recognises the development of rail improvements for both passengers and freight as a medium priority. An integrated sustainable solution to port access is outlined as being complemented by improved rail links.

2.4.44 Paragraph 11.116 of the Plan recognises the importance of the movement of freight by rail as environmentally beneficial and as a key component of trans-shipment. It is also acknowledged in paragraph 11.116 that there are limited

opportunities at present on the existing rail network in Ipswich, however the potential for the future transfer of goods by rail does exist in certain areas.

2.4.45 The Plan strongly supports port access and the development of ports, stating that:

*“Maintaining rail access to Ipswich Port and facilities for freight movement through Ipswich are important issues that the Plan seeks to address”* (para 11.7, p163).

#### Summary

2.4.46 The Scheme conforms to the strategic and environmental protection policies in the adopted and first deposit draft Ipswich Local Plans and will make a contribution to enhancing rail freight and port facilities.

## 2.5 CONCLUSIONS

2.5.1 The scheme has already, in principle, had the endorsement of the Secretary of State, in that it is an integral part of the Felixstowe South port expansion, already approved.

2.5.2 I have set out in this evidence how the improvements will help to meet the UK's ports objectives in Modern Ports: A UK Policy and accords with the sustainable transport objectives in successive Transport White Papers and PPG13. The scheme will support national policies and the provision to increase the movement of freight by railway which is necessary for success of the Government's objectives in Transport 2010: The 10 Year Plan and the Government's Rail Freight Policy. It will also contribute to securing the objectives of other relevant national policy guidance on planning and the environment, in particular, PPS1 and the General Principles. It conforms fully

with the requirements of PPSs 7, 9 and 23 and PPGs 15, 16 and 24, which protect the environment.

2.5.3 The Scheme will help to deliver the regional policies in the East of England Draft Plan and the Proposed Changes, in particular, policies T1 and T4.

2.5.4 The Scheme will contribute to achieving the Suffolk Structure Plan rail freight policy T6 and accords with the relevant environmental protection policies in the Structure Plan and those in the Suffolk Coastal and Ipswich Local Plans.

2.5.5 The proposed footpath and other street closures in the Order are necessary for operational and safety reasons, once the railway has been dualled. The powers in Article 8 of the Order are essentially the same as those which local highway and planning authorities have under the Highways Act and the Town and Country Planning Act to extinguish or divert rights of way, including those which cross railways. In the case of each permanent closure proposed, the Promoters have identified a satisfactory diversion or alternative. Draft planning condition 13 reinforces their commitment only to implement any permanent closures when they become necessary, for operational and safety reasons. The proposed permanent closures of footpaths and other streets across the railway meet, as far as possible, the tests in paragraph 34 of Circular 2/93.

2.5.6 My evidence is that the Project is '*consistent with national, regional and local planning and transport policies*' [Statement of Matters 2]. It is also consistent with relevant national, regional and local environmental protection and rights of way policies.

### 3 *THE PLANNING DIRECTION, CONDITIONS AND CODE OF CONSTRUCTION PRACTICE*

#### 3.1 *INTRODUCTION*

3.1.1 In this section of my evidence, I set out details of the FBL Request for Direction under section 90(2A) of the Town and Country Planning Act. I am introducing minor amendments to the Request and to Appendix 1, the Schedule of Elements of the Development, in **Appendix IMG 2**. I introduce a set of Design and Access Principles in **Appendix IMG3**. I discuss the Draft Planning Conditions, the draft Code of Construction Practice and other measures to ensure that any adverse environmental effects are properly mitigated. I also report the ongoing consultations with the local authorities about the Planning Conditions and Code of Construction Practice. The latest versions of the Planning Conditions are in **Appendix IMG 4** and the Code of Construction Practice in **Appendix IMG5**. I also deal with any other objections to the conditions and issues related to the delivery of environmental mitigation.

#### 3.2 *REQUEST FOR DIRECTION UNDER SECTION 90 (2A) OF THE TOWN AND COUNTRY PLANNING ACT 1990*

3.2.1 Felixstowe Dock and Railway Company (FDRC), pursuant to rule 5 (7) of the Transport and Works (Applications and Objections Procedure) Rules 1992, has applied for a direction from the Secretary of State that planning permission be deemed to be granted for the development contained in the draft Order.

3.2.2 Those elements of the works likely to constitute development are described in Appendix 1 to the Request. Following the decision to amend the Order application in May 2006, the Promoters need to make minor amendments to the Request and to Appendix 1. The amendments are set out in **Appendix IMG 2**.

3.2.3 The amendments are, in essence, to remove references to the original proposals for the footbridge at Westerfield and to the minor changes to the footpath proposals that were made and consulted upon in May 2006.

### 3.3 *DESIGN AND ACCESS PRINCIPLES*

3.3.1 A statement, covering how the physical characteristics of the Scheme have been informed by careful analysis of design issues and accessibility needs. This is included as **Appendix IMG 3**. The statement meets the requirements for design and access statements to be submitted with applications for planning permission, as set out in the Town and Country Planning (General Development Procedure) (Amendment) (England) Order 2006. These came into force on 10 August 2006, eight months after the submission of this TWA Order and application for deemed planning permission. It has been included so that the Inspector can be satisfied that had a design and access statement been a statutory requirement, it would have taken this form and would have met the requirements of the GPDO.

### 3.4 *REVISED DRAFT PLANNING CONDITIONS*

3.4.1 Draft Planning Conditions originally proposed by the Promoters are set out in Appendix 2 to the submitted Request. Following discussions and negotiations with the Department for Transport and objectors, I am proposing minor revisions to the draft Planning Conditions. I comment on each condition and any revisions and on any remaining objections.

3.4.2 My evidence in relation to the Draft Planning Conditions relates to the extent of powers sought by the Order and draws on recent Orders, and permissions granted under the Town and Country Planning Act, to justify the form of conditions sought. Generally, the Draft Planning Conditions proposed are derived from those approved by the Secretary of State in relation to other recent TWA Directions.

3.4.3 The Promoters have been in negotiation with Ipswich Borough Council (OBJ/53) and Suffolk Coastal District Council (OBJ/24), seeking generally to resolve their objections and also seeking their agreement to the draft planning conditions and the draft Code of Construction Practice. The versions of the conditions and CoCP in **Appendices IMG 4 and IMG 5** are the latest drafts and have been sent to the local planning authorities for approval. The Environment Agency (OBJ/40) has also asked for additional conditions. The draft now reflects changes I am proposing to meet those requests which are reasonable.

3.4.4 I have updated the definitions in the preamble to the conditions to take account of documents submitted since the original conditions were submitted.

- 3.4.5 Condition 1 is a five year time limit condition. Given the time that it may take to secure approvals from Network Rail, I believe it would be reasonable to ask for five rather than three years, which is now the norm for planning permissions. Suffolk Coastal DC and Ipswich BC are content that if the time period needs to be extended it could be covered by this condition, rather than requiring the Promoters to seek a new planning permission.
- 3.4.6 Condition 2 sets out the staging of the development and, in effect, provides for the discharge of conditions on a stage by stage basis.
- 3.4.7 Condition 3 reserves the approval of the layout, scale, appearance and materials for certain key parts of the works to the LPAs. It has been amended to delete Westerfield footbridge and to reflect the new definitions of reserved matters introduced into the General Development Procedure Order in August 2006.
- 3.4.8 Condition 4 has been amended to meet the request of SCDC that it should also approve any boundary fences in open countryside. Condition 5 has been amended to avoid overlap with Conditions 4 and 6.
- 3.4.9 Condition 6 deals with permanent and temporary highway access and has been amended to improve the clarity of the wording.
- 3.4.10 Condition 7 deals with the implementation of fencing to the railway boundary, including during construction. The drafting has been improved.
- 3.4.11 Condition 8 is a standard landscape implementation condition.
- 3.4.12 Condition 9 provides for protection of trees and woodland during construction. It has been amended, at the request of SCDC, to include all trees

within limits, not just those at Gun Lane. In reality, these are the principal trees likely to be affected, but I am happy to widen the condition.

3.4.13 Condition 10 provides for the submission of a scheme of archaeological investigation and for a watching brief during any works likely to affect archaeology. It has been amended to incorporate specific reference to areas of high and medium archaeological potential, making it consistent with the ES.

3.4.14 Condition 11 provides for the protection of part of Levington Park Trial Grounds by providing for fencing and other protection of a defined land parcel within limits in order to protect agricultural and crop research.

3.4.15 Condition 12 provides for the protection of residential amenity at Morston Hall Cottages by preventing the use of land immediately at the rear of these Cottages for construction purposes in order to protect residential amenity.

3.4.16 Condition 13 is a specific condition concerning permanent footpath closures. SCDC objects to this condition, arguing that these provisions should be within the Order and that a planning condition is therefore unnecessary. The relevant provisions within the Order are those in Article 8, which states that:

*“No street specified ... (being a street to be stopped up for which a substitute is to be provided) shall be wholly or partly stopped up under this article unless –*

*(a) the new street to be substituted for it, ...has been completed to the reasonable satisfaction of the street authority and is open for use; or*

*(b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and thereafter maintained by the undertaker”.*

- 3.4.17 In my view, reinforcing these requirements as a planning condition is appropriate, for two reasons. The planning conditions are readily accessible document for the public and the local authority (who are likely to be the recipients of objections if these provisions are not properly implemented). A planning condition could, if necessary, be enforced by SCDC as a breach of condition.
- 3.4.18 Condition 14 provides for desk studies and, if necessary, a site investigation for contaminated land, including contamination of groundwater at Ipswich Yard. This is the only part of the scheme where significant contamination may be present. It provides for approval of such studies by the local planning authority and the carrying out of any remediation works. References to the Environment Agency and to the provision of a validation report have been added.
- 3.4.19 Condition 15 provides for the protection of any watercourse, well, spring, soakaway or groundwater. It provides for approval for the construction of any storage facilities for oils, fuels or chemicals. It has been amended to include the requirement for approval of the surface water drainage scheme at Ipswich Yard, a request from the Environment Agency, and to the cleaning of ballast, which is mentioned in the Environmental Statement, but had been left out of the earlier draft.
- 3.4.20 Condition 16 provides for check surveys and, if necessary, mitigation measures for bats. It is in a standard form and meets the requirements of Natural England and Defra.
- 3.4.21 Condition 17 provides for the protection or translocation of any nationally scarce plants. It provides for approval or protection measures of translocations

by the local planning authority before the carrying out of any construction works.

3.4.22 Condition 18 provides a strategy for the protection or translocation of any reptiles likely to be adversely affected by the works. It provides for approval of protection measures or translocations by the LPA before the carrying out of any construction works.

3.4.23 Condition 19 provides for the restoration of land acquired and used temporarily for construction.

3.4.24 Condition 20 is a standard condition covering approval of the Code of Construction Practice by the local authorities and the implementation of the works in accordance with that Code.

3.4.25 Condition 21 provides for noise monitoring and attenuation during construction and operation. It provides for approval by the LPA of adequate mitigation of construction noise before the carrying out of any construction works. The Code of Construction Practice also requires the contractor to use the prior consent procedures under s61 of the Control of Pollution Act, 1974.

3.4.26 Condition 22 has been amended to allow for the approval of the noise barrier design by Ipswich BC and its early construction.

3.4.27 Condition 23 has been introduced to give effect to two specific footway improvements, agreed with SCDC and SCC, at Levington bridge and Thorpe Lane.

3.4.28 Condition 24 provides for the assessment and submission of environmental mitigation measures if any of the main railway works subsequently deviate

materially from the centre line or vertical sections shown on the Works and Land Plans. It is in a form used in other TWA directions and is intended to protect against a legal challenge to the ES, in the event that there is a substantial change to the alignment from that assessed.

3.4.29 Condition 25 provides for protection of the amenities of residents of Reeve Lodge, designating an area of land adjacent to Reeve Lodge as out of bounds for construction equipment or storage. This condition has been introduced by agreement with SCDC to meet the concerns of local objectors, including Trimley St Martin PC (OBJ/ 31).

3.4.30 Conditions 26 and 27 provide for approvals in writing and implementation in accordance with those approvals.

3.4.31 The Secretary of State should only impose conditions which meet the tests in paragraph 14 of Circular 11/95 that “*conditions should be:*

- (i) *necessary;*
- (ii) *relevant to planning;*
- (iii) *relevant to the development to be permitted;*
- (iv) *enforceable;*
- (v) *precise;*
- (vi) *and reasonable in all other respects”.*

3.4.32 My evidence is that the revised draft conditions meet all of these tests.

### 3.5 *DRAFT CODE OF CONSTRUCTION PRACTICE*

- 3.5.1 The purpose of the Code of Construction Practice (CoCP) is to define minimum standards of construction practice acceptable to FDRC, and is required of the Contractor as a responsible employer. These measures are intended to protect the environment, amenity and safety of local residents, businesses, the general public and the surroundings in the vicinity of proposed railway works.
- 3.5.2 The CoCP covers specific legislative requirements as well as general requirements and compliance with current standards. It also provides for those mitigation measures identified in the ES and not secured by other means. The provisions of the CoCP will be incorporated into the contract(s) for the construction of the scheme. The Contractor and sub-contractors implementing the scheme will be required to comply fully with the terms of the Code and also meet Network Rail's environmental standards.
- 3.5.3 Planning Condition 20 requires the submission of a final CoCP for approval by the local authorities and for adherence to that Code. In advance of the Inquiry, I have sought the agreement of the relevant local authorities and Network Rail to the Draft Code. Network Rail has proposed amendments to correspond to their normal requirements. I have accepted these, with one exception. Network Rail is reluctant to subject its works to the s61 prior consent procedure under the Control of Pollution Act. The local authorities, on the other hand, believe that the use of s61 is entirely appropriate and adopting this approach means that the exact ways in which noise attenuation is delivered and the predicted construction noise levels can be left to be settled by the appointed contractor, once the details of construction methods and

timing have been resolved. I have now made minor amendments to the Code to meet specific comments from Ipswich BC, Suffolk Coastal DC and the Environment Agency.

3.5.4 On appointment, the principal Contractor will take responsibility for the CoCP. If not already agreed, it will be finally agreed by the relevant local authorities. It is anticipated that the principal Contractor will produce a further, more detailed Site Environmental Management Plan (SEMP) to meet Network Rail requirements. The SEMP will normally set out the specific control measures necessary to deliver the requirements of the CoCP.

3.5.5 A revised draft CoCP is included at **Appendix IMG 5**. It incorporates changes agreed, to date, with Network Rail, the Environment Agency, Suffolk Coastal District Council and Ipswich Borough Council.

### **3.6** *CONCLUSIONS*

3.6.1 Felixstowe Dock and Railway Company (FDRC), has applied for a direction from the Secretary of State that planning permission be deemed to be granted for the development contained in the draft Order. Following the decision to amend the Order application in May 2006, the Promoters need to make minor amendments to the Request and to Appendix 1. These amendments have been set out in **Appendix IMG 2**.

3.6.2 I have provided a statement of Design and Access Principles in **Appendix IMG 3**. This meets the requirements for design and access statements, introduced after the order application was made, in the Town and Country

Planning (General Development Procedure) (Amendment) (England) Order 2006.

3.6.3 I have set out a revised set of draft planning conditions, which have been discussed with the local planning authorities, Network Rail and the Environment Agency, in **Appendix IMG 4**.

3.6.4 The Code of Construction Practice (CoCP) defines the minimum standards of construction practice acceptable to FDRC. The revised draft CoCP has been included as **Appendix IMG 5** and incorporates changes agreed, to date, with Network Rail, the EA, Suffolk Coastal District Council and Ipswich Borough Council. The Contractor and sub-contractors implementing the scheme will be required to comply fully with the terms of the Code.

3.6.5 I have set out the justification for the Planning Direction and that the “planning conditions proposed meet the tests in Circular 11/95”. [Statement of Matters 3].

## **4**                    *RESPONSES TO OBJECTIONS*

### **4.1**                    *INTRODUCTION*

4.1.1                  In this section, I deal specifically with outstanding objections which refer mainly to construction issues and can be adequately dealt with through the Code of Construction Practice.

### **4.2**                    *OBJECTIONS*

#### **OBJ/02 Mr G Ammon**

4.2.1                  Mr Ammon has asked for the provision of a 24/7 telephone hotline in case of problems or complaints encountered during construction of the works, and specifically, to complain about ‘ticking over’ noise from machinery.

4.2.2                  It will be the responsibility of the Contractor to provide and maintain a ‘complaints hotline’ to deal with any complaints received in connection with the construction of the railway works (para 2.4 of the CoCP). This hotline will be operated from 7.00am until one hour after construction is terminated, every day during the duration of construction. Outside these hours, an automated call recording service will be provided. As stated in the Code of Construction Practice, complaints will be registered in a log and action will have to be instigated within 24 hours by the Contractor (para 2.5.1).

#### **OBJ/08 Mrs Rosemary Gitsham**

4.2.3                  Mrs Gitsham has objected to temporary road and public rights of way closure and diversions as a result of the works.

4.2.4 A number of measures will be adopted to reduce the impacts of traffic generated during the construction phase in Section 5.2 of the Code. Until appropriate traffic safety measures are put in place, no work that affects the public highway will be commenced. Traffic signs, road markings, lamps, barriers and traffic controls and other such measures will be erected and maintained (para 5.2.1). It may be necessary to temporarily close or divert certain highways, footpaths and cycle ways during the construction period, in which, the FDRC will consult with the Highway Authority, and post notices informing local residents and businesses of these closures (paras 5.2.5 to 5.2.12).

**OBJ/10 Ms. Kitty Moss**

4.2.5 Ms Moss has objected to temporary road and Public Rights of Way closure and diversions as a result of the works.

4.2.6 Appropriate measures will be put in place to reduce the impacts of traffic generated during the construction phase (Section 5.2). Traffic signs, road markings, lamps, barriers and traffic control signal among others will be used and maintained as necessitated during the construction phase (para 5.2.1). Details of road closures or diversion are shown on the deposited plans and sections relating to the scheme. In terms of the closure of footpaths, the FDRC will consult with the Highway Authority, and post notices informing local residents and businesses of these closures (para 5.2.5 to 5.2.12).

**OBJ/14 Mrs S W Cowan**

4.2.7 Mrs Cowan has objected to:

- (i) the construction of the works on Sundays;

- (ii) the construction works will generate dust and waste;
- (iii) works sites to be cleared on completion of the work;
- (iv) the use of local roads for construction works traffic;
- (v) the Temporary Road and Public Rights of Way closure and diversion as a result of the works;
- (vi) the generation of dust and emissions from Construction Vehicles;
- (vii) access to sites, use of haul roads and lorry movements during construction;
- (viii) noise and vibration control;
- (ix) disposal of waste and contaminated materials; and
- (x) the protection for the ecology of the area during the works.

4.2.8 The normal construction that the working hours for the scheme will be Monday to Friday 0700 to 1900 hours (para 3.1). However, this is not applicable to machinery that has to operate continuously. In such cases, it will be the responsibility of the Contractor, FDRC and the local authorities to agree alternative working hours (para 3.1.3). As set out in the CoCP, residents will be informed seven days in advance of works carried out on Sunday evening/night. The local authority will be informed of any emergency works that need to be carried outside of normal or agreed working hours, a description of the work carried out and the mitigation measures that will be used (para 3.1.5).

4.2.9 All necessary measures will be used during the construction and demolition works to reduce dust nuisance. Any impacts that could potentially arise as a result of dust generated during construction will be mitigated by the measures contained in the CoCP (para 7.1).

- 4.2.10 All areas (both working and access areas) will be cleared and cleaned during the construction phase (para 4.7.1). All temporary material used during the construction phase, will be removed and restored as near to its original condition as possible or as agreed with the land owner and or local authorities.
- 4.2.11 A Waste Management Plan will be developed, which will highlight the proposed treatment and disposal route guidelines (para 8.1.1). The disposal of waste will be managed carefully such to reduce any adverse environmental impacts. It will be the responsibility of the Contractor to carry out site investigations for contaminated land (para 8.1.1). Any contaminated material will be dealt within in accordance with national and European regulations (8.2.2).
- 4.2.12 Section 4.4 of the Code of Construction Practice sets out appropriate measures for access and loading of lorries and vehicles.
- 4.2.13 A number of measures will be adopted to reduce the impacts of traffic generated during the construction phase (Section 5.2). Until appropriate traffic safety measures are put in place, no work that affects the public highway will begin. Traffic signs, road markings, lamps, barriers and traffic controls and other such measures will be erected and maintained (para 5.2.1). In order to construct the scheme, it may be necessary to close or divert certain highways, footpaths and cycle ways temporarily during the construction period (para 5.2.5). The FDRC will consult with the Highway Authority, and post notices informing local residents and businesses of highway and footpath closures (paras 5.2.5 to 5.2.12).

4.2.14 The Contractor will employ various methods to reduce noise levels. The Contractor is required to submit to the local authority, an application under s61 of the Control of Pollution Act and will have to employ Best Practicable Means to reduce noise from construction carried out during the night time and week-end. The Contractor is expected to meet specific noise targets set out in the CoCP (para 6.1.3).

4.2.15 The objection also raises concern over the protection for the ecology of the area during the works. Section 10 of the CoCP sets out these arrangements in detail.

**OBJ/15 Ian Cowan**

4.2.16 Mr Cowan has objected to the impacts of a wide range of construction activities.

4.2.17 These are all addressed in the Code of Construction Practice and will amplified in detail in the Site Environmental Management Plan (SEMP) (para 1.5). Inconvenience and disruption for local residents will be kept to a minimum, using well established and reliable methods.

**OBJ/17 Gillian A Padgham**

4.2.18 Ms. Padgham has objected to mud on highways from construction traffic.

4.2.19 The objection raises concerns over the environmental disturbance that the project will bring. It will be the responsibility of the Contractor to provide a Site Environmental Management Plan (SEMP) (para 1.5). As set out in paragraph 4.1.1, all working areas will need to be kept clean and tidy and will

be inspected at least fortnightly. A number of tried and tested measures will be used to minimise mud on roads (para 5.2.22).

**OBJ/19 National Grid and OBJ/22 Atkins Telecoms on behalf of Cable and Wireless**

4.2.20 National Grid and Cable and Wireless raise concerns that their apparatus and installations need to be safeguarded against damage during the works.

4.2.21 This is principally a matter for protective provisions, but the CoCP also requires that all buildings, works, services or installations shall be safeguarded from harm, disturbance or deterioration (para 4.10.2).

**OBJ/28 The Open Spaces Society**

4.2.22 The Open Spaces Society is concerned that the proposals have not taken account of the Rights of Way Improvement Plan. This was only issued finally in October 2006. To the extent that it is relevant, I deal with it in paras 2.4.34 to 2.4.37 above.

**OBJ/31 Trimley St Martin Parish Council**

4.2.23 This objection has been resolved, with the exception of Gun Lane and access to residential properties. The Council asks for assurances that the AoNB will be protected. I can assure the Council that any temporary work areas will be fully reinstated and there will be no permanent impacts.

**OBJ/36 Fuller Peiser on behalf of the Scotts Company, Levington Park**

4.2.24 This objection is principally concerned with ensuring that their trial grounds are protected from damage during construction, including the need for

replacement rabbit fencing. They are also concerned to ensure the protection of mature trees along the boundary of the railway. Planning Conditions 9 and 11, as well as Section 9.10 of the CoCP will, in my view, secure the necessary protection that they are seeking.

**OBJ/39 Mr. Paul Vyse**

4.2.25 This objection is particularly concerned about the loss of established trees along the railway (which act as a windbreak to his nursery), access during construction and reinstatement of land acquired temporarily.

4.2.26 Mr Vyse has been given assurances that as few trees as possible will be removed to enable the works and this is also covered by Planning Condition 9. The Contractor will be required to maintain vehicular access to the objector's land during the works. Planning condition 19 requires the reinstatement of all land occupied temporarily.

**OBJ/40 Environment Agency**

4.2.27 Negotiations are continuing with the Agency to resolve their objections. Amendments are proposed to the Planning Conditions and the Code of Construction Practice, but the Agency remains concerned that any consultation over, for example, the arrangements for remediation of contaminated land will still only be at the discretion of the LPA. The proposed conditions are in exactly the same form as are usually applied to planning permissions. In my experience the LPA will always seek the advice of a relevant statutory consultee.

**OBJ/42 British Telecommunications**

4.2.28 This objection is concerned with protection of statutory undertaker's apparatus. The CoCP in Section 4.10 requires the Contractor to safeguard all services and apparatus.

**OBJ/43 Mr David King**

4.2.29 Mr King has concerns about dust and noise from the proposed worksite adjacent to his home.

4.2.30 The CoCP states that measures will be put in place to reduce dust nuisance and air pollution during construction and demolition works (Section 7.1).

4.2.31 A Waste Management Plan will be developed by the Contractor, which will identify acceptable treatment and disposal routes for handling waste materials (para 8.1.1).

**OBJ/46 Mr Tony Flower & Alison Malcolm**

4.2.32 This objection refers to both the permanent and temporary impacts of their property at 1, Morston Hall Cottages. As far as construction impacts are concerned, provision has already been made, under planning condition 12, to prevent the Contractor from using the land immediately to the east of their house as a construction work or storage site. All other aspects of the construction will be subject to the requirements of the CoCP, which will minimise the adverse impact on the objectors' residential amenity.

**OBJ/54 R W Ellis**

4.2.33 This objection principally relates to the original proposals for a construction worksite and compounds adjacent to the Trimley St Martin roundabout and Reeve Lodge. An alternative work site is being secured, away from

residential property and Reeve Lodge, which is elderly persons housing. A new planning condition 25 is proposed to confirm this.

### **4.3**            *CONCLUSIONS*

4.3.1            I have addressed outstanding objections which relate mainly to construction management issues, which will be properly resolved by the revised draft planning conditions and Code of Construction Practice.

- 5.1.1 The proposed Felixstowe Branch Line and Ipswich Yard Improvement scheme makes a valuable contribution to rail freight and port policies at a European, national, regional and local level. I have demonstrated in my proof of evidence that the scheme conforms to national, regional and local planning and transport policies.
- 5.1.2 I have addressed outstanding objections which relate to mainly to construction management issues and which will be resolved by the proposed planning conditions and the Code of Construction Practice.
- 5.1.3 I have submitted minor amendments to the Request for Planning Permission, the Elements of Development and revisions to the proposed Planning Conditions and ask the Secretary of State to grant the deemed planning permission necessary for the Scheme, incorporating those amendments and subject to the revised planning conditions.