

# Powers and Consents Note

September 2011



**Hertfordshire County Council****Croxley Rail Link**

A breakdown of scheme elements

**Purpose:**

This paper has been prepared to provide the scheme partners with a common understanding of the scheme elements.

**Structure:**

The paper has been structured as follows:-

1. What will be in the Order
2. What might be in the Order (and what it depends on).
3. What will be dealt with by agreement with Network Rail and LUL or both
4. What is dealt with under another process

**1 What will be in the Order**

HCC and LUL will jointly promote the Order. The Order will include the following:

- Works powers: The Transport and Works Order will include powers for HCC to construct, operate and maintain the works and structures. The works and structures will include the connection with LUL's existing Metropolitan line (including new junction), the new viaduct and the new railway laid on the former branch line and the connection to the existing rail network south of Watford High Street station.
- Powers to construct the on-network works: Any platform alterations and minor works on the main railway network from south of Watford High Street up to Watford Junction station will fall within Network Rail's permitted development rights which allows it to carry out certain minor works on its operational land without the need for planning permission. On that basis they will be included in the TW Order as works which HCC is authorised to carry out.
- Ancillary works powers: The Order will also include powers to carry out and maintain other smaller works related to the main works. These include electrification and signalling works, means of access (including emergency access points), works altering the position of any existing utilities apparatus, landscaping or other works to mitigate the

effects of the main works. The new stations would also be included as ancillary works.

- Any works in streets: If apparatus in the street must be moved or new means of access from the highway to the new stations needs to be created, or if any existing streets need to be stopped up either permanently or temporarily while the works are carried out the Order will authorise these. (This is not known at this stage).
- Powers to acquire land permanently (and rights in land): The Order would include powers to acquire any third party land which is required for the railway. This would include land required for the new viaduct structure, including, Croxley Cars and Cinnamond Construction and will extinguish any third party rights over any such land. It is to be expected that a freehold interest will be required in the viaduct structure with a possible lease-back of land under the viaduct. Rights of access for maintenance may also be required. If the Three Rivers playground is to be acquired compulsorily through powers included in the Order rather than by agreement and it amounts to more than 250 square yards, HCC will need to provide exchange land of equivalent size and that is equally advantageous for its users as it is classed as public open space. The same issue potentially arises in relation to the Watford Council land at the proposed Hospital Station, which may affect a playground and/or allotments. There is a separate process relating to exchange land (set out further below).
- Powers to use land temporarily: If land is required on a temporary basis in order to construct the works, the Order will enable land to be occupied as a worksite during construction and returned to the owner afterwards in a state equivalent to when it was taken.
- Interference with canal: the Order will authorise temporary closure of the canal and the removal of houseboats subject to protective provisions for BWB and compensation to be payable for interference with rights to use the canal.
- Compensation: Where land is acquired permanently or used temporarily, the Order will provide for compensation to be paid to the owners and occupiers in accordance with the standard compensation code set out in legislation.
- Miscellaneous powers:
  - (i) *Transfer of powers*: The Order will usually contain provisions to allow for either the outright transfer of the powers to construct, maintain, use or operate the works and the related statutory rights to another person, or to grant the powers and rights to a concessionaire for a fixed period. In this case the compulsory

powers can be exercised by one of the joint promoters (here currently intended to be HCC but could be LUL) in order to construct the scheme and the powers to maintain, use or operate the line can be exercised by LUL. However, the inclusion of this provision will allow for the entire undertaking (including the land) to be transferred to another person (should HCC and LUL wish to do so at any stage.).

- (ii) *Planning permission:* Rather than applying separately for planning permission for the works, the Order application will usually be accompanied by a request for a direction from the Secretary of State (who will decide if the Order should be made) to grant deemed outline planning permission for the works and it is recommended that that approach should be adopted here. Where that approach is adopted, it is the Secretary of State rather than the local planning authority who grants planning permission, subject to such planning conditions as he may impose. The local planning authority has no formal role in the process except as a consultee. It would expect to be consulted in particular on the proposed planning conditions, and the intention would be to seek to agree these before any application is made, and will be responsible for approving any details reserved for subsequent approval under the conditions and for enforcement of the conditions in due course. In this case the application will be for what is effectively an outline permission and design and external appearance of buildings and structures is likely to be reserved for subsequent approval by the local planning authority. The Order will then spell out that the land covered by the direction which is retained for the purpose of the railway and stations is to be treated as operational land. It will also allow for the construction works to affect trees with Tree Preservation Orders without the need for further applications.
- (iii) *Other powers:* The order will also include other powers to charge fares, operate and use the railway (but it does not authorise a specific timetabled service which is approved separately), deal with trespass and any other matters thought appropriate for this particular railway.
- (iv) *Protective Provisions:* The Order will usually include provisions to protect the interests and assets or equipment of statutory bodies affected by the proposed scheme. In this case, that would be likely to include the Environment Agency and British Waterways, who in certain circumstances would be able to approve certain details of the scheme where these affect their own infrastructure. The Order would be likely to include protective provisions for both TfL (LOROL) and

for Network Rail, in order to protect those statutory undertakings.

As part of the statutory process for the Order application notification will have to be given to various statutory consultees where interests are affected including local authorities, the Environment Agency, BWB, the Inland Waterways Association, ORR, London Travel Watch, English Heritage, CABE, Natural England and statutory undertakers.

## **2 What might be in the Order (and what it depends on)**

The Order may also include:

- Compulsory powers over the existing Network Rail branch line: Although there will be a property agreement with Network Rail to transfer the line to HCC if the Order is made, the Order may still include compulsory purchase powers over that land and by compulsorily acquiring the line any existing third party rights over that land will be extinguished so that the line can be constructed and operated free of any historic rights.
- Works for stabling: If it is decided that Watford Metropolitan line station is to be used for the stabling of trains, this may not require any authorisation (except for the closure of the station to passenger services – see further below) if no works are required. However, if works to the track and station are required, these works could be authorised under provisions included in the TW Order. (Such works are not anticipated).

## **3 What will be dealt with by agreement with LUL and Network Rail or both**

Agreements with LUL and Network Rail will cover the following matters:

(a) A joint promotion agreement with LUL to include:

- How the parties will work together to secure the promotion of the Order including:

the scope of the Order and works to be authorised

the form and content of the Application and supporting documents

on matters relating to Network Rail, and in relation to any consultation, discussions and negotiations with stakeholders and third parties, including objectors to the Order;

in relation to all aspects of the Inquiry process.

- Details of the responsibilities of each party, acknowledging that HCC will be responsible for the day to day management of the application and inquiry process with appropriate input from LUL
- a process for agreeing the form of documents, including any planning conditions or to any agreements or undertakings given to third parties which affect LUL's network and inquiry documents
- a commitment for LUL to pursue the station closure application, subject to Board approval,

(b) A framework agreement with LUL to provide for:

- commitment by HCC to carry out the works in the Order once funding is in place and subject to certain other pre-conditions
- a commitment on LUL to procure new rolling stock at the lowest price at the time and to bring Metropolitan line services into operation on the new line subject to certain other pre-conditions
- a funding arrangement to allow HCC to recover project costs through a separate finance agreement
- identification and scope of other agreements required to bring the extension into use, including:

(i) A property-based agreement with LUL dealing with:

- Transfer to LUL of any other third party land or rights in or over that land on which the viaduct and other facilities are provided
- Transfer of any land at Ascot Road from HCC to LUL following construction of the station for use in connection with operating the station (except for car-parking)
- Any licences to go on to LUL land in order to construct the connections with the Croxley Branch Link

(ii) A works design agreement to regulate the development of design of the Link in accordance with previously agreed scheme assumptions/criteria

(iii) A works delivery agreement to regulate the procurement, construction and delivery of the Order works in accordance with previously agreed scheme assumptions/criteria

(iv) other rail industry related agreements to allow for operation of services and use of stations on the Link.

(c) A property-based agreement with Network Rail dealing with:

- Transfer of the existing Croxley Branch Line (if the Order is made) (and all liabilities), from Network Rail to the joint promoters, subject to a handback provision if works are not completed within 10 years of transfer
- Acquisition of any rights required to run LUL services over Network Rail's network
- Any licences to go on to either Network Rail land in order to construct the connections with the Croxley Branch Line

(d) A general agreement with Network Rail to include:

- a commitment by Network Rail not to object to the Order and for HCC to include protective provisions in the Order and to agree to be bound by agreed protective provisions whether in the Order or not
- A commitment from Network Rail to allow the joint promoters to carry out the on-network works using powers provided under the Order
- a process for Network Rail to consent to or approve the form of any planning conditions or to any agreements or undertakings given to third parties which affect Network Rail's network
- a commitment for Network Rail to negotiate access rights to operate LUL services over the Network Rail network and an asset protection agreement with LUL and any other rights or arrangements required where the LUL and Network Rail Networks connect
- a requirement for Network Rail to approve any transfer of the new line and works to a person other than LUL
- a commitment for Network Rail to provide information and support for the application and inquiry process as necessary

#### 4 What is dealt with under another process

- Reserved matters for details of development with planning permission: The request for a direction for deemed outline planning permission under the Town and Country Planning Act 1990 from Secretary of State will need to set out which matters are reserved to the local planning authority for approval prior to the works being commenced. In practice this will mean that matters such as the height and external appearance of structures (including the new stations), landscaping and drainage will need to be approved by the local planning authority.
- Network Rail permitted development works: if these are relied on any platform alterations and minor works on the main railway network from south of Watford High Street up to Watford Junction station should fall within Network Rail's permitted development rights which allows it to carry out certain minor works on its operational land without the need for planning permission. However prior approval of plans and specifications of any structures may be required from the local planning authority.
- Closure of Watford Metropolitan line services to the station: This is a procedure under the Railways Act 2005 to close the existing station led by LUL. It requires LUL to advertise the proposal for objections to be made to LondonTravelWatch, for LondonTravelWatch report to the Mayor and for the Mayor then to decide whether to consent to the closure. In practice the public inquiry which deals with objections to the Order is also likely to take into account the closure of the station (because it will need to be included as part of the environmental assessment into the likely significant effects of the scheme on the environment). There will need to be further consideration of the timing of the application for station closure.
- Railway Industry process: Network change and station change procedures will have to be gone through in relation to works on the network. A track access agreement or option and station access agreements with the station operator at Watford High Street and Watford Junction will need to be approved by ORR for running LUL services on the network.
- If the Three Rivers playground is to be acquired compulsorily through powers included in the Order rather than by agreement and it amounts to more than 250 square yards, HCC will need to provide exchange land of equivalent size and that is equally advantageous for its users as it is classed as public open space. There will need to be a separate application under the Acquisition of Land Act 1981 to the Secretary of State who, if satisfied that the exchange land meets these requirements, will advertise an

intention to provide a certificate to confirm this. Objectors may make representations and if necessary these may be heard at an inquiry specifically on these matters which will be run as part of the overall inquiry considering the Order.

**Winckworth Sherwood**

**16.8.11**