



Department for Transport

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To:
RiverOak Strategic Partners Limited

17 January 2020

cc:
All interested parties

Dear Sir/Madam

Planning Act 2008 and The Infrastructure Planning (Examination Procedure) Rules 2010

Application by RiverOak Strategic Partners Limited (“the Applicant”) for an Order granting Development Consent for the reopening and development of Manston Airport in Kent.

REQUEST FOR COMMENTS AND FURTHER INFORMATION

The Examining Authority (“ExA”) submitted on 18 October 2019 a Report and Recommendations in respect of its findings on the above application to the Secretary of State for Transport (“the Secretary of State”).

In accordance with section 107 of the Planning Act 2008, the Secretary of State had until 18 January 2020 to make a decision on the Development Consent Order (“DCO”) application. However, in order to allow time for the steps below to be taken, the Secretary of State has set a new deadline for a decision on the Application of 18 May 2020. A statement confirming the new deadline for a decision was been made to Parliament on 16 January 2020 in accordance with section 107(7) of the Planning Act 2008.

The Secretary of State would be grateful if the Applicant and other affected parties where highlighted in bold could provide further information or comments on the matters set out below.

Unilateral Undertakings

1. The Secretary of State seeks comments from **Kent County Council** and **Thanet District Council** in relation to their respective Unilateral Undertakings, that were submitted on 9 July 2019 (the final day of the examination), in relation to the appropriateness of RiverOak Fuels being the named party in those Undertakings.
2. The Secretary of State invites views from **Thanet District Council** regarding the level of the financial payments proposed in the Unilateral Undertaking representing the Applicant’s contribution for the Air Quality Station ZH3 and whether that commitment will ensure the air quality in Thanet Air Quality Management Area is not negatively impacted by the Development.

3. The Secretary of State invites views from **Kent County Council** on the acceptability and adequacy of the Applicant's contribution of £139,000 per year for affected schools for 20 years to mitigate and minimise the noise effects on schools.

4. The Secretary of State requests that **the Applicant** provides a new Unilateral Undertaking in favour of Thanet District Council so as to identify correctly the District Council in Schedule 3 as the discharging body for any requirement relating to the Education, Employment and Skills Plan.

5. The Secretary of State invites the views of **Kent County Council** on the proposed mitigation for off-site junction improvements schemes included in the Unilateral Undertaking in favour of the County Council.

Transport/Engagement with public transport operators

6. The Secretary of State invites **the Applicant** to comment and indicate agreement on a revised requirement 7, which is set out at Annex A to this letter. This will impose an obligation on the Applicant to agree a Bus Service Enhancement Scheme, including the enhancement of existing services and the provision of a shuttle bus service.

Transport/Controlled Parking Zones

7. The Secretary of State invites the views of **Thanet District Council** on the acceptability of the Applicant's proposed 890 metres of controlled parking and the assumptions of its costs that would equate to a financial contribution of £231,400 and the provision of an annual payment of this amount for 20 years.

Transport/Public Rights of Way

8. The Secretary of State invites **the Applicant** and **Kent County Council** to provide clarification on the reason for the contradiction in the approach initially adopted by the Applicant in consideration of the costs and methodology regarding the improvements to the Public Right of Way to Manston village to allow pedestrian access.

Compulsory Acquisition ("CA")

9. The Secretary of State requests confirmation or otherwise from **the Secretary of State for Defence** of consent to compulsory acquisition under section 135 of the Planning Act 2008 in relation to Crown land¹.

10. The Secretary of State seeks confirmation or otherwise from **the Government Legal Department** of consent to the compulsory acquisition under section 135 of the Planning Act 2008 in relation to plots 019c and 05b held as Queen's Nominee in respect of *bona vacantia* land.

11. The Secretary of State seeks confirmation or otherwise from both **the Met Office** and **the Secretary of State for Housing, Communities and Local Government** of consent to the compulsory acquisition under section 135 of the Planning Act 2008 in relation to plot 27.

12. The Secretary of State seeks confirmation or otherwise from the **BT Group plc** of agreement to the compulsory acquisition in relation to its Category interests² and that such agreement would not result in any serious detriment to the carrying on of its statutory undertaking.

13. The Secretary of State seeks confirmation or otherwise from **South Eastern Power Networks plc** of agreement to the compulsory acquisition in relation to its Category 1 and / or 2 interest in plots 018a, 018b, 018c, 040, 042, 050d, 050e, 051b, 051c, 053b, 055 and 068 and also a

¹ Plots 018, 018a, 018b, 025, 026, 038, 041, 042, 042a, 044, 045, 045a, 045b and Category 2 and 3 interests in respect of plots 014, 015, 015a, 016a, 017, 019b, 020, 020a, 023, 024, 026a, 027, 028, 036, 037, 039, 040, 040a, 041a, 043, 043a, 046, 047, 047a, 048, 048a, 048b, 049, 049a, 049b, 050, 050a, 050b, 050c, 050d, 050e, 051b, 053a, 053b, 054, 055, 058, 068, 069, 070, 070a, 102, 103, 114 and 114a

² Plots 015, 015a, 015b, 016, 016a, 016c, 017, 019, 019a, 019b, 020, 020a, 021, 022, 023, 024, 025, 026, 028, 036, 037, 038, 039, 041, 045, 048, 048b, 049, 049a, 050, 050a, 050c, 050e, 051b, 053a, 053b, 055, 056, 056a, 059, 068 and 069

Category 1 interest in respect of apparatus additionally in plots 015, 015a, 018, 026, 028, 036, 038, 042a, 043a, 050, 050a, 053, 054, 059, 078, 080, 095, 097, 107, 108, 109, 110, 111, 124, 128, 129, 152, 160, 162, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 181, 182, 183 and 185 and a Category 2 interest in 040b and that such agreement would not result in any serious detriment to the carrying on of its statutory undertaking.

Draft Development Consent Order

14. The Secretary of State invites **the Applicant** and other **Interested Parties** to comment on revised wording in relation to requirement 19 (airport-related commercial facilities) for inclusion in any DCO that might be granted in due course:

“Works Nos 15,16 and 17 must only be developed and used where the local planning authority has agreed in writing that those works have a direct relationship to and support the operation of Works Nos. 1 to 11 and 13”.

15. The Secretary of State seeks the views of **the Applicant, Thanet District Council** (who would have responsibility under any made DCO of discharging such a Requirement) and other **Interested Parties** in relation to the definition of “airport related” in article 2 for inclusion in any DCO that might be granted in due course. This would read:

““airport-related” development means development directly related to and required to support operations at Manston Airport including, but not limited to freight distribution centres, including freight forwarding and temporary storage facilities”.

16. The Secretary of State seeks confirmation that **Historic England** and **the Applicant** are agreed on the amended wording of article 6(3) and requirement 3(3) for inclusion in any DCO that might be granted in due course, and that it should read:

“Article 6(3)

“Deviations are restricted where they are likely to harm heritage assets of national importance and their settings as defined in the development masterplan that are considered worthy of conservation by the relevant planning authority, Kent County Council and Historic England as defined in the further assessment required in requirement 3(3)(a)”.

“Requirement 3(3)

Before a masterplan is submitted the undertaker must—

(a) commission and carry out a further assessment of the historic character of the airfield, historic buildings survey, and archaeological investigation, and assess the heritage significance of heritage assets and their settings;

(b) consider that the conservation of heritage assets of national importance and their settings should be given great weight, and conflict between their conservation and the proposal avoided or minimised; and

(c) consult the relevant planning authority, Kent County Council and Historic England before submitting the masterplan for approval and report on the consultees’ recommendations in the submission.”

17. The Secretary of State seeks confirmation from **the Applicant** that the documents listed in Annex B, which reflect technical notes and other documents submitted in the examination should be added to Schedule 10 (documents to be certified) in any DCO that might be granted in due course.

18. The Secretary of State seeks the comments of **the Applicant** and other **Interested Parties** on the new requirement 21(4) for inclusion in any DCO that might be granted in due course. This would read: *“(4) No passenger air transport departures will take place between the hours of 20.00 and 21.00. There shall only be one passenger air transport arrival between the hours of 16.00 and 17.00; only two passenger air transport departures between the hours of 18.00 and 19.00; and only one passenger air transport departure between the hours of 19.00 and 20.00.”*

19. The Secretary of State seeks the views of **the Applicant, MOD (The Defence Infrastructure Organisation)** and other **Interested Parties** on the wording of new requirement 24 (High Resolution Direction Finder) for inclusion in any DCO that might be granted in due course:

“(1) No part of the authorised development is to commence until a detailed mitigation scheme to provide an alternate High Resolution Direction Finder, prepared by the undertaker and agreed in writing by the Ministry of Defence, has been submitted to, and approved in writing by, the relevant planning authority. The detailed mitigation scheme must include siting location(s) for the alternate High Resolution Direction Finder, full specification for the equipment and infrastructure proposed, the technical performance data necessary to establish safeguarding criteria to protect its subsequent operation and a timetable for its implementation.

(2) The installation of the alternative High Resolution Direction Finder must be carried out in accordance with the scheme approved pursuant to sub-paragraph (1), unless otherwise agreed in writing by the Ministry of Defence and the relevant planning authority.

(3) None of the authorised development is permitted to be constructed within the zone protected by the Ministry of Defence (Manston) Technical Site Direction 2017 while the safeguarding direction is in force without the consent of the Secretary of State for Defence.

(4) No part of the authorised development is to commence unless and until a programme for the decommissioning and removal of the existing High Resolution Direction Finder, prepared by the undertaker and submitted to and agreed in writing by the Ministry of Defence, has been submitted to, and approved in writing by, the relevant planning authority. The decommissioning and removal of the existing High Resolution Definition Finder equipment must be carried out strictly in accordance with the details approved.”

20. The Secretary of State seeks views from **Network Rail** and other **Interested Parties** on the new Protective Provisions at Annex C to this letter to be included in the draft DCO, if made.

Habitats Regulations Assessment

21. The Secretary of State requests that **the Applicant** provide an updated air quality assessment that focusses on the consequential impacts to relevant European sites and features from anticipated changes in air quality. The updated assessment should be informed by the Applicant’s original Transport Assessment which excludes the Manston-Haine link road and should address the inaccuracies and lack of in-combination assessment as raised by Natural England in their representation [REP9-025] to the examination . The updated air quality assessment should be prepared in consultation with **Natural England** in an effort to agree the approach and conclusions regarding likely significant effects and the assessment of adverse effects on the integrity of European sites. A list of the relevant Habitats Regulations examination documents is attached at Annex D.

Climate Change

22. The Secretary of State invites further clarification from **the Applicant** on its assessment of the carbon emissions contribution from Manston Airport representing 1.9% from the total UK aviation emissions of 37.5 Mt CO₂ for 2050. The Climate Change Act 2008, as amended through the Climate Change Act 2008 (2050 Target Amendment) Order 2019, established a net-zero greenhouse gas emissions target in law. The Committee on Climate Change is accordingly advising that the planning assumptions for international aviation should be to achieve net-zero emissions and its emerging advice to the UK Government is that this should be reflected in the UK emerging Aviation Strategy³, which means reducing actual emissions in the aviation sector. While the Secretary of State notes that the Aviation Strategy has not yet been published, he would welcome comments on what the implications of the Committee on Climate Change’s recommendation on international aviation being adopted might be for the Development, and on that basis what further mitigation measures might be

³ <https://www.theccc.org.uk/wp-content/uploads/2019/09/Letter-from-Lord-Deben-to-Grant-Shapps-IAS.pdf>

considered in relation to the Development, so as to ensure the Government would be able to meet its 2050 net-zero emissions target.

Late Representations

23. The Secretary of State invites **the Applicant** and other **Interested Parties** to submit any comments they have on two late representations from Five10Twelve Limited dated 17 October 2019 and 27 October 2019, which it states are an evidenced Rebuttal to the Applicant's Overall Need Case [REP11-013]. The representations are published alongside this letter.

24. The Secretary of State seeks views from **Historic England, Kent County Council, Thanet District Council** and other **Interested Parties** on the late representation from Five10Twelve Limited dated 1 November 2019, which is also published alongside this letter.

25. The Secretary of State invites **the Applicant, York Aviation** and the **Civil Aviation Authority ("CAA")** to submit any comments they have on the late representation from Five10Twelve Limited dated 19 December 2019 relating to correspondence it has received from the CAA. The Secretary of State also invites their comments on the late representation from Five10Twelve Limited dated 20 December 2019 relating to inconsistencies in the application, The representations are published alongside this letter.

26. The Secretary of State also invites comments from **the Applicant** and other **Interested Parties** on the late representation from Five10Twelve Limited dated 23 December 2019 relating to public cost and reputational risk, which is published alongside this letter.

27. The Secretary of State invites comments from **the Applicant** and other **Interested Parties** on the late representation from Mr Chris Lowe dated 6 January 2020 relating to air and noise emissions. The representation is published alongside this letter.

The deadline for any response is 31 January 2020

28. Responses to the matter outlined in this letter should be submitted by email to: manstonairport@planninginspectorate.gov.uk . Please send any hard copy response to Manston Airport Case Team, The Planning Inspectorate, Kite Wing, Temple Quay House, Temple Quay, Bristol, BS1 6PN. If you will have difficulty in submitting a response by the consultation deadline, please inform the Case Team.

29. The responses may be published on the project page for the Manston Airport DCO on the Planning Inspectorate website as soon as possible after the above deadline at: <https://infrastructure.planninginspectorate.gov.uk/projects/south-east/manston-airport/> .

30. This letter is without prejudice to the Secretary of State's decision whether or not to grant development consent for the reopening and development of Manston Airport, and nothing in this letter is to be taken to imply what that decision might be.

Yours faithfully

Susan Anderson
Head of Transport Infrastructure Planning

Revised Requirement 7, Bus Service Enhancement Scheme - Annex A

Operation environmental management plan

7.—(1) No part of the authorised development is to begin operation until an operation environmental management plan for that part has been submitted to, and approved in writing by, the relevant planning authority, following consultation with the relevant highway authority, the Environment Agency, Southern Water, Historic England, the Civil Aviation Authority and Natural England to the extent that it relates to matters relevant to their functions.

(2) The operation environmental management plan must contain—

- (a) chapters addressing:
 - (i) environment and sustainability policies;
 - (ii) legal compliance;
 - (iii) reporting procedures;
 - (iv) obligations to be placed upon third parties including tenants and commercial users of the airport;
 - (v) stakeholder management and complaints procedures;
 - (vi) waste and materials management (including hazardous or abnormal substances);
 - (vii) noise management;
 - (viii) air quality management;
 - (ix) wildlife management;
 - (x) water and drainage;
 - (xi) traffic management and green travel planning;
 - (xii) landscape planting and maintenance;
 - (xiii) fuel storage and transport arrangements; and
 - (xiv) operational use of herbicides to control vegetation;
- (b) plans and policy documents including:
 - (i) environmental spillage plan;
 - (ii) site waste management plan;
 - (iii) carbon minimisation action plan;
 - (iv) operational emergency plan;
 - (v) wildlife hazard management plan;
 - (vi) habitat management plan;
 - (vii) long grass policy;
 - (viii) emergency response and post-crash management plan;
 - (ix) framework travel plan including freight management strategy;
 - (x) public rights of way management strategy;
 - (xi) car park management strategy;
 - (xii) airport management strategy;
 - (xiii) bus service enhancement scheme;**
 - (xiv) airport surface access strategy;
 - (xv) HGV signage strategy;
 - (xvi) lighting strategy substantially to meet the requirements set out in the draft lighting strategy;
- (c) the commitments to aftercare, monitoring and maintenance activities relating to the environmental features and mitigation measures that will be required to ensure the continued effectiveness of the environmental mitigation measures and the prevention of unexpected environmental impacts during the operation of that part of the authorised development;
- (d) a record of the consents, commitments and permissions resulting from liaison with statutory bodies;
- (e) those mitigation measures set out in the register of environmental actions and commitments which are relevant to the operation and maintenance of the authorised development; and

(f) provision for a process under which the contents of the operational environmental management plan are continually reviewed against relevant best practice and any consequent changes are submitted for approval by the local planning authority.

(3) Each part of the authorised development must be operated and maintained in accordance with the approved operation environmental management plan for that part.

(4) No part of the authorised development is to begin operation until a bus service enhancement scheme has been submitted to, and approved in writing by, the local highway authority. This must contain measures to enhance existing bus services and include shuttle bus service provision within the local highway authority area.

Potential Schedule 10 draft DCO Certified Documents – Annex B

Deadline 1

- Updated Volume 6 (containing the RIAA and Ecological Desk Study) [REP1-009]

Deadline 3

- The Applicant's Appendices to Answers to First Written Questions TR020002/D3/FWQ/Appendices - Appendix HE.1.2: Heritage Assets and Public Benefit Paper [REP3-187]
- The Applicant's Appendices to Answers to First Written Questions TR020002/D3/FWQ/Appendices - Appendix CA1.4: Revised Wirelines [REP3-187]
- The Applicant's Appendices to Answers to First Written Questions TR020002/D3/FWQ/Appendices - Appendix LV.1.2: Landscape Master Plan Drawings [REP3-187]
- The Applicant's Appendices to Answers to First Written Questions TR020002/D3/FWQ/Appendices - Appendix LV1.31: Landscape Strategy Plans and Site Sections [REP3-187]
- The Applicant's Appendices to Answers to First Written Questions TR020002/D3/FWQ/Appendices - Appendix LV.1.36: Landscape and Visual Impact Assessment Addendum [REP3-187]
- The Applicant's Appendices to Answers to First Written Questions TR020002/D3/FWQ/Appendices - Appendix LV.1.41: Engineering Drawings building height [REP3-187]
- Revised Construction tables in response to ExA question NS.1.22 and car parking noise assessment in response to ExA question NS.1.25 [REP3-187]

Deadline 4

- Updated noise contour maps [REP4-021]
- Review of potential noise mitigation measures [REP4-022]
- Data on disability adjusted life years [REP4-027]
- Updated ecology noise contour maps [REP4-018]

Deadline 5

- Revised Transport Assessment [REP5-021]
- Updated ES Chapter 14 Traffic and Transport [REP5-022]
- Written summary of oral representation – noise summary and appendices [REP5-010]
- Appendix A Eligibility for Manston Noise Insulation and Ventilation Scheme

Deadline 6

- Addendum to ES Chapter 6 [APP-033] [REP6-016]
- Appendix OP.2.7 – Environmental Statement Addendum addressing the potential introduction of a Public Safety Zone at Manston Airport [REP6-014]
- LVIA addendum Appendices: Appendix A [REP6-026]
- Appendices to Applicant's Responses to Second Written Questions [REP6-014]
- Appendix Ec.2.3 Winter bird survey report 2018-2019
- Appendix Ec.2.5 the Waterbird Disturbance and Mitigation Toolkit 2013
- Appendix Ec.2.6 Resubmitted figures for RIAA
- Appendix Ec.2.8 Technical note: quantification of net gain
- Appendix Ec.2.9 Part A Thanet Parkway Wintering Bird Report
- Appendix Ec.2.9 Part B Report to inform the Habitats Regulation Screening in Appendix Ec. 2.10 Sites of Special Scientific Interest
- Appendix OP.2.11 Part B Wildlife Strike Risk Hazard management for aerodromes

Deadline 7a

- Technical Note: Revised TA - Additional Junction Assessment (Appendix TR3.16) [REP7a-003]
- REP7a-014 – RIAA Appendix I – Modelling and Assessment of Nitrogen and Acid Deposition [REP7a-014]

- Appendices to Answers to Third Written Questions [REP7a-003]
- Appendix NS.3.2 noise contours for schools
- Appendix NS.3.3 Part A: combined noise study
- Appendix NS.3.3 Part B: flow diagram and
- Appendix NS.3.3 Part C: results tables for combined road and air noise; and Appendix NS.3.7 eligibility for Manston noise insulation and ventilation scheme
- Updated RIAA [REP7a-014]
- Appendices to Answers to Third Written Questions [REP7a-002]
- Appendix Ec. 3.4 Response to Natural England Deadline 6 Submission (Annex 3)

Deadline 8

- Technical Note: Airport Passenger Traffic Generation (Appendix ISH7-30) [REP8-017]
- Technical Note: Manston Airport DCO Wider Study Area – Proportional Impact Assessment (Appendix ISH7-32) [REP8-017]
- Technical Note: The Transport Assessment Update (Appendix ISH7–43) [REP8-017]
- Air Quality and Road Traffic Model Inputs [REP8-020]
- Manston Noise and Air Quality Flows – KCC Model Year 2 [REP8-021]
- Road Traffic Model Inputs [REP8-022]
- Noise and Air Quality Traffic Flows KCC Model [REP8-023]
- Appendix ISH4 – 5 – Technical note concerning the effect of the Proposed Development on the May 2019 listing, upgrading and relisting of specific heritage assets in Ramsgate [REP8-014]
- Design Guide [REP8-014]
- Appendix ISH4 – 7 – Historic Environment Issue Specific Hearing Actions Review of ES Assessments: Examination Authority clarification item 7 [REP8-014]

Deadline 9

- Revised Archaeological Written Scheme of Investigation (Fourth issue, 28/06/19) [REP9-008]
- Appendices to Applicant's Responses to the Examining Authority's Fourth Written Questions [REP9-006]
- Appendix Ec.4.2 Technical Note: North Pegwell Bay and Turnstone

Deadline 10

- Technical Note: A256 - Junctions Assessments (Appendix TR.4.1) [REP10-003]
- Applicant's Comments on the RIES [REP10-002]
- Appendix A North Pegwell Bay: Noise and Turnstone Technical Note

Deadline 11

- REAC [REP11-008]

Additional Submissions

- Updated versions of the Noise Mitigation Plan final version submitted as an additional submission on the 9 July 2019 [AS-579, AS-580]

PART 1

FOR PROTECTION OF NETWORK RAIL

1. The following provisions of this Part of this Schedule shall have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 14, any other person on whom rights or obligations are conferred by that paragraph.

In this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of his or her powers under section 8 of the Railways Act 1993;

“Network Rail” means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail Infrastructure Limited and—
any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
any easement or other property interest held or used by Network Rail for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

—(1) Where under this Part Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail shall—

co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

The undertaker shall not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

The undertaker shall not under the powers of this Order extinguish or acquire new rights over any railway property except with the consent of Network Rail.

Where Network Rail is asked to give its consent pursuant to this paragraph, such consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

—(2) The undertaker shall before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work shall not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

The approval of the engineer under sub-paragraph (1) shall not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his or her disapproval of those plans and the grounds of such disapproval the undertaker may serve upon

the engineer written notice requiring the engineer to intimate his or her approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail shall construct it without reasonable delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

When signifying his or her approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes shall be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works shall be carried out at the expense of the undertaker in either case without reasonable delay and the undertaker shall not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his or her reasonable satisfaction.

—(3) Any specified work and any protective works to be constructed by virtue of paragraph 4(4) shall, when commenced, be constructed—

without reasonable delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 4;

under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;

in such manner as to cause as little damage as is possible to railway property; and

so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker shall, notwithstanding any such approval, make good such damage and shall pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

Nothing in this Part shall impose any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

The undertaker shall—

at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and supply the engineer with all such information as he or she may reasonably require with regard to a specified work or the method of constructing it.

Network Rail shall at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part during their construction and shall supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

—(4) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which shall be specified in the notice), the undertaker shall pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail shall assume construction of

that part of the specified work and the undertaker shall, notwithstanding any such approval of a specified work under paragraph 4(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

The engineer shall, in respect of the capitalised sums referred to in this paragraph and paragraph 9(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving shall be set off against any sum payable by the undertaker to Network Rail under this paragraph.

The undertaker shall repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 4(3) or in constructing any protective works under the provisions of paragraph 4(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work and otherwise in connection with the implementation of the provisions of this Part of this Schedule;
- in respect of the employment or procurement of the services of any inspectors, signalers, watch-person and other persons whom it shall be reasonably necessary to appoint for inspecting, signaling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

—(5) In this paragraph-

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 4(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

In order to facilitate the undertaker’s compliance with sub-paragraph (3)-

the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 4(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and

Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus,

but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications pursuant to paragraph 4(1) have effect subject to the sub-paragraph.

If at any time prior to the commencement of regular revenue-earning operations comprised in the authorised development and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

In the event of EMI having occurred –

the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;

Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and

Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6) –

Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;

any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 6.

To the extent that it would not otherwise do so, the indemnity in paragraph 14(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

For the purpose of paragraph (a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

In relation to any dispute arising under this paragraph the reference in 43 (Arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Electrical Engineers.

If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker shall, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

The undertaker shall not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it shall have first consulted Network Rail and it shall comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

Any additional expenses which Network Rail may reasonably and properly incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work shall, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

—(6) The undertaker shall pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part which may be occasioned to or reasonably incurred by Network Rail—

by reason of the construction or maintenance of a specified work or the failure thereof, or

by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work,

and the undertaker shall indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission; and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

Network Rail shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.

The sums payable by the undertaker under sub-paragraph (1) shall include a sum equivalent to the relevant costs.

Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail shall promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

Network Rail shall, on receipt of a request from the undertaker, from time to time provide the undertaker with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part (including any claim relating to those relevant costs).

In the assessment of any sums payable to Network Rail under this Part there shall not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part or increasing the sums so payable. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- any railway property shown on the works and land plans and described in the book of reference;
- any lands, works or other property held in connection with any such railway property; and
- any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

Nothing in this Order, or in any enactment incorporated with or applied by this Order, shall prejudice or affect the operation of Part I of the Railways Act 1993. 18. The undertaker shall give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State’s consent, under article 8 (consent to transfer the benefit of Order) of this Order and any such notice shall be given no later than 28 days before any such application is made and shall describe or give (as appropriate)—

- the nature of the application to be made;
- the extent of the geographical area to which the application relates; and
- the name and address of the person acting for the Secretary of State to whom the application is to be made.

Any difference or dispute arising between the undertaker and Network Rail under this Part of this Schedule shall be referred to and settled by arbitration under article 43 (arbitration).

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