



**The Planning
Inspectorate**

The Planning Inspectorate

National Infrastructure Directorate

Temple Quay House

Temple Quay

Bristol

BS1 6PN

t: 0303 444 5000

e: northdoncasterchord@infrastructure.gsi.gov.uk

Date: 31 July 2012

The Planning Act 2008 (as amended)

**North Doncaster Rail Chord, North of Doncaster,
Near Shaftholme**

**Examining Authority's Report of Findings and
Conclusions**

and

**Recommendation to the
Secretary of State for Transport**

**Dr Pauleen Lane CBE FICE
Examining Authority**

File Ref TR040001

- The application, received on 22 June 2011 was made under section 37 of the Planning Act 2008 as amended (PA 2008) for a Development Consent Order (the Order).
- The applicant is Network Rail Infrastructure Limited (NR).
- The application was accepted for examination on 19 July 2011.
- The examination of the application began on 16 November 2011 and was completed at 17:00 on 2 May 2012.
- The development proposed is a new rail chord, 3.2 kilometres long, running partly on embankment and partly on viaduct to the North of Doncaster over the East Coast Main Line (ECML) railway, linking the Skellow and Askern railway lines together with the construction of a permanent highway overbridge over the ECML to allow the closure of Joan Croft level crossing and other associated works.

Summary of Recommendation: The Examining Authority recommends the Secretary of State to make the Order in the form attached.



ERRATA SHEET – North Doncaster Rail Chord - Ref TR040001

Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for Transport dated 31 July 2012

Corrections agreed by the Examining Authority prior to a Decision being made

<u>Page No:</u>	<u>Correction or query:</u>
3	Para 15 full stop inserted at the end of the sentence/para
4	Para 22 'Including' changed to ' <u>i</u> ncluding' in the 3 rd line
5	Para 23: 'are' inserted after 'plans' in the 1 st line and 'Including' changed to ' <u>i</u> ncluding' in the 4 th line
10	Para 45, 3 rd line: 'DMCB' replaced with 'DM <u>BC</u> '
15	Para. 70, within the quotation: in 3 rd line of quotation, 'level Crossing' replaced with ' <u>L</u> evel Crossings'; 7 th line, superfluous 'l' deleted in 'travell <u>i</u> ng'
16	Para. 79, 1 st line: 'no' replaced with ' <u>N</u> o.'
17	Para. 81, 5 th line: 'AL <u>R</u> CRM' replaced with 'ALCRM'
20	Para. 100, final line: '[REP82]' replaced with '[REP8 <u>1</u>]' Para. 104, 10 th line: '[REP58]' replaced with '[REP5 <u>1</u>]'
21	Para 107 capital 'O' in Hedgerow O fficer in the 4 th line
22	Para. 112, 10 th line: 'Officer <u>r</u> ' replaced with 'Office'
27	Para. 137, 3 rd line: 'Oswton' replaced with 'O <u>w</u> ston'
30	Para. 150, final line: 'REP112' replaced with 'REP77, HR1-3'
32	Para. 155, first line on this page: 'Clydesdate' replaced with 'Clydesda <u>l</u> e' Para. 156, 10 th line: 'Noise Control Plan' replaced with 'Noise and Vibration Management Plan' (c.f. Requirement 8(3)(c) in

Schedule 2 at Appendix F)

55 Second para, 10th line: 'incorporated' replaced with 'incorporationion'

Third para, 5th line: 'update' replaced with 'updated'

Naming of Level Crossings

In order to distinguish between Owston Grange No. 1 Crossing and Honey Lands Lane/Owston Crossing, the word 'Farm' has now been inserted, to read as 'Owston Grange **Farm** No. 1 Crossing' in the references to the crossing proposed to be extended, to be consistent with the DCO and the submissions, in the following locations in the Report: -

Page:	Para:	Line:
15	Section 4.5.5 heading	
15	73	3
15	74	3 and 5
16	78	3
16	79	1
17	81	1
17	86	2
22	112	5 and 8
22	113	7
27	135	5
27	137	3
28	140	4



Dr Pauleen Lane CBE FICE - Examining Authority

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1. INTRODUCTION

1. On 22 June 2011 I, Dr Pauleen Lane, was appointed to exercise the powers and duties under section 55 of the PA 2008 in respect of a decision to accept the application as a Commissioner. Subsequently, in a letter sent on 24 October 2011, the Chair of the former Infrastructure Planning Commission (IPC), Sir Michael Pitt, notified all Interested Parties (IPs) of his decision to appoint myself as the Examining Authority (ExA) to examine this application as a Single Commissioner¹.
2. This document sets out in accordance with section 83(1)(b)(i) of the PA 2008 the ExA's reasons for the recommendation to the Secretary of State for Transport under section 83(1)(b)(ii) of the PA 2008.
3. The proposed development for which consent is required under section 31 of the PA 2008 comprises a new rail chord, 3.2 kilometres long, running partly on embankment and partly on viaduct to the North of Doncaster over the ECML railway, linking the Skellow and Askern railway lines together with the construction of a permanent highway overbridge over the ECML to allow the closure of Joan Croft level crossing and other associated works. It is within England and comprises a nationally significant infrastructure project (NSIP) as defined by section 14 and section 25 of the PA 2008 and associated development defined in section 115 of the PA 2008. The Environmental Statement (ES) 4.3 Vol III Figures give an overview of the scheme layout [Appendix C APP10].
4. The application is Environmental Impact Assessment development as defined by The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 as amended. It was accompanied by an ES which in my view meets the definition given in Regulation 2(1) of these Regulations.
5. The accepted application was advertised by NR and forty-two Relevant Representations were received [REP1 to REP42]. The Rule 4 and Rule 6 letters [PD6] together with the initial assessment of principal issues were issued on 24 October 2011. A preliminary meeting was held on 16 November 2011 at which NR and IPs were able to make representations to the ExA about how the application should be examined. The ExA's procedural decision was issued on

¹ The Infrastructure Planning Commission was abolished on 1 April 2012. The Infrastructure Planning (Transitional Provisions) Direction 2012 makes provision for anything so done by the Commission in relation to an application or proposed application prior to 1 April 2012, to be treated as if it had been done by the Secretary of State, where the Commission had previously been notified under section 46 of the Planning Act 2008 for that proposal.

22 November 2011 [PD7]. This set out the decision about how the application would be examined and the examination proceeded in line with this.

6. Specific Issues hearings were held on the draft DCO, Requirements and Local Impact Report, traffic and highways matters, and a Compulsory Acquisition hearing also took place. One request was received for an Open Floor Hearing which was also held and an accompanied site inspection also took place. Provision was made for the consideration of any s106 undertakings but none were put forward. The ExA also undertook a number of unaccompanied site inspections to view matters referred to in the hearings.
7. A Local Impact Report (LIR) was received from Doncaster Metropolitan Borough Council (DMBC).
8. Two rounds of written questions were put forward by the ExA and a number of additional questions asked under Regulation 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 together with an updated timetable [PD7, PD12].
9. The National Planning Policy Framework (NPPF) was issued by the Department for Communities and Local Government on 27 March 2012 and this was notified to the IPs together with an opportunity to comment on any implications for their previous responses [PD13]. All documents, representations and submissions made together with a note of the Preliminary Meeting and summary notes of the hearings and the accompanied site inspection are available on the website [Appendix C]. The examination closed on 2 May 2012. Appendix A summarises the examination timetable.

2 MAIN FEATURES OF THE PROPOSAL

10. The development proposed is for a new rail chord, 3.2 kilometres long, running partly on embankment and partly on viaduct to the north of Doncaster over the ECML railway, linking the Skellow and Askern railway lines. Associated with the development is the proposed construction of a permanent highway overbridge over the ECML to allow the closure of Joan Croft level crossing and other associated works.
11. The proposed chord is intended to remove slow moving freight trains from a section of the ECML by allowing direct access between the Askern and Skellow lines for trains travelling to/from the east coast ports and the Yorkshire power stations and so avoiding crossing the ECML at grade.

12. The proposed development lies wholly within the boundaries of DMBC and the parishes of Thorpe in Balne, Barnby Dun with Kirk Sandall and Owston. The parishes of Norton and Askern are also affected by the proposed haul routes.
13. The proposal also impacts on the Trans Pennine Trail which crosses the ECML at Joan Croft.

2.1 Designated and Protected Sites

14. The ES and the Report on the Assessment of Effects on Designated Sites or Features of Nature Conservation, Habitats and Water Bodies [APP28, APP31] have not identified any significant impacts on any European or Ramsar sites. Natural England have confirmed to the ExA that they agree that there is no European or Ramsar Site which may be affected by the proposed development [REP40] and I am therefore satisfied that the Competent Authority is not required to undertake an Appropriate Assessment.
15. An assessment of the authorised development on European and Nationally Protected Species is presented in Appendix E.
16. No significant impacts on historic sites were identified [APP29].

2.2 Substantial Changes

17. No substantial changes were proposed by the applicant during the examination of the application to the physical construction although a number of amendments were proposed to the draft DCO [APP5] relating to scope and powers and these are discussed later in this report.

3 POLICY CONTEXT

3.1 PA 2008

18. During the pre-application, acceptance and examination stages of this proposal, no National Policy Statement (NPS) for national networks had been published. No other current NPSs are relevant to this proposal.
19. Further, as no draft NPS has been published during the recommendation stage, this recommendation is made under section 83(1)(b) for the Secretary of State to determine under section 105 of the PA 2008, decisions in cases where no NPS has effect. In this

instance the Secretary of State must have regard to:

- Any Local Impact Report;
- Any matters prescribed in relation to development of a description to which the application relates;
- Any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision.

Principal issues identified and the LIR are considered in Section 4 of this report.

3.2 Planning Background

20. The Planning Statement in the application [APP15] identified the following policy context as relevant to the proposed authorised development:

Planning Policy Statement (PPS) 1 Delivering Sustainable Development;

Planning Policy Guidance (PPG) 2 Green Belts;

PPG 13 Transport

21. And the following policy documents:

Delivering a Sustainable Transport System

Delivering a Sustainable Railway

including the High Level Output Statement (HLOS) for 2009 to 2014 which provides for a 15% increase in the annual passenger kilometres on the ECML and the Route Utilisation Strategies (RUS) for the Strategic National Corridor 10 – London to Yorkshire, the North-East and Scotland.

22. The relevant Regional Spatial Strategy (RSS):

Yorkshire and Humberside RSS to 2026

including policies YH1 and HE1 to optimise use of the Humber Ports, SY1 to improve rail links in South Yorkshire and transport policies T3 and T4 to improve public transport and freight systems. The Secretary of State for Communities and Local Government has announced his intention to revoke Regional Strategies outside London and intends to lay regulations to this effect using powers contained in the Localism Act 2011. This intention has been taken

into account, however legally the Regional Strategy remained a part of the Development Plan on submission of this application, and during and at the conclusion of the examination of this application. It is therefore in my view both relevant and important to this decision.

23. The relevant local plans are:

The Doncaster Unitary Development Plan; and

The draft Doncaster Core Strategy 2011–2026

including Policy 9 in the submission version of the draft Core Strategy on upgrading the ECML and rail transport as an alternative to road haulage and Policies 3 and 4 on Countryside and Flooding to avoid detriment and manage flood risk.

24. These policies were also identified in the LIR received from DMBC together with:

PPS 4 Planning for Sustainable Economic Growth;

PPS 5 Planning for the Historic Environment;

PPS 9 Biodiversity and Geological Conservation;

PPS 23 Planning and Pollution Control;

PPS 24 Planning and Noise;

PPS 25 Development and Flood Risk;

PPG Note 14 Development on Unstable Land.

3.3 Core Strategy

25. The draft Core Strategy for DMBC was considered in the examination initially using the version submitted for examination to the Planning Inspectorate.
26. On 26 March 2012, the Inspector's report into the draft Core Strategy for DMBC was published. This report was issued the day before the final NPPF was published. The Inspector's report highlighted 8 issues upon which the soundness of the Core Strategy depends. Matter 8 refers specifically to the Chord proposal.
27. An amended Core Strategy was adopted by DMBC on 18 May 2012 after the close of the examination.

28. There were no material changes to Policy 9 and the chord was included in the list of major infrastructure schemes in the implementation section which seek to alleviate existing transport issues and support opportunities:

‘North Doncaster Chord, Shaftholme Junction – The construction of a new railway flyover over the East Coast Main Line from the Skellow Line to the Askern Line in the vicinity of Joan Croft Level Crossing in Shaftholme. In addition, the scheme includes closure of Joan Croft level crossing and provision of a new road bridge over the East Coast Main Line.’

29. The reason for delivery is given as:

“At present slow moving freight traffic from Immingham is part routed along a 14-mile stretch of the ECML, which constrains timetabling and can result in delays to passenger services.

Once completed the scheme will solve the network bottleneck between Joan Croft Junction and Temple Hirst Junction and allow operators to increase the speed and frequency of both passenger and freight trains.”

3.4 National Planning Policy Framework (NPPF)

30. During the examination, on 27 March 2012, the NPPF [PD18] was published, paragraph 3 of which notes that the NPPF may be considered both important and relevant to NSIPs where no NPS is in place.
31. In accordance with Annex 3 of the NPPF, the following policy statements have been replaced by the NPPF:
- PPSs: 1, 2, 3, 4, 5, 7, 9, 12, 22, 23, 25 (including the supplement to 25).
- PPGs: 8, 13, 14, 17, 18, 19, 20 and 24
32. A decision was taken by the ExA, following publication of the NPPF, to invite all IPs to make any comments which they felt were necessary on matters arising from the NPPF in relation to this application [PD13]. No further submissions were received which amended earlier representations.

3.5 Green Belt

33. The ECML between DMBC and Selby District Councils forms the eastern boundary of the Green Belt around Sheffield and Leeds conurbations. The chord being constructed to the west of the ECML therefore lies in the Green Belt. The Planning Statement [APP15] makes the case for 'very special circumstances' outweighing the harm to the Green Belt on the basis that the chord is essential railway infrastructure to which there is no alternative.
34. The NPPF retains this test for inappropriate development and also continues the statements in relation to development which may be appropriate in the Green Belt including 'engineering operations' and 'local transport infrastructure..'. The chord is an operational imperative for NR and in physical terms – connecting two lines must occur in the vicinity of those two rail lines – and in capacity improvement terms – the removal of freight traffic from the ECML is essential to meet the objectives of national, regional and local plans.

3.6 Conclusions on the Planning Policy Context

35. There is a clear policy context supporting the principle of the proposed development in facilitating the ease and volume for both passenger traffic on the ECML and freight traffic on the Skellow and Askern Lines in all current local policies and plans and in improving the safety of the rail network. There are issues arising in terms of the impact of the development on local communities in particular, and the relevant policies identify that those should be dealt with by way of mitigation where possible and this is a position supported in the LIR. The mitigation of impacts will be considered in the sections on the Examination Issues and the Order.
36. The DMBC Core Strategy specifically supports the chord proposal and the delivery outputs are supported by the Regional Spatial Strategy and the Department for Transport's (DfT's) current transport policy statements. The NPPF retains the test on very special circumstances in relation to the impact on the Green Belt and the provisions for engineering operations and local transport infrastructure.
37. I consider that the chord proposal is consistent with all current local plans and policies and with the RSS and it does not constitute inappropriate development in the Green Belt as it is engineering operations and local transport infrastructure.

4 EXAMINATION ISSUES AND FINDINGS

4.1 Principal Issues

38. In accordance with section 88 of the PA 2008 the ExA identified the initial principal issues as:

Transport and Highways including

- Impact on travel times, volume and road and rail safety on the ECML, the Askern and Skellow railway branches
- Impact on travel times, volume and road safety on the surrounding highway network
- The possible impact of crossing closures and operational effects on the local community

Landscape and Visual Impacts including

- Impact on the visual landscape of the embankment and the proposed highway bridge at Joan Croft

Compulsory Acquisition including

- Justification for the proposed Compulsory Acquisition of the land, rights and temporary access rights and powers sought by the draft Development Consent Order including possible funding implications

Natural Environment including

- Impacts on protected species, local wildlife and ecology and proposed mitigation measures
- Effects on local drainage measures during construction and operation

Socio-economic Impact including

- Impact on the local and wider economy with particular reference to the local farming community

Construction Impacts including

- Impact of proposed embankment construction, material usage and importation arrangements
- Traffic effects during construction and consideration of alternative arrangements

Planning Policy Context

- The planning policy context for the application in terms of any local, regional and national plans

4.2 Local Impact Report [REP72]

39. The LIR identified specific issues which fell within these categories with particular concerns relating to the impacts on local communities both during construction and operation in relation to travel times, noise, visual impact, loss of trees and hedges and the Joan Croft bridge proposal.

4.3 Principle of Development

40. The relevant and written representations received were overwhelmingly supportive of the principle of the development in order to secure improvements in freight and passenger movement whilst highlighting the need for mitigation measures. Alternatives were considered during the consultation phases and no feasible alternatives were identified for the construction of the chord itself. The initial consultation proposed minor amendments only to the Joan Croft level crossing but this was amended to a road bridge and removal of the level crossing in the final proposal which also resulted in a height reduction in the viaduct supporting the chord.
41. No feasible alternatives were identified to the construction of the chord itself although the LIR and many IPs identified the deletion of the proposed road bridge and the retention of the Joan Croft level crossing as the main alternative for the associated development. A number of parties affected by the closure of the Honey Lands Lane/Owston Grange level crossing [REP10, REP11, REP12 et al] also identified the provision of an underpass along the line of the existing level crossing as an alternative. This will be dealt with in the section on Compulsory Acquisition.

4.4 Environmental Matters

42. The ES lays out a number of matters which are identified as potential impacts such as noise, dust, traffic disruption and disturbance to wildlife. The impacts are to be managed by means of the *Contract Requirements – Environment* which NR propose to incorporate in the contract arrangements for the construction of the chord. *Proposed Requirement 8 of Schedule 2* of the proposed Order implements this arrangement and so does provide a route for mitigation arrangements subject to the following considerations on noise and additional receptors.

4.4.1 Noise

43. During the course of the examination there was considerable discussion on the appropriate methodology for the measure of noise

during the construction phase. NR proposed a measure under BS5228:2009 as impacts of both absolute (in excess of 65dB_{L_{Aeq}} over 12 hours) and increase (> 5dB against background) in noise levels were identified in the ES. DMBC preferred a measure under Minerals Policy 2 (MPS 2) of 55dB_{L_{Aeq}} over 1 hour.

44. No agreement was reached over this matter. There is a provision in the Requirements (*proposed Schedule 2 Requirement 8(3)(c)*) for a Noise and Vibration Management Plan and NR will be required to apply to DMBC for a section 61 agreement under the Control of Pollution Act 1974 (CPA) once construction methods have been finalised with the appointed contractor. The impacts and mitigations for noise during operation were accepted by all parties.
45. I conclude that it will be possible for the impact of noise, especially during the construction stage, to be managed by means of a Noise and Vibration Management Plan and the oversight of DMBC through the CPA.

4.4.2 Environmental Receptors

46. There was agreement on the receptors identified through the scoping process and covered in the ES with the exception of the impact on cattle, especially during calving, which had not been identified prior to the examination. NR and other parties have now identified these as potential receptors. It is expected therefore that these matters will be covered by the *Contract Requirements – Environment* issued by NR as part of *Requirement 8*.
47. Also identified during the examination, with evidence provided by Messrs John H Pickup and Co and Mr Booth subsequently, were a pair of nesting Barn Owls with owlets. These were reviewed by the Doncaster Ringing Group of the British Trust for Ornithology [REP90]. However as the nesting site was identified in excess of 200m from the nearest construction point there is not likely to be a significant impact on the nest. The risk of owls being affected by construction traffic particularly at dawn and dusk should also be covered by the *Contract Requirements – Environment* as before.

4.4.3 Ecology

48. Concern was expressed by DMBC through the LIR, in written representations and at the hearings at the loss of trees and hedgerows during the construction of the chord and through associated highways works. This was based on concerns of both visual amenity and wildlife. Limited mitigation measures were proposed through the ES and DMBC put forward a number of amendments to the draft Order to reduce the scope for removal

and/or require replacements. This issue is considered further in the section on the Order.

49. A specific alternative was put forward in relation to the removal of a section of ancient hedgerow to widen Storrs Lane on the proposed haul route. The alternative was to cross a field between Rockley Lane and Storrs Lane directly and so avoid the widening. However, as the direct route lies outside the limits of the proposed Order and would affect the rights of the land owner and occupier of the field which had not been considered or consulted on it cannot be considered as an alternative for the purposes of this Order.
50. This does not prevent NR reaching a local agreement for such an alternative route with the land owner and occupier and with the consent of the highway authority.
51. Appendix E covers the assessment of impacts on protected species. The *proposed Schedule 2 Requirement 9* of the proposed Order in Appendix F of this report requires the provision, approval and implementation of an Ecological Management Plan to minimise or mitigate these impacts. On this basis Natural England and the Yorkshire Wildlife Trust made no objection to the proposed development [COR13, REP40, REP113].

4.5 Transport Impacts

4.5.1 Highways Matters

52. Concern was expressed by DMBC through the LIR, in written representations and at the hearings by DMBC and by other IPs particularly the local parish councils [REPs3,4,19,34,41,52-57] at the impact on local roads of the construction traffic associated with the development. Associated works 2, 3A, 3B, 4 and 13 are proposed to manage this which consisted mainly of minor road works to improve passing and visibility on the haul routes and junction works particularly to the entrance and egress points on the A19 together with the stopping up of some road sections affected by the viaduct or the embankments.
53. DMBC were particularly concerned that their ability as the highway authority to properly assess the proposed works including temporary works would be impacted by the short notice periods in the draft DCO. NR subsequently proposed additional clauses and amendments to the DCO to amend these provisions to allow for additional time and to put in place arbitration arrangements in the event of a failure to reach agreement within the revised time limits. These will be discussed further in the DCO section.

4.5.2 Joan Croft Level Crossing and Bridge Proposal

54. The existing manned level crossing at Joan Croft is proposed to be closed in favour of an offset road bridge (Associated Work No. 8) with the existing western approach to the level crossing bounded by the Joan Croft cottages stopped up in to a cul de sac. The bridge proposal arose following the first phase of consultation and consideration of NR's general requirements under the Health and Safety at Work Act 1974 to reduce risk where practical on the network. The inclusion of the bridge also allows the overhead line wires on this section of the ECML to be lowered and hence, also the overall height of the viaduct to be reduced. NR submitted a copy of the Joan Croft Level Crossing study [APP12 Section 8] in support of the associated works.
55. The LIR notes the opposition of the DMBC Planning Committee to this proposal although the original officers report proposed that the bridge be supported on road safety grounds primarily. Written representations and the hearings identified concerns that in providing a continuous crossing of the ECML – the only one for some distance either side – the Joan Croft Bridge proposal would increase traffic on Joan Croft, Middle and Rockley Lanes and increase the risk of accidents particularly for pedestrians, cyclists, horse riders and cattle. Joan Croft Lane is part of the Trans Pennine Trail and the lanes are also used for driving cattle.
56. The Office of Rail Regulation (ORR) in both their written representations and at the hearings strongly supported the bridge proposal as being in line with their over-riding objective to improve safety on the rail network [REP27]. It was also considered that by removing a level crossing this supported the speed and volume of passenger traffic on the ECML.
57. NR's representations identified that deleting the Joan Croft Bridge proposal would require an increase in the overall height of the viaduct and the embankment and impact on the visual amenity of the proposal. However, DMBC and others also contended that the proposed road bridge would itself present a visual impact in an otherwise very flat landscape. View points in the landscape and the positions of both the chord and the bridge were included in the accompanied site inspection.
58. Other representations argued that as the Joan Croft Bridge was not an essential element of the chord proposal it should not be considered as associated works and should not form part of the DCO. I consider that as the Bridge assists in delivering the outputs of the scheme – namely the increase in speed and volume of passenger traffic on the ECML – and in reducing the height of the

viaduct so reducing the impact of the scheme on the openness of the Green Belt – it can be considered as associated works.

59. The removal of a level crossing on the ECML and its replacement with a highways bridge assists both safety and movement for all modes and is consistent with the access to the Trans Pennine Trail. Therefore it should be supported unless there is overwhelming evidence to the contrary.
60. Whilst there are legitimate concerns about additional traffic being attracted to the route and the impact of the road improvement on volume and speed, these can be dealt with by means of traffic calming measures both in the layout of the bridge – as proposed in the drawings [APP21] - and by any other appropriate traffic management measures as may be agreed with the highway authority through the Traffic Management Plan.

4.5.3 Askern Line Level Crossings

61. The LIR and many other representations made reference to the impact of the additional freight traffic on the Askern Line. In particular there was concern at the potential for increased downtime at the level crossing in Askern Town Centre. The chord would facilitate the removal of freight trains from the ECML between Joan Croft and the Hambleton junction but is therefore forecast to increase the number of movements by 1 train each way per hour on this section of the Askern line.
62. NR's initial written response to the ExA's first questions [REP43] was that firstly there was no basis for the consideration of the impact on the level crossing at Askern as it was remote from the chord and secondly, that the additional train movements would not result in any additional downtime at any crossing on the Askern Line, including in Askern Town Centre.
63. A report prepared for NR on all the level crossings on the Askern Line [REP76] was received on 16 January 2012 and discussed at the issue specific hearing on Traffic and Highways on 23 January 2012.

4.5.4 Askern Town Centre Crossing (Station Rd / Moss Rd)

64. DMBC, Askern Town Council and other IPs argued that the report did not effectively identify the existing situation regarding delay on the highway network due to existing closures or recognise any further delays likely to result from the additional trains. The report did acknowledge some queuing (27 vehicles westbound backing up past the town centre zebra crossing) and this level of queuing was also observed on the accompanied site inspection during a closure of the crossing [PD21].

65. NR contended that there was no problem with the existing downtimes and that there would be no further delay due to the additional trains.
66. A representation was received from South Yorkshire Fire and Rescue [REP84] expressing concern at potential delays to emergency vehicles associated with the Askern Crossing but without any quantification of the impact. It was particularly concerned at the impact on the Fire Station which is immediately adjacent to the crossing and access by emergency services to the residential areas nearby.
67. It is accepted following NR's response to the first round of questions, that general changes in the volume and nature of traffic on any part of the network is unquantifiable and their duty is to maximise volumes and speeds for rail traffic. However, the North Doncaster Chord proposal is a specific scheme with a specific set of impacts which includes a quantifiable transfer of existing traffic from a section of the ECML on to the Askern Line between defined points and that the Askern Town Centre crossing lies on the affected section.
68. Whilst it is not possible to quantify the direct impact on delay to the local highways network by any additional downtime exactly, it is clear that there is a likely increase and that this will affect the movement of local residents, the accessibility for local businesses and the needs of the emergency services. The report [REP76] submitted by NR did identify a likely maximum increase in downtime as a result of the additional trains per hour as around 1 minute 40 seconds per hour. NR contended that this was insignificant. DMBC and Askern Councillors (Cllrs) White and Jones [REP102] contended that it was significant particularly as a cumulative effect on the existing delay of up to 6 minutes per hour.
69. Askern Town Council Mayor [REP55], Rt Hon Ed Miliband MP [REP64] and other IPs made representations for an alternative 'Green Route' on an unmade lane between the A19 at Norton Common Lane via Fenwick Lane on to Moss Road in Askern. This location was viewed on the accompanied site inspection. However, the proposal lies outside the limits of the order and would require access and other rights which have not been considered or consulted on. It is a matter for DMBC as highway authority to consider if such an alternative route is justified in terms of the existing delay through Askern Town Centre. I do not consider that the proposed chord would itself justify such additional works.

70. However, as NR identify in their response [REP95] and as they also raised during the consultation, there is an opportunity to optimise the operation of level crossings on this section of the Askern Line:

“During consultation, Network Rail has committed to ‘optimising’ down time at Norton, Selby Road, and Askern Level Crossings (see Consultation Report). This will be achieved by the removal of a temporary speed restriction between Thorpe Gates Level Crossing and Haywood Level Crossing improving the Askern approach speed of trains travelling in a northerly direction. Trains travelling in a southerly direction through Askern will not have to slow down before reaching Haywood Level Crossing.”

71. The ORR in their responses [REP98, REP114] identify their willingness to work with NR to assist in improving the safety and operation of all the crossings affected by the proposal.
72. I conclude that it is reasonable for the Requirements in the proposed Order to reflect the need for this additional work to reduce the likely impacts of the development and this will be discussed further in the section on the DCO.

4.5.5 Honey Lands Lane/Owston Grange and Owston Grange Farm No. 1 Level Crossings

73. The draft Order also proposes the closure of the Honey Lands Lane level crossing/Owston Grange and Associated Works No. 5 to the Owston Grange Farm No. 1 crossing. Both crossings lie on the existing Askern Line. Honey Lands Lane/Owston Grange provides the main crossing point for Mr A Ritchie and his cattle to access his farm land on the north and east of the existing Askern Line and is the crossing point for Footpath No. 11. At this point the chord proposed would be approaching the Askern Line from the south-east still on embankment so no at grade crossing could continue.
74. The proposal is to close this crossing entirely and to divert the existing footpath to the north west some several hundred metres to an existing crossing – Owston Grange Farm No. 1. As the chord proposal would still be feeding in to the existing Askern Line at this point but at grade, the existing Owston Grange Farm No. 1 crossing would therefore be extended in width from two parallel rail line widths to effectively three parallel lines width – an increase of approximately 50% in width and hence a significant increase in crossing time. Both temporary and permanent works are required to the crossing to accommodate construction traffic and the operation of the proposed chord.

75. Mr Ritchie argued [REP12, REP30] that the existing Honey Lands Lane/Owston Grange crossing point should be retained and an underpass provided to accommodate his cattle and other users. NR submitted that they had considered all alternatives for this location and that an underpass was not feasible both on cost and construction grounds. In particular that the high water table in this location would mean the lowest point of any underpass would be regularly flooded and impractical to maintain. The question of the alternatives was explored at the Compulsory Acquisition hearing on 17 January 2012. Mr Ritchie made further submissions [REP96] on the feasibility of the underpass, and specifically on the location of the water table.
76. Detailed information was not available on all seasonal water levels in the area but the exploratory boreholes referred to in the Environmental Statement 4.4b Vol IVb [APP12] identified existing ground water at between 1.93 and 2.64m below ground level and standing water was observed in the drainage ditches in the area on the site inspection. I therefore consider it likely that flooding, or at best standing water, would be a persistent problem for any underpass constructed here especially given the clearance required (2.3m on standard construction plus the depth of cover required to carry the railway lines and embankments). Also, the gradients on the approaches would require very extensive approaches on either side and on the north side of the line there would be insufficient room to accommodate a direct approach route, requiring an angled approach unsuited to riders or driving cattle.
77. For these reasons and on likely cost grounds I consider that the provision of an underpass at Honey Lands Lane/Owston Grange crossing is not a feasible alternative.
78. The alternative route put forward by NR for the footpath and cattle route at Honey Lands Lane/Owston Grange is via the existing crossing Owston Grange Farm No. 1 as extended. This would require Mr Ritchie to drive his cattle several hundred additional metres every day and through areas where they may come in to contact with the cattle of other farms, particularly those of Mr Booth, which would be a source of potential conflict and contamination.
79. The Owston Grange Farm No. 1 crossing would also have to be extended in width resulting in additional crossing times (as noted above).
80. This proposal has been noted since the original consultation period as a significant issue arising from the proposed chord. In the Consultation Report the ORR noted that their position was caveated

by the need to demonstrate that the risks at this bridleway crossing have been reduced as far as reasonably practicable [APP26 s5.4.27]. NR use the All Level Crossings Risk Model (ALCRM) system to categorise the risks associated with a level crossing based on the design, location and utilisation of the crossing, ranging from A1 (highest) to M13 (lowest).

81. Owston Grange Farm No. 1 is currently a User Worked Crossing (UWC) which is currently only used by Mr Booth and has no telephone. NR propose to change this to a UWCT – i.e. by adding telephones – to accommodate Mr Ritchie and the bridleway in the permanent works. This changes the ALCRM score to B6 – a higher level than the existing assessment (D12) and therefore contrary to their overriding objective of increasing safety on the railway.
82. NR's own manual (NR/L2/SIG/11201/Mod X01) identifies that for a new UWC "there shall be not normally more than two lines over the crossing".
83. Detailed arrangements for the crossing during construction were still being finalised at the close of the examination but would include a level crossing attendant.
84. Questions were raised on this matter in both written representations and through the hearings and additional questions were asked by the ExA under Rule 17 [PD7, PD12, PD13] in particular on the safety assessment of the crossing proposal both during construction and operation of the chord.
85. NR submitted that [REP112] alternatives have been considered and that this was the most appropriate arrangement for the location taking into account all factors. The ORR also responded on the matter [REP98, REP114] but identified that further work was needed to finalise the proposed arrangements. In particular they noted that the ALCRM scores should not be viewed in isolation and that they had recently undertaken additional review work with NR on the affected crossings. They noted that:

"ORR and Network Rail are still working to agree whether there might be some reasonably practicable additional controls that could be introduced at any of the affected crossings."
86. Legitimate concern therefore remains about the proposed extension to the Owston Grange Farm No.1 crossing and it is appropriate for the Requirements to recognise this if this is to be an acceptable diversionary route for the closure of Honey lands Lane/Owston Grange Level Crossing. These level crossings will be discussed

further in the sections on the Development Consent Order and Compulsory Acquisition.

4.6 Other Matters

87. Representations were received from Askern Town Council Mayor, Cllr Jackson [REP85] on the question of the routing of Heavy Goods Vehicles beyond the end of the specified haul routes and in particular the impact on junctions on the A19. It was identified at the Traffic Issues hearing that this had not been fully considered and NR and DMBC agreed to review the options further as part of the Traffic Management Plan in the Requirements of the proposed Order.

5 THE DRAFT DEVELOPMENT CONSENT ORDER AND REQUIREMENTS²

5.1 The draft Order

88. The draft DCO [APP5] submitted by NR was discussed in two Issue Specific hearings and though specific questions from the ExA together with written representations from the Environment Agency (EA), DMBC and several Affected Persons (APs). The wording of provisions in the draft order generally follows that of orders under the Transport and Works Act and this was generally accepted by all parties as being appropriate save for the concerns raised by DMBC on the impact of the draft provisions in relation to their position as the highway, planning and street authority, relating to deemed consents.
89. Some amendments were then proposed by NR, most of which were welcomed by the IPs concerned but with some issues still remaining. The following sections explain amendments as proposed, whether these are recommended for inclusion in the proposed order and if alternative or additional amendments are recommended.

5.2 Amendments Proposed by Network Rail

90. NR proposed to re-title all the Schedules from an alphabetical label in the draft DCO to a numeric one in line with standard format for Statutory Instruments. Hence *original Schedules A to L* were amended to revised *Schedules 1 to 12* and this approach has been

² The draft DCO refers to the order text submitted with the application to the IPC and dated June 2011 (APP5). *Articles* or *Schedules* referred to as *draft* or *original* versions relate to this copy. The proposed Development Consent Order refers to the order text presented in Appendix F of this report and *proposed* or *revised* *Articles* or *Schedules* relate to this version.

followed in the proposed DCO together with all consequential amendments in the body of the proposed order.

91. In response to questions raised by the ExA and issues raised at the hearing on 17 January 2012, NR proposed *two new articles 6 and 7* (with consequential amendments and renumbering of the remainder including the deletion of original Requirement 11) [REP87].
92. DMBC had expressed concern that it was unreasonable for them to respond as highway/street/planning authority in relation to consents to alterations, closures etc being within a deemed consent arrangement with a time limit of 28 days. NR proposed *new Article 6* to bring together all highways, street works and traffic consent matters and to allow additional time for DMBC to request additional information before the deemed consent operated with a provision of arbitration in the event of a failure to agree.
93. Similarly, DMBC had expressed concern in relation to the original 28 day time limit for their response on approvals as a local planning authority and wording addressing this was also included in the new Article 6.
94. NR also proposed a *new Article 7*, which in summary, applies the appeal provisions under section 78 of the Town and Country Planning Act 1990 to matters requiring consent, agreement or approval under this order. New Article 7 also provides for the removal of references to the IPC in favour of the local planning authority as the discharging body.
95. Both these amendments were welcomed by DMBC and have been included in the proposed DCO presented here together with consequential amendments.
96. *Original Article 23* in the draft DCO (Compulsory Acquisition of Rights) named the IPC as the consenting body for the acquisition of certain rights and the imposition of restrictive covenants. NR proposed that this is amended to the Secretary of State rather than the local planning authority and this amendment is incorporated in the proposed DCO presented here as *revised Article 24*.
97. *Original Article 29(4)(b)* in the draft DCO (Temporary use of land for carrying out the development) contained a provision that NR should not be required to reinstate any ground used during construction. As the land affected may include farm land the ExA questioned whether this was reasonable. NR accepted this point and deleted original subsection (4)(b). The *revised Article 30* in the proposed DCO now contains only the two remaining subsections (previously (4) (a) and (c)) as a new (4) (a) and (b).

5.3 Amendments Proposed by the EA

98. The draft DCO contained *original Article 4* - Disapplication of legislative provisions - which disapplied sections of the Water Resources Act 1991 and the Land Drainage Act 1991. Also included in the draft DCO was *Part 3 of original Schedule L* Provisions for the Protection of the EA.
99. Representations were received from the EA [REP29] questioning the need for *original Article 4* – Disapplication of legislative provisions. Following discussions with the EA, NR proposed to delete the *original Article 4* (with consequential amendments) and also put forward amendments to the Part 3 provisions [REP87]. This would also then require NR to apply to the Dun Drainage Commissioners for any consent required of them. This proposal was welcomed by the EA [REP78, REP80].
100. Consequent on their proposed removal of the *original Article 4*, NR then proposed to delete *Part 3 of original Schedule L* of protections for the EA on the basis that they were redundant following the deletion of *original Article 4*. The EA however were not content with this proposed deletion as they considered that it retained protections important to them and was the basis on which they withdrew their objections to the scheme [REP81].
101. The proposed DCO provides for the deletion of the *original Article 4* and consequential renumbering but retains the *Part 3 provisions of the revised Schedule 12* for the protection of the EA incorporating amendments as detailed in NR submission of 30 January 2012.
102. The EA also proposed additional Requirements in relation to the Flood Risk Assessment (FRA) and in relation to risks associated with piling affecting groundwater or contaminated land [REP29].
103. NR [REP94] accepted the additional Requirement in relation to an approved FRA and this is incorporated in *revised Schedule 2 additional Requirement 13 (1)* with the agreed wording.
104. NR did not accept the proposal in relation to the Requirement associated with piling. The EA's proposed wording would require the approval by the EA of a piling method statement as an express Requirement. NR contended that this matter could be covered by *existing Requirement 8(2)(b)*. There is no substantive disagreement on this matter however I recommend that the inclusion of a Requirement is a clear and direct method of agreeing this element of the scheme and the *proposed Schedule 2* contains *additional Requirement 13(2)* to this effect. The text of this is based on the EA written representation [REP51] but is for direct approval by the EA rather than by the local planning authority.

5.4 Amendments Proposed by DMBC

105. DMBC proposed a number of amendments to the highway and planning authority related powers of the draft DCO (*original Articles 9 – 17 inc.*), including to the deemed consent elements of those provisions. NR rejected these proposed amendments in favour of *new Articles 6 and 7* (discussed before) but did not rule out reaching agreements with DMBC on carrying out certain works by agreement.
106. I agree that the *new Articles 6 and 7* are suitable to permit the highway, planning and street works authority roles to be properly exercised whilst not frustrating the proposed construction and no further amendments to these articles (*revised Articles 10 to 18*) are proposed beyond the consequential amendments noted before.
107. DMBC also proposed amendments to the *original Article 35 – Trees* – which also affect shrubs and hedgerows in the area of the chord and associated works. DMBC made representations on this, including from their Hedgerow Officer, alongside other IPs, at hearings and in response to questions from the ExA and in the LIR [REP72, REP86, REP108]. The potential loss of trees is an important visual consideration in this flat landscape. NR contended that there were significant operational and safety issues to require the inclusion of this Article and not to constrain its powers.
108. I consider that it is for NR to exercise their operational responsibility on such matters but that in this location and in accordance with the need for sustainable development in the NPPF, it is appropriate for NR to give additional consideration to the impact of the loss of trees and shrubs, especially in ancient or longstanding hedgerows.
109. I also consider that in the event that felling or removal is the only option identified then for any trees or shrubs lost during the construction and for the initial 12 month period of the operation of the chord, NR should replant suitable alternative trees or shrubs either in the existing location or in a suitable alternative location as agreed with DMBC. It may be practical to incorporate this within the landscape strategy as outlined in Requirement 4 but that is a matter for NR and DMBC to resolve.
110. Hence, the proposed DCO contains a *revised Article 36* (as renumbered) with *additional subsection (2)(b)* which I recommend for inclusion.
111. DMBC also proposed an amendment to *original Requirement 4(3)(d)* in *original Schedule B* on fencing to protect hedgerows etc to refer to best practice. NR were content to accept this wording and this is incorporated in the *proposed Schedule 2 Requirement 4(3)(d)*.

5.5 Other Amendments

112. As discussed in Section 4 of this report there are outstanding issues in relation to an assessment of the impact of the chord proposal on the level crossings on the Askern Line and in particular on the downtimes of the Askern Town Centre (Station Rd/Moss Rd) crossing and the proposed extension of the Owston Grange Farm No. 1 crossing. NR identified the option for the optimisation of the train handling on this section of the line [REP95] and the need for further work on the detail of the Owston Grange Farm No. 1 crossing [REP106, REP112]. The ongoing consideration of these issues is noted by the Office of Rail Regulation in their responses [REP98, REP114].
113. As both NR and the ORR accept that further consideration on detailed design and implementation is needed I recommend that these matters be dealt with explicitly by way of an additional Requirement, firstly to review the optimisation of the level crossings on the Askern Line between the chord and Norton and secondly for a final review of the operational proposals for the extended crossing at Owston Grange Farm No. 1. In both cases it is appropriate that the determining body should be the ORR but with the information being shared with DMBC as the local highway authority and made publicly available.
114. A *proposed Schedule 2 Requirement 11* is therefore included in the proposed Order replacing the original Requirement 11 deleted as an earlier consequential amendment.

5.6 Conclusions on the Proposed Development Consent Order

115. The proposed Order includes a number of amendments agreed between NR and DMBC and the EA. I have accepted or modified some of the other requested amendments from DMBC and the EA. I have also proposed additional Requirements to be discharged in conjunction with the ORR to assist in the safe and efficient operation of the proposed authorised development and to minimise its impacts on the residents and businesses in the surrounding area. These additional Requirements also affect the judgement to be exercised in respect of Compulsory Acquisition and are integral to the balance of public and private rights being considered.

6 COMPULSORY ACQUISITION MATTERS

6.1 The Draft Order Powers

116. The draft DCO seeks to include Compulsory Acquisition powers for land through *original Article 21 (revised Article 22)* and for other rights over land through *original Articles 23 and 24 (revised Articles 24 and 25)*. Other original (revised) articles affecting rights include:
- 9 (10) Street works
 - 12 (13) Stopping up of streets
 - 14 (15) Temporary stopping up of streets
 - 18 (19) Level crossings
 - 19 (20) Discharge of water
 - 20 (21) Authority to survey and investigate land
 - 26 (27) Acquisition of subsoil or airspace only
 - 27 (28) Acquisition of part of certain properties
 - 28 (29) Rights over or under streets
 - 29 (30) Temporary use of land for carrying out the authorised development
 - 30 (31) Temporary use of land for maintaining authorised development
 - 31 (32) Statutory undertakers
 - 32 (33) Apparatus and rights of statutory undertakers in stopped up streets
 - 33 (34) Recovery of costs of new connections – following removal of apparatus under 31 (32)
117. The Book of Reference (BoR) [APP4] identifies 165 plots of land in Category 1, 11 locations in Category 2 and 7 locations in Category 3. The BoR was amended by Certificates under s.59 of PA 2008 [COR2]
118. The Statement of Reasons [APP4] concludes that sufficient reasons have been given in relation to all the plots of land over which compulsory powers may be exercised under the Order.
119. The wording of the draft Order – broadly following the approach of orders made under the Transport and Works Act – allows for the exercise of acquisition under the Order to a lesser extent than the full powers outlined in the draft. This gives flexibility to the applicant in implementing the Order however the consideration of the draft Order must be on the basis that it is capable of being exercised to the full extent as drafted.
120. It is understood that this approach was taken in the order used for the Docklands Light Railway. The proposed Doncaster North Chord is on a viaduct with embankment approaches on either side. The

land under the viaduct and potentially the land on the embankment slopes could be used for other purposes than just carrying the railway lines – most likely farming. Therefore the option to acquire such rights as may be required and to remove or impose rights (*proposed Articles 24 and 25*) is potentially an appropriate approach in these circumstances having regard to the statutory conditions under s.122 PA 2008.

121. The proposed Order also creates powers of entry over and temporary possession of land for the purposes of maintaining the proposed development (*proposed Articles 5 and 31*). Again, this is a practical approach for railway lines and the embankments and viaduct where major maintenance is required every few years but where other uses of the land under or adjacent to the railway can have productive uses in the interim. These powers do not extend to residential dwellings and are therefore proportionate to the need.

6.2 The Tests for Compulsory Acquisition

122. In summary section 122 and section 123 of the PA 2008 require that the land or rights sought to be acquired compulsorily must be no more than is reasonably required for the development and that there is a compelling case in the public interest for the land to be acquired to be compulsorily.
123. In summary, the public benefit must be balanced against the loss of private rights and the derivation of the public benefit stems from the need for and benefit of the proposed development, together with any associated development. The general considerations are therefore:
- All reasonable alternatives to compulsory acquisition have been explored
 - A clear use for the land must be identified by the applicant
 - Funds for the development must be demonstrated to be available

And

- The ExA must be satisfied that the purpose stated for the acquisition are legitimate and sufficiently justify the interference with the human rights of those affected

to be assessed in accordance with guidance and the legal duties of the ExA.

6.3 The Applicant's Case

124. The applicant's case for Compulsory Acquisition powers is set out in the Statement of Reasons [APP2]. Section 5 of the Statement illustrates the reasons as being:

- for the construction of, or to maintain, protect or renew the authorised development or to provide for the associated development.
- it is not possible to construct the chord without the land or rights to be acquired and that temporary access is required for the worksite and the construction route.

It also states that all reasonable alternatives to the development have been explored.

125. The case of need for the development is illustrated in the Planning Statement [APP15] and the case for funding availability is set out in the Funding Statement [APP3] through the Control Period 4 Delivery Plan. The Chord is identified for funding through the High Level Output Statement by the ORR and the London Capacity Specification for the East Coast route.

126. As land is being acquired from DMBC it would normally be subject to special parliamentary procedures under section 128 of PA 2008 however, as NR is itself a statutory undertaker then the provisions of section 129 apply. The statement also notes that no Crown Land or special category land is affected.

127. The Statement also reviews the articles of the European Convention on Human Rights as implemented by the Human Rights Act 1998. It notes the need for a fair and public hearing by an independent and impartial tribunal with recourse to judicial review under Article 6.

128. It notes the protection for private and family life under Article 8 and to peaceful enjoyment under Article 1 with any interference being proportionate and striking a fair balance between the individuals' rights and the public interest.

129. The statement together with the Planning Statement and the Assessment of Need [APP17] note that procedures under the PA 2008 and rights under the Compulsory Purchase Act 1965 and the Land Compensation Act 1973 make provisions for objections to be

heard by the ExA as an independent tribunal and for challenges to be brought by judicial review in the High Court and so meet the test under the Convention.

6.4 The Affected Persons' (AP's) Cases

130. A number of representations were received in relation to Compulsory Acquisition matters by APs. No specific request was made for a Compulsory Acquisition hearing but the ExA provided for such a hearing in order to test issues raised by the representations and to explore the proposed Compulsory Acquisition provisions in the draft DCO to meet the tests under PA 2008 and the Convention. Further representations were also received from a number of APs following the hearing [REP88, REP90, REP96, REP108].

6.4.1 DMBC [REP34]

131. DMBC raised no objection to the principle of the development or to the Compulsory Acquisition of their land or rights in respect of their sites. This position was confirmed by the ExA with them at the Compulsory Acquisition hearing held on 17 January 2012 [Ref HR 1-3]. The affected sites consist mainly of highway land required for improvements or access.

6.4.2 Thornhurst Leisure Ltd [REP70]

132. Mr Elton Moulds as agent for Thornhurst Leisure Ltd stated that they had no objection to the scheme in principle but were concerned about the impact on visitor numbers to the golf club during construction and the need to reinstate agricultural land at the end of construction. The first point will be dealt with by compensation if loss of trade can be demonstrated. On the second point the ExA raised the question of the lack of reinstatement of agricultural land in the *draft DCO Article 29 (4)(b)*. NR agreed to the deletion of this article and the *proposed DCO* no longer contains this article. Hence, agricultural land temporarily required for the development should be reinstated on completion of the works.

6.4.3 George Alan Booth and Robert Booth [REP68]

133. Mr Elton Moulds as agent for Messrs GA and R Booth stated that their concerns related to the impact on the land drainage of their field required for temporary works and that the increase in traffic in the area would disrupt their activities. Both of these matters can be dealt with by management during the construction process, reinstatement of agricultural land (see note above) and by

compensation in the event of identified loss on completion of the works.

6.4.4 John Philip Dunnington, T N Welburn [REP69]

134. Mr Elton Moulds as agent for Messrs Dunnington and Welburn stated that they had no objection to the principle of the development but were concerned at the impact on the viability of the field affected by the temporary works and the need for appropriate reinstatement. The note above on reinstatement will address this concern and demonstrated loss can be dealt with by means of compensation on completion of the works.

6.4.5 Andrew Richard Booth [REP60, REP73, REP90, REP96]

135. Mr AR Booth is concerned about the impact of the temporary use of land for the haul road on his grazing arrangements. He is also affected by the proposed closure of the Honey Lands Lane/Owston Grange crossing and the potential conflict between his beef herd and Mr Ritchie's dairy cows being diverted to Owston Grange Farm No. 1 crossing. He would prefer an underpass to be provided. Finally, he is also concerned about the impact of the Joan Croft bridge proposal increasing vehicle speed and volumes on Middle Lane which bisects his farm. These issues were further explored at the Compulsory Acquisition, DCO, Traffic and Open Floor hearings [HR1-16].

6.4.6 Mr F D Ritchie, Mr J E Ritchie and T E Ritchie and Sons, Andrew Ritchie [REP30, REP61-63 and REP73, REP96]

136. Mr Elton Moulds made representations on behalf of the Ritchie family who own and/or farm land on both sides of the proposed development. A significant proportion of their land is affected both temporarily and permanently. Their dairy cattle in particular will be significantly impacted both by the loss of grazing area and the closure of Honey Lands Lane/Owston Grange crossing. To access all of the remaining farmland it is necessary to undertake diversions of several hundred metres every day. Mr Andrew Ritchie attended many of the hearings to expand on these points [HR1-16].
137. In particular Mr Ritchie was concerned about the closure of the Owston Grange crossing at Honey Lands Lane and the diversion to the extended Owston Grange Farm No. 1 crossing. He was also concerned at the access arrangements underneath the viaduct adjacent to the proposed Joan Croft Bridge where he considered a 2.5m width to be insufficient for cattle driving and farm machinery. He also considered the proposed car park adjacent to this access

(Plot 36a) to be poorly laid out and in conflict with his access needs. He objected to the proposed Joan Croft Bridge itself as unnecessary, not associated development and likely to lead to increased volume and speed of traffic on Middle Lane which bisects his farm and along which he has to drive cattle. There was also concern at the design of the drainage ditch (Tunholme drain) to the north of the chord adjacent to Plot36a which resulted in excessive land take and that a piped drain was a feasible alternative.

138. Finally he was also concerned at the poor condition of his private crossing known as Ritchie's crossing. This lies outside the Order limits but was an alternative route for access to part of his land but was currently unused due to its poor condition.
139. Mr Moulds made further submissions on behalf of Mr Ritchie and Mr AR Booth [REP96] to press the case for an underpass and this together with Mr Ritchie's other concerns were discussed at the Compulsory Acquisition, DCO, Traffic and Open Floor Hearings [HR1-16]. Mr Moulds, Mr Ritchie and Mr AR Booth all contended that NR had not sufficiently tested the alternatives to the closure of Honey Lands Lane/Owston Grange crossing and that an underpass was feasible and more cost effective.
140. As discussed in the section on Traffic, I explored all these matters in some detail. However, for the reasons set out in Section 4.4, I consider that the underpass is not a feasible alternative. The arrangements for the extended crossing at Owston Grange Farm No. 1 could provide an alternative crossing route but the detail of the design and construction has not been finalised with the ORR [REP98, REP114] and that the mitigation offered by this needs to be finalised before the closure of Honey Lands Lane/Owston Grange. Hence the *proposed Schedule 2 Requirement 11 (2)* is necessary.
141. Following the hearings and the second round of questions [PD12] and additional Rule 17 questions to NR [PD13], arrangements were made between Mr Ritchie and NR to explore the reopening of Ritchie's crossing. As this lies outside the Order limits it cannot be dealt with in the proposed DCO but this access route may assist with mitigation of impacts and losses in respect of any compensation claim arising from the proposed development.
142. Also arising from the hearings and questions further discussions took place between Mr Ritchie and NR on widening the access under the viaduct to 4.5m to allow full farm machinery access and on the layout to the car park proposed for maintenance vehicles on Plot 36a. NR confirmed the amendment to the access [REP89] and at

the close of the examination there was ongoing discussion on the car park layout [REP111, REP112].

143. In response to the ExA's second round of questions the Dun Drainage Commissioners confirmed that the surface drainage ditch was an essential requirement and that a land drain in this location was not feasible [REP110]. NR undertook to resolve drainage difficulties as economically as possible [REP77].
144. The issue of the proposed Joan Croft Bridge was discussed at the Traffic, DCO and Open Floor hearings and the ORR confirmed their support for the bridge [HR15, HR16] as enabling NR to meet their obligations under the Health and Safety at Work Act 1974. As discussed in Section 4 on Traffic and Section 5 on the DCO, I also consider that the bridge is associated development and supports the aims of the development.

6.4.7 Andrew Davenport Parker and Mollie Kathleen Parker [REP66]

145. Mr Elton Moulds made a representation on behalf of Mr Parker which stated that he was not opposed to the principle of the development but was concerned about the need to maintain access to his fields adjacent to Joan Croft Lane and affected by plots 39, 40 and 41. Network Rail undertook to make all reasonable effort to maintain this access during the construction work [REP77]. Any actual losses identified can be dealt with through compensation arrangements on completion of the development.

6.4.8 Louis and Susan Parkin-Coates [REP58 and REP83]

146. Mr Elton Moulds made a representation on behalf of Mr and Mrs Parkin-Coates which stated that they were not opposed to the principle of the development but were concerned about the impact of the Joan Croft Bridge on their fields (plots 54-56) which would render the remaining land uneconomic. The principle of the Bridge has been discussed above. Further concern was expressed about the restriction of access on Applehurst Lane to other rented sites. The financial effects of the loss of land can be dealt with through compensation arrangements on completion of the development.

6.4.9 John Edgar Lloyd Nicholson and Robert Anthony Nicholson [REP65 and REP83]

147. Mr Elton Moulds made a representation on behalf of Mr Nicholson which stated that he was concerned about the need to maintain access to his fields via Applehurst Lane which was part of the haul

route and affected by plots 61-64. A request was also made to increase the width of the underpass of the north viaduct adjacent to Joan Croft to 4m to allow farm machinery access. NR undertook to make all reasonable effort to maintain access during the construction work [REP77] and to provide at least a 4m access under the viaduct. Any actual losses identified can be dealt with through compensation arrangements on completion of the development.

6.4.10 Network Rail Infrastructure Ltd and BRB (Residuary) Ltd [REP82]

148. Network Rail Infrastructure Ltd are the applicant. The ExA asked for clarification on the legal status of BRB (Residuary) Ltd at the Compulsory Acquisition Hearing [HR1-3]. A letter was received indicating that BRB (Residuary) did not appear to have any interests in the sites listed (82-85, 95, 101-103) and that any interests would have passed to Railtrack and hence NR itself.

6.4.11 HJ Banks and Company Ltd [REP47]

149. A representation was received from Jonathan Cooke on behalf of H J Banks and Company Ltd (Banks Group) and Mr Cooke also attended the CA hearing and the site inspection. Banks Group had no objection in principle to the development but objected to the DCO attempting to give NR exclusive access to temporary roads which Banks Group also required for the redevelopment of the Thorpe Marsh power station sites (plots 115, 117). NR also wished to undertake strengthening works to bridges and roadways (plots 107-111a) but had not provided sufficient detail to them. Mr Cooke was also concerned about the access needs of tenants (Mr Nicholson and Mr Parkin-Coates) as discussed above.

150. Mr Cooke indicated that he hoped that agreement could be reached with NR on access and strengthening works. NR also indicated that they did not require exclusive access and at the close of the examination, dialogue was ongoing to reach an agreement on these works [REP77, HR1-3].

151. There is therefore evidence that the exclusive use of the access roads (covering plots 115-119inc) is not an essential element of the authorised development and that there is an objection to this exclusive access from the APs of plots 115 and 117 which had not been resolved at the close of the examination. Granting exclusive rights over the access roads (proposed Article 30(1)(a)(ii)) covered by these plots, conflicts with the needs of Banks Group in respect of

the redevelopment of the Thorpe Marsh site as these are the main access and egress routes for the site.

152. NR have alternative access to the authorised development either from the railway line itself – identified for the delivery of goods and/or removal of materials and through other access points such as Applehurst Lane for Works 1, 11, 12 and 13. There is a case for the setting down and storage space required on plot 114 as this is adjacent to the railway line itself.

6.4.12 The Environment Agency (EA) [REP29]

153. The EA were concerned about the need to protect rights in a number of plots adjacent to Thorpe Marsh. After extensive discussion after the DCO hearing [HR4-7] and in response to further written questions from the ExA [PD12, PD13] the EA removed their objections on the basis that the protective provisions in *draft Schedule L (revised Schedule 12)* were retained and amended as discussed with NR [REP50, REP51, REP78, REP80, REP81, REP97, REP105]. The *proposed Schedule 12 Part 3* includes these amended protections.

6.4.13 Anthony John and Wendy Harrison [REP59]

154. Mr Elton Moulds made representation on behalf of Mr Harrison who owns the bungalow adjacent to plot 27a. They were concerned with access to the property during construction and the impact of noise from the development. NR [REP75] indicated that a noise assessment would be carried out and secondary glazing would be available if necessary and that access would be managed during the construction through the Traffic Management Plan.

6.4.14 Other APs

155. No specific representations were received from the following APs concerning their land or rights:

Dun Drainage Commissioners

Carol Jean Hanley and George Ernest Hanley

W G Braide, D J Page, J E Payling and J Whitfield – mortgagees for Thornhurst Leisure Ltd

David Michael Hall and HSBC Bank as mortgagee for D M Hall

Irene Claybourn and Nicholas Carlisle, Blacker Green Farm

Clydesdale Bank plc as mortgagees for A R Booth

Elba Securities Ltd c/o Able UK Ltd

Joan Croft Cottages – G R, K L, L N, M and R L Brooks, G D Blogg

RWE Npower plc

156. In respect of the Joan Croft Cottages there are potential impacts from the development which would close Joan Croft Lane at the original crossing location making it into a cul-de-sac outside the cottages. There would also then be a view of the proposed Joan Croft Bridge from the front of the cottages. There are also likely to be noise impacts especially during construction. During operation of the authorised development there would be no through traffic outside the cottages. The overall net effect of these changes is likely to be neutral with the exception of the construction noise which will be monitored through the Noise and Vibration Management Plan covered in the *proposed Schedule 2 Requirements*.

6.4.15 Statutory Undertakers

157. A number of other statutory undertakers in addition to those discussed previously may have apparatus affected by the development and were consulted. No response raised any objection to the proposed development or to *draft Article 32 (revised Article 33)* on relocation of their equipment.

6.4.16 Crown Land

158. No Crown Land was identified as affected by the proposed development.

6.5 Overall Conclusion on the Compulsory Acquisition Powers

159. Through the examination process including the written representations, the hearings, the ExA rounds of questions and additional Rule 17 questions, I am satisfied that the proposed development is for a legitimate public purpose. I am satisfied that the Control Period 4 support for the Chord means that funds are available for the development and that each plot has been identified with a clear purpose.

160. I am further satisfied that the public benefits of the proposed development outweigh the potential private disbenefits with the exception of plots 115, 116, 117, 118 and 119.
161. I have deleted these plots from Schedule 10 of the proposed DCO. Plots 115 and 117 fail the test of being required for the development and that the private benefit lost is not outweighed by the public benefit. Plots 116, 118 and 119 form the remainder of the access and egress roads for the Thorpe Marsh site and therefore are consequential on this decision. It is open to NR to reach agreement with H J Banks and Company Ltd, Elba Securities and DMBC for shared use of these access roads if needed and they have already indicated that they intend to do so.
162. I am satisfied that mitigation measures as set out in the ES and to be implemented in the Contract Requirements together with the additional Requirements incorporated in the proposed Order are sufficient to manage the environmental impacts of the proposed development. The proposed Order also contains provisions to ensure that there is adequate monitoring of impacts and contains provisions for remedial actions if any are required.
163. There are significant potential impacts on a number of local farmers – Mr AR Booth, Mr Ritchie, Mr Nicholson and Mr Parkin-Coates in particular. I am satisfied that in respect of the loss of land and/or rights, that alternatives have been explored and that no feasible alternative exists to the loss of these rights. Where consequential losses can be quantified, compensation exists.
164. Finally, in respect of the human rights of the APs, I am satisfied that the examination process including the written representations and the Compulsory Acquisition hearing and all other matters, has ensured a fair and public hearing under Article 6 of the Convention.

7 CONCLUSIONS AND RECOMMENDATION

165. The principle of the proposed North Doncaster (Shaftholme) Chord is supported by all relevant local policies, the relevant RSS and is consistent with national planning policies.
166. The draft Development Consent Order submitted with the application is appropriate for the implementation of the proposed chord subject to the amendments outlined in Section 5 of this report.
167. The amendments provide for appropriate liaison with DMBC as highway, planning and street works authority, give effect to the implementation of mitigation measures and provide for further detailed review of the safety on level crossings affected by the proposed development with the ORR.
168. The Order also provides for the Compulsory Acquisition of land and/or rights and the creation of new rights and these are considered necessary for the implementation of the proposed chord subject to the deletion of plots 115, 116, 117, 118 and 119 where the loss of private rights outweighs the public interests of the development.

7.1 Other Consents

169. A number of other consents are likely to be required in addition to the powers and consents under the terms of the draft DCO and these are outlined in Section 10.0 of the Statement of Reasons [APP4]. The noise impacts requiring consent under section 61 of the Control of Pollution Act 1974 were discussed during the examination. I am satisfied that there are no other matters likely to justify refusal of any consent.

7.2 Recommendation

170. For the reasons set out above I recommend, in accordance with section 83(1)(b) of PA 2008, that the Secretary of State for Transport make the Network Rail (North Doncaster) Order in the form proposed in Appendix F of this report.

APPENDIX A - THE EXAMINATION

The table below lists the main 'events' occurring during the examination and the main procedural decisions taken by the ExA.

Date	Examination Event
16 November 2011	Preliminary Meeting and start of the Examination
20 November 2011	Notification by ExA of the venues, times and dates of Open Floor, Issue Specific and Compulsory Acquisition Hearings, and the arrangements for an accompanied site inspection.
22 November 2011	Notification by ExA of procedural decision including confirmation of the examination timetable and first written questions from the ExA under Rule 8 of the Infrastructure Planning (Examination Procedure) Rules 2010
15 December 2011	<p><u>Deadline for receipt by the ExA of:</u></p> <p>Comments on relevant representations (RRs) (Rule 8(1)(c)(i) and (d)(i) and Rule 3(2)(b))</p> <p>Any summaries of RRs exceeding 1500 words (Rule 8(1)(i))</p> <p>Written representations (WRs) (Rule 8(1)(a) and Rule 10(1) and(2))</p> <p>Any summaries of WRs exceeding 1500 words (Rule 8(1)(i))</p> <p>LIR by all local authorities (Rule 8(1)(j))</p> <p>Responses to ExA's first written questions (Rule 8(1)(b))</p> <p>Notification of wish to be heard at an Open Floor (OF) Hearing by Interested Parties (IPs) (s93(1) PA 2008, Rule 8(1)(f) and Rule 13(1))</p> <p>Notification of wish to be heard at a Compulsory Acquisition (CA) hearing by Affected Persons (APs) (s92(2) (PA 2008) Rule 8(1)(g) and Rule 13(1))</p> <p>Notification of wish to make oral representations on the specific issue or issues being examined at the Issue Specific (IS) Hearing, relating to the draft development consent order (DCO), Requirements, s106 undertaking and related LIR matters, by IPs (s91 (PA 2008) and Rule 8(1)(k)).</p>

20 December 2011	<p><u>Issue of notification by ExA of confirmed date(s) time(s) and place(s) for:</u></p> <p>OF hearings (s93 PA 2008 and Rule 13(3)(a))</p> <p>CA hearing (s92 PA 2008 and Rule 13(3)(b))</p> <p>IS hearings (s91 PA 2008 Rule 13(3)(a) and Rule 8(1)(h))</p> <p>Accompanied site inspection (Rule 16(3))</p> <p><u>Deadline for receipt by the ExA of:</u></p> <p>Legal representations on the conduct of the examination or issues to be considered</p>
16 January 2012	<p>Accompanied site inspection to application site and surrounding area (Rule 16(2))</p> <p><u>Deadline for receipt by the ExA of:</u></p> <p>Comments on WRs and responses to comments on RRs, (including comments on legal representations on the conduct of the examination or issues to be considered) (Rule 8(1)(c) and (d) and Rule 10(5))</p> <p>Comments on LIRs (Rule 8(1)(j))</p> <p>Comments on responses to ExA's first written questions (Rule 8(c)(ii) and(d)(ii))</p> <p>Statements of common ground (SoCG) (Rule 8(1)(e))</p>
17 January 2012 (am)	Compulsory Acquisition hearing in the morning at Askern Town Council
18 January 2012	Issue Specific hearing on DCO, Requirements, s106 undertaking and related LIR matters (Rule 8(1)(h))
23 January 2012	Issue specific hearing on traffic and highways (Rule 8(1)(h))
24 January 2012	Open floor hearing (Rule 8(1)(f))
30 January 2012	<u>Deadline for receipt by ExA of:</u>

Any proposed amendments to the draft DCO, Requirements and s.106 undertakings (Rule 8(1)(k))

Any written summary of the oral case put at the first IS hearing on the draft DCO including Requirements, s.106 undertaking and related LIR matters (Rule 8(1)(k))

Any written summary of the case put orally at the CA hearing (Rule 8(1)(k))

Deadline for IPs to inform the Commission of their intention to be heard at the IS hearing to be held on 31 January 2012

31 January 2012

Second IS hearing (on DCO, Requirements, s106 undertaking and related LIR matters (and traffic and highways if necessary following the hearing held on 23 January 2012) (Rule 8(1)(h)))

7 February 2012

Revised deadline for receipt by ExA of:

Any written summary of the oral case put at the CA hearing held on 17 January 2012 (Rule 8(1)(k))

27 February 2012

Deadline for receipt by ExA of:

Any written summary of the oral case put at the OF hearing held on 24 January 2012 (Rule 8(1)(k))

Any written summary of the oral case put at the IS hearing on traffic and highways held on 23 January 2012 (Rule 8(1)(k))

Any written summary of the oral case put at the second IS hearing held on 31 January 2012 Rule 8(1)(k))

Final DCO, Requirements and executed s106 (Rule 8(1)(K))

26 March 2012

Deadline for receipt by ExA of:

Responses to ExA's second written questions (Rule 8(1)(b)).

Comments on Network Rail's amended draft DCO including draft Requirements (Rule 8(1)(k))

16 April 2012

Deadline for receipt by ExA of:

Comments on responses to ExA's second written questions (Rule 8(1)(d)).

Responses to comments on Network Rail's amended draft DCO including draft Requirements (Rule 8(1)(k)).

Submissions on matters arising from the NPPF in relation to the North Doncaster Rail Chord Application (Rule 8(1)(k)).

Receipt of additional information from Network Rail (Rule 8(1)(k)).

30 April 2012

Deadline for receipt by ExA of:

Comments on additional information from Network Rail (Rule 8(1)(k)).

Comments on submissions arising from the NPPF in relation to the North Doncaster Rail Chord application (Rule 8(1)(k)).

2 May 2012

Close of Examination at 17:00

APPENDIX B – LIST OF THOSE WHO ATTENDED THE HEARINGS

Compulsory Acquisition Hearing

17 January 2012

Name	Organisation
Dr Pauleen Lane	Examining Authority
Kathryn Powell	Infrastructure Planning Commission
Nikita Perepelov	Infrastructure Planning Commission
Austen White	Askern Spa Ward Councillor
Ros Jones	Askern Spa Ward Councillor
Teresa Hubery	Doncaster Metropolitan Borough Council
Wayne Lake	Doncaster Metropolitan Borough Council
Mel Roberts	Doncaster Metropolitan Borough Council
Jonathan Cooke	HJ Banks & Co
Andrew Ritchie	Landowner
Sarah Ritchie	Landowner
Andrew Booth	Landowner
Elton Moulds	John H. Pickup & Co.
Peter Munz	Network Rail
Steve Poole	Network Rail
Paul Tomblin	Network Rail
Michael Walton	Network Rail
Henry Long	Network Rail
Matt Hadlington	Network Rail
Lee Tearle	Bircham Dyson Bell
Saira Kabir Sheikh	Counsel for Network Rail
K. Gummerson	Askern Town Council
R. Gummerson	Askern Town Council
Councillor Alan Jones	Norton Parish Council
Margaret Whitmore	Lancashire County Council

Issue Specific Hearing

DCO, Requirements, s106 undertaking and related LIR matters (Rule 8(1)(h))

18 January 2012

Name	Organisation
Dr Pauleen Lane	Examining Authority
Kathryn Powell	Infrastructure Planning Commission
Nikita Perepelov	Infrastructure Planning Commission

Austen White	Askern Spa Ward Councillor
Ros Jones	Askern Spa Ward Councillor
Teresa Hubery	Doncaster Metropolitan Borough Council
Richard Purcell	Doncaster Metropolitan Borough Council
Wayne Lake	Doncaster Metropolitan Borough Council
Malc Lucas	Doncaster Metropolitan Borough Council
Phil Marran	Doncaster Metropolitan Borough Council
Tim Bryant	Doncaster Metropolitan Borough Council
Trev McDonald	Doncaster Metropolitan Borough Council
John Davies	Doncaster Metropolitan Borough Council
Andy Carnell	Doncaster Metropolitan Borough Council
Lisa Croft	Doncaster Metropolitan Borough Council
Neil Firth	Doncaster Metropolitan Borough Council
Ian Kellett	Doncaster Metropolitan Borough Council
Peter Munz	Network Rail
Steve Poole	Network Rail
Jim Pearson	Network Rail
Anne Galewski	Network Rail
A Guinness	Network Rail
A Rivero	Network Rail
Matt Hadlington	Network Rail
Ian McCulloch	Bircham Dyson Bell
Saira Kabir Sheikh	Counsel for Network Rail
Rachel Jones	Environment Agency
Carol Bolt	Environment Agency
Mark Stalland	Mott McDonald
Joe Turner	National Grid
Illegible Handwriting	Lancashire County Council
G Demming	Lancashire County Council
B Wright	ADAS
Phil (illegible handwriting)	Lancashire County Council
Jill Shaw	Norton Parish Council
Steven Halsall	Lancashire County Council
Claire Hallwood	Lancashire County Council
Sarah Dougherty	Lancashire County Council
M Morrison	Lancashire County Council

Issue specific hearing

Issue specific hearing on traffic and highways (Rule 8(1)(h))

23 January 2012

Name

Dr Pauleen Lane

Kathryn Powell

Organisation

Examining Authority

Infrastructure Planning Commission

Jolyon Wootton	Infrastructure Planning Commission
Teresa Hubery	Doncaster Metropolitan Borough Council
Richard Purcell	Doncaster Metropolitan Borough Council
Wayne Lake	Doncaster Metropolitan Borough Council
Phil Marran	Doncaster Metropolitan Borough Council
Malc Lucas	Doncaster Metropolitan Borough Council
Andy Carnell	Doncaster Metropolitan Borough Council
Neil Firth	Doncaster Metropolitan Borough Council
Peter Munz	Network Rail
Steve Poole	Network Rail
Jim Pearson	Network Rail
David Anderson	Network Rail
Mark Stainland	Network Rail
Gwen Buchan	Network Rail
Henry Long	Network Rail
Salim Patel	Network Rail
David Simmonds	Network Rail
Colin Murphy	Network Rail
Anna McGuinness	Network Rail
Matt Hadlington	Network Rail
Ian McCulloch	Bircham Dyson Bell for Network Rail
Saira Kabir Sheikh	Counsel to Network Rail
Austen White	Askern Spa Ward Councillor
Ros Jones	Askern Spa Ward Councillor
Jane Burtoft	Owston Parish Council
Mike Morgan	Norton Parish Council
Francis Jackson	Askern Town Council
K Gummerson	Askern Town Council
R Gummerson	Askern Town Council
Raymond Grimson	Resident
Elton Moulds	John H. Pickup & Co.
Andrew Booth	Landowner
Andrew Ritchie	Landowner
Reg Arathoon	Morgan Sundall
J Booth	
A Langley	
S MacDonald	
J Gilliver	
G Gracey	Fire Brigades Union

**Open Floor Hearing
24 January 2012**

Name

Dr Pauleen Lane
Kathryn Powell
Jolyon Wootton
Teresa Hubery
Wayne Lake
Malc Lucas
Peter Munz
Steve Poole
Jim Pearson
Henry Long
A Guinness
M Hadlington
Lee Tearle
Saira Kabir Sheikh
Austen White
Ros Jones
Francis Jackson
K Gummerson
R Gummerson
Raymond Grimson
Elton Moulds
Andrew Ritchie
Sarah Ritchie
Matt J Reynolds

A Booth
J Booth
Mr Senior
Mark Staniland
Alan Jones
G Moss
Steve Copp
Duncan Stephenson
Errol Galloway
C Holliday
J Sibbon
G Gracey
J Gullivan
P Amson

Organisation

Examining Authority
Infrastructure Planning Commission
Infrastructure Planning Commission
Doncaster Metropolitan Borough Council
Doncaster Metropolitan Borough Council
Doncaster Metropolitan Borough Council
Network Rail
Network Rail
Network Rail
Network Rail
Network Rail
Network Rail
Bircham Dyson Bell for Network Rail
Counsel for Network Rail
Askern Spa Ward Councillor
Askern Spa Ward Councillor
Askern Town Council
Askern Town Council
Askern Town Council
Resident
John H Pickup & Co.
Landowner
Landowner
South Yorkshire Passenger Transport
Executive
Landowner

Mott MacDonald
DMBC Councillor

South Yorkshire Fire and Rescue

Office of Rail Regulation
Resident

Fire Brigade Union
Brodsworth Parish Council

Second Issue Specific Hearing

Second Issue Specific Hearing on the draft development consent order (DCO), proposed amendments, Requirements, and related local impact report (LIR) matters, held under s.91 of the Planning Act 2008

31 January 2012

Name	Organisation
Dr Pauleen Lane	Examining Authority
Kathryn Powell	Infrastructure Planning Commission
Nikita Perepelov	Infrastructure Planning Commission
Raymond Grimson	Resident
Elton Moulds	John H. Pickup & Co.
Peter Munz	Network Rail
Steve Poole	Network Rail
Henry Long	Network Rail
Michael Walton	Network Rail
Ian McCulloch	Bircham Dyson Bell for Network Rail
Richard Purcell	Doncaster Metropolitan Borough Council
Neil Firth	Doncaster Metropolitan Borough Council
Teresa Hubery	Doncaster Metropolitan Borough Council
Wayne Lake	Doncaster Metropolitan Borough Council
Malc Lucas	Doncaster Metropolitan Borough Council
Phil Marran	Doncaster Metropolitan Borough Council
Tim Bryant	Doncaster Metropolitan Borough Council
Trev McDonald	Doncaster Metropolitan Borough Council
John Davies	Doncaster Metropolitan Borough Council
Mark Staniland	Mott MacDonald
Duncan Stephenson	
Andrew Ritchie	Landowner
Austen White	Askern Spa Ward Councillor
Jim Pearson	
P Hewitt	Askern Town Council
G Moss	
K Gummerson	Askern Town Council
J Booth	
Andrew Booth	Landowner
C Holliday	Resident
M G Serrick	Resident

APPENDIX C – EXAMINATION DOCUMENTS

APPLICATION DOCUMENTS

APP1	<u>1.1 - Application form for Development Consent for NWR (North Doncaster Chord) Order Application</u>
APP2	<u>6.1 - Statement of Reasons for NWR (North Doncaster Chord) Order Application</u>
APP3	<u>6.2 - Funding Statement for NWR (North Doncaster Chord) Order Application</u>
APP4	<u>6.3 - Book of Reference for NWR (North Doncaster Chord) Order Application</u>
APP5	<u>5.1 - Draft Order for NWR (North Doncaster Chord) Order Application</u>
APP6	<u>2.1 - Design Drgs Sections and Overview Plans for NWR (North Doncaster Chord) Order Application</u>
APP7	<u>4.1 - ES Main Statement for NWR (North Doncaster Chord) Order Application</u>
APP8	<u>4.2a - ES Vol. II - Technical Appendices (A-C) for NWR (North Doncaster Chord) Order Application</u>
APP9	<u>4.2b - ES Vol. II - Technical Appendices (D-J) for NWR (North Doncaster Chord) Order Application</u>
APP10	<u>4.3 - ES Vol III Figures for NWR (North Doncaster Chord) Order Application</u>
APP11	<u>4.4a - ES Vol. IV Supporting Documents (1-4) for NWR (North Doncaster Chord) Order Application</u>
APP12	<u>4.4b - ES Vol. IV Supporting Documents (5-8) for NWR (North Doncaster Chord) Order Application</u>
APP13	<u>4.5 - ES Non-Technical Summary for NWR (North Doncaster Chord) Order Application</u>
APP14	<u>1.2 - Copies of Newspaper Notices for NWR (North Doncaster Chord) Order Application</u>
APP15	<u>3.7 - Planning Statement for NWR (North Doncaster Chrod) Order Application</u>
APP16	<u>3.8 - Description of the development for NWR (North Doncaster Chord) Order Application</u>
APP17	<u>3.9 - Assessment of Need for NWR (North Doncaster Chord) Order Application</u>
APP18	<u>5.2 - Explanatory Memorandum for NWR (North Doncaster Chord) Order Application</u>
APP19	<u>North Doncaster Chord list of application documents</u>

APP20	110622 TR040001 Application Cover Letter
APP21	5.4 - Works Plans and Sections for NWR (North Doncaster Chord) Order Application
APP22	2.2 - Plans identifying site for nature conservation of NWR (North Doncaster Chord) Order Application
APP23	2.3 - Plans identifying sites of the historic environment for NWR (North Doncaster Chord) Order Application
APP24	5.3 - Land Plans for NWR (North Doncaster Chord) Order Application
APP25	5.5 - Street Plans for NWR (North Doncaster Chord) Order Application
APP26	3.1 - Consultation Report for NWR (North Doncaster Chord) Order Application
APP27	3.2 - Flood Risk Assessment for NWR (North Doncaster Chord) Order Application
APP28	3.3 - Assessment of Nature Conservation Effects for NWR (North Doncaster Chord) Order Application
APP29	3.4 - Assessment of effects on the Historic Environment for NWR (North Doncaster Chord) Order Application
APP30	3.5 - Assessment of Statutory Nuisances for NWR (North Doncaster Chord) Order Application
APP31	3.6 - European Sites Report for NWR (North Doncaster Chord) Order Application

PROJECT DOCUMENTS

Environmental Impact Assessment

PD1	100906 Doncaster Scoping Opinion Web Version
PD2	Shaftholme Scoping Report web
PD3	101223 TR040001 432068 Doncaster Late Responses

Procedural Decisions

PD4	110719 TR040001-001-Accept Application
PD5	110719 TR040001 ACCEPTANCE CHECKLIST
PD6	111024 TR040001 Rule 4 and 6 Email.doc
PD7	111122TR040001 Rule 8 letter
PD8	111221 TR040001 ExA publicity direction
PD9	111118 TR040001 Doncaster Examination Calendar
PD10	120123 TR040001 final hearing email
PD11	Notice of hearings
PD12	120314 TR040001 Final Timetable

- PD13 [120330 TR040001 NPPF and timetable variation letter](#)
- PD14 [120503 TR040001 Close of Examination letter section 99 of the PA 2008](#)
- PD15 [111220 TR040001 Notification of hearings and site inspection](#)

Other

- PD16 [Doncaster outreach 23 August \(3\)](#)
- PD17 [110809 TR040001 EH Letter](#)
- PD18 [National Planning Policy Framework](#)

Correspondence

- COR1 [110906 TR040001 Ian McCulloch Notification under section 56\(2\) of the Planning Act 2008 \(PA2008\) and Regulation 13 of The Infrastructure Planning \(Environmental Impact Assessment\) Regulations 2009](#)
- COR2 [110923 TR040001 Certificates under section 56, 59 and regulation 13](#)
- COR3 [111028 TR040001 South Yorkshire Fire & Rescue R](#)
- COR4 [120104 TR040001 Northern Gas Networks R](#)
- COR5 [120104 TR040001 JH Pickup & Co on behalf of T E Ritchie regarding site inspection R](#)
- COR6 [120106 TR040001 Barnby Dun with Kirk Sandall Parish Council R](#)
- COR7 [120113 TR040001 Councillor Austen White comments regarding the site inspection R](#)
- COR8 [110909 TR040001 Yorkshire Wildlife Trust plan R](#)
- COR9 [120107 TR040001 Owston Parish Council R](#)
- COR10 [120125 TR040001 SSE Pipelines R](#)
- COR11 [120103 TR040001 Owston Parish Council comments re site inspection R](#)
- COR12 [111104 TR040001 Barnsley Borough Council R](#)
- COR13 [110906 TR040001 Section 56 & Regulation 13 Consultation - Response from Natural England R](#)
- COR14 [111231 TR040001 Jill Shaw comments re site inspection R](#)
- COR15 [120109 TR040001 Letter from Andrew Booth \(R\)](#)
- COR16 [111228 TR040001 letter from John H Pickup & Co \(R\)](#)
- COR17 [120328 TR040001 NHS North Yorkshire and York rec. 28.03.12](#)

Meetings

- PD19 [111116 TR040001 Audio Recording of North Doncaster Preliminary Meeting](#)
- PD20 [111116 TR040001 Preliminary Meeting Note](#)
- Site Inspection (Accompanied) - 16-01-2012 - 10am - North Doncaster**
- PD21 [120116 TR040001 North Doncaster Chord Site Inspection](#)

REPRESENTATIONS

Relevant Representations

- REP1 [Mrs Christine Ann Holliday](#)
- REP2 [Adrian Greaves](#)
- REP3 [Francis Jackson on behalf of Askern Town Council](#)
- REP4 [Raymond Grimson](#)
- REP5 [Paul Howe](#)
- REP6 [Graham Moss](#)
- REP7 [Mrs Jane Mawson](#)
- REP8 [Instalcom on behalf of Global Crossing \(UK\) Telecommunications Ltd](#)
- REP9 [James Stewart-Evans on behalf of Health Protection Agency](#)
- REP10 [Elton Moulds on behalf of T E Ritchie and Sons](#)
- REP11 [Elton Moulds on behalf of F.D Ritchie](#)
- REP12 [Elton Moulds on behalf of J.E Ritchie](#)
- REP13 [Elton Moulds on behalf of J.E.L Nicholson](#)
- REP14 [Elton Moulds on behalf of A.R Booth](#)
- REP15 [Sheila Rogers](#)
- REP16 [Justin Atkin on behalf of Associated British Ports](#)
- REP17 [Mr Matthew J Reynolds on behalf of SYPTE](#)
- REP18 [Yorkshire Water](#)
- REP19 [Austen White](#)
- REP20 [Andrew Booth](#)
- REP21 [Vicky Stirling on behalf of National Grid Plc](#)

REP22 [Phil Brandreth on behalf of The Coal Authority](#)
REP23 [John Booth](#)
REP24 [Andrew Richard Booth](#)
REP25 [Martin John Spoor](#)
REP26 [Elton Moulds on behalf of Gary & Claire Ellis](#)
REP27 [Oliver Stewart on behalf of Office of Rail Regulation](#)
REP28 [Anton Josef Fix](#)
REP29 [Rachel Jones on behalf of Environment Agency](#)
REP30 [Andrew Ritchie](#)
REP31 [Suzanne Bates on behalf of Wakefield Council](#)
REP32 [Michelle Lambert](#)
REP33 [Julie Ann Holman](#)
REP34 [Teresa Hubery on behalf of Doncaster Metropolitan Borough Council](#)
REP35 [Mark Leving on behalf of Passenger Focus](#)
REP36 [Joanne Hodgson on behalf of Yorkshire Wildlife Trust](#)
REP37 [Miss Rachael A Bust on behalf of The Coal Authority](#)
REP38 [Keith Gummerson](#)
REP39 [Mrs J Werrett](#)
REP40 [Chris H. Smith on behalf of Natural England](#)
REP41 [Councillor Ros Jones](#)
REP42 [Mrs G Bell](#)

15 Dec 2011 **Comments on Relevant Representations, Written Representations, Responses to First Written Questions and legal representations on the conduct of the examination or issues to be considered**

REP43 [Network Rail](#)
REP44 [Network Rail](#)
REP45 [Doncaster MBC Responses to ExA First Written Questions](#)
REP46 [UK Power Networks](#)
REP47 [Jonathan Cooke on behalf of Banks Group](#)
REP 48 [Network Rail](#)
REP49 [Laura Evans on behalf of Health and Safety Executive](#)
REP50 [Ms Rachel Jones on behalf of The Environment Agency](#)
REP51 [Ms Rachel Jones on behalf of The Environment Agency](#)

REP52	Barnby Dun with Kirk Sandall Parish Council
REP53	Owston Parish Council
REP54	Norton Parish Council
REP55	Francis Jackson on behalf of Askern Town Council
REP56	Mr David M Telford on behalf of Parish Council of Norton
REP57	Austen White/Ros Jones on behalf of Askern Spa Ward
REP58	Elton Moulds on behalf of Messer's Parkin-Coates
REP59	Elton Moulds on behalf of Mr AJ Harrison
REP60	Elton Moulds on behalf of AR Booth
REP61	Elton Moulds on behalf of JE Ritchie
REP62	Elton Moulds on behalf of FD Ritchie
REP63	Elton Moulds on behalf of TE Ritchie & Sons
REP64	111215 EN040001 Rt Hon Ed Miliband MP
REP65	Elton Moulds on behalf of Nicholson
REP66	Elton Moulds on behalf of Mr AD Parker
REP67	Gill Morgan
REP68	Elton Moulds on behalf of GA & R Booth
REP69	Elton Moulds on behalf of Mr JP Dunnington & TN Welburn
REP70	Elton Moulds on behalf of Thornhurst Leisure Limited
REP71	Anton Fix

Local Impact Report

REP72	Teresa Hubery MSc, PgCert on behalf of Doncaster Metropolitan Borough Council
16 January 2012	Comments on written representations, responses to comments on relevant representations, comments on the local impact report, comments on responses to the ExA first written questions and comments on legal representations on the conduct of the examination or issues to be considered
REP73	120104 TR040001 email from E Moulds re Comment on NR representations on behalf - Ritchie & Booth
REP74	120116 TR040001 Network Rail comments on responses to ExA's first written questions for deadline of 16 January 2012
REP75	120116 TR040001 email from Ian McCulloch (Network Rail comments for WR, LIR & ExA first written questions and Level Crossing Impact)

REP76	120116 TR040001 Network Rail comments on Level Crossing Impacts
REP77	120116 TR040001 Network Rail comments on written representations for deadline of 16 January 2012
REP78	120117 TR040001 Environment Agency comments in respect of Issue Specific, CA Hearings and Site Inspection
REP79	120116 TR040001 Network Rail comments on Local Impact Reports for deadline of 16 January 2012
REP80	120116 TR040001 Environment Agency - proposed amendments to draft DCO for deadline of 30 January 2012
30 January 2012	Proposed amendments to the draft DCO, Requirements and any s106 undertaking, written summary of the oral case put at the first issue specific hearing on the draft DCO, Requirements, any s106 undertaking and related LIR matters, any written summary of the case put orally at the Compulsory Acquisition hearing.
REP81	120130 TR040001 Written summary of the oral case from Environment Agency at the Issue Specific hearing (18 January), submitted for the deadline of 30 January 2012
REP82	120118 TR040001 Network Rail email containing BRB (Residuary) Limited's letter about land interests
REP83	120127 TR040001 Email comments including plans from Elton Moulds for the deadline of 30 January 2012
REP84	120124 TR040001 Comments from South Yorkshire Fire and Rescue to the ExA for the deadline of 30 January 2012
REP85	120130 TR040001 Letter from Cllr Francis Jackson to the ExA for the deadline of 30 January 2012
REP86	120130 TR040001 Written summaries of the oral case from Doncaster MBC at the CA hearing (17 January) and Issue Specific hearing (18 January), and related LIR matters, submitted for the deadline of 30 January 2012
REP87	120130 TR040001 Written summary of the oral case from Network Rail (with draft DCO and commentary attached) submitted for the deadline of 30 January 2012
7 February 2012	Written summary of the oral case put at the Compulsory Acquisition hearing held on 17 January 2012
REP88	120207 TR040001 DNBC comments and written summaries from Traffic and Highways IS hearing
REP89	120207 TR040001 Network Rail written summary of case at CA Hearing and first Issue Specific hearing on DCO Requirements and related LIR matters
REP90	120207 TR040001 John H Pickup and Co statement following

[hearings](#)

27 February 2012 **Any written summary of the oral case put at the Open Floor hearing (24 January 2012), written summary of the oral case put at the issue specific hearing on traffic and highways (23 January 2012) and written summary of the oral case put at the second issue specific hearing (31 January 2012).**

REP91 [120130 TR040001 Written summary of the oral case from South Yorkshire Passenger Transport Executive at the Open Floor hearing, submitted for the deadline of 27 February 2012](#)

REP92 [120123 TR040001 Letter from Jane Burtoft of Owston Parish Council, presented to the ExA at the Issue Specific hearing held on 23 January 2012](#)

REP93 [111223 TR040001 Comments from Alan Piggot, Clerk to Brodsworth Parish Council](#)

REP94 [120227 TR040001 Network Rail Draft Development Consent Order with amendments.DOC](#)

REP95 [120227 TR040001 Network Rail Written summary of case at the traffic and highways Issue Specific Hearing \(23 January\); the Open Floor Hearing \(24 January\) and the final hearing on the draft DCO and LIR matters \(31 January\)](#)

REP96 [120221 TR040001 statement on behalf of Messers Booth 10013301 & Ritchie 10013297](#)

REP97 [120228 TR040001 Environment Agency comments](#)

26 March 2012 **Responses to Examining Authorities second written questions and comments on Network Rail's amended draft DCO including draft Requirements**

REP98 [120323 TR040001 Office of Rail Regulation for the deadline of 26 March 2012](#)

REP99 [120325 TR040001 Askern Town Council for the deadline of 26 March 2012](#)

REP100 [120323 TR040001 John H Pickup & Co for deadline 26 March 2012](#)

REP101 [120323 Tr040001 Parish Council of Norton for deadline 26 March 2012](#)

REP102 [120325 TR040001 Councillors Austen White and Ros Jones for the deadline of 26 March 2012](#)

REP103 [120326 TR040001 NATS submission for the deadline of 26 March 2012 \(R\)](#)

- REP104 [120319 TR040001 Highways Agency submission for the deadline of 26 March 2012 \(R\)](#)
- REP105 [120326 TR040001 Environment Agency submission for the deadline of 26 March 2012 \(R\)](#)
- REP106 [120326 TR040001 Network Rail submission for the deadline of 26 March 2012 \(R\)](#)
- REP107 [120302 TR040001 Network Rail response to Environment Agency comments dated 28 February 2012.doc](#)
- REP108 [120321 TR040001 DMBC response to 2nd round of questions for deadline of 26 March 2012](#)
- REP109 [120313 TR040001 Jane Mawson for the deadline of 26 March 2012](#)
- REP110 [120321 TR040001 Shire Group of IDBs \(Dun Drainage Commissioners\) for deadline of 26 March 2012](#)

16 April 2012 **Comments on responses to Examining Authorities second written questions, responses to comments on Network Rail's amended draft DCO including draft Requirements and submissions on matters arising from the National Planning Policy Framework in relation to the North Doncaster Rail Chord and receipt of additional information by Network Rail**

- REP111 [120404 TR040001 John H Pickup & Co submission for deadline of 16 April 2012](#)
- REP112 [120416 TR040001 Network Rail's submission for the deadline of 16 April 2012](#)
- REP113 [120411 TR040001 Yorkshire Wildlife Trust submission for deadline of 16 April 2012](#)

30 April 2012 **Comments on additional information arising from Network Rail and comments on submissions arising from the National Planning Policy Framework in relation to North Doncaster Rail Chord**

- REP114 [120429 TR040001 Office of Rail Regulation's submission for deadline of 30 April 2012 \(R\)](#)

Adequacy of consultation

- REP115 [110701 TR040001 SELBY LA ADEQUACY OF CONSULTATION REPRESENTATION.pdf](#)
- REP116 [110708 TR040001 BARNSELY ADEQUACY OF CONSULTATION REPRESENTATION.pdf](#)
- REP117 [110705 TR040001 DONCASTER MBC ADEQUACY OF CONSULTATION REPRESENTATION.pdf](#)
- REP118 [110706 TR040001 WAKEFIELD ADEQUACY OF](#)

[CONSULTATION REPRESENTATION.pdf](#)

- REP119 [110706 TR040001 NORTH YORKSHIRE ADEQUACY OF CONSULTATION REPRESENTATION.pdf](#)
- REP120 [110708 TR040001 NOTTSCC ADEQUACY OF CONSULTATION REPRESENTATION.pdf](#)
- REP121 [110719 TR040001 NORTH LINCS ADEQUACY OF CONSULTATION REPRESENTATION.pdf](#)
- REP122 [110708 TR040001 ROTHERHAM ADEQUACY OF CONSULTATION REPRESENTATION.pdf](#)

Hearings

- HR1 [120125 TR040001 Compulsory Purchase hearing audio 1 17Jan](#)
- HR2 [120125 TR040001 Compulsory Purchase hearing audio 2 17Jan](#)
- HR3 [120117 TR040001 Compulsory Acquisition hearing note.pdf](#)
- HR4 [120125 TR040001 Issue Specific hearing audio 2 18Jan](#)
- HR5 [120125 TR040001 Issue Specific hearing audio 3 18Jan](#)
- HR6 [120125 TR040001 Issue Specific hearing audio 1 18Jan](#)
- HR7 [120118 TR040001 DCO Issue Specific hearing note.pdf](#)
- HR8 [120126 TR040001 Issue Specific hearing audio 1 23Jan](#)
- HR9 [120126 TR040001 Issue Specific hearing audio 2 23Jan](#)
- HR10 [120126 TR040001 Issue Specific hearing audio 3 23Jan](#)
- HR11 [120123 TR040001 Issue Specific hearing note \(traffic and highways\).pdf](#)
- HR12 [120203 TR040001 Issue specific hearing audio 1 31 Jan](#)
- HR13 [120203 TR040001 Issue specific hearing audio 2 31 Jan](#)
- HR14 [120131 TR040001 Second DCO hearing note](#)
- HR15 [120125 TR040001 Open Floor hearing audio 24Jan](#)
- HR16 [120124 TR040001 Open Floor hearing note](#)

APPENDIX D – ABBREVIATIONS

AP	Affected Person
ALCRM	All Level Crossings Risk Model
BoR	Book of Reference
CPA	Control of Pollution Act 1974
DCO	Development Consent Order
DMBC	Doncaster Metropolitan Borough Council
DfT	Department for Transport
EA	Environment Agency
ECML	East Coast Main Line
ES	Environmental Statement
ExA	Examining Authority
HLOS	High Level Output Statement
IP	Interested Party
IPC	Infrastructure Planning Commission
LIR	Local Impact Report
NR	Network Rail Infrastructure Ltd
NSIP	Nationally Significant Infrastructure Project
ORR	Office of Rail Regulation
Order	The Development Consent Order
PA 2008	Planning Act 2008 as amended by the Localism Act 2011
PPG	Planning Policy Guidance
PPS	Planning Policy Statement
RSS	Regional Spatial Strategy
RUS	Route Utilisation Strategy
UWC	User Worked Crossing
UWCT	User Worked Crossing with Telephones
WCA	Wildlife and Countryside Act 1992

APPENDIX E PROTECTED SPECIES

European Protected Species

The ES and the Report on the Assessment of Effects on Designated Sites or Features of Nature Conservation, Habitats and Water Bodies [APP7, APP28] have identified the presence on site of the European Protected Species bats and great crested newts (*Triturus cristatus* (GCN)). The bat populations along the chord and haul routes are of district and local value based on Institute of Environmental and Ecological Management (IEEM) and Bat Conservation Trust criteria. The GCN population is of national importance and is located within 500m of the site found in Pond 2 (Railway Pond), Pond 3 and the ditch along the disused railway embankment as shown on the Phase 1 Habitat Map (Figure 2.1 of Document 4.2 – Volume IIA, Ecology Technical Appendix C of the ES, [APP8]).

GCN

Construction of the proposed development will not directly affect amphibian breeding ponds or significant foraging habitat, but will encroach on terrestrial habitat within 50 metres of the breeding ponds, resulting in a temporary and permanent loss of foraging and hibernation around the works area and the potential for increased mortality/injury. The ES has identified measures to mitigate for loss of habitat and to avoid mortality/injury to GCN including; fencing, trapping of amphibians, and reinstatement of lost scrub habitats, plus creation of artificial refugia along the railway embankments and post-project monitoring of at least three years. Following the incorporation of this mitigation, the ES has concluded that there are no significant residual impacts predicted for any of the GCN in the North Doncaster Chord study area during either construction or operation and that there will be no decline in the suitability for amphibians post-construction.

The mitigation measures identified in the paragraph above will need to be carried out under licence from Natural England (paragraph 5.2.1.3 of Document 4.2 – Volume IIA, Ecology Technical Appendix C of the ES, [APP8]). As works are not due to start until at least July 2012 based on current construction programmes, updated population assessments will be needed as part of the licence application process in 2011. A draft application for a GCN Protected Species Licence for Natural England was not provided with the Development Consent Order application documents. The *proposed Schedule 2 Requirement 9* of the proposed Development Consent Order in Section 7 requires the provision, approval and implementation of an Ecological Management Plan to minimise or mitigate these impacts. On this basis, Natural England and the Yorkshire Wildlife Trust made no objection to the proposed development [COR13, REP40, REP113].

Given the available evidence and having regard to Regulation 53 of the Conservation of Habitats and Species Regulations 2010 (as amended) the ExA takes the view that there is no satisfactory alternative but to undertake the exclusion of GCN from the works footprint through the disturbance, capture and transport of GCN; that this will not be detrimental to the maintenance of the population as whilst the identified population of GCN is nationally important, only terrestrial habitats are being directly affected. The ExA also takes the view that it is likely that construction of the chord constitutes an imperative reason of overriding public interest of a social or economic nature due in part at least to the reasons included in this report. In addition, no reasons were identified by Natural England or by any other parties to suggest that a licence would not be granted. The weight of the evidence is therefore that there is no identifiable reason why a Protected Species Licence would not be granted for the disturbance, transport or capture of GCN, nor is there any other reason related to Protected Species Licences, therefore not to make the Order.

Bats

The ES has identified that the area around the proposed scheme location is important for bat foraging and commuting, particularly around the Skellow Line and Applehurst level crossing. However, surveys undertaken by NR have indicated relatively little activity in habitats north of Skellow Line and almost no activity north of Joan Croft crossing nearest the proposed highway bridge area.

Bat species ranging from district (Noctule (*Nyctalus noctula*) and common pipistrelle (*Pipistrellus pipistrellus*)) to local value (Leisler's bats *Myotis leisleri* and soprano pipistrelles *Pipistrellus pipistrellus*, plus some *Myotis* sp. Bats) have been identified within the North Doncaster Chord scheme study area. Potential impacts identified on these bat species include; permanent loss of possible summer roost trees (trees 55-80 identified in Appendix 2 of Document 4.2 – Volume IIA, Ecology Technical Appendix C [APP8]), loss of foraging and commuting habitats due to land take arising from the chord's presence along and adjacent to the Skellow Line, collision risk with trains and disturbance due to night time lighting which is known to alter bats' foraging behaviour and may deter them from feeding. No maternity roosts were found during surveys and no buildings were identified as being suitable for bats and requiring modification or demolition within the survey area.

Mitigation to address collision risks has been identified in the ES in the form of planting arranged along new embankments on the chord to guide the bats up and over the line in the case of Applehurst crossing and under the line at Bell Croft Lane to minimise the risks of collision with trains. Potential impacts arising from night time construction site lighting will be

mitigated through the use of low sodium directional lights where feasible with hoods, cowls, louvers and shields used to direct the light towards working areas and away from commuting and foraging routes. The loss of foraging habitat would be mitigated through replacement planting on a like for like basis in any landscaping. Following incorporated mitigation above, the ES has identified that there are no significant residual impacts predicted for bat species in the North Doncaster Chord study area during either construction or operation.

The ES and Report on the Assessment of Effects on Designated Sites or Features of Nature Conservation, Habitats and Water Bodies (Document 3.3, [APP28]) consider that the chord area, highway bridge or haul routes do not have any trees that will support bat roosts whose removal will require mitigation licensing from Natural England (paragraph 5.2.1.5 of Document 4.2 – Volume IIA, Ecology Technical Appendix C, [APP8]). To avoid any potential incidental breaches of the Conservation of Habitat and Species Regulations 2010 (as amended), trees identified as having the potential to support summer roosts (numbered 55 to 80) will be soft-felled under the supervision of a licensed bat handler in September 2012, timed to avoid bats' most vulnerable periods of maternity. The ES does not consider that any trees are suitable for hibernation. Artificial roost boxes (3 per tree roost destroyed) will also be provided to mitigate any lost roosts, located in suitable locations and in habitat close to the former roost site.

Given the available evidence and having regard to Regulation 9 of the Conservation of Habitats and Species Regulations 2010, the ExA takes the view that there is no evidence that the proposal would result in the deliberate disturbance of bat species which would have a detrimental impact so as to affect the conservation status of the species at a population level. In addition, no reasons were identified by Natural England or by any other parties to suggest that a licence under Regulation 53 of the Conservation of Habitats and Species Regulations 2010 would be required for bat species. The *proposed Schedule 2 Requirement 9* of the proposed Development Consent Order in Section 7 requires the provision, approval and implementation of an Ecological Management Plan to minimise or mitigate these impacts. On this basis, Natural England and the Yorkshire Wildlife Trust made no objection to the proposed development [COR13, REP40, REP113].

Nationally Protected Species

NR has also identified that it will seek a licence under section 10 of the Badgers Protection Act 1992 and under section 16 of the Wildlife and Countryside Act 1981 (WCA). The ES has identified an active badger main sett located 350m south of the scheme boundary. Works associated with the proposed chord would not directly affect the sett but disturbance and injury to badgers may occur if badgers were to cross the work area at

night time. Mitigation measures identified in the ES and Ecology Technical Appendix (Document 4.2a, Volume IIA [APP8]) would result in no significant impact on badgers. The ES has identified that there are records of wild bird species protected under the WCA, located nearby to the proposed development site at Thorpe Marsh Nature Reserve. Grass snakes, also protected under the WCA, have been identified within 100m of the proposed storage compound. Mitigation measures identified in the ES and Ecology Technical Appendix (Document 4.2a, Volume IIA [APP8]) would result in no significant impact on wild birds and grass snakes. Natural England in their relevant representation [REP40] have confirmed that "we are satisfied with the mitigation measures outlined for nationally protected species in the Environmental Statement".

The limited number of relevant European and nationally protected species therefore are sufficiently provided for by the attached Order and present no reason why the Order should not be made.

APPENDIX F THE PROPOSED DEVELOPMENT CONSENT ORDER

201[] No. []

INFRASTRUCTURE PLANNING

NATIONAL NETWORKS, RAILWAYS

The Network Rail (North Doncaster Chord) Order 201[]

Made - - - - 201[]
Coming into force - - 201[]

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An application has been made to the Infrastructure Planning Commission, in accordance with the Infrastructure Planning (Applications and Prescribed Forms and Procedure) Regulations 2009(a), for an order under sections 37, 114, 115, 117(4), 120, 121 and 122 of the Planning Act 2008(b):

Preliminary

Citation and commencement

1. This Order may be cited as the Network Rail (North Doncaster Chord) Development Consent Order 201[] and shall come into force on [] 201[].

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(c);

“the 1965 Act” means the Compulsory Purchase Act 1965(d);

“the 1980 Act” means the Highways Act 1980(e);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(f)

“the 1984 Act” means the Road Traffic Regulation Act 1984(g);

(a) S.I. 2009/2264.

(b) 2008 c. 29.

(c) 1961 c. 33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c. 65). There are other amendments to the 1961 Act which are not relevant to this Order.

(d) 1965 c. 56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c. 34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c. 23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c. 15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c. 39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.

(e) 1980 c. 66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c. 22); sections 1(2), (3) and (4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c. 51); section 1(2A) was inserted, and section 1(3) was amended, by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c. 29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c. 71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11), by section 64(1) (2) and (3) of the Transport and Works Act 1992 (c. 42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c. 37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c. 51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c. 15). There are other amendments to the 1980 Act which are not relevant to this Order.

(f) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c. 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are amendments to the 1981 Act which are not relevant to this Order.

(g) 1984 c. 27.

“the 1990 Act” means the Town and Country Planning Act 1990(a);

“the 1991 Act” means the New Roads and Street Works Act 1991(b);

“the 2008 Act” means the Planning Act 2008(c);

“the 2009 Regulations” means the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(d);

“address” includes any number or address used for the purposes of electronic transmission;

“authorised development” means the development and associated development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;

“the book of reference” means the book of reference certified by the decision-maker as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“the decision-maker” has the same meaning as in section 103 of the 2008 Act;

“the design drawings” means the design drawings submitted under regulation 5(2)(o) of the 2009 Regulations and certified as the design drawings by the decision-maker for the purposes of the Order;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“environmental impact assessment” means the assessment of the environmental impact of the authorised development, the findings of which are recorded in the environmental statement;

“environmental statement” means the environmental statement submitted under regulation 5(2)(a) of the 2009 Regulations and certified as such by the decision-maker for the purposes of this Order;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“the land plans” means the plans certified as the land plans by the decision-maker for the purposes of this Order;

“limits of deviation” means the limits of deviation referred to in article 7;

“maintain” and any of its derivatives include inspect, repair, adjust, alter, remove, reconstruct or replace the authorised development and any derivative of “maintain” shall be construed accordingly;

“Network Rail” means Network Rail Infrastructure Limited;

“Order land” means the land shown on the land plans which is within the limits of land to be acquired or used and described in the book of reference;

“the Order limits” means the limits of deviation shown on the works plans and the limits of land to be acquired or used shown on the works plans and the land plans;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(a);

-
- (a) 1990 c. 8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c. 29) (date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
- (b) 1991. c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
- (c) 2008 c. 29.
- (d) S.I. 2009/2264

“relevant planning authority” means The Doncaster Metropolitan Borough Council;

“the sections” means the sections included with the works plans and certified as the sections by the decision-maker for the purposes of this Order;

“statutory undertaker” means any person falling within section 127(8), 128(5) or 129(2) of the 2008 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“the street plans” mean the plans certified as the street plans by the decision-maker for the purposes of the Order;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“the works plans” means the plans certified as the works plans by the decision-maker for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in Network Rail’s railway undertaking.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development shall be taken to be measured along that work.

(4) All areas described in square metres in the Book of Reference are approximate.

(5) References in this Order to points identified by letters, with or without numbers, shall be construed as references to points so lettered on the street plans.

(6) References in this Order to numbered works are references to the works as numbered in Schedule 1.

Incorporation of Railways Clauses Acts

3.—(1) The following provisions of the Railways Clauses Consolidation Act 1845**(b)** shall be incorporated in this Order—

section 46 (crossing of roads – level crossings), subject to paragraph (4) and article 18 (level crossings);

section 58 (company to repair roads used by them), except for the words from “and if any question” to the end;

section 61 (company to make sufficient approaches and fences to highways crossing on the level);

section 68 (accommodation works by company);

section 71 (additional accommodation works by owners), except for the words “or directed by such justices to be made by the company” and “or, in case of difference, as shall be authorised by two justices”;

sections 72 and 73 (supplementary provisions relating to accommodation works);

section 77 (presumption that minerals excepted from acquisition of land);

(a) 1981 c. 67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). There are other amendments to the 1981 Act which are not relevant to this Order.

(b) 1845 c. 20.

sections 78 to 83, 85 to 85E and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923(a); and

section 105 (carriage of dangerous goods on railway), except for the words from “and if any power” to “for every such offence”.

(2) The following provisions of the Railways Clauses Act 1863(b) shall be incorporated in this Order—

sections 5 and 7 (level crossings); and

section 12 (signals, watchmen etc.).

(3) In those provisions, as incorporated in this Order—

“the company” means Network Rail;

“goods” includes any thing conveyed on the railway authorised to be constructed by this Order;

“lease” includes an agreement for a lease;

“prescribed”, in relation to any such provision means prescribed by this Order for the purposes of that provision;

“the railway” means any railway authorised to be constructed by this Order and any other authorised development; and

“the special Act” means this Order.

(4) In section 46 of the Railways Clauses Consolidation Act 1845, as incorporated in this Order, for the proviso there shall be substituted “Provided always that, with the consent of the highway authority and subject to such conditions as the authority may reasonably impose, the railway may be carried across a highway on the level”.

Principal powers

Development consent etc. granted by the Order

4.—(1) Subject to the provisions of this Order and to the requirements in Schedule 2 (requirements) attached to this Order Network Rail is granted development consent for the authorised development to be carried out within the Order limits.

(2) Subject to article 7 (limits of deviation) the authorised development shall be constructed in the lines and situations shown on the works plans and in accordance with the levels shown on the sections.

Maintenance of authorised development

5. Network Rail may at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order, provides otherwise.

Procedure in relation to certain approvals, etc.

6.—(1) In this article—

“plans” includes sections, drawings, specifications and particulars (including descriptions of methods of construction)

(2) Where an application is made to the relevant planning authority, a highway authority, a street authority, a traffic authority or the owner of a sewer for any consent, agreement or approval required under any of the provisions of this Order such application shall, where appropriate, be

(a) 1923 c. 20.

(b) 1863 c. 92.

accompanied by proper and sufficient plans of the proposal and such consent, agreement or approval shall, if given, be in writing and may be given subject to such reasonable terms and conditions as the authority or owner may require and shall not be unreasonably withheld.

(3) If, within 28 days after the application has been submitted to the authority or owner, it has not intimated its disapproval and the grounds of disapproval, it shall be deemed to have approved them.

(4) In the event of any refusal or disapproval by the authority or owner, Network Rail may re-submit a revised application, or revised plans in support of the original application, and, in that event, if the authority or owner has not intimated its refusal or disapproval and the grounds of refusal or disapproval within 28 days of the revised application or of revised plans being submitted, it shall be deemed to have given its consent or agreement to, or its approval of, them.

(5) Network Rail shall not carry out the proposal until such plans have been approved or are deemed to have been approved or have been settled by arbitration.

Further provision as to approvals, etc, under Schedule 2

7.—(1) Where the application is for a consent, agreement or approval required by a requirement under Schedule 2, the following provisions apply, so far as they relate to a consent agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission, as if the requirement was a condition imposed on the grant of a planning permission—

- (a) sections 78 (other than paragraph (a) of subsection (2)) and 79 of the 1990 Act (right of appeal in relation to planning decisions)
- (b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

Limits of deviation

8. In carrying out the authorised development Network Rail may—

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans; and
- (b) deviate vertically from the levels of the authorised development shown on the sections—
 - (i) to any extent not exceeding 2 metres upwards; or
 - (ii) to any extent downwards as may be found to be necessary or convenient.

Benefit of Order

9.—(1) The provisions of this Order conferring powers on Network Rail shall have effect solely for the benefit of Network Rail.

(2) Paragraph (1) is—

- (a) subject to paragraph (5) of article 23 (compulsory acquisition of rights) of this Order; and
- (b) does not apply to the benefit of the consent granted by this Order for works for the benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

Streets

Power to alter layout, etc., of streets

10.—(1) Network Rail may for the purposes of the authorised development alter the layout of or carry out any works in the street specified in column (1) of Schedule 3 (streets subject to temporary alteration of layout) in the manner specified in relation to that street in column (2).

(2) Without prejudice to the specific powers conferred by paragraph (1) but subject to paragraph (3), Network Rail may, for the purposes of constructing and maintaining the authorised development, alter the layout of any street within the Order limits and the layout of any street having a junction with such a street; and, without limiting the scope of this paragraph, Network Rail may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of any such kerb, footway, cycle track or verge;
- (c) reduce the width of the carriageway of the street;
- (d) make and maintain crossovers, sidings and passing places.

(3) Network Rail shall restore to the reasonable satisfaction of the street authority any street that has been temporarily altered under this article,.

(4) The powers conferred by paragraph (2) shall not be exercised without the consent of the street authority; but such consent shall not be unreasonably withheld.

Street works

11.—(1) Network Rail may, for the purposes of the authorised development, enter upon so much of any of the streets specified in Schedule 4 (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b) (c) and (d).

(2) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

Construction and maintenance of new or altered streets

12.—(1) Any street to be constructed under this Order shall be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed with the highway authority, shall be maintained by and at the expense of Network Rail for a period of 12 months from its completion and at the expiry of that period by and at the expense of the highway authority.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street shall, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed with the street authority, be maintained by and at the expense of Network Rail for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(3) Paragraphs (1) and (2) do not apply in relation to the structure of any bridge or tunnel carrying a street over or under any railway of Network Rail and except as provided in those paragraphs Network Rail shall not be liable to maintain the surface of any highway under or over which the authorised development shall be constructed, or the immediate approaches to any such highway.

(4) Unless otherwise agreed in writing by Network Rail and the highway authority, the term “structure” in paragraph (3) includes, in relation to Work No. 8, all of the features referred to in the description of that work in Schedule 1.

(5) In any action against Network Rail in respect of loss or damage resulting from any failure by it to maintain a street under this article, it shall be a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that Network Rail had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(6) For the purposes of a defence under paragraph (4), the court shall in particular have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether Network Rail knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street;
- (e) where Network Rail could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that Network Rail had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that Network Rail had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

(7) Nothing in this article shall—

- (a) prejudice the operation of section 87 of the 1991 Act (prospectively maintainable highways); and Network Rail shall not by reason of any duty under this article to maintain a street be taken to be a street authority in relating to that street for the purposes of Part 3 of that Act; or
- (b) have effect in relation to the street works with regard to which the provisions of Part 3 of the 1991 Act apply.

Stopping up of streets

13.—(1) Subject to the provisions of this article, Network Rail may, in connection with the carrying out of the authorised development, stop up each of the streets specified in columns (1) and (2) of Schedule 5 (streets to be stopped up) to the extent specified, by reference to the letters and numbers shown on the street plans, in column (3) of that Schedule.

(2) No street specified in columns (1) and (2) of Schedule 5 shall be wholly or partly stopped up under this article unless—

- (a) the new street to be constructed and substituted for it, which is specified in column (4) of that Part of that Schedule, has been constructed and 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 subsequently maintained by Network Rail, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

(3) Where a street has been stopped up under this article—

- (a) all rights of way over or along the street so stopped up shall be extinguished; and

(b) Network Rail may appropriate and use for the purposes of the authorised development so much of the site of the street as is bounded on both sides by land owned by Network Rail.

(4) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article is subject to article 32 (apparatus and rights of statutory undertakers in stopped up streets).

Application of the 1991 Act

14.—(1) Works carried out under this Order in relation to a highway which consists of or includes a carriageway shall be treated for the purposes of Part 3 of the 1991 Act (street works in England and Wales) as major transport works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works); or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64 of the 1980 Act (dual carriageways and roundabouts).

(2) The provisions of the 1991 Act mentioned in paragraph (3) (which, together with other provisions of that Act, apply in relation to the carrying out of street works) and any regulations made, or code of practice issued or approved, under those provisions shall apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by Network Rail under the powers conferred by article 14 (temporary stopping up and diversion of streets) and the carrying out of street works under article 10 (street works) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(3) The provisions of the 1991 Act referred to in paragraph (2) are—

- section 54 (advance notice of certain works), subject to paragraph (4);
- section 55 (notice of starting date of works), subject to paragraph (4);
- section 57 (notice of emergency works);
- section 59 (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- section 68 (facilities to be afforded to street authority);
- section 69 (works likely to affect other apparatus in the street);
- section 76 (liability for cost of temporary traffic regulation);
- section 77 (liability for cost of use of alternative route); and

all such other provisions as apply for the purposes of the provisions mentioned above.

(4) Sections 54 and 55 of the 1991 Act as applied by paragraph (3) shall have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

Temporary stopping up of streets

15.—(1) Network Rail may, during and for the purposes of carrying out the authorised development, temporarily stop up, alter or divert any existing street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without prejudice to the scope of paragraph (1), Network Rail may use any street stopped up under the powers conferred by this article within the Order limits as a temporary working site.

(3) Network Rail shall provide reasonable access for pedestrians going to or from premises abutting a street affected by the exercise of the powers conferred by this article if there would otherwise be no such access.

(4) Without prejudice to the generality of paragraph (1), Network Rail may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 6 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the street plans in column (3) of that Schedule.

(5) Network Rail shall not temporarily stop up, alter, divert or use as a temporary working site—

- (a) any street specified as mentioned in paragraph (4) without first consulting the street authority; and
- (b) any other street, without the consent of the street authority.

(6) Any person who suffers loss by the suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Access to works

16. Network Rail may, for the purposes of the construction or maintenance of the authorised development with the approval of the relevant planning authority, after consultation with the highway authority form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as Network Rail reasonably requires for the purposes of the authorised development.

Agreements with street authorities

17.—(1) A street authority and Network Rail may enter into agreements with respect to—

- (a) the construction of any new street, including any structure carrying the street over or under a railway authorised by the Order;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) the maintenance of the structure of any bridge or tunnel carrying a street over or under any authorised railway;
- (d) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
- (e) the carrying out in the street of any of the works referred to in article 10(1) (street works).

(2) Such an agreement may, without prejudice to the generality of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between Network Rail and the street authority specifying a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

Construction of bridges and tunnels

18. Any bridge or tunnel to be constructed under this Order for carrying a highway over or under a railway shall be constructed in accordance with the plans and specifications approved by the highway authority.

Level crossings

19.—(1) Subject to paragraph (3), the level crossings specified in columns (1) and (2) of Schedule 7 (replacement and closure of road level crossings) shall be stopped up and discontinued.

(2) Subject to paragraph (3), upon the stopping up and discontinuance of the level crossing referred to in paragraph (1), any right of way over the part of the street specified in relation to it in column (3) of Schedule 7 shall be extinguished to the extent specified, by reference to the letters and numbers shown on the street plans, in column (3) of that Schedule.

(3) Paragraphs (1) and (2) shall not take effect with respect to the level crossing specified in Schedule 7 until the new street to be substituted for it, which is specified in column (4) of that Part of the Schedule, has been constructed and completed to the reasonable satisfaction of the highway authority and is open for use..

(4) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article is subject to article 32 (apparatus and rights of statutory undertakers in stopped up streets).

Supplemental powers

Discharge of water

20.—(1) Network Rail may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by Network Rail pursuant to paragraph 1 shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

(3) Network Rail shall not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs.

(4) Network Rail shall not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) Network Rail shall not, in carrying out or maintaining works conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) Network Rail shall take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise the entry into inland fresh waters or coastal waters of any matter whose entry or discharge into those waters is prohibited by regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010(b)

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and
- (b) other expressions, excluding watercourses, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

(a) 1991 c. 56.

(b) S.I. 2010/675.

Authority to survey and investigate land

21.—(1) Network Rail may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without prejudice to the scope of sub-paragraph (a), make trial holes in such positions as Network Rail thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land;
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1), unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of Network Rail—

- (a) shall, if so required, before or after entering the land produce written evidence of authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes shall be made under this article—

- (a) on land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority.

(5) Network Rail shall compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

Powers of acquisition

Compulsory acquisition of land

22.—(1) Network Rail may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate, or is incidental, to it.

(2) This article is subject to paragraph (2) of article 23 (compulsory acquisition of rights) and paragraph (8) of article 29 (temporary use of land for carrying out the authorised development).

Time limit for exercise of authority to acquire land compulsorily

23.—(1) After the end of the period of 5 years beginning on the day on which the Order is made—

- (a) no notice to treat shall be served under Part 1 of the 1965 Act; and
- (b) no declaration shall be executed under section 4 of the 1981 Act as applied by article 25 (application of Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 29 (temporary use of land for carrying out the authorised development) shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent Network Rail remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

24.—(1) Subject to paragraph (2) Network Rail may acquire compulsorily such rights over the Order land, or impose restrictive covenants affecting the land, as may be required for any purpose for which that land may be acquired under article 21 (compulsory acquisition of land) by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 8 (land in which only new rights etc., may be acquired) Network Rail's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements or new rights in the land, or the imposition of restrictive covenants affecting the land, as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights) where Network Rail acquires a right over land or the benefit of a restrictive covenant under paragraph (1) or (2) Network Rail shall not be required to acquire a greater interest in that land.

(4) Schedule 9 shall have effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(5) In any case where the acquisition of new rights or the imposition of restrictive covenants under paragraph (1) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, Network Rail may, with the consent of the Secretary of State, transfer the power to acquire such rights or impose such covenants to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by Network Rail.

Private rights

25.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order shall be extinguished—

- (a) as from the date of acquisition of the land by Network Rail, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by Network Rail under section 11(1) of the 1965 Act (power of entry),

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under the Order shall be extinguished in so far as their continuance would be inconsistent with the exercise of the right or the burden of the restrictive covenant—

- (a) as from the date of the acquisition of the right or the benefit of the restrictive covenant by Network Rail, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by Network Rail under section 11(1) of the 1965 Act in pursuance of the right whichever is the earliest.

(3) Subject to the provisions of this article, all private rights over land owned by Network Rail which, being within the limits of land which may be acquired or used shown on the land plans, are required for the purposes of this Order shall be extinguished on the appropriation of the land by Network Rail for any of those purposes.

(4) Subject to the provisions of this article, all private rights over land of which Network Rail takes temporary possession under this Order shall be suspended and unenforceable for as long as Network Rail remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article shall be entitled to compensation in accordance with the terms of section 152 of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 31 (statutory undertakers) applies.

(7) Paragraphs (1) to (3) shall have effect subject to—

(a) any notice given by Network Rail before—

(i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;

(ii) Network Rail's appropriation of it;

(iii) Network Rail's entry onto it; or

(iv) Network Rail's taking temporary possession of it,

that any or all of those paragraphs shall not apply to any right specified in the notice; and

(b) any agreement made at any time between Network Rail and the person in or to whom the right in question is vested or belongs.

(8) If any such agreement as is referred to in paragraph (6)(b)—

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it shall be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) Reference in this article to private rights over land includes reference to any trusts or incidents to which the land is subject.

Application of Compulsory Purchase (Vesting Declarations) Act 1981

26.—(1) The 1981 Act shall apply as if this Order were a compulsory purchase order.

(2) The 1981 Act, as so applied, shall have effect with the following modifications.

(3) In section 3 (preliminary notices) for subsection (1) there shall be substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—

(a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and

(b) published in a local newspaper circulating in the area in which the land is situated.”.

(4) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after “given” there shall be inserted “and published”.

(5) In that section, for subsections (5) and (6) there shall be substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

(a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or

(b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

(a) in subsection (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and

(b) subsection (2) shall be omitted.

(7) In section 7 (constructive notice to treat) in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” shall be omitted.

(8) References to the 1965 Act in the 1981 Act shall be construed as references to the 1965 Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

Acquisition of subsoil or airspace only

27.—(1) Network Rail may acquire compulsorily so much of, or such rights in, the subsoil of or the airspace over the land referred to in article 21 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where Network Rail acquires any part of or rights in the subsoil of or the airspace over land under paragraph (1), Network Rail shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent article 27 (acquisition of part of certain properties) from applying where Network Rail acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Acquisition of part of certain properties

28.—(1) This article shall apply instead of section 8(1) of the 1965 Act (other provisions or divided land) (as applied by section 125 of the 2008 Act) where—

(a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and

(b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on Network Rail a counter-notice objecting to the sale of the land subject to the notice to treat and stating that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner shall be required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner shall be required to sell only the land subject to the notice to treat shall, unless Network Rail agrees to take the land subject to the counter-notice, be referred to the tribunal.

(5) If on such a reference the tribunal determine that the land subject to the notice to treat can be taken—

(a) without material detriment to the remainder of the land subject to the counter-notice; or

(b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner shall be required to sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determine that only part of the land subject to the notice to treat can be taken—

(a) without material detriment to the remainder of the land subject to the counter-notice; or

(b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat shall be deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determine that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which Network Rail is authorised to acquire compulsorily under this Order.

(8) If Network Rail agrees to take the land subject to the counter-notice, or if the tribunal determine that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which Network Rail is authorised to acquire compulsorily under this Order.

(9) In any case where by virtue of a determination by the tribunal under this article a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, Network Rail may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and if it does so shall pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, Network Rail shall pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Rights under or over streets

29.—(1) Network Rail may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), Network Rail may exercise any power conferred by paragraph (1) in relation to a street without Network Rail being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) shall not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without Network Rail acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation shall not be payable under paragraph (3) to any person who is an undertaker to whom section 85 of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

30.—(1) Network Rail may, in connection with the carrying out of the authorised development—

- (a) enter on and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the 1981 Act;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any works specified in relation to that land in column 3 of Schedule 10, or any other mitigation works.

(2) Not less than 28 days before entering on and taking temporary possession of land under this article Network Rail shall serve notice of the intended entry on the owners and occupiers of the land.

(3) Network Rail may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 10; or
- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless Network Rail has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, Network Rail shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but Network Rail shall not be required to—

- (a) replace a building removed under this article; or
- (b) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development.

(5) Network Rail shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(7) Nothing in this article shall affect any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) Network Rail may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that Network Rail shall not be precluded from—

- (a) acquiring new rights or imposing restrictive covenants over any part of that land under article 23 (compulsory acquisition of rights); or
- (b) acquire any part of the subsoil or of airspace over (or rights in the subsoil or of airspace over) of that land under article 26 (acquisition of subsoil or airspace only).

(9) Where Network Rail takes possession of land under this article, it shall not be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory

acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) Paragraph (1)(a)(ii) shall not authorise Network Rail to take temporary possession of any land which it is not authorised to acquire under article 21 (compulsory acquisition of land) or any land specified in Schedule 8.

Temporary use of land for maintaining authorised development

31.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the authorised development, Network Rail may—

- (a) enter upon and take temporary possession of any Order land if such possession is reasonably required for the purpose of maintaining the authorised development; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) shall not authorise Network Rail to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article Network Rail shall serve notice of the intended entry on the owners and occupiers of the land.

(4) Network Rail may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, Network Rail shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) Network Rail shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(8) Nothing in this article shall affect any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim is overcome) or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where Network Rail takes possession of land under this article, it shall not be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to the acquiring authority) shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) In this article “the maintenance period”, in relation to any part of the authorised development means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

Statutory undertakers

32. Subject to the provisions of Schedule 12 (Protective Provisions), Network Rail may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers shown on the land plans within the limits of the land to be acquired or used and described in the book of reference;

- (b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers over or within the Order land.

Apparatus and rights of statutory undertakers in stopped up streets

33.—(1) Where a street is stopped up under article 12 (stopping up of existing streets) or article 18 (Level crossings) any statutory utility whose apparatus is under, in, on, along or across the street shall have the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under articles 12 or 18 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by Network Rail shall—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, Network Rail shall pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the execution of the relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by Network Rail, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) shall be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) shall not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works shall be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and
- (b) the allowable costs shall be borne by Network Rail and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“relocation works” means work executed, or apparatus provided, under paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003(a).

Recovery of costs of new connections

34.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 31 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from Network Rail compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) shall not apply in the case of the removal of a public sewer but where such a sewer is removed under article 31, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

shall be entitled to recover from Network Rail compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article shall not have effect in relation to apparatus to which article 32 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003; and

“public utility undertaker” has the same meaning as in the 1980 Act.

Operations

Operations and use of railways

35.—(1) Network Rail may operate and use the railway and any other elements of the authorised development as a system, or part of a system, of transport for the carriage of passengers and goods.

(2) Nothing in this Order, or in any enactment incorporated with or applied by this Order, shall prejudice or affect the operation of Part 1 of the Railways Act 1993(b) (the provision of railway services).

(a) 2003 c. 21. There are amendments to this Act which are not relevant to this Order.

(b) 2003 c. 21. There are amendments to this Act which are not relevant to this Order.

Felling or lopping trees

36.—(1) Network Rail may fell or lop any tree or shrub within or overhanging land within the Order limits or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to passengers or other persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), Network Rail shall

- (a) do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity, and
- (b) for any trees or shrubs felled or removed during the construction, or during the first 12 months of the operation, of the authorised development, plant the same number of suitable alternative trees or shrubs in the same location or in a suitable alternative location or locations as agreed in writing with Doncaster MBC.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

Miscellaneous and general

Operational land for purposes of the 1990 Act

37. Development consent granted by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as not being operational land for the purposes of that Act).

Defence to proceedings in respect of statutory nuisance

38.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(**a**) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by Network Rail for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(**b**); or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot be reasonably avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act

(a) 1990 c. 43. There are amendments to this Act which are not relevant to this Order.

(b) 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c. 25. There are other amendments to the 1974 Act which are not relevant to this Order.

1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), shall not apply where the consent relates to the use of premises by Network Rail for the purposes of or in connection with the construction or maintenance of the authorised development.

Traffic regulation

39.—(1) Subject to the provision of this article, and the consent of the traffic authority in whose area the road concerned is situated, Network Rail may, at any time for the purposes of the construction of the authorised development permit or prohibit vehicular access in the manner specified in Schedule 11 (traffic regulation) on those roads specified in column (1) and along the lengths and between the points specified, or to the extent otherwise described in column (2) of that Schedule.

(2) Without limiting the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, Network Rail may, in so far as may be expedient or necessary for the purposes of or in connection with construction of the authorised development, at any time prior to the opening of the authorised development for use—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by Network Rail.

(3) Network Rail shall not exercise the powers of paragraphs (1) and (2) unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 7 days of its receipt of notice of Network Rail's intention in the case of sub-paragraph (a).

(4) Any prohibition, restriction or other provision made by Network Rail under paragraph (1) or (2) shall—

- (a) have effect as if duly made by, as the case may be—
 - (i) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
 - (ii) the local authority in whose area the road is situated as an order under section 32 of the 1984 Act,

and the instrument by which it is effected may specify savings and exemptions (in addition to those mentioned in Schedule 14 (traffic regulation) to which the prohibition, restriction or other provision is subject; and

- (b) be deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004^(a) (road traffic contraventions subject to civil enforcement).

(5) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by Network Rail from time to time by subsequent exercise of the powers conferred by paragraph (2) at any time prior to the opening of the authorised development for use.

(a) 2004 c. 18.

(6) Before complying with the provisions of paragraph (3) Network Rail shall consult the chief officer of police and the traffic authority in whose area the road is situated.

(7) Expressions used in this article and in the 1984 Act shall have the same meaning in this article as in that Act.

Protection of interests

40. Schedule 12 (protective provisions) to the Order has effect.

Application of Land Compensation Act 1973

41.—(1) Any regulations made by the Secretary of State under section 20 (sound proofing of buildings affected by public works) and 20A (power to make payments in respect of caravans and other structures affected by noise of public works) of the Land Compensation Act 1973^(a) which apply to a railway provided or used in the exercise of statutory powers shall apply to the railway comprised in the authorised project as if that railway as provided or used in the exercise of statutory powers.

(2) Section 28 (power to pay expenses) of the Land Compensation Act 1973 shall have effect as if any works comprised in the authorised project were public works for the purposes of that section.

Certification of plans, etc.

42.—(1) Network Rail shall, as soon as practicable after the making of this Order, submit to the decision-maker copies of—

- (a) the book of reference;
- (b) the land plans;
- (c) the works plans;
- (d) the street plans;
- (e) the sections;
- (f) the design drawings; and
- (g) the environmental statement,

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

43.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

(a) 1973 c.26. Section 20 was amended by subsection (6) and (12) of section 146 of, and Schedule 13 to, the Road Traffic Regulation Act 1984 (c.27). Subsection (10) of section 20 was repealed by section 343(3) of, and Schedule 25 to, the Highway Act 1980 (c.66) and subsection (11) was repealed by section 155 of, and Schedule 25 to, the Rent Act 1977 (c.42). There are other amendments to the 1973 Act which are not relevant to this Order.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement shall be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender shall provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person shall give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation shall be final and shall take effect on a date specified by the person in the notice but that date shall not be less than 7 days after the date on which the notice is given.

(9) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Arbitration

44. Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order (other than a difference

(a) 1978 c. 30.

which falls to be determined by the tribunal) shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Civil Engineers.

Signed by authority of the Secretary of State for Transport

/ [Designation]
[Department]

[] 201[]

SCHEDULES

SCHEDULE 1

Articles 2 and 4

AUTHORISED DEVELOPMENT

A nationally significant infrastructure project as defined in sections 14 and 25 of the Act comprising—

In Doncaster Metropolitan Borough Council

Work No.1 — The construction of new permanent railway chord (centred on grid reference SE 58166 10443) (3,200 metres in length) commencing at a point on the existing Askern railway line at Owston Grange Farm No. 1 level crossing, running southwards along the eastern side of the said section of the Askern line on embankment, then a multi-span railway viaduct (246 metres in length) spanning Joan Croft Lane, the East Coast Main Line and Applehurst Chord railways, continuing on embankment curving south-eastwards along the eastern side of the Applehurst Chord railway before terminating at a point on the Skellow railway line 520 metres east of Applehurst Lane level crossing; including permanent way (rail tracks), railway switch and crossing track and the construction of temporary haul roads located adjacent to the embankment.

Associated development within the meaning of section 115(2) of the Act comprising—

Work No.2 — Construction of permanent A19 junction widening (52 metres in length) on Rockley Lane (north side of junction), including the construction of a new kerb line and a new road surface within the amended road limits.

Work No.3A — Construction of permanent A19 junction widening (35 metres in length) on Holme Lane (north side of junction), including the construction of a new kerb line and a new road surface within the amended road limits.

Work No.3B — Construction of permanent A19 junction widening (60 metres in length) on Holme Lane (south side of junction) including the construction of a new kerb line and a new road surface within the amended road limits.

Work No.4 — Construction of permanent road widening works commencing at a point 110 metres east of the junction of Storr's Lane with Holme Lane and terminating at a point 160 metres from its commencement point.

Work No.5 — Temporary widening works (56 metres in length and 5.5 metres wide) to Owston Grange Farm No. 1 level crossing across Work No. 1 in order to accommodate construction traffic from both directions and permanent improvement to the approach gradients to the level crossing.

Work No.6 — Construction of a new permanent land drain (375 metres in length) between the existing Askern railway line and the proposed new line, commencing at a point 357 metres south of Honey Lands Lane level crossing and terminating at a point 23 metres north of Joan Croft Lane, including a headwall at the Joan Croft Lane end.

Work No.7 — Construction of new permanent drainage works (155 metres in length) on the north side of Joan Croft lane commencing at a point 29 metres north east of Middle Lane level crossing and terminating at a point 155 metres north east of its commencement, including placing the existing ditch in a culvert under the new viaduct, tying it into the proposed ditch and also connections into the proposed overbridge drainage and the provision of new manholes.

Work No.8 — Construction of permanent highway and overbridge (440 metres in length) over the East Coast Main Line railway commencing at the junction of Joan Croft Lane and Honey Lands Lane at a point 90 metres north west of Joan Croft level crossing, running first in a north-easterly direction, then in an easterly direction before running in a southerly direction and terminating at a point 176 metres from its commencement, including abutment and wing wall piling, road and toe drainage, the bridge superstructure (deck, abutments and wing walls), the earthworks associated with the embankment approaches and boundary fencing.

Work No.9 — Construction of new permanent underpass on Bell Croft Lane commencing at a point 120 metres north of the Applehurst Chord railway and terminating at a point 53 metres south of its commencement.

Work No.10 — Construction of a new permanent drainage works at Bell Croft Lane commencing at a point 53 metres north west of Bell Croft Lane and terminating at a point 103 metres south east of its commencement, including placing in culvert a drain (50 metres in length) under the embankment with two headwalls and placing in culvert an existing drain to tie into the proposed new ditch and culvert under the embankment (115 metres in length).

Work No.11 — Construction of new permanent drainage (326 metres in length) to the south of the new railway and north of the existing Skellow railway commencing 173 metres to the east of Bell Croft Lane and terminating by the disused railway embankment.

Work No.12 — Installation of a new permanent buried power cable (DNO) in the existing verge commencing from a point 28 metres north of Applehurst level crossing, continuing along Applehurst lane before turning eastwards into Sickle Croft Farm (located north east of Applehurst level crossing) and terminating at a point 355 metres from its commencement.

Work No.13 — Widening works to Applehurst level crossing (50metres in length and 6.5 metres wide) across Work No 1 to accommodate haul road traffic from both directions,

and in connection with such works further associated development within the Order limits consisting of—

- (a) electrical equipment and signalling works;
- (b) ramps, means of access, footpaths and bridleways;
- (c) embankment, viaducts, aprons, abutments, shafts, foundations, retaining walls, drainage, wing walls, fencing and culverts;
- (d) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (e) works to alter the course of, or otherwise interfere with a watercourse other than a navigable watercourse;
- (f) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (g) works for the benefit or protection of land affected by the authorised development;
- (h) works required for the strengthening, improvement, maintenance, or reconstruction of any streets; and
- (i) such other works, including working sites and works of demolition, as may be necessary or expedient for the purposes of or in connection with the construction of the authorised development and which fall within the scope of the environmental impact assessment.

SCHEDULE 2

Article 4

REQUIREMENTS

Interpretation

1. In this Schedule—

“the CR-E” means Network Rail’s Contract Requirements – Environment, Issue 5, April 2004, as set out in Volume I, Appendix E, of the environment statement;

“stage” means a defined section or part of the authorised development, the extent of which is shown in a scheme submitted to and approved by the relevant planning authority pursuant to requirement 2; and

“commence”, in relation to any part of the authorised development, does not include any demolition, site clearance, devegetation, remediation, environmental (including archaeological) investigation, site or soil survey, erection of contractors’ work compound, erection of site office, erection of fencing to site boundaries or marking out of site boundaries.

Stages of authorised development

2. No authorised development shall commence until a written scheme setting out all the stages of the authorised development has, after consultation with the highway authority, been submitted to and approved by the relevant planning authority.

In accordance with approved details

3.—(1) The authorised development shall be carried out in accordance with the design drawings unless otherwise agreed in writing by the relevant planning authority.

Landscaping

4.—(1) No stage of the authorised development shall commence until a written landscaping scheme for that stage has, after consultation with the relevant planning authority, been submitted to and approved by the relevant planning authority.

(2) The submitted scheme shall reflect the mitigation measures described in section 5.2 (Construction Phase Incorporated Mitigation) of Technical Appendix F (Landscape and Visual Amenity) to Volume II of the environmental statement.

(3) The landscape scheme shall include details of—

- (a) location, number, species, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) implementation timetables for all landscaping; and
- (d) temporary fencing that complies with current best practice to protect trees and hedgerows adjacent to the works.

Implementation and maintenance of landscaping

5.—(1) All landscaping work shall be carried out in accordance with the scheme and implementation timetable approved under requirement 4.

(2) Any tree or shrub planted as part of an approved landscaping scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season

with a specimen of the same species and size as that originally planted, unless otherwise approved by the relevant planning authority..

Highway accesses

6.—(1) No part of the authorised development, other than Works numbered 2, 3A, 3B, 4, 5 and 13, which requires road access for construction traffic from the west side of the East Coast Main Line, shall commence until—

- (a) for that part details of the siting, design and layout of any new or altered, permanent or temporary, access, and any temporary or permanent road improvements on Rockley Lane, Holme Lane and Storr Lane, and any temporary haul roads, have, after consultation with the local planning and highway authority, been submitted to and approved by the relevant planning authority; and
- (b) the approved highway alterations and improvements, including any altered or new accesses and any temporary haul roads, for that part have been implemented.

Archaeology

7.—(1) No stage of the authorised development shall commence until for that stage a written scheme for the investigation of areas of archaeological interest identified at paragraph 5.2.1 (Incorporated Mitigation) of Technical Appendix E, (Historic Environment) to Volume II of the environmental statement has, after consultation with the local planning authority, been submitted to and approved by the relevant planning authority.

(2) The scheme shall identify areas where field work or a watching brief is required and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) Any archaeological works or watching brief carried out under the scheme must be by a suitably qualified person or body approved by the relevant planning authority.

(4) Any archaeological works or watching brief must be carried out in accordance with the approved scheme.

Contract Requirements – Environment

8.—(1) The development shall be carried out in accordance with the CR-E or as otherwise amended with the written agreement of the relevant planning authority. The mitigation measures set out in the environmental statement shall be reflected in preparing any plan required by the CR-E.

(2) The Mandatory Environmental Requirements set out in section 5 of the CR-E in respect of—

- (a) 5.10 External Communications,
- (b) 5.13 Pollution Incident Control Plan (which shall include a Construction Phase Surface Water Management Plan, as referred to in paragraph 5.2.1 (Incorporated Plan) of Technical Appendix J (Water Resources) to Volume II of the environmental statement); and
- (c) 5.17 Waste Management Plan (which shall be prepared in accordance with The Site Waste Management Plans Regulations 2008(a)),

shall not be agreed by Network Rail until they have been submitted to and approved by the relevant planning authority.

(3) The following matters set out in section 6 (Particular Environmental Requirements) of the CR-E shall be mandatory—

- (a) 6.2 Environmental Design Management

(a) S.I. 2008/314.

- (b) 6.3 Traffic Management Plan
- (c) 6.4 Noise & Vibration Management Plan
- (d) 6.6 Dust
- (e) 6.7 Air Pollution
- (f) 6.14 Boundaries, and
- (g) 6.15 Lighting.

(4) The dust, air pollution and lighting mitigation measures required by the CR-E shall be incorporated into a Nuisance Management Plan. The Nuisance Management Plan and other plans required under section 6 of the CR-E shall, after consultation with the relevant planning authority, be submitted to and approved by the relevant planning authority.

(5) No stage of the authorised development shall be commenced until such of the plans or programmes required under sections 5.10, 5.13, 5.17, 6.2, 6.3, 6.4 of the CR-E and the Nuisance Management Plan as relate to that stage have been approved by the relevant planning authority and those plans or programmes shall be implemented as approved.

Ecological Management Plan

9.—(1) No stage of the authorised development shall commence until for that stage a written ecological management plan reflecting the survey results and ecological mitigation and enhancement measures included in the environmental statement, in particular to accord with paragraph 5.2.1 of section 5 (Mitigation & Prediction of Effects) of Technical Appendix C (Ecology) to Volume II of the environmental statement has been submitted to and approved by the relevant planning authority.

(2) The ecological management plan shall include an implementation timetable and must be carried out as approved.

Alteration, reconstruction or replacement of buildings

10.—(1) No alteration, reconstruction or replacement of a building shall be carried out under article 6 (maintenance of authorised development) except in accordance with plans and specifications approved after consultation with the relevant planning authority.

Alteration, reconstruction or replacement of level crossings

11.—(1) Within 12 months of the commencement of the operation of the authorised development a report on the optimisation of the operation and risk assessments of the level crossings on the Askern (KWS) Line between the authorised development and the Norton level crossing shall be submitted to and agreed in writing with the Office of Rail Regulation and made available to the relevant highway authority.

(2) Before commencement of the removal of the level crossing at Honey Lands Lane a report on the amendments to and risk assessment of the Owston Grange no. 1 crossing both during construction and in final operational form shall be submitted to and agreed in writing with the Office of Rail Regulation and made available to the relevant highway authority.

Amendments to approved details

12. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority, the approved details shall be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority.

Flood Risk Assessment and Piling Method Statement

13.—(1) The authorised development shall be carried out in accordance with the approved Flood Risk Assessment document reference 3.2 version 3 dated May 2011 (Mott MacDonald) and the mitigation measures detailed therein.

(2) No piling works for any part of the authorised development shall be commenced until a method statement for the piling works has been submitted to and approved in writing by the Environment Agency. Any piling works carried out in relation to the authorised development must be carried out in accordance with the approved method statement.

SCHEDULE 4

Article 11

STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Street subject to street works</i>
Doncaster Metropolitan Borough Council	Storrs Lane Rockley Lane Holme Lane Joan Croft Lane Honey Lands Lane Bell Croft Lane Middle Lane Field Station Road Private roads through Thorpe Marsh Power Station Applehurst Lane Private track from Sickle Croft Farm to Applehurst Lane A19

SCHEDULE 5

Article 13

STREETS TO BE STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New Street to be substituted</i>
Doncaster Metropolitan Borough Council	Joan Croft Lane	Road over Joan Croft Level Crossing and south east section of Joan Croft Lane between points V and W.	New access to be provided over new highway bridge over railway (Work No.8) between points S and U via point T.
	Farm access over Honey Lands Lane level crossing and Footpath 11 south to Honey Lands Lane.	Stopping up of farm access between points 1, 2 and 3. Stopping up of Footpath 11 between points 2 and 2a.	New farm access and footpath to be provided between point 1 and point 4, between point 4 and point 5 and between point 5 and point 3.
	Honey Lands Lane at junction with Joan Croft Lane	Close bridleway 13 between points 6 and 7.	Proposed new bridleway to be created between point 6 and point 8.

SCHEDULE 6

Article 15

STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
Doncaster Metropolitan Borough Council	Rockley Lane	Between points A and B
	Southbound lane of A19 at junction of Rockley Lane	Between points C and D
	Holme Lane	Between points E and F
	Southbound lane of A19 at junction of Holme Lane	Between points G and H
	Private (unnamed) access track)	Between points J and K
	Storrs Lane	Between points L and M
	Rockley Lane	Rockley Lane between Storrs Lane and Holme Lane between points N and P
	Joan Croft Lane	Between points Q and R
	Applehurst Lane	Between points X and Y
Applehurst Lane	Between points Y and Z	

SCHEDULE 7

Article 19

REPLACEMENT AND CLOSURE OF LEVEL CROSSINGS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Level crossing to be discontinued</i>	<i>(3)</i> <i>Street to be stopped up</i>	<i>(4)</i> <i>New street to be substituted</i>
Doncaster Metropolitan Borough Council	Joan Croft Level Crossing	Joan Croft Lane over the level crossing and the south eastern section of Joan Croft Lane between points V and W	New access to be provided over new highway bridge over railway line (Work No.8) between points S and U via point T
	Owston Grange No 1 Level Crossing	Stopping up of the farm access between points 1, 2 and 3	New boundary and farm access to be provided between point 1 and point 4, from point 4 and point 5 and from point 5 and point 3

SCHEDULE 8

Article 24(2)

LAND IN WHICH ONLY NEW RIGHTS ETC., MAY BE ACQUIRED

<i>(1)</i> <i>Number of land shown on Land Plan</i>	<i>(2)</i> <i>Purpose for which rights over the land may be acquired</i>
37a	Right to construct, keep, maintain, protect and renew the authorised development
47a	Right to construct, keep, maintain, protect and renew the authorised development
68	Right to construct, keep, maintain, protect and renew the authorised development
73a	Right to construct, keep, maintain, protect and renew the authorised development
87, 87a, 88, 90, 91 and 92	Right to construct, keep, maintain, protect and renew the authorised development

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land shall apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973(a) shall have effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken” there shall be substituted the words “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” there shall be substituted the words “over which the right is exercisable or the restrictive covenant enforceable”.

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

- (a) for the word “part” in paragraphs (a) and (b) there shall be substituted the words “a right over or restrictive covenant affecting land consisting”;
- (b) for the word “severance” there shall be substituted the words “right or restrictive covenant over or affecting the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there shall be substituted the words “right or restrictive covenant proposed”; and
- (d) for the words “part is” there shall be substituted the words “right or restrictive covenant is”.

Application of the 1965 Act

3.—(1) The 1965 Act shall have effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(2) Without prejudice to the generality of sub-paragraph (1), Part 1 of the 1965 Act shall apply in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

(a) 1973 c. 26.

4. For section 7 of the 1965 Act (measure of compensation) there shall be substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

5. For section 8 of the 1965 Act (provisions as to divided land) there shall be substituted the following section—

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right or the imposition of the restrictive covenant would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased or the restrictive covenant imposed without material detriment to that land; or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased or the restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs,

the Network Rail North Doncaster Chord Order 201[](a) (“the Order”) shall, in relation to that person, cease to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice shall be deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section shall be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”.

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

(a) S.I. 201[]/[]

shall be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

7. Section 11 of the 1965 Act (powers of entry) shall be so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act shall be modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) shall apply with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

9. Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) shall be so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 10

Article 30

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
Doncaster Metropolitan Borough Council	1 ,5	Worksite and/or access for construction	Work No 2
	5a, 5b, 5c, 5d, 5e	Temporary passing bay for construction route	Work Nos 1, 4, 5, 6
	6, 12	Worksite and/or access for construction	Work Nos 3A, 3B
	12a, 12,b, 12c	Temporary passing bay for construction route	Work Nos 1, 4, 5, 6
	13, 14, 15,16	Worksite and/or access for construction	Work Nos 1, 4, 5, 6
	19, 21 ,23	Worksite and/or access for construction	Work Nos 1, 4, 5, 6
	24	Worksite and/or access for construction	Work Nos 1, 4, 5, 6
	28, 29, 32, 35	Worksite and/or access for construction	Work Nos 1, 4, 5, 6
	36, 37	Worksite	Work Nos 1, 6, 7, 8
	40, 41	Worksite and/or access for construction	Work Nos 1, 6, 7, 8
	42	Worksite	Work Nos 1, 6, 7, 8
	43a	Worksite and/or access for construction	Work Nos 1, 6, 7, 8

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
	44, 46, 47	Worksite	Work Nos 1, 6, 7, 8
	49, 54, 56, 59, 60	Worksite	Work Nos 1, 6, 7, 8
	61	Worksite and/or access for construction	Work Nos 1, 6, 7, 8
	63	Worksite	Work Nos 1, 6, 7, 8
	64	Worksite	Work Nos 1, 6, 7, 8, 9, 10
	66, 67, 67a	Worksite and/or access for construction	Work Nos 1, 6, 7, 8, 9, 10
	70, 71, 72	Worksite and/or access for construction	Work Nos 1, 9, 10
	73	Worksite and/or access for construction	Work Nos 1, 9, 10,11
	75	Worksite and/or access for construction	Work Nos 1, 9, 10,11
	77, 77a	Worksite and/or access for construction	Work Nos 1, 11
	81	Worksite and/or access for construction	Work Nos 1, 11, 12, 13
	84, 85, 86,	Worksite and/or access for construction	Work Nos 1, 11, 12, 13
	89, 93, 96, 98, 99, 99a, 102, 103, 104, 105, 106, 107, 109a, 110a, 111, 112, 113, 114	Worksite and/or access for construction	Work Nos 1, 11, 12, 13

SCHEDULE 11

Article 39

TRAFFIC REGULATION

Prohibition of driving

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>	<i>(3)</i> <i>Notes</i>
A19 at junction with Rockley Lane	The southbound lane of the A19 between points C and D shown on the street plans	To maintain traffic flow during construction of junction widening works
A19 at junction with Holme Lane	The southbound lane of the A19 between points G and H shown on the street plans	To maintain traffic flow during construction of junction widening works

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the undertakers referred to in this part of this Schedule the following provisions shall, unless otherwise agreed in writing between Network Rail and the undertaker concerned, have effect.

2. In this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the undertaker under the Water Industry Act 1991(b); and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

“undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(c);
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

(a) 1989 c. 29.

(b) 1991 c. 56.

(c) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

for the area of the authorised development, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

3. This part of this Schedule does not apply to apparatus in respect of which the relations between Network Rail and the undertaker are regulated by the provisions of Part 3 of the 1991 Act.

4. Regardless of any provision in this Order or anything shown on the land plans, Network Rail shall not acquire any apparatus otherwise than by agreement.

5.—(1) If, in the exercise of the powers conferred by this Order, Network Rail acquires any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this part of this Schedule and any right of an undertaker to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, Network Rail requires the removal of any apparatus placed in that land, it shall give to the undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus) Network Rail shall, subject to sub-paragraph (3), afford to the undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of Network Rail and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of Network Rail, or Network Rail is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the undertaker in question shall, on receipt of a written notice to that effect from Network Rail, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of Network Rail under this part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and Network Rail or in default of agreement settled by arbitration in accordance with article 43 (arbitration).

(5) The undertaker in question shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 43, and after the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by Network Rail to be removed under the provisions of this part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if Network Rail gives notice in writing to the undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of Network Rail, that work, instead of being executed by the undertaker, shall be executed by Network Rail without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the undertaker.

(7) Nothing in sub-paragraph (6) shall authorise Network Rail to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

6.—(1) Where, in accordance with the provisions of this part of this Schedule, Network Rail affords to an undertaker facilities and rights for the construction and maintenance in land of Network Rail of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between Network Rail and the undertaker in question or in default of agreement settled by arbitration in accordance with article 43 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along any railway of Network Rail, the arbitrator shall—

- (a) give effect to all reasonable requirements of Network Rail for ensuring the safety and efficient operation of the railway and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of Network Rail or the traffic on the railway; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the railway for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by Network Rail in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator shall make such provision for the payment of compensation by Network Rail to that undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

7.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by Network Rail under paragraph 5(2), Network Rail shall submit to the undertaker in question a plan, section and description of the works to be executed.

(2) Those works shall be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the undertaker shall be entitled to watch and inspect the execution of those works.

(3) Any requirements made by an undertaker under sub-paragraph (2) shall be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If an undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by Network Rail, reasonably requires the removal of any apparatus and gives written notice to Network Rail of that requirement, paragraphs 1 to 6 shall apply as if the removal of the apparatus had been required by Network Rail under paragraph 5(2).

(5) Nothing in this paragraph shall preclude Network Rail from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan, section and description.

(6) Network Rail shall not be required to comply with sub-paragraph (1) in a case of emergency but in that case it shall give to the undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and shall comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

8.—(1) Subject to the following provisions of this paragraph, Network Rail shall repay to an undertaker the reasonable expenses incurred by that undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2).

(2) There shall be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by Network Rail or, in default of agreement, is not determined by arbitration in accordance with article 43 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the undertaker in question by virtue of sub-paragraph (1) shall be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works by virtue of sub-paragraph (1) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 5(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of an undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any undertaker, Network Rail shall—

- (a) bear and pay the cost reasonably incurred by that undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) shall impose any liability on Network Rail with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an undertaker, its officers, servants, contractors or agents.

(3) An undertaker shall give Network Rail reasonable notice of any such claim or demand and no settlement or compromise shall be made without the consent of Network Rail which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

10.—(1) Nothing in this part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between Network Rail and an undertaker in respect of any apparatus laid or erected in land belonging to Network Rail on the date on which this Order is made.

PART 2

PROTECTION FOR OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

1. For the protection of any operator, the following provisions shall, unless otherwise agreed in writing between Network Rail and the operator, have effect.

2. In this part of this Schedule—

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system shall be construed in accordance with paragraph 1(3A) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(a);

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

3. The exercise of the powers of article 31 (statutory undertakers) are subject to paragraph 23 of Schedule 2 to the Telecommunication Act 1984(b).

4.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or their construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works, or other property of an operator); or
- (b) there is any interruption in the supply of the service provided by an operator, Network Rail shall bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and shall—
 - (i) make reasonable compensation to an operator for loss sustained by it; and
 - (ii) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) shall impose any liability on Network Rail with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator shall give Network Rail reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand shall be made without the consent of Network Rail which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between Network Rail and the operator under this Schedule shall be referred to and settled by arbitration under article 43 (arbitration).

(a) See section 106.

(b) 1984 c. 12.

(5) This part of this Schedule shall not apply to—

- (a) any apparatus in respect of which the relations between Network Rail and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

(6) Nothing in this part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between Network Rail and an undertaker in respect of any apparatus laid or erected in land belonging to Network Rail on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

1.—(1) The following provisions shall apply for the protection of the Agency unless otherwise agreed in writing between Network Rail and the Agency.

(2) In this part of this Schedule—

“the Agency” means the Environment Agency;

“construction” includes execution, placing, altering, replacing, relaying and removal and “construct” and “constructed” shall be construed accordingly;

“drainage work” means any watercourse and includes any land which provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring and any ancillary works constructed as a consequence of works carried out for drainage purposes;

“the fishery” means any waters containing fish and fish in such waters and the spawn, habitat or food of such fish;

“plans” includes sections, drawings, specifications and method statements;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a drainage work or is otherwise likely to—

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
- (c) cause obstruction to the free passage of fish or damage to any fishery; or
- (d) affect the conservation, distribution or use of water resources; and

“watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer.

2.—(1) Before beginning to construct any specified work, Network Rail shall submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably require.

(2) Any such specified work shall not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 12.

(3) Any approval of the Agency required under this paragraph—

- (a) shall not be unreasonably withheld or delayed;
- (b) shall be deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval or receipt of further particulars if such particulars

have been required by the Agency and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and

- (c) may be given subject to such reasonable requirements as the Agency may make for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) The Agency shall use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

3. Without prejudice to the generality of paragraph 2 but subject always to the provision of that paragraph as to reasonableness, the requirements which the Agency may make under that paragraph include conditions requiring Network Rail at its own expense to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of the specified work.

4.—(1) Subject to sub-paragraph (2), the specified work, and all protective works required by the Agency under paragraph 3, shall be constructed—

- (a) with all reasonable despatch in accordance with the plans approved or deemed to have been approved or settled under this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

and the Agency shall be entitled by its officer to watch and inspect the construction of such works.

(2) Network Rail shall give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency shall reasonably require, Network Rail shall construct all or part of the protective works so that they are in place prior to the construction of the specific works.

(4) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Schedule, the Agency may by notice in writing require Network Rail at Network Rail's own expense to comply with the requirements of this part of this Schedule or (if Network Rail so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(5) Subject to sub-paragraph (6) and paragraph 8, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served upon Network Rail, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure incurred by it in so doing shall be recoverable from Network Rail.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency shall not except in emergency exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined.

5.—(1) Subject to sub-paragraph (6) Network Rail shall from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by Network Rail for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which Network Rail is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require Network Rail to repair and restore the work, or any part of such work, or (if Network Rail so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to paragraph 8, if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on Network Rail, Network Rail has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from Network Rail.

(4) If there is any failure by Network Rail to obtain consent or comply with conditions imposed by the Agency in accordance with the provisions of this part of this Schedule the Agency may serve written notice requiring Network Rail to cease all or part of the specified works and Network Rail shall cease the specified works or part thereof until it has obtained the consent or complied with the condition unless the cessation of the specified works or part thereof would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency shall not except in a case of emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

(6) This paragraph does not apply to drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not prescribed by the powers of the Order from doing so.

6. Subject to paragraph 8, if by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage shall be made good by Network Rail to the reasonable satisfaction of the Agency and if Network Rail fails to do so, the Agency may make good the same and recover from Network Rail the expense reasonably incurred by it in so doing.

7.—(1) Network Rail shall take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on Network Rail requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) Subject to paragraph 8, if within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, Network Rail fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from Network Rail the expense reasonably incurred by it in doing so.

(4) Subject to paragraph 8, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from Network Rail the reasonable cost of so doing provided that notice specifying those steps is served on Network Rail as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

8.—(1) Nothing in paragraphs 4(4), 5(3), 6, 7(3) and (4) shall authorise the Agency to execute works on or affecting an operational railway forming part of Network Rail’s network without the prior consent in writing of Network Rail.

(2) Consent under paragraph (1) shall not be unreasonably withheld or delayed and Network Rail shall be deemed to have given its consent if it has not refused consent within 2 calendar months of a written request by the Agency.

9. Network Rail shall indemnify the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—

- (a) in the examination or approval of plans under this part of this Schedule; and
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this part of this Schedule; and
- (c) the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

10.—(1) Without prejudice to the other provisions of this part of this Schedule, Network Rail shall indemnify the Agency from all claims, demands, proceedings, costs, damages, expenses or loss, which may be made or taken against, recovered from, or incurred by, the Agency by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any damage to the fishery;
- (c) any raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourses;
- (d) any flooding or increased flooding of any such lands, or
- (e) inadequate water quality in any watercourse or other surface waters or in any groundwater,

which is caused by the construction of any of the specified works or any act or omission of Network Rail, its contractors, agents or employees whilst engaged upon the work.

(2) The Agency shall give to Network Rail reasonable notice of any such claim or demand and no settlement or compromise shall be made without the agreement of Network Rail which agreement shall not be unreasonably withheld or delayed.

11. The fact that any work or thing has been executed or done by Network Rail in accordance with a plan approved or deemed to be approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not relieve Network Rail from any liability under the provisions of this part of this Schedule.

12. Any dispute arising between Network Rail and the Agency under this part of this Schedule shall, if the parties agree, be determined by arbitration under article 43 (arbitration), but shall otherwise be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport acting jointly on a reference to them by Network Rail or the Agency, after notice in writing by one to the other.

