

South Humber Bank Energy Centre Project

Planning Inspectorate Reference: EN010107

South Marsh Road, Stallingborough, DN41 8BZ

The South Humber Bank Energy Centre Order

7.7 - Statement of Common Ground with Network Rail



Applicant: EP Waste Management Ltd
Date: January 2021

DOCUMENT HISTORY

Document Ref	Statement of Common Ground with Network Rail		
Revision	Revised draft for Deadline 3		
Author	Kirsty Cobb		
Signed		Date	January 2021
Approved By	Richard Lowe		
Signed		Date	January 2021
Document Owner	AECOM		

GLOSSARY

Abbreviation	Description
ACC	Air-cooled condenser.
ALCRM	All Level Crossing Risk Model
CCGT	Combined Cycle Gas Turbine.
CTMP	Construction Traffic Management Plan.
CWTP	Construction Worker Travel Plan.
DCO	Development Consent Order: provides a consent for building and operating an NSIP.
EfW	Energy from Waste: the combustion of waste material to provide electricity and/or heat.
EIA	Environmental Impact Assessment.
EPUKI	EP UK Investments Ltd.
EPWM	EP Waste Management Limited ('The Applicant').
ES	Environmental Statement.
HE	Highways England.
HGV	Heavy Goods Vehicle.
mAOD	Metres Above Ordnance Datum.
MW	Megawatt: the measure of power produced.
NELC	North East Lincolnshire Council.
NSIP	Nationally Significant Infrastructure Project: for which a DCO is required.
OWTP	Operational Worker Travel Plan.
PA 2008	Planning Act 2008.
PEI	Preliminary Environmental Information.
PINS	Planning Inspectorate.
Q2	Quarter 2.
RDF	Refuse derived fuel.
SHBEC	South Humber Bank Energy Centre.

EP Waste Management Ltd
7.7 - Statement of Common Ground with Network Rail

SHBPS	South Humber Bank Power Station.
SoS	Secretary of State.
SRN	Strategic Road Network.

CONTENTS

1.0 Introduction	5
1.1 Overview	5
1.2 The Applicant	5
1.3 The Proposed Development Site	5
1.4 The Proposed Development	6
1.5 Purpose of this Document	7
1.6 Status of this Version	7
2.0 The Role of Network Rail	8
3.0 Summary of Consultation	9
4.0 Matters Agreed	32
4.1 Network Rail Assets	32
4.2 Consented Development	33
4.3 Proposed Development Construction and Operational HGV Routing	33
4.4 Construction and Operational Light Vehicle Routing	34
4.5 Baseline Road Conditions	34
4.6 Baseline Traffic Conditions	34
4.7 Proposed Development Construction Traffic Impacts	35
4.8 Abnormal Indivisible Loads	37
4.9 Proposed Development Operational Traffic Impacts	37
4.10 Level Crossing Risk Assessments and Mitigation	39
4.11 Amendments to Requirements in the Order	39
5.0 Matters Not Yet Agreed	40
5.2 Network Rail's Requested Amendments to Requirements in the Order	52
APPENDIX A: Copy of the Applicant's technical response to Network Rail's objection (October 2020)	55
APPENDIX B: Network Rail's Bespoke Protective Provisions	56

TABLES

Table 3.1: Consultation Summary	9
Table 5.1: Summary of Matters Not Yet Agreed	40

1.0 INTRODUCTION

1.1 Overview

- 1.1.1 This Statement of Common Ground ('SoCG') with Network Rail (Document Ref. 7.7) has been prepared on behalf of EP Waste Management Limited ('EPWM' or the 'Applicant'). It relates to the application (the 'Application') for a Development Consent Order (a 'DCO'), that has been submitted to the Secretary of State (the 'SoS') for Business, Energy and Industrial Strategy, under section 37 of 'The Planning Act 2008' (the 'PA 2008').
- 1.1.2 EPWM is seeking development consent for the construction, operation and maintenance of an energy from waste ('EfW') power station with a gross electrical output of up to 95 megawatts (MW) including an electrical connection, a new site access, and other associated development (together 'the Proposed Development') on land at South Humber Bank Power Station ('SHBPS'), South Marsh Road, near Stallingborough in North East Lincolnshire ('the Site').
- 1.1.3 A DCO is required for the Proposed Development as it falls within the definition and thresholds for a 'Nationally Significant Infrastructure Project' (a 'NSIP') under sections 14 and 15(2) of the PA 2008.
- 1.1.4 The DCO, if made by the SoS, would be known as the 'South Humber Bank Energy Centre Order' ('the Order').
- 1.1.5 Full planning permission ('the Planning Permission') was granted by North East Lincolnshire Council ('NELC') for an EfW power station with a gross electrical output of up to 49.9 MW and associated development ('the Consented Development') on land at SHBPS ('the Consented Development Site') under the Town and Country Planning Act 1990 on 12 April 2019. Since the Planning Permission was granted, the Applicant has assessed potential opportunities to improve the efficiency of the EfW power station, notably in relation to its electrical output. As a consequence, the Proposed Development would have a higher electrical output (up to 95 MW) than the Consented Development, although it would have the same maximum building dimensions and fuel throughput (up to 753,500 tonnes per annum (tpa)).

1.2 The Applicant

- 1.2.1 The Applicant is a subsidiary of EP UK Investments Limited ('EPUKI'). EPUKI owns and operates a number of other power stations in the UK and is a subsidiary of Energetický A Prumyslový Holding ('EPH'). EPH owns and operates energy generation assets in the Czech Republic, Slovak Republic, Germany, Italy, Hungary, Poland, Ireland, and the United Kingdom.

1.3 The Proposed Development Site

- 1.3.1 The Proposed Development Site (the 'Site' or the 'Order limits') is located within the boundary of the SHBPS site, east of the existing SHBPS, along with part of the carriageway within South Marsh Road. The principal access to the Site is off South Marsh Road.
-

- 1.3.2 The Site is located on the South Humber Bank between the towns of Immingham and Grimsby; both over 3 km from the Site.
- 1.3.3 The Site lies within the administrative area of NELC, a unitary authority. The Site is owned by EP SHB Limited, a subsidiary of EPUKI, and is therefore under the control of the Applicant, with the exception of the highway land on South Marsh Road required for the new Site access.
- 1.3.4 The existing SHBPS was constructed in two phases between 1997 and 1999 and consists of two Combined Cycle Gas Turbine (CCGT) units fired by natural gas, with a combined gross electrical capacity of approximately 1,400 MW. It is operated by EP SHB Limited.
- 1.3.5 The Site is around 23 hectares ('ha') in area and is generally flat, and typically stands at around 2.0 m Above Ordnance Datum (mAOD).
- 1.3.6 A more detailed description of the Site is provided at Chapter 3: Description of the Proposed Development Site in the Environmental Statement ('ES') Volume I (Document Ref. 6.2).

1.4 The Proposed Development

- 1.4.1 The main components of the Proposed Development are summarised below:
- Work No. 1— an electricity generating station located on land at SHBPS, fuelled by refuse derived fuel ('RDF') with a gross electrical output of up to 95 MW at ISO conditions;
 - Work No. 1A— two emissions stacks and associated emissions monitoring systems;
 - Work No. 1B— administration block, including control room, workshops, stores and welfare facilities;
 - Work No. 2— comprising electrical, gas, water, telecommunication, steam and other utility connections for the generating station (Work No. 1);
 - Work No. 3— landscaping and biodiversity works;
 - Work No. 4— a new site access on to South Marsh Road and works to an existing access on to South Marsh Road; and
 - Work No. 5— temporary construction and laydown areas.
- 1.4.2 Various types of ancillary development further required in connection with and subsidiary to the above works are detailed in Schedule 1 of the DCO.
- 1.4.3 The Proposed Development comprises the works contained in the Consented Development, along with additional works not forming part of the Consented Development ('the Additional Works'). The Additional Works are summarised below:
- a larger air-cooled condenser ('ACC'), with an additional row of fans and heat exchangers;
 - a greater installed cooling capacity for the generator;
 - an increased transformer capacity; and
-

- ancillary works.

1.4.4 A more detailed description of the Proposed Development is provided at Schedule 1 'Authorised Development' of the Draft DCO and Chapter 4: The Proposed Development in the ES Volume I (Document Ref. 6.2) and the areas within which each of the main components of the Proposed Development are to be built is shown by the coloured and hatched areas on the Works Plans (Document Ref. 4.3). Three representative construction scenarios (timescales) are described within Chapter 5: Construction Programme and Management in the ES Volume I (Document Ref. 6.2) and assessed in the Environmental Impact Assessment ('EIA').

1.5 Purpose of this Document

1.5.1 This document is intended to summarise clearly the agreements reached between the parties on matters relevant to the examination of the Application and areas that have not yet been agreed, and to assist the Examining Authority. It has been prepared with regard to the guidance in 'Planning Act 2008: examination of applications for development consent' (Department for Communities and Local Government, March 2015). This document also summarises the engagement between the parties in respect of the Proposed Development and the Consented Development.

1.5.2 This version of the document summarises the agreements regarding matters such as the locations and types of level crossings in the vicinity of the Site, baseline road and traffic conditions, Proposed Development traffic routing, consultation regarding abnormal indivisible loads, Proposed Development traffic impacts, and controls contained in the draft DCO (Document Ref. 2.1). It is based on the information available at this time, which principally comprises the Draft DCO (Document Ref. 2.1) and accompanying ES Volumes I to III (Document Refs. 6.2 to 6.4), which includes the Transport Assessment at Volume III, Appendix 9A (Document Ref. 6.4.12).

1.6 Status of this Version

1.6.1 The SoCG was prepared in January 2021 and subsequently was agreed on **[TBC]** between the parties as suitable. This version of the SoCG demonstrates what the parties have been able to agree to date, and summarises the remaining issues between them as at 20 January 2021. It will be submitted to the Examining Authority to assist the examination of the Application. It is hoped that as more matters are agreed an updated SoCG will be prepared and submitted to the Examining Authority. Therefore, for the avoidance of doubt, this is the position of the parties as at the date of this statement and may be subject to change.

1.6.2 Section 2 of this document summarises the role of Network Rail, Section 3 sets out details of consultation with Network Rail to date and discussion on agreement of the relevant matters for consideration. Section 4 sets out areas of disagreement/ matters to be agreed.

2.0 THE ROLE OF NETWORK RAIL

- 2.1.1 Network Rail owns, operates and develops Britain's railway infrastructure.
- 2.1.2 Network Rail's role in relation to the DCO process derives from the PA 2008 and secondary legislation made under the same.
- 2.1.3 Network Rail is a consultee under sections 42 and 56 of the PA 2008, meaning applicants must consult with Network Rail before submitting a DCO application and once an application has been accepted for examination.
- 2.1.4 Network Rail has registered as an interested party in the DCO examination process by submitting a Relevant Representation to the Planning Inspectorate ('PINS'). Network Rail summarises its objection to the Order as comprising concerns relating primarily to the increase in HGV use of the Kiln Lane Level Crossing, as well as, to the use of the South Marsh Road Level Crossing.

3.0 SUMMARY OF CONSULTATION

- 3.1.1 The consultation that has taken place with Network Rail in relation to the issues raised within this SoCG is summarised in Table 3.1 below.
- 3.1.2 Consultation has been ongoing with Network Rail since the planning application for the Consented Development. Consultation comments received for the Consented Development are considered to be relevant to the Proposed Development and therefore a summary of all consultation comments received to date for the Consented Development and Proposed Development is presented in Table 3.1 below.

Table 3.1: Consultation Summary

Date	Details
February 2019 (consultation on Consented Development planning application)	<p>Network Rail consulted by NELC in respect of the Consented Development planning application.</p> <p>Network Rail responded to NELC as follows:</p> <p>“Ref – DM/1070/18/FUL</p> <p><i>Proposal – Construction of energy from waste facility</i></p> <p><i>Location – Land rear of Power Station Hobson Way Stallingborough North East Lincolnshire</i></p> <p><i>Thank you for your letter of 30 January 2019 providing Network Rail with an opportunity to comment on the abovementioned application.</i></p> <p><i>With reference to the protection of the railway, Network Rail has no objection in principle to the development, but below are some requirements which must be met,</i></p> <p><i>expense. [sic]</i></p> <p><i>We note from the Transport Assessment that it is proposed to route HGV traffic to the site over the railway level crossing on Kiln Lane and we therefore have the following requirement regarding HGV traffic/abnormal loads and the potential impact on the level crossing surface and infrastructure;</i></p> <p><u>Abnormal Loads</u></p>

Date	Details
	<p><i>We would have serious reservations if during the construction or operation of the site, abnormal loads will use routes that include Network Rail assets. Network Rail would request that the applicant contact our Asset Protection Project Manager (details below) to confirm that any proposed route is viable and to agree a strategy to protect our asset(s) from any potential damage caused by abnormal loads. I would also like to advise that where any damage, injury or delay to the rail network is caused by an abnormal load (related to the application site), the applicant or developer will incur full liability.</i></p> <p><i>Network Rail is required to recover all reasonable costs associated with facilitating these works.</i></p> <p><i>I would advise that the abnormal loads should be the subject of conditions, the reasons for which can include the safety, operational needs and integrity of the railway.</i></p> <p><i>I trust full cognisance will be taken in respect of these comments. If you have any further queries or require clarification of any aspects, please do not hesitate to contact myself I would also be grateful if you could inform me of the outcome of this application, forwarding a copy of the Decision Notice to me in due course.</i></p> <p><i>Our Asset Protection Team can be contacted as follows:</i></p> <p>Asset Protection Project Manager Network Rail (London North Eastern) Floor 3B George Stephenson House Toft Green York Y01 6JT Email: assetprotection@networkrail.co.uk</p> <p>The planning permission issued by NELC</p>

Date	Details
	<p>subsequently included an informative requesting that abnormal loads are notified to NELC and highways and bridge authorities, and stating <i>“Network Rail (London North Eastern) office (assetprotectionneem@networkrail.co.uk) should also be contacted in advance to confirm that any proposed abnormal load route is viable and to agree a strategy to protect Network Rail asset(s) from any potential damage caused by abnormal loads”</i>.</p>
<p>September 2019 (consultation on EIA Scoping Opinion for Proposed Development)</p>	<p>Network Rail consulted by PINS in respect of a request made by the Applicant for an EIA Scoping Opinion for the Proposed Development.</p> <p>Network Rail responded to advise <i>“With reference to the safety and protection of the railway, the EIA for the proposed development should contain a Transport Assessment, providing an assessment in relation to the impact on the operational railway and Level Crossing situated on South Marsh Road to the West of the site location, along with a Flood Assessment.”</i></p>
<p>December 2019 (consultation on Preliminary Environmental Information (PEI) Report for Proposed Development)</p>	<p>Network Rail consulted by the Applicant in October 2019 (s42 consultation).</p> <p>Network Rail responded in December 2019 as follows:</p> <p><i>“Network Rail has been reviewing the information to date and at this stage it is not sufficiently detailed to fully assess the potential impacts of the scheme on the railway and further information will be required to properly respond on the likely impacts of the proposed scheme.</i></p> <p><i>Our initial point of concern relates to site access which we believe will be via the Marsh Lane level crossing over the railway. During construction of the proposed development, access will be required for heavy goods vehicles (HGVs), abnormal loads for certain items and for construction work traffic. This may lead to a significant increase in vehicular and pedestrian movements across this level crossing during the construction phase and subsequent operation of the site.</i></p> <p><i>Network Rail’s position is that there shouldn’t be any increase or change in usage to the level crossings in the area. Any increase in movement across level crossings increase risk. Accordingly, we will need further and better particulars from you to understand the position and we reserve the right to comment</i></p>

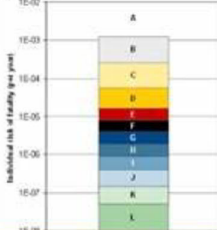
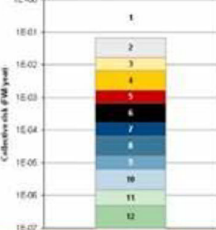
Date	Details
	<p><i>further on this aspect of the development when further details are available.</i></p> <p><i>Network Rail reserve the right to produce additional and further grounds of concern when further details of the application and its effect on Network Rail's land are available.</i></p> <p><i>Network Rail will be seeking protection from the exercise of compulsory purchase powers over operational land either for permanent or temporary purposes. In addition, Network Rail will wish to agree protection for the railway during the course of the construction works and otherwise to protect our undertaking and land interests. Network Rail reserves the right to produce additional and further grounds of concern when further details of the application and its effect on Network Rail's land are available. In addition, any rights for power or other lines under, over or alongside the railway line will require appropriate asset protection measures deemed necessary by Network Rail to protect the operational railway and stations. We have standard protective provisions which will need to be included in the DCO as a minimum therefore contact should be made to Emily Christelow, email: to obtain a copy of the relevant wording. In addition, a number of legal and commercial agreements will need to be entered into, for example, asset protection agreements, method statements, connection agreements, property agreements and all other relevant legal and commercial agreements. This list is not exhaustive and will need to be reviewed once more details of the scheme are discussed between the parties.</i></p> <p><i>Network Rail is prepared to discuss the inclusion of Network Rail land or rights over land subject to there being no impact on the operational railway, all regulatory and other required consents being in place and appropriate commercial and other terms having been agreed between the parties and approved by Network Rail's board.</i></p> <p><i>Network Rail also reserves the right to make additional comments once we have evaluated the proposals in more detail."</i></p> <p><i>The Applicant responded directly to Network Rail in writing on 18 February 2020 as follows:</i></p> <p><i>"The designated operational HGV route was agreed for the Consented Development as part of pre application and determination stage discussions with the local highways authority, NE Lincolnshire Council. This has full planning permission (ref DM/1070/18/FUL) and is capable of being built out. The</i></p>

Date	Details
	<p><i>Proposed Development would use the same HGV route and would have no greater HGV movements across the two level crossings than the Consented Development. A limited number of Abnormal Indivisible Loads (AILs) may be required during construction or at later stages but the details of these are not known at this stage. AILs would be subject to the standard notification procedures, and therefore Network Rail would be afforded the opportunity to discuss its requirements as part of this procedure. No compulsory acquisition or temporary possession powers are to be sought over Network Rail operational land (or at all in the DCO) and therefore no protective provisions are proposed for Network Rail.”</i></p>
<p>21 January 2020</p>	<p>Network Rail was consulted by NELC on the Delivery and Servicing Plan for the Consented Development, which was submitted by the Applicant to discharge planning condition 18. Network Rail responded as follows:</p> <p><i>“Ref – DM/1117/19/CND</i></p> <p><i>Proposal – Details in charge of condition 18 (Delivery and Servicing) pursuant to DM/1070/18/FUL</i></p> <p><i>Location – South Humber Bank Power Station South Marsh Road Stallingborough Grimsby</i></p> <p><i>Thank you for your letter of 9 December 2019 providing Network Rail with an opportunity to comment on the abovementioned application.</i></p> <p><i>In relation to the above application I can confirm that Network Rail have no objection to the discharge of this condition.”</i></p>
<p>July 2020 (Network Rail’s Relevant Representation on the DCO Application)</p>	<p>Network Rail submitted a Relevant Representation to PINS summarised as follows:</p> <p><i>“Compulsory acquisition powers to acquire new rights over Network Rail land are not sought under the Scheme. However, the designated route providing HGV access to the site of the Scheme (HGV Designated Route) includes Kiln Lane level crossing, located on Kiln Lane, Stallingborough (the Crossing). Network Rail objects to the inclusion of the Crossing in the HGV Designated Route. The requirements of the Order relating to traffic regulation are insufficient and have been suggested without any meaningful engagement with Network Rail or a proper understanding of the level of impact the HGV vehicles will have on the Crossing and the safety of the railway and its users.</i></p>

Date	Details
	<p><i>The Crossing would not currently be able to withstand the significant increase in HGV traffic proposed. Upgrade works to the Crossing at a cost of approximately £50,000 would be required ahead of the commencement of construction of the Scheme, as there are no appropriate alternative routes into the site.</i></p> <p><i>The Crossing constitutes land owned by Network Rail for the purpose of its statutory undertaking and, accordingly, this representation is made under section 56 of the Planning Act 2008.</i></p> <p><i>Network Rail also objects to all other compulsory powers in the Order to the extent that they affect, and may be exercised in relation to, Network Rail's property and interests.</i></p> <p><i>In order for Network Rail to be in a position to withdraw its objection, Network Rail requires:</i></p> <p><i>(a) an agreement with the Applicant that regulates the use of the Crossing by HGVs, and the liability of the Applicant for any necessary repairs and upgrades to the Crossing as a result of the HGV Designated Route, including terms which protect Network Rail's statutory undertaking;</i></p> <p><i>(b) an agreement with the Applicant that compulsory acquisition powers included in the Order will not be exercised in relation to Network Rail's property and interests; and</i></p> <p><i>(c) an amendment of Requirement 16 of Schedule 2 (Construction traffic management and travel planning), Requirement 24 (Delivery and Servicing Plan) an Requirement 25 (Operational Travel Plan) of the Order so as to require Network Rail approval of the construction traffic management plan prior to commencement of authorised development, and the delivery and servicing and operational travel plans prior to authorised development coming into operation, as both directly impact the Crossing.</i></p> <p><i>Network Rail is hopeful that an agreement can be reached with the Applicant but until such time, to safeguard Network Rail's interests and the safety and integrity of the operational railway, Network Rail objects to the Order.</i></p> <p><i>Network Rail requests that the Examining Authority treat Network Rail as an Interested Party for the purposes of the Examination, and reserves the right to produce additional and further grounds of concern when further details of the Scheme and its effects on Network Rail's land are available."</i></p> <p><i>Prior to the submission of Network Rail's Relevant Representation a number of emails were exchanged</i></p>

Date	Details
	in which the Applicant outlined the Proposed Development and highlighted some of the relevant technical documents submitted to Network Rail.
24 July 2020 (Introductory meeting between Applicant and Network Rail)	An introductory meeting was held between Network Rail and the Applicant in order to introduce the Proposed Development further and gain a better understanding of Network Rail's expectations identified in their Relevant Representations.
August 2020	<p>A number of emails and calls between Network Rail and the Applicant were held discussing further matters associated with the Relevant Representation.</p> <p>Key discussion points in emails focused on the Applicant requesting the Level Crossing Risk Assessment, Network Rail requesting a Costs Undertaking for a Framework Agreement ('FA') and Network Rail outlining provisions it said were required to protect the railway.</p> <p>Notable calls made are as set out below:</p> <p>A call was held between the Applicant and Network Rail on 19 August 2020 further discussing Network Rail's expectations set out in the submitted Relevant Representations. No agreements were made on this call.</p> <p>A call was held between the Applicant and Network Rail on 26 August 2020. This call confirmed Network Rail had begun drafting a FA and bespoke Protective Provisions ('PPs'). The Applicant confirmed it had not conceded the need for either. No agreements were made on this call.</p> <p>The above list is a summary of the main exchanges and does not represent all calls and emails exchanged in August between the Applicant and Network Rail.</p>
21 September 2020	<p>Network Rail provided a written objection to the Applicant by email as follows:</p> <p><i>"Network Rail objects to the proposed routes from the road infrastructure to the proposed location of the South Humber Bank Energy Centre. This is on the grounds of significant increase to traffic,</i></p>

Date	Details
	<p><i>specifically Heavy Goods Vehicles, as noted in your document 'Annex 23_ES VOL III Appendix 9A - Traffic Volumes over Kiln Lane LC' and 'EN010107-000241-SHBEC DCO - 6.4.12 ES Vol III Appendix 9A Transport Assessment File 1 - Main Document (1)'. Whilst we note that a baseline traffic survey has been completed, no references can be found to indicate that a study was also carried out on the 'South marsh Road (East of Hobson Way), Hobson Way (North & Southbound), Laporte Road (North & Southbound) via Queens Road (East & Westbound) onward to Kings Road (East & Westbound) to join the A1173 and then the A180.' The aforementioned route is approximately 1.5 miles longer but utilises a road over rail bridge to cross the railway on Queens Bridge Road. As you may be aware, the interface between members of the public and rail traffic at level crossings, also referred to as 'at grade', presents the greatest risk of any rail operations. Therefore, it is Network Rail's goal to remove or minimise the risk of such interactions.</i></p> <p><i>Having added the traffic movements from your projections to the baseline model scores for each level crossing, we can see that the ALCRM modelled risk posed at each stay at previous rail signalling light indicator Marsh Lane - Double Yellow*</i></p> <p><i>Current ALCRM Score</i> <i>RISK – J6 (Z10)</i> <i>ALCRM Score with added traffic to SHBEC</i> <i>RISK – I8 (Z10)</i> <i>and Kiln Lane – Yellow*</i></p> <p><i>Current ALCRM Score</i> <i>RISK – I5 (Z13)</i> <i>ALCRM Score with added traffic to SHBEC</i> <i>RISK – H6 (Z13)</i></p> <p><i>* We use standard railway signalling aspect colours to denote the relative risk of a crossing. These are,</i></p>

Date	Details
	<p data-bbox="510 337 1455 370"><i>from preferred to least preferable – Green, Double Yellow, Yellow, Red</i></p> <p data-bbox="510 386 1633 418"><i>Please find as follows an aid in deciphering the ALCRM scores and what they mean.</i></p> <div data-bbox="531 443 1260 922" style="border: 1px solid black; padding: 10px;"> <p data-bbox="562 459 636 492">Risk</p> <p data-bbox="562 524 1150 548">Collective Risk and Individual Risk are also presented as simplified rankings.</p> <div style="display: flex; justify-content: space-around;"> <div data-bbox="541 548 903 922" style="border: 1px solid black; padding: 5px;"> <p data-bbox="636 557 808 573">Individual Risk ranking</p> <ul style="list-style-type: none"> <li data-bbox="552 589 892 638">■ Allocates individual risk into rankings A to M (A is highest, L is lowest, and M is 'zero risk' for sleeping dog or crossing on mothballed line) <li data-bbox="552 646 892 678">■ Allows comparison of individual risk to average users across any crossings on the network.  </div> <div data-bbox="913 548 1260 922" style="border: 1px solid black; padding: 5px;"> <p data-bbox="1003 557 1171 573">Collective Risk ranking</p> <ul style="list-style-type: none"> <li data-bbox="919 589 1249 638">■ Allocates collective risk into rankings 1 to 13 (1 is highest, 12 is lowest, and 13 is 'zero risk' for sleeping dog or crossing on mothballed line.) <li data-bbox="919 646 1249 678">■ Can easily compare collective risk between any two crossings on the network.  </div> </div> </div> <p data-bbox="510 954 1890 1365"><i>Having discussed this increase with my operational risk experts, the type of mitigation would have to be barrier protection, which goes to fail safe should a barrier be damaged by vehicle incursion. I have been advised that the infrastructure for these is in the region of £290k per level crossing. This does not include required changes to signalling, communications, nor road infrastructure changes. Given the Marsh Lane has a 'substandard' width (<4m) with minimal passing places and bounded by third party land, I would feel this would push the costs for this route up significantly. The Kiln Lane level crossing fares a little better. The Western approach, whilst improved from the east, has its own difficulties. The route is via a large and busy industrial estate. From a brief desktop review, it appears that there are a high proportion of businesses that either service or would require deliveries by LGV/HGV. As you will imagine, this brings in a significant number of LGV/HGVs, and using this as your preferred route, will only exacerbate traffic volumes. Your traffic modelling also shows projected movements of 17 HGV's per hour in each direction, or one every 1¾ minutes. This significantly increases the chance of head on</i></p>

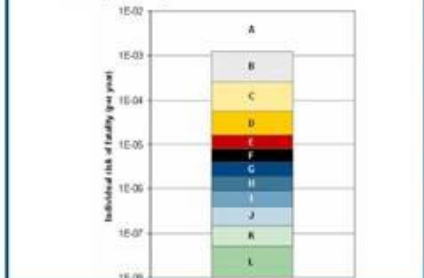
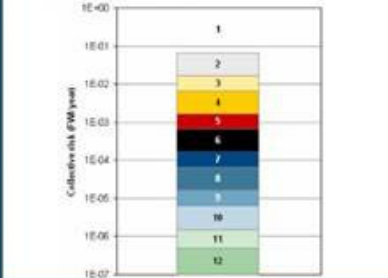
Date	Details
	<p><i>meets between vehicles and the potential for vehicles to 'back up' over the crossing. Your vehicle modelling states 'PCU' Passenger Car Units, however HGV are two to three times the length of PCUs, therefore I argue that your Max Queue output is skewed and does not accurately represent the scenario with HGVs.</i></p> <p><i>Given as noted in the first paragraph, please can you provide evidence that you have reviewed the route via the north and submit robust reasoning behind your evaluation and decision.</i></p> <p><i>Lastly, I notice that your report identifies a southern access via the A180, Westgate roundabout and Moody Lane, where no mitigation is proposed due to the 'small percentage that development flows are adding to the junction'. I would like to understand further why this could not be a preferred route. It appears to provide a suitable route that needs no upgrade to proposed figures, whilst not requiring the use of a level crossing and more of the access via A Class roads.</i></p> <p><i>I look forward to receiving your report and findings on the areas noted above."</i></p> <p>A report from the Applicant was submitted to Network Rail on 16 October 2020.</p>
16 October 2020	The Applicant submitted a technical response to Network Rail's objection (see copy in Appendix A).
6 November 2020	<p>Network Rail submitted an updated note of technical detail to the Applicant on 6 November 2020 and responded as follows:</p> <p><i>"Network Rail objects to the proposed routes to the location of the South Humber Bank Energy Centre. This is on the grounds of significant increase to traffic, specifically Heavy Goods Vehicles as noted in your documents 'Annex 23_ES VOL III Appendix 9A - Traffic Volumes over Kiln Lane LC' and 'EN010107-000241-SHBEC DCO - 6.4.12 ES Vol III Appendix 9A Transport Assessment File 1 - Main Document (1)'. This document provides technical information outlining why the proposed routes are unsafe, what is required to make the proposed routes safe and justifications as to costs.</i></p> <p><u>ALCRM modelled risk values for level crossings</u></p>

Date	Details
	<p><i>The traffic movements from your projections have been added to the baseline model scores for each level crossing. These are the ALCRM⁽³⁾ modelled risk values for each crossing:</i></p> <p>Marsh Lane - Double Yellow⁽¹⁾ <i>Current ALCRM Score</i> <i>RISK – J6 (Z10)</i> <i>ALCRM Score with added traffic to SHBEC</i> <i>RISK – I8 (Z10)</i></p> <p>Kiln Lane – Yellow⁽¹⁾ <i>Current ALCRM Score</i> <i>RISK – I5 (Z13)</i> <i>ALCRM Score with added traffic to SHBEC</i> <i>RISK – H6 (Z13)</i></p> <p><i>Having discussed this with my operational risk experts, the type of mitigation required would be an upgrade to a Manually Controlled Barrier with Obstacle Detection (MCB-OD) barrier protection⁽⁴⁾, which defaults to fail safe should a barrier be damaged by vehicle incursion, or other blocking of the level crossing.</i></p> <p><i>Both types of level crossing are automatic, Marsh Lane being Automatic Half Barrier (AHBC) and Kiln Lane being Automatic Operator Controlled (AOCL). In both locations, when the crossings are to be upgraded to meet the demands of increased road and / or rail traffic, or end of life replacement, they would be upgraded to a MCB-OD. This is based on national operational risk minimisation. As further information for the differential in risk ranking, the AHBC is, as its name suggests is only a half barrier. This can increase the likelihood for people to run the crossing to ‘save time’ on their journey.</i></p> <p><i>The upgrades make the crossing safer by providing a full, cross road visual deterrent to road users who previously may have tried to slalom the existing half barriers. They also protects trains and vehicle occupants by utilising LIDAR and RADAR systems to detect that the crossing is clear; if it is not, the</i></p>

Date	Details
	<p><i>sequence is disrupted and any approaching train would come to a stand at the protecting signal and the signaller would be required to check the crossing. Without these upgrades, there is greater likelihood of vehicle to vehicle head on interface, particularly given the significant increase in traffic due to the proposed development.</i></p> <p><i>I have been advised that the infrastructure for these is in the region of c.£2M⁽²⁾ per level crossing. This does not include required changes to signalling, communications, nor road infrastructure changes. The specific justifications for these upgrades for each level crossing are outlined below:</i></p> <p><u>Marsh Lane Level Crossing (Also referred to as South Marsh Road)</u></p> <p><i>A UK road is usually 5.5 metres wide, which provides a minimum width for a rigid HGV to pass another rigid HGV. Given the Marsh Lane has a width of less than 4 metres, this is substandard for both the passing of HGVs and for normal cars to pass (which would require a road with of 4.1 metres). The minimal passing places and being bounded by third party land, would increase the costs for this route significantly due to works required to minimize the risk of accident, collision etc that the highway currently presents.</i></p> <p><i>I have also been advised that our Liability Team is investigating the status of Marsh Lane LC. There is a potential that it is a private level crossing and does not have permission for general vehicular use. We are currently investigating the status of the level crossing.</i></p> <p><u>Kiln Lane Level Crossing</u></p> <p><i>The Kiln Lane level crossing fares a little better. The Western Approach, whilst improved from the east, has its own difficulties. The route is via a large and busy industrial estate. From a brief desktop review, it appears that there are a high proportion of businesses that either service or would require deliveries by LGV/HGV. As you can imagine, this brings in a significant number of LGV/HGVs, and using this as your preferred route, will only exacerbate traffic volumes.</i></p>

Date	Details
	<p><i>Your traffic modelling also shows projected movements of 17 HGV's per hour in each direction, or one every 1¾ minutes. This significantly increases the chance of head on interfaces between vehicles and the potential for vehicles to 'back up' over the crossing. Your vehicle modelling states 'PCU' Passenger Car Units, however HGV are two to three times the length of PCUs, therefore I suggest that your Max Queue output is skewed and does not accurately represent the scenario with the volumes of HGVs you propose.</i></p> <p><i>It bears mentioning, that once activated, the crossings would be in the down position for some time. A 'crossing barrier cycle' in this location and given the nature of the freight traffic using the line, may mean the crossing is down (closed) to road users for around 4 minutes. Given that the you note a HGV is to use the Kiln Lane crossing every 1¾ minutes, this could have significant blocking back issues for the road and potentially the junction to the east and most definitely to the western approach and access to / from the industrial estate and surface roads.</i></p> <p><u>Alternative Routes</u></p> <p><i>Whilst we note that a baseline traffic survey has been completed, no references can be found to indicate that a study was also carried out on the 'Marsh Lane (East of Hobson Way), Hobson Way (North & Southbound), Laporte Road (North & Southbound) via Queens Road (East & Westbound) onward to Kings Road (East & Westbound) to join the A1173 and then the A180' (The Northern Route). The aforementioned route is approximately 1.5 miles longer but utilises a road over rail bridge to cross the railway on Queens Bridge Road. As you may be aware, the interface between members of the public and rail traffic at level crossings, also referred to as 'at grade', presents the greatest risk of any rail operations. Therefore, it is Network Rail's goal to remove or minimise the risk of such interactions.</i></p> <p><i>I would therefore suggest that as per my previous comments, the Northern Route is thoroughly investigated, as this would potentially not only alleviate any cost borne impact at the level crossings, but also, given the blocking back issue noted and subsequent clearance of the ensuing tailback, provide a much smoother and consistently reliable route to and from the energy centre. As part of the Northern Route investigation, I would also expect to see the inclusion of routing signs, to ensure that</i></p>

Date	Details
	<p><i>HGVs accessing and egressing the site are directed via the Northern Route, so as to minimise the chance of the level crossings being used.</i></p> <p><i>I also notice that your report identifies a southern access via the A180, Westgate roundabout and Moody Lane, where no mitigation is proposed due to the ‘small percentage that development flows are adding to the junction’. I would like to understand further why this could not be a preferred route. It appears to provide a suitable route that needs no upgrade to proposed figures, whilst not requiring the use of a level crossing and more of the access via A Class roads.</i></p> <p><u>Costs recovery</u></p> <p><i>Lastly to recover costs already accrued⁽⁵⁾, and to enable continued support and advice from Asset Protection and the other Network Rail specialists required, I will need you to enter into a Basic Asset Protection Agreement (BAPA). This document sets out the nature and estimated costs involved for the support of your project. We work on a cost arising basis and always strive to offer the best value for our clients. Please can you advise me of the contact name, email address etc of the person best placed to liaise with.</i></p> <p><i>I look forward to receiving your report and findings on the areas noted above.</i></p> <p><i>Yours sincerely,</i></p> <p><i>Roland Brown MAPM</i></p> <p><i>Scheme Interface Manager</i></p> <p><i>Asset Protection & Optimisation</i></p> <p><u>Notes</u></p> <p><i>(1) We use standard railway signalling aspect colours to denote the relative risk of a crossing. These</i></p>

Date	Details									
	<p>are, from preferred to least preferable – Green, Double Yellow, Yellow, Red</p> <p>Please find as follows an aid to understanding the ALCRM scores and what they mean.</p> <div data-bbox="512 467 1360 1024" style="border: 1px solid black; padding: 10px;"> <p style="text-align: center;">Risk</p> <p style="text-align: center;">Collective Risk and Individual Risk are also presented as simplified rankings.</p> <div style="display: flex; justify-content: space-around;"> <div style="width: 45%;"> <p style="text-align: center;">Individual Risk ranking</p> <ul style="list-style-type: none"> ■ Allocates individual risk into rankings A to M (A is highest, L is lowest, and M is 'zero risk' for sleeping dog or crossing on mothballed line) ■ Allows comparison of individual risk to average users across any crossings on the network  </div> <div style="width: 45%;"> <p style="text-align: center;">Collective Risk ranking</p> <ul style="list-style-type: none"> ■ Allocates collective risk into rankings 1 to 13 (1 is highest, 12 is lowest, and 13 is 'zero risk' for sleeping dog or crossing on mothballed line.) ■ Can easily compare collective risk between any two crossings on the network  </div> </div> </div> <p>(2) Breakdown of costs (approx.) for barrier protection. MCB-OD type crossing</p> <table border="1" data-bbox="512 1130 1276 1341"> <thead> <tr> <th>Category</th> <th>Cost £k</th> <th>Description</th> </tr> </thead> <tbody> <tr> <td>Feasibility Works</td> <td>£83</td> <td>Initial optioneering and feasibility study.</td> </tr> <tr> <td>Surveys</td> <td>£80</td> <td>Asset condition, correlation, power, topo, lighting etc.</td> </tr> </tbody> </table>	Category	Cost £k	Description	Feasibility Works	£83	Initial optioneering and feasibility study.	Surveys	£80	Asset condition, correlation, power, topo, lighting etc.
Category	Cost £k	Description								
Feasibility Works	£83	Initial optioneering and feasibility study.								
Surveys	£80	Asset condition, correlation, power, topo, lighting etc.								

Date	Details		
	Site set-up and road/rail access	£84	Welfare, road closures, site compound and possessions etc.
	Design	£338	Development of selected option and detailed design.
	Implementation	£1,448	Materials, installation, testing and commissioning.
	TOTAL	£2,033	
	<p>(3) Notes for ALCRM (All Level Crossing Risk Model) ALCRM uses baseline traffic survey data as part of its analysis. If there is no baseline traffic data in the system (usually a 9-day traffic survey), the Level Crossing manager (LCM) will undertake a 1-hour survey. This is carried out between the hours of 0930 and 1530 to avoid peak traffic flows and thus minimises the skewing of any data. The collected survey data is then input into ALCRM, along with information such as time gathered etc. ALCRM then uses algorithms to extrapolate this into the wider parameters required to assess the risk. The baseline data, as referred to previously, has the proposed traffic data added to it. This includes vehicle type and volume. As you would imagine, an increase in HGV traffic would have a greater effect on the risk ranking, and the ALCRM algorithms take this into account when calculating the new levels.</p> <p>ALCRM Risk Ranking - The risk ranking is based upon train and vehicular traffic. In a similar method to that noted above, the LCM will carry out an assessment of rail traffic, usually over a range of weeks to obtain a more reliable figure. The number of tracks, line speed etc will also be factored into the calculations. The reason that we cannot rely solely on booked services for this number and need to undertake a physical survey, is that there may be companies that have network access agreements that can call up to path their train at relatively short notice. These therefore are not included in any regularly scheduled movements, however, must be included for fullness of information and risk assessment.</p>		

Date	Details
	<p>(4) Barrier Protection <i>Both types of level crossing are automatic, Marsh Lane being Automatic Half Barrier (AHBC) and Kiln Lane being Automatic Operator Controlled (AOCL). In both locations, when the crossings are to be upgraded to meet the demands of increased road and / or rail traffic, or end of life replacement, they would be upgraded to a Manually Controlled Barrier with Obstacle Detection (MCB-OD). This is based on national operational risk minimisation. As further information for the differential in risk ranking, the AHBC is, as its name suggests is only a half barrier. This can increase the likelihood for people to run the crossing to 'save time' on their journey.</i></p> <p>(5) Accrued and potential costs <i>These have been incurred in the review, internal discussions and response to the DCO application. It has been recommended that myself and other NR staff (TBC) also attend a site visit with the Inspector. These costs would also be added to this phase of the project. "</i></p> <p><u>Responses to queries from Applicant:</u></p> <p>1. "Request for a full narrative risk assessment for Kiln Lane and Marsh Lane level crossings which would include the following information:</p> <ul style="list-style-type: none"> a) The traffic baseline and other inputs; b) The traffic added in the "with SHBEC" scenario; c) The train movement assumptions used and the nature of risks identified at each level crossing; d) Information on the usage of the level crossing by all users; e) Observations and comments on the condition of the crossings; f) Site-specific hazards; and g) Mitigation options. <p><i>a) and b) have been provided for in the technical note. The ALCRM modelled risk values for each level</i></p>

Date	Details
	<p><i>crossing have been determined by adding the baseline model scores for each level crossing to the traffic movements from the Promoter's projections. These also include the train movement assumptions referred to in c) (see in particular Note 3 of the technical note).</i></p> <p><i>The nature of the risks (if you want that information then can give them) identified at the level crossing are multi-faceted and if it helpful we can provide guidance on the factors utilised in the ALCRM, however the technical note sets out the broad nature of the risks. It also sets out how the traffic survey data is collected, compiled and used in the ALCRM system to support our objection. Similarly the information referred to in d) to f) are discussed in the technical note but further detail of what is used in the ALCRM model can be provided if necessary. The mitigation options g) are based on further data and are driven by a combination of the ACLRM score and policy, which require the upgrades requested as a minimum standard.</i></p> <p><i>A further full risk assessment would require significant additional analysis and Network Rail believes that the information provided in the technical note is sufficient justification as to why the upgrades are required. Should the Promoter require further information in the form of a full risk assessment report as previously forwarded, Network Rail will require an undertaking as to its costs for carrying out this additional work which goes beyond that which is necessary to provide.</i></p> <p>2. Request for an explanation of the reasons for the changes in risk ratings at each level crossing as reported in NR's objection for the 'with SHBEC' scenario.</p> <p><i>The technical note sets out the justifications for the changes in risk ratings at each level crossing as well as the basis of the ALCRM scoring and colour system. NR would be happy to have discussions between the technical teams to provide any further explanation of how the system works if required. The upgrades required are the deemed minimum requirement for upgrades to level crossings.</i></p> <p>3. Query whether the changes are solely due to SHBEC traffic, or if they also relate to other additional future road traffic that is identified and allowed for in the Promoter's Transport</p>

Date	Details
	<p style="text-align: center;">Assessment.</p> <p><i>The risk values were determined using the traffic volumes noted in documents 'Annex 23_ES VOL III Appendix 9A - Traffic Volumes over Kiln Lane LC' and 'EN010107-000241-SHBEC DCO - 6.4.12 ES Vol III Appendix 9A Transport Assessment File 1 - Main Document (1)'.</i></p>
November 2020	<p>A number of emails between Network Rail and the Applicant were exchanged discussing further matters associated with the Statement of Common Ground.</p> <p>Key discussion points in emails focused on the Applicant maintaining the importance of its requests for the Narrative Level Crossing Risk Assessments and relevant data inputs to the ALCRM and Network Rail requesting figures used from the Transport Assessment for a new ALCRM risk assessment.</p> <p>This table is a summary of the main exchanges and does not represent all calls and emails exchanged in November between the Applicant and Network Rail.</p>
26 November 2020	<p>Network Rail responded to the Applicant by email as follows:</p> <p><i>"Thanks for this. In light of it and previous correspondence, I have asked one of our Route Level Crossing Managers to reassess the risk increase posed by the additional vehicle movements which the SHBEC development proposes.</i></p> <p><i>His response to that request is in italics below. I have attached the files that he attached to his email.</i></p> <p><i>The crux of his response is that the upgrade to ABCL (adding barriers to the existing open crossing, along with associated signalling system upgrades), at an estimated cost of £1.5m, is not justified by the additional risk introduced by the HGV movements. Certainly the originally proposed upgrade to MCB-OD is not justified.</i></p> <p><i>Whilst no upgrade to the fundamental level crossing type is required, the additional movements will increase wear on the crossing deck and approach roads. I have consulted the Off Track Section Manager as suggested below, and he is confident that the cost of upgrades to these elements, along with improved signage and road markings, would not exceed £100k.</i></p>

Date	Details
	<p><i>To confirm the answers to your questions:</i></p> <ol style="list-style-type: none"> <i>1. Yes, the existing figures used are 5184 and 81 as per the attached baseline assessment</i> <i>2. I failed to write down what the RLCM said to me on the phone on the existing split of HGVs and other vehicles, but it was a significant number of HGVs due to the nearby industrial estate</i> <i>3. The additional daily movements used for SHBEC traffic were 624 HGVs and 112 other vehicles as per the Transport Assessment in the operational phase</i> <i>4. 1 train a day has been used as the assumption, and there is a reasonable level of confidence that this is unlikely to increase significantly</i> <i>5. No other factors have changed other than the increased vehicle movements to and from SHBEC</i> <i>6. The risks are shown in the detailed results files and they are similar to those in the narrative risk assessment – large number of HGVs and general vehicle movements is the main one</i> <i>7. See detailed response below – none of the identified mitigation options (ABCL, MCB-OD or any other intermediate upgrades) are considered proportionate given the high cost of implementing them against the low risk at the crossing (notwithstanding mitigation to wear by lorries to the crossing deck and road surface)</i> <p><i>Regards</i></p> <p><i>Roland</i></p> <p><i>Afternoon Roland,</i></p> <p><i>After looking at the information again and adjusting the calculation in ALCRM I have attached the results and will try to explain.</i></p> <p><i>The first sheet detailed live details for Kiln Lane is the current situation at the crossing.</i></p> <p><i>The second sheet details the information with the projected extra vehicle use of the crossing.</i></p> <p><i>The third sheet details the option of fitting barriers at the location.</i></p> <p><i>To explain further the current risk score is 15 with a FWI (fatality weighted index) of 7.63E-04.</i></p>

Date	Details
	<p><i>The projected risk score for the introduction of the extra vehicles means the risk score remains at I5 though the FWI increases to 8.25E-04 and so increases the risk.</i></p> <p><i>The fitting of barriers to the existing crossing, which would be the minimum work required at the crossing to upgrade from Automatic open crossing locally monitored (AOCL) to AOCL+B gives a risk score of J5 and FWI of 2.65E-04 and hence mitigates the imported risk.</i></p> <p><i>This work though has been discounted after discussions with the signalling RAM have determined that full upgrade to an ABCL would be required as the current equipment may be unsuitable to just fit barriers, this work I have been informed would be 1.5 million.</i></p> <p><i>So upon conclusion the imported risk due to the increase in vehicles would mean no works to the upgrading of the current mitigations.....that said there are other factors to consider, the crossing when replaced some years ago would have a life span for the current level of use.</i></p> <p><i>This life span will considerably reduce due to these added vehicles that is down to the proposed development. It should be noted that the road approaches to the crossing and surrounding roads would be impacted. I presume the council will have been consulted around the impact of roadway routes that the HGVs shall take?</i></p> <p><i>The upgrade of the current crossing deck as well as other options such as renewal of approach signage should be undertaken. The line markings should be re-newed and the crossing approaches re-surfaced.</i></p> <p><i>May I suggest that the Track maintenance engineer and the Off track section manager are contacted so as to input there requirements with regards the above, they should also be able to provide any costs associated with the works."</i></p> <p><i>Network Rail provided three Excel spreadsheets attached to the email showing the risk assessment inputs and results for the current baseline, with the Proposed Development operational traffic, and with</i></p>

Date	Details
	barrier mitigation.
Solicitor engagement	<p>Network Rail's solicitors (Addleshaw Goddard LLP) ('AG') contacted the Applicant's solicitors (Pinsent Masons LLP) ('PM') on 8 June 2020 to outline Network Rail's concerns with increases in traffic resulting from the Proposed Development.</p> <p>AG proposed that the parties enter into legal agreements and/or amendments to the Order to mitigate Network Rail's concerns and to allow them to remove its objection to the Proposed Development. AG requested an undertaking for legal costs and for Network Rail internal costs.</p> <p>PM did not confirm that the Applicant considered a legal agreement or amendments to the Order were required. AG provided a draft FA and PPs for inclusion in the Order to PM on 25 August 2020 and repeated its request for an undertaking for legal costs. On 23 September 2020 PM noted that it was instructed not to review the FA or PPs until additional technical information was provided by Network Rail, and the Applicant was unable to assess the basis of Network Rail's requested terms, and the need for the FA and PPs was not agreed.</p> <p>PM confirmed on 2 October 2020 that the Applicant was willing to contribute up to £3,000 towards Network Rail's technical costs, which was subsequently confirmed as insufficient by AG. Network Rail accepted the Applicant's offer on 4 December but noted that this was insufficient to cover all of Network Rail's technical costs but is willing to accept this level of contribution for now.</p> <p>AG also noted its position that even without further technical details which had been requested by the Applicant, it was possible to move forward with the FA and PPs and requested that PM engage with these documents. PM reiterated its position that without having sight of that technical detail, entering in to discussions on the need for PP and FA would be premature.</p> <p>Following provision of technical information from Network Rail detailing the impacts on the Kiln Lane Level Crossing and South Marsh Road level crossing, PM confirmed on 22 October 2020 that the Applicant did not consider it necessary to enter into a FA or PPs and that an undertaking for legal costs was therefore not necessary.</p> <p>On 1 December 2020 AG confirmed to PM that based on the extra 624 HGV movements, only</p>

Date	Details
	<p>upgrades to the approach road, deck and signage would be required rather than significant upgrades to the Kiln Lane Level Crossing that were previously requested by Network Rail between July and November inclusive. However, AG noted that Network Rail needed to maintain control with regards to the final level of vehicle movements to ensure that the numbers do not reach levels that could cause an unacceptable risk increase to users of the railway and the Kiln Lane Level Crossing and South Marsh Road level crossings, and on that basis, AG considers that the FA and PPs, and the requested amendment to the Order are still required.</p> <p>On 15 December 2020 AG requested the Applicant submit a highways search in respect of South Marsh Road (west of Hobson Way), repeated the request for the Applicant to consider the draft FA and PPs and request for an undertaking in relation to legal costs for the same, and requested a formal undertaking for the recently accepted £3,000 undertaking for NR technical costs.</p> <p>On 18 December 2020 PM confirmed that the highways search has been requested, advised that the Applicant's position remains that the FA and PPs are not required and as such would not provide an undertaking for legal costs, and provided the undertaking for £3,000 for NR technical costs.</p> <p>On 7 January 2021 PM advised that the highways search is still awaited from NELC and asked for confirmation that there are no practical implications given i) there is no impact on Marsh Lane level crossing and ii) if South Marsh Road is not a highway the issue falls away. PM also confirmed that a restriction on HGV movements on South Marsh Road (west of Hobson Way) is acceptable to the Applicant and will be included in the revised draft DCO at Deadline 3.</p> <p>On 12 January 2021 PM sent a copy of the highways search confirming that the relevant section of South Marsh Road (west of Hobson Way) is a bridleway, and seeking confirmation that any issues relating to South Marsh Road are resolved.</p> <p>AG responded on 13 January 2021 to confirm that subject to securing restrictions on vehicles over South Marsh Road including within the DCO it was agreed the issue is resolved.</p> <p>Separately there have also been without prejudice communications between PM and AG during December 2020 and January 2021, the terms of which are confidential.</p>

4.0 MATTERS AGREED

4.1 Network Rail Assets

- 4.1.1 It is agreed that there are two level crossings in the vicinity of the Site – ‘Marsh Lane’ level crossing on South Marsh Road (west of Hobson Way) and ‘Kiln Lane’ level crossing on Kiln Lane. It is agreed that Kiln Lane is a public adopted highway. It is agreed that South Marsh Road (west of Hobson Way) is a bridleway, meaning that it is not a public through route for motor vehicles. The level crossings cross a single railway line which is currently used by up to one freight train per day.
- 4.1.2 It is agreed that Marsh Lane level crossing comprises an automatic half barrier crossing (AHBC). This crossing type has two half-barriers that close the entrance lanes to the crossing, signage, lights and audible alarms. The current risk rating is J6, where J refers to the individual risk ranking, and 6 refers to the collective risk ranking.
- 4.1.3 It is agreed that Kiln Lane level crossing comprises an automatic open crossing locally monitored (AOCL). This crossing type comprises an open crossing with lights, signage and audible alarms, but no barriers. The current risk rating is I5, where I refers to the individual risk ranking, and 5 refers to the collective risk ranking.
- 4.1.4 It is agreed that an alternative highway crossing of the railway line that avoids level crossings is available at Queens Road, to the north of Kiln Lane, via Queens Road bridge.
- 4.1.5 It is agreed that four other level crossings are present to the south of the Site at:
- Woad Lane;
 - Gilbey Road (known as ‘Pyewipe Road’ level crossing);
 - Moody Lane near the former Tioxide site (known as ‘Tioxide UK GF’ level crossing); and
 - Moody Lane near Westside Road.
- 4.1.6 It is agreed that there are no Network Rail assets or operational land located within the Order limits.
- 4.1.7 It is agreed that the Draft DCO (Document Ref. 2.1) does not seek any compulsory acquisition or temporary use powers over Network Rail operational land or assets.
- 4.1.8 It is agreed that the Draft DCO (Document Ref. 2.1) does not include any protective provisions for the benefit of Network Rail, or allow Network Rail any control over how many HGVs will be permitted to use the Kiln Lane level crossing and/or the South Marsh Road level crossing. The draft DCO includes a requirement to consult with Network Rail in relation to draft Requirement 16 in relation to abnormal loads, which is consistent with the requirement of the planning conditions on the Consented Development Planning Permission.

4.1.9 It is agreed that the draft DCO will be revised at Deadline 3 to require that Network Rail is consulted under requirements 16(1) (construction traffic management plan) and 24(1) (delivery and servicing plan).

4.2 Consented Development

4.2.1 It is agreed that Network Rail did not object to the planning application for the Consented Development and did not specify that level crossing upgrades were required as a condition of the Consented Development. It is agreed that Network Rail did however communicate its serious reservations about the use of the Kiln Lane Level Crossing and South Marsh Road level crossing by abnormal loads in an email dated 8 March 2019 to Planning – IGE (ENGIE) and requested that the Applicant contact its asset protection project manager to confirm that any proposed route is viable and agree a strategy to protect assets from any potential damage caused by abnormal loads. This requirement was included by NELC as an informative number 5 in the decision notice for the Planning Permission for the Consented Development (see Document Ref. 5.5 Planning Design and Access Statement, Appendix 2/ Examination Library Ref APP-024).

4.2.2 It is agreed that Network Rail noted that it would need to recover all reasonable costs associated with the works of the Proposed Development and that where any damage, injury or delay to the rail network was caused by an abnormal load (related to the application site) the Applicant or developer would incur full liability.

4.2.3 It is agreed that the Planning Permission conditions require a construction traffic management plan and a construction worker travel plan to be submitted and approved by the local planning authority prior to commencement of development, and an operational travel plan to be submitted and approved by the local planning authority prior to the Consented Development coming into operation. There is no formal requirement for Network Rail to be consulted on these plans.

4.2.4 It is agreed that the Planning Permission conditions also require a Delivery and Servicing Plan (condition 18) which defines the operational HGV management and routing. NELC have consulted Network Rail on the Delivery and Servicing Plan and it is agreed that Network Rail responded to NELC in January 2020 to confirm no objection.

4.3 Proposed Development Construction and Operational HGV Routing

4.3.1 The Transport Assessment states (at paragraphs 6.4.1 and 11.5.3) that all construction and operational HGV traffic will be routed to/ from the A180 Stallingborough Interchange via the A1173, Kiln Lane, Hobson Way and South Marsh Road, as agreed with NELC for the Consented Development.

4.3.2 It is agreed that the designated HGV route for the Consented Development and the Proposed Development are the same, and that based on the Transport Assessments, traffic generated by the Consented Development and Proposed Development is the same.

4.4 Construction and Operational Light Vehicle Routing

- 4.4.1 With regards to non-HGV traffic routing, no designated route has been identified for non-HGV traffic (i.e. staff cars). The Transport Assessment uses assumptions about where staff are likely to be travelling from/ to, based on the 2011 Journey to Work Census.
- 4.4.2 No HGV traffic and no non-HGV traffic from the Proposed Development will be able to use South Marsh Road (west of Hobson Way) as this is confirmed as being a bridleway.

4.5 Baseline Road Conditions

- 4.5.1 Paragraph 3.2.4 of the Transport Assessment states that Kiln Lane is a 7.3 m wide single carriageway road subject to a 40 mph speed limit. It is agreed that the level crossing on Kiln Lane is located approximately 400 m west of the junction with Hobson Way. (It is agreed that there is a typographical error in paragraph 3.2.4 of the Transport Assessment which erroneously suggests that the level crossing is approximately 200 m east of Hobson Way, but the correct location of the level crossing is clearly visible in the preceding Figure 3.1 of the Transport Assessment.)

4.6 Baseline Traffic Conditions

- 4.6.1 The Study Area for the Transport Assessment was defined and agreed with NELC and Highways England, and is shown in Figure 3.2 of the Transport Assessment.
- 4.6.2 The baseline highway junction capacity and road traffic flows within the Study Area are set out in Section 3.3 of the Transport Assessment. The key points relevant to consideration of impacts on Kiln Lane level crossings relating to road capacity and road traffic flows set out in the Transport Assessment are summarised below.

Kiln Lane Baseline Traffic

- 4.6.3 Kiln Lane approach to roundabout junction with Hobson Way and Laporte Road queue length (Tables 3.4 and 10.18 of the Transport Assessment):
- 2018 Base (AM peak) = 0.2 PCUs;
 - 2018 Base (PM peak) = 0.1 PCUs;
 - 2030 Base + Committed Development (AM Peak) = 0.6 PCUs; and
 - 2030 Base + Committed Development (PM Peak) = 0.1 PCUs.
- 4.6.4 Kiln Lane approach to roundabout junction with North Moss Lane and Trondheim Way queue length (Tables 3.5 and 10.24 of the Transport Assessment):
- 2018 Base (AM peak) = 0.2 PCUs;
 - 2018 Base (PM peak) = 0.8 PCUs;
 - 2030 Base + Committed Development (AM Peak) = 0.3 PCUs; and
 - 2030 Base + Committed Development (PM Peak) = 0.5 PCUs.

4.6.5 Kiln Lane annual average weekday traffic (two way) (paragraph 3.3.21 and Table 10.58 of the Transport Assessment):

- 2018 Base = 3,635 vehicles; and
- 2030 Base + Committed Development = 7,487 vehicles.

4.7 Proposed Development Construction Traffic Impacts

4.7.1 The Applicant has stated that construction of the Proposed Development is anticipated to take approximately three years.

4.7.2 Section 11 of the Transport Assessment assesses the impacts of the Proposed Development construction traffic.

4.7.3 HGV movements are expected to be spread evenly over the day between 07:00 and 19:00 and, as noted at Section 4.3 above, all HGVs will use the designated HGV route (passing over Kiln Lane level crossing). Non-HGV traffic will generally travel to Site in the morning and travel away from the Site in the evening, and will not be required to follow a designated route (as noted at Section 4.,4 above).

Maximum HGV Movements – Start of Construction Phase

4.7.3.1. The Transport Assessment identifies that the maximum (worst case) volume of construction HGVs will be around 412 two way movements per day during the first three months of construction in the event that an extensive cut and fill exercise is required. For the twelve hour work day period Network Rail has calculated that this would equate to:

- 34.3 two way HGV movements (i.e. approximately 17 HGVs in and 17 HGVs out) per hour; and
- approximately one HGV movement every 1¾ minutes.

Peak Construction Phase Traffic Generation

4.7.4 In accordance with Institute of Environmental Assessment Guidelines for the Environmental Assessment of Road Traffic (1993) the Transport Assessment assesses the overall peak of construction when 116 two way HGV movements and 750 two way non-HGV movements are anticipated per day. For the twelve hour work day period Network Rail has calculated that this equates to:

- 9.7 two way HGV movements (i.e. approximately 5 HGVs in and 5 HGVs out) per hour; and
- approximately one HGV movement every 6¼ minutes.

Increase in Traffic Volume at Peak of Construction Phase

4.7.5 Section 11.6 (Table 11.5) of the Transport Assessment concludes that the 24 hour increase in traffic at the peak three months of construction will be up to 11.8% on Kiln Lane (west of Hobson Way).

4.7.6 It is agreed that construction traffic flows on Kiln Lane will be relatively short term during the three year construction period.

Impacts on Junction Queues at Peak of Construction

- 4.7.7 Paragraph 3.3.8 of the Transport Assessment describes how junction modelling has been undertaken based on Passenger Car Units (PCUs), whereby a car has a value of 1 PCU, smaller vehicles (e.g. motorcycles) have smaller PCU values and larger vehicles (e.g. HGVs) have larger PCU values. 1 PCU is equal to 5.75 m.
- 4.7.8 Section 11.7 of the Transport Assessment provides information on junction impacts on Laporte Road/ Kiln Lane/ Hobson Way Roundabout and Kiln Lane/ North Moss Lane/ Trondheim Way Roundabout during construction of the Proposed Development.
- 4.7.9 Section 11.7 presents the findings for three different potential construction timing scenarios. The 'worst case' impacts identified in the Transport Assessment are as follows:
- Kiln Lane approach to roundabout junction with Hobson Way and Laporte Road (Tables 11.18 to 11.23 of the Transport Assessment), located 400 m from the Kiln Lane level crossing -
 - Base + Committed Development (AM Peak) = 0.6 PCUs (depending on construction which equates to 3.5 m,
 - Base + Committed Development + Proposed Development (AM Peak) = 0.8 PCUs which equates to 4.6 m,
 - Base + Committed Development (PM Peak) = 0.1 PCUs which equates to less than 1 m, and
 - Base + Committed Development + Proposed Development (PM Peak) = 0.2 PCUs which equates to 1.2 m; and
 - Kiln Lane approach to roundabout junction with North Moss Lane and Trondheim Way (Tables 10.24 and 10.25 of the Transport Assessment), located 900 m from the Kiln Lane level crossing -
 - Base + Committed Development (AM Peak) = 0.3 PCUs which equates to 1.7 m,
 - Base + Committed Development + Proposed Development (AM Peak) = 0.3 PCUs which equates to 1.7 m,
 - Base + Committed Development (PM Peak) = 0.4 PCUs which equates to 2.3 m, and
 - Base + Committed Development + Proposed Development (PM Peak) = 0.5 PCUs which equates to 2.9 m.
- 4.7.10 It is agreed that the assessment of increased traffic volume and junction queues was also included in the PEI Report (Appendix 9A: Transport Assessment).

-
- 4.7.11 It is agreed that based on paragraph 4.7.6 above that queuing at the junctions closest to the Kiln Lane level crossing is not likely to cause backing up on the level crossing during construction.
- 4.7.12 It is also agreed that the Transport Assessment has not considered the impact of closing the Kiln Lane level crossing barrier on traffic flows and queuing.

4.8 Abnormal Indivisible Loads

- 4.8.1 With regards to abnormal load delivery to the Site during construction, paragraph 11.4.2 of the Transport Assessment states “*The contractor will work with the relevant authorities and stakeholders to secure appropriate approvals for the transportation of abnormal loads on the strategic and local road network.*” It is agreed that the Applicant will be required to consult with Network Rail if the proposed abnormal delivery route crosses any level crossings in the vicinity of the Site, in accordance with draft DCO requirement 16 (Document Ref. 2.1).
- 4.8.2 Network Rail has set out at Section 5.2 the amendments it considers are required to requirements in the DCO.

4.9 Proposed Development Operational Traffic Impacts

- 4.9.1 Section 7 of the Transport Assessment provides information on the traffic generated during the operational phase of the Proposed Development, based on worst case assumptions regarding annual fuel throughput, HGV payloads, and assuming all deliveries take place Monday to Friday between 06:00 and 18:00 (when in fact deliveries could be 7 days per week, 24 hours per day).
- 4.9.2 Table 7.1 provides the anticipated hourly profile of HGV movements at the Proposed Development, identifying that the greatest number of hourly HGV movements is anticipated to be between 06:00 and 07:00 when 87 two way HGV movements are predicted, and the total number of HGV movements per day will be 624 two way movements (312 in and 312 out). Network Rail has calculated that for the twelve hour work day period between 06:00 and 18:00 this equates to an average of:
- 52 two way HGV movements (i.e. 26 HGVs in and 26 HGVs out) per hour; and
 - approximately one HGV movement every 1¼ minutes.
- 4.9.3 Section 10 of the Transport Assessment assesses the impacts of operational traffic from the Proposed Development.

Increase in Traffic Volume During Operation

- 4.9.4 Section 10.3 of the Transport Assessment provides information on the road traffic impacts on Kiln Lane level crossing during operation of the Proposed Development, stating at paragraph 10.3.3 “*The analysis below suggests the Proposed Development will increase traffic flows by circa 9% on Kiln Lane [and circa 2.6% on South Marsh Road]. The Consented Development impact would be the same.*”

4.9.5 Paragraph 12.1.5 of the Transport Assessment states *“It is noted that the construction and operational traffic flows associated with the Proposed Development are the same as the construction and operational traffic flows associated with the Consented Development.”*

Impact on Junction Queues During Operation

4.9.6 As noted at paragraph 4.7.7 above, paragraph 3.3.8 of the Transport Assessment describes how junction modelling has been undertaken based on PCUs, whereby a car has a value of 1 PCU, smaller vehicles (e.g. motorcycles) have smaller PCU values and larger vehicles (e.g. HGVs) have larger PCU values. 1 PCU is equal to 5.75 m.

4.9.7 Section 10.2 of the Transport Assessment provides information on junction impacts on Laporte Road/ Kiln Lane/ Hobson Way Roundabout and Kiln Lane/ North Moss Lane/ Trondheim Way Roundabout during operation of the Proposed Development.

4.9.8 Section 10.2 concludes the following:

- Kiln Lane approach to roundabout junction with Hobson Way and Laporte Road (Tables 10.18 and 10.19 of the Transport Assessment), located 400 m from the Kiln Lane level crossing -
 - 2030 Base + Committed Development (AM Peak) = 0.6 PCUs which equates to 3.5 m,
 - 2030 Base + Committed Development + Proposed Development (AM Peak) = 0.7 PCUs which equates to 4.0 m,
 - 2030 Base + Committed Development (PM Peak) = 0.1 PCUs which equates to less than 1 m, and
 - 2030 Base + Committed Development + Proposed Development (PM Peak) = 0.1 PCUs which equates to less than 1 m; and
- Kiln Lane approach to roundabout junction with North Moss Lane and Trondheim Way (Tables 10.24 and 10.25 of the Transport Assessment), located 900 m from the Kiln Lane level crossing -
 - 2030 Base + Committed Development (AM Peak) = 0.3 PCUs which equates to 1.7 m,
 - 2030 Base + Committed Development + Proposed Development (AM Peak) = 0.4 PCUs which equates to 2.3 m,
 - 2030 Base + Committed Development (PM Peak) = 0.5 PCUs which equates to 2.9 m, and
 - 2030 Base + Committed Development + Proposed Development (PM Peak) = 0.5 PCUs which equates to 2.9 m.

4.9.9 It is agreed that based on paragraph 4.9.7 queuing at the junctions closest to the Kiln Lane level crossing is not likely to cause backing up on the level

crossing during operation. With regards to Marsh Lane level crossing it is agreed that, as South Marsh Lane (west of Hobson Way) is a bridleway, there should be no traffic queue at the T-junction with Hobson Way.

- 4.9.10 It is also agreed that the Transport Assessment has not considered the impact of closing the Kiln Lane level crossing barrier on traffic flows and queuing. However NELC has not provided any objection on this highways matter and have approved the designated HGV route for the Consented Development.

4.10 Level Crossing Risk Assessments and Mitigation

- 4.10.1 It is agreed that the current ALCRM risk ratings reported by Network Rail for the Kiln Lane level crossing is I5. It is agreed that the Proposed Development does not alter the ALCRM risk rating but that the risk assessment as reported by Network Rail shows that the fatality weighted index increasing from 7.63E-04 to 8.25E-04.
- 4.10.2 The following two paragraphs are included for context at Network Rail's request and are covered in the Matters Not Yet Agreed section below, where the Applicant's position is also set out.
- 4.10.3 Network Rail considers that the additional vehicle movements will increase wear on the crossing deck and roads approaching the Kiln Lane level crossing and as such to mitigate this impact upgrades will be required to the deck and road, along with improvements to signage and road markings, prior to the commencement of construction works, to ensure that the lifespan of the Kiln Lane level crossing is not unduly shortened by the impact of the increased vehicle movements (as per Network Rail's email dated 26 November 2020).
- 4.10.4 Network Rail considers that no upgrade to the type of level crossing is required due to the Proposed Development.

4.11 Amendments to Requirements in the Order

- 4.11.1 The Parties have agreed that Network Rail should be a consultee to the Construction traffic management and travel plan (requirement 16) and Delivery and servicing plan (requirement 24). The Parties have not agreed the drafting to achieve this (see further below in the Matters Not Yet Agreed section).

5.0 MATTERS NOT YET AGREED

5.1.1 The matters that are not yet agreed between the parties are summarised in Table 5.1 below.

Table 5.1: Summary of Matters Not Yet Agreed

Matter	Network Rail Position	Applicant Position
<p>The key risk drivers for Kiln Lane level crossing</p>	<p>Network Rail has stated that the key risk drivers for Kiln Lane level crossing are poor visibility for approach road vehicles, the crossing is near a station, the gates are open, frequent trains (passenger and freight), opportunities for deliberate misuse or user error, the large number of HGVs and the potential for vehicle blocking back.</p>	<p>The Applicant has obtained a copy of the current narrative risk assessment for Kiln Lane level crossing, which states different key risk drivers as follows:</p> <p><i>“Key risk drivers:</i></p> <p><i>ALCRM calculates that the following key risk drivers influence the risk at this crossing:</i></p> <ul style="list-style-type: none"> • <i>Crossing approach</i> • <i>Frequent trains</i> • <i>Infrequent trains</i> • <i>Large number users</i> • <i>Sun glare</i> • <i>Reduced visibility</i> <p><i>Assessor’s key risk drivers notes</i></p> <p><i>ALCRM is generating a key risk driver for Frequent trains however as there are currently no trains booked for this line this is not an issue. Infrequent trains are a possible risk as regular users will not expect there to be any</i></p>

Matter	Network Rail Position	Applicant Position
		<p><i>trains on this line.</i></p> <p><i>There isn't any evidence of sun glare being an issue at this location.</i></p> <p><i>There haven't been any reported incidents of user misuse/human error, also currently there aren't any booked train services operating on the line</i></p> <p><i>The road is one of the main through roads within a busy industrial area so will always have large number of users."</i></p>
<p>Whether the Proposed Development construction traffic causes an increase in risk over the Kiln Lane level crossing compared to the existing situation (which includes the Consented Development).</p>	<p>Network Rail has advised that it is inevitable that an increased risk will occur as any increase in traffic on a level crossing increases the risk.</p> <p>Network Rail initially (Network Rail objection, September 2020) advised that the Proposed Development results in the risk ratings to change from J6 (Z10) to I8 (Z10) at Marsh Lane level crossing and from I5 (Z13) to H6 (Z13) at Kiln Lane level crossing.</p> <p>Network Rail re-assessed the Kiln Lane level crossing risk assessment and determined that the additional vehicle movements during the operational period of the Proposed Development result in the risk rating for Kiln Lane level crossing remaining at I5 (Z13).</p>	<p>As noted at Section 4.10, it is agreed that the Proposed Development operational traffic does not cause change to the ALCRM risk rating at the Kiln Lane level crossing compared to the current situation.</p> <p>As the Proposed Development construction traffic is less than the operational traffic, the Applicant assumes the same conclusion will apply to the construction traffic.</p> <p>Network Rail's Written Representation provided a revised estimate (£70,200) and a breakdown of costs for improving the surface of the Kiln Lane level crossing to extend its life. The Applicant is reviewing Network Rail's request for a contribution towards these costs, albeit it maintains its position that the works</p>

Matter	Network Rail Position	Applicant Position
	<p>However, the fatality weighted index (FWI) increased from 7.63E-04 to 8.25E-04. Network Rail has concluded that there is therefore an increase in risk.</p> <p>While Network Rail is content that a major upgrade to the Kiln Lane Level Crossing is not required to mitigate the increase in the FWI score, the additional movements during the operational phase will nevertheless cause increased wear to the crossing deck and to the roads approaching the Kiln Lane level crossing. Network Rail considers that improved signage and new road markings are required to improve the safety of users of the Crossing. Network Rail requires a contribution from the Applicant to cover the cost of strengthening the Crossing deck and the costs of new signage and road markings.</p>	<p>are not required due to nor should be funded by the Proposed Development.</p>
<p>The need for alternative designated HGV routes to be used for Proposed Development HGV traffic.</p>	<p>Network Rail's objection states: <i>"no references can be found to indicate that a study was also carried out on the 'South marsh Road (East of Hobson Way), Hobson Way (North & Southbound), Laporte Road (North & Southbound) via Queens Road (East & Westbound) onward to Kings Road (East & Westbound) to join the A1173 and then the A180.' The aforementioned route is</i></p>	<p>The designated HGV route was identified, consulted upon and agreed with NELC for the Consented Development.</p> <p>Network Rail was consulted by NELC on the Delivery and Servicing Plan for the Consented Development submitted to satisfy planning condition 18, and confirmed no objection, around the same time that it was responding to the Applicant's statutory consultation on the</p>

Matter	Network Rail Position	Applicant Position
	<p><i>approximately 1.5 miles longer but utilises a road over rail bridge to cross the railway on Queens Bridge Road.”</i></p> <p><i>“please can you provide evidence that you have reviewed the route via the north and submit robust reasoning behind your evaluation and decision.”</i></p> <p><i>“Lastly, I notice that your report identifies a southern access via the A180, Westgate roundabout and Moody Lane, where no mitigation is proposed due to the ‘small percentage that development flows are adding to the junction’. I would like to understand further why this could not be a preferred route. It appears to provide a suitable route that needs no upgrade to proposed figures, whilst not requiring the use of a level crossing and more of the access via A Class roads.”</i></p>	<p>Proposed Development.</p> <p>The Proposed Development traffic generation and routing is the same as the Consented Development.</p> <p>The designated HGV route provides the most suitable route for Proposed Development HGVs to travel between the Site and the SRN. The Applicant has set out consideration of alternative routes in the response to Network Rail’s request dated 16 October 2020 (see Appendix A).</p>
<p>The need for protective provisions for Network Rail assets.</p>	<p>Network Rail considers that the Proposed Development will have an impact on the safety of those using the Kiln Lane Level Crossing (being one of Network Rail assets), and needs to ensure risk levels do not increase to an unacceptable level and therefore does not agree that PPs are not required.</p> <p>Network Rail’s solicitors provided bespoke PPs to the Applicant’s solicitors on 25 August 2020, as it is acknowledged by Network Rail, that it is</p>	<p>The Applicant considers the Proposed Development to have no impacts on Network Rail assets, and therefore does not agree that protective provisions are required. The Applicant’s position on the protective provisions (as those were set out in Network Rail’s Written Representation) is set out in the Applicant’s Response to Deadline 2 Written Representations (Document Ref. 8.10).</p>

Matter	Network Rail Position	Applicant Position
	<p>not necessary in this case for its standard full PPs to be included in the Order but believes inclusion of the bespoke PPs is necessary to protect the safety of members of the public and Network Rail staff members using/ operating the crossing.</p> <p>Following discussions with the Applicant, Network Rail has agreed to amend the bespoke PPs to refer only to:</p> <p>consultation with Network Rail on Requirements 16 of Schedule 2 (Construction traffic management and travel planning) and 24 (Delivery and Servicing Plan); and</p> <p>an indemnity as to any costs Network Rail incur as a result of the Proposed Development.</p> <p>Further details of the requested amendments are provided in Section 5.2 below.</p>	
<p>The nature of any potential level crossing upgrades due to the Proposed Development.</p>	<p>Network Rail ran a further ALCRM assessment in November 2020 which determined that a major upgrade to Kiln Lane Level Crossing will not be necessary.</p> <p>However, Network Rail has concluded that improvement works will be required to the crossing deck and roads approaching Kiln Lane Level Crossing as a result of the</p>	<p>Network Rail's Written Representation provided further information on the nature of proposed Kiln Lane level crossing improvements and a revised estimate (£70,200) and breakdown of costs. The Applicant is considering the request from Network Rail for a contribution towards upgrading the Kiln Lane level crossing surface.</p>

Matter	Network Rail Position	Applicant Position
	<p>increased wear caused by the additional vehicle movements to ensure that the Kiln Lane Crossing remains fit for purpose for the lifetime of the Proposed Development and beyond.</p> <p>Network Rail also considers that improved signage and road markings will be required to ensure the safety of the users of the level crossing. The cost of the improvement works is currently estimated to be approximately £70,200.</p>	<p>As it is now agreed (as reported in Section 4 of this SoCG) that the Proposed Development will have no impact on Marsh Lane level crossing, no mitigation is required for Marsh Lane level crossing due to the Proposed Development.</p>
<p>The costs and liability of the Applicant to pay for any upgrade, and any maintenance and monitoring/ staffing of these, of Network Rail level crossings.</p>	<p>Network Rail's Relevant Representation states: <i>"Network Rail requires: (a) an agreement with the Applicant that regulates the use of the Crossing by HGVs, and the liability of the Applicant for any necessary repairs and upgrades to the Crossing as a result of the HGV Designated Route, including terms which protect Network Rail's statutory undertaking."</i></p> <p>Following Network Rail's reassessment of the risk increase posed by the additional vehicle movements of the Proposed Development in November 2020, it estimates that the cost of upgrade works to the deck and approach roads will be approximately £70,200.</p> <p>Network Rail have provided the Applicant with</p>	<p>The Applicant notes that no costs or liabilities in relation to Network Rail level crossings are required for the Consented Development. The Applicant has made clear since the provision of the draft FA and PPs that it is premature to consider those when Network Rail has not provided the traffic data used in the ALCRM modelling (which the Applicant cannot access), and when it is not agreed that there is a substantive issue to be resolved.</p> <p>As above, the Applicant is considering the request from Network Rail for a contribution towards upgrading the Kiln Lane level crossing surface.</p>

Matter	Network Rail Position	Applicant Position
	<p>the ALCRM results for Kiln Lane level crossing to demonstrate the change in risk due to the Proposed Development, and it is not therefore equitable that Network Rail should be liable for the costs of the works required to allow for the additional traffic caused by the Proposed Development.</p>	
<p>Relevance of Consented Development</p>	<p>The Consented Development is relevant insofar as it provides a baseline against which the ExA will assess the built development for which the DCO application seeks powers.</p> <p>However, the application for the Proposed Development is a new application and the DCO seeks powers, including powers in respect of land, which were not included in the planning permission for the Consented Development. Accordingly, the Applicant has to overcome a higher hurdle to make the case for the making of the DCO.</p> <p>It is entirely proper that Network Rail has considered the new application afresh; and the more rigorous consultation process associated with a DCO compared to a planning application has meant that the Proposed Development has received additional scrutiny by the Network Rail team. Network Rail has provided in this Statement of Common Ground a summary of its concerns, the mitigation measures it seeks</p>	<p>The Site has the benefit of the Consented Development planning permission, and the Applicant has taken substantial steps towards delivering the Consented Development, including through progressing with the procurement of a contractor and discharge of planning conditions. The Consented Development planning permission is an extant consent, and represents a realistic fallback position. It secures none of the extensive mitigation and controls which Network Rail now seeks in relation to the Proposed Development. Network Rail engaged with the Consented Development planning application, and commented only on the potential for abnormal loads to use roads which cross the railway.</p> <p>The Applicant agrees with Network Rail that the Consented Development provides a baseline against which the Secretary of State will assess the Proposed Development. The Applicant in particular notes that the level of</p>

Matter	Network Rail Position	Applicant Position
	<p>and the protective provisions it wishes to have included in the DCO.</p>	<p>HGVs and the designated HGV route for the Proposed Development are exactly the same as for the Consented Development.</p> <p>The Applicant considers that the most appropriate route for Network Rail to seek to provide for any improvements to level crossings which it considers may be required due to the large scale of development which is allocated in the area (of which the Site is part) is via the Local Plan. Network Rail did not engage in the Local Plan process when large tracts of land along the South Humber Bank were allocated for development, much of which would generate significant levels of traffic and HGVs and could use Kiln Lane or other roads which cross the railway. Similarly Network Rail did not object to the Consented Development planning application, nor other major developments in the area which also proposed to use Kiln Lane. The Examining Authority is referred to the Statement of Common Ground with NELC (Document Ref. 7.1) in this regard, and further comments in the Applicant's Comments on Relevant Representations (Document Ref. 9.1).</p> <p>The Applicant has not sought any "powers in respect of land" in the Draft DCO outside the Order Limits (which is distant from the railway), and has not sought any compulsory acquisition</p>

Matter	Network Rail Position	Applicant Position
		<p>powers in relation to any land.</p> <p>The relevant tests for the determination of the DCO Application are set out in Section 104 of the Planning Act 2008. The Applicant considers that if the Proposed Development is considered against Section 104 then the clear conclusion is that the application should be granted and the DCO made. The Applicant's position on the need for and benefits of the Proposed Development are set out in the DCO Application, and it does not consider that there are impacts on Network Rail's infrastructure or statutory undertaking which the Secretary of State needs to take into account.</p>
<p>Delivery and Servicing Plan</p>	<p>The Delivery and Servicing Plan does not limit the number of HGVs using the route and does not provide a mechanism for the re-evaluation of the safety of Kiln Lane level crossing should there be an increase in vehicle numbers beyond the 624 daily HGV movements described in the Delivery and Servicing Plan.</p> <p>Given the above, Network Rail has requested that the number of HGV movements over Kiln Lane level crossing is capped at 1,200 movements per day. Network Rail's internal team has determined that this is the maximum acceptable level for traffic movements over the Kiln Lane level crossing without additional</p>	<p>The Applicant agrees that the Delivery and Servicing Plan does not include those aspects, as there is no justification for doing so. Kiln Lane is suitable for HGV traffic in highway terms and the designated HGV route has been approved by NELC. The DCO, requirements and relevant plans are considered to provide adequate control in relation to the traffic movements relating to the Proposed Development, and the Applicant has revised the draft DCO to include Network Rail as a consultee on the Delivery and Servicing Plan (Requirement 24).</p>

Matter	Network Rail Position	Applicant Position
	<p>review of the impacts on safety. Additional movements above this level would cause further wear to the decking leading to an increased risk of damage to the tracks from the pressure of additional vehicle movements. Network Rail requires the re-evaluation mechanism to provide comfort that the mitigation measures put in place remain appropriate for the levels of traffic using the level crossing and sufficient to ensure the safety of users of the Kiln Lane level crossing.</p> <p>The Applicant has indicated that the number of HGVs access and egressing the site is controlled via restrictions in the Environmental Permit and a restriction in the DCO would be an unnecessary duplication and has therefore refused to inclusion of this drafting. Network Rail has requested, but has not yet received, a copy of the Environmental Permit to ascertain that (i) the number of HGV movements restricted under the Environmental Permit is the same or not significantly higher than is considered acceptable by Network Rail and (ii) this number will not be subject to change in the future.</p>	
<p>Restriction on vehicles using South Marsh Road (west of Hobson</p>	<p>The parties have agreed that no HGV traffic and no non-HGV traffic from the Proposed Development will be able to use South Marsh Road (west of Hobson Way) as this is</p>	<p>The Applicant agrees that South Marsh Road (west of Hobson Way, and also known as South Marsh Lane Bridleway) is not suitable for HGVs and has proposed a requirement to</p>

Matter	Network Rail Position	Applicant Position
Way)	confirmed as being a bridleway. The parties have agreed that the DCO shall be amended to include an additional Requirement 37 setting out a restriction on the use of South Marsh Road (west of Hobson Way). The Applicant has refused to amend the Requirement to refer to a restriction on all vehicles using the route and instead requires that it refers to a restriction on HGV movements only. Network Rail considers that given that the route is public bridleway and vehicles are not legally permitted to use it, the Requirement should refer to a restriction on both use by HGVs and non-HGVs.	NR that would restrict Proposed Development HGVs from using the route to remove the issue concerning HGVs using the Marsh Lane level crossing. As is agreed between the Parties this road has recently been confirmed by NELC as being a bridleway closed to motor vehicles, and the Applicant considers this is sufficient to deal with any concerns about other Proposed Development vehicles using the road. The Applicant's position prior to the confirmation that South Marsh Road (west of Hobson Way) is a bridleway was that there was no impact on the level crossing from the Proposed Development.
Drafting of Requirement 16	Network Rail considers that the first paragraph of the requirement should be worded as follows: 16.—(1) No part of the authorised development may commence until a construction traffic management plan for that part has, <u>following consultation with Network Rail</u> , been submitted to and approved by the relevant planning authority.	The Applicant considers that the first paragraph should be worded as follows, to match the approach to consultation with third parties in other requirements: 16.—(1) No part of the authorised development may commence until a construction traffic management plan for that part has been submitted to and <u>after consultation with Network Rail</u> , approved by the relevant planning authority.
Drafting of Requirement 24	Network Rail considers that the first paragraph of the requirement should be worded as follows:	The Applicant considers that the first paragraph should be worded as follows, to match the approach to consultation with third

Matter	Network Rail Position	Applicant Position
	<p>24.—(1) The authorised development must not come into operation until an operational delivery and servicing plan for all operational HGVs entering and leaving the site has, following consultation with Network Rail, been submitted to and approved in writing by the relevant planning authority.</p>	<p>parties in other requirements:</p> <p>24.—(1) The authorised development must not come into operation until an operational delivery and servicing plan for all operational HGVs entering and leaving the site has been submitted to and <u>after consultation with Network Rail</u>, approved by the relevant planning authority.</p>
<p>Costs</p>	<p>The Applicant has provided a limited costs undertaking to Network Rail in respect of legal fees for the review of this SoCG and has offered a contribution towards Network Rail's technical costs but the sum offered is insufficient to cover the costs already incurred in analysing the impacts of the additional traffic movements on Kiln Lane Level Crossing.</p>	<p>Network Rail is effectively asking the Applicant to fund Network Rail's objection to the DCO Application. The Applicant has provided a legal costs undertaking for review of this Draft SoCG and an undertaking for a £3,000 contribution for Network Rail's internal technical costs.</p> <p>The Applicant's position in relation to costs is entirely reasonable and common practice.</p>

5.2 Network Rail's Requested Amendments to Requirements in the Order

- 5.2.1 In this section Network Rail sets out in outline its position as at the date of this SoCG. Further details are set out in Network Rail's written representation (Examination Library Ref REP2-019).
- 5.2.2 Network Rail requested amendments to the requirements in the draft DCO (Document Ref. 2.1) as well as the inclusion of bespoke PPs. Network Rail is also seeking to protect its position by entering into a FA with the Applicant. The draft PPs and FA were first sent by AG to PM on 25 August 2020.
- 5.2.3 The Applicant notes that Network Rail issued an updated version of the PPs as part of the Written Representation at Deadline 2. Following subsequent negotiations between the parties, Network Rail has agreed to make amendments to the PPs, removing the obligation on the Applicant to seek Network Rail's approval of all travel plans and the road condition survey, and instead, to just require that Network Rail shall be consulted on the plans at Requirements 16 (Construction traffic management and travel planning) and 24 (Delivery and servicing plan) and indemnified for any losses incurred as a result of the Proposed Development.
- 5.2.4 In addition to the agreed amends detailed at paragraph 4.11.1 Network Rail considers the following amendments to the DCO are necessary in order to protect railway property against the impact of the increase in traffic resulting from the Proposed Development, and to prevent the Applicant from increasing traffic movements to a level which would cause risk levels to increase to an unacceptable level:

Restriction on use of South Marsh Road by HGVs

37.—The plans submitted pursuant to requirements 16, 24 and 33 must not provide for the use of South Marsh Road (west of Hobson Way, also known as South Marsh Lane Bridleway) by any vehicles, including heavy goods vehicles, accessing to or egressing from the authorised development.

Maximum vehicle movements

38.—The number of heavy goods vehicles using the Kiln Lane level crossing for access to or egress from the authorised development shall not exceed 1,200 per day without the undertaker having first obtained the written approval of Network Rail.

- 5.2.5 Regarding requirement 38 (above), the Applicant considers there would be practical obstacles to enforcing and measuring this. Network Rail considers that if the Applicant is capable of monitoring and controlling the number of vehicle movements referred to under the Construction Traffic Management Plan and Delivery and Servicing Plan then it should have the systems and infrastructure available to be capable of monitoring and controlling movements to 1,200 daily movements.

- 5.2.6 In addition to this amendment, Network Rail requested in its written representation (at Deadline 2 (Examination Library Ref REP2-019) to the Examiner that bespoke PPs be included in the Order. As a result of discussions with the Applicant, Network Rail is willing to amend the PPs and these are appended to this report at Appendix B.
- 5.2.7 Without the PPs Network Rail has no control over the safe use of the Kiln Lane level crossing and the impacts on the deck and roads and any future damage caused by the Proposed Development cannot be made good by Network Rail without it allocating funds (the majority of which it receives through Government grants supported by tax payers) to carry out the upgrades. This is a cost that should equitably be met by the Applicant. The PPs are summarised as follows:
- 5.2.7.1. Proposed paragraphs 44 to 45 of Part 5 of Schedule 1 to the DCO require that Network Rail must be consulted on the travel plans required under the DCO (Construction Traffic Management and Travel Planning Plan and Delivery and Servicing Plan) before being submitted to the relevant planning authorities. This is to ensure that Network Rail is aware of and agrees to the routes and levels of traffic that would utilise the Kiln Lane level crossing and are comfortable that the appropriate mitigation measures against the risks resulting from the increase in traffic have been put in place.
- 5.2.8 Proposed paragraphs 46 and 47 of Part 5 of Schedule 1 to the DCO require that the Applicant repays all Network Rail's reasonable costs accrued as a result of the provision of engineers to consult on the travel plans, the provision of services required to ensure the safety of railway property and its users, and as a result of specified works or damages caused to railway property as a result of the Proposed Development. They also require that the Applicant indemnifies Network Rail against claims arising out of or in connection with specified works. This is to ensure that Network Rail and the tax payer are not unduly financially burdened as a result of the Proposed Development taking place.

Signed:

On behalf of: Network Rail

Date:

Signed:

On behalf of: EP Waste Management Ltd

Date:

**APPENDIX A: COPY OF THE APPLICANT'S TECHNICAL
RESPONSE TO NETWORK RAIL'S OBJECTION (OCTOBER
2020)**

APPENDIX B: NETWORK RAIL'S BESPOKE PROTECTIVE PROVISIONS

SCHEDULE 1
PROTECTIVE PROVISIONS
PART 5

FOR THE PROTECTION OF NETWORK RAIL

41. For the protection of Network Rail as defined in this part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and Network Rail.

42. In this part of this Schedule—

“Network Rail” means Network Rail Infrastructure Limited (Company registration number 02904587) whose registered office is at 1 Eversholt Street, London, NW1 2DN and any associated company of Network Rail which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 (meaning of “subsidiary” etc.) of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

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

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

(2) Subject to subparagraph (1) where Network Rail is asked to give its consent, agreement or approval pursuant to this Part, such consent, agreement or approval must not be unreasonably withheld but may be given subject to reasonable conditions.

44. —(1) The undertaker shall not submit the construction traffic management plan to the relevant planning authorities in accordance with requirement 16 of Schedule 2 (Construction traffic management and travel planning) without having first consulted with Network Rail.

(2) The undertaker shall provide Network Rail with a draft of the construction traffic management plan and Network Rail shall within a period of 28 days beginning with the date on which the draft construction traffic management plan is received by Network Rail serve written notice on the undertaker confirming:

(a) any comments on the draft construction traffic management plan; or

(b) any reasonable amendments to the draft construction traffic management plan as requested by Network Rail; or

(c) that further information is required in order for Network Rail to make comments and/or reasonable amendments (in which case this paragraph 44(2) shall apply to such further information from the date of its receipt by Network Rail).

(3) In the event that Network Rail fails to serve written notice in accordance with paragraph 44(2) within 28 days of receipt no further consultation with Network Rail shall be required.

(4) The undertaker must include any reasonable amendments which are requested by Network Rail and notified to the undertaker by Network Rail in the notice given pursuant to paragraph 44(2)(b) in the draft construction traffic management plan it submits to the relevant planning authorities in accordance with requirement 16 of Schedule 2 (Construction traffic management and travel planning) and the undertaker shall not submit any such written details to the relevant planning authorities or finalise a construction traffic management plan which Network Rail has not been consulted on in accordance with paragraphs 44(2) or (3).

(5) Each notice and all other information required to be sent to Network Rail under the terms of this paragraph 44 shall:

(a) be sent to the Company Secretary and General Counsel at Network Rail Infrastructure Limited, 1 Eversholt Street, London, NW1 2DN via Royal Mail plc's special delivery service (or if this service is no longer being provided an appropriate recorded delivery postal service) and marked for the attention of the London North Western Route Level Crossing Manager; and

(b) contain a clear statement on its front page that the matter is urgent and Network Rail must respond within 28 days of receipt.

(6) In the event that any subsequent changes are made to the construction traffic management plan following consultation with Network Rail, in so far as such changes impact on railway property, the undertaker shall not submit any such written details to the relevant planning authorities or finalise any updates to the construction traffic management plan without further consultation with Network Rail.

45. —(1) The undertaker shall not submit the delivery and servicing plan to the relevant planning authorities in accordance with requirement 24 of Schedule 2 (Delivery and servicing plan) without having first consulted with Network Rail.

(2) The undertaker shall provide Network Rail with a draft of the delivery and servicing plan and Network Rail shall within a period of 28 days beginning with

the date on which the draft delivery and servicing plan is received by Network Rail serve written notice on the undertaker confirming:

- (a) any comments on the draft delivery and servicing plan; or
- (b) any reasonable amendments to the draft delivery and servicing plan as requested by Network Rail; or
- (c) that further information is required in order for Network Rail to make comments and/or reasonable amendments (in which case this paragraph 45(2) shall apply to such further information from the date of its receipt by Network Rail).

(3) In the event that Network Rail fails to serve written notice in accordance with paragraph 45(2) within 28 days of receipt no further consultation with Network Rail shall be required.

(4) The undertaker must include any reasonable amendments which are requested by Network Rail and notified to the undertaker by Network Rail in the notice given pursuant to paragraph 45(2)(b) in the draft delivery and servicing plan it submits to the relevant planning authorities in accordance with requirement 24 of Schedule 2 (Delivery and servicing plan) and the undertaker shall not submit any such written details to the relevant planning authorities or finalise a delivery and servicing plan which Network Rail has not been consulted on in accordance with paragraphs 45(2) or (3).

(5) Each notice and all other information required to be sent to Network Rail under the terms of this paragraph 45 shall:

- (d) be sent to the Company Secretary and General Counsel at Network Rail Infrastructure Limited, 1 Eversholt Street, London, NW1 2DN via Royal Mail plc's special delivery service (or if this service is no longer being provided an appropriate recorded delivery postal service) and marked for the attention of the London North Western Route Level Crossing Manager; and

- (e) contain a clear statement on its front page that the matter is urgent and Network Rail must respond within 28 days of receipt.

(6) In the event that any subsequent changes are made to the delivery and servicing plan following consultation with Network Rail, in so far as such changes impact on railway property, the undertaker shall not submit any such written details to the relevant planning authorities or finalise any updates to the delivery and servicing plan without further consultation with Network Rail.

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

(a) in respect of the consultation with the engineer on the construction traffic management plan and the delivery and servicing plan submitted by the undertaker;

(b) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;

(c) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others or from the substitution or diversion of services which may be reasonably necessary for the same reason; and

(d) in respect of any additional temporary lighting of railway property, being lighting made reasonably necessary by reason or in consequence of damage to railway property as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others.

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

(a) by reason of the construction or maintenance of a specified works or the failure thereof or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified works or

(c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development or

(d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a

specified works or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

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

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

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

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

(6) In this paragraph—

"the relevant costs" means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified works or any such act or omission as mentioned in subparagraph (1); and

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

48. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.