

From: [Jones, Charlotte](#)
To: [South Humber Bank](#)
Cc: [Hodge, Sarah](#); [Nick McDonald](#); [Sarah Swales](#)
Subject: South Humber DCO - Submission of responses to ExQ2 - Network Rail Infrastructure Limited [ADDGDD-Live.FID3314360]
Date: 15 March 2021 10:01:00
Attachments: [image002.png](#)
[Deadline 5 - NR PPs.pdf](#)

Dear Sir or Madam

EN010107

IP Reference: 20025443

Examining Authority's Further Written Questions (ExQ2)

Please see below Network Rail's responses to the ExQ2 questions:

ExQ2	Question	Response
QB.5.5	Best practice for Statutory Instrument drafting, as issued by the Office of Parliamentary Counsel, entitled Drafting Guidance is to avoid the use of "shall", but there may of course be exceptions to this. It is noted that the Protective Provisions detailed in the Applicant's SoCG agreed with Network Rail [REP4-008] and set out in the dDCO [REP4- 004] submitted at Deadline 4 uses the term "shall" several times. Bearing in mind the Drafting Guidance referred to above, it is considered that these could easily be replaced with "must" or "will". Network Rail's comments in regard to whether the word "shall" within the Network Rail's proposed Protective Provisions should be replace with the words "must" or "will" are sought.	<i>Network Rail and the Applicant have agreed that the word "shall" within the Network Rail's proposed Protective Provisions should be replaced with the words "with" or "must". Attached please find an updated copy of the Protective Provisions which will be included in the next draft Order submitted at Deadline 5 as agreed with the Applicant.</i>
QB.5.7	The content of the Applicant's SoCG with Network Rail [REP4-008] is noted. However, the ExA also notes that despite Network Rail being specifically listed as a consultee within Requirement 16 (Construction Traffic Management and Travel Planning) and Requirement 24 (Delivery and Service Plan), Article 5 and Schedule 3 of the dDCO would have the effect of transferring any conditions already discharged against the Consented Development over and into the DCO, should the DCO be granted. This would include Planning Condition 10	<i>Network Rail confirm that they are aware of and agreeable to the effects of Article 5 and Schedule 3 on the basis that any amendment to the relevant plans would require submission to the planning authority and thus engage the consultation requirements of the Network Rail Protective Provisions.</i>

(Construction Management Plan) and Condition 18 (Delivery and Servicing) of the Consented Development, which have already been discharge by NELC under their references DM/0713/19/CND and DM/1117/19/CND respectively.

The likely effect of this means that no further consultation with Network Rail would be required, unless the Applicant seeks to submit further details pursuant to those conditions or seeks to amend existing details already approved by NELC under those discharge of Planning Conditions. Bearing the above in mind, the ExA would seek confirmation that Network Rail are cognisant, and agreeable, to the effects of Article 5 and Schedule 3, especially in regard to Requirements 16 and 24? When responding, please bear in mind the details set out within the agreed SoCG and the fact that Network Rail have previously indicated to NELC that they had no objections to the discharge of Planning Condition 10 (NELC Planning Reference DM/0713/19/CND).

I would be grateful if you could please confirm safe receipt of this submission.

Kind regards

Charlotte

Charlotte Jones

Associate

Addleshaw Goddard LLP



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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 must 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 will provide Network Rail with a draft of the construction traffic management plan and Network Rail will 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) will 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 is 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 must 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 must:

(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 must 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 must 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 will provide Network Rail with a draft of the delivery and servicing plan and Network Rail will 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) will 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 is 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 must 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 must:

(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 delivery and servicing plan following consultation with Network Rail, in so far as such changes impact on railway property, the undertaker must 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 is 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 reasonable 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 must 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 will be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) will 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 subparagraph (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 will, 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.