

**Written representations submitted on behalf of Network Rail
Infrastructure Limited**

Reference Number: 20044102

1 Introduction

- 1.1 This written representation is submitted on behalf of Network Rail Infrastructure Limited (**Network Rail**) in response to the application by Gatwick Airport Limited for amendments to the infrastructure at Gatwick Airport to allow, amongst other improvements, dual runway operations (the **DCO**). The proposed development which is the subject of the DCO application is referred to in this document as the Northern Runway Project and abbreviated in places to 'NRP'.
- 1.2 Network Rail is a statutory undertaker and owns, operates and maintains the majority of the railway infrastructure of Great Britain pursuant to its network licence. Under the terms of that licence Network Rail is under a duty to secure the operation, maintenance, renewal and enhancement of the network in order to satisfy the reasonable requirements of customers and funders. Network Rail's duties under the Network Licence are enforceable by the Office of Rail Regulation (**ORR**). If the ORR were to find Network Rail in breach of its licence obligations then enforcement action could be taken against Network Rail.
- 1.3 This response has been informed by discussions with key industry partners, including Govia Thameslink Railway (**GTR**) and Great Western Railway (**GWR**), but is not intended to cover all potential interactions and considerations for the rail industry as a whole.

2 Impact of the proposals on the rail network

- 2.1 The applicant's proposals rely on the rail network to achieve its sustainable mode share. Network Rail recognises and supports the role that the rail network already does play, and can continue to play, in supporting sustainable transport movements to and from the airport and the resulting opportunity for rail revenue growth. Achieving that mode share on an on-going basis relies on there being a reliable rail service and sufficient capacity to meet the demand, and passengers having a positive experience such that rail is a preferred mode of travel to the airport. However, as detailed in this document, the applicant has not proposed any investment in the rail network to meet the additional demand arising from the Northern Runway Project. Without this investment, Network Rail are concerned that the rail system will not have sufficient capacity and reliability at key times to ensure that Gatwick's sustainable mode share targets are realised, and rail passenger experience is maintained or improved.
- 2.2 Attached at **Appendix A** is Network Rail's Principal Areas of Disagreement Summary Statement (**PADSS**) document. This has been shared with the applicant ahead of Deadline 1. This document sets out in detail Network Rail's concerns about the proposals and the steps that it expects the applicant to take to address those concerns. The intention is for the PADSS to be a 'live' document which will be updated during the course of the examination as discussions with the applicant progress.
- 2.3 Some of Network Rail's main concerns are summarised in paragraphs 2.4 – 2.17 below.

Impact on rail network capacity

- 2.4 The relevant factual background is summarised in Table 1 below:

Year	Comment	COMBINED AIRPORT STAFF & PASSENGER TRIPS (TWO-WAY)				TRIP GROWTH IN PERCENTAGE TERMS	
		Baseline	With NRP	Additional NRP-generated trips cf. baseline	Total growth since 2016	Rail trip growth year-on-year	Rail trip growth since 2016
2016	Similar to volume of rail trips to and from Gatwick in 2024. Note between 2016 and 2024 major changes to rail services have been delivered, including Thameslink, enhancements to the North Downs Line and the Elizabeth Line.	49,154	49,154	-	-	-	-
2029	Assumed first full year of opening of the Northern Runway Project and therefore the first year when effects arising from its operation would occur.	74,200	81,555	+7,355	+32,401	10%	66%
2032	Interim assessment year, by which time the highway works are expected to have been completed and all peak slots on both runways would be full.	77,686	96,481	+18,795	+47,327	24%	96%
2047	Required assessment period (15-years on from runway opening).	84,016	107,532	+23,516	+58,378	28%	119%

Table 1: GHOST Model daily two-way rail trip figures for a 'busy June day', both with and without the Northern Runway Project. Figures quoted above are retrieved from tables 8.6.2 and 8.6.6 of Gatwick Transport Assessment, Book 7 (APP-258).

2.5 The above table shows that:

- (a) Accounting for both airport staff and passengers, Gatwick's model suggests a near doubling in rail trips to and from the Airport by 2032 when the Northern Runway Project is factored in – an extra 47,000 additional two-way trips compared to 2016 (which is broadly similar to current passenger volumes).
- (b) Of this growth, according to the GHOST model, around 60% of these additional trips are forecast to occur without the Northern Runway Project and the remaining 40% directly as a result of the Northern Runway Project.
- (c) The 40% increase directly attributable to the Northern Runway Project equates to at least 19,000 additional daily rail trips in 2032, when compared to the 2016 base.

2.6 Very plainly, the proposals generate a material increase in rail passenger demand over and above the "business as usual" anticipated increase in demand.

2.7 There is also variance between the future baseline level of demand indicated by the GHOST model for rail passengers at Gatwick Airport and that forecast by the Department for Transport's Exogenous Demand Growth Estimator (**EDGE**) model which is used as the basis for rail industry demand forecasting. Network Rail are working to understand the implications

of this variance and will continue to work with Gatwick Airport Limited to align forecasts where possible.

- 2.8 As explained at Issue Specific Hearing 4, the applicant's modelling is based on the overall level of rail capacity provided for in the December 2019 timetable (a pre-Covid level of capacity). Since 2019 financial constraints have led to a reduction in network capacity relative to 2019 levels. As such there is theoretical scope to provide a slight increase in total hourly train capacity on the Brighton Main Line north of the airport so as to return to the level of rail capacity the airport had in 2019. However, there is currently no funding for the resumption of rail service capacity to pre-Covid levels – albeit it is recognised as being theoretically possible.
- 2.9 At a strategic level, there is no scope to increase the overall level capacity beyond that provided for in the December 2019 timetable without major reconfigurations of the service and/or significant new infrastructure (such as the Brighton Main Line Upgrade Programme). The train service operating in the December 2019 timetable was the most intensive possible service that could be run on the existing infrastructure without unacceptably compromising overall system performance. At peak times there were no more paths available, and the off-peak periods were used as a 'buffer' time for the rail system to recover from delays which accumulated in the peak. Effectively, the December 2019 timetable was the maximum 'cap' to the service volume which could be accommodated, peak and off peak, without infrastructure enhancements or service reconfiguration.
- 2.10 Any further capacity upgrades beyond the December 2019 timetable require investment and there is currently no public funding allocated or planned for such upgrades. As it stands, the infrastructure that exists today will be the same infrastructure that will be in place at the point the Northern Runway Project becomes operational (because no further investment is planned). Therefore, the 2019 timetable is the limit of capacity for the foreseeable future. Emerging post-Covid rail industry forecasts, based on the Department for Transport's EDGE model —whilst not yet finalised — indicatively demonstrate that the 2019 level of capacity on the Brighton Main Line will be exhausted in the 2030s. This means that:
- (a) the existing capacity will be exhausted even absent the Northern Runway Project; and
 - (b) any remaining capacity will be exhausted at or around the point that there will be an uplift in passenger numbers attributable to the Northern Runway Project¹.
- 2.11 Crucially:
- (a) there is no public funding currently allocated or planned for the train service or infrastructure mitigation needed to accommodate the additional demand generated by the Northern Runway Project; and
 - (b) the applicant has not identified any mechanisms to fund any future shortfall.

¹At Issue Specific Hearing 4 the Examining Authority raised concerns about the baseline used in Chapter 12 of the ES. Network Rail notes that even absent the proposals, any remaining capacity on the rail network would be exhausted at, or close to, the time at which the passenger numbers would increase. Network Rail is of the view that this "fall back" scenario is a material consideration for Examining Authority and the Secretary of State.

2.12 Network Rail's view is that:

- (a) the applicant should provide a reasonable and proportionate contribution to mitigate the effects of airport-driven rail demand growth; and
- (b) the absence of such a commitment is in conflict with Aviation Policy Framework which notes that "*The general position for existing airports is that developers should pay the costs of upgrading or enhancing road, rail or other transport networks or services where there is a need to cope with additional passengers travelling to and from expanded or growing airports*" (p.75, para. 5.12).

2.13 At Issue Specific Hearing 4 the applicant referred to the potential for the Sustainable Transport Fund to be used to fund rail interventions. This is a fund intended to mitigate the impact across various transport modes. Given that we know that interventions will be necessary to deliver the rail service needed to support the Northern Runway Project, Network Rail needs certainty that funding will be available and expects this to be secured via a ring-fenced rail-specific fund, or similar, to deliver the necessary interventions at the point they are required.

Rail crowding modelling

2.14 As detailed in Appendix A, there are specific clarifications that Network Rail needs in order to fully interrogate the model. Based on the information seen to date, Network Rail disputes the applicant's conclusion that "*no significant increase in crowding on rail services is expected as a result of the Project*" and that therefore "*no additional mitigation is required*" (Transport Assessment, page 73). In particular, Network Rail has concerns that the model artificially aggregates and smoothes out demand between individual services and service groups, resulting in lighter than average train loads than is commonly seen on some service groups. This is a result of the applicant measuring and reporting rail capacity utilisation on an aggregated, hour-by-hour basis.

2.15 Network Rail is engaging with the applicant to obtain these clarifications and discuss its concerns. Network Rail requests that it be given the opportunity to update the Examining Authority as discussions progress.

Station capacity

2.16 The Gatwick Station Project opened in late 2023 delivering additional station capacity and an improved passenger experience. The station project was designed to accommodate forecast levels of demand as far as 2036 and explicitly did not account for the impact of the Northern Runway Project. The applicant's Transport Assessment indicates that there are some instances of crowding, in particular at the arrival ticket barriers, which may require further interventions.

2.17 The applicant's station capacity analysis is based on a model of the new station. Now that the station improvements are complete, Network Rail considers it important that a model validation exercise is undertaken to ensure that the modelled patterns reflect the real-world patterns at the station. Once this exercise is undertaken Network Rail will be able to comment further on the need for any mitigative measures at the station.

3 Proposed acquisition of land belonging to Network Rail

- 3.1 The Book of Reference identifies Network Rail as having interests in a large number of plots. Based on information provided by the applicant's land referencers, which is currently being verified by Network Rail, it is the current understanding that Network Rail
- (a) Is the freehold owner of 7 plots which the applicant is seeking to permanently acquire (1/248, 1/261, 1/267, 1/271, 1/277, 3/398 and 3/446);
 - (b) Is the freehold owner of 3 plots which the applicant is seeking to temporarily possess and acquire rights over (Plots 1/205, 1/234 and 1/286); and
 - (c) Has the benefit of rights and/or apparatus in 168 plots which the applicant is seeking to permanently acquire or temporarily possess.
- 3.2 If exercised these compulsory acquisition powers would seriously compromise Network Rail's ability to carry out its statutory undertaking. Accordingly, Network Rail objects to the inclusion of any part of its land in the draft Order and objects to the grant of compulsory acquisition powers in respect of its land. Network Rail also objects to all other compulsory purchase powers or access rights in the draft Order to the extent that they affect, and may be exercised in relation to, Network Rail's property and interests.
- 3.3 Network Rail is currently reviewing whether the Book of Reference accurately reflects the extent of their interests in the Order land. Given the number of plots involved, this is a time-consuming task. A meeting with the applicant's land referencers is scheduled for 15 March 2024 to discuss the impact on Network Rail land, and, specifically, land which has been acquired for the purpose of their undertaking.
- 3.4 It is understood that some of the compulsory purchase powers are sought to facilitate the widening of Airport Way which spans the railway. The precise impact of the works on the railway line is being assessed and the carrying out of any works is subject to the clearance process (which is explained below). As a matter of caution, Network Rail wishes to reserve its right to attend the Compulsory Acquisition Hearing scheduled for Thursday 2 May.
- 3.5 In considering this representation the Secretary of State should have regard to section 127 and 138 Planning Act 2008. Network Rail considers that the Secretary of State, in applying these provisions cannot conclude that the land or rights can be purchased without serious detriment to the carrying on of Network Rail's undertaking, nor can any detriment to the carrying on of the undertaking, in consequence of the acquisition, be made good by the use of other land belonging to or available for acquisition by Network Rail.

4 Asset protection

- 4.1 It is essential to the safe and efficient operation of the railway network that Network Rail's assets are appropriately protected during both the construction and operational phases. Clearance is a two stage process by which Network Rail's technical and asset protection engineers review a proposal before clearance can be granted for a proposal to proceed. Clearance may be granted to subject to conditions and requirements.
- 4.2 Network Rail is in the process of applying for clearance. Until the outcome of the clearance process is known Network Rail is unable to comment fully on the impact of the proposals on its operational railway. Network Rail intends to keep the Examining Authority informed regarding the clearance process at the relevant examination deadlines.

- 4.3 To ensure that Network Rail's assets are not adversely impacted: (a) the applicant must commit to entering into any asset protection agreement(s) and any other documents required by Network Rail for the benefit and protection of its railway (to be in a form stipulated by Network Rail); and (b) Network Rail will need to be confident that the proposals will not compromise its duties to operate, maintain, renew and inspect its railway.

5 Protective Provisions

- 5.1 The submitted form of the draft DCO does not include any protective provisions in favour of Network Rail. In order to properly protect its undertaking (particularly having regard to the number of plots in which Network Rail is understood to have an interest) Network Rail requires the form of protective provisions at Annex B to this document to be included in the final form of the Order.
- 5.2 Network Rail has had positive discussions with the applicant's solicitors regarding the form of protective provisions and will update the Examining Authority further on those discussions as they progress.

6 Conclusion

- 6.1 In summary:
- 6.1.1 Network Rail recognises and supports the role that the rail network can play in supporting sustainable transport movements to and from the airport. A good day-to-day passenger experience is critical in ensuring that the mode shares are achieved.
- 6.1.2 However, Network Rail has concerns about the impact of the proposals on the railway network – these are set out in detail in the PADSS at Appendix A. That document sets out details of the steps Network Rail expects the applicant to take to address those concerns. In particular, Network Rail expects the applicant to provide a reasonable and proportionate contribution to mitigate the effects of airport-driven rail demand growth.
- 6.1.3 Network Rail objects to the compulsory acquisition of operational land and rights that it relies on for the carrying out of its railway undertaking. The land and rights subject to the DCO cannot be purchased without serious detriment to the carrying on of Network Rail's undertaking, nor can any detriment to the carrying on of the undertaking, in consequence of the acquisition, be made good by the use of other land belonging to or available for acquisition by Network Rail.
- 6.1.4 Network Rail requires the applicant to commit to entering into any asset protection agreement(s) and any other documents required by Network Rail for the benefit and protection of its railway.
- 6.1.5 Network Rail requests that its standard form of protective provisions in the form attached at Annex B be included in the DCO.

Dentons UK and Middle East LLP

12 March 2024

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Annex A – Network Rail's Principal Areas of Disagreement Summary Statement

Annex B – Requested form of protective provisions for inclusion in the DCO

Annex A – Network Rail's Principal Areas of Disagreement Summary Statement

<p>Principal Areas of Disagreement Summary Statement PADSS from Network Rail</p>	<p>Version Number: 1.0 Submitted at: 27/02/2024</p>
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This Principal Areas of Disagreement Summary Statement (PADSS) has been prepared following the format set out in the Planning Inspectorate's letter of 8 September 2023. As set out below, Network Rail requires various clarifications and further information in respect to certain aspects of the proposals. Pending receipt of that information, Network Rail is not in a position to reach a view on the likelihood of the stated concerns being addressed during the Examination, However, this PADSS is intended to be a 'live' document so will be updated in due course to include this information.

Principal Issue in Question	Concern held	What needs to change/be amended/be included in order to satisfactorily address the concern	Likelihood of concern being addressed during Examination
1. Land implications			
1.1. Land implications	<p>The DCO includes the proposed compulsory acquisition of land and rights belonging to Network Rail. These rights include the permanent acquisition of land, the temporary occupation of land and the acquisition of rights benefitting Network Rail, including rights of access.</p> <p>Work is ongoing to review the impact of these proposed acquisition, but these access rights should be maintained so that Network Rail can effectively and safely access and maintain the railway.</p>	<p>Technical Clearance underway within Network Rail to clarify impact and acceptability of the land acquisition proposals.</p> <p>Network Rail expects all rights that it relies on to be retained.</p>	
1.2. Asset protection	<p>The DCO includes the carrying out of works which are on or in close proximity to the railway. Network Rail's Southern Region Asset Protection and Optimisation team (ASPRO) must be engaged to support the safe delivery of works in a way which does not unduly place risk on the railway.</p>	<p>Gatwick Airport to engage with NR Southern Region ASPRO and agree any relevant Asset Protection agreements.</p>	
2. Transport assessment: overall conclusion that no mitigation for rail system required			
2.1. Lack of mitigative funding for rail	<p>The Gatwick Northern Runway DCO does not include any mitigative funding to manage the impact of the proposed increase in passengers on the railway network. There are also no clear mechanisms for Gatwick to invest in the rail network later, as and when such investment is required to accommodate forecast increases in airport passenger numbers.</p>	<p>Acknowledgement from Gatwick that the Northern Runway Project is a major change event for the railway and that business as usual arrangements are unsuitable.</p>	

	<p>Gatwick’s Holistic Strategic Transport (GHOST) Model predicts that, with the Northern Runway, the number of combined staff and passenger two-way rail trips to/from the Airport relative to 2016 (the base year for the model) will increase by 66% to 2029, 96% to 2032, and 119% to 2047. In absolute terms, this represents an increase from just under 50,000 daily rail trips in 2016 to around 96,000 in 2032. According to ORR station usage data, in the year from April 2022 to March 2023, 16.5 million people passed through Gatwick station, equivalent to over 45,000 people each day. With ongoing demand recovery, by late 2023 the station had exceeded the passenger demand levels observed in 2016. Overall growth at Gatwick is therefore forecast to more than double the number of rail passengers to the Airport by 2032, of which, according to the GHOST model outputs, around 40% are associated with the Northern Runway Project. This equates to at least an additional 20,000 daily trips, which Network Rail reflects is a material increase and that accommodating this demand will require a range of interventions.</p> <p>At a strategic level, the overall level of capacity provided in the December 2019 timetable is the limit for the foreseeable future without further capacity upgrades, such as the Brighton Main Line Upgrade Programme. Rail industry forecasts – which only account for modest growth at Gatwick – indicate that the capacity the capacity limit on the Brighton Main Line will be exhausted in the 2030s - a similar timescale to this proposal. This means accommodating growth over and above industry forecasts will require careful review of the allocation of services and distribution of passenger capacity.</p> <p>The DCO inherently assumes the overall railway system will provide the rail capacity required by the Airport, including a return to December 2019 levels of capacity. This does not take account of the unprecedented financial constraints that the rail industry is operating within, which has resulted in recent capacity reduction. This includes reductions in the number of passenger trains leased by GTR. It is important to note that there is no public funding currently allocated or planned for the train service or infrastructure mitigations that Gatwick’s expansion might</p>	<p>It is not currently possible based on the information that that we have seen to date to confirm there will be sufficient capacity on the rail network in the early 2030s to accommodate Gatwick’s growth. Therefore, the onus should be on Gatwick to identify and propose mechanisms which could fund investment in rail, including infrastructure or train service subsidy, to support the provision of sufficient capacity to serve the additional airport passengers anticipated in the future.</p> <p>This should take the form of funded proposals from Gatwick for mitigations to manage the impact of the additional airport demand, similar to the commitments Gatwick have made for the road network.</p> <p>Network Rail note proposals for a Sustainable Transport Fund and/or Transport Mitigation Fund. However our working assumption is that a separate ringfenced Rail</p>	
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	<p>require, and Gatwick have not identified mechanisms to fund any future shortfall. This is also out of alignment with the Aviation Policy Framework which notes that “The general position for existing airports is that developers should pay the costs of upgrading or enhancing road, rail or other transport networks or services where there is a need to cope with additional passengers travelling to and from expanded or growing airports” (p.75, para. 5.12).</p> <p>Overall, our position is that Gatwick should provide a reasonable and proportionate contribution to the rail network to mitigate the effects of airport-driven growth for which Network Rail and the wider rail industry on behalf of the taxpayer are not currently funded to provide.</p>	<p>Mitigation Fund would be the most appropriate and streamlined approach. This would enable the introduction of appropriate governance arrangement for these funds and the integration of appropriate rail industry representation.</p>	
<p>3. Transport assessment: technical modelling approach, assumptions, comprehensiveness and conclusions</p>			
<p>3.1. Unfunded model assumptions</p>	<p>Gatwick’s transport modelling assumes that the rail industry will deliver the following schemes in time for the opening of Gatwick’s Northern Runway:</p> <ul style="list-style-type: none"> a) 24 tph Thameslink services (also as per table 9.2.1). 9.4.16 of the Transport Assessment incorrectly states that 24 tph has been delivered – this requires Traffic Management which has not yet been delivered; b) North Downs 3 tph service pattern; c) Restoration of 4 tph Gatwick Express peak and off peak; d) Reinstatement of peak hour services (as per the December 2019 timetable); e) Additional off peak fast services between Thameslink / London Bridge and Gatwick (Table 9.2.1) – these cannot be accommodated without a major change to service specification or increased infrastructure capacity. <p>For points a-d, these model input assumptions are uncommitted and unfunded, but nonetheless credible. Point e is not compatible with the capacity available on the current infrastructure.</p>	<p>For 3.1a, confirmation of the materiality of the 24tph Thameslink service assumption to the overall analysis.</p> <p>For 3.1b-d, clarification from Gatwick Airport on the materiality of these outcomes to the overall Transport Assessment if they are not in place.</p> <p>For 3.1b-d, proposals for mechanisms for Gatwick to fund/ part-fund the implementation of these services, should the industry</p>	

		<p>not have implemented them by the timescales required by the NRP.</p> <p>For 3.1e, Network Rail have received supplemental advice from Gatwick and are reviewing the implications alongside observed capacity data.</p>	
<p>3.2. Technical model clarification and alignment</p>	<p>A large volume of information has been provided relating to forecast train loading data across services which would be affected by the Northern Runway Project. Network Rail are working to review these in detail with Gatwick Airport Ltd and to compare to observed and industry forecasts.</p> <p>At this stage, Network Rail cannot endorse the Airport’s conclusion that “no significant increase in crowding on rail services is expected as a result of the Project” and that therefore “no additional mitigation is required” (Transport Assessment, page 73).</p> <p>In summary, Network Rail’s concerns relate to the following areas:</p> <ul style="list-style-type: none"> i. The aggregation of passenger demand by hour and service group does not reflect the significant variation that results in uneven passenger loads across each of the Brighton Main Line service groups. Network Rail are reviewing observed loading data provided by GTR to understand the materiality of this concern as there is a risk the modelled outputs artificially smoothen out demand. ii. The assumptions relating to assumed train capacities, including train lengths, formation and seated and standing densities. The requirements for airport passengers, particularly those with luggage, have a material impact on passenger experience and reduce effective 	<p>It is noted that Network Rail are in live discussions with Gatwick Airport Ltd to explore these issues. Ongoing liaison between Network Rail and Gatwick Airport Ltd is required to come to an agreement on factors such as these.</p> <p>It is possible that initiatives or investments in services and infrastructure could be required to satisfy these concerns – Gatwick Airport Ltd should propose mechanisms for this to be implemented if required.</p>	

	<p>available capacity. Network Rail are reviewing the provided data to understand the materiality of this concern.</p> <p>iii. The modelling of the Gatwick Express and the impact of fare differentials on the overall distribution of capacity may smoothen out demand.</p> <p>iv. The impact of Covid-19 on the overall modelling and conclusions, taking to account the base is 2016.</p> <p>v. Confirmation of the level of service modelled across the day (train frequencies) for each of the stated time bands.</p> <p>vi. Alignment with rail industry forecasts and subsequent conclusions.</p> <p>vii. Conclusion from Gatwick that future crowding levels are acceptable. We note that it is an industry standard to aim for passengers at peak times to not have to stand for more than 20 minutes, and no standing at off peak times.</p> <p>viii. It is unclear how much of the additional demand is allocated to the slow line services via Redhill.</p> <p>Network Rail reserves the right to add items to this list as our analytical assurance activity continues.</p>		
<p>3.3. Rail network performance challenge</p>	<p>Maintaining good train service performance is an ongoing challenge on the Brighton Main Line. The high volume of trains, passengers, and mix of service groups including freight sharing the same infrastructure means small disruptions on the network can cascade and magnify, leading to cancellations and more significant network disruption.</p> <p>Gatwick’s Transport Assessment does not recognise this ongoing challenge to maintain and improve performance across the Brighton Main</p>	<p>As above, Gatwick should identify and include funding for mitigative works to maintain or enhance overall network performance associated with increased Gatwick Airport passengers.</p>	

	<p>Line and is instead proposing more trains and passengers on a system which is at or will soon be at its functional capacity*.</p> <p>It is in both Gatwick's and the rail industry's best interests to ensure a reliable rail service can operate otherwise existing performance challenges on the Brighton Main Line could significantly dent passenger experience and diminish Gatwick's attractiveness for passengers. This could also threaten the achievement of the Airport's modal shift targets.</p> <p>Our concern is that Gatwick has not acknowledged how the Runway will add to the interlinked capacity and performance challenge. Gatwick has also not proposed any initiatives to mitigate the impact of the Airport's growth on railway system performance.</p> <p>Similarly, the additional pressure placed on the rail network from Gatwick's expansion will mean engineering access for maintenance, renewals and enhancements will become increasingly difficult to accommodate and the pressure on alternative routes when passengers are diverted will also increase.</p> <p>*The train service operating in the December 2019 timetable was the most intensive possible on the existing infrastructure, without unacceptably compromising overall system performance. At peak times there were no more paths available, and the off-peak periods were used as a 'buffer' time to recover from delays which accumulate in the peak. Effectively, the December 2019 timetable was the 'cap' to the service volume which could be accommodated peak and off peak, without infrastructure enhancements.</p>	<p>Gatwick should contribute to a ringfenced fund for joint railway reliability / performance initiatives relating to the Brighton Main Line.</p>	
<p>3.4. Gatwick Airport station capacity is a concern with future</p>	<p>The Gatwick Station Project has substantially increased passenger capacity and has transformed the journey from train to plane and given passengers travelling between Brighton and London easier, faster, more reliable journeys.</p>	<p>Gatwick should engage with technical experts at Network Rail to formally review and approve the capacity model.</p>	

<p>passenger levels</p>	<p>The Gatwick Station Project delivers additional capacity but explicitly did not account for the impact of the Northern Runway Project. The evidence provided in the Transport Assessment indicates a particular issue with congestion at two of the ticket barriers (gate lines) due to the extra passengers arising due to the scheme, which requires further investigation and potential mitigative measures.</p> <p>Network Rail have not formally quality assured Gatwick’s station modelling analysis. Consequently, we cannot endorse Gatwick’s conclusion that “the Project does not require any additional mitigation works to Gatwick Airport station” (Transport Assessment, p. 83).</p> <p>With the station opening in late 2023, there is also now the opportunity to calibrate the modelling with observed passenger movement/queuing data. This is important to verify the conclusion of the Transport Assessment that the station can accommodate the substantial increase in passenger throughput proposed as part of the Northern Runway Project.</p>	<p>Gatwick work with Network Rail to undertake a calibration exercise to compare the model to reality now the station is open.</p> <p>Considerations for this validation should include taking account of different nature of airport passengers e.g. luggage and rail system familiarity characteristics.</p> <p>Gatwick should contribute to funding mitigative measures, whether operational or capital investment, to accommodate the additional passengers the Northern Runway will bring to the station and ensure a positive passenger experience is maintained.</p>	
<p>3.5. Brighton Main Line freight services unaccounted for in Transport Assessment</p>	<p>We are concerned that Gatwick’s Transport Assessment makes no mention of rail freight services. This is an issue because many rail freight services interact with Gatwick passenger services each day. This affects network performance and capacity and means that capacity is not necessarily available in the off peak to accommodate additional passenger services to serve Gatwick demands.</p> <p>Network Rail is also committed to deliver freight growth across the Region. Existing and potential future freight train usage of the network is another reason as to why the off-peak service assumptions provided in table 9.2.1 may not be deliverable as assumed.</p>	<p>Removal of the off-peak service uplift assumed in the modelling in table 9.2.1, and acknowledgement of freight services using the network in the off-peak.</p> <p>Consideration of the opportunities for delivery of materials by rail during construction.</p>	

	There is also an opportunity to deliver goods by rail to reduce road network implications which may also require freight terminal interventions such as at Crawley New Yard or in the immediate Gatwick station area. Gatwick has not acknowledged this opportunity at this stage.	Identification of any required mitigative works to Crawley New Yard or in the immediate Gatwick station area and how those would be funded.	
3.6. Wider network capacity issues that are unacknowledged and/or assessed	<p>There are system-wide considerations that Network Rail must have due regard to as different proposals will interface with one another. Although these are outside the scope of Gatwick's own DCO, the implications could be severe as pressures increase across the route from multiple directions. Concerns for the rail industry are:</p> <ul style="list-style-type: none"> - The current application for expansion at Luton Airport, which is served by the same Thameslink services that would be serving Gatwick. Increases in demand at both ends of the route clearly places further pressure on the overall service. - Integration with the Elizabeth Line at Farringdon - with demand increases from Gatwick and Luton as well as general shift towards Farringdon from other London Terminal stations could result in wider system limitations and the need for interventions here. 	Due to the uncertainty in these applications, it is unlikely Gatwick can satisfy these concerns.	
4. Transport Assessment: Sustainable Access Commitments queries and issues			
4.1. Mode share target for rail	<p>Currently, Gatwick's Sustainable Access Commitments (SACs) are stated as a combined 'public transport' target, differentiated by staff and air passenger trips.</p> <p>While this reflects the separate trip characteristics/modal choices made by passengers and staff, it makes it ambiguous what the rail industry mode share target is. The lack of a rail specific target means accountability in its achievement could be undermined and a specific target would focus industry partners on a simple goal.</p>	<p>Details from Gatwick on how it intends to monitor and manage rail mode shares and details on the opportunities that will exist for the airport to invest in initiatives which could increase rail demand and mode share – particularly for initiatives which would require subsidy.</p> <p>Having a clear rail mode share target that Gatwick is accountable for achieving.</p>	

<p>4.2. Mode share opportunities</p>	<p>Gatwick does not take a proactive approach to increasing rail mode share. The largest mode share uplift is between 2016 and 2029 – which is a result of the completion of major schemes such as Thameslink and the Elizabeth Line, which have already been delivered. No further rail enhancements are identified meaning mode share for rail only marginally improves between 2029 and 2047.</p> <p>Network Rail points to the Aviation Policy Framework which notes that “all proposals for airport development must be accompanied by clear surface access proposals which demonstrate how the airport will ensure easy and reliable access for passengers, increase the use of public transport by passengers to access the airport, and minimise congestion and other local impacts” (p.75, para 5.11).</p> <p>As no rail interventions are identified by Gatwick, and the rail mode share uplifts are linked to schemes that have already been delivered, the increase in rail trips appears to be in line with the overall increase in passenger numbers rather than a concerted effort to encourage the use of rail.</p> <p>Furthermore, increasing highway capacity will make achieving public transport mode share commitments more challenging.</p>	<p>Identification of, and funding for, rail initiatives that would support Gatwick in achieving its public transport modal shift targets.</p> <p>Further discussion on the mode share opportunities for rail.</p>	
<p>4.3. Clarity of mode share commitments</p>	<p>The Transport Assessment is not clear as to the actions that Gatwick are proactively taking to drive mode shift, only that the Sustainable Access Commitments and mode shift targets are an output of the model specification. Objective 4 of the Transport Assessment reads “Objective 4: Deliver a new standard in sustainable surface access in support of Gatwick’s Decade of Change” (p.4, para. 50). This objective should be supported by clear initiatives to support monitoring and evaluation.</p>	<p>Clear list of the push and pull interventions that Gatwick have in place within the model to ensure the mode shift targets are achievable and thus achieved.</p> <p>Clarity on how rail mode share increases and due to which assumed interventions.</p>	

APPENDIX B

SCHEDULE 9

PROTECTIVE PROVISIONS

PART []

FOR THE PROTECTION OF RAILWAY INTERESTS

1. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

2. In this Part of this Schedule—

"asset protection agreement" means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

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

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

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993;

"Network Rail" means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at Waterloo General Office, London, SE1 8SW) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited's railway undertaking;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging

proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

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

"railway property" means any railway belonging to Network Rail and-

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail for the purposes of such railway or works, apparatus or equipment;

"regulatory consents" means any consent or approval required under:

- (a) the Railways Act 1993;
- (b) the network licence; and/or
- (c) any other relevant statutory or regulatory provisions;

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development;

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 4 (maintenance of authorised development) in respect of such works.

"undertaker" has the same meaning as in article 2 (interpretation) of this Order

3. (1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.
- (2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
 - (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.
4. (1) The undertaker must not exercise the powers conferred by—
- (a) article 3 (*development consent etc. granted by the Order*);
 - (b) article 4 (*maintenance of authorised development*);
 - (c) article 16 (*access to works*);
 - (d) article 22 (*discharge of water*);
 - (e) article 24 (*authority to survey and investigate the land*);
 - (f) article 25 (*felling or lopping of trees and removal of hedgerows*);
 - (g) article 27 (*compulsory acquisition of land*);
 - (h) article 28 (*compulsory acquisition of rights and imposition of restrictive covenants*);
 - (i) article 30 (*statutory authority to override easements and other rights*);
 - (j) article 32 (*private rights of way*);
 - (k) article 35 (*acquisition of subsoil or airspace only*);
 - (l) article 36 (*rights under or over streets*);
 - (m) article 37 (*temporary use of land for carrying out the authorised development*);
 - (n) article 39 (*temporary use of land for maintaining the authorised development*);
 - (o) article 41 (*statutory undertakers*);
 - (p) article 45 (*use of airspace within the Order land*);
 - (q) the powers conferred by section 11(3) (power of entry) of the 1965 Act;
 - (r) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;
 - (s) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;
 - (t) any powers under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017;
- in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

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

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 30 (*statutory authority to override easements and other rights*), article 32 (*private rights of way*) or article 41 (*statutory undertakers*), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.

(5) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(6) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld or delayed but may be given subject to reasonable conditions but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).

(7) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work (including but not limited to any works referred to in paragraphs (a) – (o) in the definition of "commence" in article 2 (*interpretation*) forming part, or carried out for the purposes, of any specified work.

5. (1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration in accordance with article 53 (*arbitration*) of this Order.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated their disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

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

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

6. (1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) must, when commenced, be constructed—
- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
 - (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
 - (c) in such manner as to cause as little damage as is possible to railway property; and
 - (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.
- (2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the

undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

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

7. The undertaker must-

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

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

9. (1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction or completion of a specified work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

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

work under paragraph 5(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

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

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

(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;

(c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons 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 the construction or failure of a specified work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and

(e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

11. (1) In this paragraph-

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

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

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

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

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

(a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

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

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

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) has effect subject to this sub-paragraph.

(6) Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred –

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

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

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

(d) the undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

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

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

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

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and

facilitating access to Network Rail's apparatus) or in consequence of any EMI to which subparagraph (6) applies.

(10) For the purpose of paragraph 10(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 53 (*arbitration*) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.

12. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.
13. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.
14. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.
15. (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 (subject to article 49 (*no double recovery*)) which may be occasioned to or reasonably incurred by Network Rail—
 - (a) by reason of the construction, maintenance or operation of a specified work 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 work;
 - (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;

(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;

(e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development;

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

(2) Network Rail must –

(a) give the undertaker reasonable written notice of any such claims or demands

(b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and

(c) take such steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands.

(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, 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 work or any such act or omission as mentioned in subparagraph (1); and

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

16. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).
17. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.
18. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—
 - (a) any railway property shown on the works and land plans and described in the book of reference;
 - (b) any lands, works or other property held in connection with any such railway property; and
 - (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.
19. 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.

- 20 The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 8 (*consent to transfer benefit of Order*) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—
- (a) the nature of the application to be made;
 - (b) the extent of the geographical area to which the application relates; and
 - (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.
- 21 The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 51 (certification of documents etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.