

25 May 2011

Ian McCulloch
Bircham Dyson Bell LLP
50 Broadway
London
SW1H 0BL

Our ref. TR040001

Dear Mr McCulloch,

NETWORK RAIL NORTH DONCASTER CHORD PROPOSAL RESPONSE TO DRAFT DOCUMENTS

Thank you for your letter dated 16 May 2011 regarding the IPC's response, dated 04 May 2011, to Network Rail's draft documents for the above proposal.

Experience has shown from the current examination of the application made by Covanta in respect of Rookery South and in particular from the recent issue specific hearing on the draft Development Consent Order (DCO), that it is more difficult and time consuming to address issues relating to the content of the draft DCO, ranging from substantive issues to minor drafting points, once an application is accepted for examination. We would therefore urge you to take our comments into account when preparing the final draft to be submitted with the application. We would also expect the final draft to be in a form that uses clear language, eliminates all typing errors and is consistent in the use of definitions.

The Examining authority's comments and the Secretariat's drafting points on the Rookery South draft DCO will shortly be made publicly available on the IPC's website. This will also be the case for all future DCO applications.

You will also be aware of the need, at application acceptance stage, to have complied with the pre-application procedure in Chapter 2 of Part 5 of the Planning Act 2008.

We have the following detailed comments on the points arising from your letter of 16 May 2011.

Definition of "maintain" Article 2

We consider that this definition, as drafted, is too broad in scope and the words "...alter, remove, reconstruct or replace..." should be deleted.

Temporary working site Article 14(2)

We note that you will now include reference to temporary working sites in the description of associated development in Schedule A. You have confirmed that the whole of the area within the Order limits will be used as a working site. We would query though whether this should include access over any access roads within the Order limits. You may therefore wish to make reference to this as appropriate in Schedule A.

It may be the case that this approach may be appropriate for a linear scheme where the working site area is a narrow confined corridor but you will need to provide an explanation

and justification as to why it is appropriate and necessary in the context of this particular project. You will be aware that the scope of what may be permitted should be limited by reference to the proposed development that has been assessed in the Environmental Impact Assessment (EIA) as set out in the Environmental Statement (ES).

The description of the authorised development Schedule A

We note that you refer to the residual category (h). We presume that this should refer to (i) rather than (h).

We would also suggest that the category of associated development in paragraph (b) of Schedule A is not sufficiently precise or clearly defined.

Limit of deviation Article 7(b)

The limits of deviation should be clearly shown on the works plan and be consistent with the consultation process and limits as assessed within the EIA as set out in the ES.

Compulsory Acquisition

Modification of provisions - Article 23 and Schedule E

Your comments are noted. If you consider that these modifications are necessary even though the definition of land in s.159(3) of the Planning Act 2008 includes the creation of new rights, explanation and justification for the modifications should be fully set out in the Explanatory Memorandum.

Acquisition by Statutory Undertakers - Article 23(5)

We note your intention to revise the wording. Where it is proposed to include a provision which transfers any benefits of an Order, we would wish to see the inclusion of Railway Model Provision (RMP) 8(3) dealing with restrictions, liabilities and obligations.

Your draft Article 23(5) proposes to transfer the rights of compulsory acquisition to statutory undertakers. The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the APFP Regulations) set out the documents which must accompany an application. These include a statement which explains how the proposals for acquiring any land and rights will be funded. It will need to be demonstrated to the satisfaction of the Examining authority that the acquiring statutory undertaker has available adequate financial resources to fund any compensation payments arising as a result of its exercise of these compulsory acquisition powers. We suggest that you should consider how it will be possible for the acquiring statutory undertaker, who is to receive this benefit, to give assurances on the funding position to the Examining authority.

Protective Provisions - Schedule L

We consider that the emphasis in RMP 39(2) is rather different to that in Schedule L. In RMP 39(2) the emphasis is on the undertaker responding to a reasonable request from the applicant and placing the apparatus in a position which it may reasonably determine. You may wish to consider whether this might be an alternative approach to the Protective Provisions. Alternatively, explanation and justification for your approach to these provisions imposing obligations on statutory undertakers should be fully explained and justified in the Explanatory Memorandum.

Temporary use of land and permanent mitigation works - Article 29

Thank you for your clarification of the fact that no permanent rights are required and we note your intention to delete the word "permanent" in Article 29.

Application of the Land Compensation Act 1973 RMP 33

A full explanation of the effect of omitting this provision on compensation payments and justification for this in respect of this particular project should be contained in the Explanatory Memorandum.

Draft Requirements

In accordance with approved details - requirement 1

We presume that the "design plans" referred to here are those plans etc. which are necessary to describe the proposals that may be submitted under Regulation 5(2)(o) of the APFP Regulations. If so, this draft definition should state this in terms.

We note that reference is made in your proposed definition to the "design plans" being certified by the decision-maker, although the current draft DCO does not include any provisions dealing with such certification process. If this approach is to be followed we would therefore suggest that Model Provision 41 (Certification of plans etc.) should be included albeit if necessary in a modified form.

Landscaping - draft requirements 3 and 4

We note that draft requirements in relation to landscaping have now been included, although these have not followed the form of the Model Provisions. In particular requirement 3 is not negatively worded and there is no reference made to the scheme being prepared taking into account current British Standards nor best practice per Model Requirement 7. We consider that this Model Provision wording should be used. We also note that the proposed wording includes the word "reflect" in referring to the submitted landscape scheme. We consider that this is not sufficiently precise.

Contract Requirements Environment - draft requirement 7

As previously noted, we think that this requirement should be negatively worded as a Grampian type restriction. We suggest that after "must be implemented as approved" the words "by the Commission" are added in 8(5). We also note that no requirement has been included to deal with any noise impacts arising during the operational phase of the proposed development. If it is considered that no such requirement is necessary then explanation for this should be fully set out in the Explanatory Memorandum.

Requirements - Surface Water Drainage and Contaminated Land

We note that no draft requirements in relation to either of these matters have been included, although in the draft DCO it was noted that these would be forthcoming.

The decision of whether or not to accept an application will be taken by a Commissioner who has had no involvement in the pre-application stage for this proposal. All advice the Commission provides at this stage does not prejudice or pre-judge the decision of the Commissioner regarding acceptance or non-acceptance of an application.

Should you have any queries in relation to the above or any other matter, please do not hesitate to contact me.

Yours sincerely



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cc David Simmonds, Network Rail
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