



Your reference TR050006

Our reference ELSEM/43283-2374

30 November 2018

BY EMAIL NorthamptonGateway@pins.gsi.gov.uk

The Planning Inspectorate
National Infrastructure Planning
Temple Quay House
2 The Square
Bristol
BS1 6PN

Dear Sir or Madam

**Application by Roxhill (Junction 15) Limited for an Order Granting Development Consent for the Northampton Gateway Rail Freight Interchange (Order)
Deadline 3 Submissions on behalf of Network Rail (PINS Reference No. 20011154)**

We write on behalf of Network Rail to submit the following comments to the Examining Authority (ExA) at Deadline 3.

- 1 Comments on the Applicant's revised dDCO
Protective provisions for the benefit of Network Rail, Schedule 13 Part 1 of the Order**
 - 1.1 Whilst the protective provisions are largely agreed with the Applicant there remain some key issues to be resolved between the parties. The protective provisions that Network Rail requests to be included with the Order are attached to this email (**NR Protective Provisions**). The NR Protective Provisions show in tracked changes Network Rail's proposed amendments to the protective provisions for Network Rail's benefit included in the Order [REP2-006].
 - 1.2 The outstanding issues relate paragraph 4 of the NR Protective Provisions which requires the Applicant to obtain consent from Network Rail before exercising a number of powers under the Order in relation to Network Rail, including the exercise of compulsory purchase powers in respect of Network Rail property.
 - 1.3 Network Rail cannot agree to protective provisions that allow the Applicant to exercise Order powers in respect of Network Rail land without Network Rail's consent. Pursuant to the Order the Applicant will have the power to, among other things, connect its sidings and infrastructure

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to the WCML Northampton Loop railway. It is inconceivable that such works, to one of Great Britain's main inter-city rail lines, could take without Network Rail's express consent.

- 1.4 The Applicant's position is that, for the powers at paragraph 4 to remain, there should be a mechanism for resolving any failure to give consent and suggests the following:
- (a) that Network Rail's standard arbitration provisions are replaced by a fast track expert determination mechanism (which the Applicant has included as a new paragraph 22) to be applied to all matters of dispute between the parties; and
 - (b) that Network Rail's standard arbitration provisions in relation to electro-magnetic interference at paragraph 11(11) be deleted.

- 1.5 For the following reasons, Network Rail is unable to accept the Applicant's proposed amendments to the NR Protective Provisions:

Network Rail's statutory duties regarding the safety of the railway

- 1.6 Network Rail is responsible for operating, maintaining and renewing a safe national rail network.
- 1.7 In the construction, operation and maintenance of a Nationally Significant Infrastructure Project, such as the SRFI proposed by the Applicant, any disputes arising between the Applicant and Network Rail that may have a bearing on the safe operation of the railway, must be determined by arbitration (as provided by Article 49 of the Order) and not by expert determination.
- 1.8 Where a dispute is determined by an expert, the expert may their decision, based on their own expertise, and may impose such decision on the parties to the dispute, regardless of the submissions made by the parties. In contrast, where matters of dispute are resolved by arbitration, the arbitrator must take into account the arguments put forward by the parties in their submissions and this provides Network Rail with comfort that the expert opinions of its engineers are given due consideration by the arbitrator.
- 1.9 Where the safe operation of the railway is concerned, Network Rail cannot be left in a position where an expert makes a decision based on their own views instead of giving appropriate weight to the opinion of Network Rail's engineers, who are the experts in all matters relating to the operation of the railway including safety.

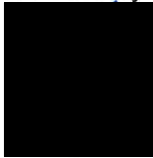
Timescales for obtaining clearance and other consents to be taken into account

- 1.10 Further, Network Rail cannot commit to the expert determination deadlines proposed by the Applicant in its proposed expert determination provision (paragraph 22) because in some instances Network Rail must obtain follow its internal clearance process before it can approve certain proposals.
- 1.11 The clearance process can continue for a number of weeks, and in some instances longer, depending on a number of factors, including, for example, whether an objection is raised. In addition, Network Rail has other engineering, regulatory and stakeholder (internal and external) consents to obtain before matters concerning the railway can be approved by its board members, and, while Network Rail recognises that there is a need for expeditious handling of disputes, it cannot commit to reducing the time needed for the relevant consents to be obtained.
- 1.12 In summary, Network Rail requests that the following amendments are made to Schedule 13 of Part 1 of the Order, as shown in the NR Protective Provisions:
- (a) paragraph 22 of the protective provisions is deleted;
 - (b) the list of Order powers at paragraph 4(1) is added; and
 - (c) paragraph 11(11) is re-inserted.

2 Comments on any additional information / submissions received by Deadline 2

- 2.1 Network Rail would like to clarify a point of information regarding the Rail Central Written Representation submitted at Deadline 2 [REP2-016].
- 2.2 In sub-paragraph 5.11 of its Written Representation, Rail Central states that "*in terms of operational compatibility, the combined results of the work undertaken with NRIL on main line access and network capability for Rail Central have not identified any constraints, which would otherwise prevent both Projects from being able to operate as SRFIs in line with the Planning Act 2008*".
- 2.3 Network Rail wishes to clarify to the ExA that Network Rail has not undertaken any work to assess the technical or operational capability of the Rail Central and Roxhill SRFIs together.
- 2.4 The ExA will find an explanation of this issue in the tri-partite Statement of Common Ground, agreed by the Rail Central and Northampton Gateway Applicants and submitted at Deadline 3.

Yours faithfully



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SCHEDULE 13
PROTECTIVE PROVISIONS

Article 44

PART 1

FOR PROTECTION OF RAILWAY INTERESTS ~~1-~~

1. The following provisions of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15, any other person on whom rights or obligations are conferred by that paragraph. ~~2-~~

2. In this Schedule—

“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 his or her powers under section 8 of the Railways Act 1993;

“Network Rail” means Network Rail Infrastructure Limited 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(a)) 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;

“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 Infrastructure Limited and—
~~(a)~~

(a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and ~~(b)~~

(b) any easement or other property interest held or used by Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised works as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property. ~~(a)~~
~~2006 c. 46. 80-~~

3.—(1) Where under 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 works pursuant to this Order.

4.—(1) ~~The undertaker must not exercise the powers conferred by—~~~~(a)~~

- ~~(a)~~ article 5 (Authorisation of use)~~(b)~~
- ~~(b)~~ article 6 (Maintenance of the authorised development)~~(c)~~
- ~~(c)~~ article 12 (Public rights of way – creation, substitution and stopping up)~~(d)~~
- ~~(d)~~ article 13 (Accesses)~~(e)~~
- ~~(e)~~ article 22 (Authority to survey and investigate the land) ~~(f)~~
- ~~(f)~~ article 24 (Compulsory Acquisition of land)~~(g)~~
- ~~(g)~~ article 25 (Compulsory Acquisition of rights)~~(h)~~
- ~~(h)~~ article 26 (Acquisition of part of certain properties)~~(i)~~
- ~~(i)~~ article 27 (Private rights)~~(j)~~
- ~~(j)~~ article 28 (Power to override easements and other rights)~~(k)~~
- ~~(k)~~ article 33 (Statutory undertakers and operators of the electronic communications code network)~~(l)~~
- ~~(l)~~ article 35 (Temporary use of land for carrying out the authorised development)~~(m)~~
- ~~(m)~~ article 36 (Temporary use of land for maintaining the authorised development)~~(n)~~
- ~~(n)~~ article 43 (Felling or lopping of trees and removal of hedgerows)~~(o)~~

or the powers conferred by section 11(3) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.~~(2)~~

~~(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)~~

~~(3)~~ The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act or, article 33 (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)~~

~~(4)~~ Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

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.~~(2)~~

~~(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 his or her 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 ~~81~~ days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.~~(3)~~

~~(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)~~

~~(4)~~ When signifying his or her 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

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 his or her 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)~~

(a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 5; ~~(b)~~

(b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer; ~~(c)~~

(c) in such manner as to cause as little damage as is possible to railway property; and ~~(d)~~

(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)~~

(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)~~

(3) Nothing in 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)~~

(a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and ~~(b)~~

(b) supply the engineer with all such information as he or she 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 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. ~~82~~

9.—(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that 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 reasonable notice 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)~~

(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)~~

(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)~~

(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)~~
- (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)~~
 - (c) in respect of the employment or procurement of the services of any inspectors, signallers, ~~(d)~~ 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; ~~(e)~~
 - (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 ~~(f)~~
 - (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 works 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 works) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, ~~83~~ 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 works 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 works 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)~~

- (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)~~
- (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)~~
- (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) have effect subject to the sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning operations on the authorised railway comprised in the authorised works and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised works 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)~~

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

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

(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.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to subparagraphs (5) or (6)—~~(a)~~

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

(b) any modifications to Network Rail's apparatus approved pursuant to those ~~sub-paragraphs~~ subparagraphs 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 ~~84~~ 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 ~~sub-paragraph~~ 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. ~~12-~~

(11) In relation to any dispute arising under this paragraph the reference in article 49 (Arbitration) to the Lands Chamber of the Upper Tribunal 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-~~

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-~~

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 Schedule which may be occasioned to or reasonably incurred by Network Rail—~~(a)~~

(a) by reason of the construction or maintenance of a specified work or the failure thereof or ~~(b)~~

(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;

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)~~

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker. ~~(3)~~

(3) The sums payable by the undertaker under sub-paragraph (1) shall include a sum equivalent to the relevant costs. ~~(4)~~

(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)~~

(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)~~

(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 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 ~~sub-paragraph~~ subparagraph (1); and ~~85-~~

“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-~~

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 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 Schedule (including any claim relating to those relevant costs). ~~17-~~

17. In the assessment of any sums payable to Network Rail under 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 Schedule or increasing the sums so payable. ~~18-~~

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)~~

(a) any railway property shown on the works and land plans and described in the book of reference; ~~(b)~~

(b) any lands, works or other property held in connection with any such railway property; and ~~(c)~~

railway property or any lands, works or other property referred to in this paragraph.

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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 7 (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)~~

(a) the nature of the application to be made; ~~(b)~~

(b) the extent of the geographical area to which the application relates; and ~~(c)~~

(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 49 (Certification of plans and documents) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail. ~~Expert Determination 22. — (1) Article 49 (arbitration) does not apply to this part of Schedule 13 except in respect of sub-paragraph (5) below. (2) Any difference under this part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Law Society. (3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute. (4) The expert must — 86 (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment; (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission; (c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and (d) give reasons for the decision. (5) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 49. (6) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.~~