

A46 Newark Bypass

TR010065

Schedule of Changes to draft DCO

Rule 8(1)(k)

Planning Act 2008
Infrastructure Planning (Examination Procedure)
Rules 2010

Volume 7

February 2025

Infrastructure Planning

Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

A46 Newark Bypass Development Consent Order 202[]

Schedule of Changes to draft DCO

Regulation Number	Rule 8(1)(k)
Planning Inspectorate Scheme Reference	TR010065
Application Document Reference	TR010065/EXAM/7.18
Author	A46 Newark Bypass Project Team, National Highways

Version	Date	Status of Version
Rev 1	22 October 2024	Final for Deadline 1
Rev 2	12 November 2024	Final for Deadline 2
Rev 3	26 November 2024	Final for Deadline 3
Rev 4	13 December 2024	Final for Deadline 4

Rev 5	4 February 2025	Final for Deadline 5
<u>Rev 6</u>	<u>25 February 2025</u>	<u>Final for Deadline 6</u>

CONTENTS

1	Introduction	1
2	Summary of proposed changes to draft DCO Rev 2 [REP1-001] submitted at Deadline 1 from the draft DCO submitted with the Application [APP-021]	2
3	Summary of proposed changes to draft DCO Rev 3 submitted at Deadline 2 from the draft DCO submitted at Deadline 1 [REP1-001]	5
4	Summary of proposed changes to draft DCO Rev 4 submitted at Deadline 3 from the draft DCO submitted at Deadline 2 [REP2-002]	17
5	Summary of proposed changes to draft DCO Rev 5 submitted at Deadline 4 from the draft DCO submitted at Deadline 3 [REP3-004]	18
6	Summary of proposed changes to draft DCO Rev 6 submitted at Deadline 5 from the draft DCO submitted at Deadline 4 [REP4-003]	30
7	Summary of proposed changes to draft DCO Rev 7 submitted at Deadline 6 from the draft DCO submitted at Deadline 5 [REP5-002]	50
1	Introduction	1
2	Summary of proposed changes to draft DCO Rev 2 [REP1-001] submitted at Deadline 1 from the draft DCO submitted with the Application [APP-021]	2
3	Summary of proposed changes to draft DCO Rev 3 submitted at Deadline 2 from the draft DCO submitted at Deadline 1 [REP1-001]	5
4	Summary of proposed changes to draft DCO Rev 4 submitted at Deadline 3 from the draft DCO submitted at Deadline 2 [REP2-002]	17
5	Summary of proposed changes to draft DCO Rev 5 submitted at Deadline 4 from the draft DCO submitted at Deadline 3 [REP3-004]	18
6	Summary of proposed changes to draft DCO Rev 6 submitted at Deadline 5 from the draft DCO submitted at Deadline 4 [REP4-003]	30

1 Introduction

- 1.1.1 The following tables have been prepared by National Highways ("the Applicant") to set out the changes made to the draft Development Consent Order from that submitted with the application to the Planning Inspectorate on 26 April 2024 (Rev 1).
- 1.1.2 It is submitted together with:
 - a. Revised draft Development Consent Order
 - b. A tracked change version of the draft Development Consent Order showing all changes made since Rev 3 [REP2-002]
- 1.1.3 The changes are made principally to reflect drafting errors or corrections to technical details.

2 Summary of proposed changes to draft DCO Rev 2 [REP1-001] submitted at Deadline 1 from the draft DCO submitted with the Application [APP-021]

Ref.	Article/Schedule	Change	Reason for change	Precedent
1	Article 2 - Interpretation	"National Grid" means National Grid Electricity Transmission <u>Distribution</u> PLC (Company No. 2366977 <u>09223384</u>) whose registered office is at 1-3 Strand, London, WC2N 5EH <u>Avonbank, Feeder Road, Bristol, Avon, BS2 0TB</u> or a related or subsidiary company of National Grid	The definition of National Grid has been amended to correct an error and to refer to the correct entity.	N/A
2	Article 2 – Interpretation	<u>"Natural England" means the body of that name created by the Natural Environment and Rural Communities Act 2006 (a) or any successor in function to it;"</u>	The definition has been added for completeness following the amendment to add Natural England as a statutory consultee in Requirement 3 (Second Iteration EMP).	N/A
3	Article 2 – Interpretation	<u>"(a) 2006 (c.16)."</u>	Consequential change required to define Natural England.	N/A
4	Article 2 – Interpretation	""owner", in relation to land has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981 (a) <u>(b)</u> ;"	Consequential change to footnote numbering due to the addition of a new footnote.	N/A
5	Article 2 – Interpretation	"(a)(b) 1981 (c.67). The definition of "owner" was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 7 which are not relevant to this Order."	Consequential change to footnote numbering due to adding a new footnote due to the addition of a new footnote.	N/A

Ref.	Article/Schedule	Change	Reason for change	Precedent
6	Article 12 (Consent to transfer benefit of Order)	12(4) "Part 3 <u>4</u> of Schedule 4 (permanent stopping up of highways and private means of access and provision of new highways and means of access) to this Order."	Correction of a cross referencing error.	N/A
7	Schedule 2 – Requirements (Second iteration EMP)	3(1) "No part of the authorised development is to commence until the Second Iteration EMP for that part, substantially in accordance with the First Iteration EMP, has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority, Natural England and the Environment Agency on matters related to its statutory function ."	The Environment Agency and Natural England have been added as consultees to address a point raised in their relevant representations.	N/A
8	Schedule 2 – Requirements (Second iteration EMP)	3(2) "The Second Iteration of EMP for a part must be produced in accordance with DMRB and so far as is relevant to that part of the authorised development, must reflect the mitigation measures required by the REAC and set out in the Environmental Statement and must include the following management plans and method statements and method statements as are applicable"	Correction of a repetition error.	N/A
9	Schedule 2 – Requirements (Third iteration EMP)	4(1) "Following completion of construction of the authorised development the Third Iteration EMP must be submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and the Environment Agency on matters related to its statutory function ;"	The Environment Agency has been added as a consultee to address a point raised in their relevant representation.	N/A

Ref.	Article/Schedule	Change	Reason for change	Precedent
10	Schedule 2 – Requirements (Contaminated Land and groundwater)	8(1) "In the event that contaminated land, including groundwater, is found at any time when carrying out the authorised development, which was not previously identified in the environmental statement, <u>then no further development (unless otherwise approved in writing by the relevant authorities) shall be carried out within the identifiable perimeters of the area in which the suspected contamination is located.</u> It must be reported as soon as reasonably practicable to the Secretary of State, the Environment Agency and relevant planning authority, and the undertaker must complete a risk assessment of the contamination in consultation with the Environment Agency and the relevant planning authority."	Additional text added at the request of the Environment Agency to address comments in their relevant representation.	N/A
11	Schedule 2 – Requirements (Archaeology and Built Heritage)	9(6) "A programme of archaeological reporting, post excavation and publication required as part of the archaeological mitigation strategy and written schemes of investigation referred to in sub-paragraphs (1), (2) and (4) must be agreed with the County Archaeologist"	To correct a typographical error of a missing space.	
12	Schedule 2 – Requirements (Surface and foul water drainage)	13(1) "No part of the authorised development is to commence until for that part written details of the surface and foul water drainage system, reflecting the mitigation measures in <u>Chapter 13, Road Drainage and the Water Environment</u> , of the environmental statement and including means of pollution control, have been submitted to and approved in writing by the Secretary of State following consultation with the relevant local authority on matters relating to its function and the Environment Agency on matters relating to its function."	To insert a full cross reference for clarity.	N/A

Ref.	Article/Schedule	Change	Reason for change	Precedent		
13	Schedule 2 – Requirements (Flood compensatory storage)	14(2) "The schemes prepared under paragraph (1) must provide suitable flood storage for any flood waters that would be displaced by the authorised development in the 1 in 100 year plus 359% climate change allowance event."	To correct the figure and bring it in line with the Flood Risk Assessment [APP-177].	N/A		
14	Schedule 10 – Documents to be Certified	<table><tr><td>Tree Protection Plans</td><td>Appendix E2 of Appendix 7.4 of TR010065/APP/6.3 TR010065/APP/2.13</td></tr></table>	Tree Protection Plans	Appendix E2 of Appendix 7.4 of TR010065/APP/6.3 TR010065/APP/2.13	To refer to the stand alone plans submitted to the Examination in response to the Planning Inspectorate's s51 advice letter issued on 23 May 2024.	N/A
Tree Protection Plans	Appendix E2 of Appendix 7.4 of TR010065/APP/6.3 TR010065/APP/2.13					

3 Summary of proposed changes to draft DCO Rev 3 submitted at Deadline 2 from the draft DCO submitted at Deadline 1 [REP1-001]

Ref.	Article/Schedule	Change	Reason for change	Precedent
1	Article 12 – Consent to transfer benefit of Order	"(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker, save where those benefits or rights are exercised by a statutory undertaker (which for the purposes of this article includes any entity listed in paragraph (5)), or by an owner or occupier of land pursuant to paragraph (23) of article 29 (compulsory acquisition of rights and imposition of restrictive covenants) of this Order, in which case liability for the payment of compensation remains with the undertaker.	The cross referencing has been updated to reflect the inclusion of a new paragraph in Article 29.	N/A

Ref.	Article/Schedule	Change	Reason for change	Precedent
		(4) The consent of the Secretary of State under this article is not required where the powers of article 29 (compulsory acquisition of rights and imposition of restrictive covenants) are, with the consent of the undertaker given under article 29(23), proposed to be exercised by a statutory undertaker rather than by the undertaker, or are proposed to be exercised for the express benefit or accommodation of owners and occupiers of land, as identified in column (4) of the table in Part 4 of Schedule 4 (permanent stopping up of highways and private means of access and provision of new highways and private means of access) to this Order."		
2	Article 26 – Compulsory acquisition of land	"(2) This article is subject to paragraph (3 4) of article 29 (compulsory acquisition of rights and imposition of restrictive covenants) and paragraph (9 10) of article 40 (temporary use of land for carrying out the authorised development) and article 52 (crown rights)."	The cross referencing has been updated to reflect the inclusion of a new paragraph in Article 29 and Article 40.	N/A
3	Article 29 – Compulsory acquisition of rights and imposition of restrictive covenants	"(2) <u>This article is subject to paragraph (9) of article 40 (temporary use of land for carrying out the authorised development) and article 52 (crown rights).</u> (2)(3) The powers of paragraph (1) may be exercised by a statutory undertaker or by an owner or occupier of land identified in column (4) of the table in Part 4 of Schedule 4 (permanent stopping up of highways and private means of access and provision of new highways and private means of access) to this Order, instead of by the undertaker in any case where the undertaker has given its prior consent to that in writing, and that consent may be given subject to terms and conditions. (3)(4) Where in consequence of paragraph (23), a statutory undertaker or an owner or occupier of land exercises the powers in paragraph (1) in place of the undertaker, the statutory undertaker or the owner or occupier of land, as the case may be, is to be treated for the purposes of this Order, and by any person with an	The change was made in response to Examining Authority's written question 6.1.12 [PD-007]. The paragraph numbering and cross referencing in this article has also been updated as a result of the inclusion of the new paragraph (2).	N/A

Ref.	Article/Schedule	Change	Reason for change	Precedent
		interest in the land affected, as being the undertaker in relation to the acquisition of the rights and the imposition of the restrictive covenants in question, except in relation to the payment of compensation the liability for which remains with the undertaker. (4)<u>(5)</u> In the case of the Order land specified in column (1) of Schedule 5 (land in which only new rights and restrictive covenants etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements, new rights in the land or the imposition of restrictive covenants as may be required for the purposes specified in relation to that land in column (2) of that Schedule and relating to that part of the authorised development specified in column (3) of that Schedule. (5)<u>(6)</u> The power under paragraph (1) to acquire the rights and to impose the restrictive covenants described in Schedule 5 for the benefit of statutory undertakers or for the benefit of any other person— (a) does not preclude the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land in accordance with Schedule 5 as may be required for the benefit of any other statutory undertaker or any other person; and (b) must not be exercised by the undertaker in a way that precludes the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land in accordance with Schedule 5 as are required for the benefit of any other statutory undertaker or any other person. (6)<u>(7)</u> Subject to section 8(a) (other provisions as to divided land) of, and Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 5(8) of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants)), where the undertaker acquires a right over land or the benefit of a restrictive covenant, affecting land under paragraph (1) or (23), the undertaker is not required to acquire a greater interest in that land.		

Ref.	Article/Schedule	Change	Reason for change	Precedent
		(7) (8) Schedule 6 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant."		
4	Article 40 – Temporary use of land for carrying out the authorised development	(9) <u>"The undertaker may not compulsorily acquire under this Order any land or rights in respect of the land referred to in paragraph (1)(a)(i) except that the undertaker is not to be precluded from acquiring any part of the subsoil of or airspace over (or rights in the subsoil of or airspace over) that land under article 38 (acquisition of subsoil or airspace only).</u> (9)(10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it. (10)(11) Section 13(a) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act. (11)(12) Paragraph (1)(a)(ii) does not authorise the undertaker to take temporary possession of any land which the undertaker is not authorised to acquire under article 26 (compulsory acquisition of land) or article 29 (compulsory acquisition of rights and imposition of restrictive covenants)."	The Applicant has included a new paragraph 9 in response to the Examining Authority's written question 6.1.13 [PD-007]. The paragraph numbering in this article has also been updated as a result of the inclusion of the new paragraph (9).	N/A
5	Schedule 2 – Part 1 Requirements (Interpretation)	1 In this Schedule – ... "archaeological mitigation strategy" means phase 3Chapter 6 of the archaeological management plan that is to be prepared in accordance with Requirement 9;	Updated to refer to the updated Archaeological Management Plan which now includes the detailed archaeological mitigation strategy in	N/A

Ref.	Article/Schedule	Change	Reason for change	Precedent
			Chapter 6. The updated Archaeological Management Plan has been submitted at Deadline 2 of the Examination [APP-187].	
6	Schedule 2 – Part 1 Requirements (Second Iteration EMP)	3(2)"(l) Construction Communications Management Plan;"	Updated to refer to the correct document title.	N/A
7	Schedule 2 – Part 1 Requirements (Second iteration EMP)	3(2)"(z) Designated Refuelling and Maintenance Areas and Concrete Batching Method Statement; and (aa) Welfare of Staff Method Statement; and and (bb) Dewatering Management Plan ."	Additional plan added to reflect the position stated at row 32 of the Statement of Common Ground with the Environment Agency.	N/A
8	Schedule 2 – Part 1 Requirements (Third iteration EMP)	4(1) "Following completion of construction of the authorised development the Third Iteration EMP must be submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority, Natural England and the Environment Agency on matters related to its statutory function."	Natural England have been added as a consultee in response to the Examining Authority's written question 6.2.5 [PD-007].	N/A

Ref.	Article/Schedule	Change	Reason for change	Precedent
9	Schedule 2 – Part 1 Requirements (Contaminated Land and groundwater)	8(2) "Where the <u>risk assessment prepared in accordance with paragraph (1) undertaker</u> determines that remediation of the contaminated land is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose <u>and to prevent any impacts on controlled waters</u> must be submitted to and approved in writing by the Secretary of State, following consultation with the Environment Agency and the relevant planning authority <u>on matters related to their functions.</u> "	Changes made to reflect Examining Authority's written question 6.2.10 [PD-007].	N/A
10	Schedule 2 – Part 1 Requirements (Archaeology and built heritage)	9" (1) Prior to the start of any pre-commencement works an archaeological mitigation strategy, reflecting the mitigation measures included in the REAC has been prepared in consultation with the relevant planning authority and Historic England, agreed with the County Archaeologist and District Archaeologist and submitted to and approved in writing by the Secretary of State. (2) Prior to the start of any pre-commencement works a written scheme of investigation for the investigation and mitigation of areas of archaeological interest, reflecting the mitigation measures included in the archaeological mitigation strategy referred to in paragraph (1) above, has been prepared in consultation with the relevant planning authority and Historic England, agreed with the County Archaeologist and District Archaeologist and submitted to and approved in writing by the Secretary of State. (3) The pre-commencement works must be carried out in accordance with the archaeological mitigation strategy and written schemes of investigation referred to in paragraphs (1) and (2) unless otherwise agreed in writing by the Secretary of State. (4) No part of the authorised development is to commence until for that part a written scheme of investigation for the investigation and mitigation of areas of archaeological interest, reflecting the mitigation measures included in the archaeological mitigation strategy, has been prepared in consultation with the relevant planning authority and Historic England, agreed with the County	Requirement 9 has been updated by the Applicant to reflect the fact that the detailed archaeological mitigation strategy has now been prepared and is found in Chapter 6 of the Archaeological Management Plan. An updated copy of the Archaeological Management Plan (including the detailed archaeological mitigation strategy) has been submitted into the Examination	N/A

Ref.	Article/Schedule	Change	Reason for change	Precedent
		Archaeologist and District Archaeologist and submitted to and approved in writing by the Secretary of State. (5) The authorised development must be carried out, <u>operated and maintained</u> in accordance with the archaeological mitigation strategy and <u>as set out in that strategy, the undertaker must submit individual Site Specific Written Schemes of Investigation to the relevant planning authority for approval.</u> written schemes of investigation referred to in paragraphs (1) and (4) unless otherwise agreed in writing by the Secretary of State. (6) A programme of archaeological reporting, post excavation and publication required as part of the archaeological mitigation strategy and written schemes of investigation referred to in sub-paragraphs (1), (2) and (4) must be agreed with the County Archaeologist and implemented within a timescale agreed with the County Archaeologist and deposited with the Historic Environment Record of the relevant planning authority within two years of the date of completion of the authorised development or such other period as may be agreed in writing by the relevant planning authority. (7) Any archaeological remains not previously identified which are revealed when carrying out the authorised development, including any pre-commencement works must be subject to appropriate mitigation as set out in the relevant archaeological mitigation strategy and agreed with the County Archaeologist. (8) No construction operations are to take place within 10 metres of the remains referred to in sub-paragraph (6) for a period of 14 days from the date they are identified unless otherwise agreed in writing by the Secretary of State."	at Deadline 2 [APP-187].	
11	Schedule 2 – Part 1 Requirements (Detailed design)	12(1)(b) "the <u>mitigation</u> principles set out in the environmental masterplan ¹ and"	Amendment in response to the Examining Authority's written question 6.2.15 [PD-007] and	N/A

Ref.	Article/Schedule	Change	Reason for change	Precedent
			a punctuation correction.	
12	Schedule 2 – Part 1 Requirements (Surface and foul water drainage)	13(1) "No part of the authorised development is to commence until for that part written details of the surface and foul water drainage system, reflecting the mitigation measures in Chapter 13, Road Drainage and the Water Environment, of the environmental statement and including means of pollution control, have been submitted to and approved in writing by the Secretary of State following consultation with the relevant local planning authority on matters relating to its function and the Environment Agency on matters relating to its function."	To ensure use of the correct defined term in response to the Examining Authority's written question 6.2.16 [PD-007].	N/A
13	Schedule 2 – Part 1 Requirements (Surface and foul water drainage)	13(2) "The surface and foul water drainage system must be constructed in accordance with the approved details referred to in paragraph (1) unless otherwise agreed in writing by the Secretary of State following consultation with the relevant local planning authority on matters relating to its function, provided that the Secretary of State is satisfied that any amendments to the approved details would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement."	To ensure use of the correct defined term in response to the Examining Authority's written question 6.2.16 [PD-007].	N/A
14	Schedule 2 – Part 1 Requirements (Surface and foul water drainage)	13(2) "The surface and foul water drainage system must be constructed in accordance with the approved details referred to in paragraph (1) unless otherwise agreed in writing by the Secretary of State following consultation with the relevant local planning authority on matters relating to its function, and the Environment Agency on matters relating to its function , provided that the Secretary of State is satisfied that any amendments to the approved details would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement."	To correct an omission in response to the Examining Authority's written question 6.2.16 [PD-007].	N/A
15	Schedule 2 – Part 1 Requirements (Flood	14(1) "No part of the authorised development is to commence until a detailed floodplain compensation scheme for that part, that reflects the mitigation within the flood risk assessment , has been submitted to and approved in writing by the	To ensure that the detailed flood compensation	N/A

Ref.	Article/Schedule	Change				Reason for change	Precedent				
	compensatory storage)	Secretary of State, following consultation with the relevant planning authority and the Environment Agency. (2) The schemes prepared under paragraph (1) must provide suitable flood storage for any flood waters that would be displaced by the authorised development in the 1 in 100 year plus 39% climate change allowance fluvial flood event ."				scheme aligns with the mitigation measures currently set out in the Flood Risk Assessment and to provide clarity in relation to the flood event.					
16	Schedule 2 – Part 1 Requirements (Highway lighting)	18(1) "No part of the authorised development may be brought into use until a written scheme of the proposed highway lighting to be provided for that part of the authorised development has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant local planning authority on matters relating to its function."				To ensure use of the correct defined term in response to the Examining Authority's written question 6.2.21 [PD-007].	N/A				
17	Schedule 3 – Classification of Roads, etc. (part 8 Traffic Regulation Measures (no entry))	<table><tr><td>Newark CP</td><td>Reference 5-A The A46 northbound off-slip road to the new Brownhills Junction Roundabout.</td><td>The new Brownhills Junction Roundabout.</td><td>No Entry.</td></tr></table>				Newark CP	Reference 5-A The A46 northbound off-slip road to the new Brownhills Junction Roundabout.	The new Brownhills Junction Roundabout.	No Entry.	Entry deleted to address an error identified in Nottinghamshire County Council's Local Impact Review [REP1-038].	N/A
Newark CP	Reference 5-A The A46 northbound off-slip road to the new Brownhills Junction Roundabout.	The new Brownhills Junction Roundabout.	No Entry.								
18	Schedule 3 – Classification of Roads, etc. (part 9 revocations & variations of existing traffic	<table><tr><td>Farndon CP</td><td>Existing A46 (northbound) carriageway from point 1/2 to point 1/39, a distance of 105 metres.</td><td>The A46 Trunk Road (A607 Hobby Horse Roundabout, Syston to A1133 Winthorpe Roundabout, Newark-on-Trent) (24 Hours Clearway and</td><td>The variation of the order to exclude the length of road referred to in column (2) from the restriction on waiting contained in Article 3 of the Order.</td></tr></table>				Farndon CP	Existing A46 (northbound) carriageway from point 1/2 to point 1/ 39 , a distance of 105 metres.	The A46 Trunk Road (A607 Hobby Horse Roundabout, Syston to A1133 Winthorpe Roundabout, Newark-on-Trent) (24 Hours Clearway and	The variation of the order to exclude the length of road referred to in column (2) from the restriction on waiting contained in Article 3 of the Order.	Entry corrected to address an error identified in Nottinghamshire County Council's Local Impact Review [REP1-038].	N/A
Farndon CP	Existing A46 (northbound) carriageway from point 1/2 to point 1/ 39 , a distance of 105 metres.	The A46 Trunk Road (A607 Hobby Horse Roundabout, Syston to A1133 Winthorpe Roundabout, Newark-on-Trent) (24 Hours Clearway and	The variation of the order to exclude the length of road referred to in column (2) from the restriction on waiting contained in Article 3 of the Order.								

Ref.	Article/Schedule	Change				Reason for change	Precedent
	regulation orders)			Prohibition of Waiting Order 2012			
19	Schedule 3 – Classification of Roads, etc. (part 9 revocations & variations of existing traffic regulation orders)	Newark CP	Existing A46 (southbound) carriageway from point 1/3 10 to point 1/4, a total distance of 98 metres.	The A46 Trunk Road (A607 Hobby Horse Roundabout, Syston to A1133 Winthorpe Roundabout, Newark-on-Trent) (24 Hours Clearway and Prohibition of Waiting Order 2012	The variation of the order to exclude the length of road referred to in column (2) from the restriction on waiting contained in Article 3 of the Order.	Entry corrected to address an error identified in Nottinghamshire County Council's Local Impact Review [REP1-038].	N/A
20	Schedule 3 – Classification of Roads, etc. (part 9 revocations & variations of existing traffic regulation orders)	Farndon CP, Newark CP	Existing A46 (northbound) carriageway from point 1/9 to point 1/3, a distance of 45 metres.	The A46 Trunk Road (A607 Hobby Horse Roundabout, Syston to A1133 Winthorpe Roundabout, Newark-on-Trent) (24 Hours Clearway and Prohibition of Waiting Order 2012	The variation of the order to exclude the length of road referred to in column (2) from the restriction on waiting contained in Article 3 of the Order.	Removed to reflect a comment made in Nottinghamshire County Council's Local Impact Review [REP1-038].	N/A
		Newark CP	Existing A46 (southbound) carriageway from point 1/3 to point 1/10, a total distance of 45 metres.	The A46 Trunk Road (A607 Hobby Horse Roundabout, Syston to A1133 Winthorpe Roundabout, Newark-on-Trent) (24 Hours Clearway and Prohibition of Waiting Order 2012	The variation of the order to exclude the length of road referred to in column (2) from the restriction on waiting contained in Article 3 of the Order.		
21	Schedule 3 – Classification of Roads, etc. (part	Newark CP	Existing A46 (southbound) carriageway from point 3/4	The A46 Trunk Road (A607 Hobby Horse Roundabout, Syston to	The variation of the order to exclude the length of road referred	Correction of a typographical error identified in	N/A

Ref.	Article/Schedule	Change				Reason for change	Precedent
	9 revocations & variations of existing traffic regulation orders)		3/4 to point 3/3, a distance of 65 metres.	A1133 Winthorpe Roundabout, Newark-on-Trent) (24 Hours Clearway and Prohibition of Waiting Order 2012	to in column (2) from the restriction on waiting contained in Article 3 of the Order.	Nottinghamshire County Council's Local Impact Review [REP1-038].	
22	Schedule 4 – Permanent Stopping Up of Highways and Private Means of Access & Provision of New Highways and Private Means of Access (part 2 Highways to be stopped up for which a substitute is to be provided)	Newark CP	B6326 Great North Road	Reference 3C (inset A) The existing B6326 Great North Road, starting at the existing Cattle Market Roundabout to a point 286 metres southeast.	The altered B6326 Great North Road, from point H-3L to point H- 3K inset3K , a distance of 243 metres.	Correction of a typographical error.	N/A
23	Schedule 9 – Protective Provisions (Part 1 For the protection of electricity, gas, water and	2 "apparatus"(d)(ii) "any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)(d) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreement to adopt sewers, drains or sewage disposal works at future date) of that Act(e), and includes a sludge main, disposal main (within the meaning of section 219(a) (general interpretation of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or				This amendment has been made to correct a punctuation error.	N/A

Ref.	Article/Schedule	Change	Reason for change	Precedent
	sewerage undertakers)	works ² and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus; ²		
24	Schedule 9 – Protective Provisions (Part 1 For the protection of electricity, gas, water and sewerage undertakers)	2 " <u>"Cadent" means Cadent Gas Limited (company number 10080864), whose registered office is at Pilot Way, Ansty, Coventry, CV7 9JU, and includes its successors in title or any successor as a gas transporter within the meaning of Part 1 (introductory) of the Gas Act 1986(b);</u> "	This amendment has been made in line with the response to the Examining Authority's Written Question 6.3.4 so that it is clear that this Part of Schedule 9 does not apply to Cadent Gas Limited given that they benefit from bespoke protective provisions in Part 3 of Schedule 9.	N/A
25	Schedule 9 – Protective Provisions (Part 1 For the protection of electricity, gas, water and sewerage undertakers)	2 "utility undertaker" (b) "a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986 <u>except for Cadent;</u> "	This amendment has been made in line with the response to the Examining Authority's Written Question 6.3.4 so that it is clear that this Part of Schedule 9 does not apply to Cadent Gas Limited given that they benefit from bespoke	N/A

Ref.	Article/Schedule	Change	Reason for change	Precedent
			protective provisions in Part 3 of Schedule 9.	

4 Summary of proposed changes to draft DCO Rev 4 submitted at Deadline 3 from the draft DCO submitted at Deadline 2 [REP2-002]

Ref.	Article/Schedule	Change	Reason for change	Precedent
1	Article 49 – Defence to proceedings in respect of statutory nuisance	49(1) "Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(a) in relation to a nuisance falling within paragraph (d) , (fb) , (g) and (ga) of section 79(1) (b) (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—"	To correct an omission identified in question 6.1.17 of NSDC's Responses to the Examining Authority's First Written Questions [REP2-050] and to reflect the matters set out in the Statement Relating to Statutory Nuisances [APP-186].	N/A
2	Schedule 2 – Part 1 Requirements (Highway lighting)	18(1) "No part of the authorised development may be brought into use until a written scheme of the proposed highway lighting to be provided for that part of the authorised development has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority and the local highway authority on matters relating to its their functions."	To add a clarification requested by NCC in question 6.2.21 of NCC's Responses to	N/A

Ref.	Article/Schedule	Change	Reason for change	Precedent
			the Examining Authority's First Written Questions [REP2-052]. "Local highway authority" has the meaning as defined in Article 2(1) of the Order.	

5 Summary of proposed changes to draft DCO Rev 5 submitted at Deadline 4 from the draft DCO submitted at Deadline 3 [REP3-004]

Ref.	Article/Schedule	Change	Reason for change	Precedent
1	Article 2 – Interpretation	(1) <u>""lead local flood authority" means Nottinghamshire County Council in its function as lead flood authority; "</u>	Consequential change to account for the addition of the lead local flood authority as consultees to requirements 13 and 15.	
2	Article 2 – Interpretation	(1) ""relevant planning authority" means in any given provision of this Order, the local planning authority for the land to which the provision relates <u>either one or</u>	Amendment made in response to a	

Ref.	Article/Schedule	Change	Reason for change	Precedent
		both Newark and Sherwood District Council or Nottinghamshire County Council to the extent relevant to their planning functions"	request from the Local Planning Authorities and the Examining Authority to consider how best to clarify the meaning of 'relevant planning authority'.	
3	Article 10 – Limits of deviation	"(2) The maximum limits of deviation set out in paragraph (1) do not apply where it is demonstrated by the undertaker to the Secretary of State's satisfaction and the Secretary of State, following consultation with the relevant planning authority and the local highway authority, certifies that a deviation in excess of these limits would not give rise to any materially new or materially different environmental effects from those reported in the environmental statement."	To reflect amendments agreed with NSDC and NCC.	N/A
4	Article 58 – Temporary suspension of navigation in connection with the authorised development	"(1) Notwithstanding anything in any other enactment or in any rule of law, t he undertaker may, subject to part [5] of Schedule 9 (protective provisions for the protection of the Canal & River Trust), in connection with the construction and operation of the authorised development, temporarily interfere with the relevant accordance with the provisions of this article temporarily close any part of the river Trent under paragraph (2) or (4) for the purposes of the construction, inspection or and maintenance of Work No.7 and Work No.56 Reof Schedule 1 the (authorised development) and any associated development in connection with it. (2) Without limitation on the powers conferred by paragraph (1) but subject to paragraphs (3) and (4) For the purposes of constructing the authorised development the undertaker may, in a case of emergency only, temporarily close	The Applicant and the Canal & River Trust have agreed new measures for the suspension of navigation in connection with the authorised development.	N/A

Ref.	Article/Schedule	Change	Reason for change	Precedent
		<u>to navigation the relevant part of the river.</u> having first consulted the Canal & River Trust, close the following area of the river Trent within the Order limits— (a) 100 metres north and 50 metres south (as measured along the centre of the river channel) of the centre line of Works No. 7 where the A46 crosses the river Trent; (b) 60 metres north and 236 metres south (as measured along the centre of the river channel) of the centre line of Works No. 56 where the A46 crosses the river Trent. (3) The power conferred by paragraphs <u>(1) and (2)</u> is to<u>must</u> be exercised <u>in such a way which secures—</u> on no more than 25 occasions and the period of closure on each such occasion is not to exceed 12 hours. <u>(a) that no more of the relevant part of the river is closed to navigation at any time than is necessary in the circumstances and wherever possible the full closure of the navigation is avoided so that the general availability of the Trust's waterways for public use under s105 Transport Act 1968 is not prejudiced for any period of time; and</u> <u>(b) that, if complete closure to navigation of the relevant part of the river becomes necessary, all reasonable steps are taken to secure that the period of closure is kept to a minimum and that the minimum obstruction, delay or interference is caused to vessels or craft which may be using or intending to use the part so closed.</u> (4) <u>During the period of any</u> In addition to the closures authorised by <u>referred to in paragraph (2)</u> <u>all rights of navigation and other rights relating to and any obligations of the Trust to manage the relevant part of the river so closed are to be suspended and unenforceable against the.</u> the undertaker may, with the consent of the Canal & River Trust.—		

Ref.	Article/Schedule	Change	Reason for change	Precedent
		(a) — for the purposes of constructing the authorised development partially reduce the width of the river Trent within the Order limits; and (b) — for the purposes of inspecting or maintaining the authorised development — (i) — partially reduce the width of the river Trent within the Order limits; or (ii) — close the entire width of the river Trent within the Order limits in circumstances where there is no reasonable alternative. <u>(5) Any person who as a result of the exercise of powers conferred by this article, suffers loss by reason of the interference with any private rights of navigation is entitled to be paid compensation for such loss by the undertaker, to be determined, in case of dispute, under Part 1 of the 1961 Act (a). The consent of the Canal & River Trust under paragraph (4) must not be unreasonably withheld or delayed, and where granted may be given subject to reasonable conditions.</u> (6) In the application of paragraph (5) regard is to be had to — (a) — the urgency and importance of the activities or works in relation to which the closure is sought; (b) — the limitations of available materials or technology relevant to the activities or works; (c) — any danger or detriment to users of the river and highways which will or may result if the works or activities are not carried out as proposed; (d) — any potential consequences to the users of the river for business and recreational purposes; (e) — any potential material damage to the business of Canal & River Trust; and (f) — any other matter or factors which are material in all the circumstances.		

Ref.	Article/Schedule	Change	Reason for change	Precedent
		(7) Before exercising the powers conferred by paragraphs (2) and (4) the undertaker must (except where exercising the power conferred by paragraph (4) in a case of emergency)— (a) — publish notice of the temporary closure in the affected area and on a website maintained by the undertaker; and (b) — display notice of the temporary closure for the minimum period in a conspicuous position adjacent to the area of the closure from the date of the notice published under sub-paragraph (a) above. (8) Following consultation with the Canal & River Trust under paragraph (2) or (as the case may be) the grant of the Canal & River Trust's consent under paragraph (4), the Canal & River Trust must as soon as practicable upon the undertaker's request issue a notice to mariners giving the commencement date and anticipated duration of the relevant temporary closure. (9) Except in a case of emergency, the period between the publication of a notice required by paragraph (7)(a) and the commencement date of the closure to which it relates must not be less than the minimum period. (10)<u>(6)</u> Where the undertaker exercises the powers conferred by this article in a case of emergency, the undertaker must as soon as practicable display notice of the temporary closure in a conspicuous position adjacent to the area of the closure.<u>In this article, "the relevant part of the river" means so much of the River Trent as is within the Order limits and the "Trust" means the Canal & River Trust.</u> (11)<u>(7)</u> In this article "emergency" means any circumstance existing or imminent which the undertaker considers is likely to cause danger to— (a) any person or property, including the new bridge, any vessel and any person using, working on, or intending to use or work on the new bridge or aboard any vessel passing the new bridge; or		

Ref.	Article/Schedule	Change	Reason for change	Precedent
		(b) the environment. (12) In this article— “the minimum period” means— (i) 21 days in the case of a closure of the entire width of the river Trent; (ii) 14 days in the case of a partial reduction in the width of the river Trent.”		
5	Schedule 1 – Authorised Development	"Work No. 69 - As shown on sheet 4 of the works plans, the construction of an access track approximately 210 metres in length <u>and passing place</u>, commencing at Quibell's Lane."	The change is to capture an agreement with Network Rail that a passing place would be provided in this location as referred to during ISH2.	N/A
6	Schedule 2 – Part 1, Requirements (Second Iteration EMP)	3(2) "(j) Invasive Non-Native Species Management Plan and Bio-Security Risk Assessment, <u>including an Invasive Non-Native Species Method Statement</u>; (k) Landscape and Ecological Management Plan; (l) Construction Communications Management Plan; (m) Pollution Prevention Management Plan; (n) Erosion and Sediment Management Plan; (o) Carbon Management Plan; (p) Emergency Response Plan for Flood Events; (q) Education, Employment and Skills Plan; (r) Inclusion Action Plan;	The change has been made to reflect the fact that the INNS Method Statement is part of the INNS Management Plan and to avoid any question of duplication in the plans to be produced.	N/A

Ref.	Article/Schedule	Change	Reason for change	Precedent
		(s) Construction Worker Travel and Accommodation Plan; (t) Invasive Non-Native Species Method Statement; (u)(t) Badger Method Statement; (v)(u) Piling Works Method Statement; (w)(v) Earthworks Method Statement; (x)(w) Topsoil Strip Method Statement; (y)(x) Storage of Oil, Fuel and Other Potentially Hazardous Substances Method Statement; (z)(y) Designated Refuelling and Maintenance Areas and Concrete Batching Method Statement; (aa)(z) Welfare of Staff Method Statement; and (bb)(aa) Dewatering Management Plan."		
7	Schedule 2 – Requirements (Construction hours)	5 "(1) Construction work for the authorised development must only take place between 0700 hours and 1800 hours Monday to Friday, and 08700 hours to 14300 hours on Saturdays, with no activity on Sundays or bank holidays, except as specified in paragraphs (2), (3) and (4). (2) Outside the hours and days specified in paragraph (1), construction work may be undertaken <u>with the prior written consent of the relevant planning authority</u> for essential activities comprising— (a) Traffic management measures and signal changes; (b)(a) bridge installation works to the new bridge structures; (c)(b) removal of the existing signal gantries and the installation of new gantry structures;	Amendment to the working hours on Saturdays agreed with NSDC. The Applicant has grouped the list of activities in this requirement differently to reflect: NSDC requested that some activities	N/A

Ref.	Article/Schedule	Change	Reason for change	Precedent
		(e)<u>(c)</u> highway tie-in works and installation of temporary and permanent road markings; (e)<u>(d)</u> installation of signs and streetlights adjacent to live carriageways; (f)<u>(e)</u> abnormal load deliveries or deliveries where daytime working would be excessively disruptive to normal traffic operation, including the delivery of plant; <u>or</u> (g)<u>(f)</u> construction of the Nether Lock Rail bridge and the works over the Nottingham to Lincoln line.; (h) — any emergency works or operations required for safe working; (i) — security; (j) — maintenance of plant and equipment that require 24hr operation such as dewatering pumps; (k) — completion of activities already begun which require continuous periods of operation, such as completing concrete pouring; or (l) — environmental and engineering surveys may be carried out outside of core working hours. <u>(3) Outside the hours and days specified in paragraph (1), the undertaker may carry out activities comprising –</u> <u>(a) traffic management measures and signal changes;</u> <u>(b) any emergency works or operations required for safe working;</u> <u>(c) security;</u> <u>(d) maintenance of plant and equipment that require 24hr operation such as dewatering pumps;</u> <u>(e) completion of activities already begun which require continuous periods of operation, such as completing concrete pouring; or</u>	be subject to their prior written consent; and Other activities may need to be undertaken urgently or they are not noise generating activities and it would be inappropriate to delay in order to obtain prior consent. Paragraph 5(6) has also been amended to include reasonable time limits for providing consent as requested by NSDC. For further information please refer to the written summary of ISH1	

Ref.	Article/Schedule	Change	Reason for change	Precedent
		<u>(f) environmental and engineering surveys may be carried out outside of core working hours.</u> (3)(4) Outside the hours and days specified in paragraph (1), the undertaker will consult with the relevant planning authority prior to carrying out certain operations which are season and weather dependent including but not limited to earthworks <u>(5) Outside the hours and days specified in paragraph (1), the undertaker may with the prior written consent or deemed consent under paragraph (6) of the relevant planning authority carry out activities (including but not limited to those works set out in paragraph (2)) assessed in the environmental statement or activities which would not give rise to new or materially different effects from those assessed in the environmental statement which do not fall within paragraph (32).</u> (4)(6) <u>If the relevant planning authority which receives a request to carry out works outside the hours and days specified in paragraph (1) in accordance with paragraphs (2) and (5) fails to notify the undertaker of its decision within 14 days of receiving the request for consent that relevant planning authority is deemed to have granted consent."</u>	submitted at Deadline 4.	
8	Schedule 2 – requirements (surface and foul water drainage)	13 "(1) No part of the authorised development is to commence until for that part written details of the surface and foul water drainage system, reflecting the mitigation measures in Chapter 13, Road Drainage and the Water Environment, of the environmental statement and including means of pollution control, have been submitted to and approved in writing by the Secretary of State following consultation with the relevant planning authority on matters relating to its function, <u>the lead local flood authority on matters relating to its function,</u> and the Environment Agency on matters relating to its function. (2) The surface and foul water drainage system must be constructed in accordance with the approved details referred to in paragraph (1) unless	In response to a request from the lead local flood authority to be added as a consultee.	N/A

Ref.	Article/Schedule	Change	Reason for change	Precedent
		otherwise agreed in writing by the Secretary of State following consultation with the relevant planning authority on matters relating to its function, the lead local flood authority on matters relating to its function , and the Environment Agency on matters relating to its function, provided that the Secretary of State is satisfied that any amendments to the approved details would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement."		
9	Schedule 2 – Requirements (flood risk assessment)	15 "(2) Sub-paragraph (1) does not apply in any circumstance where the undertaker proposes to carry out a part of the authorised development otherwise than in accordance with the flood risk assessment but either demonstrates to the Secretary of State's satisfaction, in consultation with the lead local flood authority and the Environment Agency, that the part of the authorised development concerned would not result in an exceedance of the flood levels shown in the flood risk assessment beyond 10mm or demonstrates that all affected landowners accept the predicted exceedance of the flood levels shown in the flood risk assessment."	In response to a request from the lead local flood authority to be added as a consultee.	N/A
10	Schedule 2 – Requirements (Langham Hall Estate)	"Langham Hall Estate 19(1) The construction of the new entrance at Langford Hall estate contained within Work No. 110 cannot commence until the Applicant has submitted to the Secretary of State for its approval in writing, following consultation with the relevant landowner of Langford Hall Estate and Historic England, the proposed design of the new entrance. (2) The proposed design referred to in paragraph (1) must accord with the landscaping principles shown on the environmental masterplan and any relevant mitigation identified in the first iteration environmental management plan. (3) The new entrance must be constructed in accordance with the approved design."	In response to a request from the ExA to ensure that the final design of the new entrance at Langford Hall Estate did not cause any harm to the setting of the listed building.	N/A

Ref.	Article/Schedule	Change	Reason for change	Precedent
11	Schedule 2 – Requirements (Approvals and amendments to approved details)	" 19 . 20 ."	Consequential change due to the addition of Requirement 19 (Langham Hall Estate)	N/A
12	Schedule 2 – Requirements (Applications made under requirements)	" 20 . 21 .—(1) Where an application has been made to the Secretary of State for any consent, agreement or approval required by a requirement (including agreement or approval in respect of part of a requirement) included in this Order, the Secretary of State must give notice to the undertaker of the decision on the application within a period of 8 weeks beginning with— (a) the day immediately following that on which the application is received by the Secretary of State; (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 24 22 (further information); or"	Consequential changes to correct numbering due to the addition of Requirement 19 (Langham Hall Estate)	N/A
13	Schedule 2 – Requirements (Further information)	" 24 . 22 .—(1) In relation to any part of an application made under this Schedule, the Secretary of State has the right to request such further information from the undertaker as is necessary to enable the Secretary of State to consider the application. (2) In the event that the Secretary of State considers such further information to be necessary, the Secretary of State must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates. In the event that the Secretary of State does not give such notification within this 21 business day period the Secretary of State is deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.	Consequential changes to correct numbering due to the addition of Requirement 19 (Langham Hall Estate)	N/A

Ref.	Article/Schedule	Change	Reason for change	Precedent
		(3) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 21 ²⁰ (applications made under requirements) and in this paragraph."		
14	Schedule 2 – Requirements (Register of requirements)	" 22 ²³ ."	Consequential change due to the addition of Requirement 19 (Langham Hall Estate)	N/A
15	Schedule 2 – Requirements (Anticipatory steps towards compliance with any requirement)	" 23 ²⁴ ."	Consequential change due to the addition of Requirement 19 (Langham Hall Estate)	N/A
16	Schedule 2 – Requirements (Details of consultation)	" 24 ²⁵ ."	Consequential change due to the addition of Requirement 19 (Langham Hall Estate)	N/A
17	Schedule 3 – Classification of Roads, etc., Part 10 (Cycle Tracks)	" Winthorpe CP, Langford CP A cycle track comprised in a highway from point F-6C to point F-6E, a distance of 142²²² metres. "	To reflect an amendment to the Streets, Rights of Way and Access	N/A

Ref.	Article/Schedule	Change	Reason for change	Precedent
			Plans to ensure the cycle track extends the full length as intended.	

6 Summary of proposed changes to draft DCO Rev 6 submitted at Deadline 5 from the draft DCO submitted at Deadline 4 [REP4-003]

Ref.	Article/Schedule	Change	Reason for change	Precedent
1	Article 3 - Disapplication of legislative provisions	3"(4) The provisions of the Nottinghamshire County Council Permit Scheme Order 2020(d) will not have effect in relation to any "works" or "urgent activities or works" (as those terms are defined in that order) which are required for the carrying out of the authorised development."	Removal of the disapplication of NCC's permitting scheme as agreed with NCC.	N/A
2	Article 4 – Maintenance of drainage works	2 "In this article "drainage" has the same meaning as in section 72(1) (interpretation) of the Land Drainage Act 1991 (de)."	Consequential amendment to footnote required due to removal of article 3(4).	N/A
3	Article 3 – Disapplication of legislative provisions	"(d) The Nottinghamshire County Council Permit Scheme Order 2020 was made under sections 32 to 39 of the Traffic Management Act 2004 (c.18) and the Traffic Management Permit Scheme (England) Regulations 2007 (SI 2007/3372) as amended by Traffic Management Permit Scheme (England) (Amendment) Regulations 2015 (SI 2015/958).	Consequential amendments required to the footnotes due to the deletion of article 3(4).	N/A

Ref.	Article/Schedule	Change	Reason for change	Precedent
		(de) 1991 (c.59), the definition of “drainage” was substituted by section 100(2) of the Environment Act 1995 (c.25).		
4	Schedule 2 - Requirements (Construction Hours)	5 "(1) Construction work for the authorised development must only take place between 0700 hours and 1800 hours Monday to Friday, and 0800 hours to 1400 <u>1300</u> hours on Saturdays, with no activity on Sundays or bank holidays, except as specified in paragraphs (2), (3) and (4)."	This change has been made to ensure the working hours for the Scheme remain within those specified in BS5228 (Code of practice for noise and vibration control on construction and open sites).	N/A
5	Schedule 2 – Requirements (Archaeology and built heritage)	9 " (1) The authorised development must be carried out, operated and maintained in accordance with the archaeological mitigation strategy and, as set out in that strategy, the undertaker must submit individual Site Specific Written Schemes of Investigation to the relevant planning authority for approval. The additional trial trenching set out within the Archaeological Mitigation Strategy, must be carried out in accordance with the approved Written Scheme of Investigation contained in Appendix G of the Archaeological Management Plan, unless otherwise agreed with Nottinghamshire County Council. <u>(2) If the additional trial trenching results in the need for further archaeological investigation, the Archaeological Mitigation Strategy must be updated to include the scope of any further investigation required in the location of the additional trial trenching. This update must be submitted in writing and approved by Nottinghamshire County Council, in consultation with Historic England prior to Work No. 10, Work No. 27,</u>	To reflect wording agreed with NCC and NSDC.	N/A

Ref.	Article/Schedule	Change	Reason for change	Precedent
		<u>Work No. 28, Work No. 29 or Work No. 30 being started in the location of the additional trial trenching.</u> <u>(3) The authorised development must be carried out, operated and maintained in accordance with the Archaeological Mitigation Strategy, as updated in accordance with paragraph (2) if required, and, as set out in that strategy, the undertaker must submit individual Site Specific Written Schemes of Investigation for each phase of mitigation work set out within the Archaeological Mitigation Strategy to Nottinghamshire County Council for approval.</u> <u>(4) Any archaeological works must be carried out by a suitably qualified and competent person or body previously notified to Nottinghamshire County Council. "</u>		
6	Schedule 2 – Requirements (Protected Species)	10 "(1) In the event that any protected <u>or notable</u> species which were not previously identified in the environmental statement or nesting birds are found at any time when carrying out the authorised development the undertaker must— (a) cease the relevant parts of the relevant works and report it immediately to the Ecological Clerk of Works; and (b) prepare a written scheme for the protection and mitigation measures of such protected <u>or notable</u> species or nesting birds when carrying out the authorised development.	To reflect a request from Nottinghamshire County Council and to avoid duplication with provisions in the FIEMP.	N/A
7	Schedule 2 – Requirements (Langford Hall Estate)	" Langham <u>Langford</u> Hall Estate"	To correct a typographical error.	N/A

Ref.	Article/Schedule	Change	Reason for change	Precedent
8	Schedule 2 – Requirements (Langford Hall Estate)	19 "(1) The construction of the new entrance at Langford Hall estate contained within Work No. 110 cannot commence until the Applicant has submitted to the Secretary of State for its approval in writing, following consultation with the relevant landowner of Langford Hall Estate, Newark and Sherwood District Council and Historic England, the proposed design of the new entrance."	To add Newark and Sherwood District Council as a consultee.	N/A
9	Schedule 9, Part 5 (For the Protection of the Canal & River Trust)	"PART 5 FOR THE PROTECTION OF THE CANAL & RIVER TRUST Application" 53. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the Canal & River Trust. Interpretation 54. In this Part of this Schedule— “Code of Practice” means the Code of Practice for Works Affecting the Canal & River Trust (April 2024) or any updates or amendments thereto; “Construction” in relation to any Specified Work or Protective Work, includes: (a) the execution and placing of that work; and (b) any relaying, renewal, or maintenance of that work; and “Construct” and “Constructed” have corresponding meanings; “Canal & River Trust’s Network” means the Canal & River Trust’s network of waterways; “Detriment” means any damage to the Waterway or any other property of the Canal & River Trust’s Network caused by the presence of the authorised development and, without prejudice to the generality of that meaning, includes:	To insert the agreed protective provisions for the Canal & River Trust.	N/A

Ref.	Article/Schedule	Change	Reason for change	Precedent
		<u>(a) any material obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the Waterway (including towing paths) unless such interference is authorised by this Order or otherwise agreed with the Canal & River Trust;</u> <u>(b) the erosion of the bed or banks of the Waterway, or the impairment of the stability of any works, lands or premises forming part of the Waterway;</u> <u>(c) the deposit of materials or the siltation of the Waterway so as to damage the Waterway;</u> <u>(d) the pollution of the Waterway;</u> <u>(e) any significant alteration in the water level of the Waterway, or significant interference with the supply of water thereto, or drainage of water therefrom;</u> <u>(f) any harm to the ecology of the Waterway (including any adverse impact on any site of special scientific interest comprised in the Canal & River Trust's Network); and</u> <u>(g) any material interference with the exercise by any person of rights over Canal & River Trust's Network;</u> <u>"the Engineer" means an engineer appointed by the Canal & River Trust for the purpose in question;</u> <u>"Plans" includes navigational risk assessments, topographical surveys, sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;</u> <u>"Practical Completion" means practical completion of all of the Specified Work notwithstanding that items which would ordinarily be considered</u>		

Ref.	Article/Schedule	Change	Reason for change	Precedent
		<u>snagging items remain outstanding, and the expression “practically complete” and “practically completed” is to be construed accordingly;</u> <u>“Prior Notice” means a minimum of 6 weeks’ prior notice;</u> <u>“Protective Work” means a work constructed under paragraph 57 (approval of plans, protective works etc.);</u> <u>“Specified Work” means so much of any authorised development (including any temporary works) as defined in article 2 of this Order that is situated upon, across, under, over or within 15 metres of, or may in any reasonable way affect, the Waterway;</u> <u>“the Waterway” means each and every part of the River Trent within the Order limits, and any works, lands or premises within the Order limits belonging to the Canal & River Trust, or under its management or control, and held or used by the Canal & River Trust in connection with Canal & River Trust’s Network and/or its statutory functions.</u> <u>55. Where the Code of Practice applies to any works or matter that are part of the authorised development or that form part of the Protective Works and there is an inconsistency between these protective provisions and the Code of Practice, the part of the Code of Practice that is inconsistent with these protective provisions will not apply and these protective provisions will apply.</u> <u>Powers requiring the Canal & River Trust’s Consent</u> <u>56.—(1) Article 10(1)(b) and 10(2) (in respect of vertical deviations only) (limits of deviation) shall not apply in relation to the Waterway unless such exercise is with the consent of the Canal & River Trust</u> <u>(2) Save as authorised by the powers conferred by this Order the undertaker must not materially obstruct or interfere with pedestrian or vehicular access to the waterway unless such obstruction or interference with such access is with the consent of the Canal & River Trust</u>		

Ref.	Article/Schedule	Change	Reason for change	Precedent
		<u>(3) The undertaker must not exercise any power conferred by this Order to discharge water into the Waterway under article 23 (discharge of water) unless such exercise is with the consent of the Canal & River Trust PROVIDED THAT such consent shall not be required where the undertaker demonstrates to the Engineer that the maximum discharge velocity of such discharge is less than or equal to 0.3 metres per second.</u> <u>(4) The undertaker must not exercise any power conferred by this Order to interfere with the existing supply of water to or the drainage of water from the Waterway unless such exercise is with the consent of the Canal & River Trust.</u> <u>(5) The undertaker must not exercise the powers conferred by article 25 (authority to survey and investigate the land) or section 11(3) of the 1965 Act, in relation to the Waterway unless such exercise is with the consent of the Canal & River Trust.</u> <u>(6) The undertaker must not exercise any power conferred by article 26 (compulsory acquisition of land), article 29 (compulsory acquisition of rights and imposition of restrictive covenants), 38 (acquisition of subsoil or airspace only) or 42 (statutory undertakers) in respect of the Canal & River Trust's interests in the Waterway, except with the consent of the Canal & River Trust.</u> <u>(7) The undertaker must not exercise any power conferred by article 40 (temporary use of land for carrying out the authorised development), article 41 (temporary use of land for maintaining the authorised development) or article 45 (felling or lopping of trees and removal of hedgerows) in respect of the Waterway unless such exercise is with the consent of the Canal & River Trust.</u> <u>(8) Without prejudice to sub-paragraphs (1) to (7) (inclusive) the undertaker must not under the powers of this Order acquire or use or</u>		

Ref.	Article/Schedule	Change	Reason for change	Precedent
		<u>acquire new rights over, or seek to impose any restrictive covenants over, the Canal & River Trust's Network, or extinguish any existing rights of the Canal & River Trust in respect of any third party property, except with the consent of the Canal & River Trust.</u> <u>(9) The consent of the Canal & River Trust pursuant to (1) to (8) (inclusive) must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions provided that it will not be reasonable for the Canal & River Trust to withhold or delay consent or impose terms and conditions that would prevent the undertaker from complying with the protective provisions in this Part of this Schedule or any condition contained in Schedule 2 (Requirements).</u> <u>(10) The undertaker must not under the powers of this Order do anything which would directly result in the Waterway being incapable of being used or maintained or which would affect the safe operation of the Canal & River Trust's Network, in the Canal & River Trust's reasonable opinion.</u> <u>(11) This paragraph 56 does not apply where the undertaker reasonably believes emergency works are required to prevent imminent injury or damage to persons or property PROVIDED THAT in such circumstances the undertaker must notify the Canal & River Trust as soon as reasonably practicable.</u> <u>Approval of Plans, Protective Works etc.</u> <u>57.—(1) The undertaker must before commencing Construction of any Specified Work supply to the Canal & River Trust proper and sufficient Plans of that work (on the Canal & River Trust's own forms or as otherwise agreed in writing) having regard to the Canal & River Trust's Code of Practice, together with such further particulars as the Canal & River Trust may within 21 days of initial receipt of such plans reasonably require for the approval of the Engineer.</u>		

Ref.	Article/Schedule	Change	Reason for change	Precedent
		<u>(2) The approval of the Engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if within 35 days after all such Plans (including any other particulars reasonably required under sub-paragraph (1)) have been received by the Canal & River Trust the Engineer has not given notice of the approval or disapproval of those Plans and the grounds of such disapproval the Engineer is deemed to have approved the Plans as submitted.</u> <u>(3) Construction of a Specified Work must not commence until Plans of that work have been approved in writing by the Engineer, deemed approved pursuant to sub-paragraph (2), or settled by arbitration.</u> <u>(4) When signifying approval of the Plans the Engineer (or the arbitrator) may specify (in relation to land held or controlled by the Canal & River Trust or the undertaker and subject to such works being authorised by this Order or being development permitted by an Act of Parliament or general development order made under the 1990 Act) —</u> <u>(a) any Protective Work (whether temporary or permanent) which in the reasonable opinion of the Engineer should be carried out before the commencement of a Specified Work to prevent Detriment; and</u> <u>(b) such other requirements as may be reasonably necessary to prevent Detriment.</u> <u>(5) Any Protective Work required under this paragraph must be:</u> <u>(a) constructed by the undertaker or by the Canal & River Trust at the undertaker's request within 28 days of notification of a Protective Work by the Engineer in accordance with sub-paragraph (4)(a) or in accordance with an agreed programme to be agreed within 14 days of notification of a Protective Work by the Engineer in accordance with paragraph (4)(a); and</u>		

Ref.	Article/Schedule	Change	Reason for change	Precedent
		<u>(b) the undertaker must not commence the Construction of a Specified Work unless approved by the Engineer (such approval to be provided within 14 days of request by the undertaker) or until the Engineer has notified the undertaker that the Protective Work has been Practically Completed to the Engineer's reasonable satisfaction (such approval to be provided within 14 days of notification of completion of the Protective Work by the undertaker).</u> <u>(6) The withholding of an approval of the Engineer under this paragraph 57 will be deemed to be unreasonable if it would prevent the undertaker from complying with any condition contained in Schedule 2 (Requirements) to this Order.</u> <u>(7) The undertaker must pay to the Canal & River Trust a capitalised sum representing the reasonably increased or additional cost of maintaining and, when necessary, renewing any Specified Works or any permanent Protective Works provided under sub-paragraph (3) and sub-paragraph (5) respectively above, for which the Canal & River Trust is liable to maintain, and of carrying out any additional dredging of the Waterway reasonably necessitated by the exercise of any of the powers under this Order PROVIDED THAT if the cost of maintaining the Waterway, or of works of renewal of the Waterway, is reduced in consequence of any such works, a capitalised sum representing such reasonable saving is to be set off against any sum payable by the undertaker to the Canal & River Trust under this paragraph.</u> <u>(8) In the event that the undertaker fails to Practically Complete the Construction of, or part of, a Specified Work the Canal & River Trust may, if it is reasonably required in order to avoid Detriment, serve on the undertaker a notice in writing requesting that Construction be Practically Completed. Any notice served under this sub-paragraph must state the works that are to be Practically Completed by the undertaker and lay out</u>		

Ref.	Article/Schedule	Change	Reason for change	Precedent
		<u>a reasonable timetable for the works' Practical Completion. If the undertaker fails to comply with this notice within 35 days (or the timescales set out in the timetable, whichever is the longer), the Canal & River Trust may undertake Protective Works to make safe the area and avoid Detriment and the undertaker must reimburse the Canal & River Trust all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.</u> <u>Design of Works</u> <u>58.—(1) Save in respect of any works or plans already agreed in writing between the undertaker and the Canal & River Trust prior to the date of this Order, and without prejudice to its obligations under the foregoing provisions of this Part of this Schedule the undertaker must consult, collaborate and respond constructively to any reasonable approach, suggestion, proposal or initiative made by the Canal & River Trust on—</u> <u>(2) the design and appearance of any Specified Works and/or any Protective Works;</u> <u>(3) the environmental effect of any Specified Works and/or any Protective Works, having regard to such views as may be expressed by the Canal & River Trust in response to such consultation pursuant in particular to the requirements imposed on the Canal & River Trust by section 22 (general environmental and recreational duties) of the British Waterways Act 1995 and to the interest of the Canal & River Trust in preserving and enhancing the environment of its waterways;</u> <u>(4) amendments or alterations to any management plan or action plan as may be approved pursuant to Schedule 2 of this Order in respect of or in connection with a Specified Work or a Protective Work; and</u> <u>(5) the structural monitoring plan in respect of the Fiddler's Elbow Bridge (as identified in the First Iteration Monitoring Plan (Ref: CH2).</u>		

Ref.	Article/Schedule	Change	Reason for change	Precedent
		<u>Fencing</u> <u>59. Where so required by the Engineer the undertaker must to the reasonable satisfaction of the Engineer fence off a Specified Work or a Protective Work or take such other steps as the Engineer may require to be taken for the purpose of separating a Specified Work or a Protective Work from the Waterway, whether on a temporary or permanent basis or both.</u> <u>Notice of Works</u> <u>60.—(1) Without prejudice to sub-paragraphs (2) and (3), the undertaker must give to the Engineer 30 days' notice of its intention to commence the Construction of any of the Specified Works or Protective Works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, the Canal & River Trust may where appropriate arrange for the publication of notices bringing those works to the attention of users of the Canal & River Trust's Network.</u> <u>(2) Unless Prior Notice is given by the undertaker to the Canal & River Trust, the undertaker must not completely close to navigation any part of the Waterway between—</u> <u>(a) 10pm and 6am during the months April to October; or</u> <u>(b) 7pm and 7am during the months November to March.</u> <u>(3) The undertaker will not construct or, to the extent that it would affect the Waterway or any function of the Canal & River Trust, maintain any specified work outside of the timescales provided for within subparagraph (2) unless otherwise agreed in writing between the undertaker and the Canal & River Trust in accordance with the notice periods contained within the Code of Practice.</u>		

Ref.	Article/Schedule	Change	Reason for change	Precedent
		<u>(4) This paragraph 60 does not apply where the undertaker reasonably believes emergency works are required to prevent imminent injury or damage to persons or property PROVIDED THAT in such circumstances the undertaker must notify the Canal & River Trust as soon as reasonably practicable.</u> <u>Lighting</u> <u>61. Provided that such lighting does not result in any adverse environmental effects (as assessed and evidenced by the undertaker to the Canal & River Trust's reasonable satisfaction), the undertaker must provide and maintain at its own expense in the vicinity of the Specified or Protective works such temporary lighting and such signal lights for the control of navigation as the Engineer may reasonably require during the Construction or failure of the Specified or Protective works.</u> <u>Survey of Waterway</u> <u>62.—(1) Before the commencement of the initial Construction of any part of the Specified Works and again following Practical Completion of the Specified Works the undertaker must bear the reasonable and proper cost of the carrying out by a qualified surveyor (the "Surveyor"), to be approved by the Canal & River Trust and the undertaker, of a survey including a dip-survey to measure the depth of the Waterway ("the Survey") of so much of the Waterway and of any land and existing works of the undertaker which may provide support for the Waterway as will or may be affected by the Specified Works.</u> <u>(2) For the purposes of the Survey the undertaker must—</u> <u>(a) on being given reasonable notice (save in case of emergency, when immediate access must be afforded) afford reasonable facilities to the Surveyor for access to the site of the Specified Works and to any land</u>		

Ref.	Article/Schedule	Change	Reason for change	Precedent
		<u>and existing works of the undertaker which may provide support for the Waterway as will or may be affected by the Specified Works; and</u> <u>(b) supply the Surveyor as soon as reasonably practicable with all such information as he may reasonably require and which the undertaker holds with regard to such existing works of the undertaker and to the Specified Works or the method of their Construction.</u> <u>(3) The reasonable costs of the Survey must include the costs of any dewatering or reduction of the water level of any part of the Waterway (where reasonably required) which may be effected to facilitate the carrying out of the Survey and the provisions of this Part will apply with all necessary modifications to any such dewatering or reduction in the water level as though the same were Specified Works.</u> <u>(4) Copies of the Survey must be provided to both the Canal & River Trust and the undertaker at no cost to the Canal & River Trust.</u> <u>Construction of Specified Works</u> <u>63.—(1) Any Specified Works or Protective Works must, when commenced, be constructed—</u> <u>(a) as soon as reasonably practicable in accordance with the Plans approved or deemed to have been approved or settled as aforesaid and with any specifications made under paragraphs 57 (approval of plans, protective works, etc.) and 58 (design of works) of this Part;</u> <u>(b) under the supervision (if given) and to the reasonable satisfaction of the Engineer;</u> <u>(2) in such manner as to cause as little Detriment as is reasonably practicable;</u> <u>(3) in such manner as to cause as little inconvenience as is reasonably practicable to the Canal & River Trust, its officers and agents and all other</u>		

Ref.	Article/Schedule	Change	Reason for change	Precedent
		<u>persons lawfully using the Waterways (including members of, and those authorised by, the Newark & District Piscatorial Federation), except to the extent that temporary obstruction has otherwise been agreed by the Canal & River Trust;</u> <u>(4) in such a manner as to ensure that no materials are discharged or deposited into the Waterway; and</u> <u>(5) in compliance with the Code of Practice where relevant.</u> <u>(6) Nothing in this Order authorises the undertaker to make or maintain any permanent works in or over the Waterway so as to impede or prevent (whether by reducing the width of the Waterway or otherwise) the passage of any vessel which is of a kind (as to its dimensions) for which the Canal & River Trust is required by section 105(1)(b) and (2) of the Transport Act 1968() to maintain the Waterway.</u> <u>(7) Following the Practical Completion of the Construction of the Specified Works the undertaker must restore the Waterway to a condition (save in respect of the Specified Works themselves) no less satisfactory than its condition immediately prior to the commencement of those works unless otherwise agreed between the undertaker and the Canal & River Trust.</u> <u>(8) In assessing whether the condition of the Waterway is no less satisfactory than immediately prior to the works pursuant to sub-paragraph (3) the Canal & River Trust and the undertaker must take account of any Survey issued pursuant to paragraph 62 (survey of waterway) and any other information agreed between them pursuant to this Part.</u> <u>Prevention of Pollution</u> <u>64. The undertaker must not in the course of constructing a Specified Work or a Protective Work or otherwise in connection therewith do or permit anything which may result in the pollution of the Waterway or the</u>		

Ref.	Article/Schedule	Change	Reason for change	Precedent
		<u>deposit of materials therein and must take such steps as the Engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.</u> <u>Access to Work – Provision of Information</u> <u>65.—(1) The undertaker on being given reasonable notice must:</u> <u>(a) at all reasonable times allow reasonable facilities to the Engineer for access to a Specified Work during its Construction; and</u> <u>(b) supply the Engineer with all such information as the Engineer may reasonably require with regard to a Specified Work or the method of constructing it.</u> <u>(2) The Canal & River Trust on being given reasonable notice must:</u> <u>(a) at all reasonable times afford reasonable facilities to the undertaker and its agents for access to any works carried out by the Canal & River Trust under this Part during their Construction; and</u> <u>(b) supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them and the undertaker must reimburse the Canal & River Trust's reasonable costs in relation to the supply of such information.</u> <u>Alterations to the Waterway</u> <u>66.—(1) If during the Construction of a Specified Work or a Protective Work or during a period of twenty four (24) months after the Practical Completion of those works any alterations or additions, either permanent or temporary, to the Waterway are reasonably necessary in consequence of the Construction of the Specified Work or the Protective Work in order to avoid Detriment, and the Canal & River Trust 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 the</u>		

Ref.	Article/Schedule	Change	Reason for change	Precedent
		<u>Canal & River Trust the reasonable costs of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the Canal & River Trust in maintaining, working and, when necessary, renewing any such alterations or additions.</u> <u>(2) If the cost of maintaining, working or renewing the Waterway is reduced in consequence of any such alterations or additions, where reasonably justified a capitalised sum representing such saving is to be set off against any sum payable by the undertaker to the Canal & River Trust under this paragraph.</u> <u>Maintenance of Works</u> <u>67.—(1) If at any time after the Practical Completion of a Specified Work or a Protective Work, not being a work vested in the Canal & River Trust, the Canal & River Trust gives notice to the undertaker informing it that it reasonably considers that the state of maintenance of the Specified Work or Protective Work appears to be such that the work is causing or likely to cause Detriment, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put the work in such state of maintenance as not to cause such Detriment.</u> <u>(2) The Canal & River Trust shall at all reasonable times afford reasonable access to its land or premises as is required by the undertaker in order to take such steps as are required by sub-paragraph (1).</u> <u>Repayment of the Canal & River Trust's Fees, etc.</u> <u>68.—(1) The undertaker must repay to the Canal & River Trust in accordance with the Code of Practice all fees, costs, charges and expenses reasonably incurred by the Canal & River Trust:</u>		

Ref.	Article/Schedule	Change	Reason for change	Precedent
		<u>(a) in constructing any Protective Works under the provisions of paragraph 57 (approval of plans, protective works etc.).</u> <u>(b) in respect of the approval by the Engineer of Plans submitted by the undertaker and the supervision by the Engineer of the Construction or repair of a Specified Work and any Protective Works;</u> <u>(c) in respect of the employment during the Construction of the Specified Works or any Protective Works of any inspectors, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the Construction or failure of the Specified Works or any Protective Works;</u> <u>(d) in bringing the Specified Works or any Protective Works to the notice of users of the Canal & River Trust's Network; and</u> <u>(e) in constructing and/or carrying out any measures related to any Specified Works or Protective Works which are reasonably required by the Canal & River Trust to ensure the safe navigation of the Waterway save that nothing is to require the Canal & River Trust to construct and/or carry out any measures.</u> <u>Making Good of Detriment, Compensation and Indemnity etc.</u> <u>69.—(1) If any Detriment is caused by the Construction or failure of the Specified Works or the Protective Works if carried out by the undertaker, the undertaker (if so required by the Canal & River Trust) must make good such Detriment and must pay to the Canal & River Trust all reasonable expenses incurred by the Canal & River Trust, and compensation for any loss sustained by the Canal & River Trust in making good or otherwise by reason of the Detriment.</u>		

Ref.	Article/Schedule	Change	Reason for change	Precedent
		<u>(2) The undertaker must be responsible for and make good to the Canal & River Trust all costs, charges, damages, expenses and losses not otherwise provided for in this Part which may be occasioned to and reasonably incurred by the Canal & River Trust—</u> <u>(a) by reason of the Construction of a Specified Work or a Protective Work or the failure of such a work; or</u> <u>(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 the Construction of a Specified Work or Protective Work; and subject to sub-paragraph (4) the undertaker must effectively indemnify and hold harmless the Canal & River Trust from and against all claims and demands arising out of or in connection with any of the matters referred to in sub-paragraphs (2)(a) and 2(b).</u> <u>(3) The fact that any act or thing may have been done by the Canal & River Trust 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 or in accordance with any directions or awards of an arbitrator is not to (if it was done without negligence on the part of the Canal & River Trust or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.</u> <u>(4) Nothing in sub-paragraph (2) imposes any liability on the undertaker with respect to any Detriment, damage, loss or interruption to the extent that it is attributable to the act, neglect or default of the Canal & River Trust, its officers, servants, contractors or agents.</u> <u>(5) The Canal & River Trust must give the undertaker reasonable notice of any such claim or demand as aforesaid and no settlement or</u>		

Ref.	Article/Schedule	Change	Reason for change	Precedent
		<u>compromise of such a claim or demand is to be made without the prior consent of the undertaker.</u> <u>(6) The aggregate cap of the undertaker's gross liability for consequential losses under this Part shall be limited to £50,000,000.00 (fifty million pounds) for any one occurrence or all occurrences of a series arising out of the one original cause.</u> <u>Arbitration</u> <u>70. Any difference arising between the undertaker and the Canal & River Trust under this Part (other than a difference as to the meaning or construction of this Part) must be referred to and settled by arbitration in accordance with article 57 (arbitration) of this Order.</u> <u>Capitalised Sums</u> <u>71. Any capitalised sum which is required to be paid under this Part must be calculated by multiplying the cost of the maintenance or renewal works to the Waterway necessitated as a result of the operation of the authorised development by the number of times that the maintenance or renewal works will be required during the operation of the authorised development.</u> <u>As-Built Drawings</u> <u>72. As soon as reasonably practicable following the completion of the construction of the authorised development, the undertaker must provide to the Canal & River Trust as-built drawings of any Specified Works in a form and scale to be agreed between the undertaker and the Canal & River Trust to show the position of those works in relation to the Waterway. "</u>		

7 Summary of proposed changes to draft DCO Rev 7 submitted at Deadline 6 from the draft DCO submitted at Deadline 5 [REP5-002]

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
<u>1</u>	<u>Article 2 - Interpretation</u>	<u>"(11) For the purposes of this Order, references to "days" are to be construed as references to calendar days unless otherwise specified."</u>	<u>To make it clear that references within the DCO to activities being required within a number of "days" mean calendar days, unless otherwise specified elsewhere in the DCO. This is following a request by North Sherwood District Council at Deadline 5 in relation to Requirement 5(7).</u>	<u>N/A</u>
<u>2</u>	<u>Article 2 – interpretation</u>	<u>"“agricultural land plan” –means the document of that description listed in Schedule 10 (documents to be certified) and certified by the Secretary of State as the agricultural land plan for the purposes of this Order;"</u>	<u>Amendment made to define the agricultural land plan referred to in Schedule 2, Part 1, Requirement 23 (Agricultural Land Classification Surveys).</u>	<u>N/A</u>
<u>3</u>	<u>Schedule 2 – Requirements (Construction hours)</u>	<u>"5.—(1) Construction work for the authorised development must only take place between 0700 hours and 1800 hours Monday to Friday, and 0800 hours to 1300 hours on Saturdays, with no activity on Sundays or bank holidays, except as specified in paragraphs (2), (3), and (4) and (5). (2) Except where they relate to the activities specified in paragraphs (3) and (4), the following activities may not take place between the hours of 07:00 and 07:30: (a) start or use of construction plant;</u>	<u>Amendment made at the request of North Sherwood District Council at Deadline 5 to reflect the agreement between the parties recorded in the Statement of Common Ground.</u>	<u>N/A</u>

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>(b) loading and unloading of construction vehicles; and</u> <u>(c) material deliveries.</u> <u>(2)(3) Outside the hours and days specified in paragraph (1), construction work may be undertaken with the prior written consent of the relevant planning authority for activities comprising—</u> <u>(a) bridge installation works to the new bridge structures;</u> <u>(b) removal of the existing signal gantries and the installation of new gantry structures;</u> <u>(c) highway tie-in works and installation of temporary and permanent road markings;</u> <u>(d) installation of signs and streetlights adjacent to live carriageways;</u> <u>(e) abnormal load deliveries or deliveries where daytime working would be excessively disruptive to normal traffic operation, including the delivery of plant; or</u> <u>(f) construction of the Nether Lock Rail bridge and the works over the Nottingham to Lincoln line.</u> <u>(3)(4) Outside the hours and days specified in paragraph (1), the undertaker may carry out activities comprising—</u> <u>(a) traffic management measures and signal changes;</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>(b) any emergency works or operations required for safe working;</u> <u>(c) security;</u> <u>(d) maintenance of plant and equipment that require 24hr operation such as dewatering pumps;</u> <u>(e) completion of activities already begun which require continuous period of operation, such as completing concrete pouring; or</u> <u>(f) environmental and engineering surveys may be carried out outside of core working hours.</u> <u>(4)(5) Outside the hours and days specified in paragraph (1), the undertaker will consult with the relevant planning authority prior to carrying out certain operations which are season and weather dependent including but not limited to earthworks</u> <u>(5)(6) Outside the hours and days specified in paragraph (1), the undertaker may with the prior written consent or deemed consent under paragraph (67) of the relevant planning authority carry out activities (including but not limited to those works set out in paragraph (23)) assessed in the environmental statement or activities which would not give rise to new or materially different effects from those assessed in the environmental statement which do not fall within paragraph (34).</u> <u>(6)(7) If the relevant planning authority which receives a request to carry out works outside the hours and days specified in paragraph (1) in accordance with</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		paragraphs (23) and (56) fails to notify the undertaker of its decision within 14 days of receiving the request for consent that relevant planning authority is deemed to have granted consent."		
<u>4</u>	<u>Schedule 2 – Requirements (Offsite Barn Owl Boxes)</u>	<u>"Offsite Barn Owl Boxes</u> <u>21.—(1) No part of the site clearance as part of the pre-commencement works is to begin until—</u> <u>(a) written details have been submitted to the Secretary of State—</u> <u>(i) demonstrating that the undertaker has secured the provision of the offsite barn owl boxes in accordance with the barn owl box specification;</u> <u>(ii) including in relation to the offsite barn owl boxes, a regime of management measures substantially in accordance with those contained in the barn owl box specification; and</u> <u>(b) the Secretary of State, following consultation with Natural England, has approved the matters listed in sub-paragraph (a).</u> <u>(2) The undertaker must—</u> <u>(a) provide the offsite barn owl boxes prior to any site clearance as part of the pre-commencement works; and</u> <u>(b) maintain the offsite barn owl boxes, in accordance with the details approved by the Secretary of State under sub-paragraph (1)(b).</u> <u>(3) In this paragraph—</u>	<u>To date, the Applicant has secured the placement of barn owl boxes by way of a Licence with the relevant landowner. The intention is that this Licence will be replaced by a s.253 agreement, which will providing for the barn owl boxes' on-going maintenance and management. The Applicant is progressing this agreement with the landowner, and it is the Applicant's hope that it will be in place before the DCO is made. However, if the Applicant has been unable to provide the Secretary of State with a completed copy of the agreement before they make their decision, the Applicant has provided this wording for inclusion in the draft DCO to ensure that the works for which the barn owl boxes are required for mitigation cannot be commenced until the Secretary of State is satisfied that the agreement is in place.</u> <u>This approach was adopted on the A303 (Amesbury to Berwick Down) Development Consent Order 2023 in</u>	<u>A303 (Amesbury to Berwick Down) Development Consent Order 2023, Schedule 2, requirement 12</u>

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>"barn owl box specification" means the barn owl box specification listed in Schedule 10 (documents to be certified) certified by the Secretary of State as the barn owl box specification for the purpose of this Order."</u>	<u>relation to the provision of stone curlew plots (see requirement 12 of that Order).</u>	
<u>5</u>	<u>Schedule 2 - Requirements (Offsite Bat Box)</u>	<u>"Offsite Bat Box</u> <u>22.—(1) No part of the demolition of the existing Mint Leaf restaurant as part of Work No. 95 is to commence until—</u> <u>(a) written details have been submitted to the Secretary of State—</u> <u>(i) demonstrating that the undertaker has secured the provision of the offsite bat box in accordance with the bat box specification;</u> <u>(ii) including in relation to the offsite bat box, a regime of management measures substantially in accordance with those contained in the bat box specification; and</u> <u>(b) the Secretary of State, following consultation with Natural England, has approved the matters listed in sub-paragraph (a).</u> <u>(2) The undertaker must—</u> <u>(a) provide the offsite bat box prior to the beginning of Work No. 95; and</u> <u>(b) maintain the offsite bat box, in accordance with the details approved by the Secretary of State under sub-paragraph (1)(b).</u> <u>(3) In this paragraph—</u>	<u>The Applicant intends to enter into a s.253 agreement with the relevant landowner to provide for the installation, on-going maintenance and management of the offsite bat box required to mitigate the impact of the demolition of the Mint Leaf restaurant as part of Work No. 95.</u> <u>The Applicant is progressing this agreement with the landowner, and it is the Applicant's hope that it will be in place before the DCO is made. However, if the Applicant has been unable to provide the Secretary of State with a completed copy of the agreement before they make their decision, the Applicant has provided this wording for inclusion in the draft DCO to ensure that demolition of the Mint Leaf restaurant cannot be commenced until the Secretary of State is satisfied that the agreement is in place.</u>	<u>A303 (Amesbury to Berwick Down) Development Consent Order 2023, Schedule 2, requirement 12</u>

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>"bat box specification" means the bat box specification listed in Schedule 10 (documents to be certified) certified by the Secretary of State as the bat box specification for the purposes of this Order."</u>	<u>This approach was adopted on the A303 (Amesbury to Berwick Down) Development Consent Order 2023 in relation to the provision of stone curlew plots (see requirement 12 of that Order).</u>	
<u>6</u>	<u>Schedule 2 – Requirements (Agricultural Land Classification Surveys)</u>	<u>"Agricultural Land Classification Surveys</u> <u>23. Prior to any works commencing on the land shown hatched green on the agricultural land plan the undertaker must carry out agricultural land classification surveys on that land and submit the results of those surveys to Natural England."</u>	<u>Requirement added to secure agricultural land classification surveys requested by Natural England.</u>	<u>N/A</u>
<u>7</u>	<u>Schedule 2 – Procedure for discharge of requirements</u>	<u>"Applications made under requirements</u> <u>21.24.—(1)(b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 22 25 (further information); or"</u> <u>"Further information</u> <u>22.25.—(3) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 21 24 (applications made under requirements) and in this paragraph. "</u> <u>"Register of requirements</u> <u>23.26.—(1)"</u>	<u>Consequential renumbering of requirements due to the addition of two new requirements.</u>	<u>N/A</u>

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>"Anticipatory steps towards compliance with any requirement</u> <u>24.27. "</u> <u>"Details of consultation</u> <u>25.28.—(1)"</u>		
<u>8</u>	<u>Schedule 9, Part 4</u> <u>(For the protection of</u> <u>railway interests)</u>	<u>"31. 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 4046 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.</u> <u>32. In this Part of this Schedule—</u> <u>"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;</u> <u>"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;</u> <u>"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;</u> <u>"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(a);</u>	<u>To reflect updated agreed protective provisions with Network Rail Infrastructure Limited.</u>	<u>N/A</u>

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>"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(b)) 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;</u> <u>"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;</u> <u>"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;</u> <u>"railway property" means any railway belonging to Network Rail and-</u> <u>(a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>(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;</u> <u>"regulatory consents" means any consent or approval required under:</u> <u>(a) the Railways Act 1993;</u> <u>(b) the network licence; and/or</u> <u>(c) any other relevant statutory or regulatory provisions;</u> <u>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;</u> <u>"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 6 (maintenance of authorised development) in respect of such works.</u> <u>"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;</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		“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, United Kingdom, 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;		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		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;		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		“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 6 (construction and maintenance of authorised development) in respect of such works. 33.—(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. 34. —(1) The undertaker must not exercise the powers conferred by—		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>(a) article 5 (development consent granted by the Order);</u> <u>(b) article 6 (maintenance of authorised development);</u> <u>(c) article 23 (discharge of water);</u> <u>(d) article 25 (authority to survey and investigate the land);</u> <u>(e) article 26 (compulsory acquisition of land);</u> <u>(f) article 27 (compulsory acquisition of rights);</u> <u>(g) article 38 (acquisition of subsoil or airspace only);</u> <u>(h) article 31 (power to override easements and other rights);</u> <u>(i) article 40 (temporary use of land for carrying out the authorised development);</u> <u>(j) article 41 (temporary use of land for maintaining the authorised development);</u> <u>(k) article 42 (statutory undertakers);</u> <u>(l) article 30 (private rights over land);</u> <u>(m) article 45 (felling or lopping of trees and removal of hedgerows);</u> <u>(n) article 46 (trees subject to tree preservation orders, etc.);</u> <u>(o) the powers conferred by section 11(3)(a) (power of entry) of the 1965 Act;</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>(p) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016(b);</u> <u>(q) the powers conferred by section 172(c) (right to enter and survey land) of the Housing and Planning Act 2016;</u> <u>(r) any powers under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017;</u> <u>(s) in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.</u> <u>(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.</u> <u>(3) The undertaker must not exercise the powers conferred by sections 271(a) or 272(b) of the 1990 Act, article 42 (statutory undertakers), article 31 (power to override easements and other rights or article 30 private rights over land, 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.</u> <u>(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</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.</u> <u>(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.</u> <u>(6) 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 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).</u> <u>(7) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.</u> <u>35.—(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.</u> <u>(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</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>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.</u> <u>(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.</u> <u>(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</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>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.</u> <u>36.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 35(4) must, when commenced, be constructed—</u> <u>(a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 35;</u> <u>(b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;</u> <u>(c) in such manner as to cause as little damage as is possible to railway property; and</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>(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.</u> <u>(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.</u> <u>37.—(1) 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 to any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.</u> <u>38. The undertaker must-</u> <u>(a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>(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.</u> <u>39. 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.</u> <u>40.—(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.</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>(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 35(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.</u> <u>(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 41(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.</u> <u>(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.</u> <u>41. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 35(3) or in constructing any protective works under the provisions of paragraph 35(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;</u> <u>(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;</u> <u>(c) in respect of the employment or procurement of the services of any inspectors, signallers, watchpersons 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;</u> <u>(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</u> <u>(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</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>in consequence of the construction or failure of a specified work.</u> <u>42.—(1) In this paragraph-</u> <u>“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</u> <u>“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.</u> <u>(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 35(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).</u> <u>(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</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>acting reasonably) appropriate arrangements to verify their effectiveness.</u> <u>(4) In order to facilitate the undertaker's compliance with sub-paragraph (3)-</u> <u>(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 35(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;</u> <u>(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</u> <u>(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).</u> <u>(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 35(1) has effect subject to the sub-paragraph.</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>(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.</u> <u>(7) In the event of EMI having occurred –</u> <u>(a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;</u> <u>(b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;</u> <u>(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</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>(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.</u> <u>(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6) –</u> <u>(a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;</u> <u>(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 36.</u> <u>(9) To the extent that it would not otherwise do so, the indemnity in paragraph 46(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 sub-paragraph (6) applies.</u> <u>(10) For the purpose of paragraph 41(a) any modifications to Network Rail's apparatus under this</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>paragraph shall be deemed to be protective works referred to in that paragraph.</u> <u>(11) In relation to any dispute arising under this paragraph the reference in article 57 (Arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.</u> <u>43.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.</u> <u>44.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.</u> <u>45.Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>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.</u> <u>46.—(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 34 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail—</u> <u>(a) by reason of the construction, maintenance or operation of a specified work or the failure thereof; or</u> <u>(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;</u> <u>(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;</u> <u>(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;</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>(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;</u> <u>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.</u> <u>(2) Network Rail must –</u> <u>(a) give the undertaker reasonable written notice of any such claims or demands</u> <u>(b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and</u> <u>(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.</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>(3) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.</u> <u>(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.</u> <u>(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).</u> <u>(6) In this paragraph—</u> <u>"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</u> <u>"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.</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>47. 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 46) 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).</u> <u>48. 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.</u> <u>49. 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—</u> <u>(a) any railway property shown on the works and land plans and described in the book of reference;</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>(b) any lands, works or other property held in connection with any such railway property; and</u> <u>(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.</u> <u>50. 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.</u> <u>51. 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 12 (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)—</u> <u>(a) the nature of the application to be made;</u> <u>(b) the extent of the geographical area to which the application relates; and</u> <u>(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.</u> <u>52. 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 55 (certification of documents etc.) are certified by the</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.</u> <u>53. In relation to any dispute arising under this part of this Part of this Schedule (except for those disputes referred to in paragraph 42(11))the provisions of article 57 (Arbitration) shall not apply and any such dispute, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) to the President of the Institution of Civil Engineers.</u> <u>33. 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.</u> <u>(1) 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—</u> <u>(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</u> <u>(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.</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		34.— The undertaker must not exercise the powers conferred by— (a) — article 5 (development consent etc. granted by the Order);(b) — article 6 (maintenance of authorised development); (c) — article 23 (discharge of water); (d) — article 25 authority to survey and investigate the land); (e) — article 26 (compulsory acquisition of land); (f) — article 29 (compulsory acquisition of rights and imposition of restrictive covenants); (g) — article 30 (private rights over land); (h) — article 38 (acquisition of subsoil or airspace only); (i) — article 40 (temporary use of land for carrying out the authorised development); (j) — article 41 (temporary use of land for maintaining the authorised development); (k) — article 42 (statutory undertakers); (l) — article 45 (felling or lopping of trees and removal of hedgerows); (m) — article 46 (trees subject to tree preservation orders, etc); (n) — the powers conferred by section 11(3)() (power of entry) of the 1965 Act;		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		(o) — the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016(); (p) — the powers conferred by section 172() (right to enter and survey land) of the Housing and Planning Act 2016; (q) — 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 42 (statutory undertakers), or article 30 (private rights over land), 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		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		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 but may be given subject to reasonable conditions, but it is not 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. 35. 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) 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		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		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 14 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 PROVIDED THAT this paragraph shall not apply to any works that require temporary traffic management on the Strategic Road Network. (4) When signifying their approval of the plans the engineer may specify any protective works (whether		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		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. 36.— Any specified work and any protective works to be constructed by virtue of paragraph 35(3) 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 35(1); (b) — under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		(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. 37. The undertaker must— (a) — at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		(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. 38. 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. 39. — 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.		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		(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 35(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 40(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. 40. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		(a) — in constructing any protective works under the provisions of paragraph 35(3) or in constructing any protective works under the provisions of paragraph 35(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.		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		41.— 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 35(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.		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		(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 35(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 35(1) has effect subject to the sub-paragraph.		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		(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		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to subparagraphs (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 subparagraphs must be carried out and completed by the undertaker in accordance with paragraph 36; (9) To the extent that it would not otherwise do so, the indemnity in paragraph 45(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 40(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 57 (Arbitration) to the Institution of Civil Engineers shall be read as a		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		reference to the Institution of Engineering and Technology. 42. 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. 43. 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. 44. 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 not less than 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		given to the undertaker, be repaid by the undertaker to Network Rail. 45.—The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (but subject always to the remaining provisions of this paragraph and to article 34 (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		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		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 (and in any event not less than 7 days) of any such claims or demands (b) — not admit any liability or make any offer to settle or any settlement or compromise of such a claim or demand without the prior consent of the undertaker (which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand); (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; and		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		(d) — keep the undertaker informed in relation to the progress of any such claims and demands and pay due regard to the undertaker's reasonable representations in relation to them; (3) The undertaker is not liable under sub paragraph (1) for any indirect or consequential loss or loss of profits except that the sums payable by the undertaker under that sub paragraph include a sum equivalent to the relevant costs in circumstances where; (a) — Network Rail is liable to make payment of the relevant costs pursuant to the terms of an agreement between Network Rail and a train operator; and (b) — the existence of that agreement and the extent of Network Rail's liability to make payment of the relevant costs pursuant to its terms previously disclosed in writing to the undertaker, but not otherwise; (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		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		concerned to the extent that such sums would be payable to that operator pursuant to sub paragraph (4); (6) In this paragraph— “the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified 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. 46. 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 45) 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); 47. 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		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		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. 48. 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. 49. 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. 50. 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 12 (consent to transfer benefit of Order) of this Order and any such notice must be given no later than		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		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. 51. 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 55 (certification of documents, etc.), provide a set of those plans to Network Rail in a format specified by Network Rail. 52. In relation to any dispute arising under this part of this Schedule (except for those disputes referred to in paragraph 41(11)) the provisions of article 57 (Arbitration) shall not apply and any such dispute, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) to the President of the Institution of Civil Engineers."		
<u>9</u>	<u>Schedule 9, Part 5</u> <u>(For the protection of</u> <u>the Canal & River</u> <u>Trust)</u>	"Application 53.54. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in	<u>To update cross references following amendments to Part 4 (for the protection of rail interests) of Schedule 9.</u>	<u>N/A</u>

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>writing between the undertaker and the Canal & River Trust.</u> <u>Interpretation</u> <u>54-55. In this Part of this Schedule—</u> <u>“Code of Practice” means the Code of Practice for Works Affecting the Canal & River Trust (April 2024) or any updates or amendments thereto;</u> <u>“Construction” in relation to any Specified Work or Protective Work, includes:</u> <u>(a) the execution and placing of that work; and</u> <u>(b) any relaying, renewal, or maintenance of that work; and “Construct” and “Constructed” have corresponding meanings;</u> <u>“Canal & River Trust’s Network” means the Canal & River Trust’s network of waterways;</u> <u>“Detriment” means any damage to the Waterway or any other property of the Canal & River Trust’s Network caused by the presence of the authorised development and, without prejudice to the generality of that meaning, includes:</u> <u>(a) any material obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the Waterway (including towing paths) unless such interference is authorised by this Order or otherwise agreed with the Canal & River Trust;</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>(b) the erosion of the bed or banks of the Waterway, or the impairment of the stability of any works, lands or premises forming part of the Waterway;</u> <u>(c) the deposit of materials or the siltation of the Waterway so as to damage the Waterway;</u> <u>(d) the pollution of the Waterway;</u> <u>(e) any significant alteration in the water level of the Waterway, or significant interference with the supply of water thereto, or drainage of water thereon;</u> <u>(f) any harm to the ecology of the Waterway (including any adverse impact on any site of special scientific interest comprised in the Canal & River Trust's Network); and</u> <u>(g) any material interference with the exercise by any person of rights over Canal & River Trust's Network;</u> <u>"the Engineer" means an engineer appointed by the Canal & River Trust for the purpose in question;</u> <u>"Plans" includes navigational risk assessments, topographical surveys, sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;</u> <u>"Practical Completion" means practical completion of all of the Specified Work notwithstanding that items which would ordinarily be considered snagging items remain outstanding, and the expression "practically</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>complete” and “practically completed” is to be construed accordingly;</u> <u>“Prior Notice” means a minimum of 6 weeks’ prior notice;</u> <u>“Protective Works” means a work considered under paragraph 57–58 (approval of plans, protective works etc.);</u> <u>“Specified Work” means so much of any authorised development (including any temporary works) as defined in article 2 of this Order that is situated upon, across, under, over or within 15 metres of, or may in any reasonable way affect, the Waterway;</u> <u>“the Waterway” means each and every part of the River Trent within the Order limits, and any works, lands or premises within the Order limits belonging to the Canal & River Trust, or under its management or control, and held or used by the Canal & River Trust in connection with Canal & River Trust’s Network and/or its statutory functions.</u> <u>55-56. Where the Code of Practice applies to any works or matter that are part of the authorised development or that form part of the Protective Works and there is an inconsistency between these protective provisions and the Code of Practice, the part of the Code of Practice that is inconsistent with these protective provisions will not apply and these protective provisions will apply.</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>Powers requiring the Canal & River Trust's Consent</u> <u>56-57.—(1) Article 10(1)(b) and 10(2) (in respect of vertical deviations only) (limits of deviation) shall not apply in relation to the Waterway unless such exercise is with the consent of the Canal & River Trust.</u> <u>(2) Save as authorised by the powers conferred by this Order the undertaker must not materially obstruct or interfere with pedestrian or vehicular access to the waterway unless such obstruction or interference with such access is with the consent of the Canal & River Trust.</u> <u>(3) The undertaker must not exercise any power conferred by this Order to discharge water into the Waterway under article 23 (discharge of water) unless such exercise is with the consent of the Canal & River Trust PROVIDED THAT such consent shall not be required where the undertaker demonstrates to the Engineer that the maximum discharge velocity of such discharge is less than or equal to 0.3 metres per second.(4) The undertaker must not exercise any power conferred by this Order to interfere with the existing supply of water to or the drainage of water from the Waterway unless such exercise is with the consent of the Canal & River Trust.</u> <u>(5) The undertaker must not exercise the powers conferred by article 25 (authority to survey and investigate the land) or section 11(3) of the 1965 Act,</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>in relation to the Waterway unless such exercise is with the consent of the Canal & River Trust.</u> <u>(6) The undertaker must not exercise any power conferred by article 26 (compulsory acquisition of land), article 29 (compulsory acquisition of rights and imposition of restrictive covenants), 38 (acquisition of subsoil or airspace only) or 42 (statutory undertakers) in respect of the Canal & River Trust's interests in the Waterway, except with the consent of the Canal & River Trust.</u> <u>(7) The undertaker must not exercise any power conferred by article 40 (temporary use of land for carrying out the authorised development), article 41 (temporary use of land for maintaining the authorised development) or article 45 (felling or lopping of trees and removal of hedgerows) in respect of the Waterway unless such exercise is with the consent of the Canal & River Trust.</u> <u>(8) Without prejudice to sub-paragraphs (1) to (7) (inclusive) 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, the Canal & River Trust's Network, or extinguish any existing rights of the Canal & River Trust in respect of any third party property, except with the consent of the Canal & River Trust.</u> <u>(9) The consent of the Canal & River Trust pursuant to (1) to (8) (inclusive) must not be unreasonably withheld or delayed but may be given subject to reasonable</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>terms and conditions provided that it will not be reasonable for the Canal & River Trust to withhold or delay consent or impose terms and conditions that would prevent the undertaker from complying with the protective provisions in this Part of this Schedule or any condition contained in Schedule 2 (Requirements).</u> <u>(10) The undertaker must not under the powers of this Order do anything which would directly result in the Waterway being incapable of being used or maintained or which would affect the safe operation of the Canal & River Trust's Network, in the Canal & River Trust's reasonable opinion.</u> <u>(11) This paragraph 56 does not apply where the undertaker reasonably believes emergency works are required to prevent imminent injury or damage to persons or property PROVIDED THAT in such circumstances the undertaker must notify the Canal & River Trust as soon as reasonably practicable.</u> <u>Approval of Plans, Protective Works etc.</u> <u>57.58.—(1) The undertaker must before commencing Construction of any Specified Work supply to the Canal & River Trust proper and sufficient Plans of that work (on the Canal & River Trust's own forms or as otherwise agreed in writing) having regard to the Canal & River Trust's Code of Practice, together with such further particulars as the Canal & River Trust may within 21 days of initial receipt of such plans reasonably require for the approval of the Engineer.</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>(2) The approval of the Engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if within 35 days after all such Plans (including any other particulars reasonably required under sub-paragraph (1)) have been received by the Canal & River Trust the Engineer has not given notice of the approval or disapproval of those Plans and the grounds of such disapproval the Engineer is deemed to have approved the Plans as submitted.</u> <u>(3) Construction of a Specified Work must not commence until Plans of that work have been approved in writing by the Engineer, deemed approved pursuant to sub-paragraph (2), or settled by arbitration.</u> <u>(4) When signifying approval of the Plans the Engineer (or the arbitrator) may specify (in relation to land held or controlled by the Canal & River Trust or the undertaker and subject to such works being authorised by this Order or being development permitted by an Act of Parliament or general development order made under the 1990 Act)—</u> <u>(a) any Protective Work (whether temporary or permanent) which in the reasonable opinion of the Engineer should be carried out before the commencement of a Specified Work to prevent Detriment; and</u> <u>(b) such other requirements as may be reasonably necessary to prevent Detriment.</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>(5) Any Protective Work required under this paragraph must be:</u> <u>(a) constructed by the undertaker or by the Canal & River Trust at the undertaker's request within 28 days of notification of a Protective Work by the Engineer in accordance with sub-paragraph (4)(a) or in accordance with an agreed programme to be agreed within 14 days of notification of a Protective Work by the Engineer in accordance with paragraph (4)(a); and</u> <u>(b) the undertaker must not commence the Construction of a Specified Work unless approved by the Engineer (such approval to be provided within 14 days of request by the undertaker) or until the Engineer has notified the undertaker that the Protective Work has been Practically Completed to the Engineer's reasonable satisfaction (such approval to be provided within 14 days of notification of completion of the Protective Work by the undertaker).</u> <u>(6) The withholding of an approval of the Engineer under this paragraph 57–58 will be deemed to be unreasonable if it would prevent the undertaker from complying with any condition contained in Schedule 2 (Requirements) to this Order.</u> <u>(7) The undertaker must pay to the Canal & River Trust a capitalised sum representing the reasonably increased or additional cost of maintaining and, when necessary, renewing any Specified Works or any permanent Protective Works provided under sub-paragraph (3) and sub-paragraph (5) respectively</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>above, for which the Canal & River Trust is liable to maintain, and of carrying out any additional dredging of the Waterway reasonably necessitated by the exercise of any of the powers under this Order PROVIDED THAT if the cost of maintaining the Waterway, or of works of renewal of the Waterway, is reduced in consequence of any such works, a capitalised sum representing such reasonable saving is to be set off against any sum payable by the undertaker to the Canal & River Trust under this paragraph.</u> <u>(8) In the event that the undertaker fails to Practically Complete the Construction of, or part of, a Specified Work the Canal & River Trust may, if it is reasonably required in order to avoid Detriment, serve on the undertaker a notice in writing requesting that Construction be Practically Completed. Any notice served under this sub-paragraph must state the works that are to be Practically Completed by the undertaker and lay out a reasonable timetable for the works' Practical Completion. If the undertaker fails to comply with this notice within 35 days)or the timescales set out in the timetable, whichever is the longer), the Canal & River Trust may undertake Protective Works to make safe the area and avoid Detriment and the undertaker must reimburse the Canal & River Trust all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.</u> <u>Design of Works</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>58-59.—(1) Save in respect of any works or plans already agreed in writing between the undertaker and the Canal & River Trust prior to the date of this Order, and without prejudice to its obligations under the foregoing provisions of this Part of this Schedule the undertaker must consult, collaborate and respond constructively to any reasonable approach, suggestion, proposal or initiative made by the Canal & River Trust on—</u> <u>(2) the design and appearance of any Specified Works and/or any Protective Works;</u> <u>(3) the environmental effect of any Specified Works and/or any Protective Works, having regard to such views as may be expressed by the Canal & River Trust in response to such consultation pursuant in particular to the requirements imposed on the Canal & River Trust by section 22 (general environmental and recreational duties) of the British Waterways Act 1995 and to the interest of the Canal & River Trust in preserving and enhancing the environment of its waterways.</u> <u>(4) amendments or alterations to any management plan or action plan as may be approved pursuant to Schedule 2 of this Order in respect of or in connection with a Specified Work or a Protective Work; and</u> <u>(5) the structural monitoring plan in respect of the Fiddler's Elbow Bridge (as identified in the First Iteration Monitoring Plan (Ref: CH2).</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>Fencing</u> <u>59.60. Where so required by the Engineer the undertaker must to the reasonable satisfaction of the Engineer fence off a Specified Work or a Protective Work or take such other steps as the Engineer may require to be taken for the purpose of separating a Specified Work or a Protective Work from the Waterway, whether on a temporary or permanent basis or both.</u> <u>Notice of Works</u> <u>60.61.—(1) Without prejudice to sub-paragraphs (2) and (3), the undertaker must give to the Engineer 30 days' notice of its intention to commence the Construction of any of the Specified Works or Protective Works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, the Canal & River Trust may where appropriate arrange for the publication notices bringing those works to the attention of users of the Canal & River Trust's Network.</u> <u>(2) Unless Prior Notice is given by the undertaker to the Canal & River Trust, the undertaker must not completely close to navigation any part of the Waterway between—</u> <u>(a) 10pm and 6am during the months April to October; or</u> <u>(b) 7pm and 7am during the months November to March.</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>(3) The undertaker will not construct or, to the extent that it would affect the Waterway or any function of the Canal & River Trust, maintain any specified work outside of the timescales provided for within subparagraph (2) unless otherwise agreed in writing between the undertaker and the Canal & River Trust in accordance with the notice periods contained within the Code of Practice.</u> <u>(4) This paragraph 60–61 does not apply where the undertaker reasonably believes emergency works are required to prevent imminent injury or damage to persons or property PROVIDED THAT in such circumstances the undertaker must notify the Canal & River Trust as soon as reasonably practicable.</u> <u>Lighting</u> <u>61.62. Provided that such lighting does not result in any adverse environmental effects (as assessed and evidenced by the undertaker to the Canal & River Trust's reasonable satisfaction), the undertaker must provide and maintain as its own expense in the vicinity of the Specified or Protective works such temporary lighting and such signal lights for the control of navigation as the Engineer may reasonably require during the Construction or failure of the Specified or Protective works.</u> <u>Survey of Waterway</u> <u>62.63.—(1) Before the commencement of the initial Construction of any part of the Specified Works and</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>again following Practical Completion of the Specified Works the undertaker must bear the reasonable and proper cost of the carrying out by a qualified surveyor (the “Surveyor”), to be approved by the Canal 7 River Trust and the undertaker, of a survey including a dip-survey to measure the depth of the Waterway (“the Survey”) of so much of the Waterway and of any land and existing works of the undertaker which may provide support for the Waterway as will or may be affected by the Specified Works.</u> <u>(2) For the purposes of the Survey the undertaker must—</u> <u>(a) on being given reasonable notice (save in case of emergency, when immediate access must be afforded) afford reasonable facilities to the Surveyor for access to the site of the Specified Works and to any land and existing works of the undertaker which may provide support for the Waterway as will or may be affected by the Specified Works; and</u> <u>(b) supply the Surveyor as soon as reasonably practicable with all such information as he may reasonably require and which the undertaker holds with regard to such existing works of the undertaker and to the Specified Works or the method of their Construction.</u> <u>(3) The reasonable costs of the Survey must include the costs of any dewatering or reduction of the water level of any part of the Waterway (where reasonably required) which may be effected to facilitate the</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		carrying out of the Survey and the provisions of this Part will apply with all necessary modifications to any such dewatering or reduction in the water level as though the same were Specified Works. (4) Copies of the Survey must be provided to both the Canal & River Trust and the undertaker at no cost to the Canal & River Trust. <u>Construction of Specified Works</u> <u>63.64.—(1) Any Specified Works or Protective Works must, when commenced, be constructed—</u> <u>(a) as soon as reasonably practicable in accordance with the Plans approved or deemed to have been approved or settled as aforesaid and with any specifications made under paragraphs 57–58 (approval of plans, protective works, etc.) and 58–59 (design of works) of this Part;</u> <u>(b) under the supervision (if given) and to the reasonable satisfaction of the Engineer;</u> <u>(c) in such manner as to cause as little Detriment as is reasonably practicable;</u> <u>(d) in such manner as to cause as little inconvenience as is reasonably practicable to the Canal & River Trust, its officers and agents and all other persons lawfully using the Waterways (including members of, and those authorised by, the Newark & District Piscatorial Federation), except to the extent that temporary obstruction has otherwise been agreed by the Canal & River Trust;</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>(e) in such a manner as to ensure that no materials are discharged or deposited into the Waterway; and</u> <u>(f) in compliance with the Code of Practice where relevant.</u> <u>(2) Nothing in this Order authorises the undertaker to make or maintain any permanent works in or over the Waterway so as to impede or prevent (whether by reducing the width of the Waterway or otherwise) the passage of any vessel which is of a kind (as to its dimensions) for which the Canal & River Trust is required by section 105(1)(b) and (2) of the Transport Act 1968() to maintain the Waterway.</u> <u>(3) Following the Practical Completion of the Construction of the Specified Works the undertaker must restore the Waterway to a condition (save in respect of the Specified Works themselves) no less satisfactory than its condition immediately prior to the commencement of those works unless otherwise agreed between the undertaker and the Canal & River Trust.</u> <u>(4) In assessing whether the condition of the Waterway is no less satisfactory than immediately prior to the works pursuant to sub-paragraph (3) the Canal & River Trust and the undertaker must take account of any Survey issued pursuant to paragraph 6263 (survey of waterway) and any other information agreed between them pursuant to this Part.</u> Prevention of Pollution		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>64.65. The undertaker must not in the course of constructing a Specified Work or a Protective Work or otherwise in connection therewith do or permit anything which may result in the pollution of the Waterway or the deposit of materials therein and must take such steps as the Engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.</u> <u>Access to Work – Provision of Information</u> <u>65.66.—(1) The undertaker on being given reasonable notice must—</u> <u>(a) at all reasonable times allow reasonable facilities to the Engineer for access to a Specified Work during its Construction; and</u> <u>(b) supply the Engineer with all such information as the Engineer may reasonably require with regard to a Specified Work or the method of constructing it.</u> <u>(2) The Canal 7 River Trust on being given reasonable notice must—</u> <u>(a) at all reasonable times afford reasonable facilities to the undertaker and its agents for access to any works carried out by the Canal & River Trust under this Part during their Construction; and</u> <u>(b) supply the undertaker with such information as it may reasonable require with regard to such works or the method of constructing them and the undertaker must reimburse the Canal & River Trust's reasonable costs in relation to the supply of such information.</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>Alterations to the Waterway</u> <u>66.67.—(1) If during the Construction of a Specified Work or a Protective Work or during a period of twenty four (24) months after the Practical Completion of those works any alterations or additions, either permanent or temporary, to the Waterway are reasonably necessary in consequence of the Construction of the Specified Work or the Protective Work in order to avoid Detriment, and the Canal & River Trust 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 the Canal & River Trust the reasonable costs of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the Canal & River Trust in maintaining, working and, when necessary, renewing any such alterations or additions.</u> <u>(2) If the cost of maintaining, working or renewing the Waterway is reduced in consequence of any such alterations or additions where reasonably justified a capitalised sum representing such saving is to be set off against any sum payable by the undertaker to the Canal & River Trust under this paragraph.</u> <u>Maintenance of Works</u> <u>67.68.—(1) If at any time after the Practical Completion of a Specified Work or a Protective Work, not being a</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>work vested in the Canal & River Trust, the Canal & River Trust gives notice to the undertaker informing it that it reasonably considers that the state of maintenance of the Specified Work or Protective Work appears to be such that the work is causing or likely to cause Detriment, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put the work in such state of maintenance as not to cause such Detriment.</u> <u>(2) The Canal & River Trust shall at all reasonable times afford reasonable access to its land or premises as is required by the undertaker in order to take such steps as are required by sub-paragraph (1).</u> <u>Repayment of the Canal & River Trust's Fees, etc.</u> <u>68:69.—(1) The undertaker must repay to the Canal & River Trust in accordance with the Code of Practice all fees, costs, charges and expenses reasonably incurred by the Canal & River Trust—</u> <u>(a) in constructing any Protective Works under the provisions of paragraph 5758 (approval of plans, protective works etc.).</u> <u>(b) in respect of the approval by the Engineer of Plans submitted by the undertaker and the supervision by the Engineer of the Construction or repair of a Specified Work and any Protective Works;</u> <u>(c) in respect of the employment during the Construction of the Specified Works or any Protective Works of any inspectors, watchmen and other persons</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>whom it is reasonably necessary to appoint for inspecting, watching and lighting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the Construction or failure of the Specified Works or any Protective Works;</u> <u>(d) in bringing the Specified Works or any Protective Works to the notice of users of the Canal & River Trust's Network; and</u> <u>(e) in constructing and/or carrying out any measures related to any Specified Works or Protective Works which are reasonably required by the Canal & River Trust to ensure the safe navigation of the Waterway save that nothing is to require the Canal & River Trust to construct and/or carry out any measures.</u> <u>Making Good of Detriment, Compensation and Indemnity etc.</u> <u>69-70.—(1) If any Detriment is caused by the Construction or failure of the Specified Works or the Protective Works if carried out by the undertaker, the undertaker (if so required by the Canal & River Trust) must make good such Detriment and must pay to the Canal & River Trust all reasonable expenses incurred by the Canal & River Trust, and compensation for any loss sustained by the Canal & River Trust in making good or otherwise by reason of the Detriment.</u> <u>(2) The undertaker must be responsible for and make good to the Canal & River Trust all costs, charges, damages, expenses and losses not otherwise provided</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>for in this Part which may be occasioned to and reasonably incurred by the Canal & River Trust—</u> <u>(a) by reason of the Construction of a Specified Work or a Protective Work of the failure of such a work;</u> <u>or</u> <u>(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 the Construction of a Specified Work or Protective Work;</u> <u>and subject to sub-paragraph (4) the undertaker must effectively indemnify and hold harmless the Canal & River Trust from and against all claims and demands arising out of or in connection with any of the matters referred to in sub-paragraphs (2)(a) and (2)(b).</u> <u>(3) The fact that any act or thing may have been done by the Canal & River Trust 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 or in accordance with any directions or awards of an arbitrator is not to (if it was done without negligence on the part of the Canal & River Trust or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.</u> <u>(4) Nothing in sub-paragraph (2) imposes any liability on the undertaker with respect to any Detriment, damage, loss or interruption to the extent that it is attributable to the act, neglect or default of the Canal & River Trust, its officers, servants, contractors or agents.</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		<u>(5) The Canal & River Trust must give the undertaker reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.</u> <u>(6) The aggregate cap of the undertaker's gross liability for consequential losses under this Part shall be limited to £50,000,000.00 (fifty million pounds) for any one occurrence or all occurrences of a series arising out of the one original cause.</u> <u>Arbitration</u> <u>70.71. Any difference arising between the undertaker and the Canal & River Trust under this Part (other than a difference as to the meaning or construction of this Part) must be referred to and settled by arbitration in accordance with article 57 (arbitration) of this Order.</u> <u>Capitalised Sums</u> <u>71.72. Any capitalised sum which is required to be paid under this Part must be calculated by multiplying the cost of the maintenance or renewal works to the Waterway necessitated as a result of the operation of the authorised development by the number of times that the maintenance or renewal works will be required during the operation of the authorised development.</u> <u>As-Built Drawings</u> <u>72.73. As soon as reasonably practicable following the completion of the construction of the authorised development, the undertaker must provide to the Canal</u>		

<u>Ref.</u>	<u>Article/Schedule</u>	<u>Change</u>	<u>Reason for change</u>	<u>Precedent</u>
		& River Trust as-built drawings of any Specified Works in a form and scale to be agreed between the undertaker and the Canal & River Trust to show the position of those works in relation to the Waterway."		
<u>10</u>	<u>Schedule 10 – Documents to be certified</u>	" Agricultural land plan [TR010065/XX/XX] " -	<u>Addition to the list of documents to be certified as a result of a new requirement 23 (Agricultural Land Classification Surveys). The document reference number will be added once available. It is anticipated that the agricultural land plan will be submitted at Deadline 7.</u>	<u>N/A</u>