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The Planning Act 2008

Rail Chord North of Ipswich Goods Yard

Examining Authority's Report of Findings and Conclusions

and

**Recommendation to the
Secretary of State for Transport**

Gideon Amos OBE RIBA MRTPI

Examining Authority

File Ref TR040002

- The application, dated 27 June 2011 was made under Section 37 of the Planning Act 2008 and was received in full by the IPC on 29 June 2011.
- The applicant is Network Rail Infrastructure Limited.
- The application was accepted for examination on 21 July 2011.
- The examination of the application began on 9 November 2011 and was completed on 22 March 2012.
- The development proposed is the construction and operation of a new railway link (known as a "chord"), 1,415m long, to the north of Ipswich Goods Yard, Ipswich, Suffolk, linking the Great Eastern Main Line and East Suffolk Line railways. The construction of the railway includes the widening of the embankment carrying the Great Eastern Main Line, reconstruction and widening of the bridge over Sproughton Road, Ipswich, a new railway bridge across the River Gipping, a new railway embankment on the south-eastern side of the river and the replacement of the existing railway bridge carrying the East Suffolk Line railway over the river.

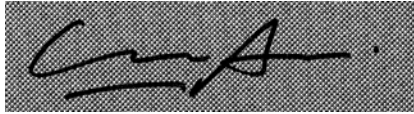
Summary of Recommendation: The Examining authority recommends the Secretary of State for Transport to make the Development Consent Order in form attached.

ERRATA SHEET - Rail Chord North of Ipswich Goods Yard - Ref TR040002

Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for Transport dated 12 June 2012

The following corrections in the report were identified by Department for Transport and agreed by the Examining Authority prior to a Decision being made, and have been rectified in the final published report.

<u>Page No:</u>	<u>Correction:</u>
i	In 'Summary of Recommendation' first line, 'Examining' not 'Examination'
15	Para. 4.25, 6 th line: 'require' not 'requires', and delete 'it'
19	Para. 4.40, 19 th line: 'licence' not 'license'
22	Para. 4.53, 7 th line: '1' not 'A'
25	Para. 4.64; 7 th line: '1' not 'A'
30	Para. 4.84; 3 rd line: '1' not 'A'; 7 th line: delete first 'be'; 10 th line, 'development consent' be inserted after 'result'
	Para. 4.87, 2 nd line: '3' not '2'
33	Para. 4.94, 4 th line on this page: '7' not 'G'
34	Para. 5.1, 4 th line: '4' not 'D'
	Para. 5.2, 1 st bullet: '2' not 'B'; 2 nd bullet: '3' not 'C'; last bullet: '6' not 'F'
43	Para. 5.36, 4 th line on this page: 'of' not 'or'
	Para. 5.38, 3 rd line: 'effect' not 'affect'
47	Para. 5.48, last line: 'effects' not 'affects'
48	Para. 5.53, 4 th line: should read 'did <u>not</u> believe' instead of 'did believe'
55	Para. 5.82, 1 st line: 'effects' not 'affects'
56	Para. 5.84, 3 rd line: 'effects' not 'affects'
59	Para. 5.98, 2 nd line: 'for' not 'or'
A23	Para. n., 1 st line: '1' not 'A'

A handwritten signature in black ink on a grey, textured background. The signature is stylized and appears to read 'Gideon Amos'.

Gideon Amos OBE RIBA MRTPI - Examining Authority

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1 INTRODUCTION

- 1.1 On 27 September 2011 the chair of the Infrastructure Planning Commission (IPC) appointed Gideon Amos OBE as the single Commissioner Examining authority to examine the application.
- 1.2 This document sets out in accordance with s83(1) of the Planning Act 2008 (the Act) the Examining authority's report of findings and conclusions and the recommendation as to the decision to be made on the application.
- 1.3 The proposed development for which consent is required [AP20] under s31 of the Act comprises construction of railway that is not permitted development. It is within England and comprises a nationally significant infrastructure project (NSIP) as defined by s25 of the Act.
- 1.4 The application is EIA development as defined by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009. It was accompanied by an environmental statement (ES) which in the view of the Examining authority met the definition given in Regulation 2(1) of these Regulations. Additional environmental information was supplied during the course of the examination [REP53]. In reaching the recommendation, the environmental information as defined in Regulation 2(1) (including the ES and any other information on the environmental effects of the development) has been taken into consideration in accordance with Regulation 3(2) of these Regulations.
- 1.5 A preliminary meeting was held on 9 November 2011 at which the Applicant and all interested parties were able to make representations to the Examining authority about how the application should be examined. The Examining authority's procedural decisions under Rule 8 of the Infrastructure Planning (Examination Procedure) Rules 2010 (the Rules) were issued on 15 November 2011 [PD17]. The Examining authority also issued requests for further information or written comment under Rule 17 on 13 January 2012 [PD19]. This set out the decisions about how the application would be examined and the examination proceeded in line with this.
- 1.6 The Examining authority carried out an inspection of the site in the company of interested parties on 6 December 2011.
- 1.7 As set out in the timetable for the examination and as a result of requests made the following hearings were held at the IP City Centre, Bath Street in Ipswich:
 - Open Floor Hearing 14 February 2012

- Issue Specific hearing on the specific issue of the Development Consent Order (DCO) 14 and 15 February 2012
- Compulsory Acquisition Hearing 21 and 22 February 2012

1.8 In addition to the consent required under the Act (which is the subject of this decision), the proposal is subject to the need for the following consents and permits:

- Railways Act 1993 - Network change to be accepted by Train Operating Companies and Freight Operating Companies under Part G of the Network Code
- Conservation Habitats and Species Regulations 2010 - Licences under regulation 53 in respect of disturbance of any protected species found on the Land
- Control of Pollution Act 1974 - Consents under s.61 in respect of construction noise
- Environmental Permitting (England and Wales) Regulations 2010 - Permits in respect of any waste operations, water discharge activities and ground water activities (all as defined in the regulations) and the use of mobile plant

1.9 At the time the examination was completed on 22 March 2012, the consents above were not yet in place.

2 MAIN FEATURES OF THE PROPOSAL AND ITS SITE

- 2.1 The application was made for the construction and operation of a new railway link (known as a "chord"), 1,415m long, to the north of Ipswich Goods Yard, Ipswich, Suffolk, linking the Great Eastern Main Line and East Suffolk Line railways. The construction of the railway includes the widening of the embankment carrying the Great Eastern Main Line, reconstruction and widening of the bridge over Sproughton Road, Ipswich, a new railway bridge across the River Gipping (a skew bridge), a new railway embankment on the south-eastern side of the river and the replacement of the existing railway bridge carrying the East Suffolk Line railway over the river.
- 2.2 The proposed works are situated within the built up area of Ipswich and would include a curved raised dual tracked railway line on a new embankment alongside the River Gipping and crossing the site of the former Harris Bacon factory, which itself is the subject of planning permissions for employment development granted by the Borough Council. This latter site is accessed from the Hadleigh Road Gate which would provide one of the main access points for the construction of the railway development.
- 2.3 The proposed works will impact on the transport network of the town including temporary closure and alteration of the riverside cycle and footpath (which connects with National Cycle Route 51) including the construction of two new bridges over it, proposals for junction improvements at the Hadleigh Road site access and the new bridge over Sproughton Road.
- 2.4 The Applicant definitively identified [APP12] the presence on the site of only a small number of European and Nationally Protected species (eg bats seen flying around the site and stag beetles) however it also concluded there is a high likelihood that a wider number of protected species are also present across large areas of the site. These included bats, otters, and certain species of invertebrates (including stag beetles). Measures to avoid or reduce potential effects on protected species are identified in Tables 9-D and 9-E of the ES [APP12]. On the request of the Examining authority (ExA), the applicant submitted an annotated Environmental Management Plan drawing [REP32] showing the main landscaping proposals, who/how they will be maintained, and demonstrating where the key ecological and all key environmental mitigation measures will be provided. The applicant also submitted a Statement of Common Ground (SoCG) with Natural England (NE) [REP109] and the Environment Agency (EA) agreeing a minimum set of measures required to prevent a water pollution incident

affecting the River Gipping, and to monitor and manage pollution risks. These will be delivered through the Pollution Incident Control Plan (PICP).

- 2.5 The proposed development falls within the County of Suffolk and in the Borough of Ipswich with the exception of some works to the Great Eastern Mainline (including works for the proposed new bridge over Sproughton Road) which are situated in the District of Babergh.
- 2.6 The applicant included proposals for the compulsory acquisition and temporary possession of land as set out on the Land Plans [APP22] for permanent and for temporary works and land uses. Land proposed to be compulsorily acquired outright included one dwelling and a number of areas under other land uses.
- 2.7 There were no material changes to the above proposed development during the course of the examination however a number of changes to the detailed aspects of the Order and the application were put forward by the applicant (and by other interested parties and affected persons) and are considered in relation to the relevant findings and conclusions below.

3 POLICY AND LEGAL CONTEXT

- 3.1 The examination was held according to s105 of the Act given that no relevant National Policy Statement had been designated (nor had any relevant draft National Policy Statement been published) at the time of the examination and therefore no National Policy Statement has effect.
- 3.2 Section 105 of the Act "Decisions in cases where no national policy statement has effect" requires that the Secretary of State for Transport in reaching her decision shall have regard to the local impact report submitted, any matters prescribed and "any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision." The Examining authority, on behalf of the Secretary of State for Transport, examined the Local Impact Report [REP104] and all matters which are both important and relevant to the decision. Examination was conducted on the basis of the written evidence and the hearings held and the Examining authority's findings and conclusions, as required by s83(1) are set out in this report.
- 3.3 The Act was amended by the Marine and Coastal Act 2009, and on 15 November 2011 the Localism Act 2011 received Royal Assent amending the Act further. This report is therefore prepared according to the Act as amended by the Localism Act 2011 insofar as its provisions have come into force. Under the Infrastructure Planning (Transitional Provisions) Direction 2012 which came into effect on 1 April 2012, anything done in relation to an application before the date of the abolition of the Infrastructure Planning Commission "shall be treated as if it had been done for the purposes of the provisions of the 2008 Act".
- 3.4 As part of the examination the application was examined in the light of all relevant and important policy at the time of the examination.
- 3.5 The main policies were the following:
- The statutory Development Plan comprising the East of England Plan [PD32], as approved by the Secretary of State for Communities in 2008, taking due account of the intention of the Secretary of State for Communities' intention to revoke it, and respectively the Ipswich Borough [PD37] and Babergh District Councils' Development Plan Documents [PD33].
 - Other Government planning policy including Planning Policy Guidance Note 13 (PPG13) [PD14]. PPG13 was cancelled subsequent to the completion of the

examination by the publication of the National Planning Policy Framework (the Framework [PD40]) which also contains Government policies on transport.

- 3.6 The planning history of the site is set out in the Local Impact Report [REP104]. It states "the wish to see an improved connection for east to west freight trains from Felixstowe Port has been a long standing aspiration of planning documents". Extant planning permissions relevant to the proposed rail chord are as set out in the Local Impact Report as follows:

Former Harris Bacon Factory Site:

- 11/00120/FUL "Construction of access road and associated infrastructure including lighting and railway containment barriers" (Renewal of 08/00696/FUL)
- 08/00928 "Erection of one B2/B8 commercial unit with associated external works(Plot 2)"
- 08/00929/FUL "Erection of two terraces of six and four single storey class B1/B2 commercial units with associated external works (Plot 2)"
- 08/00970/FUL "Refurbishment of former coldstore building to create nine commercial units for B1, B2 and B8 use, with associated elevation alterations and external works". This permission includes the following condition: Prior to occupation of the hereby approved building; a scheme for the provision of a foot/cycle path linking Hadleigh Road to the River Gipping within the site shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be completed and made available for use in perpetuity in accordance with the agreed scheme within 12 months of first occupation of the building."

Europa Way:

- 05/00599/FUL "Erection of food store totalling 1,796m² and associated car parking, up to 14 convenience units comprising of; A1, A2m, B1, A3-5, D1 and D2 totalling 3,194m², 110 flats, 32 retirement dwellings, decked car parking space and surface car park, roof gardens (up to six storeys high), ancillary soft and hard landscaping and construction of vehicular accesses."

- 3.7 The Local Impact Report [REP104] states that the first three above permissions (former Harris Bacon Factory employment site) "do not directly impact on the development" however all are affected by the development and the Order land overlaps

with land which benefits from these permissions. Implications of the proposed rail chord for the employment development permitted by these permissions are considered, to the degree they are relevant, in this report.

- 3.8 Findings and conclusions on the relevant policy and the need for the development are set out in the following section.

4 FINDINGS AND CONCLUSIONS

4.1 The principal issues of the examination were:

- the need and relevant policy for the proposed development;
- the Stour and Orwell Estuaries Special Protection Areas, protected species and statutory designations;
- townscape, design, foot cycle and other transport implications;
- visual intrusion and noise and amenity impacts, and,
- the impacts on economic development.

NEED, RELEVANT POLICY & THE LOCAL IMPACT REPORT

4.2 No relevant National Policy Statement had been published (either in draft or designated) at the time of the examination and therefore no National Policy Statement has effect.

4.3 Section 105 of the Act "Decisions in cases where no national policy statement has effect" requires that the Secretary of State for Transport in reaching her decision shall have regard to the local impact report submitted, any matters prescribed and "any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision." The local impact report and all matters which the Examining authority, on behalf of the Secretary of State, thinks are both important and relevant were examined through the written evidence and hearings held.

4.4 The Department for Transport White Paper "Delivering a Sustainable Railway" (July 2007) [PD34] provides further policy on railway development matters. It emphasises that "Competition between freight operating companies and road hauliers decides which goods are moved by which company and mode." and adds that the "Government does not wish to undermine or distort this market." The White Paper also refers to a Strategic Freight Network and highlights that schemes under consideration at that time included: "gauge and capacity enhancement between Nuneaton and Peterborough, providing Felixstowe with a new link to the west coast main line". The Executive Summary of the White Paper also states that "increasing capacity is the most urgent investment need" and Network Rail's publication "Developing Freight in Control Period 5" sets out the applicant's proposals for taking forward these objectives. The White Paper and the policies within it are relevant and important to the decision on this application.

- 4.5 The statutory Development Plan bears directly on the form and location of development proposed. Prior to the publication of the National Planning Policy Framework (the Framework) [PD40], PPG 13 [PD14] was the principal guidance document relevant to the proposed development.
- 4.6 The initial assessment of principal issues [PD16] outlined this policy context and opportunities were made available at the Preliminary Meeting for questions upon it. Additionally the relevance of Government policy such as PPG13 was a matter on which parties commented in the Hearings.
- 4.7 As set out in s38(3) of the Planning and Compulsory Purchase Act 2004 the development plan is the regional spatial strategy and the adopted development plan documents.
- 4.8 The regional spatial strategy is the East of England Plan [PD32] published by the Secretary of State for Communities and Local Government in May 2008. The first objective of the East of England Plan is:
- “(i): To reduce the region’s impact on, and exposure to, the effects of climate change by ...
- effecting a major shift in travel away from car use towards public transport, walking and cycling;”
- [and amongst other measures by]
- reducing the risk of adverse impact of flooding on people, property and wildlife habitats.”
- 4.9 The East of England Plan’s third objective is:
- “(iii): To realise the economic potential of the region and its people by: ...[amongst other measures]
- maintaining and strengthening the East of England’s inter-regional connections by improving access to economic opportunities in London; and
 - ensuring adequate and sustainable transport infrastructure.”
- 4.10 The East of England Plan’s “Policy T1: Regional Transport Strategy Objectives and Outcomes” is founded on a clear
- “priority to increase passenger and freight movement by more sustainable modes”**
- to deliver the outcomes of
- “an increased proportion of freight movement by rail [and] safe, efficient and sustainable movement between homes and workplaces, education, town centres, health provision and other key destinations”.**

“Policy T4: Urban Transport” requires that local authorities find:

“ways to bring about a shift away from car use to public transport, walking and cycling”

through,

“capitalising on opportunities provided by new development to achieve area wide improvements in public transport services, footpaths and cycle networks;”

and through,

“improvements to local networks for walking and cycling, including increasing the attractiveness and safety of the public realm.”

“Policy T10: Freight Movement” states that:

“Priority should be given to the efficient and sustainable movement of freight, maximising the proportion of freight carried by rail and water where those are the most efficient modes:

- **high priority should be given to measures to provide adequate rail freight capability and capacity on routes to the region’s major ports of Bathside Bay (Harwich), Felixstowe, London (including Tilbury), and London Gateway;”**

“Policy T11: Access to Ports” states that:

“Access to the region’s ports should be managed and enhanced to support their development and enable them to contribute to national and regional objectives for economic growth and regeneration. In accordance with Policy T10, a key priority will be to maximise the proportion of freight, particularly longer distance freight, by modes other than road, consistent with commercial viability.”

- 4.11 The other constituent part of the Development Plan are the local development documents. At the start of the examination this comprised policies from the Ipswich Local Plan (November 1997) [PD35] saved under the Planning and Compulsory Purchase Act 2004. This Plan includes objectives to “minimise congestion” on the road network and to “provide for an environmentally efficient transport system, in terms of energy conservation and reduced levels of pollution”. Policies **T20:**

Roads and T21: Movement of Freight & Goods Vehicles assess development **“in terms of its impact on the road network”** and encourage freight movements at locations **“which have potential for rail access”** respectively.

- 4.12 During the examination, on 14 December 2011, Ipswich Borough Council adopted its “Core Strategy and Policies Development Plan Document” [PD37]. One of the adopted policies supports and safeguards land for the proposed rail chord:

“POLICY CS20: KEY TRANSPORT PROPOSALS:

“The Council supports the 'Ipswich: Transport Fit for the 21st Century' scheme, which aims to reduce dependency on the private car by 15% within the lifetime of the Plan. This will improve bus station provision, passenger information, shuttle bus provision and pedestrian links between the Central Shopping Area, the railway station and Waterfront.

The Council also supports the completion of the upgrading of the Felixstowe to Nuneaton rail line. To assist with this the Council will protect, for rail use, the line of the 'Bacon Chord' near Hadleigh Road, Ipswich.”

- 4.13 Given the townscape aspects of the proposed development and the existence of the riverside foot and cyclepath connecting with National Cycle Route 51, two further adopted policies in the Core Strategy are relevant:

“POLICY DM5: Urban Design Quality

The Council will require all new development to be well designed and sustainable. In Ipswich this will mean:

- a. layouts and designs that provide a safe, attractive, permeable, legible and useable public realm for all users, which is pedestrian and cycle orientated;**
- b. areas which function well and where possible integrate residential, working and community environments and fit well with adjoining areas;**
- c. the promotion of safe and secure communities;**
- d. greener streets and spaces to contribute to local biodiversity, visual amenity, and health and well-being, and offset the impacts of climate change;**
- e. protecting and enhancing the special character and distinctiveness of Ipswich and helping to**

- reinforce the attractive physical characteristics of local neighbourhoods;
- f. buildings that exhibit very good architectural quality, are highly sustainable and are designed for long life by being capable of adaptation to accommodate
- g. changing needs and uses over time;
-"

and,

"POLICY DM17: Transport and Access in New Developments

Each development proposal will be assessed in terms of:

- a. its impact on the road network in respect of traffic capacity, highway safety and the environmental impact of generated traffic;
- b. pedestrian and cycle accessibility to and within the site as well as the wider effects of the development upon pedestrian movement;
- c. its impacts on rights of way; and
- d. availability of and access to public transport.

Applicants will be required to demonstrate how the development would improve provision and/or how any acceptable adverse impacts would be managed and mitigated.

The Council will require the inclusion of priority bus measures and dedicated cycle routes where appropriate.

The Council will require mitigating measures to be provided to the satisfaction of the Highway Authority where necessary."

- 4.14 The District of Babergh, broadly, adjoins the land included within the proposed Order limits and indeed some of the Order land is situated within the District of Babergh. The public footpath alongside the River Gipping affected by the development, runs through the Order land that is in the Borough of Ipswich and continues into the District of Babergh after it has left the Order land. Two development plan policies in the District of Babergh are therefore relevant and important (Babergh Local Plan Alteration No.2 – 2006 [PD33]):

"TP03: The provision of cycle routes and other cycling facilities in new developments will be required for any development where key cycle links can be created. The

provision of cycle parking areas and associated amenities in town centres will also be encouraged.”

and,

“TP02: Where development affects a public right of way, it must be accommodated in the development in a way that will maintain its visual character and encourage and sustain its use. In all new development, which affects a public right of way developers will be expected to provide new connections into public rights of way, and extend the network where possible. Developers will also be expected to meet Best Practice guidance where development proposals affect public rights of way.”

4.15 Babergh policies also contain similar requirements for transport assessments as stated in policies in Ipswich (eg. Policy TP17).

4.16 The Government’s Planning Policy Guidance 13 Transport (PPG13) [PD14]: was also relevant at the time of the examination. It states at the outset:

“The objectives of this guidance are to integrate planning and transport at the national, regional, strategic and local level to:

- 1. promote more sustainable transport choices for both people and for moving freight;**
- 2. promote accessibility to jobs, shopping, leisure facilities and services by public transport, walking and cycling,…”**

4.17 PPG13 thus supports both the principle of rail freight developments and promoting measures for cycling. The latter is developed elsewhere in PPG13, in paragraph 28 it states: “New development should help to create places that connect with each other sustainably, providing the right conditions to encourage walking, cycling and the use of public transport.” Paragraph 78 requires decision makers to identify cycle routes “including alongside rivers” and to:

“assist in the completion of the national cycle network, and additional key links to and from the network, as well as promoting local networks.”

4.18 PPG13 [PD14] was cancelled following the closure of the Examination, by the publication of the National Planning Policy Framework [PD40] on 27 March 2012. Whilst it is of course for the Secretary of State for Transport to consider whether she

wishes to hear further evidence as a result of this change in policy, it is notable that in relation to the aspects of transport under consideration the Framework contains very similar policies to those in PPG13 which were fully taken into account in the examination. Examples include in paragraph 29 of the Framework the policy that "The transport system needs to be balanced in favour of sustainable development" and in paragraph 32 "decisions should take account of whether the opportunities for sustainable transport modes have been taken up ...[and of whether] improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development". It also states in paragraph 35 that "developments should give priority to pedestrian and cycle movements".

- 4.19 Since 27 March 2012 the Examining authority has also considered the evidence submitted during the examination in the light of the new policies in the Framework.
- 4.20 It may also be noted that the draft Framework was publicly available during the examination and that neither any interested parties nor any affected persons felt it necessary to make representations in any way related to the Framework.
- 4.21 In part because the National Cycle Route 51 is nearby the above Guidance is considered to be particularly relevant and important to the application and to consideration of foot and cycle measures in the proposed requirements.
- 4.22 As stated in the Local Impact Report [REP104] both the Suffolk Local Transport Plan [PD38] and its Rights of Way Improvement Plan [PD39] are both further relevant policy documents. The former takes forward the objective of "encouraging a shift to more sustainable travel patterns."
- 4.23 The Secretary of State for Communities has announced his intention to revoke Regional Strategies outside London and intends to lay regulations to this effect using powers contained in the Localism Act 2011. This intention has been taken into account, however legally, the Regional Strategy remained a part of the Development Plan throughout the submission of, and during and at the conclusion of the examination, it is therefore both relevant and important to this decision.
- 4.24 Some interested parties and affected persons questioned the need for the chord in view of the existence of the Felixstowe South Reconfiguration planning permission (including various rail gauge enhancements, a 2004 section 106 agreement and the pursuant Felixstowe Branch Line and Ipswich Yard Improvement Order 2008), works which have not been

completed. It was represented to the Examining authority by Freightliner [REP39] that the Secretary of State should approve either one scheme or the other and that to approve both, in the words of Freightliner's relevant representation, would lead to "a degree of redundancy" and that the degree of disruption might be excessive and unnecessary. The implication being that the Secretary of State for Transport should permit only one scheme or the other.

4.25 The Felixstowe South Reconfiguration (FSR) is a development for the provision of new container terminal capacity at the port. The Port of Felixstowe owns and operates two intermodal rail freight terminals with a combined annual throughput close to 500,000 containers. In more detailed terms the permission and associated works require, as set out in the Written Representation from Hutchison Ports UK Limited and The Felixstowe Dock and Railway Company (FDRC) [REP38], the following:

- gauge clearance works on the East Coast Main Line (ECML) to Doncaster;
- gauge enhancement works from Ipswich to Peterborough;
- gauge enhancement works to ECML diversionary routes (via Gainsborough, and via Knottingley); and
- works to increase the freight capacity of the Branch Line and Ipswich Yard (the "FDRC Scheme").

and includes in the FDRC Scheme:

- the extension of an existing double track section from Trimley station, westwards, towards Derby Road Station by a distance of 6.8km to facilitate the operation of additional freight services in timetabled 'flights' of two freight trains per hour in each direction and one passenger service per hour in each direction;
- works at Westerfield Junction level crossing;
- associated signalling and level crossing control modifications and upgrades that are required as a consequence of works required by the above permission, and,
- works at Ipswich Yard that consist of the construction of three sidings, of at least 525m in length, at Ipswich Yard that would facilitate the reversal of 24 wagon freight

services in both directions, between Felixstowe and Peterborough.

- 4.26 Even if there were significant planning reasons demanding that alternatives to the rail chord should be considered, and no representations have demonstrated there are, the FSR proposals and FDRS Scheme could still not be considered as an alternative method of achieving the aim of the Ipswich Rail Chord. This is because the aim of the chord is to connect the Great Eastern Main and East Suffolk Branch lines whilst the aim of the FDRS Scheme amounts mainly to enhanced train turnaround facilities within Ipswich Goods Yard. There were no reasons why the examination needed to consider alternative solutions to connecting the two lines.
- 4.27 As far as the planning case is concerned therefore there is no obligation on the Secretary of State for Transport to consider the Chord other than on its own merits, regardless of whether or not other works or developments are applied for and/or permitted by her or by any other authority.
- 4.28 Whether there is a compelling case in the public interest for land acquisition in this regard is a matter returned to below.
- 4.29 In conclusion given the support provided to the proposed rail chord set out explicitly in the statutory development plan (both in the East of England Plan [PD32] and in the Ipswich Core Strategy and Policies Development Plan Document) [PD37] the principle of the development can be said to be in conformity with the statutory development plan. The Framework [PD40] also supports safeguarding rail facilities and sustainable transport. Furthermore since the White Paper "Delivering a Sustainable Railway" [PD34] makes clear that there is a national need for additional freight capacity and mentions Felixstowe (a port that the proposed rail chord would serve) as a priority, the case for the need for the chord is made.

THE STOUR AND ORWELL ESTUARIES SPECIAL PROTECTION AREAS, STATUTORY DESIGNATIONS, AND NOTABLE AND PROTECTED SPECIES AND HABITATS

- 4.30 The screening of any potential for impacts on the Stour and Orwell Estuaries Special Protection Area and Ramsar sites is set out in full in Appendix E. The Examining authority's conclusion is that taking into account the likelihood of an incident occurring, the distance to the European site, and the implementation of preventative measures stopping a pollution incident reaching the River Gipping, an adverse impact on the European site is not considered likely to occur. Therefore, on the basis of the information provided by the applicant, including

Natural England's response to consultation on the HRA Screening Report and the final consultation on the DCO, the Examining authority has concluded that significant effects on the European site are not likely.

- 4.31 As the proposed development is not likely to have a significant effect on a European site, the Examining authority is not required to undertake appropriate assessment of the implications for the site in view of that site's conservation objectives.
- 4.32 The Orwell Estuary Site of Special Scientific Interest (SSSI) is notified for its species assemblages and numbers of breeding and non-breeding birds, vascular plants and intertidal mud flats. The ES identifies that impacts could arise "as a result of a pollution event entering the River Gipping during construction and affecting the protected downstream areas" [APP12], concluding that with mitigation in place the project would not result in a significant effect. The Examining authority's view is that the pollution prevention measures examined and agreed in the context of considering the Special Protection Areas above would avoid the risk of any pollution to the River Gipping and also successfully mitigate any impact on the SSSI. NE has stated [REP95] that on this basis "the proposed operations are not likely to damage the protected features of the Orwell Estuary SSSI". The Examining authority therefore concludes that there will not be damage to the protected features of the SSSI and thus notifications under the Wildlife and Countryside Act 1981 are not required.
- 4.33 With regard to the Examining authority's and the Secretary of State's duties in relation to nationally protected species and conservation of biodiversity under the Natural Environment and Rural Communities Act 2006, the protected species identified on and near the site, and the Examining authority's conclusions in relation to them, are set out below.
- 4.34 The closest protected species identified [APP12] in a search of records within 2km of the site were Slow worm, described as "0m" from site in 2000, Grass snake 0.2km to west of the site in 2008 and Daubenton's bat 0.7km. Other protected species recorded around and in proximity to the site were common lizard, otter, European eel and common pipistrelle, soprano pipistrelle, noctule and Myotis bats. Surveys of the site itself identified the presence of bats and nesting birds, and populations of common lizard, slow worm and grass snake. A bat emergence and re-entry survey at the factory building recorded common or soprano pipistrelles "flying around the annexe building ... and around and over the main factory building" although "no bats were seen entering or leaving the

building" (paragraph 9.6.8) [APP12]. The ecology report appended to the ES considers that given "the habitat quality and the connected corridor along the rail embankments, it is highly likely that slow worm, grass snake and common lizard are present over the whole development area, potentially at high population numbers" (paragraph 1.5.32 of the Ecology Technical Report [APP14]). The ES also states that it is "highly likely" that otter use the section of river adjacent to the proposed development site to commute and forage along.

- 4.35 Site surveys identified high potential for breeding birds in the building, the invasive non-native plant Giant Hogweed, nationally scarce Dittander and fifteen species of fish in the River Gipping (which runs through the site) in 2009. Badger surveys are mentioned in the ES but the Ecology report makes clear that no badgers were found and that only limited potential to support interesting invertebrates exists on the site.
- 4.36 Requirement 12 requires that an Ecological Management Plan be prepared and approved by the relevant planning authority in accordance with the measures set out in Table 1-J of the Ecology Technical Report [APP14]. These measures include inspections prior to works, compensatory roosts for bats and requirements that lights do not shine onto otter habitats. Translocation of reptiles is also required by existing planning permissions on the land (both the translocation of reptiles already required by planning permissions for the site but to be carried out by Network Rail as confirmed in the Statement of Common Ground with Peter Colby Commercials [REP102], and of those affected by the proposed rail chord as required by Requirement 12).
- 4.37 The written representation submitted by Natural England, dated 13 March 2012 [REP95], states that "the European Protected Species of relevance to this application are bats, otters, and certain species of invertebrates (including stag beetles)". It also states that Natural England is "satisfied that there is unlikely to be an adverse effect on the populations of bat species or on otters" and that the proposed mitigation "is sufficient to maintain populations" of stag beetle on the site.
- 4.38 The land take proposed for the new rail chord overlays a corner of the former cold store building on the former Harris Bacon factory site, thus necessitating its demolition. This is likely to result in the disturbance, damage and destruction of a breeding site or resting place of bats which would require a Protected Species Licence from Natural England.
- 4.39 When preparing the application for the DCO under the Act the applicant also prepared a draft application for a Protected

Species Licence for Natural England on the understanding that Natural England would be willing to provide a letter of comfort, if appropriate, based on the draft. This would have informed the Examining authority, and subsequently the Secretary of State for Transport to take this into account in determining whether or not to make the Order. Natural England however made clear that its current procedure is to require a draft application containing substantially the same information as a full application in order for it to have the necessary information to issue any response. This would require the carrying out of further surveys, which because the bat maternity roosting season commences in May, could only be completed by autumn 2012. In the light of the available evidence, there is no reason to believe that a further survey will reveal any significant presence of Protected Species in the building to be demolished.

- 4.40 Given the available evidence and having regard to Regulation 53 of the Conservation of Habitats and Species Regulations 2010 the Examining authority takes the view, as made clear in the compulsory acquisition section of this report, that there is no satisfactory alternative but to demolish the cold store building and disturb the bats due to the arrangement of this rail chord and its radius and layout on the ground; that this will not be detrimental to the maintenance of the population as the number of bats affected is likely to be low given the conclusion in the ES that only a "small transient roost is present" and that "it is highly unlikely that a significant roost, such as a maternity roost, is present within the building" and that the letter received from Natural England referred to above supports this. The Examining authority also takes the view that it is likely that construction of the chord constitutes an imperative reason of overriding public interest of a social or economic nature due in part at least to the reasons included in this report. In addition no reasons were identified by Natural England or by any other parties to suggest that a licence would not be granted. As expressed by the applicant at the Hearing the issue was not likely to be whether a licence would be issued to relocate bats but simply when and how this would be achieved. The weight of the evidence is therefore that there is no identifiable reason why a Protected Species Licence would not be granted for the disturbance of bats which may be roosting in the former Cold Store building, nor is there any other reason related to Protected Species Licences, therefore not to make the Order.
- 4.41 Nationally protected species of relevance to this application include certain species of reptiles and certain species of fish (including eel), and Natural England is broadly satisfied with the mitigation measures outlined for nationally protected species.

- 4.42 The site over which the chord will be built as described in paragraph 9.7.4 of the ES [APP12], qualifies as being an open mosaic habitat on previously developed land, a priority habitat under the UK Biodiversity Action Plan. The ES identifies the need to provide mosaic habitat during the construction works, increasing in size after construction (Table 9D).
- 4.43 The ES [APP12] stated that 0.7ha of mosaic habitat would be provided, however on the submission of an indicative drawing (Environmental Management Plan Ref.B1469500_EMP_2 [REP32]) as requested by the Examining authority to demonstrate that environmental measures could be accommodated, the applicant stated that the correct provision would be 0.07Ha and that 0.7ha had been "miscalculated". This 0.07ha provision for mosaic habitat is shown on land also designated on the plan as "Proposed nature conservation area". This wider area has been scaled by the Examining authority at approximately 1.7ha, which is therefore adequate to also accommodate the larger 0.7Ha of mosaic habitat if, at the Requirement stage, it is concluded that such an area of mosaic habitat is required. This was not a matter on which any parties made representations (save for the above from the applicant) and is one that falls for the relevant planning authority to determine. Given the size of the overall nature conservation area in particular therefore, the weight of evidence is that this aspect of the proposals is generally acceptable.
- 4.44 Representations including the Local Impact Report (LIR) [REP104] were received from the local authorities regarding the need for further landscaping along the proposed new embankments. Requirement 4 requires a landscaping scheme. Requirement 8 requires an Environmental Design Management Plan to be submitted to and approved by the relevant planning authority at which time the mitigation and exact landscaping measures may be approved. Requirement 8 would also ensure provision was made for Dittander.
- 4.45 The LIR [REP104] stated that the impacts included insufficient landscape mitigation and uncertainty of use of land between the rail chord and the river. Following representations from Ipswich Borough Council further landscaping requirements were drafted for the Examining authority and are now incorporated into the Order.
- 4.46 The limited number of relevant European and nationally protected species and habitats therefore are sufficiently provided for by the attached Order and present no reason why the Order should not be made.

TOWNSCAPE, DESIGN, FOOT CYCLE AND OTHER TRANSPORT IMPLICATIONS

Underbridge at Sproughton Road

- 4.47 The Sproughton Road underbridge (BFC/1) Architectural Design Statement [APP11] along with the Consultation Report [APP5] set out the design considerations for this bridge to be constructed alongside the existing Sproughton Road Bridge. The clearance beneath the existing bridge is 4600mm above the road centre line (signed at 4400mm) which is less than the recommended 5700mm and the bridge is subject to collisions. Raising the height of the new bridge to be built alongside the existing Great Eastern Mainline bridge would do nothing to address the low height of the latter which will remain in situ and would cause significant other design problems including difficulty in providing sufficient span of the new bridge to accommodate foot and cycle ways given the additional depth of beams required to meet today's engineering safety standards. The County Council [REP5] raised concerns relating to the low clearance of this bridge, however the pre-application process appears to have allayed these to a degree given that the County Council then stated in its Written Representation [REP34] that it "acknowledges that widening the pathways along Sproughton Road to be a greater priority than improving height clearance."
- 4.48 Because of the above design considerations and the need to achieve a degree of parity between the grade of the new and the existing rails the weight of evidence on design grounds favours the solution proposed by the applicant for this bridge.

Replacement of Bridge 404: Design and Townscape Issues

- 4.49 In the written evidence, including in the Examining authority's written questions [PD19] and through questioning at the Hearings the design of the proposed replacement Bridge 404 was thoroughly examined.
- 4.50 Bridge 404 carries the East Suffolk Railway over the River Gipping where the proposed new chord at its north west end joins the line. It thus needs to be widened/replaced to accommodate the new chord as it joins the Branch line. The existing structure is steel girder construction on relatively light weight steel stanchions with the riverside cycle and footpath passing beneath it. The replacement structure would be of concrete construction and faced with brick, with a tunnel provided to accommodate the cycle and footpath. Details of the brickwork and anti-graffiti coatings are to be determined

through Requirement 14 following the agreement of the relevant planning authority. The County Council objected to the proposed new design of the bridge and particularly the cycle and footpath tunnel through it "on the grounds of safety ... being dark, more confined and therefore less inviting to users of the river path." [REP34]. The Council later withdrew these particular representations.

- 4.51 The replacement of the bridge with a like for like steel construction had been considered at an early design phase, however in the case of the concrete construction the piers to the proposed new bridge could be constructed with the existing bridge in situ thus minimising the periods of closure of both the railway and the cycle and footpath. Apertures and arches in the walls of the bridge (between the river and the footpath) were considered as potential hiding places along the length of the tunnel and admitting natural light from above was not practicable given the available lineside space on the bridge. The dimensions of the tunnel would be generous for a pedestrian and cycle way being approximately seven metres wide and just over three metres high. Following exploration in the hearings the applicant agreed that the fitting of lighting in the tunnel would be included in the works to build the bridge.
- 4.52 The site of the proposed replacement bridge is not in a Conservation Area, nor are there any identified townscape features or heritage assets (designated or undesignated) in the vicinity of the bridge area. For these reasons only limited weight can be given to architectural design features of the bridge which in any case are entirely adequate for the job to be done: a balance must be struck between design appearance issues and those of practicality of construction. Given the lack of any designations or other factors demanding particular design responses and because of the generosity of space provided for the cycle and footpath tunnel (to reduce the fear of crime), the lighting to be provided and because of the need to construct the project in a timely manner, the proposed design of replacement Bridge 404 is considered acceptable in all respects.

Motor Vehicle Transport

- 4.53 Given that the proposed chord would be over a kilometre in length, site access would be taken from different locations. The applicant submitted that given the need for detailed project management yet to be carried out, it could not specify within the application where means of access and ramps up the embankments would be located. The draft Development Consent Order (DCO) [APP20] in Schedule 1, Part 1 includes the construction of ramps and means of access amongst other

associated development. The parts of the Order land closest to residential property are those closest to Railway Cottages and to the dwellings at the foot of Riverside Road. Railway Cottages already have a railway adjacent to them and No.4 Railway Cottages is proposed to be acquired in its entirety. The impacts of works and access ramps on the remaining cottages, while considered as relevant issues for this examination are subject to compensation. It is less clear that the potential impacts on dwellings on Riverside Road would be the subject of compensation and the proximity of these to the works was a feature pointed out to the Examining authority during his site inspection in the company of interested parties by Cllr Jones. Following questioning of the Examining authority the applicant submitted assurances that no ramps would be constructed on the land numbered 68 and 69 on the Land Plans and this would now be required by virtue of Requirement 21.

- 4.54 The principal access to the construction site however would be via the Hadleigh Road access gate into the land between the two existing railway lines. The existing access track across the industrial site toward the site of the proposed works would be reconstructed to a standard suitable for it to serve the new employment developments that have been permitted. The timing of the provision of the access road, given that it would serve both the construction needs of the proposed rail chord and another major development is a matter considered relevant and important in planning terms to the decisions. Following questioning by the Examining authority the applicant submitted wording now included in Requirement 6 to the effect that the estate road (including works to the junction with Hadleigh Road) will be completed at an early stage of the development to facilitate this.
- 4.55 Given the increases in train movements that the new rail chord would facilitate, impacts on level crossings and in particular the duration and frequency of closures of level crossings is a relevant and important consideration. Claydon and Whitton Parish Council raised the impacts on Great Blakenham Level Crossing in their Relevant Representation [REP6]. In answering the Examining authority's written question on the matter the applicant [REP32] showed that the reduction in the daily average time over which the crossing will be open once the chord becomes fully operational is likely to be in the region of five to six minutes per day at most. Weighed against the wider benefits of the scheme in terms of taking freight off the road reducing congestion and carbon emissions elsewhere this is negligible.
- 4.56 East Cambridgeshire District Council also raised the impacts on the A142 Ely [APP5] at an early stage but following the pre-

application consultation did not pursue any representations to the examination.

- 4.57 Road closures in the vicinity of the works would be authorised by the proposed Order and will impact on all road users. Requirement 8 however requires a Traffic Management Plan to be submitted to and approved by the relevant planning authority before any relevant stage of the authorised development is commenced.

Impacts on Riverside Cycle and Footpath

- 4.58 The cycle and footpath alongside the River Gipping is, along part of its way, National Cycle Route 51. Records of the extent of the cycle path which is designated as National Cycle Route vary. Sustrans is the national charity which manages the National Cycle Route Network, its online maps [PD41] show National Cycle Route 51 extending up to the foot of the steps over the flood wall near the sluice gate (which continue down the other side of the flood wall and connect with the Gipping Way footpath also alongside the river and into the District of Babergh). The local authority Cycle Routes Map [REP67] by contrast shows it as National Cycle Route 51 only to a point to the east of Bridge 404, outside the Order land.
- 4.59 On the ground a signpost, painted in National Cycle Route livery marks "End of Cycle Route" posted at a point within the Order limits some metres to the northeast of the sluice gate/existing Great Eastern Mainline over the river.
- 4.60 Whether or not the cycle route is National Cycle Route for the full length of its route up to the flood wall as shown by Sustrans, it remains a fact that a foot and cycle path of some form extends up to this point, and continues as a footpath only after the interruption by the flood wall. It is therefore referred to in this report as the riverside cycle and footpath.
- 4.61 The riverside cycle and footpath intersects and crosses the Order land as it passes under Bridge 404 and continues along the riverside until it enters the Order land again in the area of the sluice gate at the site of the proposed skew bridge.
- 4.62 Both Sustrans [REP11] and the County Council [REP5] made representations regarding the need to join the cycle path with the Gipping Way footpath on the other side of the flood wall by means of ramps, to remove a blockage lying within the Order land and thus facilitate the extension of the National Cycle Network.
- 4.63 Streets (which under the relevant interpretation set out in the Order include "any footway") may be temporarily stopped up

under the proposed Order, subject to agreement by the street authority or arbitration (or in the event that no reason for refusal is given consent may be deemed) as set out in draft article 11.

- 4.64 There are two principal impacts on this riverside cycle and footpath. First to facilitate the construction of the replacement Bridge 404 it will need to be closed altogether for some periods of time (with a diversion via the normal road network) and diverted more closely to its current route for other periods. Following questioning by the Examining authority Network Rail suggested wording now included in Schedule 1, Part 1 of the DCO authorising, and wording in Requirement 19 which will require, the construction of a temporary cantilever cycleway over the river beneath Bridge 404 in order that the periods of closure of the cycle path will be minimised.
- 4.65 Second, since the steps over the flood wall are within the Order land between the existing and the proposed new skew bridge over the River Gipping (the flood wall being near the apex between the joining railway lines) powers would be granted by the Order to stop up the path at that point to facilitate construction of the works. Network Rail proposed to include no works to overcome the obstruction of the flood wall at this point within the Order land in its application or proposed works. There was thorough examination of this issue via the written evidence and through questions in the hearings and the applicant provided a sketch plan (Appendix 1 "Potential cycleway measures within Order Limits" of Network Rail's response dated 6 February 2012 to the Examining authority's Requests for Further Information [REP 45]) showing how the cycle path could be carried over the flood wall by means of ramps if funded by another party, the applicant believed it was not relevant to the construction of the rail chord that this obstructed cycle path lay within the proposed Order land.
- 4.66 Set against this it is necessary to consider Babergh District Council's adopted development plan [PD33] policy TP02 requiring that:
- "In all new development, which affects a public right of way developers will be expected to provide new connections into public rights of way, and extend the network where possible. Developers will also be expected to meet Best Practice guidance where development proposals affect public rights of way."**
- 4.67 And the East of England Plan [PD32] "Policy T4: Urban Transport" that requires that local authorities find: **"ways to**

bring about a shift away from car use to public transport, walking and cycling”

through,

“capitalising on opportunities provided by new development to achieve area wide improvements in public transport services, footpaths and cycle networks;”

and through,

“improvements to local networks for walking and cycling, including increasing the attractiveness and safety of the public realm.”

- 4.68 And Ipswich Borough Council's ambition set out in Development Plan [PD37] Policy CS20 to achieve a fifteen percent reduction in dependency on the private car.
- 4.69 In addition the Government's PPG13 [PD14] required that decision makers should assist in the completion of the National Cycle Networks and mentioned the suitability generally of routes alongside rivers for this purpose.
- 4.70 The overwhelming evidence of policy therefore is that the riverside cycle and footpath within the Order land should be unblocked as part of the development by the creation of ramps over the flood wall insofar as such works are required to be located within the Order land. The development applied for, in the area of the flood wall, already included the construction of four bridges and a new embankment all of which would be significantly higher than any works that would be required for cycleway measures to traverse the flood wall. The earthworks required for the ramps and foot/cycle paths involved are therefore well within the scope of the proposed development assessed in the Environmental Impact Assessment and recorded in the ES [APP12].
- 4.71 The applicant also added in objecting at the hearings to works of this kind being required, that consents would be required for them if they were to be carried out outside the Order land and that consent generally would be required from the Environment Agency to traverse their flood wall. Whether works outside the Order land occur is not a matter for this application. This possibility however does not obviate the need to deliver on adopted policies, to a reasonable extent, within the Order. Requirement 20 therefore requires that the applicant should bring forward a scheme for works, as are within the Order land and are necessary to traverse the flood wall, for the approval of the relevant planning authority and the Environment Agency.

The scheme is to include a date by which they should be available for public use.

VISUAL INTRUSION AND NOISE AND AMENITY IMPACTS

Noise and vibration impacts

- 4.72 Noise impacts of the proposed works were assessed as set out in the ES [APP12]. The ES made clear that the worst increase in noise impacts on residential premises would be experienced at first floor level at Railway Cottages. These would be of the order of plus 0.8dB at night time and plus 0.4dB in the daytime. Responding to questions the applicant clarified that noise at ground floor level at the worst affected dwelling (4a Railway Cottages which is proposed to be compulsorily acquired and later returned to residential use) would be 51.9dB. This level is below 55dB and therefore one at which, according to World Health Organisation Guidance, "few people would be seriously annoyed". However the ES states that "complaints would be likely as a consequence of noise from trains idling near Railway Cottages" and thus Requirement 10 also requires measures to mitigate the noise impact of idling westbound freight trains subject to approval by the relevant planning authority. The technology employed on standard diesel locomotives used in the industry is such that shutting down engines would create more nuisance from the time this would take and from the sounding of klaxons, than would be caused by idling. This explanation is set out by Network Rail in its answers to the Examining authority's questions [REP45].
- 4.73 Noise impacts [APP12] will also occur to the dwellings on Riverside Road and Europa Way but given the existing railway lines the increases in noise disturbance would be within acceptable levels according to BS 5228-1: 2009 Code of Practice.
- 4.74 Following requests from the Examining authority Network Rail also provided to the examination, on 15 February 2012, an assessment of the impacts of wheel squeal as railway vehicles negotiate the curved sections of track [REP53]. The distance from receptors is increased by the curvature of the chord being concave in relation to the nearest dwellings (Europa Way). Given this and the fact that the widening of the gauge proposed to mitigate this risk, wheel squeal noise would amount to no more than an increase of 0.1dB and can be considered negligible.
- 4.75 On the question of vibration impacts the ES stated that "With the scheme in place there is an increased possibility of adverse comment regarding operational vibration levels at Railway

Cottages" [APP12]. Questions were also asked of the applicant therefore as to the vibration impacts, to which the applicant answered that the design of the proposed retaining wall at Railway Cottages would sufficiently mitigate this risk.

- 4.76 The most significant noise impacts on non-residential receptors would be of the order of 1 to 2 dB according to the ES (paragraph 6.7.25), the most significant impact of wheel squeal would add 0.4dB at the worst affected receptor location (Howdens Joinery). With these impacts on non-residential premises there would be associated vibration impacts. The order of impacts are therefore well within acceptable levels.
- 4.77 Whilst some interested parties and affected persons made representations relating to noise impacts and the Local Impact Report listed impacts of noise on residents in Sroughton/Riverside Road/Europa Way including in construction and operational phases, no party or affected person pursued such issues as far as the Hearings.

Visual intrusion/environmental features

- 4.78 In addition to the noise impacts on receptors at the Riverside Road dwellings there are visual amenity impacts: the railway is raised on an embankment at this point thus level with upper storeys of the dwellings. Growing on the embankment between the railway line and the dwellings are a row of mature trees screening the railway where much of the work will take place. Their role and presence was pointed out by Cllr Jones during the site inspection. The examination considered the possibility of requiring these trees to be retained.
- 4.79 Significantly, virtually all of the trees lay well beyond the 6m 'flail strip' [PD13] distance from the rails which is routinely cleared for reasons of safety and punctuality of trains otherwise affected by leaf fall (as stated by the applicant at the Hearings). The assessed visual impact in this part of the site of the works, close to Bridge 404, was described as "moderate adverse" in the ES (paragraph 8.8.3 [APP12]) in year one, falling to "moderate adverse to slight adverse" by year 15. The ES also stated (paragraph 8.8.16) that "the trees and scrub would be lost on the existing embankments on both sides of the bridge" however the applicant's detailed work arrangements were to be determined after any Order is made and thus were not available. It was not clear therefore whether this felling would extend to those trees providing the most screening for the dwellings. The trees could mitigate the visual impacts in the area as well as directly mitigate the visual impacts of the works themselves. The possibility of a Requirement to preserve the

trees was therefore thoroughly examined including at the Hearings.

- 4.80 Set against an approach requiring the retention of the trees was the fact that the Borough Council did not articulate support for such an approach at the Hearings (although it did state that trees should be retained wherever possible). The Borough Council's representations on this matter being significant given the fact that, if the Order is made, it will be responsible for determining the landscaping matters covered by Requirements 4 and 5. Also set against this approach was the fact that visual impacts upon Riverside Road residents would not be severe. It was also the case that any Requirement made would need to be subject to considerations of safe operation of the undertaking, as is provided for, for example, in Regulation 14 of the Town & Country Planning (Tree Preservation) (England) Regulations 2012.
- 4.81 The applicant did provide, however, following questions from the Examining authority, the proposed wording now included in Requirement 4 of the DCO to minimise the loss of mature trees. Given the changes made to the DCO and all the reasons above the balance of evidence is that an additional Requirement that these trees be retained is unnecessary and may in any case be difficult to enforce.

IMPACTS ON ECONOMIC DEVELOPMENT

- 4.82 Whilst the proposed rail chord would require some reconfiguration of the extant permissions for employment development at the former Harris Bacon Factory and at Europa Way the impacts could be considered as positively enhancing and providing nearby investment to these sites by the consequent potential reductions in vehicle traffic in/around the town and from the environmental improvement and landscaping works associated with the chord. Indeed the Local Impact Report [REP104] lists long term main impacts including "could help regenerate the former Harris factory site" and "using the same access could encourage redevelopment of this site as has been granted planning permission." The Order, as now prepared, does indeed include early provision of the access road to serve both developments. For these reasons therefore the Examining authority concludes that the overall economic benefits outweigh the impacts on the extant planning permissions for economic/employment development. The weight of evidence is well summed up in the LIR which describes the importance of Felixstowe to the wider economy and states: "The Ipswich Chord is essential for securing the long term future of the Port of Felixstowe."

- 4.83 Similarly closures of the lines to construct the chord will be necessary and will necessarily impact on the port operators freight services however the overall benefits to the port and its operators clearly outweigh these impacts [REP38].

OTHER ISSUES

Permanence and scope of authorised and associated development

- 4.84 Following examination of the issues the Order was amended to ensure that any associated development as authorised by Schedule 1 Part 1 will be limited to works that are within the scope of the Environmental Impact Assessment recorded in the Environmental Statement. The applicant submitted that works approved under a Requirement which may require a further Environmental Impact Assessment should also be defined as consented associated development. However if any works require further assessment then, by definition, these have not been assessed under this application and as a result development consent cannot be granted in the Order for them. The amendment therefore was not included.
- 4.85 The Order was also altered (in Article 23) to clarify which of the proposed works on land of which temporary possession is to be taken are permanent and which are temporary land uses where land must be restored before the giving up of such land.

Discharge of Requirements

- 4.86 The proposed new rail chord, whilst a Nationally Significant Infrastructure Project being a railway that is not permitted development, is close in scale to permitted development. Cognisant of this and recognising also the Government's policies regarding localism, the Order has been amended following questions from the Examining authority, such that the appropriate authority for discharging the Requirements shall be the relevant planning authority.
- 4.87 The applicant objected to this approach only in relation to Requirement 3 of the draft DCO submitted with the application which required that any future changes to the submitted Design Drawings could be approved by a letter from the Commission, as it then was, or Secretary of State as it would now be. It did not believe [REP65] that the relevant planning authority was properly placed to agree changes to the Design Drawings. The draft DCO also initially proposed that the Design Drawings would not be considered part of the Order. However it also stated that "the applicant invites the Examining authority to agree that the design drawings are an integral part of the

authorisation which must be finalised as part of the grant of development consent." [REP65]. The Design Drawings have been the subject of considerable consultation and in-depth examination. Inasmuch as applicants are expected to submit applications showing all the necessary detail the Design Drawings must be considered to represent such detail and no suggestions were made that the Design Drawings would not be adhered to. They must therefore be considered as much part of the detailed proposals as the Works Plans. For the above reasons therefore the Design Drawings are included as plans, drawings and documents to be certified as required by Article 32 upon the making of the Order.

- 4.88 The question of authorising changes to the Design Drawings was also examined. The Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011, as amended by the Localism Act 2011 (Infrastructure Planning) (Consequential Amendments) Regulations 2012, came into force on 1 October 2011. These provide an appropriate process through which the Secretary of State can authorise a change to a development consent order which is not material, and a fuller application process for changes which are material. To address the need for detailed flexibility in the course of construction however, the Examining authority has broadened the Limits of Deviation (Article 7) such that these now apply also to the Design Drawings as well as to the Works Plans, a flexibility constrained only by restrictions that certain dimensions (head room clearances and breadths of footpaths etc.) may not be deviated from by more than 200 millimetres. More significant changes to the certified plans, drawings or documents will require, unless arising as a result of discharge of Requirements, application under the above Regulations as is set out in Requirement 3.

Overhead Line Electrification(OLE)

- 4.89 This matter was examined, including through written questions [REP45]. The electrification is proposed only of the new rail chord where it will run alongside the existing electrified Great Eastern Mainline and the separation distance of 15m is well above the necessary separation distances set out in "T515 Rail Safety and Standards Board Report into the Effects of the EMF Directive on Railway Operations".

Disapplication of legislative provisions

- 4.90 Following representations from the Environment Agency objecting to the disapplication of s24 of the Water Resources Act that restricts abstraction from rivers, any interference with s24 was removed from the draft Order. Following questions

from the Examining authority about the proposed disapplication of restrictions on impoundment, the disapplication of s25 of that Act was also removed from the Order.

Apparatus to be placed in street

- 4.91 The wording of the draft Order initially would have authorised the placing of apparatus not only in/under the street but also on the street on a permanent basis rather than simply in the street. This would have included “any structure for the lodging therein” if the definition in the New Roads and Street Works Act 1991 were relied upon. Following questions from the Examining authority the applicant suggested revisions to the Order which restricts apparatus to being placed under the street as necessary for the authorised works.

Working hours

- 4.92 Given that Requirement 8(5) of the Order requires the submission to and approval of both a Nuisance Management Plan and a Noise and Vibration Management Plan by the relevant planning authority, the Examining authority concluded following examination that working hours should be a matter dealt with at that stage rather than in the Order itself. This was also because until the Order is made detailed work stage planning would not be carried out and because of the complex nature of works to an existing railway needing to minimise railway closure periods.

Stopping up of streets and roads during construction

- 4.93 A provision in the draft Order for deemed consent to be granted for the temporary stopping up of streets was amended following representations from the County Council [REP36] and subsequent questions from the Examining authority. The Order now provides (in Article 11) that consent would be deemed to be granted only if the street authority refuses consent without giving any grounds for its refusal or fails to notify the applicant of its decision. A refusal with grounds for refusal would be a matter for arbitration as provided for in the Order. It was also relevant that under Requirement 8(4)(b) the relevant planning authority must receive submission of, and approve, a Traffic Management Plan prior to the commencement of the relevant stage of the development.

Blood and Transplant

- 4.94 It was clear from representations [REP93] that alternative parking provision for National Health Service Blood and Transplant (NHSBT) would be affected and it was possible, though no specific evidence on delays or quantum of reduction

in service was provided, that less convenient parking would have an impact (whilst temporary possession had effect) on provision of this public service. For the reason of safeguarding this public service Part 5 of Schedule 7 has been added to the Order. The effects of the compulsory acquisition on NHSBT as a landowner are considered in the next section of the report.

OVERALL CONCLUSION ON THE CASE FOR DEVELOPMENT

- 4.95 In reaching conclusions on the case for development all matters which were relevant and important were considered. Regard was also had to the Examining authority's legal duties under the Human Rights Act 1998 and the Equality Act 2010. The outstanding Protected Species Licences and all other required consents can be reasonably expected, in the Examining authority's view, to be obtained and the proposal, in principle, is supported by all relevant Development Plan policies. Given that none of the economic, noise or other amenity impacts are sufficient to outweigh this policy support, the Examining authority concludes, in respect of the planning case for development, that consent for the development should be granted.

5 FINDINGS AND CONCLUSIONS ON COMPULSORY ACQUISITION MATTERS

THE REQUEST FOR COMPULSORY ACQUISITION POWERS

- 5.1 The DCO as attached would include compulsory acquisition powers both to acquire land outright (Article 16) and to acquire rights and impose restrictive covenants over land (Article 18 together with Schedule 4).
- 5.2 The application also seeks, within the DCO, further powers to interfere with rights over land in the following areas:
- Street works, Article 9 and Schedule 2
 - Temporary stopping up of streets, Article 11 and Schedule 3
 - Traffic signs, Article 12
 - Discharge of water, Article 13
 - Protective work to buildings, Article 14
 - Surveying and investigating land, Article 15
 - Entering onto and taking temporary possession of land, Article 23 and Schedule 6
- 5.3 Protection of interests are dealt with by Article 30 but by definition are not compulsory acquisition matters.
- 5.4 The Book of Reference [APP27] identifies 85 plots of land for the following purposes:
- plots 4, 11 and 11a (in the County of Suffolk District of Babergh) and plots 6, 8, 17, 18, 19, 21, 23, 23a, 25, 28, 30, 32, 34, 36, 37, 43, 52, 56, 59, 60, 65, 66, 67, 70, 74 and 75 (in the County of Suffolk, district of Ipswich) for outright acquisition under Article 16 (29 plots in total);
 - plots 33, 44a, 45a, 46, 47 and 50 (in the County of Suffolk, district of Ipswich) being land in which only new rights may be acquired under Article 18 (6 plots in total);
 - plots 14, 15 and 16 (in the County of Suffolk District of Babergh) and plots 1, 2, 5, 7, 9, 9a, 20, 20a, 22, 24, 26, 27, 31, 35, 38, 39, 40, 41, 42, 44, 44b, 45, 49, 51, 53, 54, 55, 57, 58, 61, 62, 63, 64, 65a, 68, 69, 71, 72, 73, 76 and 77 (in the County of Suffolk, Borough of Ipswich), being land of which temporary possession may be taken under Article 23 (44 plots in total);

- plot 12 (in the County of Suffolk District of Babergh) and plots 3, 19a, and 48 (in the County of Suffolk, District of Ipswich) being streets that may be stopped up and used as temporary worksites under Article 11 (4 plots in total), and,
- plot 29 (in the County of Suffolk, District of Ipswich) being land on which protective works may be carried out to buildings under Article 14.

5.5 The Examining authority noted that plots 3, 12, 19 and 48 were not specifically referred to in the Statement of Reasons [APP24], although reasons were provided for the purposes in Article 11 for which this land would be used. Following questions from the Examining authority an addition to the Statement of Reasons was published during the Examination, as follows:

“In addition to the land mentioned in Table 3, the Order allows temporary possession of parts of the highway temporarily stopped up under article 11 of the Order (plots 3, 12, 19a, and 48), which can be used as temporary working sites...”

[Post Compulsory Acquisition Hearings Additional Information (Rule 17), Network Rail, 29th February 2012] [REP65]

5.6 The applicant concludes therefore that sufficient reasons have been given in relation to all plots of land over which compulsory powers may be exercised on the authority of the attached Order.

THE REQUIREMENTS OF THE PLANNING ACT 2008

5.7 Compulsory acquisition powers can only be granted if the conditions set out in s122 and s123 of the Act are complied with. S122(2) requires that the land must be required for the development to which the DCO relates or is required to facilitate or is incidental to the development. In respect of land required for the development, the land to be taken must be no more than is reasonably required and must be proportionate (Guidance related to procedures for compulsory acquisition, DCLG February 2010).

5.8 With regard to s123, s123(2) is met because the application for the DCO included a request for compulsory acquisition of the land to be authorised.

5.9 S122(3) requires that there must be a compelling case in the public interest for the land to be acquired compulsorily. When balancing the public interest against private loss, the public benefits derived from the compulsory acquisition must outweigh

the private loss which would be suffered by those whose land is affected.

5.10 But this does not mean that the compulsory acquisition proposals can be considered in isolation from the wider consideration of the merits of the development: there will be some overlap. There must be a need for the development to be carried out and there must be consistency and coherency in the decision making process.

5.11 A number of general considerations also have to be addressed either as a result of following applicable guidance or in accordance with legal duties on the Examining authority:

- all reasonable alternatives to compulsory acquisition must be explored;
- the applicant must have a clear idea of how it intends to use the land;
- the applicant must demonstrate that funds are available, and,
- the Examining authority must be satisfied that the purposes stated for the acquisition are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

THE APPLICANT'S CASE [APP24]

Requirement for the compulsory acquisition powers

5.12 The land, including rights to be acquired over, entering on and taking temporary possession of the land, is required for the development to be carried out. Without the land the proposed development cannot take place. The property interests must necessarily be obtained in order to ensure the timely delivery of the scheme according to the Department for Transport's requirements. Without the land the national need for the Ipswich Chord Development could not be met.

Alternatives to compulsory acquisition

5.13 The purpose of the Ipswich Rail Chord, to join the Great Eastern Mainline to the East Suffolk Line in order to bypass Ipswich Goods Yard as a turn around location, necessarily requires land to be used close to the intersection of these two railway lines. The length and position of the chord are governed on the one hand by the permissible gradient and radius for a track to allow a freight train of up to 775m in length to stand on the new line clear of all junctions and on the other hand the need draw the

limits of the land as tightly as possible so as to avoid any unnecessary land take. In addition different options to support rail infrastructure were considered in the environmental impacts assessment recorded in the Environmental Statement.

Availability of funds for compensation

- 5.14 Network Rail borrows the funds for the delivery of its investment programmes (including Strategic Freight Network - SFN) on the open markets, and receives regulated income as set by the Office of Rail Regulation to fund that borrowing. This debt-funding programme benefits from direct and explicit support from the UK Government in the form of a Financial Indemnity from the Secretary of State for Transport, acting for and on behalf of the Government of the United Kingdom of Great Britain and Northern Ireland [REP65].
- 5.15 All funds for the proposed Works, and planned to be committed towards the Works, are from the SFN Fund during the present funding control period (1 April 2009 – 31 March 2014). The total amount of the SFN fund in present funding control period is currently valued at £250.916m in cash prices (adjusted for inflation and year of forecast spend from £208m at 2006/07 prices). The fund value is as determined by the Office of Rail Regulation in its Periodic Funding Review (2008) as the amount required by Network Rail to deliver the outputs specified by the Department for Transport.

Compelling case in the public interest

- 5.16 The Assessment of Need [APP26] accompanying the application explains the strategic transport case for the Ipswich Chord Development as developed from the Government's policy for the railways. This was set out in the White Paper 'Delivering a Sustainable Railway' (Department for Transport July 2007), [PD34] in particular Appendix A the 'High Level Output Statement' which detailed the outputs the Government was seeking during the current regulatory control period. This high level output requirement is translated into physical requirements through the Route Utilisation Strategy (RUS) which Network Rail produces as part of its licence requirements.
- 5.17 The Executive Summary of the White Paper also states that "increasing capacity is the most urgent investment need" and Network Rail's publication "Developing Freight in Control Period 5" sets out the applicant's proposals for taking forward these objectives.

Special considerations: Crown land

- 5.18 Plot 2 is 169 square metres of hard standing at the north-west end of Europa Way, Ipswich. The former landowner was a company now dissolved and the land is now vested in the Crown bona vacantia. The applicant submitted a draft DCO [APP20], as above, including a provision other than for compulsory acquisition of Plot 2, ie to allow, under Article 23, Network Rail to enter onto and take temporary possession of the plot. The applicant believed the Crown would sell the land and stated that it could be safely assumed that "any sale will not be to a Crown body so that there will not be any need for a Crown authority consent under s135 of the Planning Act 2008." [REP65]. This provision stated that provisions of the Order would not apply to the plot as long as it remained Crown Land. The applicant also indicated in the hearings that the provision could be included in the Order because it would not be exercised unless and until ownership of the plot was no longer in the hands of the Crown.

Special considerations: Local authority land

- 5.19 Local authorities either own or have an interest in a number of plots of land listed in the Book of Reference [APP27] and subject to compulsory powers in the Order. Compulsory acquisition of local authority and statutory undertakers land would normally be subject to special parliamentary procedure under s128 of the Act however s129 makes clear that this requirement does not apply where, as in this case, the acquiring authority is itself a statutory undertaker.

Human rights

- 5.20 The Statement of Reasons [APP24] acknowledges that the granting of compulsory acquisition powers has the potential to infringe the human rights of persons whose land is affected. The Statement indicates that the relevant provisions of the European Convention on Human Rights (incorporated within the Human Rights Act 1998) which could be infringed are Article 6 in relation to a fair and public hearing, Article 8 in relation to respect for private and family life, home and correspondence and Article 1 of the First Protocol in relation to peaceful enjoyment of possessions.
- 5.21 The applicant considered the public benefits of the scheme as potential human rights benefits in the context of Article 8 of the Convention; in general the applicant sets out that the adverse affects and environmental burdens, such as increased traffic during construction, are considerably outweighed by the positive impacts. The applicant also sets out the measures it

has taken in the pre-application stages to provide a fair hearing for those affected.

- 5.22 For all these reasons the applicant concludes that the degree of interference in human rights would be proportionate to the legitimate aims of the development, that there is a compelling case in the public interest for the development and that the appropriate procedures had been followed.

THE AFFECTED PERSONS' CASES

- 5.23 Representations on the grant of compulsory acquisition powers were received from the following affected persons: Sustrans, Suffolk County Council, Honeyview Investments, Island Properties GB Limited, Global Car Hire Limited, Omnicorp Limited (owners of Railway Cottages), the East of England Development Agency (later represented by the Homes and Communities Agency), Nicoll and Smith, the Environment Agency, East of England Co-operative Society, National Health Service Blood and Transplant, Mr Mark Read and Miss Emma Brinkley, Peter Colby Commercial (owners of the proposed Hadleigh Road employment development), Ipswich Borough Council, Flagship Housing, Ms Clare Peck, Ceramic Tiles Limited, Eastern Power Network and the Treasury Solicitor (in the last case in the form of a letter to the applicant passed onto the examination).
- 5.24 A late representation was received from Ms Clare Peck an affected person resident at Railway Cottages and listed in the Book of Reference [APP27] as Mrs Gowing of 3, Railway Cottages.
- 5.25 Representations specifically relating to compulsory acquisition powers were also received from Freightliner Group of Companies, Felixstowe Dock and Railway Company and Hutchison Ports. The operators believed their operations would be affected.

Sustrans [REP11]

- 5.26 Sustrans is the national charity responsible for managing the National Cycle Network, including National Cycle Route 51 at the site. They made representations both as a landowner and as a partner in proposals to improve riverside access for walkers, cyclists and disabled people. Proposals as they stood would have a very negative impact on land purchased by Sustrans to enable new ramps to be built to allow improved crossing of Environment Agency flood wall. The proposals as they stood would make cycle ramps to facilitate the National Cycle Network impossible. Ramps should be constructed as part

of the development. Sustrans pointed out the cycle route alongside the river at the Examining authority's site inspection in the company of interested parties. Sustrans subsequently withdrew its representations and did not appear at the hearings.

Suffolk County Council [REP34]

- 5.27 Suffolk County Council's principal reasons for objection largely related to the foot and cycle path alongside the river (the omission of a diversion scheme for path users and the design and safety of Bridge 404 for users of the river path), but also related to the danger of incursion onto the railway by construction traffic (specifically at the Hadleigh Road access). Relevant policies included the guidance on use of riverside paths and dealing with missing links in such routes and on minimising environmental impacts as set out in PPG13. In relation to Bridge 404, priority should be given to pedestrian and cycle movements. The County's Rights of Way Improvement Plan [PD39] "to provide and protect a more continuous network that provides for the requirements of all users" and the Suffolk Local Transport Plan to improve connectivity and accessibility generally and access to jobs and commercial markets for residents and businesses. The diversion of the cycle path was welcomed but was not secured by the Order. It acknowledged in relation to Sproughton Road bridge that although there would be advantages to raising the height of the proposed bridge that widening the pathways was a greater priority. Abnormal load movements should not occur over one of the two bridges at the Hadleigh Road access and agreement had been reached with the applicant in relation to this. The landscaping was insufficient and the land to be acquired should include the land between the proposed new chord and the river for landscaping purposes. A substantial tree belt should be planted along the toes of the embankments. Revisions were needed to the travel plan especially to reduce the impacts of heavy goods vehicles during construction on the local community. The Council was not content with proposals that consent would be deemed for the stopping up of highways for the benefit of the applicant.
- 5.28 The County Council did not distinguish between its representations on the planning case for development and those on the proposed compulsory powers, given that the County is an affected person through its role as highway authority. Its representations were also considered in relation to the compulsory acquisition as they were in relation to the planning case for the development.

- 5.29 At the Hearings the County Council withdrew its representations in relation to the design of replacement Bridge 404. Following questions from the Examining authority and changes to the Order in relation to deemed consent for the stopping up of streets it also withdrew its objections in this area also. The officer responsible for the definitive map of rights of way also encouraged at the hearings that the effect on the cycle path should be mitigated.

Honeyview Investments Limited [REP81]

- 5.30 Honeyview's land interest was the Solar Bowling alley (Plots 28 and 29 on the land plans). Their representation was that there would be impacts to servicing arrangements during construction, plus concerns about dust and noise. Land to the rear of the building would no longer be available for development and further land would be taken up by protective works (the retaining wall). The loss of the land would have a significant impact on plans to develop the site. Honeyview did not advance any objections to compulsory powers at, nor did this company appear at, the hearings.

Island Properties GB Limited [REP85]

- 5.31 Island Properties objected to the loss of plots 75 and 76 which were integral to their overall property ownership in the area. Fencing and boundary works would also be necessitated. The affected person did not advance any objections to compulsory powers at, nor did this company appear at, the hearings.

Global Self Drive Limited/Global Car Hire Limited [REP15]

- 5.32 The company objected to the acquisition of plot 23 which was currently required by the business in connection with the hard standing and parking of vans as this would severely restrict the company's ability to continue this established and successful business. The affected person did not advance any objections to compulsory powers at, nor did the affected person appear at, the hearings.

Omicorp Limited [REP14]

- 5.33 Omnicorp objected to the acquisition of land and to the temporary possession to be taken of their land at Railway Cottages. Omnicorp stated that it was clear from the draft Environmental Statement that there would be "very large adverse cumulative affects during construction and operation for Railway Cottages." Current tenants would be likely to leave and re-letting would be impossible. The property was now unsaleable since the Ipswich Chord was proposed. At the

Compulsory Acquisition Hearings Omnicorp confirmed that all properties at Railway Cottages were let on assured shorthold six month tenancies.

East of England Development Agency (EEDA)/Homes and Communities Agency (HCA) [REP26 & REP37]

- 5.34 EEDA, and as from 19th September 2011 the HCA in place of EEDA, benefited from a charge on the plots 44, 44a, 44b, 45, 45a, 46, 47, 50, 51, 52, 53 and 55 of the land. EEDA's Relevant Representation pointed out that it had safeguarded the route for the chord and allowed development to be permitted on the rest of the site (being the former Harris Bacon Factory site). Neither EEDA nor the HCA in their answers to the Examining authority's questions made any objection to the acquisition of the land and EEDA supported the proposals in principle. The affected persons did not advance any objections to compulsory powers at, nor did they appear at, the hearings.

Nicoll and Smith [REP22]

- 5.35 In a Statement of Common Ground with the applicant Nicoll and Smith (having interests in plots 8 and 9) stated that they would not oppose the acquisition of plot 8 and agreed that compensation would be payable under the Compensation Code should agreement not be reached by private treaty for the acquisition. The affected person did not advance any objections to compulsory powers at, nor did this affected person appear at, the hearings.

The Environment Agency (EA) [REP80 & REP94]

- 5.36 The EA owned flood protection works alongside the proposed chord. Their representations insofar as they related to its landowning interests were that it would not wish to take responsibility for maintaining any further environmental mitigation measures unless they were directly related to the operation of flood defence measures and that permits would need to be separately applied for to authorise any discharges into the River Gipping. At the Hearing on the Specific Issue of the DCO the Agency confirmed its acceptance of the amending of the Order such that the pollution control measures in the Statement of Common Ground would become required by the Order, that it had confidence in Network Rail's Contract Requirements-Environment document and that it was content with the protective provisions for its benefit as proposed for the Order. It confirmed it was content with these in a letter dated 2 March 2012. In a letter dated 13 March it stated it had no objection to a temporary cantilever cycle path in principle but details would need to be agreed. The Agency also raised new

issues such as a need to revise protective provisions in relation to Requirement 13. Details would be needed of any proposed construction of cycle ramps to ensure this did not affect the maintenance of flood defences. Protective provisions may need to be altered or alternatively a s30 agreement under the Anglian Water Act 1977 could be effected. The letter stated that further representations would be submitted if necessary given the latest revisions to the DCO. The examination remained open until 22 March and no further representations were received during the examination.

Felixstowe Dock and Railway Company(FDRC) and Hutchison Ports UK Ltd(HPUK) [REP97]

- 5.37 Whilst not affected persons, joint representations from FDRC and HPUK were received that the Port would be affected by the acquisition. Container volumes through the Port by rail had increased significantly to some 27% of total domestic port movements. There were 58 services in and out daily at the Port, whose rail operation generates in excess of £21M of revenue annually and employs 200 personnel. The proposed chord was subsidiary to the requirements of the Port that it would serve. There would be line closures affecting the network in the vicinity of and affecting the Port which would have a major impact on the Port and its customers, alternative road haulage capacity was limited. Considerable advance notice is required of any contraction in capacity. Based on data from the last five years the volume of goods that could be affected on any rail operating day in January 2014 was likely to be in the region of 2,000 containers per day and the applicant has stated that line closures were proposed for Christmas 2013. Should the works and Ipswich Goods Yard works both be permitted protective provisions that were under negotiation would effectively address these concerns. Whether there was a compelling case in the public interest for both the chord as well as the FSR Proposals / FDRC Scheme (due to be delivered by 2018 and set out above in the section on the Policy and Need for the development) was a matter that would sit with the Secretary of State for Transport in determining this application and applications under that Scheme. FDRC must protect its ability to deliver the FDRC Scheme by 2018. Subsequently these affected persons appeared at the hearings only to confirm their agreement with protective provisions now included in the Order.

East of England Co-operative Society (EECS) [REP100]

- 5.38 The Society owned Boss Hall Business Park parts of which would be subject to temporary and permanent acquisition. The works would have a direct effect on operations to and from its

distribution centre and on its building services department, there were legitimate concerns about disruption, the Society stated. The total estate of the business park covered circa 28 acres comprising 46 units and employing local people. There would be a loss of existing employment land and employment at the site, ten units would be affected by permanent acquisition or by temporary possession and tenants (specifically at Units 7 and 14) were now raising uncertainties about committing to being located at Boss Hall with business implications. The loss of the yard at Unit 46 would make the unit less viable. The Society undertook 3,381 weekly vehicle movements in and out of its own distribution centre on the business park with the building services department undertaking a further 700. The works would impact on these movements. The distribution operation was a six day a week activity and access to the A14 was essential, alternative routes would require greater mileages to be travelled. The Society asked for assurances that it would be involved in the Traffic Management Plan. The Society disagrees with Network Rail's transport assessments.

- 5.39 At the hearings the Society confirmed that there had been some discussion with the applicant about the use of land in front of Unit 20a for alternative National Health Service Blood and Transplant (NHSBT) car parking. In a letter submitted after the close of the Hearings the Society stated that this had not been fully explored by Network Rail and it did not agree that in this matter all possible alternatives had been properly and fully considered.

Freightliner Group of Companies [REP39]

- 5.40 While not an affected person it would nonetheless be affected by the compulsory acquisition. The Examining authority and the Secretary of State would need to consider the question of need for the scheme in view of the existence of the Felixstowe South Reconfiguration and associated FDRC Scheme/Felixstowe Branch Line and Ipswich Yard Improvement Order 2008. Freightliner did not advance any objections to compulsory powers at, nor did the company appear at, the hearings.

National Health Service Blood and Transplant [REP19 & REP57 & REP61 & RE68 & REP74 & REP93]

- 5.41 NHSBT has no objections to the completed scheme but objected to vehicular access, noise, disturbance, fugitive dust and car parking during construction. The assurances given by the applicant would resolve all these issues with the exception of car parking. Two options for alternative car parking provision still needed to be considered. At the Compulsory Acquisition

Hearings NHSBT stated that the alternative car parking on offer did not meet the same standards of provision for clear swept path by turning vehicles as they currently enjoyed, nor did it meet all relevant standards, although the number of spaces was equal to those that would be lost due to land being temporary possessed by Network Rail. NHSBT provides a vital service to society without which the wider NHS could not function, they were seeking to safeguard 5.6% of national blood supplies. A plan indicating NHSBT's preferred location for parking was submitted to the Examining authority on the opening day of the Compulsory Acquisition Hearing. The aisle width for the parking and other features did not meet the standards of the Manual for Streets. In a letter in response to the final DCO consultation the affected person stated it was content with a draft Requirement considered by the Examining authority to resolve this matter, the wording of this is now contained in protective provisions for the benefit of NHSBT.

Mr Mark Read and Miss Emma Brinkley [REP82]

- 5.42 Being resident at Railway Cottages they stated that there would be significant adverse affects of construction of Sproughton Road bridge and the track itself especially with night-time bridge construction assessed as having "very large adverse cumulative affects" in the Environmental Statement. They were concerned that Article 29 (Defence to proceedings in respect of statutory nuisance) could limit the Council's ability to enforce against nuisances or pollution arising from the works. There should be restrictions on operating hours and screening. Neither Mr Read nor Miss Brinkley advanced any objections to compulsory powers at, nor did they appear at, the hearings.

Peter Colby Commercials Limited (PCCL) [REP13 & REP62 & REP66 & REP75 & REP88 & REP96 & REP99]

- 5.43 PCCL acknowledged the policy background for the scheme but believed the IPC should minimise conflict with other national and local policies and should enable contemporaneous development of the employment park along with the rail chord. The company stated that temporary traffic lights and Jersey barriers would be required at the Hadleigh Road site access to prevent vehicle incursion onto the railway, the shared access road should be constructed up to the underside of the wearing course prior to this road being used to access the proposed works. The company was obliged by a different planning permission to relocate reptiles. Network Rail had agreed to undertake this but it was not contracted to do so. The scheme, PCCL stated further, should allow for the slab and foundations of the former cold store building to be re-used. PCCL also stated that the compulsory acquisition of rights proposed over

land to be acquired outright were unnecessarily broad, it believed acquisition should only be of those private rights which would be inconsistent with the purposes of the Order.

Ipswich Borough Council [REP16 & REP33]

- 5.44 The Council submitted a schedule of standard planning conditions such as would be attached to a planning permission and drew particular attention to ecology matters (the need create and retain appropriate habitats to which reptiles could be relocated), highway access matters (keeping the river path open as much as possible, signage and lighting for the low bridges on Sproughton Road) and noise implications (idling engines with a request for engine turn off).
- 5.45 The Borough Council did not specify whether it was objecting to the compulsory acquisition or providing representations on the planning case alone however as an affected person its representations have been taken into account in relation to the compulsory acquisition proposal as they are relevant to it.
- 5.46 At the Hearings and in responses to questions, the Council was clear that it was content to discharge, and had access to the necessary expertise to be responsible for discharging the Requirements. At the Compulsory Acquisition Hearing the Council also stated that although it was content with the assurances given by Network Rail about not constructing a ramp on plots 68 or 69 a Requirement may be needed to secure this.

Flagship Housing [REP17]

- 5.47 Flagship Housing had no objections to the proposed works but expected Network Rail to keep their tenants informed with details of duration, level of noise and timings on an ongoing basis. Flagship Housing did not advance any objections to compulsory powers at, nor did the affected person appear at, the hearings.

Ms Clare Peck [REP54 & REP55]

- 5.48 No relevant representation was received from Ms Peck (who was formerly Mrs Gowing and is listed in the Book of Reference as such) but a letter was received from her on 14 February 2012 (the opening day of the Hearings), to which the IPC responded on behalf of the Examining authority, taking the letter into account and inviting Ms Peck to take part in the Compulsory Acquisition Hearings if she wished to. She did not appear at the Hearings although her landlord, Omnicorp Limited, did appear. She had been in her home for seven years and raised two children there who attended local schools, which

will make it difficult to find alternative accommodation in the same. The home had provided important security for her family given her personal circumstances. All options should be reconsidered and compensation should be available. In a letter received as part of the final consultation on the draft DCO Ms Peck reiterated her concerns, the financial losses she would suffer and stated that the process was heartless and unfair in its effects on her children.

Ceramic Tiles [REP30]

- 5.49 The company had 40 employees and a turnover of approximately £4.5M. The company stated that a late representation should be considered by the Examining authority otherwise there would be a breach of Ceramic Tiles' rights under Article One of the First Protocol of European Convention on Human Rights. The application for the Order should be either rejected or amended to reduce its impact on local employment and the environment. Ceramic Tiles was not represented at any of the Hearings.

Eastern Power Networks [REP24]

- 5.50 The company was the owner or occupier of land to be acquired or temporarily used if the Order was made. The premises rights and apparatus have been acquired for and are used for the purposes of its statutory undertaking. A further letter received on 15 December 2011 sent by UK Power Networks, the statutory successor in title of the former Eastern Power Networks, had the effect of withdrawing the previous representation by stating that "the concerns raised in its representation ... have been addressed."

The Treasury Solicitor [REP65]

- 5.51 As part of the Post Compulsory Acquisition Hearings Additional Information Network Rail provided a copy of a letter from the Treasury Solicitor in relation to plot 2, an asset that vests in the Crown bona vacantia, this stated that "it is not our policy to grant temporary rights over property which has vested in the Crown."

THE APPLICANT'S RESPONSE TO THE OBJECTIONS [REP32 & REP86 & REP91 & REP98]

Sustrans

- 5.52 Network Rail stated that Sustrans withdrawal of its objections was as a result of commitments given by Network Rail. Details of these commitments were not made available to the examination.

- 5.53 At the Compulsory Acquisition Hearings the applicant stated that it believed the National Cycle Route stopped just “short of our works”. A cycle path did indeed go under Bridge 404 but it did not believe it was National Cycle Route at that point. The applicant agreed that PPG13 did apply to cycle routes generally and not just to those designated as National Cycle Routes but stated that the Order did not affect the designated cycle route. A study had been undertaken which confirmed that Disability Discrimination Act compliant cycle and footpath ramps could be constructed despite the proposed works. It had submitted a plan showing this was possible as Appendix 1 “Potential cycleway measures within Order Limits” of Network Rail’s response dated 6 February 2012 to the Examining authority’s Requests for Further Information submitted to the IPC during the examination. The applicant was willing to construct these and make a financial contribution to them, though Sustrans would have to apply for planning permission and secure funding. In its consultation response on the final draft DCO the applicant stated that the proposal to extend the National Cycle Route was not a development proposal let alone a consented scheme. The fragment that is within the Order limits would serve no useful purpose in itself. It would be unlawful for Network Rail to carry out works outside the Order limits.

Suffolk County Council

- 5.54 Network Rail stated that it was incorrect that stopping up of streets for example should be dealt with without reference to any time limits, nor was it correct that the council(s) should be the sole arbiters of what is reasonable. Restricted closure of Sproughton Road would be impractical and would increase night time working and consequent disruption. Network Rail clears up all worksites and leaves roads in the same condition as found. The extended consent period implied for deemed closures could not be practicably accommodated. The applicant shares the Council’s concern to avoid clashes in requests for use of road space and points out that applications for closure would be in the context of an agreed timetable as required by the Requirements. A drawing of a temporary cycle path is not necessary.
- 5.55 The Ecological Management Plan, according to Network Rail, would be for a five year period and the landscaping scheme will be required to operate for the same period.

Honeyview Investments Limited

- 5.56 Not all of plot 28 would need to be acquired, part of it to be used for sewer diversion. There may be scope for acquisition only of covenants and/or rights over land. There are no

development proposals applied for or permitted with regard to the site and thus Network Rail can protect only the existing building. Article 14 provides for an owner to take issue with any protective work by referring the matter to arbitration. The five year period for claims is adequate. All construction activities would be carried out to meet the best practice standards of BS5228:2009 which is the code of practice for noise and vibration control on open sites. With regard to nuisance caused by dust, Network Rail is required to produce a Nuisance Management Plan and have that agreed by the relevant planning authority.

Island Properties GB Limited

- 5.57 Plot 75 is required for the diversion of a low pressure gas main, acquisition under the Order would be outright to provide Network Rail with the powers necessary for the diversion. Plot 76 is required for temporary access to the site. Compensation will be payable. Network Rail will be responsible for fencing.

Global Self Drive Limited/Global Car Hire Limited

- 5.58 Both business names appear but Global Car Hire Limited is a dissolved company. Plot 23 is required for the permanent construction of works, plot 23a is required permanently for sewer diversion and plot 24 for temporary access for construction. Sharing of access to allow for access to the trading entity's office should be possible. There may be scope for the permanent acquisition of relevant plots to be limited. A temporary alternative access to the van washing area could be arranged. Network Rail would restore plot 24. Compensation is payable.

Omnicorp Limited

- 5.59 Rental properties at Railway Cottages will be emptied and voided as agreed with Omnicorp who would be compensated. Mitigation measures are mandatory on Network Rail under the Order. Compensation is payable for blight if the criteria are met.

East of England Development Agency (EEDA)/Homes and Communities Agency (HCA)

- 5.60 Network Rail is working with PCCL to ensure development of the site can go ahead without interruption. A Statement of Common Ground concluded between the applicant and the Homes and Communities Agency of 5 January 2012 concluded that there were no points of contention between them regarding the granting of compulsory purchase powers and that

the construction of the access solution would take place prior to commencement of Network Rail's chord works.

Nicoll and Smith

- 5.61 Plot 8 is required permanently for the construction of the embankment therefore its acquisition is unavoidable. The use of plot 9 would only delay and would not prevent development of the plot. Compensation would be payable.

The Environment Agency

- 5.62 Mitigation works are already a requirement of the Order. Given the comprehensive assessment of the site and proposed development, including of penetrative works such as pile driven foundations there may be potential for hydrocarbon contamination in isolated hotspots. Requirement 11 includes requirements for additional investigation of hotspots, and Remediation Strategy and verification plan are also covered under Requirement 11. Protective provisions for the Agency were included in the Order. There is no need to amend the Protective Provisions in relation to the temporary cantilever cycle path as this is already within the scope of the works provided for and as a temporary structure Network Rail will be responsible for its maintenance.

Felixstowe Dock and Railway Company(FDRC) and Hutchison Ports UK Ltd (HPUK)

- 5.63 A Statement of Common Ground [REP103] was concluded between the applicant and HPUK, FDRC and Freightliner Limited on 19 January 2012. It agreed the background to the 2004 planning permission and the subsequent FDRC Scheme. The overall need for improvements at the junction (that is at the site of the chord) was agreed particularly in allowing northbound trains to proceed north without turnaround. It was agreed that parties should receive notifications of possessions at the same time and be consulted on the same. The parties did not agree as to whether the proposed rail chord and the FDRC Scheme were mutually exclusive or not and HPUK and FDRC requested the Examining authority to confirm that the proposed works supersede the FDRC Scheme making it redundant while Network Rail believed no such request should be made.

East of England Co-operative Society (EECS)

- 5.64 Following consultation with EECS, Network Rail reviewed the scheme and considerably reduced the land take. Loss of some employment is inevitable if the chord goes ahead and this balance is one for the decision maker. Compensation would be payable. Construction traffic will not be using the estate roads

and therefore assessment of impacts on them in traffic terms was not necessary. There is a minimal effect on the operation of six key junctions but the impacts are not such as to materially impact on EECS operations. The increase in two-way traffic on Boss Hall Road was projected at 3%.

Freightliner Group of Companies

- 5.65 The chord is the only scheme which will deliver the benefits of a new chord connection with the Great Eastern Mainline and it would be constructed with or without construction of the Ipswich Yard Improvement Order 2008. The applicant believed that it was not for the Examining authority to be arbiter between the proposed rail chord and any other project. Construction will not impact on Freightliner's operations in Ipswich Yard. There is no interrelationship with timetables for the Ipswich Yard Improvement Order 2008 works and those for the proposed chord construction. Discussions continue.
- 5.66 Freightliner was also party to a Statement of Common Ground as stated above [REP103].

National Health Service Blood and Transplant (NHSBT)

- 5.67 The applicant stated that NHSBT's written representation confirmed that the issues of vehicular access, noise and fugitive dust had been adequately dealt with by the applicant. With regard to loss of parking spaces NHSBT was very concerned the offer of replacement spaces made was the only one available. Negotiations had been held with owners of land outside the Order limits as the preferred location of NHSBT but there had been no firm outcome and being outside the Order limits it was not capable of compulsory acquisition. At the Compulsory Acquisition Hearing the applicant provided evidence that had been agreed with NHSBT in the form of a statement. This confirmed that under s60 of the National Health Service and Community Care Act 1990 (Removal of Crown Immunities), the land of the NHSBT as a special health authority, did not enjoy the status of Crown Land but rather that of health service body from which any Crown privileges had been removed. Therefore s135 of the Planning Act 2008 did not apply. The applicant also provided plans showing swept path analyses of large and small cars using its proposed replacement car parking. This showed that small cars could use and negotiate the spaces and turning head using a seven-point turn whilst large cars would be required to undertake something of a fourteen-point turn. The applicant stated the Department for Transport's Manual for Streets did not apply to private land off the highway which was also non-residential. Both Mobile Blood Units were parked at the front of the Unit and could continue to be parked there in

addition to the six spaces to be replaced. The use of the plots (58 and 62) would be essential, commitments had been given not to construct ramps on the other side of the adjacent bridge and thus the full extent of these sites were needed for service diversions, cable routes, abutment, stormwater sewer, bridge construction, assembly of deck, storage of materials and other construction related works. The owners of the alternative site had told the applicant they had a prospective tenant for it thus rendering it unavailable. The parking spaces offered was all that was available but the period was a temporary one.

Mr Mark Read and Miss Emma Brinkley

- 5.68 No tenants are to be affected by construction nuisance as the tenancies are to be brought to an end. Nuisance from noise and pollution would be regulated through the Requirements instead of through laws relating to statutory nuisance. Compensation is not payable to tenants whose tenancy is six months in length or less as this could be brought to an end at any time. Re-housing would be a matter for local authorities to deal with, the applicant stated. Proposed mitigation would deal with effects during operation.

Peter Colby Commercials Limited (PCCL)

- 5.69 A Statement of Common Ground [REP102] was agreed between PCCL and the applicant. Matters agreed included: that PCCL would as soon as possible obtain consent through discharge of conditions of a planning permission to provide and construct access arrangements off Hadleigh Road to serve both their permitted, and Network Rail's proposed development; that use of the access road for both developments need not conflict; that Network Rail will use the access road along the route as ultimately required by PCCL; that the applicant would give all reasonable cooperation to PCCL in redesigning its development; that the applicant would provide a suitable conduit through the underbridge to provide for drainage of the PCCL site; that the substructure of the Cold Store building will remain and that reptile relocation required by both the DCO and the planning permissions obtained on PCCL land would be carried out by Network Rail. Any restrictions upon the acquisition of rights over land to be compulsorily acquired is unnecessary as Network Rail can except rights from acquisition and would have an incentive to provide alternative rights. Access would be allowed. PCCL made representations at the Compulsory Acquisition Hearings to the effect that all outstanding matters had in principle been agreed between the two parties save for the need for Requirement 13 to refer to a "public" right of way rather than a private one, Network Rail gave assurance that its intention was that the DCO should secure a public right here.

Following the Hearings detailed wording for Requirement 6 as agreed by PCCL and the applicant were submitted to the Examining authority and have been included by the Examining authority in the attached Order.

Ipswich Borough Council

- 5.70 Additional conditions would duplicate the requirements and are not necessary. It is not necessary to list the Design drawings in the Order. The landscaping wording is only slightly different from that drawn up by the applicant. The wording provided by Ipswich Borough Council for all its proposed conditions was either consistent with or only marginally different from the wording used in the Order to cover the same issues. A receptor site for the relocation of reptiles had been agreed as Bramford Meadows and a licence had been agreed. Shutting down and restarting engines created more noise than an engine at idling including the need for klaxons etc such that switching off idling engines would be counter productive.

Flagship Housing

- 5.71 Requirement 8 would ensure that residents would be kept informed as requested by Flagship Housing, the applicant stated.

Ms Clare Peck

- 5.72 Network Rail stated at the Compulsory Acquisition Hearing (the representation having been recently received) that Ms Peck had referred to the negotiations with Omnicorp (her landlord) which were ongoing. Compensation would be payable to the landlord. The matters were landlord and tenant matters not ones for Network Rail.

Ceramic Tiles

- 5.73 Adverse impact had been acknowledged, there were ongoing discussions. Relocation had been jointly agreed as best option and Network Rail had agreed to pay the costs under the Compensation Code. A site had been identified.

Eastern Power Networks

- 5.74 Network Rail have an assurance in writing that there would be no need for interference in its property and given the withdrawal of the representations made by Eastern Power Networks no further responses were made and the procedures in s127 are not therefore required.

Treasury Solicitor

- 5.75 Network Rail expressed the view that the letter from the Treasury Solicitor that included the statement “it is not our policy to grant temporary rights over property which has vested in the Crown” also confirmed that Network Rail “can acquire plot 2 either outright or the temporary rights it requires.” Once the land was sold by the Treasury Solicitor, the applicant suggested, the plot could then become subject to the powers in their draft Order.

EXAMINING AUTHORITY’S CONCLUSIONS ON COMPULSORY POWERS

Compelling Case in Public Interest

- 5.76 The representations received from, amongst others, The Felixstowe Dock and Railway Company and Hutchison Ports UK Limited questioned [REP38] whether there was a compelling case in the public interest for the chord. The national need and priority given to the chord in the adopted statutory development plan and in Government policy is fully set out above and because of this, including in particular the making possible of a transfer of goods from road to rail, a compelling case in the national interest has been clearly demonstrated for the rail chord.
- 5.77 Similarly to the section of this report on the planning case the FDRC Scheme, subsequent to the Felixstowe South Reconfiguration planning permission, cannot be considered an alternative in terms of land acquisition to the acquisition of land for the construction of the rail chord. The physical constraints of the curvature of the existing railways and the need to remain within undeveloped land as much as possible demonstrate that there is no reasonable alternative to the land take for the proposed rail chord on the ground.
- 5.78 It is also necessary to consider whether the public benefits outweigh the private losses that will be incurred. There will be private losses which in all cases raised by affected persons will to some extent or another be mitigated by compensation being payable (except to tenants of six months standing or less).
- 5.79 The losses of Sustrans [REP11], of its land (four plots making up parts of the riverside cycle path where it traverses the Order land in different places) purchased for the purpose of extending the cycle route over the flood wall, are notable for two reasons. First because they will be deprived of their property. Second because the acquisition will significantly constrain access thereby compromising Sustrans’ ability to deliver their cycle

measures. For this reason, in addition to the reasons set out in the planning case, Requirement 20 (confined as it is to works within the Order limits) is necessary to mitigate the loss of these freedoms and abilities in bringing their land forward for their intended purpose. A purpose which is also, like the rail chord, in the public interest and appropriate to be effected, insofar as the obstacle to the cycle path is within the Order land, by the DCO. The opening to public use of the ramps may depend upon additional works being completed outside the Order limits and thus outside the scope of the Order. Hence the date by which this shall occur is provided to be set out in the scheme by the applicant for agreement by the relevant planning authority. The existing cycle/footpath beneath the bridges and via steps over the flood wall is already a public right of way.

- 5.80 There are also private losses from a range of other private businesses, all of these however are subject to compensation and none of these affected persons voiced objections on these grounds at the Compulsory Acquisition Hearings.
- 5.81 Whilst it was clear that Freightliner Group of Companies, The Felixstowe Dock and Railway Company and Hutchison Ports UK Limited would be affected by the works, and in particular the disruption of timetabled freight services [REP38 & REP39], these companies also supported the rail chord to varying degrees and stand to benefit from improved freight servicing of the port that the rail chord represents. They further reached agreement with the applicant in a Statement of Common Ground on the need for the chord and agreed protective provisions now included in the DCO.
- 5.82 PCCL's land holding interests and the effects on them from the chord project were also the subject of a Statement of Common Ground [REP102] and measures in the requirements to ensure the provision of the access road to serve both developments simultaneously, effectively mitigate this loss. Early provision of the access road as a requirement being justified in planning terms alone.
- 5.83 PCCL's representations on the DCO [REP99] such that acquisition of rights over land to be compulsory acquired should not extend to 'all' such rights. However Network Rail demonstrated they have good reason to need to acquire this land outright and it must be considered that they therefore require such land free of encumbrance. Network Rail proposed, as included the Order, a requirement that they give notice of such acquisition of rights with the opportunity that agreement may be reached on retaining some such rights. Given this the

power to acquire such rights is necessary and a compelling case in the public interest has been demonstrated for this.

- 5.84 Any potential losses to the Environment Agency [REP94] in relation to its landholdings are protected against through agreed protective provisions included in the DCO. Any effects on its property from the proposed cantilever cycle structure or from the proposed cycle ramps will be extremely modest given the intention of both is not to interfere with such property and given that construction of both is subject to detailed consent of the agency. Both these cycle measures are within the scope of works provided for in the protective provisions and assessed as set out in the ES.
- 5.85 The property interests of the NHSBT are clearly affected by the temporary possession of their car park [REP93]. The Protective Provisions however provide that replacement parking must be approved by the relevant authority and for this reason and because the possession of the land is temporary, the loss is not sufficient to outweigh the national need for the project and compulsory acquisition powers. In addition because, as confirmed at the Compulsory Acquisition Hearing on 22 February, NHSBT is not a statutory undertaker of any form none of the provisions of s127 are relevant.
- 5.86 The land to be acquired outright is relatively tightly drawn along the railway consistent with railways generally. Whether there was a compelling case in the public interest to enter onto and take temporary possession of the full extent of a number of other plots (1, 7, 9 and 51) was the subject of written questions and further questions from the Examining authority at the Hearings. In each case the land was clearly necessary, often due to constraints in other locations around the site.
- 5.87 This demonstrated, amongst other things, that the applicant has indeed a clear idea about how it intends to use all the land.
- 5.88 Furthermore the answers to the Examining authority's questions clearly demonstrated that Network Rail had access to sufficient funds for the Order works and all associated compensation and other related costs, being guaranteed by public funding.

Human Rights

- 5.89 The private losses to businesses and residents in terms of amenity impacts and particularly in terms of loss of tenants' homes at Railway Cottages are real concerns. These losses interfere with the human rights of those concerned. In particular these losses breach the European Convention on

Human Rights (incorporated within the Human Rights Act 1998) Article 8 in relation to respect for private and family life, home and correspondence and Article 1 of the First Protocol in relation to peaceful enjoyment of possessions.

- 5.90 It is considered by the Examining authority, in examining all the written representations and holding a Compulsory Acquisition Hearing at which all affected persons could appear (and to which Ms Peck whose only representations were received late [REP55 & REP73], was specifically invited [REP54]), that he has by this action ensured a fair and public hearing under Article 6.
- 5.91 In relation to the tenants of the Railways Cottages they occupy the properties under six month tenancies so that their maximum tenure could be no more than six months. The grant of the Order does not alter this but would enable the applicant to terminate the tenancies earlier. If it did so compensation would be payable for the tenancies being terminated earlier than the expiration of the six months period, but if the tenancies were to expire at the end of their term then no compensation would be payable. Loss sustained by the tenants would be more in terms of the timing of departure, being likely to be brought forward by the chord project, rather than there being any more substantive loss of rights to remain indefinitely which they do not enjoy. In these circumstances the interference with their human rights is considered to be proportionate and in the public interest.
- 5.92 It is similarly judged to be justified in relation to the interference in human rights of those other companies and persons who would be less significantly affected by the acquisition.
- 5.93 If the Order is granted the applicant, notwithstanding the representations made concerning human rights, would have a statutory defence to nuisance arising from any of its actions authorised by the Order. The importance of the relevant planning authority's role (in discharging requirements that provide alternative protections) is therefore not to be underestimated and the requirements provided make any interference in human rights here proportionate and justified in the public interest. In questioning at the hearings the Borough Council, which is in any case the environmental health authority, believed itself well placed to deal with these matters effectively.

OTHER OUTSTANDING ACQUISITION MATTERS

Crown Land

5.94 With regard to Crown land located at plot 2, following questions from the Examining authority and evidence from the applicant of correspondence with the Treasury Solicitor (who acts on behalf of the Crown in relation to such land), no consent of the Crown was obtained to this provision, nor was transfer of the plot to an owner other than the Crown effected during the examination. The letter obtained from the Treasury Solicitor [REP65] indicated that the land would either be sold, or title to it disclaimed and emphasised that all options remained open. It did not consent to any provisions for temporary possession of, nor for entry onto, the land.

5.95 Whilst the applicant's case that the Order could suspend application of certain of its articles over land until such time as the land was no longer Crown Land was heard, s135(2) is very clear that:

"An order granting development consent may include any other provision applying in relation to Crown land, or rights benefiting the Crown, only if the appropriate Crown authority consents to the inclusion of the provision."

5.96 A provision granting powers of entry onto and temporary possession of land would clearly be a provision that would apply in relation to Crown Land. The attached Order has therefore been amended such that it does not include any provisions applying in relation to the Crown land, plot 2. The Examining authority does not consider that any inability to obtain temporary possession of the relatively small plot 2 would be sufficient to make implementation of the works in any way not possible.

Land in Unknown Ownership

5.97 Plots 17 and 18 are in unknown ownership, and the process to be followed for the payment of compensation for the acquisition of such land is set out in other legislation. In such cases the Examining authority must ensure that diligent inquiry had been made by the applicant as required by s57(1) of the Act and schedules setting out the investigations carried out were duly provided to the examination [REP45]. It is concluded that diligent inquiry was made in relation to these plots.

OVERALL CONCLUSION ON COMPULSORY ACQUISITION MATTERS

- 5.98 The Examining authority is satisfied that the compulsory powers are needed for the project to be implemented and are justified in their own right. In addition and for all the reasons set out above in this section the Examining authority concludes that there is a compelling case in the public interest for the acquisition of all land subject to the order as attached. The request for the compulsory powers is also justified in all other respects save in relation to the request for a provision relating to Crown Land, plot 2, which is excluded from the Order as now proposed.

6 THE RECOMMENDATION

The Secretary of State for Transport, for the reasons set out in the above report of my findings and conclusions, is recommended to make the Network Rail (Ipswich Chord) Order as below proposed.

7 THE PROPOSED ORDER

201[X] No.

INFRASTRUCTURE PLANNING

The Network Rail (Ipswich Chord) Order

Made - - - - - ***

Coming into force - - - - - ***

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An application has been made to the Infrastructure Planning Commission in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(a) for an Order under sections 37, 114, 115, 117(4) and 120 of the Planning Act 2008(b).

PART 1 PRELIMINARY

Citation and Commencement

1. This Order may be cited as the Network Rail (Ipswich Chord) Order 201[] and shall come into force on [] 201[].

Interpretation

2.—(1) In this Order—

“the 1991 Act” means the Land Compensation Act 1961(c);

“the 1965 Act” means the Compulsory Purchase Act 1965(d);

“the 1980 Act” means the Highways Act 1980(e);

(a) S.I. 2009/2264.

(b) 2008 c.29.

(c) 1961 c.33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c.65). There are other amendments to the 1980 Act which are not relevant to this Order.

(d) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c.34). Section 11(1) and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.

(e) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), (3) and (4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted by, and section 1(3) was amended by, section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47 (a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1) (2) and (3) of the Transport and Works Act 1992 (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the

“the 1990 Act” means the Town and Country Planning Act 1990(a);

“the 1991 Act” means the New Roads and Street Works Act 1991(b);

“the 2008 Act” means the Planning Act 2008(c);

“ancillary works” means any works authorised by the Order which are not development within the meaning of section 32 of the 2008 Act;

“authorised development” means the development and associated development described in Part 1 of Schedule A (authorised project) and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;

“the authorised project” means the authorised development and the ancillary works authorised by this Order;

“the book of reference” means the book of reference certified by the decision-maker as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“the decision-maker” has the same meaning as in section 103 of the 2008 Act;

“the design drawings” means the drawings submitted under regulation 5(2)(o) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and certified as the design drawings by the decision-maker for the purposes of the Order;

“the Environmental Statement” means the document certified as the environmental statement by the decision-maker for the purposes of this Order;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“the land plans” means the plans submitted under regulation 5(2)(i) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and certified as the land plans by the decision-maker for the purposes of this Order;

“limits of deviation” means the limits of deviation referred to in article 7;

“maintain” and any of its derivatives include to inspect, repair, adjust, alter, remove, reconstruct or replace the authorised project and any derivative of “maintain” shall be construed accordingly;

“Network Rail” means Network Rail Infrastructure Limited;

“Order land” means the land shown on the land plans which is within the limits of land to be acquired or used and described in the book of reference;

“Order limits” means the limits of deviation and the limits of additional land to be used shown on the works plans;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(d);

“relevant planning authority” means the district planning authority for the area in which the land to which the provisions of this Order apply is situated;

Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.

- (a) 1990 c.8. Section 206(1) was amended by section 192(8) to, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (date in force to be appointed see section 241(3), (4)(a),(c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
- (b) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).
- (c) 2008 c.29.
- (d) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). There are other amendments to the 1981 Act which are not relevant to this Order.

“the sections” unless otherwise stated in this Order means the sections and elevations shown on the design drawings and works plans certified as the design drawings and works plans by the decision-maker for the purposes of this Order;

“statutory undertaker” means any person falling within section 127(8), 128(5) or 129(2) of the 2008 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“the works plans” unless otherwise stated in this Order means the plans submitted under regulation 5(2)(j) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and certified as the works plans by the decision-maker for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised project shall be taken to be measured along that work.

(4) References in this Order to points identified by letters, with or without numbers, shall be construed as references to points so lettered on the works plans.

(5) References in this Order to numbered works are references to the works as numbered in Part 1 of Schedule A.

Incorporation of the Railway Clauses Acts

3.—(1) The following provisions of the Railways Clauses Consolidation Act 1845(**a**) shall be incorporated in this Order—

section 46 (crossing of roads—level crossings), subject to paragraph (4);

section 58 (company to repair roads used by them), except for the words from “and if any question” to the end;

section 61 (company to make sufficient approaches and fences to highways crossing on the level);

section 68 (accommodation works by company);

section 71 (additional accommodation works by owners), except for the words “or directed by such justices to be made by the company” and “or, in case of difference, as shall be authorised by two justices”;

sections 72 and 73 (supplementary provisions relating to accommodation works);

section 77 (presumption that minerals excepted from acquisition of land);

sections 78 to 83, 85 to 85E and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923(**b**); and

(a) 1845 c. 20. Section 46 was amended by sections 109(1) and (3) of, and paragraph 22 of Schedule 8, and Schedule 10 to, the Courts Act 2003 (c.39). Section 58 was amended by section 46 of, and Part 3 of Schedule 7 to, the Justices of the Peace Act 1949 (c.101). Section 78 was amended by section 39(3) of, and Schedule 7 to, the Compulsory Purchase Act 1968 (c.56) and articles 5(1) and (2) of, and paras 1 and 3 of Schedule 7 to, S.I. 2009/1307. Section 105 was amended by section 46 of, and Part 3 of Schedule 7 to, the Justices of the Peace Act 1949 (c.101), and section 31(6) of the Criminal Law Act 1977 (c.45), and sections 37 and 49 of the Criminal Justice Act 1982 (c.48). There are other amendments to the 1845 Act not relevant to this Order.

(b) 1923 c. 20. Section 15 was amended by section 10(1) of the Decimal Currency Act 1969 (c.19).

section 105 (carriage of dangerous goods on railway), except for the words from “and if any person” to “for every such offence”.

(2) The following provisions of the Railways Clauses Act 1863(a) shall be incorporated in this Order—

sections 5 and 7 (level crossings); and
section 12 (signals, watchmen etc.).

(3) In those provisions, as incorporated in this Order—

“the company” means Network Rail;

“goods” includes any thing conveyed on the railway authorised to be constructed by this Order;

“lease” includes an agreement for a lease;

“prescribed”, in relation to any such provision, means prescribed by this Order for the purposes of that provision;

“the railway” means any railway authorised to be constructed by this Order and any other authorised development; and

“the special Act” means this Order.

(4) In section 46 of the Railways Clauses Consolidation Act 1845, as incorporated in this Order, for the proviso there shall be substituted “Provided always that, with the consent of the highway authority and subject to such conditions as the authority may reasonably impose, the railway may be carried across a highway on the level.”.

Disapplication of legislative provisions

4.—(1) The following provisions shall not apply in relation to the construction of works carried out for the purpose of, or in connection with, the construction or maintenance of the authorised project—

(a) section 109 (structures in, over or under a main river) of the Water Resources Act 1991(b);

(b) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 to the Water Resources Act 1991, which require consent or approval for the carrying out of the works;

(c) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991(c);

(2) Section 6 of the Party Wall etc. Act 1996(d) (underpinning of adjoining buildings) shall not apply in relation to a proposal to excavate, or excavate for and erect anything, in exercise of the powers conferred by this Order.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

5.—(1) Subject to the provisions of this Order and to the requirements in Part 2 of Schedule A (requirements) attached to this Order Network Rail is granted—

(a) 1863 c. 92.

(b) 1991 c.56. Section 106 was amended by the Water Act 2003 (c.37), sections 36(2) and 99 subject to the transitional provisions contained in article 6 of, and Schedule 3 to, S.I. 2004/641. There are other amendments to section 106 which are not relevant to this Order.

(c) 1991 c.59.

(d) 1996 c.40.

- (a) development consent for the authorised development; and
- (b) consent for the ancillary works,

to be carried out within the Order limits.

(2) Subject to article 7 (limits of deviation) the authorised development comprising the works numbered in Schedule A shall be constructed in the lines and situations shown on the works plans and the levels shown on the sections.

Maintenance of authorised project

6. Network Rail may at any time maintain the authorised project, except to the extent that this Order or an agreement made under this Order, provides otherwise.

Limits of Deviation

7.—(1) Subject to paragraph (2) in carrying out the authorised development comprising the works numbered in Schedule A Network Rail may—

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans and design drawings to the extent of the limits of deviation shown on the works plans; and
- (b) deviate vertically from the levels of the authorised development shown on the sections within the works plans and design drawings—
 - (i) to any extent not exceeding 1 metre upwards; or
 - (ii) to any extent downwards as may be found to be necessary or convenient.

(2) No deviation is authorised under paragraph (1) which would—

- (a) in any way diminish the headroom or clearance beneath any proposed bridge structure or above any stairway; or
- (b) in any way diminish the breadth of any walkway, staircase, flight of steps, carriageway, tunnel, footpath or cycleway

by more than 200 millimetres from its dimension as shown on the design drawings.

Benefit of Order

8.—(1) The provisions of this Order conferring powers on Network Rail shall have effect solely for the benefit of Network Rail.

(2) Paragraph (1) is—

- (a) subject to paragraph (5) of article 18 (compulsory acquisition of rights) of this Order; and
- (b) does not apply to the benefit of the consent granted by this Order for works for the benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised project.

PART 3 STREETS

Street works

9.—(1) Network Rail may, for the purposes of the authorised project, enter on so much of any of the streets specified in Schedule B (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) place apparatus in the street;

- (c) maintain temporary apparatus in the street and permanent apparatus under the street and, in either case, change its position;
- (d) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b) and (c).

(2) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act and “in” as referring to apparatus in the street, means under, over, across, along or upon the street.

Application of the 1991 Act

10.—(1) The provisions of the 1991 Act mentioned in paragraph (2) which, together with other provisions of that Act, apply in relation to the carrying out street works and any regulations made or code of practice issued or approved under those provisions shall apply (with the necessary modifications) in relation to the temporary stopping up, temporary alteration or temporary diversion of a street by Network Rail under the powers conferred by article 11 (temporary stopping up of streets) and the carrying out of works under article 9 (street works) whether or not the stopping up, alteration or diversion, or the carrying out of such works, constitutes street works within the meaning of that Act.

(2) The provisions of the 1991 Act referred to in paragraph (1) are—

- section 54 (advance notice of certain works), subject to paragraph (3);
- section 55 (notice of starting date of works), subject to paragraph (3);
- section 57 (notice of emergency works);
- section 59 (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- section 68 (facilities to be afforded to street authority);
- section 69 (works likely to affect other apparatus in the street);
- section 76 (liability for cost of temporary traffic regulation);
- section 77 (liability for cost of use of alternative route); and

all such provisions as apply for the purposes of the provisions mentioned above.

(3) Sections 54 and 55 of the 1991 Act as applied by paragraph (1) shall have effect as if references in section 57 of that Act to emergency included a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

Temporary stopping up of streets

11.—(1) Network Rail, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without prejudice to paragraph (1), Network Rail may use any street stopped up under the powers conferred by this article within the Order limits as a temporary working site.

(3) Network Rail shall provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) Without prejudice to the generality of paragraph (1), Network Rail may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule C (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the works plans, in column (3) of that Schedule.

(5) Network Rail shall not temporarily stop up, alter or divert—

- (a) any street specified as mentioned in paragraph (4) without first consulting the street authority; and

(b) any other street without the consent of the street authority which may attach reasonable conditions to any consent, but such consent shall not be unreasonably withheld.

(6) During any period that the footpath/cycleway on the west bank of the River Gipping is stopped up between points E and F Network Rail shall provide and maintain an alternative means of access between those points on land within the Order limits.

(7) Any person who suffers loss by the suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(8) If within 28 days of receiving an application for consent under paragraph (5)(b) a street authority fails to notify Network Rail of its decision or refuses consent without giving any grounds for its refusal that street authority shall be deemed to have granted consent.

Traffic signs

12.—(1) Network Rail may, for the purposes of, or in connection with, the control of construction traffic entering the site of the authorised development, and after consultation with the traffic authority, place or maintain traffic signs of a type prescribed by regulations made under section 64(1)(a) of the Road Traffic Regulation Act 1984^(a) (“the 1984 Act”) or of a character authorised by the Secretary of State at or adjoining the junction between Hadleigh Road and the access road leading to that site.

(2) Any power conferred by section 65 of the 1984 Act to give directions to a traffic authority or local traffic authority as to traffic signs shall include a power to give directions to Network Rail as to traffic signs under this article; and, accordingly, the powers conferred by paragraph (1) shall be exercisable subject to and in conformity with any directions given under that section.

(3) Expressions used in this article and in the 1984 Act shall have the same meaning in this article as in the Act.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

13.—(1) Network Rail may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised project and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by Network Rail pursuant to paragraph (1) shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991 (right to communicate with public sewers).

(3) Network Rail shall not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but shall not be unreasonably withheld.

(4) Network Rail shall not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval shall not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) Network Rail shall not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(a) 1984 c.27.

(6) Network Rail shall take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise the entry into inland fresh waters or coastal waters of any matter whose entry or discharge into those waters is prohibited by regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010^(a).

(8) If a person who receives an application for consent or approval fails to notify Network Rail of a decision within 28 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a) that person shall be deemed to have granted consent or given approval, as the case may be.

(9) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board, or a local authority; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Protective work to buildings

14.—(1) Subject to the following provisions of this article, Network Rail may at its own expense carry out such protective works to any building lying within the area shown numbered 29 on the land plans as Network Rail considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised project; or
- (b) after the completion of that part of the authorised project in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised project is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised Network Rail may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building Network Rail may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

Network Rail shall, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days’ notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is

(a) S.I. 2010/675.

necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 34 (arbitration).

(7) Network Rail shall compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised project carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised project,

Network Rail shall compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article shall relieve Network Rail from any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance).

(10) Any compensation payable under paragraph (7) or (8) shall be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised project; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised project.

Authority to survey and investigate the land

15.—(1) Network Rail may for the purposes of this Order enter on any land shown within the Order limits and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as Network Rail thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of Network Rail—

- (a) shall, if so required, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes shall be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent shall not be unreasonably withheld.

(5) Network Rail shall compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be

determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(6) If either a highway authority or a street authority which receives an application for consent fails to notify Network Rail of its decision within 28 days of receiving the application for consent—

(a) under paragraph (4)(a) in the case of a highway authority; or

(b) under paragraph (4)(b) in the case of a street authority;

that authority shall be deemed to have granted consent.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

16.—(1) Network Rail may acquire compulsorily so much of the Order land as is required for the authorised project or to facilitate, or is incidental to, it.

(2) This article is subject to paragraph (2) of article 18 (compulsory acquisition of rights) and paragraph (8) of article 23 (temporary use of land for carrying out the authorised project) and does not apply to the land numbered 3, 12, 13, 19a, 29 and 48 on the land plans (land required for highway work sites, protective works and erection of traffic signs).

Time limit for exercise of authority to acquire land compulsorily

17.—(1) After the end of the period of 5 years beginning on the day on which the Order is made—

(a) no notice to treat shall be served under Part 1 of the 1965 Act; and

(b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 20 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(a).

(2) The authority conferred by article 23 (temporary use of land for carrying out the authorised project) shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent Network Rail remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

18.—(1) Subject to paragraph (2) Network Rail may acquire compulsorily such rights over the Order land, or impose restrictive covenants affecting the land, as may be required for any purpose for which that land may be acquired under article 16 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule D (land in which only new rights etc., may be acquired) Network Rail's powers of compulsory acquisition are limited to the

(a) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are other amendments to the 1981 Act which are not relevant to this Order.

acquisition of such new rights as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule E (modification of compensation and compulsory purchase enactments for creation of new rights)) where Network Rail acquires a right over land or the benefit of a restrictive covenant under paragraph (1) or (2) Network Rail shall not be required to acquire a greater interest in that land.

(4) Schedule E shall have 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.

(5) In any case where the acquisition of new rights or the imposition of restrictive covenants under paragraph (1) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker Network Rail may, with the consent of the Secretary of State, transfer the power to acquire such rights or impose such covenants to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by Network Rail.

Private rights

19.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order shall be extinguished —

- (a) as from the date of acquisition of the land by Network Rail, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by Network Rail under section 11(1) of the 1965 Act (power of entry),

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under the Order shall be extinguished in so far as their continuance would be inconsistent with the exercise of the right or the burden of the restrictive covenant—

- (a) as from the date of the acquisition of the right or the benefit of the restrictive covenant by Network Rail, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by Network Rail under section 11(1) of the 1965 Act in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights over land owned by Network Rail which, being within the limits of land which may be acquired or used shown on the land plans, are required for the purposes of this Order shall be extinguished on the appropriation of the land by Network Rail for any of those purposes.

(4) Subject to the provisions of this article, all private rights over land of which Network Rail takes temporary possession under this Order shall be suspended and unenforceable for as long as Network Rail remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article shall be entitled to compensation in accordance with the terms of section 152 of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 24 (statutory undertakers) applies.

(7) Paragraphs (1) to (3) shall have effect subject to—

- (a) any notice given by Network Rail before—

- (i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;
 - (ii) Network Rail’s appropriation of it;
 - (iii) Network Rail’s entry onto it; or
 - (iv) Network Rail’s taking temporary possession of it,
- that any or all of those paragraphs shall not apply to any right specified in the notice; and
- (b) any agreement made at any time between Network Rail and the person in or to whom the right in question is vested or belongs.
- (8) If any such agreement as is referred to in paragraph (7)(b)—
- (a) is made with a person in or to whom the right is vested or belongs; and
 - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it shall be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) Reference in this article to private rights over land includes reference to any trusts or incidents to which the land is subject.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

20.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981 shall apply as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, shall have effect with the following modifications.

(3) In section 3 (preliminary notices) for subsection (1) there shall be substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”.

(4) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after “given” there shall be inserted “and published”.

(5) In that section, for subsections (5) and (6) there shall be substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) shall be omitted.

(7) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” shall be omitted.

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 shall be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

Acquisition of subsoil or airspace only

21.—(1) Network Rail may acquire compulsorily so much of, or such rights in, the subsoil of or the airspace over the land referred to in article 16(1) (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where Network Rail acquires any part of, or rights in, the subsoil of or the airspace over land under paragraph (1), Network Rail shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent article 22 (acquisition of part of certain properties) from applying where Network Rail acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Acquisition of part of certain properties

22.—(1) This article shall apply instead of section 8(1) of the 1965 Act (other provisions as to divided land) (as applied by section 125 of the 2008 Act) where—

(a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and

(b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on Network Rail a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner shall be required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner shall be required to sell only the land subject to the notice to treat shall, unless Network Rail agrees to take the land subject to the counter-notice, be referred to the tribunal.

(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—

(a) without material detriment to the remainder of the land subject to the counter-notice; or

(b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner shall be required to sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—

(a) without material detriment to the remainder of the land subject to the counter-notice; or

(b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat shall be deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determines that—

(a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but

(b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which Network Rail is authorised to acquire compulsorily under this Order.

(8) If Network Rail agrees to take the land subject to the counter-notice, or if the tribunal determines that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which Network Rail is authorised to acquire compulsorily under this Order.

(9) Where by reason of a determination by the tribunal under this article a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, Network Rail may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, shall pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, Network Rail shall pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Temporary use of land for carrying out the authorised project

23.—(1) Network Rail may, in connection with the carrying out of the authorised project—

- (a) enter on and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of Schedule F (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised project specified in column (4) of that Schedule;
 - (ii) subject to paragraph (11), any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any works specified in relation to that land in column 3 of Schedule F, or any other mitigation works.

(2) Not less than 28 days before entering on and taking temporary possession of land under this article Network Rail shall serve notice of the intended entry on the owners and occupiers of the land.

(3) Network Rail may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of completion of the part of the authorised project specified in relation to that land in column (4) of Schedule F; or
- (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of this land was taken unless Network Rail has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declaration) Act 1981.

(4) Before giving up possession of land of which temporary possession has been taken under this article, Network Rail shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but Network Rail shall not be required to—

- (a) replace a building removed under this article;
- (b) restore the land on which any permanent works have been constructed under paragraph (1)(d); or
- (c) remove any ground strengthening works which have been placed in that land to facilitate construction of the authorised development.

(5) Network Rail shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(7) Nothing in this article shall affect any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised project, other than loss or damage for which compensation is payable under paragraph (5).

(8) Network Rail may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that Network Rail shall not be precluded from—

- (a) acquiring new rights or imposing restrictive covenants over any part of that land under article 18 (compulsory acquisition of rights); or
- (b) acquiring any part of the subsoil of or airspace over (or rights in the subsoil of or airspace over) that land under article 21 (acquisition of subsoil or airspace only).

(9) Where Network Rail takes possession of land under this article, Network Rail shall not be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) Paragraph (1)(a)(ii) shall not authorise Network Rail to take temporary possession of any land which it is not authorised to acquire under article 16 (compulsory acquisition of land) or any land specified in Schedule D.

Statutory undertakers

24. Subject to the provisions of Schedule G (Protective Provisions), Network Rail may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers shown on the land plans within the limits of the land to be acquired or used and described in the book of reference;
- (b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers over or within the Order land.

Recovery of costs of new connections

25.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 24 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from Network Rail compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) shall not apply in the case of the removal of a public sewer but where such a sewer is removed under article 24, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

shall be entitled to recover from Network Rail compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(a); and

“public utility undertaker” has the same meaning as in the 1980 Act.

PART 6

OPERATIONS

Operation and use of railways

26.—(1) Network Rail may operate and use the railway and any other elements of the authorised project as a system, or part of a system, of transport for the carriage of passengers and goods.

(2) Nothing in this Order, or in any enactment incorporated with or applied by this Order, shall prejudice or affect the operation of Part 1 of the Railways Act 1993(b) (the provision of railway services).

Felling or lopping of trees

27.—(1) Network Rail may fell or lop any tree or shrub within or overhanging land within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project; or
- (b) from constituting a danger to passengers or other persons using the authorised project.

(2) In carrying out any activity authorised by paragraph (1), Network Rail shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

PART 7

MISCELLANEOUS AND GENERAL

Operational land for purposes of the 1990 Act

28. Development consent granted by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

(a) 2003 c 21. There are amendments to this Act which are not relevant to this Order.
(b) 1993 c.43. This Act has been amended by the Transport Act 2000 (c. 38), the Railways and Transport Safety Act 2003 (c.20) and the Railways Act 2005 (c.14). There are other amendments to this Act which are not relevant to this Order.

Defence to proceedings in respect of statutory nuisance

29.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by Network Rail for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or section 65 (noise exceeding registered level), of the Control of Pollution Act 1974(b); or
 - (ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
 - (i) relates to premises used by Network Rail for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in accordance with a scheme of mitigation of noise approved by the relevant planning authority as described in requirement 10; or
 - (ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), shall not apply where the consent relates to the use of premises by Network Rail for the purposes of or in connection with the construction or maintenance of the authorised project.

Protections of Interests

30. Schedule G to this Order has effect.

Application of the Land Compensation Act 1973

31.—(1) Any regulations made by the Secretary of State under section 20 (sound proofing of buildings affected by public works) and 20A (power to make payments in respect of caravans and other structures affected by noise of public works) of the Land Compensation Act 1973(c) which apply to a railway provided or used in the exercise of statutory powers shall apply to the railway comprised in the authorised project as if that railway was provided or used in the exercise of statutory powers.

(2) Section 28 (power to pay expenses) of the Land Compensation Act 1973 shall have effect as if any works comprised in the authorised project were public works for the purposes of that section.

(a) 1990 c.43. There are amendments to this Act which are not relevant to this Order.
(b) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to this Order.
(c) 1973 c.26. Section 20 was amended by subsections (6) and (12) of section 146 of, and Schedule 13 to, the Road Traffic Regulation Act 1984 (c.27). Subsection (10) of section 20 was repealed by section 343(3) of, and Schedule 25 to, the Highway Act 1980 (c.66) and subsection (11) was repealed by section 155 of, and Schedule 25 to, the Rent Act 1977 (c.42). There are other amendments to the 1973 Act which are not relevant to this Order.

Certification of plans etc.

32.—(1) Network Rail shall, as soon as practicable after the making of this Order, submit to the decision-maker copies of—

- (a) the book of reference as submitted in the application for this Order;
- (b) the land plans as submitted in the application for this Order:
 - Sheet 1 May 2011,
 - Sheet 2 May 2011,
 - Sheet 3 May 2011, and
 - Sheet 4 May 2011;
- (c) the works plans:
 - B149500-IPS/IP.GAD/0003 Rev A02 dated 29 November 2011 and submitted to the Examining authority in connection with the examination of the application for this Order,
 - B149500-IPS/IP.GAD/0004 Rev A02 dated 29 November 2011 and submitted to the Examining authority in connection with the examination of the application for this Order,
 - B149500-IPS/IP.GAD/0005 Rev A01 as submitted in the application for this Order,
 - B149500-IPS/IP.GAD/0006 Rev A01 as submitted in the application for this Order,
 - B149500-IPS/IP.GAD/0007 Rev A01 as submitted in the application for this Order,
 - B149500-IPS/IP.GAD/0008 Rev A01 as submitted in the application for this Order, and
 - B149500-IPS/IP.GAD/0009 Rev A01 as submitted in the application for this Order;
- (d) the design drawings as submitted in the application for this Order:
 - B1469500-IPS/IP.GAD/0101 Rev A02,
 - B1469500-IPS/IP.GAD/0010 Rev A02,
 - B1469500-IPS/IP.GAD/0011 Rev A02,
 - B1469500-IPS/IP.GAD/0022 Rev A02,
 - B1469500-IPS/IP.GAD/0030 Rev A02,
 - B1469500-IPS/IP.GAD/0040 Rev A02,
 - B1469500-IPS/IP.GAD/0042 Rev A02,
 - B1469500-IPS/IP.GAD/0043 Rev A02,
 - B1469500-IPS/IP.GAD/0050 Rev A02,
 - B1469500-IPS/IP.GAD/0060 Rev A02,
 - B1469500-IPS/IP.GAD/0061 Rev A02,
 - B1469500-IPS/IP.GAD/0070 Rev A02,
 - B1469500-IPS/IP.GAD/0071 Rev A02,
 - B1469500-IPS/IP.GAD/0072 Rev A02, and
 - B1469500-IPS/IP.GAD/0074 Rev A02; and
- (e) the environmental statement as submitted in the application for this Order,

for certification that they are true copies of the plans, drawings and documents referred to in this Order.

(2) A plan, drawing or document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of Notices

33.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement shall be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender shall provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person shall give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation shall be final and shall take effect on a date specified by the person in the notice but that date shall not be less than 7 days after the date on which the notice is given.

(9) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

(a) 1978 c.30.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Arbitration

34. Any difference under any provision of this Order, unless otherwise provided for, shall 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) by the President of the Institution of Civil Engineers.

Procedure in relation to approvals etc under requirements

35. Where an application is made for any consent, agreement or approval required by a requirement under Schedule A, Part 2, the following provisions apply, so far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission, as if the requirement was a condition imposed on the grant of planning permission—

- (a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions);
- (b) any orders, rules or regulations which make provision in relation to appeals under section 78 of the 1990 Act.

Signatory text

Address
Date

Name
Secretary of State
Department of Transport

SCHEDULES

SCHEDULE 1

Article 5

AUTHORISED PROJECT

PART 1

AUTHORISED DEVELOPMENT

A nationally significant infrastructure project as defined in sections 14 and 25 of the Act comprising:

In the county of Suffolk, districts of Ipswich and Babergh

Work No. 1 – A railway 1,415 metres in length, commencing at a point on the existing Great Eastern Main Line railway 650 metres north-west of the bridge carrying that railway over Sproughton Road, passing south-eastwards on existing embankment then passing south-eastwards over the River Gipping, curving eastwards and then north-eastwards on the south-eastern side of the River Gipping then joining the existing East Suffolk Line railway passing back over the River Gipping and terminating at a point on the East Suffolk Line railway 70 metres north-east of the bridge carrying that railway over the river.

Work No. 1 includes widening of the existing embankment carrying the Great Eastern Main Line railway on its north-eastern side supported by a retaining wall; a new bridge adjacent to the existing bridge carrying the Great Eastern Main Line railway over Sproughton Road; a bridge over the River Gipping; an embankment carrying the proposed railway on the south-eastern side of the River Gipping; and the reconstruction of bridge 404 carrying the East Suffolk Line railway over the River Gipping.

Associated development within the meaning of section 115(2) of the Act comprising:

Work No. 2 – Diversion of a surface water sewer, commencing at a point 75 metres south of the junction of Sproughton Road and Boss Hall Road, passing south-eastwards and terminating by means of an outfall into the River Gipping at a point 55 metres north-east of the bridge carrying the Great Eastern Main Line railway over the river;

Work No. 3 – Extension of the training wall on the southern side of the River Gipping between points R1 and R2 on the works plans;

Work No. 4 – An access road commencing at a point 205 metres south of the bridge carrying the East Suffolk Line railway over the River Gipping passing north-eastwards through the proposed embankment (Work No. 1) by means of an underpass, then passing south-westwards by means of a ramp and terminating at a point on the said embankment 110 metres south-west of the point of commencement;

and in connection with such works further associated development within Order limits which has been subject to an environmental impact assessment recorded in the Environmental Statement consisting of—

- (a) demolition of the former cold store building at the Harris Factory site;
- (b) electrical equipment and signalling works;
- (c) ramps, means of access, cyclepaths and footpaths;

- (d) embankments, aprons, abutments, retaining walls, wing walls and culverts;
- (e) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (f) works to alter the course of, or otherwise interfere with, a watercourse other than a navigable watercourse;
- (g) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised project;
- (h) works for the benefit or protection of land affected by the authorised project;
- (i) working sites in connection with the construction of the authorised project;
- (j) a temporary structure secured to the north bank of the River Gipping to support a footpath and cycleway for use as a temporary replacement for any part of the existing footpath and cycleway while that part is stopped up under article 11; and
- (k) such other works as may be necessary or expedient for the purposes of or in connection with the construction of the authorised project.

For the purpose of the description of further associated development the Order limits do not include so much of Boss Hall Road as is shown numbered 33 on the land plans.

PART 2 REQUIREMENTS

Interpretation

1. In this Part of this Schedule—

“the CR-E” means Network Rail’s Contract Requirements-Environment Issue 5, April 2004 as set out in chapter 15, Volume 3 of the Environmental Statement;

“stage” means a defined section or part of the authorised development the extent of which is shown in a scheme submitted to and approved by the relevant planning authority pursuant to requirement 2.

Stages of authorised development

2. No authorised development shall commence until a written scheme setting out all the stages of the authorised development has, after consultation with the highway authority, been submitted to and approved by the relevant planning authority.

In accordance with plans, drawings, sections and documents

3.—(1) The authorised development shall be carried out in accordance with the certified plans, drawings, sections and documents and with any plans, drawings, sections or documents approved under these Requirements or under The Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 as amended.

(2) Subject to the provisions of Article 7 any changes to or revocation of certified plans, drawings, sections or documents other than those approved under these Requirements shall require an application to be made under The Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 as amended.

Landscaping

4. No stage of the authorised development shall commence until a written landscaping scheme for that stage has been submitted to and approved by the relevant planning authority. The submitted scheme shall reflect the mitigation measures set out in Chapter 8, Specialist Report on Landscape and Visual impacts in Volume 3 of the Environmental Statement, with particular

reference to paragraphs 1.6.9 – 1.6.18 of the chapter. The landscape scheme shall include details of—

- (a) location, number, species, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) implementation timetables for all landscaping work;
- (d) temporary fencing to protect trees adjacent to the work
- (e) measures relating to the removal of rabbit protection provided for trees and shrubs and to the checking, adjusting and repairing of all stakes, ties, shelters and fencing used in accordance with the scheme; and
- (f) proposals to take account of the presence of trees with trunks of a diameter of 100 mm or more and to minimise the loss of such trees.

Implementation and maintenance of landscaping

5.—(1) All landscaping work shall be carried out in accordance with the scheme and implementation timetable approved under requirement 4.

(2) Any tree or shrub planted as part of an approved landscaping scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise approved by the relevant planning authority.

Highway access

6.—(1) No bulk fill material required for the construction of the railway embankment on the south-east side of the River Gipping (chainage 12250 – 12550), forming part of Work No. 1, which requires access from Hadleigh Road shall be brought to site until the PCCL access improvements have been constructed (whether or not by Network Rail) to the satisfaction of the relevant planning authority and to Network Rail’s reasonable satisfaction to such standard (which may be less than final completion) as is sufficient to comply with the planning permission for so long as the road is being used (whether or not by Network Rail) for construction purposes.

(2) In this requirement, “the PCCL access improvements” means the new estate road and junction with Hadleigh Road inclusive of bridge containment works in accordance with the planning permission; and “the planning permission” means the grant of planning permission by Ipswich Borough Council no. IP/11/00120/FUL dated 13 April 2011.

Archaeology

7.—(1) No stage of the authorised development shall commence until for that stage a written scheme for the investigation of areas of archaeological interest identified at paragraph 12.8.1 of the Environmental Statement has been submitted to and approved by the relevant planning authority.

(2) The scheme shall identify areas where fieldwork and/or a watching brief are required and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) Any archaeological works or watching brief carried out under the scheme must be by a suitably qualified person or body approved by the relevant planning authority.

(4) Any archaeological works or watching brief must be carried out in accordance with the approved scheme.

Contract Requirements-Environment

8.—(1) The development shall be carried out in accordance with the CR-E or as otherwise amended and with the written agreement of the relevant planning authority. The mitigation

measures set out in the Environmental Statement shall be reflected in preparing any plan required by the CR-E.

- (2) The Mandatory Requirements set out in section 5 of the CR-E in respect of—
- (a) 5.10 External Communications programme;
 - (b) 5.13 Pollution Incident Control Plan (which shall include prior consideration of the potential sources of pollution and how they might be prevented, paying particular attention to the potential pollution impacts of the works on the River Gipping and sub-surface controlled waters and how they might be prevented); and
 - (c) 5.17 Waste Management Plan (which shall be prepared in accordance with the Site Waste Management Plans Regulations 2008)(a)

must be submitted to and approved by the relevant planning authority.

(3) The Pollution Incident Control Plan required under section 5.13 of the CR-E shall include the minimum measures set out in section 7 of the Statement of Common Ground between Network Rail, the Environment Agency and Natural England dated 9 January 2012 on the minimum measures required for a pollution incident control plan and submitted to the Examining authority in connection with examination of the application for this Order

(4) The following matters set out in Section 6, ‘Particular Environmental Requirements’ of the CR-E shall be mandatory—

- (a) 6.2 Environmental Design Management Plan;
- (b) 6.3 Traffic Management Plan;
- (c) 6.4 Noise & Vibration Management Plan;
- (d) 6.6 Dust;
- (e) 6.7 Air Pollution; and
- (f) 6.15 Lighting.

(5) The dust, air pollution and lighting mitigation measures required by the CR-E shall be incorporated into a Nuisance Management Plan. The Nuisance Management Plan and other plans required under section 6 of the CR-E must be submitted to and approved by the relevant planning authority.

(6) No stage of the authorised development shall be commenced until such of the plans or programmes required under sections 5.10, 5.13, 5.17, 6.2, 6.3, 6.4 of the CR-E and the Nuisance Management Plan, as relate to that stage of the development have been approved by the relevant planning authority and those plans or programmes shall be implemented as approved.

Restriction on access

9. The Traffic Management Plan to be prepared in accordance with requirement 8, as part of the CR-E, shall include a prohibition on access for the construction of the authorised development by HGVs from Hadleigh Road between the hours of 08.00 and 09.00 Monday to Friday.

Noise Mitigation Railway Cottages

10. Measures to mitigate the impact of idling engine noise from westbound freight trains held at signals as identified in the Environmental Statement at paragraph 1.6.10 of Volume 3 Report 6, Noise and Vibration Technical Report’ on Railway Cottages, Sproughton Road, to the standard provided under the Noise Insulation (Railways and other Guided Transport Systems) Regulations 1996(b), shall be submitted to the relevant planning authority for approval. The approved scheme shall be completed prior to the opening of the authorised development to rail traffic.

(a) S.I. 2008/314.

(b) S.I. 1996/428.

11.—(1) Proposals for the additional investigation of potential hotspots, implementation of mitigation measures and monitoring requirements identified in the Environmental Statement Volume 3 Specialist Technical Report 11 at paragraph 1.8 concerning existing land (and groundwater) quality, prevention of future contamination and materials management within the development shall be incorporated into the Environmental Design Management Plan required under the CR-E in accordance with requirement 8.

(2) In the event that previously unidentified contamination (to land and/or groundwater) is encountered whilst carrying out the authorised development, it shall be reported in writing immediately to the relevant planning authority and a risk assessment of the contamination completed in accordance with the Environment Agency’s ‘Model Procedures for the Management of Land Contamination, CLR 11’.

(3) Should localised remediation be required as a result of either identified or previously unidentified land and/or groundwater contamination, an Implementation Plan shall be submitted to and approved by the relevant planning authority, including a detailed description of the nature and method of implementation of the selected remedial options, and justification for the selection of those remedial options, in accordance with the Environment Agency’s ‘Model Procedures for the Management of Land Contamination, CLR 11’.

(4) On completion of the authorised development, the findings of any additional risk assessments and the details of any remedial works completed whilst carrying out the authorised development shall be submitted to and approved by the relevant planning authority within a Verification Report in accordance with the Environment Agency’s ‘Model Procedures for the Management of Land Contamination, CLR 11’.

Ecological Management Plan

12.—(1) No stage of the authorised development shall commence until for that stage a written ecological management plan reflecting the survey results and ecological mitigation and enhancement measures included in the environmental statement, in particular to accord with Table 1-J, ‘Proposed Mitigation During Construction’ in volume 3, Report 9 (Ecology Technical Report) of the Environmental Statement has been submitted to and approved by the relevant planning authority.

(2) The ecological management plan shall include an implementation timetable and must be carried out as approved.

Pedestrian/cycle access to River Gipping

13.—(1) If it is required as a condition of any planning permission for the development of the Harris Factory site that a foot and cycle path is provided linking Hadleigh Road and the river Gipping, Network Rail shall, following the implementation of such development, provide access under the embankment comprised in Work No. 1 for pedestrians and cyclists via the maintenance access road comprised in Work No. 4 and shall dedicate such access as a public right of way.

(2) The provision and dedication of such access is subject to such temporary closure as may be required from time to time in connection with the maintenance of the authorised development.

Finishes of bridges and graffiti

14. Details of the brickwork, sample of bricks and details of anti graffiti coatings in respect of the new railway bridge over Sproughton Road, the new railway bridge over the River Gipping and the reconstruction of bridge 404 over the River Gipping forming part of Work No. 1, shall be submitted to the relevant planning authority for approval. The construction of the three bridges shall be carried out in accordance with the approved details.

Alteration, reconstruction or replacement of buildings

15. No alteration, reconstruction or replacement of a building or bridge shall be carried out under article 6 (maintenance of authorised project) except in accordance with plans and specifications approved by the relevant planning authority.

Requirement for written approval

16. Where under any of the above requirements the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be given in writing.

Amendments to approved details

17. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority, the approved details shall be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority.

Street Lighting at Bridge 404

18.—(1) Before completing the reconstruction of bridge 404 over the River Gipping Network Rail shall, after consultation with the highway authority, submit to the relevant planning authority for approval a street lighting scheme for the footpath under bridge 404.

(2) Network Rail shall implement the approved street lighting scheme.

(3) Upon completion of the reconstruction of bridge 404, Network Rail shall transfer ownership of the installed lighting equipment to the highway authority.

Temporary cantilever footpath and cycleway

19.—(1) Subject to paragraph (2), Network Rail shall not stop up the footpath and cycleway on the north bank of the River Gipping until the temporary structure referred to in paragraph (j) of Part 1 of this Schedule (“the temporary structure”) is available for use by the public.

(2) Network Rail shall not be obliged to comply with paragraph (1) in circumstances where it considers that for reasons of health and safety compliance is not practically possible.

(3) Before submitting plans of the temporary structure to the Environment Agency in accordance with Part 3 of Schedule G, Network Rail shall consult the highway authority.

Riverside Cycle and Footpath

20. No stage of the authorised development shall be commenced until a scheme for the provision of such ramps as are necessary and within the order land to traverse the flood wall by bicycle and on foot has been submitted to and approved in writing by the relevant planning authority and the Environment Agency, including the specification of the time from which the ramps shall be made available for public use in perpetuity.

Ramps

21. No ramps of any kind shall be constructed on the land numbered 68 and 69 on the Land Plans.

SCHEDULE 2

Article 9

STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street works</i>
County of Suffolk, districts of Ipswich and Babergh	Sproughton Road
County of Suffolk, district of Ipswich	Footpath/cycleway (possible right of way) on north-west bank of River Gipping
County of Suffolk, district of Ipswich	Hadleigh Road

SCHEDULE 3

Article 11

STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
County of Suffolk, district of Ipswich	Europa Way	Highway verge within Order limits between points A and B
County of Suffolk, district of Ipswich and Babergh	Sproughton Road	Between points C and D
County of Suffolk, district of Ipswich	Footpath/cycleway (possible right of way) on north-west bank of River Gipping	Between points E and F and between points G and H

SCHEDULE 4

Article 18(2)

LAND IN WHICH ONLY NEW RIGHTS ETC., MAY BE ACQUIRED

<i>(1)</i> <i>Number of land shown on land plans</i>	<i>(2)</i> <i>Purpose for which rights may be acquired</i>
33	Access for construction and maintenance of the authorised project.
44a, 45a, 46, 47, 50	Access for construction of the authorised project, regulating access over the land and installation of temporary barriers and equipment for this purpose during the construction period, and thereafter access for maintenance.

**MODIFICATION OF COMPENSATION AND COMPULSORY
PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS
AND IMPOSITION OF RESTRICTIVE COVENANTS**

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land shall apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition under this Order of a restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973(a) shall have effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken” there shall be substituted the words “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” there shall be substituted the words “over which the right is exercisable or the restrictive covenant enforceable”.

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

- (a) for the word “part” in paragraphs (a) and (b) there shall be substituted the words “a right over or restrictive covenant affecting land consisting”;
- (b) for the word “severance” there shall be substituted the words “right or restrictive covenant over or affecting the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there shall be substituted the words “right or restrictive covenant proposed”; and
- (d) for the words “part is” there shall be substituted the words “right or restrictive covenant is”.

Application of the 1965 Act

3.—(1) The 1965 Act shall have effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(2) Without prejudice to the generality of sub-paragraph (1), Part 1 of the 1965 Act shall apply in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation) there shall be substituted the following section—

(a) 1973 c.26.

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

5. For section 8 of the 1965 Act (provisions as to divided land) there shall be substituted the following section—

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

(a) a question of disputed compensation in respect of the purchase of the right or the imposition of the restrictive covenant would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and

(b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—

(i) where that land consists of a house, building or manufactory, that the right cannot be purchased or the restrictive covenant imposed without material detriment to that land; or

(ii) where that land consists of such a park or garden, that the right cannot be purchased or the restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs,

the [Network Rail (Ipswich Chord)] Order 201[(a) (“the Order”) shall, in relation to that person, cease to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice shall be deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section shall be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”.

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

(a) section 9(4) (failure by owners to convey);

(b) paragraph 10(3) of Schedule 1 (owners under incapacity);

(a) S.I. 201[X].

- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land);

shall be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

7. Section 11 of the 1965 Act (powers of entry) shall be so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act shall be modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) shall apply with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

9. Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) shall be so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 6

Article 23

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> Area	<i>(2)</i> Number of land shown on land plans	<i>(3)</i> Purpose for which temporary possession may be taken	<i>(4)</i> Relevant part of the authorised project
County of Suffolk, district of Ipswich	1	Land use: Worksite	Works Nos. 1 to 4
County of Suffolk, district of Ipswich	5, 7, 9, 9a	Land use: Worksite and access for construction of the authorised project	Works Nos. 1 to 3
County of Suffolk, district of Babergh	14, 15 and 16	Land use: Worksite and construction Permanent Works: Diverted utility apparatus	Works No. 1 (Sroughton Road bridge)
County of Suffolk, district of Ipswich	20, 20a, 22, 24, 26, 27 and 31	Land use: Worksite and access for construction of the authorised project	Works Nos. 1 to 3
County of Suffolk, district of Ipswich	35	Land use: Worksite, access for construction of the authorised project and construction	Works Nos. 1 to 3

(1) Area	(2) Number of land shown on land plans	(3) Purpose for which temporary possession may be taken	(4) Relevant part of the authorised project
County of Suffolk, district of Ipswich	38	Permanent Works: Underpinning Land use: Worksite and construction	Works Nos. 1 to 3
County of Suffolk, district of Ipswich	39	Permanent Works: Works to block-up existing sewer outfall, to raise level of land and to alter guardrail heights	Works Nos. 1 to 3
County of Suffolk, district of Ipswich	40	Land use: Worksite	Works No. 1
County of Suffolk, district of Ipswich	41	Land use: Worksite and construction	Works Nos. 1 and 3
County of Suffolk, district of Ipswich	42, 44, 44b, 45	Permanent Works: Works Nos. 1, 2 and 3 Land use: Worksite and access for construction of the authorised project	Works Nos. 1 and 4
County of Suffolk, district of Ipswich	49, 51 and 55	Land use: Worksite and access for construction of the authorised project	Works Nos. 1 and 4
County of Suffolk, district of Ipswich	53 and 54	Land use: Worksite and construction Permanent Works: Environmental mitigation	Works Nos. 1 and 4
County of Suffolk, district of Ipswich	57, 58, 61, 62, 63, 64, 65a, 68, 69, 71, 73, 72, 76 and 77	Land use: Worksite and access for construction of the authorised project	Works No. 1

PROTECTIVE PROVISIONS

PART 1

PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the undertakers referred to in this part of this Schedule the following provisions shall, unless otherwise agreed in writing between Network Rail and the undertaker concerned, have effect.

2. In this part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the undertaker under the Water Industry Act 1991(b); and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

“undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(c);
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991, for the area of the authorised development, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

(a) 1989 c. 29.

(b) 1991 c. 56.

(c) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

3. This part of this Schedule does not apply to apparatus in respect of which the relations between Network Rail and the undertaker are regulated by the provisions of Part 3 of the 1991 Act.

4. Regardless of any provision in this Order or anything shown on the land plans, Network Rail shall not acquire any apparatus otherwise than by agreement.

5.—(1) If, in the exercise of the powers conferred by this Order, Network Rail acquires any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this part of this Schedule and any right of an undertaker to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, Network Rail requires the removal of any apparatus placed in that land, it shall give to the undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus) Network Rail shall, subject to sub-paragraph (3), afford to the undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of Network Rail and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of Network Rail, or Network Rail is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the undertaker in question shall, on receipt of a written notice to that effect from Network Rail, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of Network Rail under this part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and Network Rail or in default of agreement settled by arbitration in accordance with article 34 (arbitration).

(5) The undertaker in question shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 34, and after the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by Network Rail to be removed under the provisions of this part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if Network Rail gives notice in writing to the undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of Network Rail, that work, instead of being executed by the undertaker, shall be executed by Network Rail without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the undertaker.

(7) Nothing in sub-paragraph (6) shall authorise Network Rail to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

6.—(1) Where, in accordance with the provisions of this part of this Schedule, Network Rail affords to an undertaker facilities and rights for the construction and maintenance in land of Network Rail of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between Network Rail and the undertaker in question or in default of agreement settled by arbitration in accordance with article 34 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along any railway of Network Rail, the arbitrator shall—

- (a) give effect to all reasonable requirements of Network Rail for ensuring the safety and efficient operation of the railway and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of Network Rail or the traffic on the railway; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the railway for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by Network Rail in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator shall make such provision for the payment of compensation by Network Rail to that undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

7.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by Network Rail under paragraph 5(2), Network Rail shall submit to the undertaker in question a plan, section and description of the works to be executed.

(2) Those works shall be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the undertaker shall be entitled to watch and inspect the execution of those works.

(3) Any requirements made by an undertaker under sub-paragraph (2) shall be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If an undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by Network Rail, reasonably requires the removal of any apparatus and gives written notice to Network Rail of that requirement, paragraphs 1 to 6 shall apply as if the removal of the apparatus had been required by Network Rail under paragraph 5(2).

(5) Nothing in this paragraph shall preclude Network Rail from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan, section and description.

(6) Network Rail shall not be required to comply with sub-paragraph (1) in a case of emergency but in that case it shall give to the undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and shall comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

8.—(1) Subject to the following provisions of this paragraph, Network Rail shall repay to an undertaker the reasonable expenses incurred by that undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2).

(2) There shall be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by Network Rail or, in default of agreement, is not determined by arbitration in accordance with article 34 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the undertaker in question by virtue of sub-paragraph (1) shall be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works by virtue of sub-paragraph (1) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 5(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of an undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any undertaker, Network Rail shall—

- (a) bear and pay the cost reasonably incurred by that undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) shall impose any liability on Network Rail with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an undertaker, its officers, servants, contractors or agents.

(3) An undertaker shall give Network Rail reasonable notice of any such claim or demand and no settlement or compromise shall be made without the consent of Network Rail which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

10. Nothing in this part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between Network Rail and an undertaker in respect of any apparatus laid or erected in land belonging to Network Rail on the date on which this Order is made.

PART 2

PROTECTION FOR OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

1.—(1) For the protection of any operator, the following provisions shall, unless otherwise agreed in writing between Network Rail and the operator, have effect.

(2) In this part of this Schedule—

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system shall be construed in accordance with paragraph 1(3A) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(a);

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

2. The exercise of the powers of article 24 (statutory undertakers) are subject to paragraph 23 of Schedule 2 to the Telecommunications Act 1984(b).

3.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or their construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works, or other property of an operator); or
- (b) there is any interruption in the supply of the service provided by an operator, Network Rail shall bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and shall—
 - (i) make reasonable compensation to an operator for loss sustained by it; and
 - (ii) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) shall impose any liability on Network Rail with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator shall give Network Rail reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand shall be made without the consent of Network Rail which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between Network Rail and the operator under this paragraph shall be referred to and settled by arbitration under article 34 (arbitration).

4. This part of this Schedule shall not apply to—

- (a) any apparatus in respect of which the relations between Network Rail and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

(a) See section 106.

(b) 1984 c.12.

5. Nothing in this part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between Network Rail and an operator in respect of any apparatus laid or erected in land belonging to Network Rail on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

1.—(1) The following provisions shall apply for the protection of the Agency unless otherwise agreed in writing between Network Rail and the Agency.

(2) In this part of this Schedule—

“the Agency” means the Environment Agency;

“construction” includes execution, placing, altering, replacing, relaying and removal and “construct” and “constructed” shall be construed accordingly;

“drainage work” means any watercourse and includes any land which provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring and any ancillary works constructed as a consequence of works carried out for drainage purposes;

“the fishery” means any waters containing fish and fish in such waters and the spawn, habitat or food of such fish;

“plans” includes sections, drawings, specifications and method statements;

“specified work” means the temporary structure set out at (j) in Schedule A Part 1 of this Order and so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a drainage work or is otherwise likely to—

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
- (c) cause obstruction to the free passage of fish or damage to any fishery; or
- (d) affect the conservation, distribution or use of water resources; and

“watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer.

2.—(1) Before beginning to construct any specified work, Network Rail shall submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably require.

(2) Any such specified work shall not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 12.

(3) Any approval of the Agency required under this paragraph—

- (a) shall not be unreasonably withheld or delayed;
- (b) shall be deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been required by the Agency for approval and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and
- (c) may be given subject to such reasonable requirements as the Agency may make for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) The Agency shall use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

3.—(1) Without prejudice to the generality of paragraph 2, but subject always to the provisions of that paragraph as to reasonableness, the requirements which the Agency may make under that paragraph include conditions requiring Network Rail at its own expense to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

4.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 3, shall be constructed—

- (a) with all reasonable despatch in accordance with the plans approved or deemed to have been approved or settled under this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

and the Agency shall be entitled by its officer to watch and inspect the construction of such works.

(2) Network Rail shall give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency shall reasonably require, Network Rail shall construct all or part of the protective works so that they are in place prior to the construction of any specific work.

(4) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this part of this Schedule, the Agency may by notice in writing require Network Rail at Network Rail's own expense to comply with the requirements of this part of this Schedule or (if Network Rail so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(5) Subject to sub-paragraph (6) and paragraph 8, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served upon Network Rail, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure incurred by it in so doing shall be recoverable from Network Rail.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency shall not except in emergency exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined.

5.—(1) Subject to sub-paragraph (5) Network Rail shall from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by Network Rail for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which Network Rail is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require Network Rail to repair and restore the work, or any part of such work, or (if Network Rail so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to paragraph 8, if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2)

on Network Rail, Network Rail has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from Network Rail.

(4) If there is any failure by Network Rail to obtain consents or comply with conditions imposed by the Agency in accordance with this Part of this Schedule the Agency may serve written notice requiring Network Rail to cease all or any part of the specified works and Network Rail shall cease the specified works or part thereof until it has obtained the consent or complied with the condition unless the cessation of the specified works or part thereof would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency shall not except in a case of emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

(6) This paragraph does not apply to—

- (a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not prescribed by the powers of the Order from doing so; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this part of this Schedule.

6. Subject to paragraph 8, if by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage shall be made good by Network Rail to the reasonable satisfaction of the Agency and if Network Rail fails to do so, the Agency may make good the same and recover from Network Rail the expense reasonably incurred by it in so doing.

7.—(1) Network Rail shall take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on Network Rail requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) Subject to paragraph 8, if within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, Network Rail fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from Network Rail the expense reasonably incurred by it in doing so.

(4) Subject to paragraph 8, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from Network Rail the reasonable cost of so doing provided that notice specifying those steps is served on Network Rail as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice

8.—(1) Nothing in paragraphs 4(5), 5(3), 6, 7(3) and (4) shall authorise the Agency to execute works on or affecting an operational railway forming part of Network Rail's network without the prior consent in writing of Network Rail such consent not to be unreasonably withheld or delayed.

(2) Consent under paragraph (1) shall not be unreasonably withheld or delayed and Network Rail shall be deemed to have given its consent if it has not refused consent within 2 calendar months of a written request by the Agency.

9. Network Rail shall indemnify the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—

- (a) in the examination or approval of plans under this part of this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this part of this Schedule;
- (c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

10.—(1) Without prejudice to the other provisions of this part of this Schedule, Network Rail shall indemnify the Agency from all claims, demands, proceedings, costs, damages, expenses or loss, which may be made or taken against, recovered from, or incurred by, the Agency by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any damage to the fishery;
- (c) any raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourses;
- (d) any flooding or increased flooding of any such lands, or
- (e) inadequate water quality in any watercourse or other surface waters or in any groundwater,

which is caused by the construction of any of the specified works or any act or omission of Network Rail, its contractors, agents or employees whilst engaged upon the work.

(2) The Agency shall give to Network Rail reasonable notice of any such claim or demand and no settlement or compromise shall be made without the agreement of Network Rail which agreement shall not be unreasonably withheld or delayed.

11. The fact that any work or thing has been executed or done by Network Rail in accordance with a plan approved or deemed to be approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not relieve Network Rail from any liability under the provisions of this part of this Schedule.

12. Any dispute arising between Network Rail and the Agency under this part of this Schedule shall, if the parties agree, be determined by arbitration under article 34 (arbitration), but shall otherwise be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport acting jointly on a reference to them by Network Rail or the Agency, after notice in writing by one to the other.

PART 4

FOR THE PROTECTION OF HUTCHINSON PORTS (UK) LIMITED AND THE FLEXISTOWE DOCK AND RAILWAY COMPANY

1.—(1) The following provisions shall apply for the protection of the Felixstowe operator, unless otherwise agreed in writing between Network Rail and the Felixstowe Dock and Railway Company.

(2) In this part of this Schedule—

“access agreement” has the same meaning as section 83(1) of the Railways Act 1993^(a);

“the Felixstowe operator” means Hutchison Ports (UK) Limited and the Felixstowe Dock and Railway Company; and

^(a) 1993 c. 43.

“Network Code” means the common set of rules and industry procedures, regulated by the Office of Rail Regulation, that apply to all parties who have a contractual right of access to the network owned and operated by Network Rail as having effect from time to time, and includes any document (whatever called) that replaces the Network Code.

2. At the same time as Network Rail consults persons with an access agreement in accordance with its obligations under Part D of the Network Code, Network Rail shall consult the Felixstowe operator in writing about the timetable for Network Rail’s taking possession of the East Suffolk Line railway for the purposes of this Order.

3. At the same time as Network Rail consults persons with an access agreement in accordance with its obligations under Part G of the Network Code, Network Rail shall consult the Felixstowe operator in writing about any proposal by Network Rail that will impose a speed restriction on the East Suffolk Line between East Suffolk Junction and Westfield Junction.

4. As part of the consultation under paragraph 2 Network Rail shall provide the Felixstowe operator with written particulars of the proposed timetable.

5. As part of the consultation under paragraph 3 Network Rail shall provide the Felixstowe operator with written particulars of the proposed speed restriction.

6. Each initial written approach to the Felixstowe operator under paragraph 2 or paragraph 3 shall specify the latest date by which the Felixstowe operator is required to respond.

7. Network Rail shall have regard to any response to the consultation from the Felixstowe operator which is received in writing on or before the date specified in accordance with paragraph 6, or such later date as may be agreed in writing between the parties.

8. For the purposes of this part of this Schedule any written document sent by Network Rail to the Felixstowe operator under this part of this Schedule shall be duly sent to both Hutchison Ports (UK) Limited and the Felixstowe Dock and Railway Company if it is addressed to either or both those companies at the registered office of either of those companies or such other address as either company may have specified to Network Rail.

PART 5

FOR THE PROTECTION OF NATIONAL HEALTH SERVICE BLOOD AND TRANSPLANT

1.—(1) The following provisions shall apply for the protection of NHSBT, unless otherwise agreed in writing between Network Rail and National Health Service Blood and Transplant.

(2) In this part of this Schedule—

“NHSBT” means National Health Service Blood and Transplant acting in exercise of its statutory functions;

“NHSBT parking spaces” means six car parking spaces for the use of NHSBT during any period when, due to Network Rail’s exercise of the powers of this Order, NHSBT does not have the uninterrupted use of plot 58; and

“plot 58” means the land shown numbered 58 on the land plans.

(3) No works shall be commenced within plot 58 until—

(a) details of the provision for NHSBT parking spaces have been submitted to and approved by the relevant planning authority; and

(b) Network Rail has made the NHSBT parking spaces available to NHSBT in accordance with the approved details.

(4) Network Rail shall continue to make the NHSBT parking spaces available to NHSBT for any period during which, due to Network Rail’s exercise of the powers of this Order, NHSBT does not have the uninterrupted use of plot 58.

APPENDIX A – THE EXAMINATION

The table below lists the main 'events' occurring during the examination and the main procedural decisions taken by the Panel.

Date	Examination Event
9 November 2011	Preliminary Meeting
15 November 2011	Notice by Examining Authority (ExA) of procedural decision including confirmation of the examination timetable and written questions from the ExA under Rule 8 of the Infrastructure Planning (Examination Procedure) Rules 2010
21 November 2011	Notice by ExA of site inspection in the company of Interested Parties under Rule 16 of the Infrastructure Planning (Examination Procedure) Rules 2010
6 December 2011	ExA's site inspection in the company of Interested Parties
8 December 2011	Deadline for receipt by the ExA of: <ul style="list-style-type: none"> • Written representations • Responses to written questions
9 January 2012	Deadline for receipt by ExA of: <ul style="list-style-type: none"> • Statements of Common Ground • Local Impact Report(s) • Written comments on responses to ExA's written questions • Written comments on Relevant Representations • Written comments on Written representations • Notification of wish to make oral representations at any Open-floor, Compulsory acquisition or Issue specific hearings
13 January 2012	Notice by ExA of: <ul style="list-style-type: none"> • Requests for further information and written comments under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010

- Hearings under Rule 13 of the Infrastructure Planning (Examination Procedure) Rules 2010
- Extension to deadline for written comments on Written representation submitted by the Environment Agency.

6 February 2012	<p>Deadline for receipt by ExA of:</p> <ul style="list-style-type: none"> • Written comments on Statements of Common Ground • Written comments on any Local Impact Report(s) • Written responses to ExA's requests for further information and written comments • Written comments on the Written Representation submitted by the Environment Agency.
14 February 2012 (am)	Open-floor hearing
14 February 2012 (pm)	Issue specific hearing on draft Development Consent Order (DCO); Order plans; drawings and documents (Session 1)
15 February 2012	Issue specific hearing on draft DCO; Order plans; drawings and documents (Session 2)
21 February 2012	Compulsory acquisition hearing (Session 1)
22 February 2012	Compulsory acquisition hearing (Session 2)
29 February 2012	<p>Deadline for receipt by ExA of:</p> <ul style="list-style-type: none"> • Written comments on responses to ExA's requests for further information and written comments • Any written summary of any case put forward at any hearing
2 March 2012	Notice of ExA's requests for further information and written comments under Rules 17 and 8(1)(k) of the Infrastructure Planning (Examination Procedure) Rules 2010 inviting final comments on the draft DCO
13 March 2012	Deadline for receipt by ExA of final comments on the draft DCO

22 March 2012

Notification by ExA of completion of the examination

APPENDIX B – LIST OF THOSE MAKING REPRESENTATIONS AT HEARINGS

Open-floor Hearing

14 February 2012 (am) – Open-floor hearing

Name	Organisation
Francis Robert Beaumont	n/a
Jane Stanbridge	DLA Piper representing Felixtowe Dock & Railway Company and Hutchison Ports (UK) Ltd
Alison Gorlov	Winckworth Sherwood representing Network Rail

Issue Specific Hearings

14 February 2012 (pm) – Issue specific hearing on draft Development Consent Order (DCO); Order plans; drawings and documents (Session 1)

Colin Murphy	Network Rail
Jim Pearson	Network Rail
Alison Gorlov	Winckworth Sherwood representing Network Rail
Lisa Chandler	Ipswich Borough Council
Andrew Newcombe QC	Network Rail
Anita Seymour	Suffolk County Council
Richard Andrews	Network Rail
Steve Kerr	Suffolk County Council
Andrew Hunter	The Environment Agency
David Baker	Peter Colby Commercials Limited
Paul Irving	Winckworth Sherwood representing Network Rail

15 February 2012 – Issue specific hearing on draft Development Consent Order (DCO); Order plans; drawings and documents (Session 2)

Andrew Cann	Felixtowe Dock & Railway Company and Hutchison Ports (UK) Ltd
Leyton Davies	Network Rail
Lisa Chandler	Ipswich Borough Council
Andrew Hunter	The Environment Agency
Alison Gorlov	Winckworth Sherwood representing Network Rail
Andrew Newcombe QC	Network Rail
Jim Pearson	Network Rail

Compulsory Acquisition Hearings

21 February 2012 – Compulsory acquisition hearing (Session 1)

Alison Gorlov	Winckworth Sherwood representing Network Rail
Richard Andrews	Network Rail
Paul Freer	Lambert Smith Hampton representing NHS Blood and Transplant
Richard Bertram	Fenn Wright representing Omnicorp
Lisa Chandler	Ipswich Borough Council
Colin Murphy	Network Rail

22 February 2012 – Compulsory acquisition hearing (Session 2)

Alison Gorlov	Network Rail
Richard Bertram	Fenn Wright representing Omnicorp
Brian Bush	NHS Blood and Transplant
Paul Freer	Lambert Smith Hampton representing NHS Blood and Transplant
Megan Swift	NHS Blood and Transplant
Stefan Krcmar	Network Rail
Richard Andrews	Network Rail

APPENDIX C – EXAMINATION DOCUMENTS

Category and Doc Ref.	Title
Application Docs	
APP1	1.1 Network Rail (Ipswich Chord) Order - Application Documents List
APP2	1.2 Network Rail (Ipswich Chord) Order - Application Form
APP3	1.3 Network Rail (Ipswich Chord) Order - Copies of Newspaper Notices
APP4	2.2 Network Rail (Ipswich Chord) Order - Design Drawings
APP5	3.1 Network Rail (Ipswich Chord) Order - Consultation Report
APP6	3.3 Network Rail (Ipswich Chord) Order - Assessment of Effects on Nature Conservation Habitats Water Bodies etc
APP7	3.4 Network Rail (Ipswich Chord) Order - Assessment as to the Effects on Sites or Features of the Historic Environment
APP8	3.5 Network Rail (Ipswich Chord) Order - Statement relating to Statutory Nuisances
APP9	3.6 Network Rail (Ipswich Chord) Order - European Sites Appropriate Assessment Report
APP10	3.9 Network Rail (Ipswich Chord) Order - Planning Statement
APP11	3.10 Network Rail (Ipswich Chord) Order - Sproughton Road Bridge Architectural Design Statement
APP12	4.1 Network Rail (Ipswich Chord) Order - Environmental Statement Volume 2 Main Statement
APP13	4.2 Network Rail (Ipswich Chord) Order - Environmental Statement Volume 3 Technical Appendices Binder 1
APP14	4.2 Network Rail (Ipswich Chord) Order - Environmental Statement Volume 3 Technical Appendices Binder 2
APP15	4.2 Network Rail (Ipswich Chord) Order - Environmental Statement Volume 3 Technical Appendices Binder 3
APP16	4.2 Network Rail (Ipswich Chord) Order - Environmental Statement Volume 3 Technical Appendices Binder 4
APP17	4.2 Network Rail (Ipswich Chord) Order - Environmental Statement Volume 3 Technical Appendices Binder 5
APP18	4.3 Network Rail (Ipswich Chord) Order - Environmental Statement Volume 1 Non Technical Summary
APP19	4.4 Network Rail (Ipswich Chord) Order - Environmental Statement Volume 4 Figures
APP20	5.1 Network Rail (Ipswich Chord) Order - Draft Order
APP21	5.2 Network Rail (Ipswich Chord) Order - Explanatory Memorandum
APP22	5.3 Network Rail (Ipswich Chord) Order - Land Plans
APP23	5.4 Network Rail (Ipswich Chord) Order - Works Plans and Sections
APP24	6.1 Network Rail (Ipswich Chord) Order - Statement of Reasons
APP25	6.2 Network Rail (Ipswich Chord) Order - Funding Statement
APP26	6.3 Network Rail (Ipswich Chord) Order - Assessment of Need
APP27	6.4 Network Rail (Ipswich Chord) Order - Book of Reference

Relevant Representations

REP1	<u>Relevant Representation by Ms J Mourant</u>
REP2	<u>Relevant Representation by Gary Chisman on behalf of the Highways Agency</u>
REP3	<u>Relevant Representation by Instalcom on behalf of Global Crossing (UK) Telecommunications Ltd</u>
REP4	<u>Relevant Representation by Gary Pullan on behalf of Tendring District Council</u>
REP5	<u>Relevant Representation by Anita Seymour on behalf of Suffolk County Council</u>
REP6	<u>Relevant Representation by Suzanne Eagle on behalf of Claydon & Whitton Parish Council</u>
REP7	<u>Relevant Representation by David Chappell</u>
REP8	<u>Relevant Representation by Nick Dibben on behalf of Railfuture East Anglia Branch</u>
REP9	<u>Relevant Representation by Anthony Tottle</u>
REP10	<u>Relevant Representation by James Stewart-Evans on behalf of the Health Protection Agency</u>
REP11	<u>Relevant Representation by Nigel Brigham on behalf of Sustrans</u>
REP12	<u>Relevant Representation by Francis Robert Beaumont</u>
REP13	<u>Relevant Representation by David Baker on behalf of Peter Colby Commercials</u>
REP14	<u>Relevant Representation by Fenn Wright on behalf of Omnicorp Ltd</u>
REP15	<u>Relevant Representation by Fenn Wright on behalf of Global Self Drive</u>
REP16	<u>Relevant Representation by Mrs Lisa Chandler on behalf of Ipswich Borough Council</u>
REP17	<u>Relevant Representation by Julie Cocks on behalf of Flagship</u>
REP18	<u>Relevant Representation by Michael Christopher Meadows on behalf of Natural England</u>
REP19	<u>Relevant Representation by Paul Freer on behalf of National Health Service Blood & Transplant</u>
REP20	<u>Relevant Representation by Richard Guyatt on behalf of Freightliner Ltd</u>
REP21	<u>Relevant Representation by Bob Chamberlain on behalf of Suffolk Coastal District Council</u>
REP22	<u>Relevant Representation by Emmanuel Pitman on behalf of Nicoll & Smith</u>
REP23	<u>Relevant Representation by Andrew McGregor Hunter on behalf of the Environment Agency</u>
REP24	<u>Relevant Representation by Sacha Hollis on behalf of Eastern Power Networks PLC</u>
REP25	<u>Relevant Representation by Howard Bassford on behalf of Hutchison Ports (UK) Ltd</u>
REP26	<u>Relevant Representation by Natalie Blaken on behalf of the East of England Development Agency</u>
REP27	<u>Relevant Representation by Howard Bassford on behalf of Felixstowe</u>

- REP28 [Dock & Railway Company](#)
[Relevant Representation by Mr Matthew Clarke on behalf of the East of England Co-Operative Society](#)
- REP29 [Relevant Representation by Cllr. Carole Jones \(Ipswich Borough Council\)](#)
- REP30 [Relevant Representation by Simon Cook on behalf of Ceramic Tiles Ltd](#)

Written Representations

- REP31 [Letter to IPC from Sustrans 8/12/11](#)
- REP32 [Response to ExA's First Written Questions by Network Rail](#)
- REP33 [Written Representation by Ipswich Borough Council](#)
- REP34 [Written Representation by Suffolk County Council](#)
- REP35 [Written Representation by Cllr. Carole Jones](#)
- REP36 [Response to ExA's First Written Questions by Suffolk County Council & Ipswich Borough Council](#)
- REP37 [Response to ExA's First Written Questions by the Homes & Communities Agency](#)
- REP38 [Written Representation by DLA Piper \(UK\) Ltd on behalf of Hutchison Ports \(UK\) Ltd & Felixstowe Dock & Railway Company](#)
- REP39 [Written Representation by Bond Pearce LLP on behalf of Freightliner Ltd](#)
- REP40 [Written Representation by Fenn Wright on behalf of Global Car Hire](#)
- REP41 [Written Representation by Boyer Planning on behalf of East of the England Co-Operative Society](#)
- REP42 [Letter to IPC from Suffolk County Council 1/2/12](#)
- REP43 [Comments on Local Impact Report by Network Rail](#)
- REP44 [Email from Laoise Magennis on behalf of NERL Safeguarding](#)
- REP45 [Response to ExA's Request for Further Information by Network Rail](#)
- REP46 [Response to ExA's Request for Further Information by the Environment Agency](#)
- REP47 [Written Representation from GTC Engineering](#)
- REP48 [Email to IPC from Mr Francis Robert Beaumont 17/1/12](#)
- REP49 [Response to ExA's Request for Further Information by the Joint Nature Conservation Committee](#)
- REP50 [Response to ExA's Request for Further Information by Ipswich Borough Council](#)
- REP51 [Peter Colby Commercials Ltd submission regarding Issue Specific Hearing](#)
- REP52 [Network Rail submission at Issue Specific Hearing regarding amendments to DCO](#)
- REP53 [Network Rail submission at Issue Specific Hearing regarding Wheel Squeal](#)
- REP54 [Letter from IPC to Ms Clare Peck 17/2/12](#)
- REP55 [Letter to IPC from Ms Clare Peck 13/2/12](#)
- REP56 [Written Representation by Mr Francis Robert Beaumont](#)
- REP57 [National Health Service Blood & Transplant Submission at Compulsory Acquisition Hearing regarding Swept Path Analysis](#)

REP58	<u>Ipswich Borough Council submission at Issue Specific Hearing – Aerial Photo</u>
REP59	<u>Network Rail submission – Documents arising from Issue Specific Hearing</u>
REP60	<u>Network Rail submission arising from Issue Specific Hearing – Points agreed between NR and NHSBT</u>
REP61	<u>National Health Service Blood & Transplant Submission at Compulsory Acquisition Hearing</u>
REP62	<u>Network Rail & Peter Colby Commercials Ltd - Points to address at Compulsory Acquisition Hearing</u>
REP63	<u>Peter Colby Commercials Ltd - Agreed Statement</u>
REP64	<u>Boyer Planning on behalf of East of England Co-Operative Society comments arising from Compulsory Acquisition Hearing</u>
REP65	<u>Response to ExA's Request for Further Information post-Compulsory Acquisition Hearing by Network Rail</u>
REP66	<u>Letter to IPC from Baker Rose Consulting on behalf of Peter Colby Commercials Ltd 28/2/12</u>
REP67	<u>Ipswich Borough Council submission - Cycle Route Map</u>
REP68	<u>National Health Service Blood & Transplant Summary of Hearing Representations</u>
REP69	<u>Written Representation by DLA Piper (UK) Ltd on behalf of Hutchison Ports (UK) Ltd & Felixstowe Dock & Railway Company</u>
REP70	<u>Revision to proposed DCO from Network Rail</u>
REP71	<u>Revision to proposed DCO from Network Rail reflecting amendment from Peter Colby Commercials Ltd</u>
REP72	<u>Letter to IPC from Environment Agency 2/3/12</u>
REP73	<u>Letter to IPC from Clare Peck 7/3/12</u>
REP74	<u>National Health Service Blood & Transplant Submission at Compulsory Acquisition Hearing</u>
REP75	<u>Written Representation & Response to ExA's First Written Questions by Baker Rose Consulting on behalf of Peter Colby Commercials Ltd</u>
REP76	<u>Written Representation by Health & Safety Executive</u>
REP77	<u>Written Representation by National Health Service Blood & Transplant</u>
REP78	<u>Written Representation by East of England Development Agency</u>
REP79	<u>Response to ExA's First Written Questions by Natural England</u>
REP80	<u>Written Representation & Response to ExA's First Written Questions by Environment Agency</u>
REP81	<u>Written Representation by Emery Planning Partnership on behalf of Honeyview Investments Ltd</u>
REP82	<u>Written Representation by Mr Mark Read & Miss Emma Brinkley</u>
REP83	<u>Written Representation by Fenn Wright on behalf of Omnicorp</u>
REP84	<u>Response to ExA's First Written Questions & Draft Statement of Common Ground by Jones Lang Lasalle on behalf of Nicoll & Smith</u>
REP85	<u>Written Representation by Fenn Wright on behalf of Island Properties GB Ltd</u>

Comments on Written Representations; ExA's First Written Questions and final draft DCO

REP86	Network Rail comments on Relevant Representations, Written Representations & Responses to ExA's First Written Questions
REP87	DLA Piper (UK) Ltd on behalf of Hutchison Ports (UK) Ltd & Felixstowe Dock & Railway Company comments on Relevant Representations, Written Representations & Responses to ExA's First Written Questions
REP88	Peter Colby Commercials Ltd comments on final draft Development Consent Order
REP89	Highways Agency comments on final draft Development Consent Order
REP90	Suffolk County Council comments on final draft Development Consent Order
REP91	Network Rail comments on final draft Development Consent Order
REP92	Joint Nature Conservation Committee comments on final draft Development Consent Order
REP93	National Health Service Blood & Transplant comments on final draft Development Consent Order
REP94	Environment Agency comments on final draft Development Consent Order
REP95	Natural England comments on final draft Development Consent Order
REP96	Peter Colby Commercials Ltd comments on final draft Development Consent Order
REP97	DLA Piper (UK) Ltd on behalf of Hutchison Ports (UK) Ltd & Felixstowe Dock & Railway Company comments on final draft Development Consent Order
REP98	Network Rail response to Interested Parties' comments on final draft Development Consent Order
REP99	Peter Colby Commercials Ltd comments on Network Rail response to Interested Parties' comments on final draft Development Consent Order
REP100	Boyer Planning on behalf of East of England Co-Operative Society comments on Written Representations & Responses to ExA's First Written Questions
REP101	Fenn Wright on behalf of Omnicorp comments on Written Representations & Responses to ExA's First Written Questions

Local Impact Report & Statements of Common Ground

REP102	Statement of Common Ground between Peter Colby Commercials Ltd & Network Rail
REP103	Statement of Common Ground between Network Rail, Hutchison Ports (UK) Ltd, Felixstowe Dock & Railway Company Ltd & Freightliner Ltd
REP104	Local Impact Report produced by Ipswich Borough Council, Babergh District Council & Suffolk County Council

REP105	Note on progress of Statement of Common Ground between Peter Colby Commercials Ltd & Network Rail
REP106	Statement of Common Ground between Network Rail & Local Authorities
REP107	Statement of Common Ground between Network Rail & Nicoll & Smith
REP108	Statement of Common Ground between Network Rail & the Homes & Communities Agency
REP109	Statement of Common Ground between Network Rail, Natural England & the Environment Agency

Adequacy of Consultation Representations

REP110	Adequacy of Consultation response from Great Yarmouth Borough Council
REP111	Adequacy of Consultation response from Ipswich Borough Council
REP112	Adequacy of Consultation response from Essex County Council
REP113	Adequacy of Consultation response from Suffolk County Council
REP114	Adequacy of Consultation response from Broads Authority
REP115	Adequacy of Consultation response from Broads Authority

Project Documents

PD1	IPC letter to Winckworth Sherwood 25/5/11
PD2	Winckworth Sherwood submission of certificates under s.56 & s.59 of the Planning Act 2008 & regulation 13 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009
PD3	IPC Scoping Opinion
PD4	Late responses to IPC Scoping Consultation
PD5	Audio recording of Preliminary Meeting
PD5a	Note of the Preliminary Meeting
PD6	IPC 'Acceptance Checklist' under s.55 of the Planning Act 2008
PD7	Poster for IPC Outreach Event on 23/8/11
PD8	Ipswich Rail Chord Examination Timetable
PD9	Notice Publicising Hearings
PD10	Compulsory Acquisition Hearing Agenda
PD11	Issue Specific & Open Floor Hearing Agendas
PD12	Draft Development Consent Order for Consultation
PD13	House of Commons Hansard Debates for 3 Jun 2003 (pt 2)
PD14	Planning Policy Guidance 13: Transport referred to by ExA during Examination Hearings
PD15	Notification of decision to accept application under s.55 of the Planning Act 2008
PD16	Notification of the availability of relevant representations and of the Preliminary Meeting under rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010
PD17	Notification of procedural decisions made at and following the Preliminary Meeting under rule 8 of the Infrastructure Planning

PD18	<u>(Examination Procedure) Rules 2010</u> <u>Notification of arrangements for accompanied site inspection under rule 16 of the Infrastructure Planning (Examination Procedure) Rules 2010</u>
PD19	<u>ExA's request for Further Information and Written Comments under rule 17 & notification of Hearings under rule 13 of the Infrastructure Planning (Examination Procedure) Rules 2010</u>
PD20	<u>ExA's request for Written Comments on final draft Development Consent Order</u>
PD21	<u>Notification of Close of Examination under s99 of the Planning Act 2008</u>
PD22	<u>Audio recording of Compulsory Acquisition Hearing (Part 1)</u>
PD23	<u>Audio recording of Compulsory Acquisition Hearing (Part 2)</u>
PD24	<u>Compulsory Acquisition Hearing Note</u>
PD25	<u>Audio recording of Issue Specific Hearing (Part 1)</u>
PD26	<u>Audio recording of Issue Specific Hearing (Part 2)</u>
PD27	<u>Audio recording of Issue Specific Hearing (Part 3)</u>
PD28	<u>Audio recording of Issue Specific Hearing (Part 4)</u>
PD29	<u>Issue Specific Hearing Note</u>
PD30	<u>Audio recording of Open Floor Hearing</u>
PD31	<u>Open Floor Hearing Note</u>
PD32	<u>East of England Plan - Revision to the RSS, May 2008</u>
PD33	<u>Babergh Local Plan Alteration No. 2, June 2006</u>
PD34	<u>Delivering a Sustainable Railway, DfT, July 2007</u>
PD35	<u>Ipswich Local Plan (saved policies), Nov 1997</u>
PD36	<u>Ipswich Local Plan Deposit Draft, Nov 2001</u>
PD37	<u>Ipswich Core Strategy, Dec 2011</u>
PD38	<u>Suffolk Local Transport Plan 2011-2031</u>
PD39	<u>Suffolk County Council Rights of Way Improvement Plan, 2006-16</u>
PD40	<u>National Planning Policy Framework, DCLG, March 2012</u>
PD41	<u>Sustrans Online Map</u>

APPENDIX D – ABBREVIATIONS

DCO	Development Consent Order
dB	Decibel
EA	Environment Agency
ECML	East Coast Mainline
EECS	East of England Co-operative Society
EEDA	East of England Development Agency
ES	Environmental Statement
ExA	Examining authority
FDRC	Felixstowe Dock and Railway Company
FSR	Felixstowe South Reconfiguration
ha	Hectare
HCA	Homes and Communities Agency
HPUK	Hutchison Ports (UK) Limited
IPC	Infrastructure Planning Commission
JNCC	Joint Nature Conservation Committee
LIR	Local Impact Report
NE	Natural England
NHSBT	National Health Service Blood and Transplant
NPPF	National Planning Policy Framework, the Framework
NSIP	Nationally Significant Infrastructure Project
PCCL	Peter Colby Commercials Limited
PICP	Pollution Incident Control Plan
RUS	Route Utilisation Strategy
SFN	Strategic Freight Network
SNCB	Statutory Nature Conservation Body
SOCG	Statement of Common Ground
SPA	Special Protection Area
SSSI	Site of Special Scientific Interest

APPENDIX E - HABITATS REGULATIONS ASSESSMENT (HRA) FRAMEWORK

Executive summary

- The proposed development, comprising the construction and operation of a 1,415m long railway (known as “the Ipswich Chord”), is located within an industrial estate to the north of Ipswich Goods Yard, approximately 2km to the west of Ipswich town centre in Suffolk.
- The chord would link the Great Eastern Main and East Suffolk Lines requiring the construction of a new rail embankment across the Former Harris Factory Site. This will involve the widening of some existing rail embankments and creation and replacement of rail bridges over the River Gipping.
- The “Report as to Effects on European Sites” (Document Ref: 3.6) submitted with the application for a development consent order (DCO), identifies European sites potentially affected by the proposed development and makes an assessment of potential impacts on these sites.
- The development site adjoins the River Gipping which is hydrologically connected with the Stour and Orwell Estuaries Special Protection Area (SPA) and Ramsar site (the European site). The HRA Report identifies the Stour and Orwell Estuaries as the only feature of international importance that could be affected by the scheme. Appendix 2 of the HRA Report: The Habitats Regulations Assessment Screening Report (Document Ref: 4.2) (the Screening Report), concludes that there is no likely significant effect on the European site.
- Natural England has confirmed that it is content with the conclusions of the HRA Screening Report, providing that measures are in place to prevent a water pollution incident reaching the international site.
- On the request of the Examining authority (ExA), the applicant submitted a Statement of Common Ground (SoCG) with Natural England (NE) and the Environment Agency (EA) agreeing a minimum set of measures required to prevent a water pollution incident affecting the European site, and to monitor and manage pollution risks. These will be delivered through the Pollution Incident Control Plan (PICP).
- Requirement 8 of the draft Development Consent Order (DCO) (Document ref: 5.1), has been expanded by the Examining authority to require that the Pollution Incident Control Plan must include the measures agreed in the Statement of Common Ground.
- On the basis of the information provided by the applicant, including Natural England’s response to consultation on the HRA Screening Report and the Statement of Common Ground agreeing pollution control measures, the Examining authority has concluded that

significant effects on the European site can be excluded on the basis of objective evidence.

- No reasons were therefore identified at this stage, for refusing to make the DCO as attached to this report, on the grounds of protection of the Stour and Orwell Estuaries Special Protection Area and Ramsar site.

A. HABITATS REGULATIONS ASSESSMENT

The Habitats Regulations require competent authorities to carry out a Habitats Regulations Appraisal in circumstances where a project has the potential to affect a European site (a Natura 2000 site). Habitats Regulations Assessment (HRA) refers to the whole process, including the screening and appropriate assessment steps. Appropriate assessment is required when a project affecting a European site:

- Is not directly connected with or necessary to the management of the site for nature conservation, and
- Is likely to have a significant effect on the integrity of the site (either alone or in combination with other plans or projects).

B. SCREENING

A Screening Report (Document Ref: 4.2) is included at Appendix 2 of the "Report as to Effects on European Sites" (Document Ref: 3.6), submitted with the application.

The Screening Report states that the project is not directly connected with, or necessary to, the management of any of the European sites (see Paragraph 4.1.1).

The HRA Report states that the "HRA screening can conclude beyond reasonable doubt that no significant effects on the European Site (Stour and Orwell Estuaries SPA & Ramsar) are likely to occur". It also states that preventative measures will be used during construction to reduce the likelihood of a pollution event occurring, and of the pollution reaching the River Gipping which is connected to the European site.

Site Location

The proposed Ipswich Chord development is located approximately 2km to the west of Ipswich town centre in Suffolk, on land within an industrial estate and on and in proximity to the existing Network Rail track. The proposed chord line's centre is at Grid Reference 614264, 244951.

The site adjoins the River Gipping which is hydrologically connected to the Stour and Orwell Estuaries SPA and Ramsar site, located approximately 3.7km to the south-east at its closest point, or 5km downstream if following the course of the River Gipping.

Figure 2 of Appendix C of the HRA Screening Report (Appendix 2 of the 'HRA report') provides a plan showing the relative position of the European site in relation to the proposed development.

Description of the Development

Section 3 of the Screening Report summarises the main components of the proposed development as:

- A new rail embankment curve across the Former Harris Factory Site to link the Great Eastern Main Line and the East Suffolk Line;
- Widening of existing Great Eastern Main Line rail embankment between Europa Way Site 2 and the River Gipping to accommodate the extra tracks for the new embankment curve;
- New retaining wall to reinforce the widened embankment to avoid excess land take and affecting the existing buildings next to the rail line;
- Additional rail bridge crossing the River Gipping;
- Replacement of the existing rail bridge on the East Suffolk Line;
- Demolition of the disused factory building;
- Underpass through the embankment to allow access to the river for the Environment Agency;
- Steel sheet piling to reinforce an approximately 30m section of natural river bank adjacent to the new river bridge crossing;
- Sewer diversion and construction of a new outfall;
- New bridge adjacent to the existing Sproughton Road bridge;
- Temporary site compound created on Europa Way Site 2;
- Temporary access ramp on north east side of bridge 404 (East Suffolk Line river bridge); and
- A temporary work compound to be sited at Europa Way Site 2.

Further details of the scheme description and associated works as assessed are provided at Chapter 2 of the ES.

The HRA Screening Report states that the proposed development has been designed so as not to affect the existing water quality, existing flow rates or existing surface water movements.

Approach to Assessment

The HRA Report identifies that "the Stour and Orwell Estuaries are the only feature of international importance that could be affected by the scheme".

The report does not define the study area or methodology for identifying European sites that could be affected by the proposed development. However, the Examining authority has not identified any other European sites in close proximity to the proposed development site, or in connectivity with the proposed development site through environmental pathways, and concurs that no other European site is likely to be affected. Furthermore, it is noted that the response from Natural England (NE) in their role as the relevant Statutory Nature

Conservation Body (SNCB) does not express any concern regarding any other European site, and NE has stated their agreement with the conclusion of the HRA report, provided pollution control measures are in place, as now included in the DCO.

The Screening Report includes a description of the proposed development and summarises the details of the European site, including its qualifying features, conservation objectives and vulnerability. The assessment of potential effects is subsequently considered under the following headings:

- Land take
- Distance from the Natura 2000 site(s) or key features of the site
- Resource Requirements
- Air Emissions
- Water Emissions
- Land Emissions
- Excavation requirements
- Cumulative considerations

It is considered that the relevant potential impacts have been considered within the HRA report.

In undertaking the assessment, the HRA Report states that the Developer has paid due regard to the following guidance and advice:

- Planning Policy Statement 9 – Biodiversity and Geological Conservation (2005);
- Assessment of plans and projects significantly affecting Natura 2000 sites - Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC (2001);
- Managing Natura 2000 sites – The provisions of Article 6 of the Habitats Directive 92/43/EEC (2000); and
- IPC Advice Note 10 – Habitat Regulations Assessment

The report indicates that the assessment has been based in part on the habitats found to be present at the site. However the results of the phase 1 habitat survey or other species specific surveys have not been included within the HRA report. Section 3.5.2 of the 'HRA Screening Report', cross refers to the 2010 Environmental Statement in respect of data collected to undertake the assessment.

Paragraph 5.1.1 of the 'HRA report' states that breeding bird surveys were conducted at the proposed development site between April and May 2010. No background information on the scope of these surveys or indication that these were agreed with the statutory nature conservation body have been set out in the HRA report. The ES does however identify that consultation with the following organisations was undertaken during the assessment to obtain baseline data, discuss assessment methodologies and mitigation proposals:

- Natural England;
- Suffolk County Council;
- Suffolk Wildlife Trust; and,
- Suffolk Biological Records Centre.

The European site is designated for numbers of wintering and passage wildfowl. However, there is no evidence that any specific surveys were conducted for over-wintering bird species. Although the HRA report does not explicitly provide a justification for why such surveys have not been undertaken, the 'Ecology Technical Report', which is appended to the ES, states that none of the species for which the European site has been designated were observed or are likely to use the proposed development site, as the habitat is not suitable for them. Furthermore, the report states that data obtained from the Suffolk Biological Records Centre shows no records of qualifying species within a 2km radius of the proposed development site since 1994.

When assessing the potential impact on water resources the HRA report reaches a conclusion of no likely significant effects on the basis that a PICP is in place. The report states that the PICP should include measures to prevent a pollution incident occurring and reaching the European site, some of which may be above and beyond any standard environmental management measures and may constitute mitigation. At point of application, the draft DCO included a Requirement to prepare the PCIP as part of Network Rail's Mandatory Requirements set out in section 5 of the Contract Requirements-Environment, paying particular attention to the potential pollution impacts of the works on the River Gipping and sub-surface controlled waters and how they might be prevented.

Description of the European Sites: The Stour and Orwell Estuaries

The HRA report summarises the Stour and Orwell Estuaries as being a wetland of international importance, comprising extensive mudflats, low cliffs, saltmarsh and small areas of vegetated shingle on the lower reaches. The report states that "it provides habitats for an important assemblage of wetland birds in the non-breeding season and supports internationally important numbers of wintering and passage wildfowl and waders (JNCC, 2008)".

The information provided by the Applicant includes the Natura 2000 data form for the site, which lists the qualifying features for the site. However this list has now changed and is superseded by individual site accounts provided in the 2001 Reviewⁱ. A number of species in the latest list located on the JNCC website differ from the list in the original citation which are presented in the Natura 2000 data form.

The qualifying species under Directive 2009/147/EC on the conservation of wild birds for the European site are:

- Hen Harrier *Circus cyaneus*
- Black-tailed Godwit *Limosa limosa islandica*
- Dunlin *Calidris alpina alpina*
- Grey Plover *Pluvialis squatarola*
- Pintail *Anas acuta*
- Redshank *Tringa totanus*
- Ringed Plover *Charadrius hiaticula*
- Shelduck *Tadorna tadorna*
- Turnstone *Arenaria interpres*

The area also qualifies under Article 4.2 of the Directive (79/409/EEC) by regularly supporting at least 20,000 waterfowl.

The conservation status of each qualifying feature (favourable or otherwise) has not been identified within the report. The ES indicates that none of the species for which the European site has been designated were observed or are likely to use the proposed development site, as the habitat is not suitable for them. The report also indicates that there are no likely pathways that would result in an adverse effect on the European site or its qualifying features, and therefore information relating to the conservation status of each qualifying feature is not likely to be critical to the assessment.

The Natura 2000 data form which provides information on the European site and its qualifying features, identifies the vulnerabilities of the site as arising from:

- Pressure for increased port development;
- Pressure for increased marine recreation ;
- Maintenance dredging; and
- natural coastal processes causing erosion of saltmarsh

Appendix A of the Screening report includes the "Information Sheet on Ramsar Wetlands". This identifies that the site is designated for nationally scarce plants, invertebrates and wintering waterfowl.

Table 2 of the Applicant's Screening Report documents conservation objectives, population attributes, site specific target range and measures, and vulnerabilities for SPA qualifying features. Table 3 of the applicant's screening report identifies habitat features, conservation objectives, estimated extent and site specific target range and measures for the Ramsar site.

Effects of the NSIP on the European Sites

The HRA report identifies that impacts on water quality could occur as a result of:

- Runoff from construction sites containing either toxic elements or suspended solids;
- Leaks or spills of fuels (hydrocarbons), oils and chemicals entering the Watercourse and causing pollution incidents; and
- Disturbance of contaminated land and subsequent mobilisation of contaminants, which could reach the surface watercourse.

Impacts to qualifying bird species could arise through direct loss of habitat, disturbance or indirectly through the degradation of habitat as a result of changes in the water quality of the River Gipping which feeds into the Stour and Orwell Estuaries.

Table 3. Project effects likely to be significant alone:

Stour and Orwell Estuaries Special Protection Area (SPA) and Ramsar site				
European site features	Likely Effects of NSIP			
	Habitat loss/ degradation (C)	Changes to water resources & quality (C)	Changes to air quality (C/O)	Disturbance to priority species/ qualifying species (C/ O)
SPA habitats / species				
Avocet (Recurvirostra Avosetta) Pintail (Anas acuta) Dark-bellied brent goose (Branta bernicla bernicla) Dunlin (Calidris alpine Alpina) Knot (Calidris Canutus) Black-tailed godwit (Limosa limosa Islandica) Grey plover (Pluvialis Squatarola) Redshank (Tringa tetanus)	✗ ^{a, b, d, e, g, i}	✗ ^{d, e, g, h}	✗ ^{f, k}	✗ ^{a, b, c, k}
Assemblage qualification: A wetland of international importance	✗ ^{a, b, d, e, g, i}	✗ ^{d, e, g, h}	✗ ^{f, k}	✗ ^{a, b, c, k}
Ramsar features	✗ ^{a, b, d, e, g, i}	✗ ^{d, e, g, h}	✗ ^{f, k}	✗ ^{a, b, c, k}
nationally scarce plants: stiff	✗ ^{a, b, d, e, g, i}	✗ ^{d, e, g, h}	✗ ^{f, k}	✗ ^{a, b, c, k}

saltmarsh-grass Puccinellia rupestris small cord-grass Spartina maritime perennial glasswort Sarcocornia perennis lax-flowered sea lavender Limonium humile eelgrasses Zostera angustifolia, Z. marina and Z. noltei.				
British Red Data Book invertebrates: the muscid fly Phaonia fusca the horsefly Haematopota grandis two spiders, Arctosa fulvolineata and Baryphema duffeyi swollen spire snail Mercuria confusa.	✗ ^{a, b, d, e, g, i}	✗ ^{d, e, g, h}	✗ ^{f, k}	✗ ^{a, b, c, k}
Assemblages of international importance	✗ ^{a, b, d, e, g, i}	✗ ^{d, e, g, h}	✗ ^{f, k}	✗ ^{a, b, c, k}

✗ = No likely significant effect

✓ = Likely significant effect

? = Likely significant effect cannot be excluded

C = construction

O = operation

D = Decommissioning

Justification for conclusions on effects

- a. There will be no direct land take within the European site, and the HRA states that at no point will any excavation works encroach across the Natura 2000 site boundary. (See paragraph 5.7.1 of the HRA Report)

- b. The HRA report indicates that bird surveys did not record any of the qualifying species using the proposed development site, and that based on the habitats present it is considered unsuitable to sustain foraging or resting wading birds. (See paragraph 5.1.1 of the HRA Report)
- c. The report states that data obtained from the Suffolk Biological Records Centre shows no records of qualifying species within a 2km radius of the proposed development site since 1994. (See paragraph 5.1.1 of the HRA Report)
- d. No requirement for water abstraction from the River Gipping has been identified, the disapplication of legislative restrictions on abstraction and impoundment have been removed from the DCO, and it is not anticipated that any resource requirements will affect the European site. (See paragraph 5.3.1 of the HRA Report)
- e. The HRA states that the chord will not affect surface water run off rates as it does not change the amount of impermeable land within the development area. (See paragraph 5.5.3 of the HRA Report)
- f. The proposed development is predicted to lead to a decrease in emissions to air over time. (See paragraph 5.4.3 of the HRA Report)
- g. There is contaminated land within the Former Harris Factory site, however the HRA states that there are no deep excavations proposed and so the development will not result in any contaminants being mobilised into the ground water or surface water. (See paragraph 5.5.4 of the HRA Report)
- h. The HRA states that “preventative measures will be used during construction to reduce the likelihood of a pollution event occurring and of the pollution reaching the River Gipping” and “site work will be managed through the mandatory requirement for a Pollution Incident Control Plan (PICP) which would take particular note of the risk of polluting the River Gipping”. (See paragraph 5.5.2 of the HRA Report)
- i. The HRA states that due to the presence of contaminated land the removal of substrate from the site will be avoided or where necessary will be carried out in full compliance with necessary laws and regulations and licensed operators and disposal sites will be used. (See paragraph 5.7.1 of the HRA Report)
- j. Any contamination or mobilisation of contaminants within the land is not likely to spread to the vicinity of the European site. (See paragraph 5.5.4 of the HRA Report)
- k. The HRA states that impacts associated with transportation requirements are limited to the construction phase and are unlikely to be significant due to the distance between the proposed project and the Natura 2000 site. (See paragraph 5.8.1 of the HRA Report)

- l. The proposed development is not considered likely to make worse the situation in relation to any of the vulnerabilities identified for qualifying species.
- m. Natural England's response to consultation on the screening report as the relevant Statutory Nature Conservation Body (SNCB), does not express concerns regarding any other European site and states agreement with the conclusion of the HRA report in relation to the Stour and Orwell Estuaries. (See Appendix 1 of the HRA Report)
- n. The 'HRA report' states that Requirement 8 of Part 2 of Schedule 1 to the DCO sets out that the development must be carried out in accordance with Network Rail's Contract Requirements – Environment. Requirement 8 of the draft Development Consent Order (DCO) (Document ref: 5.1), requires the preparation of a Pollution Incident Control Plan which shall "include prior consideration of the potential sources of pollution and how they might be prevented paying particular attention to the potential pollution impacts of the works on the River Gipping and sub-surface controlled waters and how they might be prevented" and requires inclusion of the measures agreed in a Statement of Common ground with Natural England. (See paragraph 5.5.2 of the HRA Report and the draft DCO)
- o. The DCO requires the preparation and approval of an Environmental Design Management Plan which shall incorporate proposals for the additional investigation of potential hotspots, implementation of mitigation measures and monitoring requirements identified in the Environmental Statement Volume 3 Specialist Technical Report 11 at paragraph 1.8 concerning existing land (and groundwater) quality, prevention of future contamination and materials management. (See the draft DCO)
- p. Whilst noting that the qualifying species identified within the HRA report have been superseded by individual site accounts provided in the 2001 Review, the European Site's qualifying species largely comprise birds that are more commonly associated with wetlands, and the habitat likely to be affected is not likely to be suitable for any of the qualifying species.

The HRA report includes a consideration of potential in-combination effects with other projects.

The report indicates that projects located adjacent to the River Gipping have been considered, stating that "there are three proposals which are adjacent to the River Gipping and so have the potential to impact the European site in the same way as described above". The report states that each planning permission has conditions imposed upon it to address through pollution prevention and control measures effects on the water environment and measures to address potential land and groundwater contamination". It concludes that "the pollution

prevention Requirements imposed on Network Rail through the DCO combined with the relevant conditions imposed on these other developments means the likelihood of an incident occurring, reaching and significantly affecting the Stour and Orwell Estuaries European site is extremely low" and therefore a significant impact in combination with these developments is unlikely.

Natural England, in their response to consultation on the HRA Screening Report, have not expressed concerns regarding any in-combination effects and have stated their agreement with the conclusion of the HRA report in relation to the Stour and Orwell Estuaries.

Conclusion

Taking into account the likelihood of an incident occurring, the distance to the European site, and the implementation of preventative measures stopping a pollution incident reaching the River Gipping, an adverse impact on the European site is not considered likely to occur. Therefore, on the basis of the information provided by the applicant, including Natural England's response to consultation on the HRA Screening Report and the final consultation on the DCO, the Examining authority has concluded that significant effects on the European site are not likely.

As the proposed development is not likely to have a significant effect on a European site, the Examining authority is not required to undertake appropriate assessment of the implications for the site in view of that site's conservation objectives.

The Examining authority has conducted a review of the information provided, and has concluded that the main risk to the European site is likely to be through potential pollution effects on the River Gipping, specifically through runoff from construction sites, leaks or spills, or disturbance of contaminated land and subsequent mobilisation of contaminants.

The relevant statutory nature conservation body, Natural England (NE), confirmed that it is content with the conclusions of the HRA Screening Report, providing that measures are in place to prevent a water pollution incident reaching the international site.

Requirement 8 of the draft DCO (Document ref: 5.1), requires the preparation of a Pollution Incident Control Plan which shall "include prior consideration of the potential sources of pollution and how they might be prevented paying particular attention to the potential pollution impacts of the works on the River Gipping and sub-surface controlled waters and how they might be prevented" and minimum measures as agreed by NE.

Taking into account the need for measures to prevent water pollution reaching the site via the River Gipping, and applying a precautionary approach to ensure that any impacts are avoided or minimised, the Examining Authority determined that details of mitigation measures to prevent pollution of the River Gipping and to satisfy Natural England would be required from the applicant.

Subsequent to a request from the Examining authority, the applicant submitted a SoCG with NE and the EA agreeing a minimum set of measures required to prevent a water pollution incident affecting the European site, and to monitor and manage pollution risks (See Appendix 4).

According to Paragraph 6.1 of the SoCG, the measures set out represent "the agreed position of all parties on the implementation of pollution prevention and control measures", and the SoCG goes on to state that the Environment Agency and NE "have no outstanding issues in relation to pollution prevention and control issues".

In the SoCG, the applicant has confirmed that the measures will be delivered through a PICP, as secured through Requirement 8 in the DCO.

In order to secure the delivery of the minimum pollution control measures, the relevant sections of Requirement 8 of the DCO were amended to read:

"The Pollution Incident Control Plan required under section 5.13 of the CR-E shall include the minimum measures set out in section 7 of the Statement of Common Ground between Network Rail, the Environment Agency and Natural England dated 9 January 2012 on the minimum measures required for a pollution incident control plan and submitted to the Commission in connection with examination of the application for this Order".

Table 4. Summary of European Sites included within the HRA and screening results.

European Site Name and ID	Is the project connected with the nature conservation management of the site? Y/N	Is the project likely to have significant effects on the integrity of the site, alone or in combination? Y/N	Potential effect, interest feature(s), and conservation objective	Appropriate Assessment required? Y/N
Stour and Orwell Estuaries Special Protection Area (SPA) and Ramsar site	N	N	N	N

REFERENCES

Relevant Representations provided by the SNCB and relevant consultees.

Statement(s) of Common Ground with the SNCB and responses made by the SNCB and relevant consultees in response to the Examining authority's questions and requests for information and comments under Rule 17.

Responses from SNCB(s) on draft Appropriate Assessment Report

ⁱ <http://jncc.defra.gov.uk/page-5485>