

2007 No. 2657

TRANSPORT AND WORKS, ENGLAND
TRANSPORT ENGLAND

The London Gateway Logistics and Commercial Centre
Order 2007

Made - - - - - 7th September 2007

Coming into force - - 28th September 2007

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An application has been made to the Secretary of State, in accordance with the Transport and Works (Application and Objections Procedure) (England and Wales) Rules 2000(a) made under section 6, 6A, 7 and 10 of the Transport and Works Act 1992(b) (“the 1992 Act”), for an Order under sections 1 and 5 of the 1992 Act;

The Secretary of State caused an inquiry to be held for the purposes of the application pursuant to section 11 of the 1992 Act;

The Secretary of State having considered the objections made and not withdrawn, and the report of the person who held the inquiry, proposed to make an Order giving effect to the proposals comprised in the application with modifications which in his opinion made a substantial change in the proposals;

Having considered representations duly made to him pursuant to section 13(4) of the 1992 Act, the Secretary of State has determined to make the Order as applied for with such modifications;

Notice of the Secretary of State’s determination was published in the London Gazette on 4th June 2007;

Accordingly, the Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 1 to 5, 7, 8, 10, 11 and 15 to 17 of Schedule 1 to, the 1992 Act makes the following Order:—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the London Gateway Logistics and Commercial Centre Order 2007 and shall come into force on 28th September 2007.

Interpretation

2.—(1) In this Order—

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

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

“the 1992 Act” means the Transport and Works Act 1992;

“application date” means the day on which application was made to the Secretary of State for this Order;

“Applications Rules” means the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000;

“authorised works” means the scheduled works and any other works authorised by this Order;

“the deposited plans” means the plans certified by the Secretary of State as the deposited plans for the purposes of this Order;

“the deposited sections” means the sections certified by the Secretary of State as the deposited sections for the purposes of this Order;

“highway” and “highway authority” have the same meaning as in the Highways Act 1980(e);

(a) S.I. 2000/2190.

(b) 1992 c. 42.

(c) 1990 c. 8.

(d) 1991 c. 22. As amended by the Traffic Management Act 2004 c. 18.

(e) 1980 c. 66.

“the limits of deviation” means the limits of deviation for the scheduled works mentioned in paragraph (1)(a) of article 6 (Power to deviate) and shown on the deposited plans, or, if, in relation to any such work in a street, no such limits are shown, the boundaries of that street on the application date, including those boundaries as from time to time altered or widened under this Order;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace and “maintenance” shall be construed accordingly;

“the Promoter” means The Peninsular and Oriental Steam Navigation Company together with Shell UK Ltd;

“the scheduled works” means the works specified in Schedule 1 or any part of them;

“street” includes part of a street;

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

“the tribunal” means the Lands Tribunal.

(2) Any reference in this Order to a work identified by the number of the work shall be construed as a reference to the work of that number authorised by this Order.

(3) All distances, directions and lengths stated in the description of the scheduled works or in any description of powers or lands shall be construed as if the works “or thereabouts” were inserted after each such distance, direction and length, and distances between points on a scheduled work shall be taken to be measured along that scheduled work.

Application of the New Roads and Street Works Act 1991

3.—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway shall be treated for the purposes of Part 3 of the 1991 Act (street works) as major transport works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works); or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64 of the Highways Act 1980 (dual carriageways and roundabouts) or section 184 of that Act (vehicle crossings).

(2) The provisions of the 1991 Act mentioned in paragraph (3) which, together with other provisions of that Act, apply in relation to the execution of 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 any stopping up, alteration or diversion of a street by the Promoter under the powers conferred by this Order whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

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

- section 54 (advance notice of certain works);
- section 55 (notice of starting date of works);
- section 59 (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- section 69 (works likely to affect other apparatus in the street);
- section 76 (liability for cost of temporary traffic regulations);
- section 77 (liability for cost of use of alternative route); and

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

(4) Sections 54 and 55 of the 1991 Act as applied by paragraph (2) shall have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

Incorporation of the Railways Clauses Consolidation Act 1845

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

- section 46 (crossings of roads-level crossings);
- section 47 (provision in cases where roads are crossed on a level)(b);
- 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 the case of difference, as shall be authorised by two justices”;
- sections 72 and 73 (supplementary provisions relating to accommodation works);
- section 75 (omission to fasten gates)(c);
- section 77 (presumption that minerals excepted from acquisition of land);
- sections 78 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(d);
- section 105 (carriage of dangerous goods on railway);
- section 145 (recovery of penalties); and
- section 154 (transient offenders).

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

- “the company” means the Promoter;
- “goods” includes anything conveyed on the railways authorised to be constructed by this Order;
- “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, except where the context otherwise requires, any other authorised works;
- “the special Act” means this Order.

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

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

5.—(1) The Promoter may construct and maintain the scheduled works.

(2) Subject to article 6 (power to deviate), the scheduled works may only be constructed in the lines or situations shown on the deposited plans and in accordance with the levels shown on the deposited sections.

(3) Subject to paragraph (5), the Promoter may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works, namely—

- (a) works for the strengthening, alteration or demolition of any building or structure;

(a) 1845 c. 10.

(b) Amended by Criminal Law Act 1977 (1977 c. 45) s. 31(6) and Criminal Justice Act 1982 (1982 c. 48) ss. 37 and 46.

(c) Amended by the Transport and Works Act 1992 (1992 c. 42) s. 49.

(d) 1923 c. 20.

- (b) works to construct, improve or alter the position of any apparatus, including mains, sewers, drains and cables;
- (c) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (d) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised works;
- (e) facilities and works for the benefit or protection of land or premises affected by the authorised works;
- (f) works to make, provide and maintain all such apparatus, bridges, ramps, means of access, shafts and stagings as the Promoter thinks fit;
- (g) works to construct, provide and maintain all such embankments, aprons, abutments, retaining walls, wing walls and culverts; and
- (h) construction of earthworks, fencing, drainage, utilities, points, signalling and culverts.

(4) Subject to paragraph (5), the Promoter may carry out and maintain such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works, other than works that would interfere with a navigable watercourse.

(5) Paragraphs (3) and (4) shall only authorise the carrying out or maintenance of works within the limits of deviation shown on the deposited plans for the scheduled works.

Power to deviate

- 6.—(1) In constructing or maintaining any of the scheduled works, the Promoter may—
- (a) deviate laterally from the lines or situations shown on the deposited plans within the limits of deviation relating to that work shown on those plans; and
 - (b) deviate vertically from the levels shown on the deposited sections—
 - (i) to any extent not exceeding 3 metres upwards; and
 - (ii) to any extent downwards.

(2) In constructing any work shown on the deposited plans as situated in a street and for which no limits of deviation are shown on those plans the Promoter may deviate laterally within the boundaries of that street.

Access to Works

Access to works

7. The Promoter may, for the purposes of the construction or operation of the scheduled works, form and lay out such means of access connecting to a public highway, within the limits of deviation, as may be approved by the highway authority, but such approval shall not be unreasonably withheld.

Supplemental

Discharge of water

8.—(1) The Promoter may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction, operation or maintenance of the authorised works and for that purpose may lay down, take up and alter pipes and may, on any land within the limits of deviation, make openings into, and connections with, the watercourse, public sewer or drain.

(2) The Promoter shall not discharge any water into any watercourse, public sewer or drain except with the consent of the authority to which it belongs; and such consent may be given subject to such terms and conditions as the authority may reasonably impose but shall not be unreasonably withheld.

(3) The Promoter shall not make any opening into any public sewer or drain except in accordance with plans approved by, and under the superintendence (if provided) of, the authority to which the sewer or drain belongs, but such approval shall not be unreasonably withheld.

(4) The Promoter shall not, in the exercise of the powers conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of the main river.

(5) The Promoter shall take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance or oil or matter in suspension.

(6) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991(a).

(7) 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;
- (b) “watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passage through which water flows except a public sewer or drain; and
- (c) other expressions used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Obstruction of construction of authorised works

9. Any person who, without reasonable excuse, obstructs another person from constructing any of the authorised works under the powers conferred by this Order shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Power to keep apparatus in streets

10.—(1) The Promoter may, for the purposes of or in connection with the construction, maintenance and use of the authorised works, place and maintain in any street within the limits of deviation any work, equipment or apparatus including, without prejudice to the generality of the foregoing, foundations, platforms, road islands, substations, electric lines and any electrical or other apparatus.

(2) In this article—

- (a) “apparatus” has the same meaning as in Part 3 of the 1991 Act; and
- (b) the reference to any work, equipment, apparatus or other thing in a street includes a reference to any work, equipment, apparatus or other thing under, over, along or upon the street.

Power to execute street works

11. The Promoter may, for the purposes of exercising the powers conferred by article 10 (power to keep apparatus in streets) and the other provisions of this Order, enter upon any street within the limits of deviation and may execute any works required for, or incidental to, the exercise of those powers including, without prejudice to the generality of the foregoing, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street.

Temporary stopping up of streets

12.—(1) The Promoter may, during and for the purposes of the execution of the authorised works, 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 (2), prevent all persons from passing along the street.

(a) 1991 c. 57.

(2) The Promoter shall provide reasonable access for pedestrians going to or from premises abutting a street affected by the exercise of the powers conferred by this article if there would otherwise be no such access.

(3) 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 Land Compensation Act 1961(a).

Agreement with street authorities

- 13.**—(1) A street authority and the Promoter may enter into agreements with respect to—
- (a) the construction of any new street (including any structure carrying the street over or under an authorised work) under the powers conferred by this Order;
 - (b) the maintenance of the structure of any bridge carrying an authorised work over a street;
 - (c) any stopping up, alteration or diversion of a street under the powers conferred by this Order; and
 - (d) the execution in the street of any of the works referred to in article 11 (power to execute street works).
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question; and
 - (b) contain such terms as to payment and otherwise as the parties consider appropriate.

PART 3

OPERATION OF AUTHORISED WORKS

Power to operate and use authorised works

14. The Promoter may operate and use the railway and other authorised works as a system, or part of a system, of transport for the carriage of goods.

Maintenance of approved works, etc.

15.—(1) Where, pursuant to regulations made under section 41 of the 1992 Act (approval of works, plant and equipment), approval has been obtained from the Office of Rail Regulation with respect to any works, plant or equipment (including vehicles) forming part of the authorised works, such works, plant and equipment shall not be used in a state or condition other than that in which they were at the time that the approval was given unless any change thereto does not materially impair the safe operation of the authorised works.

(2) If without reasonable cause the provisions of paragraph (1) are contravened, the Promoter shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) No proceedings shall be instituted in England and Wales in respect of an offence under this article except by or with the consent of the Office of Rail Regulation or the Director of Public Prosecutions.

Trespass on authorised works

- 16.** Any person who—
- (a) trespasses on any authorised work; or
 - (b) trespasses upon any land of the Promoter in dangerous proximity to the authorised works or to any electrical or other apparatus used for or in connection with the operation of the authorised works,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(a) 1961 c. 33.

Power of disposal, agreements for operation, etc.

17.—(1) The Promoter may sell, lease, charge or otherwise dispose of, on such terms and conditions as it thinks fit, the whole or any part of the authorised works and any land held in connection with the authorised works or the right to operate the works under this Order.

(2) Without prejudice to the generality of paragraph (1), the Promoter may enter into and carry into effect agreements with respect to any of the following matters, namely, the construction, maintenance, use and operation of the authorised works, or any part of them, by any other person, and other matters incidental or subsidiary thereto or consequential thereon, and the defraying of, or the making of contributions towards, the cost of the matters aforesaid by the Promoter or any other person.

(3) Any agreement under paragraph (2) may provide (amongst other things) for the exercise of the powers of the Promoter in respect of the authorised works or any part of those works, and for the transfer to any person of the authorised works or any part of those works together with the rights and obligations of the Promoter in relation thereto.

(4) The exercise of the powers of any enactment by any person in pursuance of any sale, lease, charge or disposal under paragraph (1), or any agreement under paragraph (2), shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the Promoter.

Agreements with Network Rail

18.—(1) Subject to Schedule 2 (for the protection of Network Rail), the Promoter and Network Rail may enter into and carry into effect agreements with respect to the construction, maintenance, use and operation of—

- (a) any designated works, or any part of those works; and
- (b) any works required for the purposes of the designated works or in connection with those works,

by Network Rail or by the Promoter, or by the Promoter and Network Rail jointly.

(2) (a) Any agreement made under this article may contain such incidental, consequential or supplementary provisions as may be so agreed, including (but without prejudice to the generality of the foregoing) provisions—

- (i) with respect to the defraying of, or the making of contributions towards, the cost of works of alteration or adaptation or the costs of construction, maintenance, use and operation as are referred to in paragraph (1) by the Promoter or by Network Rail or by the Promoter and Network Rail jointly; and
- (ii) for the exercise by Network Rail, or by the Promoter, or by Network Rail and the Promoter jointly, of all or any of the powers and rights of Network Rail and the Promoter (as the case may be) in respect of either of the works referred to in paragraph (1) and any works required for the purposes of those works or in connection with those works.

- (b) The exercise by the Promoter or Network Rail or by the Promoter and Network Rail jointly, of any powers and rights under any enactment or contract pursuant to any such agreement as is authorised by paragraph (1) shall be subject to all statutory and contractual provisions relating thereto as would apply if such powers and rights were exercised by the Promoter or Network Rail (as the case may be) alone, and accordingly such provisions shall, with any necessary modifications, apply to the exercise of such powers and rights by the Promoter or Network Rail, or by the Promoter and Network Rail jointly, as the case may be.

(3) The Promoter and Network Rail may enter into, and carry into effect, agreements for the transfer to and vesting in Network Rail or the Promoter, or the Promoter and Network Rail jointly, of—

- (a) the designated works or any part of any of those works; or
- (b) any works, lands, or other property required for the purposes of the designated works or in connection with those works,

together with any rights and obligations (whether or not statutory) of Network Rail or the Promoter relating thereto.

(4) In this article—

“designated works” means any part of the authorised works to be constructed on railway property;

“Network Rail” means Network Rail Infrastructure Limited; and

“railway property” means any railway belonging to Network Rail and any works, apparatus and equipment belonging to Network Rail connected with the railway and includes any land held or used by Network Rail for the purposes of such railway or works, apparatus or equipment.

PART 4

PROTECTIVE PROVISIONS

Part 1 of the Railways Act 1993

19. 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(a).

For the protection of Network Rail

20. The provisions of Schedule 2 (for the protection of Network Rail) shall have effect.

For the protection of the Environment Agency

21. The provisions of Schedule 3 (for the protection of the Environment Agency) shall have effect.

PART 5

MISCELLANEOUS AND GENERAL

Certification of plans, etc.

22. The Promoter shall, as soon as practicable after the making of this Order, submit copies of the deposited plans and the deposited sections to the Secretary of State for certification that they are true copies of, respectively, the deposited plans and the deposited sections referred to in this Order, and a 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

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

(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(b) as it applies for the purposes of this article, the proper address of any person in relation to the service on him of a notice or document under paragraph (1) is, if he 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, his last known address 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 his name or address cannot be ascertained after reasonable enquiry, the notice may be served by—

(a) addressing it to him by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and

(a) 1993 c. 43.

(b) 1978 c. 30.

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

No double recovery

24. Compensation shall not be payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

Arbitration

25. Unless otherwise agreed between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) 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 notice in writing to the other) by the President of the Institution of Civil Engineers.

Defence to proceedings in respect of statutory nuisance

26.—(1) Where proceedings are brought under section 82(1) of the Environment Protection Act 1990(a) (summary proceedings by person aggrieved by statutory nuisances) 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 the defendant shows—

- (a) that the nuisance relates to premises used by the Promoter for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works; and
- (b) that the nuisance is attributable to the carrying out of works which are being carried out in accordance with a notice served under section 60 of the Control of Pollution Act 1974(b) or a consent given under section 61 or 65 of that Act.

(2) The following provisions of the Control of Pollution Act 1974, namely—

- (a) 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)(c); and
- (b) section 65(8) (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 the Promoter for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

Planning permission and supplementary matters

27.—(1) In relation to the application of paragraph 3(c) of the Second Schedule of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Tree Preservation Order) Regulations 1969(d) (including that paragraph as applied by regulation 3(ii) of the Town and Country Planning (Tree Preservation Order) (Amendment) and (Trees in Conservation Areas) (Exempted Cases) Regulations 1975(e), or as incorporated in any tree preservation order), any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to works authorised by this Order shall be treated as deeming the permission to have been granted on application made under Part 3 of that Act for the purposes of that Part.

(a) 1990 c. 43. Section 82(1) was inserted by Environment Act 1995 (1995 c. 25) s. 107.

(b) 1974 c. 40.

(c) 1990 c. 43 as amended by Environment Act 1995 (1995 c. 25) s. 107, Sch 17 and Noise and Statutory Nuisance Act 1993 (1993 c. 40) s. 5.

(d) S.I. 1969. 17.

(e) S.I. 1975/148.

(2) In relation to the application of article 5(1)(d) of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Trees) Regulations 1999^(a) as incorporated in any tree preservation order or as having effect by virtue of regulation 10(1)(a) of those Regulations, any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to works authorised by this Order shall not be treated as an outline planning permission.

(3) Planning permission which is deemed by a direction under section 90(2A) of the 1990 Act to be granted in relation to works authorised by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of that Act (cases in which land is to be treated as operational land for the purposes of that Act).

Savings for regulated rights, etc.

28. Nothing in this Order shall affect any estate, right or interest granted by Network Rail in respect of a railway facility which is subject to an access contract within the meaning of Part 1 of the Railways Act 1993.

Signed by authority of the Secretary of State

Ellis Harvey
Head of the Transport and Works Act Orders Unit
Department for Transport

7th September 2007

(a) S.I. 1999/1892.

SCHEDULES

SCHEDULE 1

Articles 5(1) and 6

SCHEDULED WORKS

In the County of Essex, in Thurrock Borough at Shellhaven, Stanford le Hope—

- Work No. 1A—A railway (2,540 metres in length) commencing 420 metres south-east of Shell Haven Refinery Entrance Gate 1, passing eastwards for 1,300 metres across the services crossing Work No. 14 on the level and crossing Works Nos. 15, 16, 17, 18, 19, 13, 20 and 21 on the level then turning and passing south-eastwards for 550 metres crossing Works No. 22 on the level then turning southwards for 600 metres and passing junctions with railways (Works Nos. 23, 24A, 24B, 25A, 25B, 1C and 1D) then crossing Work No. 26 on the level and terminating by a junction with the proposed new alignment for Thameshaven, Branch Line approximately 500 metres west of the existing Thameshaven station;
- Work No. 1B—A railway (2,540 metres in length) commencing 420 metres south-east of Shell Haven Refinery Entrance Gate 1, passing eastwards for 1,300 metres across the services crossing (Work No. 14) and crossing Works Nos. 15, 16, 17, 18, 19, 13, 20 and 21 on the level then turning and passing south-eastwards for 550 metres and crossing Work No. 22 on the level then turning southwards for 600 metres and passing junctions with railways (Works Nos. 23, 24A, 24B, 25A, 25B, 1C and 1D) and then crossing Work No. 26 on the level and terminating by a junction with the proposed new alignment for Thameshaven Branch Line approximately 500 metres west of the existing Thameshaven station;
- Work No. 1C—A railway (265 metres in length) commencing at chainage 4,400 metres on Works Nos. 1A and 1B and passing south-westwards to, and terminating by, a junction with Work No. 1D 85 metres before the junction with the existing Thameshaven Branch Line;
- Work No. 1D—A railway (350 metres in length) commencing at chainage 4,400 metres on Works Nos. 1A and 1B and passing south-westwards to, and terminating by, a junction with the existing Thameshaven Branch Line approximately 500 metres west of the existing Thameshaven station;
- Work No. 2—A service crossing (30 metres in length), forming a crossing of Works Nos. 25A, 25B and 25C on the level, commencing at a point 5 metres north of the railway (Work No. 25A) at chainage 150 metres, passing southwards and terminating at a point 5 metres south of Work No. 25C;
- Work No. 3—A crossing (30 metres in length), forming a road crossing of Works Nos. 25A, 25B and 25C on the level, commencing at a point 5 metres north of the railway (Work No. 25A) at chainage 775 metres, passing southwards and terminating at a point 5 metres south of Work No. 25C;
- Work No. 4—A service crossing (30 metres in length), forming a crossing of Works Nos. 25A, 25B and 25C on the level, commencing at a point 5 metres north of the railway (Work No. 25A) at chainage 1,075 metres, passing southwards and terminating at a point 5 metres south of Work No. 25C;
- Work No. 5—A crossing (30 metres in length), forming an access crossing of Works Nos. 25A, 25B and 25C on the level, commencing at a point 5 metres north of the railway (Work No. 25A) at chainage 1,400 metres, passing southwards and terminating at a point 5 metres south of Work No. 25C;
- Work No. 6—A crossing (30 metres in length) forming an access crossing of Works Nos. 24A, 24B and 24C on the level, commencing at a point 5 metres north of the railway (Work No. 24A) at chainage 250 metres, passing south and terminating at a point 5 metres south of Work No. 24C;
- Work No. 7—A service crossing (30 metres in length) forming a crossing of Works Nos. 24A, 24B and 24C on the level, commencing at a point 5 metres north of the railway (Work No. 24A) at chainage 425 metres, passing southwards and terminating at a point 5 metres south of Work No. 24C;
- Work No. 8—A service crossing (30 metres in length) forming a crossing of Works Nos. 24A, 24B and 24C on the level, commencing at a point 5 metres north of the railway (Work No. 24A) at chainage 575 metres, passing southwards and terminating at a point 5 metres south of Work No. 24C;
- Work No. 9—A service crossing (30 metres in length) forming a crossing of Works Nos. 24A, 24B and 24C on the level, commencing at a point 5 metres north of the railway (Work No. 24A) at chainage 975 metres, passing southwards and terminating at a point 5 metres south of Work No. 24C;
- Work No. 10—A service crossing (30 metres in length) forming a crossing of Works Nos. 24A, 24B and 24C on the level, commencing at a point 5 metres north of the railway (Work No. 24A) at chainage 1,175 metres, passing southwards and terminating at a point 5 metres south of Work No. 24C;
- Work No. 11—A crossing (30 metres in length) forming a crossing of Works Nos. 24A, 24B and 24C on the level, commencing at a point 5 metres north of the railway (Work No. 24A) at chainage 1,575 metres, passing southwards and terminating at a point 5 metres south of Work No. 24C;

- Work No. 12—A service crossing (30 metres in length) forming a crossing of Works Nos. 24A, 24B and 24C on the level, commencing at a point 5 metres north of the railway (Work No. 24A) at chainage 1,775 metres, passing southwards and terminating at a point 5 metres south of Work No. 24C;
- Work No. 13—A crossing (30 metres in length) forming a road crossing of Works Nos. 1A and 1B on the level, commencing at a point 10 metres north of the railway (Work No. 1A) at chainage 3,119 metres, passing southwards and terminating at a point 10 metres south of Work No. 1B;
- Work No. 14—A service crossing (30 metres in length) forming a crossing of Works Nos. 1A and 1B on the level, commencing at a point 10 metres north of the railway (Work No. 1A) at chainage 2,225 metres, passing southwards and terminating at a point 10 metres south of Work No. 1B;
- Work No. 15—A crossing (30 metres in length) forming a road crossing of Works Nos. 1A and 1B on the level, commencing at a point 10 metres north of the railway (Work No. 1A) at chainage 2,315 metres, passing southwards and terminating at a point 10 metres south of Work No. 1B;
- Work No. 16—A crossing (30 metres in length) forming a road crossing of Works Nos. 1A and 1B on the level, commencing at a point 10 metres north of the railway (Work No. 1A) at chainage 2,455 metres, passing southwards and terminating at a point 10 metres south of Work No. 1B;
- Work No. 17—A crossing (30 metres in length) forming a road crossing of Works Nos. 1A and 1B on the level, commencing at a point 10 metres north of the railway (Work No. 1A) at chainage 2,750 metres, passing southwards and terminating at a point 10 metres south of Work No. 1B;
- Work No. 18—A crossing (30 metres in length) forming a road crossing of Works Nos. 1A and 1B on the level, commencing at a point 10 metres north of the railway (Work No. 1A) at chainage 2,805 metres, passing southwards and terminating at a point 10 metres south of Work No. 1B;
- Work No. 19—A crossing (30 metres in length) forming a road crossing of Works Nos. 1A and 1B on the level, commencing at a point 10 metres north of the railway (Work No. 1A) at chainage 2,925 metres, passing southwards and terminating at a point 10 metres south of Work No. 1B;
- Work No. 20—A crossing (30 metres in length) forming a road crossing of Works Nos. 1A and 1B on the level, commencing at a point 10 metres north of the railway (Work No. 1A) at chainage 3,320 metres, passing southwards and terminating at a point 10 metres south of Work No. 1B;
- Work No. 21—A crossing (30 metres in length) forming a road crossing of Works Nos. 1A and 1B on the level, commencing at a point 10 metres north of the railway (Work No. 1A) at chainage 3,365 metres, passing southwards and terminating at a point 10 metres south of Work No. 1B;
- Work No. 22—A crossing (30 metres in length) forming a road crossing of Works Nos. 1A and 1B on the level, commencing at a point 10 metres north east of the railway (Work No. 1A) at chainage 3,780 metres, passing south-westwards and terminating at a point 10 metres south-west of Work No. 1B;
- Work No. 23—A railway (150 metres in length), forming a twin track junction connecting to the existing line which runs to the east of the aviation fuel storage depot, commencing with a turnout from the railway (Works Nos. 1A and 1B) at chainage 4,165 metres, passing northwards and terminating 30 metres east of the aviation fuel storage depot;
- Work No. 24A—A railway (2,067 metres in length), commencing at a point 100 metres north-east of the existing Bitumen plant, passing eastwards across new level crossings (Works Nos. 6, 27 and 11) and new service crossings (Works Nos. 7, 8, 9, 10 and 12) on the level and terminating at a junction with Works Nos. 1A and 1B;
- Work No. 24B—A railway (2,067 metres in length), commencing at a point 100 metres north-east of the existing Bitumen plant, passing eastwards across new level crossings (Works Nos. 6, 27 and 11) and new service crossings (Works Nos. 7, 8, 9, 10 and 12) on the level and terminating at a junction with Works Nos. 1A and 1B;
- Work No. 24C—A railway (1,815 metres in length), commencing at a point 100 metres north-east of the existing Bitumen plant, passing eastwards across new level crossings (Works Nos. 6, 27 and 11) and new service crossings (Works Nos. 7, 8, 9, 10 and 12) on the level and terminating at a point 38 metres east of the service crossing (Work No. 12);
- Work No. 25A—A railway (1,877 metres in length), commencing at a point 250 metres south-east of the existing Bitumen plant, passing eastwards across new level crossings (Works Nos. 28, 3 and 5) and new service crossings (Works Nos. 2 and 4) on the level and terminating at chainage 1,877 metres by a junction with the Works Nos. 1A and 1B at chainage 4,332 metres;
- Work No. 25B—A railway (1,877 metres in length), commencing at a point 250 metres south-east of the existing Bitumen plant, passing eastwards across new level crossings (Works Nos. 28, 3 and 5) and new service crossings (Works Nos. 2 and 4) on the level and terminating at chainage 1,877 metres by a junction with the Works Nos. 1A and 1B at chainage 4,332 metres;

- Work No. 25C—A railway (1,621 metres in length), commencing at a point 250 metres south-east of the existing Bitumen plant, passing eastwards across new level crossings (Works Nos. 28, 3 and 5) and new service crossings (Works Nos. 2 and 4) on the level, passing eastwards and terminating at chainage 1,621 metres;
- Work No. 26—A crossing (40 metres in length), forming a road across Works Nos. 1A, 1B, 1C and 1D on the level, commencing at a point 36 metres north-west of the railway (Work No. 1A) at chainage 4,558 metres, passing south-eastwards and terminating at a point 4 metres south-east of the railway (Works Nos. 24A, 24B and 24C) at chainage 168 metres;
- Work No. 27—A crossing (40 metres in length), forming a road across Works Nos. 24A, 24B and 24C on the level, commencing at a point 10 metres north of the railway (Work No. 24A) at chainage 810 metres, passing southwards and terminating at a point 10 metres south of Work No. 24C;
- Work No. 28—A crossing (30 metres in length), forming a road across Works Nos. 25A, 25B and 25C on the level, commencing at a point 5 metres north of the railway (Work No. 25C) at chainage 620 metres, passing southwards and terminating at a point 5 metres south of Work No. 25A;
- Work No. 29A—A railway (1,024 metres in length), commencing at a point 420 metres to the south of the existing Bitumen plant by a junction with the proposed Thameshaven branch line, passing eastwards and terminating at a junction with the proposed Thameshaven branch line at chainage 1,024 metres;
- Work No. 29B—A railway (928 metres in length), commencing at chainage 100 metres on the line of, and to the east of, the commencement of Work No. 29A, passing eastwards and terminating at chainage 928 metres on the lines of Work No. 29A;
- Work No. 29C—A railway (289 metres in length), commencing on the existing Thameshaven Branch line and terminating at chainage 225 metres on the line of Work No. 29A;
- Work No. 29D—A railway (230 metres in length), commencing at chainage 895 on the line of Work No. 29A and terminating on the existing Thameshaven Branch line;
- Work No. 30A—A railway (470 metres in length), commencing at a point 435 metres to the south of the Bitumen Plant forming a junction with the proposed Thameshaven Branch line, then turning north-eastwards for 300 metres then eastwards and terminating at the commencement of Works Nos. 25A, 25B and 25C;
- Work No. 30B—A railway (470 metres in length), commencing at a point 435 metres to the south of the Bitumen Plant forming a junction with the proposed Thameshaven Branch line, then turning north-eastwards for 300 metres then eastwards and terminating at the commencement of Works Nos. 25A, 25B and 25C;
- Work No. 30C—A railway (175 metres in length), commencing on the existing Thameshaven Branch line, passing north-eastwards to and terminating at chainage 166 metres on Works Nos. 30A and 30B; and
- Work No. 30D—A railway (175 metres in length), commencing on the existing Thameshaven Branch line, passing north-eastwards to and terminating at chainage 166 metres on Works Nos. 30A and 30B.

SCHEDULE 2

Article 20

FOR THE PROTECTION OF NETWORK RAIL

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

(2) In this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” shall be construed accordingly;

“the engineer” means an engineer to be appointed by Network Rail for the purpose in question;

“plans” includes sections, designs, drawings, specifications, soil reports, calculations and descriptions (including descriptions of methods of construction), staging proposals and programmes;

“Network Rail” means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 736 of the Companies Act 1985(a)) the holding Company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

(a) 1985 c. 6.

“railway property” means any railway belonging to Network Rail and any works, apparatus and equipment belonging to Network Rail connected therewith and includes any land held or used by Network Rail for the purposes of such railway or works, apparatus or equipment;

“relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction of the specified works or of any such act as is mentioned in paragraph 19;

“specified works” means so much of the authorised works as may be situated upon, across, under, over or within 15 metres of, or may in any way affect, railway property; and

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

(3) (a) The Promoter shall not under the powers conferred by this Order acquire or enter upon, take or use whether temporarily or permanently any railway property or acquire any new rights over any railway property unless such acquisition, entry or use is with the consent of Network Rail.

(b) Where Network Rail is asked to give its consent pursuant to sub-paragraph (a), such consent shall not be unreasonably withheld or delayed but may be given subject to reasonable conditions.

2. The Promoter shall, before commencing construction of any of the specified works, supply to Network Rail proper and sufficient plans for the reasonable approval of the engineer and shall not commence such construction of the specified works until plans of those works have been approved in writing by the engineer or settled by arbitration.

3. The approval of the engineer under paragraph 2 shall not be unreasonably withheld or delayed and if by the end of the period of 56 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his disapproval of those plans and the grounds of his disapproval he shall be deemed to have approved the plans as submitted.

4. If by the end of the period of 56 days beginning with the date on which such plans have been supplied to Network Rail, Network Rail gives notice to the Promoter that Network Rail desires itself to construct any part of the specified works which in the opinion of the engineer will or may affect the stability of railway property, the safe operation of traffic on the railways of Network Rail or the services of train operators using the same then, if the Promoter desires such part of the specified works to be constructed, Network Rail shall construct it with all reasonable dispatch on behalf of, and to the reasonable satisfaction of, the Promoter in accordance with the plans approved or deemed to be approved or settled as aforesaid.

5. When signifying his approval or disapproval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of construction of the specified works to ensure the safety or stability of railway property, the continuation of safe and efficient operation of the railways of Network Rail or the services of train operators using the same (including any relocation of works, apparatus and equipment necessitated by the specified works) and the comfort and safety of passengers who may be affected by the specified works, and such protective works as may be reasonably necessary for those purposes shall be constructed by Network Rail with all reasonable dispatch, or if Network Rail so desires, such protective works shall be carried out by the Promoter at its own expense and the Promoter shall not commence the construction of the specified works until the engineer has notified the Promoter that the protective works have been completed to his reasonable satisfaction.

6. The Promoter shall give to the engineer not less than 180 days’ notice of its intention to commence the construction of any of the specified works and also, except in emergency (when it shall give such notice as may be reasonably practicable), of its intention to carry out any works for the maintenance or repair of the specified works in so far as such work of repair or maintenance may affect or interfere with railway property.

7. Any specified work and any protective works to be constructed by virtue of paragraph 5 shall, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under this Schedule;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer; and
- (c) in such manner as to cause as little damage as possible to railway property and as little interference as may be reasonably practicable with the conduct of traffic on the railways of Network Rail,

(a) 1993 c. 43.

and, if any damage to railway property or any such interference or obstruction shall be caused by the carrying out of the specified works or protective works, the Promoter shall, notwithstanding any such approval, make good such damage and shall pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

8. Nothing in paragraph 7 shall impose any liability on the Promoter with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents.

9. The Promoter shall—

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

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

11.—(1) If any alterations or additions, either permanent or temporary, to railway property are reasonably necessary during the construction of the specified works, any protective works under paragraph 5 or during a period of 12 months after the completion of the specified works in consequence of the construction of a specified work, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the Promoter reasonable notice of its intention to carry out such alterations or additions, the Promoter shall pay to Network Rail the reasonable cost thereof including, in respect of any such permanent alterations and additions, a capitalised sum representing any increase in the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations and additions.

(2) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions referred to in sub-paragraph (1) a capitalised sum representing such saving shall be set off against any sum payable by the Promoter to Network Rail under sub-paragraph (1).

12. The Promoter shall repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of the specified works on behalf of the Promoter as provided by paragraph 4 or in constructing any protective works under the provisions of paragraph 5 including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the supervision by the engineer of the construction of the specified works and otherwise in connection with the implementation of the provisions of this Schedule;
- (c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works;
- (d) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, be required to be imposed by reason or in consequence of the construction or failure of the specified works, or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonable necessary by reason or in consequence of the construction or failure of the specified works.

13. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the Promoter informing it that the state of maintenance of the specified work appears to be such as may adversely affect the operation of railway property, the Promoter shall, on receipt of such notice, take steps as may be reasonably necessary to put the specified works in such state of maintenance as not to adversely affect railway property.

14. The Promoter shall not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it shall have first consulted Network Rail and it shall comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

15. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the Promoter, shall be repaid by the Promoter to Network Rail.

16. The Promoter shall pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of the specified works or the failure thereof; or
- (b) by reason of any act or omission of the Promoter or of any person in its employment or of its contractors or others whilst engaged upon the specified works,

and the Promoter shall indemnify Network Rail from and against all claims and demands arising out of or in connection with the specified works or any such failure, act or omission, and the fact that any act or thing may have been done by Network Rail on behalf of the Promoter or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employment or of its contractors or agents) excuse the Promoter from any liability under the provisions of this Schedule.

17. Network Rail shall give to the Promoter reasonable notice of any claim or demand under paragraph 16 and no settlement or compromise of such a claim or demand shall be made without the prior consent of the Promoter.

18.—(1) In this paragraph—

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

“the Promoter’s apparatus” means any electric lines, circuits, wires, apparatus, equipment and other works of any description owned or used (or intended to be used) by the Promoter for the purpose of the authorised works; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph shall apply to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 2 for the relevant part of the authorised works giving rise to EMI (unless the Promoter has been given notice in writing before the approval of those plans of the intention to make such change) other than any change carried out by Network Rail as part of, or in consequence of, the authorised works.

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

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

- (a) the Promoter shall consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter shall continue to consult with Network Rail (both before and after formal submission of plans under paragraph 2) to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail shall make available to the Promoter all information in the possession of Network Rail reasonably requested by the Promoter in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail shall allow the Promoter reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail shall not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution shall be selected in Network Rail’s reasonable discretion and in relation to such modifications paragraph 2 shall have effect subject to this sub-paragraph.

(6) If at any time prior to the opening of authorised works for the passage of railway traffic and notwithstanding any measures adopted pursuant to sub-paragraph (3) above, the testing or commissioning of authorised works causes EMI, then the Promoter shall immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued),

forthwith cease to use (or procure the cessation of use of) the Promoter's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent specified in sub-paragraph (5)) to Network Rail's apparatus.

- (7) In the event of EMI having occurred—
- (a) the Promoter shall afford reasonable facilities to Network Rail for access to the Promoter's apparatus in the investigation of such EMI;
 - (b) Network Rail shall afford reasonable facilities to the Promoter for access to Network Rail's apparatus in the investigation of such EMI; and
 - (c) Network Rail shall make available to the Promoter any additional material information in its possession reasonably requested by the Promoter in respect of Network Rail's apparatus or such EMI.

- (8) Where Network Rail approves modifications to apparatus pursuant to sub-paragraphs (5) or (6)—
- (a) Network Rail shall allow the Promoter reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
 - (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs shall be carried out and completed by the Promoter in accordance with sub-paragraph (5);

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 16 shall apply to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of sub-paragraph 12(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 25 (arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.

19.—(1) The sums payable by the Promoter under paragraph 16 shall include a sum equivalent to the relevant costs.

(2) Subject to the terms of any agreement between Network Rail and the relevant train operators regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail shall promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (1) which relates to the relevant costs of that train operator.

(3) The obligation under sub-paragraph (1) to pay to Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (1).

20. Subject to paragraph 18(11) any difference arising between the Promoter and Network Rail under this Schedule shall be referred to and settled by arbitration under article 25 (arbitration).

SCHEDULE 3

Article 21

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

1. For the protection of the Agency the following provisions shall, unless otherwise agreed in writing between the Promoter and the Agency, have effect.

Definitions applying to this Schedule

2. In 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;

“damage” includes scouring, erosion and environmental damage and “damaged” 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;

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

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

“specified work” means 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 (whether or not the flow is intermittent) except a public sewer.

Pre-conditions to commencing any specified work affecting a drainage work

3.—(1) Before beginning to construct any specified work, the Promoter shall submit to the Agency plans of the work and such further particulars available to it as the Agency may within 28 days of the submission 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 14.

(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 in writing (and in the case of a refusal, accompanied by a statement of the grounds for refusal) within 42 days of the submission of the plans for approval; and
- (c) may be given subject to such reasonable conditions or requirements as the Agency may impose—
 - (i) for the protection of any drainage work,
 - (ii) for the protection of the fishery,
 - (iii) for the protection of water resources,
 - (iv) for the prevention of flooding or pollution, or
 - (v) in the discharge of its environmental and recreational duties.

4. Without prejudice to the generality of paragraph 3, the conditions or requirements which the Agency may make under that paragraph include—

- (a) conditions as to the time and the manner in which any other work or operation is to be carried out;
- (b) conditions requiring the Promoter at its own expense—
 - (i) to provide or maintain means of access for the Agency;
 - (ii) to provide compensatory habitat for habitat lost or damaged by the specified works;
 - (iii) to construct such protective works, whether temporary or permanent, 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 to safeguard any drainage work against damage or 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; and
 - (iv) to provide, maintain and operate arrangements for dealing with any pollution incidents which may occur during and as a result of the construction of the specified works.

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

- (a) within such period (if any) as the Agency may approve at the time of approval or upon an application by the Promoter thereafter (such approval not to be unreasonably withheld or delayed);
- (b) in accordance with the plans approved or deemed to have been approved or settled under this Schedule; and
- (c) to the reasonable satisfaction of the Agency,

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

(2) The Promoter 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 brought into use.

(3) If any part of the specified works comprising a structure in, over or under a watercourse is constructed otherwise than in accordance with the requirements of this Schedule, the Agency may by notice in writing require the Promoter, at the Promoter's own expense, to comply with the requirements of this Schedule or (if the Promoter 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 as the Agency reasonably requires.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon the Promoter, it has failed to begin taking steps to comply with the requirements of the notice and thereafter complete them within such reasonable period as may be specified in such notice, the Agency may execute the works specified in the notice and any expenditure reasonably incurred by it in so doing shall be recoverable from the Promoter.

(5) 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 a case of emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

Survey of any drainage work liable to be affected by a specified work

6. Before commencing the construction of a specified work the Promoter shall procure at its expense, in liaison with and to the reasonable satisfaction of the Agency, a survey of any drainage work liable to be affected by that specified work.

Maintenance by the Promoter of any drainage work liable to be affected by a specified work

7.—(1) Subject to sub-paragraph (2), the Promoter shall, from the commencement of the construction of the specified works and except to the extent that any approval given by the Agency under this Schedule permits otherwise, maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land owned by the Promoter or which it otherwise has control of, or is in occupation of, for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers of this Order or is already in existence.

(2) The obligation imposed on the Promoter under sub-paragraph (1) does not apply where the Agency or another person is liable to maintain any such work and is not precluded by the exercise of the powers of this Order from doing so.

(3) If any drainage work referred to in sub-paragraph (1) is not maintained in good repair and condition and free from obstruction the Agency may by notice in writing require the Promoter to repair and restore the work, or any part thereof, of (if the Promoter 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 (including sea defences) to its former condition, to such extent and within such limits as the Agency reasonably requires.

(4) 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 (3) on the Promoter, the Promoter has failed to begin taking steps to comply with the reasonable requirements of the notice and thereafter completed them within such reasonable period as may be specified in the notice, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the Promoter.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (3), the Agency shall not except in a case of emergency exercise the powers of sub-paragraph (4) until the dispute has been finally determined.

Impairment of efficiency of drainage work for flood defence

8. If by reason of the construction of any specified work, or of the failure of any such work, or of the Promoter to maintain it, the efficiency of any drainage work for flood defence purposes is impaired, or that work is otherwise damaged, such impairment or damage shall be made good by the Promoter to the reasonable satisfaction of the Agency and if the Promoter fails to do so within such reasonable period as the Agency may require by notice in writing to the Promoter, the Agency may make good the same and recover from the Promoter the expense reasonably incurred by it in so doing.

Protection of fishery

9.—(1) The Promoter 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 the Promoter 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) 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, the Promoter fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from the Promoter the expense reasonably incurred by it in so doing.

(4) 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 the Promoter the reasonable cost of so doing provided that notice specifying those steps is served on the Promoter as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

Indemnity as to costs and expenses

10. The Promoter shall indemnify the Agency in respect of all reasonable and proper 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 Schedule; and
- (b) in the inspection of the construction of the specified works or any compensatory habitat or protective works required by the agency under this Schedule.

11.—(1) Without prejudice to the other provisions of this Schedule, the Promoter shall indemnify the Agency from all claims, demands, proceedings, costs, damages or expenses or loss, which may be made or taken against, or 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 works or any sewers, drains or 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 the Promoter, its contractors, agents or employees whilst engaged upon the specified works.

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

No relief of liability

12. The fact that any work or thing has been executed or done by the Promoter 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 the Promoter from any liability under the provisions of this Schedule.

Approvals deemed and not deemed

13.—(1) For the purposes of section 109 of the Water Resources Act 1991(a) (as to structures in, over or under watercourses) as applying to the construction of any specified work, any approval given or deemed to be given by the Agency under this Schedule with respect to such construction shall be deemed also to constitute a consent under that section.

(2) Except as otherwise provided by this Schedule, nothing in this Order shall prejudice or affect in their application to the Agency the powers, rights, jurisdictions and obligations conferred, arising or imposed under the Land Drainage Act 1991(b), the Salmon and Freshwater Fisheries Act 1975(c), the Water Resources Act 1991 or any enactment, byelaw or regulation relating to the Agency.

(a) 1991 c. 57.
(b) 1991 c. 59.
(c) 1975 c. 51.

Arbitration

14. Any dispute arising between the promoter and the Agency under this Schedule shall, if the parties agree, be determined by arbitration in the London Court of International Arbitration and in accordance with its rules, but shall otherwise be referred to the Secretary of State for Transport and the Secretary of State for the Environment, Food and Rural Affairs, acting jointly.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises the Promoter to construct and operate various railways and other works on land within or adjacent to the Shell redundant oil refinery site, Shellhaven, Stanford-le-Hope, in the Borough of Thurrock in Essex.

A copy of the deposited plans and the deposited sections referred to in this Order may be inspected at the London Gateway site offices, Shell Haven, The Manorway, Stanford-le-Hope, Essex SS17 9PD.

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TRANSPORT ENGLAND**

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