RULE 10(2)(B)

TRANSPORT AND WORKS (APPLICATIONS AND OBJECTIONS PROCEDURE) (ENGLAND AND WALES) RULES 2006

THE NETWORK RAIL (TACKLEY LEVEL CROSSING) ORDER

EXPLANATORY MEMORANDUM

This memorandum explains the purpose and effect of each article of and Schedule to the draft Network Rail (Tackley Level Crossing) Order (the "Order"), as required by Rule 10(2)(b) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (S.I. 2006 No. 1466).

Application for the Order has been made by Network Rail Infrastructure Limited ("Network Rail"). The purpose of this Order is to close specified level crossing as a matter ancillary to a transport system. In relation to this closure the Order authorises the creation of a bridleway and redesignation of the status of the existing footpath. The Order would also permit Network Rail to create a public highway over land and to temporarily use land in connection with the works and operations incidental or ancillary to the provision of a footbridge with lifts to replace Tackley level crossing, including the construction of a bridleway and temporary construction compounds, which is permitted by permitted development rights under the Town and Country Planning (General Permitted Development)(England) Order 2015.

The draft Order is based on the Transport and Works (Model Clauses for Railway and Tramways) Order 2006 ("Model Clauses"), but on occasion it departs from them. Where there is a material departure from the Model Clauses, an explanation is provided. A number of precedents have been followed from comparable orders as specified below.

PART 1

PRELIMINARY

Article 1 *(Citation and commencement)* provides for the citation and the coming into force of the Order.

Article 2 *(Interpretation)* contains provisions for the interpretation of words and phrases used in the Order. Definitions additional to those set out in the Model Clauses have been included in the article to provide clarity, taking into account the specific provisions of the Order.

A new paragraph (3) explains that references to numbered plots are references to plot numbers on the deposited plans. This has been

added to provide clarity and has precedent in the Network Rail (Huyton) Order 2014 (S.I. 2014 No. 2027), the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) and the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114).

Article 3 (*Power to alter layout etc. of streets*) is not found in the Model Clauses, but permits Network Rail to alter the layout of streets in order to accommodate the development, with the consent of the street authority (such consent not to be unreasonably withheld). Alterations in street layout are required for a number of purposes set out in sub-paragraphs (1)(a) to (c), including to create or increase the width of any footway or footpath or to reduce the width of the carriageway. A street authority which fails to notify Network Rail of its decision in respect of an application for consent within 28 days of the application being made is deemed to have given its consent. This provision for deemed consent avoids unnecessary delays to the development. A similar time limit has been inserted in the approval processes elsewhere in this Order. This article has precedent in the Network Rail (Hitchin (Cambridge Junction) Order 2011 (S.I. 2011 No. 1072), the Network Rail (Ordsall Chord) Order 2015 (S.I. 2015 S.I. 2015 No. 780) and the Network Rail (Suffolk Level Crossing Reduction) Order 2020 (S.I. 2020 No. 1663).

Article 4 (*Power to execute street works*) confers authority on Network Rail to interfere with, and execute works in or under, the streets within the Order limits for the purposes of the development. The additional clarification as to the type of street works that may be carried out (over and above that set out in the Model Clauses) can be found in art. 15 of the A428 Black Cat to Caxton Gibbet Development Consent Order 2022 (S.I. 2022 No. 934) and art. 13 of the Portishead Branch Line (MetroWest Phase 1) Order 2022 (S.I. 2022 No. 1194).

Article 5 (*Temporary stopping up of streets*) provides for the temporary stopping up of streets. In an extension to the Model Clauses, paragraph (2) confers a power on Network Rail to use any street stopped up under the powers conferred by this article as a temporary working site. Such provision has precedent in Article 9(2) of the Network Rail (East West Rail) (Bicester to Beford Improvements) Order 2020 (S.I. 2020 No. 114) and is appropriate given the limited extent of the development. Where the street is specified in Schedule 2 (*street to be temporarily stopped up*), Network Rail is obliged only to consult the relevant street authority - this is on the basis that such stoppings up will have been considered in the application for the

Order. If Network Rail wishes to temporarily stop up streets which are not specified in Schedule 2, paragraph (5)(b) provides that Network Rail will need to obtain the consent of the relevant street authority, which may attach reasonable conditions to any such consent but may not unreasonably withhold consent. In an extension to the Model Clauses, a time limit of 28 days is given, after which a street authority that fails to respond to an application for consent is deemed to have given its consent or if it refuses consent without giving any grounds for its refusal it is deemed to have given its consent. The provision of such deemed consent avoids unnecessary delays to the development. This has precedent in article 9 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) and article 14 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114).

Article 6 (*Highway subject to redesignation*) authorises Network Rail to alter the status of the highway as identified in Schedule 1. The principle of altering the status of a highway is precedented in article 2 of the Railtrack (Swinedyke Level Crossing) Order 1995 (S.I. 1995 No. 3188) and the article follows the precedent of article 9 of the Felixstowe Branch Line and Ipswich Yard Improvement Order 2008 (S.I. 2008 No. 2512) and Article 12 of the Network Rail (Essex and Others Level Crossing Reduction) Order 2022 (S.I. 2022 No. 651). Paragraph (8) is included to clarify that the Order will have no effect on the availability or not of any defence of lawful authority that may be available to any persons in relation to offences such as under s.34(1) of the Road Traffic Act 1988 (c.52).

Article 7 (*Agreements with street authorities*) allows Network Rail to enter into agreements with street authorities relating to any street created or affected under this Order. These agreements would allow Network Rail and the street authority to agree matters such as who is responsible for undertaking certain works affecting streets under this Order, a time period for the completion of the works and the terms of any payment which may be made.

Article 8 (C*losure and replacement of level crossing*) this article is not found in the Model Clauses, but is precedented in Articles 15 and 16 of Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (S.I. 2012 No. 2679) and articles 8 and 9 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114). This article authorises the permanent stopping up of the level crossing specified in Schedule 3 (*closure and replacement*

of level crossing) to the Order and the extinguishment of all rights over that crossing, including any public right of way.

Network Rail may only exercise the powers in relation to the crossing described in Schedule 3 once it has provided the new substituted right of way as identified in column (4) of Schedule 3.

Article 9 *(Creation and maintenance of new highway)* is adapted from the Model Clauses (construction and maintenance of new or altered streets) and provides for the creation of new bridleway in the form specified in column (4) in Schedule 3 (*closure and replacement of level crossings*). It includes provisions for the compensation flowing from the creation of the new highway as is precedented in orders such as the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114) (art. 9(7) et seq.) and a certification process as to when the new highway is completed to provide for greater public clarity as to the date of completion which provision has precedent in art. 12 of the A428 Black Cat to Caxton Gibbet Development Consents Order 2022 (S.I. 2022 No. 934).

Article 10 *(Discharge of water)* enables Network Rail to discharge water into any watercourse, public sewer or drain in connection with the construction, operation or maintenance of the development with the approval and (if provided) superintendence of the person to which the watercourse, public sewer or drain belongs (such approval may be subject to the reasonable terms and conditions but must not be unreasonably withheld). The Model Clauses are extended to also cover operation. In addition, the Model Clauses are extended to provide that any relevant person who fails to respond to an application for consent or approval within 28 days of the application being made is deemed to have given its consent. These extensions to the Model Clauses have precedent in the same context in article 19 of the Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (S.I. 2012 No. 2679), article 13 of the Leeds Railway Station (Southern Entrance) Order 2013 (S.I. 2013 No. 1933), article 17 of the London Underground (Bank Station Capacity Upgrade) Order 2015 (S.I. 2015 No. 2044) and article 16 of the Network Rail (Werrington Grade Separation) Order 2018 (S.I. 2018 No. 923).

Article 11 *(Power to survey and investigate land)* confers upon Network Rail power (upon notice to every owner and occupier of that land) to survey and investigate land within the Order limits and to make trial holes, carry out ecological or archaeological investigations and place on, leave on and remove apparatus. It makes provision for the payment of compensation. Approval (which may not be

unreasonably withheld) for the making of trial holes is required, in the case of a carriageway or footway from the highway authority, or in the case of a private street, from the street authority. For the reasons given above in a departure from the Model Clauses a highway or street authority which fails to respond to an application consent within 28 days of the application being made is deemed to have given its consent. Such provision has precedent in the same context in article 15 of the Leeds Railway Station (Southern Entrance) Order 2013 (S.I. 2013 No. 1933), article 15 of the Network Rail (Huyton) Order 2014 (S.I. 2014 No. 2027) and article 16 of the Network Rail (Hope Valley Capacity) Order 2018 (S. I. 2018 No. 446).

Article 12 *(Application of Part 1 of the 1965 Act)* confirms that this Order does not include powers for the compulsory purchase of land to which the 1981 Act applies (or therefore to which the Compulsory Purchase Act 1965 (c. 56) applies).

Article 13 *(Rights under or over streets)* permits Network Rail to appropriate and use so much of the subsoil of, or airspace over, any street within the limits of land to be acquired or used without being required to acquire any part of the street or any easement or right in it. Provision is made for the payment of compensation.

Article 14 *(Temporary use of land for development)* enables Network Rail, in connection with the carrying out of the development, to take temporary possession of (i) land listed in Schedule 4 (*land of which temporary possession may be taken*) and (ii) land within the Order limits. Paragraph 1(a)(ii) is an addition to the Model Clauses. It follows the approach adopted in a number of recent orders (e.g. article 27 of the Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (S.I. 2012 No. 2679, article 21 of the Network Rail (Huyton) Order 2014 (S.I. 2014 No. 2027), article 24 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) and article 28 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114). It is a lesser imposition on individual property rights than permanent acquisition and is more proportionate. Provision is also made for the payment of compensation.

The provisions also depart from the Model Clauses in allowing (as well as temporary works), permanent mitigation works specified in Schedule 4 (*land of which temporary possession may be taken*) and other permanent mitigation works to be constructed and left on the land, without a requirement for these to be removed. This would

apply, for example, where mitigation is provided but Network Rail does not need to retain a permanent interest or rights in the land. This approach is also precedented in the Orders listed in the paragraph above.

Article 15 *(Temporary use of land for maintenance)* provides for Network Rail to take temporary possession of the land within the Order limits (other than that consisting of a house, garden or occupied building) for the purpose of maintaining the development in the five years following the development relating to the crossing closure. Network Rail may construct temporary works and buildings on such land if they are reasonably required for the maintenance of any work comprised in the development. Provision is made for notice to be given and payment of compensation.

Article 16 *(Disregard of certain interests and improvements)* provides that in assessing the compensation payable in respect of compulsory acquisition or use the Upper Tribunal must disregard any interest in land or any enhancement of an interest in land caused by improvements which they are satisfied were created or undertaken with a view to obtaining compensation or increased compensation.

Article 17 *(Extinction or suspension of private rights of way)* provides for the extinguishment of private rights of way over land belonging to Network Rail and appropriated for the purposes of the Order, and the suspension of private rights of way in respect of land temporarily occupied and for payment of compensation. By way of extension to the Model Clauses, additional provisions are included in paragraphs (7) to (9) to allow for the preservation of rights of way that would otherwise be extinguished or suspended where arrangements are entered into with the relevant beneficiary or where otherwise Network Rail can take the view that the exercise of any rights can be appropriately constrained to so as to remain consistent with the purposes of the Order. This approach has precedent in art. 32 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114) and art. 39 of the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067) and has been re-drafted for greater clarity.

Article 18 *(Time limit for exercise of powers of temporary use)* imposes a time limit of five years from the coming into force of this Order for the exercise of powers of temporary possession of land.

Article 19 *(Power to lop trees overhanging the development)* enables Network Rail to fell or lop trees and shrubs for the purposes of preventing

obstruction or interference with the development and danger to passengers and users. Provision is included for compensation.

Article 20 *(Defence to proceedings in respect of statutory nuisance)* provides Network Rail with a defence to a claim in statutory nuisance brought under section 82(1) of the Environmental Protection Act 1990 (c. 43) if it can show that works are being carried out in accordance with a notice served under section 60, or a consent given under section 61 or 65 of the Control of Pollution Act 1974 (c. 40), or that the nuisance complained of is a consequence of the exercise of powers conferred by the Order with respect to the development and that it cannot be reasonably avoided. Although not a Model Clause, this is a provision which has now become common. Article 38 of the Chiltern Railways (Bicester to Oxford Improvements) Order 2021 (S.I. 2012 No. 2679) and article 28 of the Network Rail (Huyton) Order 2014 (S.I. 2014 No.2027) are examples of recent precedents.

Following article 35 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114), Paragraph (3) extends this provision to provide a defence against abatement proceedings brought by a local authority under section 80(4) of the Environmental Protection Act 1990.

Article 21 *(Statutory undertakers etc.)* introduces Schedule 5 (*provisions relating to statutory undertakers*) to the Order which contains specific safeguards for statutory undertakers.

Article 22 *(Certification of plans etc.)* requires Network Rail to submit the book of reference and the land and rights of way plans to the Secretary of State for certification after the making of this Order.

Article 23 *(Service of notices)* makes provision as to the service of notices or other documents for the purposes of the Order. In addition to the Model Clauses it provides for the publication of documents on a website or in other electronic form.

Article 24 *(No double recovery)* prevents compensation being payable in respect of the same matter both under the Order and any other enactment, contract or rule of law.

Article 25 *(Arbitration)* makes provision for differences arising under any provision of this Order to be determined by arbitration.