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Dear colleague

ORR's regulation of land disposals by Network Rail

I am writing to tell you about some changes we have made in the way we deal with Network Rail's land disposals. We are introducing these changes having considered stakeholders' views, following our consultation last year.¹ We expect they will further streamline our arrangements and reduce the number of straightforward cases which would otherwise need our specific consent.

Our proposals were supported overall and there was no opposition to their implementation. Some respondents commented on our wording in some parts of our proposals and we have made some minor clarifying changes. A number of respondents raised points about Network Rail's consultations with its stakeholders. Some of these were quite specific but we do not think we should widen the scope of our regulatory arrangements to deal with them; instead, we think that 'background' issues are for Network Rail and its stakeholders to address directly.

There are two further changes to our general consent, which we are introducing having considered the responses. The first is an amendment to clause 1(g), which now takes into account cases where rights of access are maintained or improved. The second is a new clause which will permit Network Rail to consent to sublettings under an existing lease. We will audit such transactions on a regular basis to ensure that the company is granting such consents appropriately. More details are in our regulatory arrangements document attached to this letter. I also attach a marked-up version so that you can see the revisions easily.

We aim to keep our arrangements for Network Rail's land disposals efficient and effective and will review them from time to time. As part of our work to review Network Rail's funding for 2014-19, we are considering some changes to the company's network licence including to its land disposal licence condition. We expect to consult on this in the summer.

Yours faithfully

Les Waters

¹ Our letter and the responses we received are on our website: <http://www.rail-reg.gov.uk/land-disposal-consultation-Dec2012>.

2. General consent to the disposal of land by Network Rail

1. ORR directs that for the purposes of condition 7 of the network licence, Network Rail may dispose of land by entering into any of the following ~~transactions~~arrangements without giving prior notice:

- (a) ~~the grant of~~ a lease, which incorporates the Station Access Conditions, of all or part of a station to a passenger train operator providing railway services under a franchise agreement with the appropriate franchising authority or under a concession agreement with a Passenger Transport Executive or Transport for London (“TfL”) (or ~~to a passenger train operator in the TfL Group~~, or their successors). The lease must be capable of termination on or before the termination of the relevant franchise agreement or the concession agreement ~~if any~~.

For the purpose of this paragraph a franchise agreement or a concession agreement shall not be treated as being terminated if, when it comes to an end, it is replaced by an agreement between the passenger train operator and the appropriate franchising authority, or a Passenger Transport Executive or Transport for London ~~(or its successors)~~_{1,2} on similar terms;

- (b) ~~the grant of~~ a lease or licence of part of a station of which Network Rail is the station operator ~~to a train operating company~~ for the purpose of providing services relating to railways;
- (c) ~~the grant of~~ a lease or licence:
- (i) of all or part of a light maintenance depot (LMD) to any person for the purpose of providing services relating to railways; or
- (ii) of land for the construction of an LMD provided that there are no plans to use the land for other railway purposes and the land is used only for such purposes as are permitted by the National Depot Access Conditions (December Standard) or such other depot access conditions as may be approved by ORR;
- (d) ~~the grant of~~ a reversionary or concurrent lease pursuant to an obligation contained in any such lease referred to in paragraphs 1(a) and 1(c) provided that the grant of the reversionary or concurrent lease does not interfere with or restrict the carrying on of railway services at the station or LMD;
- (e) ~~the grant of~~ a lease or a licence which contains a materially unfettered right permitting Network Rail to terminate the lease or licence if the land is required by Network Rail for the performance of its responsibilities as a provider of network services or for the purpose of the network business or for the purposes of railway and/or integrated transport related redevelopment;

- (f) ~~the grant of~~ a lease or licence of all or part of a building which will be used ~~by the lessee~~ as office or retail accommodation;
- (g) the disposal of land which has no reasonably foreseeable use:
 - (i) for, or in connection with, services relating to railways; or
 - (ii) for any other public transport use, which would provide benefit for rail passengers, through better integration of public transport modes; and
 - (iii) where rights of access are maintained or improved and where recent prior consultation with relevant stakeholders has left no issue unresolved;
- (h) the renewal or extension of any lease where the renewal is required by operation of law;
- (i) ~~the grant of~~ a licence ~~where the grant that~~ would not have a material adverse effect on the ability of Network Rail, any network operator, any beneficiary or a holder of a licence under the Act or the Railway (Licensing of Railway Undertakings) Regulations 2005 to use or develop the land for the purpose of providing services relating to railways;
- (j) the grant of sub-surface or air rights that do not infringe on the space which may be needed to facilitate the provision of services relating to railways (major developments are excluded from such grant);
- (k) the disposal of any land made solely for the purpose of boundary rectification of land in which Network Rail has an estate or interest;
- (l) ~~the grant to a third party of~~ a wayleave, easement or servitude ~~where the grant which~~ would not have a material adverse effect on the ability of Network Rail, any network operator, any beneficiary or any holder of a licence under the Act or the Railway (Licensing of Railway Undertakings) Regulations 2005 to use or develop the land for the purpose of providing services relating to railways;
- (m) ~~the grant of~~ a lease or licence of a freight depot, freight terminal or freight sidings for the purposes of providing services relating to railways;
- (n) ~~the grant of~~ a lease or licence to a person providing network services for the purpose of providing services relating to railways;
- (o) any disposal of land to the extent it comprises a network or railway facility (or part of a network or railway facility) which has been the subject of a decision on closure under section 43(9) of the Act (or the effect of the provisions set out in sections 22-35 of the Railways Act 2005 is that it is permitted to be closed or its use discontinued) and that decision (or effect of those provisions) does not explicitly require that the licence holder does not dispose of the land; ~~or~~
- (p) the ~~dedication disposal~~ of land to a governmental or local authority, agency or department for the purposes of or in connection with a highway (including approaches to and over level

crossings), where such land does not otherwise form part of the operational rail network and where recent prior consultation with relevant ~~train operators, passenger transport executives, Transport for London (or its successors) or Regional Transport Partnerships, as appropriate, stakeholders~~ has ~~raised~~ left no issues unresolved;

(g) the disposal of land wholly for a public transport use, which would provide benefit for rail passengers through better integration of public transport modes, and where:

(i) the disposal would not hinder Network Rail's ability to conduct its network business; and

(ii) recent prior consultation with relevant stakeholders has not identified a reasonably foreseeable competing railway or integrated transport use for the land or left any other issue unresolved; or

(r) a grant of consent to a lessee under an existing lease permitting the lessee to sublet all or part of the leased premises.

2. ORR may after consulting the licence holder modify or revoke this general consent if it appears to ORR requisite or expedient to do so by reason of any change of circumstances having regard to the duties imposed on ORR by section 4 of the Act.

3. In this direction:

“the Act” is the Railways Act 1993;

“existing lease” means a lease entered into by Network Rail prior to 15 November 2001;

“lease” includes a tenancy;

“prior notice” means a notice to ORR under condition 7.2 of Network Rail’s network licence;

“Station Access Conditions” means the National Station Access Conditions 1996 (England and Wales) lodged with ORR on 30 January 1996, or the National Station Access Conditions 1996 (Scotland) lodged with ORR on 4 March 1996 as appropriate, and in both cases, modified from time to time with the approval of ORR;

“Depot Access Conditions” means the National Depot Access Conditions (England and Wales) or the National Depot Access Conditions (Scotland) lodged with ORR, and in both cases modified from time to time with the approval of ORR;

and any other words and phrases in this direction shall have the same meaning as in the Act or network licence