

TRANSPORT AND WORKS ACT 1992

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

THE PROPOSED NORTHUMBERLAND LINE ORDER

STATEMENT OF CASE

on behalf of

NORTHUMBERLAND ESTATES

SEPTEMBER 2021

REFERENCE: TWA/21/APP/02/OBJ/21

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Introduction

1. Northumberland County Council ("NCC") is the promoter of the Northumberland Line Order ("the Order") to which the Northumberland Estates is a statutory objector.
2. The "Northumberland Estates" is the term used to represent all of the business and other interests of the Duke of Northumberland (from time to time) and the Percy family.
3. This Statement of Case is submitted pursuant to the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules¹ ("the Rules") on behalf of the various individuals, trusts companies and other businesses comprised within the Northumberland Estates which are or may be affected by the Order including (but not limited to) the Honourable Matthew White Fifth Viscount Ridley, the Honourable James William Eustace Percy and the Most Noble Ralph George Algernon Twelfth Duke of Northumberland (in their capacity of Trustees of the various Trusts of the Northumberland Estates), Northumberland Estates Limited, Northumberland Estates Investments Limited, and any other interests or group of companies related to these interests (all of whom are collectively referred to in this Statement as the "Estate").
4. The Estate expressly reserves the right to amend or add to this Statement.
5. Furthermore the Estate confirms that it intends to:
 - 5.1. avail itself of the right to appear at the public inquiry; and
 - 5.2. be heard before an Inspector, being a person appointed by the Secretary of State.
6. The Estate also requests that the Inspector convene a Pre-Inquiry meeting pursuant to Rule 8 of the Rules, if one is not to be called pursuant to Rule 6.

Statement of Case

7. The Estate set out its objection to the Order in its letter dated 7 July 2021 to the Secretary of State for Transport ("the Objection Letter"). A letter of response to the Objection Letter, dated 11 August 2021 was received from Pinsent Masons, acting on behalf of NCC ("Pinsent Masons' Response").

¹ Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006/1466

8. This Statement of Case sets out the Estate's position in light of the above correspondence.
9. As set out in the Objection Letter the Estate welcomes the broad objectives of the Northumberland Line Scheme ("the Scheme") in so far as it seeks to promote economic regeneration in Northumberland and the wider region.

Article 35

10. The Estate's principal concern is the inclusion in the Order of Article 35. Under Article 35 NCC seeks to modify wayleave agreements between the Estate and Network Rail ("the Wayleave Agreements"). It provides so far as relevant:

"Art 35 (2): On the bringing into use of all or any part of the development any obligation under the relevant wayleave leases to pay the rent is to cease to have effect.

Art 35 (3) Network Rail must pay to the landowner a capitalised sum by way of compensation for any loss arising from the operation of paragraph (2), such compensation to be determined, in case of dispute, under part 1 of the 1961 Act."

11. The Explanatory Memorandum to the Order states:

"Article 35 ...makes provision to modify agreements relating the land on which part of the railway are built. These agreements date back to the 19th century and were entered into by the railway company and the landowners when the railway between Ashington and Newcastle was originally constructed following authorisation by local Acts.

The agreements include wayleave leases for terms of up to 1000 years which confer rights on the railway company to construct, maintain and use the railway on the land, and contain provisions relating to payments to the landowner in respect of the transport of freight and passengers on the railway. The provisions in respect of payments do not reflect the way in which the modern railway is owned and operated and give rise to the potential for disagreement between the parties, particularly as the use of the railway is increased to include passenger services. Paragraph (2) therefore provides that Network Rail must pay to the relevant landowner a capitalised sum by way of compensation for such losses arising as a result of paragraph (2) with such compensation to be

determined in case of dispute under Part 1 of the Land Compensation Act 1961.”

12. The Estate objects to Article 35 on the following basis:
 - 12.1. Article 35 is unnecessary. The existing Wayleave Agreements provide sufficient rights to operate the Line. Those rights extend to the use of the line for both freight and passenger trains.
 - 12.2. In so far as the justification put forward in the Explanatory Memorandum is that such *“payments do not reflect the way in which the modern railway is owned and operated and give rise to the potential for disagreement between the parties”*, the Estate is not against modernising the Wayleave Agreements but it is not accepted that these are sufficient reasons to justify Article 35.
 - 12.3. Prior to the making of the application for the Order, the Estate has had no contact from Network Rail or its agents as to modernising or otherwise modifying the terms of the Wayleave Agreements and there has been no substantive engagement by Network Rail on this matter thereafter. There is no reason why the Wayleaves Agreement cannot be amended by agreement to the satisfaction of both parties rather than requiring a legislative provision to amend by force. If this were a compulsory purchase situation, the promoter would be required to seek compulsory purchase powers as a last resort and as such to seek to acquire by agreement. The failure to even approach the Estate to discuss and negotiate potential terms to modernise or modify the terms of the Wayleave Agreements is wholly unexplained and, in the Estate’s view, the Secretary of State should not contemplate interfering with a private agreement by legislative means where it cannot be demonstrated that it is necessary and a last resort.
 - 12.4. Even if it could be demonstrated that Article 35 was necessary, the basis for compensation proposed is not appropriate and in fact is wholly inappropriate.
 - 12.5. The Land Compensation Act 1961 is only an appropriate basis for compensation where land is acquired compulsorily. Section 1 of that Act is quite clear that the Act will apply to questions of disputed compensation in relation to land authorised to be “acquired compulsorily” by or under any statute. However, as Pinsent Masons expressly recognise in their response to the Objection Letter (paragraph 32), Article 35 *“is not a compulsory acquisition power.”* It does not seek to acquire any land nor any rights over land, instead it seeks the modification of an agreement relating to land (for which there

is power under section 5(1) and Schedule 1, paragraph 5 of the Transport and Works Act 1992). In the circumstances, the appropriate course, if a modified agreement cannot be agreed, would be to assess compensation under ordinary commercial principles and subject to arbitration, if not agreed.

- 12.6. Where no rights are sought over the land but rather reliance is placed on a commercial agreement that allows use of the land for rent, first, that use can carry on, and secondly, where the removal of the rent is contemplated it can only properly be done where there is payment of full compensation on ordinary commercial terms. The reference in Article 35(2) to the Land Compensation Act 1961 is wholly inappropriate (as is quite clear from the Act itself) where there is no compulsory acquisition of land. In circumstances of compulsory acquisition of land, the market value of the acquired land would fall to be assessed. That is not the case here as there is no land that is being acquired.
- 12.7. Further, it is also notable that Article 35 provides that it is for Network Rail, not NCC, to pay compensation. As set out above, Network Rail has not sought to enter into any discussions about compensation and, moreover, there is no evidence provided to date that Network Rail has the requisite means to pay such compensation.

Other matters

13. We note – and NCC accepts – that the onus is firmly on the applicant for a TWA Order to justify that the Order is warranted in all regards. The interference sought with the Wayleaves Agreements is interference with the Estate's possessions which engages Article 1 of the First Protocol of the European Convention of Human Rights. It must be justified and proportionate. A compelling case in the public interest must be demonstrated. That is a high threshold. In addition the Secretary of State's guidance in respect of TWA Orders identifies the purpose of the procedure to be followed is "*to allow the Secretary of State... to come to an informed view on whether it is in the public interest to make the TWA Order*" and that "*the outcome is certainly not a foregone conclusion*". It is therefore clearly incumbent upon the applicant for the Order to provide sufficient evidence in support of the proposed Order to enable an informed view to be reached. In the Estate's view, and accounting for the Pinsent Mason response, there remain substantial and fundamental gaps in the case that has been advanced including in respect of delivery and operation of the Scheme.

The Structure of the Order and Delivery Roles

14. Whilst no point is made as to its legal capacity to apply for such Order, NCC is not a rail authority. Furthermore, the bulk of the funding for the project (£140m) comes from the Department of Transport's Rail Network Enhancements Pipeline Fund (RNEP). There is a concerning absence of detail as to how precisely NCC will effect the delivery of the Scheme. It is understood that NCC will itself deliver the non-rail elements of the Scheme such as public highway works and that Network Rail and/or other parties will deliver the rail elements. Thus the role of the applicant for the Order is at best semi-detached from actual delivery of the core rail elements of the Scheme. Indeed, it is noted that paragraph 1.2 of NCC's Guide to the Application refers to "*the specific role that the Order will play in providing NCC with powers to support the delivery of the Project*". Even on its own terms NCC does not seek to deliver the project, but rather to "support" its delivery.
15. There is thus a gap as to how precisely the Scheme will be delivered in terms of land ownership and the contractual terms between the various parties. The onus is squarely on the applicant to explain how, if the Order were to be confirmed, NCC will effect the delivery of the Scheme, contractually and in all other ways, by third parties. In short, who precisely is to do what and on what basis?
16. For example, the diffuse nature of responsibility for the Scheme has already had practical consequences for affected landowners. Whilst SLC has been appointed by NCC to treat with affected landowners, the core rail design requirements are controlled by a third party, Network Rail. Notwithstanding that NCC is the applicant for the Scheme it is difficult to see that it has any meaningful degree of control over its precise design. To that extent meaningful discussion with NCC on such matters is compromised.
17. By way of further example, the supporting documents for the Order set considerable store by reliance on permitted development (p.d.) rights enjoyed by Network Rail. As NCC is aware those GPDO 2015 rights are available to railway undertakers on their operational land in connection with the movement of traffic by rail. They therefore apply to the existing rail network. However, what is unclear is whether reliance on p.d. rights is only in respect of works to the existing network or also to new operational land to be delivered by the Scheme and, if so, to what extent.

18. More broadly, to what extent is it intended that land or interests acquired under the Order will be transferred by NCC to Network Rail or any other third party in order to deliver the Scheme? Clarification is required in respect of this.

Prematurity

19. It is also noted that the land-take proposed in many instances reflects a lack of certainty as to the Scheme's requirements. Given that the Order contains a hierarchy of appropriation or use, from outright acquisition of land or interests to creation of new rights and temporary uses of land, it is reasonable to expect that the applicant is clear as to precisely what it requires. However, in the absence of planning permissions and final design it appears that NCC has at this stage erred on the side of caution to an unwarranted degree to include as "pink land" areas that cannot possibly be required outright. To this extent the Order is premature and is being promoted in advance of reasonable certainty and clarity as to land-take requirements. In any event a thoroughgoing review of land-take is required to be undertaken by the applicant in order to demonstrate that all the land sought can be demonstrated to be necessary for the delivery of the Scheme.

Lack of Operational Case

20. At the heart of any decision in respect of the Order is the need for sufficient certainty that it will be operationally viable. If the Order is to be justified it is essential that a clear operational case is made out and that it is demonstrated that there is no likelihood that it will be a future burden on the public purse. In the present context no informed comment can be made on the operational case for the Northumberland Line because no such case has been made out with only very tentative reference being made to a Train Operating Company (TOC). The absence of such justification means that on the present basis the Secretary of State must decline to make the Order.

Specific Sites

21. As regards site-specific aspects of the Order the following are highlighted.
22. The Estate have a particular concern arising out of the Order in respect of works proposed to Algernon Bridge ("the Bridge"). Whilst there is an agreement (a deed dated 22 November 2002) pursuant to which Nexus has certain maintenance responsibilities in respect of the Bridge, the Bridge is owned by the Estate. As part of the Order we understand that it is proposed that works be undertaken to construct a

staircase / lift shaft and "tie-in" these works to the structure of the Bridge. The Estate is concerned as to the significant additional liability that could arise as a result of these works both during construction and as part of any subsequent use and the Estate requires clarification as to who is to take on responsibility for such works and how this will be addressed through the Order so as to ensure that the Estate is not left with any liability in relation to the maintenance and use of the Bridge or any part of it. It would be wholly inappropriate to expect a private landowner to retain responsibility and liability for what is quite clearly a piece of public infrastructure even if only in part. The Order does not deal with this issue at all despite this point having been raised by the Estate on numerous occasions in meetings with NCC and its agent. It is noted from Pinsent Masons' Response that NCC is seeking to deal with revised maintenance arrangements and liabilities at this location in discussion with Nexus and that it is happy to discuss these emerging arrangements further with the Estate. We are amenable to such discussions.

23. The Estate objects to the proposed compulsory acquisition of plot 95a together with the extinguishment of the private right of way comprised in the Holywell user-works railway crossing (between points P23 and P23a on sheet 3) for the reasons set out in the Objection Letter. We note NCC's response, including confirmation that Plot 95a has been wrongly included and are amenable to seeking an agreed solution in relation to the arrangements at Holywell UWC.
24. Again, the Estate objects to the proposed acquisition of plots 102a -106 inclusive for the purposes of a new underpass for the reasons set out in the Objection Letter. We note NCC's response which would address the Estate's concerns.
25. Similarly, the Estate notes the response to its objection in relation to Plot 64, a multi-story car park ("MSCP") adjacent to the proposed Northumberland Park station and will seek to discuss this issue further.

Conclusion

26. For the reasons set out above, the Estate continues to object to the Order and intends to appear at the inquiry.

List of documents

| | |
|----------|---|
| 1 | Objection Letter |
| 2 | Pinsent Masons' Response |
| 3 | Wayleave Agreements (together with transcripts) |

The Secretary of State for Transport
c/o Transport Infrastructure Planning Unit
Department of Transport
Great Minster House
33 Horseferry Road
London
SW1P 4DR

Your Ref:
Our Ref: FMO.NOR103.425
Doc No: 31979758v4
Date: 7 July 2021

By special delivery and by email: transportinfrastructure@dft.gov.uk

Dear Sirs

**Transport and Works Act 1990
The Northumberland Line Order (the "Order")
Objection on behalf of the Northumberland Estate**

1. We act on behalf of the various individuals, trusts, companies and other businesses comprised within the "Northumberland Estates" (being the term used to represent all the business and other interests of the Duke of Northumberland (from time to time) and the Percy family) which are or may be affected by the Order including (but not limited to) the Honourable Matthew White Fifth Viscount Ridley the Honourable James William Eustace Percy and the Most Noble Ralph George Algernon Twelfth Duke of Northumberland (in their capacity of Trustees of various Trusts of the Northumberland Estates), Northumberland Estates Limited, Northumberland Estates Investments Limited, and any other interests or group of companies related to these interests (all of whom are collectively referred to in this letter as the "Estate"). The Estate have been served with Notices of the Application dated 27th May 2021 relating to the Order to "acquire land or rights in land compulsorily, to extinguish rights over land and to use land temporarily".
2. On behalf of the Estate we hereby object to the Order.
3. The Estate expressly reserves its position as regards the service of notices on Viscount Ridley. As the applicant for the order was made aware, Viscount Ridley has retired as a Trustee and his interest in any of the affected Trust properties transferred to and vested in the other trustees and a new trustee. It is furthermore noted that Viscount Ridley also owns land in his own right and which is not part of the Estate.
4. For the avoidance of doubt the Estate welcomes the broad objectives of the Northumberland Line Scheme ("the Scheme") in so far as it seeks to promote economic regeneration in Northumberland and the wider region. However the content of the application, the lack of clarity as to delivery and the absence of any meaningful evidence base in respect of the future operation of the Scheme gives substantial cause for concern.
5. The Estate's comments and objections are set out as follows:
 - Statutory context and legal tests;

- The structure of the Order and delivery roles ;
 - Prematurity;
 - Lack of operational case;
 - Measurement of outcomes;
 - Article 35;
 - Specific sites.
6. We note the statutory context in which the application is submitted and the broad ambit of the 1992 Act. However, the Act is not without limit or constraint and, as further set out below, we consider that vires issues arise, particularly in regard to Article 35.
 7. We note that the onus is firmly on the applicant for a TWA Order, ie Northumberland County Council (NCC), to justify that the Order is warranted in all regards. Where compulsory purchase powers are sought, with concomitant impacts on those whose interests are to be expropriated, it is necessary for an applicant to demonstrate a "compelling case in the public interest". That is a high threshold. In addition the Secretary of State's guidance in respect of TWA Orders identifies the purpose of the procedure to be followed is "to allow the Secretary of State... to come to an informed view on whether it is in the public interest to make the TWA Order" and that "the outcome is certainly not a foregone conclusion". It is therefore clearly incumbent upon the applicant to provide sufficient evidence in support of the proposed Order and Scheme to enable an informed view to be reached. To date there are substantial and fundamental gaps in the case that has been advanced including in respect of delivery and operation of the Scheme.
 8. It is also something of a peculiarity that NCC is the applicant. Whilst no point is made as to its legal capacity to apply for such Order, NCC is not a rail authority. Furthermore the bulk of the funding for the project (£140m) comes from the Department of Transport's Rail Network Enhancements Pipeline Fund (RNEP). There is a concerning absence of detail as to how precisely NCC will effect the delivery of the Scheme. It is understood that NCC will itself deliver the non-rail elements of the Scheme such as public highway works and that Network Rail and/or other parties will deliver the rail elements. Thus the role of the applicant for the Order is at best semi-detached from actual delivery of the core rail elements of the Scheme. Indeed, it is noted that paragraph 1.1 of NCC's Guide to the Application refers to "the specific role that the Order will play in providing NCC with powers to support the delivery of the Project". Even on its own terms NCC does not seek to deliver the project, but rather to "support" its delivery.
 9. There is thus a gap as to how precisely the Scheme will be delivered in terms of land ownership and the contractual terms between the various parties. The onus is squarely on the applicant to explain how, if the Order were to be confirmed, NCC will effect the delivery of the Scheme, contractually and in all other ways, by third parties. In short, who precisely is to do what and on what basis?
 10. For example, the diffuse nature of responsibility for the Scheme has already had practical consequences for affected landowners. Whilst SLC has been appointed by NCC to treat with affected landowners, the core rail design requirements are controlled by a third party, Network Rail. Notwithstanding that NCC is the applicant for the Scheme it is difficult to see that it has any meaningful degree of control over its precise design. To that extent meaningful discussion with NCC on such matters is compromised.

11. By way of further example, the supporting documents for the Order set considerable store by reliance on permitted development (p.d.) rights enjoyed by Network Rail. As NCC is aware those GPDO 2015 rights are available to railway undertakers on their operational land in connection with the movement of traffic by rail. They therefore apply to the existing rail network. However what is unclear is whether reliance on p.d. rights is only in respect of works to the existing network or also to new operational land to be delivered by the Scheme and, if so, to what extent.
12. More broadly, to what extent is it intended that land or interests acquired under the Order will be transferred by NCC to Network Rail or any other third party in order to deliver the Scheme? Clarification is required in respect of this.
13. It is also noted that the land-take proposed in many instances reflects a lack of certainty as to the Scheme's requirements. Given that the Order contains a hierarchy of appropriation or use, from outright acquisition of land or interests to creation of new rights and temporary uses of land, it is reasonable to expect that the applicant is clear as to precisely what it requires. However, in the absence of planning permissions and final design it is clear that NCC has at this stage erred on the side of caution to an unwarranted degree to include as "pink land" areas that cannot possibly be required outright. To this extent the Order is clearly premature and is being promoted in advance of reasonable certainty and clarity as to land-take requirements. In any event a thoroughgoing review of land-take is required to be undertaken by the applicant.
14. At the heart of any decision in respect of the Order is the need for sufficient certainty that it will be operationally viable. If the Order is to be justified it is essential that a clear operational case is made out and that it is demonstrated that there is no likelihood that it will be a "White Elephant" and future burden on the public purse. In the present context no informed comment can be made on the operational case for the Northumberland because no such case has been made out with only very tentative reference being made to a Train Operating Company (TOC). The absence of such justification means that on the present basis the Secretary of State must decline to make the Order.
15. In addition the Order is ambitious in the nature and extent of its aims and objectives. What is absent however is what level and nature of economic growth, i.e. both quantifiable and qualitatively assessed, comprises such aims. The absence of identifiable targets undermines the credibility of the aims. In any event, what methodology is proposed to be used to identify and attribute any future growth to the Scheme and therefore assess whether aims and objectives have been achieved?
16. Of particular concern to the Estate is the inclusion in the Order of Article 35. It seeks modification of agreements relating to land, namely wayleave agreements between the Estate and Network Rail ("the Wayleave Agreements"), and further states:
 - Art 35 (2): *On the bringing into use of all or any part of the development any obligation under the relevant wayleave leases to pay the rent is to cease to have effect.*
 - Art 35 (3) *Network Rail must pay to the landowner a capitalised sum by way of compensation for any loss arising from the operation of paragraph (2), such compensation to be determined, in case of dispute, under part 1 of the 1961 Act.*
17. The Explanatory Memorandum to the Order states:
 - *Article 35 ...makes provision to modify agreements relating the land on which part of the railway are built. These agreements date back to the 19th century and were entered into by the railway company and the landowners when the railway between*

Ashington and Newcastle was originally constructed following authorisation by local Acts.

- The agreements include wayleave leases for terms of up to 1000 years which confer rights on the railway company to construct, maintain and use the railway on the land, and contain provisions relating to payments to the landowner in respect of the transport of freight and passengers on the railway. The provisions in respect of payments do not reflect the way in which the modern railway is owned and operated and give rise to the potential for disagreement between the parties, particularly as the use of the railway is increased to include passenger services. Paragraph (2) therefore provides that Network Rail must pay to the relevant landowner a capitalised sum by way of compensation for such losses arising as a result of paragraph (2) with such compensation to be determined in case of dispute under Part 1 of the Land Compensation Act 1961*

18. The Estate's objections to Article 35 include:

- Article 35 is unnecessary. The existing Wayleave Agreements provide sufficient rights to operate the Line. That right extends to the use of the line for both freight and passenger trains.
- The justification put forward that such "payments do not reflect the way in which the modern railway is owned" is both inadequate and inaccurate. There is nothing unusual about such agreements. Agreements of this kind apply elsewhere on the wider rail network.
- The Wayleave Agreements reserve royalties/rents not just in respect of passenger trains but also freight trains. The operating of freight trains already occurs on the line and is not part of the Scheme. For Article 35 to in effect terminate the requirement to for Network Rail to pay royalties/rents in respect of freight trains is unnecessary and there can be no "compelling case in the public interest" to justify this. It is quite clearly ultra vires.
- The inclusion of Article 35 crystallises the tension in the Order between NCC being the applicant, Network Rail's role and indeed the role of a TOC. We note that it is expressly not stated that Article 35 is necessary to make the Scheme operationally viable. Indeed it appears wholly opportunistic to attach such provision to the Order.
- Notwithstanding the scope of an Order under the 1992 Act, it is therefore quite evident that Article 35 is ultra vires in going beyond what reasonably relates to the terms of the Order. Furthermore it is submitted that the Order cannot legitimately terminate the Wayleave Agreements in respect of land to which the Order does not apply.
- Article 35 should accordingly be deleted.
- It is also notable that in any event Article 35 provides that it is for Network Rail, not NCC, to pay compensation. To date the Estate has had no contact from Network Rail or its agents in that regard and no effort made to engage in discussions around the terms of the Wayleave Agreements.

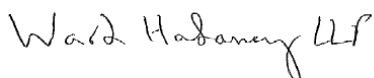
19. As regards site-specific aspects of the Order the following are highlighted.

20. The Estate have a particular concern arising out of the Order in respect of works proposed to Algernon Bridge ("the Bridge"). Whilst there is an agreement (a deed dated 22 November 2002) pursuant to which Nexus has certain maintenance responsibilities in respect of the

Bridge, the Bridge is owned by the Estate. As part of the Order we understand that it is proposed that works be undertaken to construct a staircase / lift shaft and "tie-in" these works to the structure of the Bridge. The Estate is concerned as to the significant additional liability that could arise as a result of these works both during construction and as part of any subsequent use and the Estate requires clarification as to who is to take on responsibility for such works and how this will be addressed through the Order so as to ensure that the Estate is not left with any liability in relation to the maintenance and use of the Bridge or any part of it. It would be wholly inappropriate to expect a private landowner to retain responsibility and liability for what is quite clearly a piece of public infrastructure even if only in part. The Order does not deal with this issue at all despite this point having been raised by the Estate on numerous occasions in meetings with the Applicant and its agent.

21. The Estate objects to the proposed compulsory acquisition of plot 95a together with the extinguishment of the private right of way comprised in the Holywell user-works railway crossing (between points P23 and P23a on sheet 3). It is not apparent in particular what the claimed justification is for the acquisition given that rights for railway use appertain through the Wayleave Agreements. In addition the proposed freehold acquisition would unjustifiably remove all other rights enjoyed by the Estate through its ownership of the land, such as bridging rights.
22. Furthermore the proposed acquisition, to the north of plot 95a, of plots 102a -106 inclusive for the purposes of a new underpass are excessive in terms of proposed compulsory purchase of freehold interests. As noted above, and more generally, railway rights of use are already in place pursuant to and by virtue of the Wayleave Agreements. In addition, Article 19 of the Order expressly authorises the acquisition of subsoil interests in land. Any acquisition should therefore be limited to such rights/interests as are necessary and in conjunction with the deletion of Article 35 Estate interests should be retained.
23. Plot 64 comprises a multi-story car park ("MSCP") adjacent to the proposed Northumberland Park station. It is included in Schedule 6 as being land over which new rights may be acquired for the specific purpose of "access for station". It is unclear why the entirety of the MSCP has been included. It is presently leased to Nexus, as the Book of Reference recognises. It is notably not proposed compulsorily to acquire the MSCP but rather to create new rights. Further clarification is sought as to the nature and extent of such rights and the justification for such rights over the entirety of Plot 64 and in particular the MSCP.
24. The Estate accordingly objects to the Order on the above basis and expressly reserves the right to amend or add to such objection.
25. We should be grateful if the Secretary of State would confirm receipt of this objection
26. We confirm that a copy has been sent to the applicant.

Yours faithfully



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FAO Frank Orr

By email only

11 August 2021

Dear Sirs

Transport and Works Act 1992 (the 1992 Act)
Application for the Northumberland Line Order 2021[*] (the Order)
Objection by the Northumberland Estate (OBJ21) – 7 July 2021

1. SLC acts for Northumberland County Council (NCC) in its role as applicant for the above Order which is required to facilitate the Northumberland Line scheme (the Scheme). We write in relation to the objection dated 7 July 2021 (the Objection) submitted on behalf of the Northumberland Estate (the Estate) to the Order.
2. We have responded below to the following matters raised in the objection which relate specifically to the application for the Order: (1) the statutory context for the application for the Order and relevant legal and policy tests; (2) NCC's status as applicant for the Order and delivery roles for the Scheme; (3) assertions by the Estate that the application for the Order is premature; (4) certainty of the Scheme coming forward and realisation of benefits; (4) the content and purpose of article 35 of the draft Order; and (5) concerns relating to specific land owned by the Estate that is proposed to be subject to powers in the Order.
3. We note that the Estate has reserved its position as regards the service of notices as required by the 1992 Act on Viscount Ridley and we have been liaising with representatives of Blagdon Estates to seek to rectify any administrative errors. We understand that the point can now be considered resolved. As such, we have not commented further in this response.
4. NCC very much welcomes the Estate's support for the broad objectives of the Scheme.

Statutory context for the Order and relevant legal and policy tests

5. We note the comments made at paragraphs 6 and 7 of the Objection in relation to the statutory context for the application for the Order and the applicable legal and policy tests. We acknowledge and agree that general scope of orders made under the 1992 Act is broad and but is subject to limits and constraints. It is NCC's view that the scope of the Order is wholly within the relevant parameters of the 1992 Act, given it would authorise matters "*relating to, or to matters ancillary to, the construction or operation*" of a railway (see section 1 of the 1992 Act).

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6. We also agree that NCC will need to provide a robust case as to the need for the compulsory acquisition powers contained in the draft Order, including demonstrating that there is a compelling case in the public interest for such powers. On 9 July 2021, it was confirmed that the Secretary of State would be holding a public inquiry into the application for the Order. As such, it will be for the Inspector at that inquiry to test and formulate a view as to whether the proposals in the Order meet the relevant legal and policy tests, before recommending whether or not the Order should be made. It will then be for the Secretary of State to make the ultimate decision as to whether to make the Order, including whether it should be in the form as applied for by NCC.
7. NCC's evidence to the inquiry will demonstrate there is a compelling case in the public interest for the contents of the Order, as the powers are required to facilitate the delivery of a transport scheme that has clear public benefits. If necessary, the evidence will also address what the Objection claims are 'gaps' in the case put forward to date. It will then be for the Inspector at the public inquiry and the Secretary of State to come to a conclusion on those matters.

NCC's status as applicant for the Order and delivery of the Scheme

8. Paragraphs 8 to 12 of the Objection contains comments in relation to the proposed delivery model for the Scheme.
9. It is not a 'peculiarity' that NCC is the applicant for the statutory powers to deliver the Scheme. The Council's legal capacity to seek these powers is not questioned, but rather the Objection notes that NCC is not 'a rail authority'. There is nothing peculiar about a local authority promoting a transport scheme which will improve connectivity and support economic growth in its area. Indeed, there are a number of examples where third parties which are not 'rail authorities' have applied to promote rail and other local transport schemes. One recent example is the proposed Portishead Branch Line, where an application for development consent under the Planning Act 2008 has been made by North Somerset Council.
10. Whilst NR may be responsible for the delivery of some of the rail elements of the Scheme, it does not follow that NCC is 'semi-detached' from those aspects of the Scheme as is claimed in the Objection. The Scheme is being promoted and delivered as a '3rd party investment' in the national rail network by NCC with financial support from the Department for Transport (DfT).
11. NCC has been working closely with Network Rail (NR) and Northern Trains (NTL), amongst others. NCC has led the development from the initial conceptual stages to the completion of the outline design – including amongst other things. development of the business case, train timetable, project requirements and delivery programme - these have been through the relevant NR approval stages. As such, NCC has had control of the design of the Scheme at all stages and it is therefore appropriate for NCC's land agents, SLC Property, to be conducting engagement with affected landowners such as the Estate. It is therefore not correct to say that 'meaningful discussion' on land-related issues has been compromised. NCC, as applicant for compulsory acquisition powers in the Order has entered into these discussions in good faith with a view to reaching agreement, where practicable. NCC very much sees the use of compulsory acquisition powers as a 'last resort' in line with policy.
12. As the Estate may be aware, the Scheme was brought within the Government's Project SPEED initiative, which resulted in a review of the Scheme's delivery strategy. This resulted in NCC transferring responsibility for the delivery of certain aspects of the Scheme to NR and NTL to maximise efficiency of delivery. However, delivery of the Scheme very much remains with NCC in the lead, coordinating delivery between the partners), undertaking the detailed design for the new stations and structures and procuring and managing the associated construction works. It is therefore entirely appropriate for NCC to be the applicant for the Order, not least that it is in the best position to provide the justification for the design and extent of powers required.
13. As the Estate will be aware, article 28 of the draft Order provides that NCC may transfer the benefit of any of the powers of the Order to NR, such that NR may exercise those powers. The consent of the Secretary of State is not required for such a transfer if it is brought about by way of an agreement between the parties under article 29 of the draft Order. NCC and NR are currently discussing the precise scope of any transfer of the Order powers, as well as other matters including the transfer of



land, which will be confirmed in due course should the Order be made. In summary, it is currently proposed that the station works will be constructed by NCC before being transferred to NR, with the Council retaining ownership of certain car parks. NCC will also be responsible for the works to construct new bridges at Newsham, Blyth Bebside and Chase Meadows. NCC will retain ownership of the former two structures, whilst the Chase Meadows footbridge will be transferred to NR on completion. Works within the railway corridor will be carried out by Network Rail who will retain ownership of the land and assets forming part of the operational railway.

14. As a point of clarification, we note that paragraph 8 of the Objection misinterprets a sentence from the document *The Proposed Northumberland Line Order: A Guide to the Proposed TWA Order*. The reference in that document to “the specific role that the Order will play in providing NCC with powers to support the delivery of the Project” does not mean that NCC’s role is limited to supporting the delivery of the project. Instead, that sentence is referring to the role that the Order powers will play in supporting delivery of the Scheme alongside other permissions and consents.
15. Paragraph 11 of the Objection refers to the use of permitted development rights under the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). It should be noted that the Scheme will be relying on, amongst others, a combination of both Part 8 and Part 18 of Schedule 2 to the GPDO to provide planning permission for various works. As the Estate will be aware, whilst Part 8 permitted development is required to be undertaken on operational land of Network Rail, Part 18 permitted development must instead take place on land within the limits of deviation referred to in enabling Acts of Parliament – in the case of the Scheme, these are the various 19th century enactments that authorised the Blyth and Tyne Railway.
16. Hopefully the above has provided some clarification on the delivery of the Scheme, but we would be more than happy to meet with you to discuss these issues in more detail.

Whether the application for the Order is premature

17. In response to the points made in paragraph 13 of the Objection, NCC does not accept that the proposed land take reflects a lack of certainty as to the Scheme’s requirements or that the application for the Order is premature. The land that is proposed to be subject to powers in the Order reflects the extent of land that is required based on the current stage of design development, which is that typically used to define applications for orders under the 1992 Act. The design and its associated land requirements will be refined as the detailed design is produced (as with any infrastructure project), but it is important to secure powers over all land that has been identified at this stage as being required for the Scheme to ensure timely delivery. NCC’s approach has been to seek only the powers necessary to deliver the Scheme, no more, hence the ‘hierarchy’ of powers, as referred to in the Objection. Where outright acquisition is not required, a lesser form of power (such as temporary possession) has been sought.
18. The absence of planning permission and a final design does not mean that the application for the Order is ‘clearly premature’. The proposals contained in the Order have been developed in parallel with the preparation of the planning applications, the remainder of which are being submitted over the next few months.
19. As you know, the Secretary of State will need to be satisfied that there are no impediments to the delivery of the Scheme before making the Order to include compulsory acquisition powers. It will therefore be up to NCC to demonstrate that this is the case at the forthcoming inquiry.
20. We would be more than happy to meet with the Estate to discuss these issues further.

Certainty of the Scheme coming forward and realisation of benefits

21. Paragraphs 14 and 15 of the Objection suggest that no operational case for the Scheme has been made out and therefore ‘on the present basis’ the Secretary of State must decline to make the Order. This rather ignores the process that must be followed before the application is determined.



22. NCC submitted an Outline Business Case (OBC), and subsequent Updated Business Case (UBC) to the DfT that set out and quantified the benefits that could be realised by the Scheme. The OBC and UBC were scrutinised by DfT and approved at its Rail Investment Board on 10 November 2020. This demonstrated that the Scheme has a positive economic case (where the Scheme's benefits outweigh the Scheme's costs) and this led to a further release by DfT of a tranche of funding based on its outputs. NCC will provide evidence on the operational case for the Scheme at the forthcoming inquiry.
23. As is common with projects funded by central Government, the release of the further funding will be conditional on the approval of a Full Business Case (FBC). The FBC will present the overall case for the Scheme (strategic, economic, financial, commercial and management) and will include detailed consideration and quantification of the benefits of the Scheme. This is proposed to be submitted to DfT in autumn of this year.
24. Ultimately, if the DfT is not content with the FBC, the final tranche of funding will not be released and the Scheme will not proceed.
25. It should be noted, however, that the making of the Order is not conditional on the approval of the FBC. As you know, in deciding whether or not to make the Order the Secretary of State will need be satisfied that there are no impediments to the Scheme coming forward, including that all necessary resources are likely to be available to cover the costs of the implementing the powers in the Order. NCC's will submit evidence to the forthcoming inquiry to satisfy this requirement. It will be for the Secretary of State to consider whether the points raised in paragraph 15 of the Objection regarding how the achievement of the Scheme's aims can be measured are relevant to his decision on the application.

Article 35 of the draft Order

26. NCC has been working closely with NR on the content and justification for article 35 in the draft Order, given the fact that the wayleave agreements are between NR and the Estate and their implications extend primarily to the operation of the railway. As such, the responses below have been compiled in collaboration between NCC and NR.
27. For the avoidance of doubt, it should be noted that whilst it may be true that the wayleave agreements do confer rights to operate the existing railway, this is not the issue at hand – instead, that is the rents payable under their terms. Where the compulsory acquisition of rights are sought, these rights are included in the book of reference that accompanied the application for the Order and are the subject of other provisions in the draft Order. The *rights* to operate the railway are not the focus of article 35.
28. Fundamentally, NR considers the existing rent payment arrangements under the wayleave agreements to no longer be fit for purpose given the uncertainty as to their interpretation in a modern context, and pose an inherent risk to the discharge of its statutory duties to operate the railway. As such, article 35 provides for the payment of a commuted sum, in exchange for the extinguishment of the obligation to make rent payments under the wayleave agreements.
29. The Estate contend that the rent payments under the wayleave agreements are not unusual and similar arrangements apply elsewhere on the wider rail network. To the best of NR's knowledge, this is not an accurate characterisation of the situation – it very much considers that the provisions of the wayleaves *are* unusual. Fundamentally, NR is the freehold owner of the vast majority of the rail network in England and therefore such payment arrangements do not arise.
30. The wayleave agreements were put in place in the 19th century, when the ownership and operational arrangements of the railways were very different to the situation that exists today. Whilst the arrangements may have been appropriate then, they are not now. This can be seen, for example, by the characterisation of the 'goods' in the wayleave agreements, which clearly do not bear any relation to how goods are characterised now. The uncertainty of the language in the wayleave agreements when read in the modern context creates uncertainty and therefore inherent risk to all parties, including NR in the context of its statutory duties.



31. NCC and NR acknowledge that the effect of article 35 would extend to extinguishing rent payments in relation to both passenger and freight services. However, this would not be *ultra vires* in the context of the 1992 Act, as is suggested by the Estate. As set out above, section 1 of the 1992 Act provides that an order made under it can authorise matters “*relating to, or to matters ancillary to, the construction or operation*” of a railway. Section 5(1) of the 1992 Act provides that, without prejudice to the generality of section 1, an order can make provision for matters set out in Schedule 1 to the 1992 Act. This expressly includes, at paragraph 5, “*the abrogation and modification of agreements relating to land*” (note that ‘land’ is not defined to extend only to land that is subject to others powers in the order). In addition, section 5(2) of the 1992 Act provides that an order can make provision “*in relation to more than one scheme, system or mode of transport*”. As such, taking this together, it is clear that the 1992 Act provides a statutory basis for the inclusion of article 35, as currently drafted. The justification for its inclusion extends to the operation of the railway as a whole, not just to passenger services.
32. However, it will be for the Secretary of State to determine whether or not there is a sufficient policy basis for the inclusion of article 35, should the Order be made (although, for the avoidance of doubt, the ‘compelling case in the public interest’ policy test would not necessarily apply, given the scope of article 35 – it is not a compulsory acquisition power). This will need to be considered in the context of article 35(3), which provides for a commuted sum as compensation for the extinguishment of rent payments under the wayleave agreements, determined by the Upper Tribunal in the absence of agreement, thus covering any loss experienced by the Estate and providing certainty for all parties.
33. As set out above, NCC and NR consider there to be no ‘tension’ between their respective roles in the delivery of the Scheme. Passenger services will run on the railway line as normal upon opening – the purpose of article 35 in that context is to remove the uncertainty that currently exists as to their interpretation and to remove an impediment to the operation of the Scheme at a later date, in exchange for a commuted sum payable to the Estate.
34. For all these reasons, NCC and NR are very much of the view that article 35 is a key provision in the Order to provide for the future viability of the operation of the Scheme. In this context, and noting what is said in the Objection, we, along with NR, would be very happy to arrange a meeting to discuss the implications of article 35 in more detail, particularly the level of the commuted sum required.

Land of the Estate subject to powers in the Order

Algernon Bridge (Plots 60-62)

35. For the avoidance of doubt, the Order would not authorise any works to Algernon Bridge – instead, it would secure the rights necessary to facilitate and maintain such works, which would be permitted separately under an express planning permission.
36. We are aware of the interface with Nexus at this location in terms of the current maintenance arrangements and Nexus has submitted its own objection to the Order (amongst others). We are progressing discussions with Nexus which, amongst other items, will seek to deal with any revised maintenance arrangements and liabilities at this location arising from the Scheme. We would be happy to discuss the emerging principles of those arrangements with the Estate, either individually or at a meeting with Nexus.

Holywell UWC (Plot 95a)

37. We acknowledge that the Order (and accompanying Land and Works Plans) provide that plot 95a is subject to powers of outright acquisition. This plot appears to have been included in error and we can confirm that NCC does not require a power of acquisition over this plot. The only powers sought over this land are of the extinguishment of rights over Holywell UWC to facilitate its closure (under article 8 of the draft Order). We would be happy to pursue the removal of the power of acquisition over this plot in the draft.
38. NCC understands that NR is considering the arrangements at Holywell UWC and will shortly be in touch directly with the Estate with a view to reaching a mutually agreeable solution.



Underbridge 36 (Plots 102a-106)

39. We also acknowledge that plots 102a-106 are subject to powers of outright acquisition in the Order, as currently shown on the Land and Works Plans. NCC has considered this point further in light of the Objection and has concluded that these powers are not required for the purpose of the works to the underpass, given the existing rights conferred by the wayleave agreements. However, NCC considers that (on a precautionary basis) powers over these plots are required to deal with any adverse third-party rights that may subsist. As such, NCC proposes that plots 102a-106 remain subject to powers of compulsory acquisition, but that the interests of the Estate in these plots are excluded from the Book of Reference such that the powers in the Order would not apply to them.
40. We hope this provides the Estate with sufficient comfort on this point, but we would be more than happy to discuss it further.

Multi-storey car park adjacent to Northumberland Park Station (Plot 64)

41. NCC has considered the points in the Objection relating to plot 64 and the multi-storey car park and has concluded that the power in the Order to acquire new rights of access does not need to extend to the car park building. As such, NCC proposes to remove the car park building from plot 64 on a revised sheet of the Land and Works Plans. The power in the Order to create new rights will be retained only in relation to the road layout within plot 64 that surrounds the multi-storey car park, as rights to use those roads to access the new station are required on a permanent basis (as well as a need to potentially use those roads during construction).
42. As with the above, we hope this provides sufficient clarity to the Estate on this point, but we would be more than happy to discuss it further.
43. As mentioned above, the project team would be happy to continue and increase our on-going engagement on any of the issues raised in the Estate's objection by way of a meeting or telephone call. If you consider a meeting would be helpful, please contact Russell Mills at SLC Property (07384 832058) so a mutually agreeable time and date can be agreed.

Yours sincerely

for

Wayleave dated
10.05.1853

N^o 1

Dated 10th May 1853

M. XI. 11^A. 11/10. 1853

COVER

1852

His Grace The Duke
of Northumberland.

— 10 —

The Blyth and Tyne
Railway Company.

(Counterpart)

LEASE of Wayleave
for One thousand years
from the 25th March 1862

for 3

[illegible]

Sum

assured hereby after they have seen or signified already or hereafter made and for the time being subsisting the said rent hereby reserved to be paid on the twenty fifth day of March and the twenty ninth day of September in every year in all such roads etc. and besides in such manner as is provided during the half year immediately preceding every such respective body yearly day **And** also providing and reserving yearly and every year during the said term such rents or sums in respect of all passengers cattle and goods (other than loads like tubs and casks which shall during the said term hereby granted pass over and along the said Railway and Branches or any part thereof as are not hereinafter specified) (that is to say) for every year ending with a twenty fifth day of March in which year the rent or sums payable by the said Company or their assigns as aforesaid in respect of loads like tubs or barrels passing over and along the said Railway and Branches or any part thereof from the Liverpool Colliery and its Collieries or Royalties situate to the Northward of the river Mersey shall amount to Five hundred pounds or upwards the rent of one shilling the same to be paid on such twenty fifth day of March and for every year ending with a twenty fifth day of March in which year the rent or sums payable by the said Company or their assigns as aforesaid in respect of such and sundried loads like tubs and casks shall not amount to Five hundred pounds a rent or sum equal to two per centum of the gross amount payable to or charged by the said Company or their assigns for or in respect of the passing and conveying along the said Railway and Branches or any part thereof of passengers cattle and goods (other than loads like tubs or barrels) the same to be paid on or at such twenty fifth day of March and if being agreed that the said Company and their assigns shall in all cases take a money or contribution and no other for the passing and conveying over and along the said Railway and Branches or any part thereof of passengers cattle and goods **Provided** nevertheless that in case the said rents or sums hereby reserved or any of them or any part thereof respectively shall be behind or unpaid for forty days next after any of the said days for payment thereof and for ten days or after the same shall during or after such forty days have been legally demanded there and in every such case the said Duke his heirs assigns or assigns in default may once upon the said Railway and Branches and any other Railway or Railway and any lands and buildings for the time being occupied or used by the said Company or their assigns and disclaim all or any of the loads belonging to the said Company or their assigns that shall be found thereon. And also the horse locomotive and other engines machines waggons carriages etc. as well as other materials and things which shall be in or upon the said Railway and Branches and other Railway or Railway lands and buildings respectively and whatever the same things respectively shall be in which as or not and such distress so found may take horse head carry away and sell and dispose of in order to satisfy and pay the rents or sums so in arrear and also the reasonable costs and charges of such distress and sales reserving the surplus if any or demanded unto the said Company or their assigns and **Provided** also that if the said rents or sums herebefore reserved or any of them or any part thereof respectively shall be behind or unpaid for three calendar months next after any of the said days for payment thereof and for two calendar months after the same shall during or after such three calendar months have been legally demanded there and in every such case and notwithstanding any waiver or any price right of recovery under this proviso the said Duke his heirs assigns or assigns in default if he or they shall think fit so to do into and upon the said Railway and Branches and there the premises hereby demised or intended so to be or holden or enjoyed by virtue of these presents or any part thereof in the name of the whole may reenter and the same if reentered may repossess and enjoy and the rents dues and profits thereof may take and retain for his or their own benefit until thereby or otherwise he or they shall be fully repaid all such rents or sums so in arrear and all other rents or sums hereby reserved or made payable during the said term and all costs less damages and expenses occasioned by such nonpayment reentry and repossession or intended thereof. Nevertheless he or they or demand after such full repayment permitting the said Company or their assigns again to pass and enjoy under these presents the said Railway and Branches and premises and every part thereof **And** the said Company do hereby for themselves and their assigns covenant with the said Duke his heirs and assigns that the said Company and their assigns will from time to time during the said term yearly pay or pay unto the said Duke his heirs assigns or assigns in default the said several rents and sums of money to be herebefore reserved or at the several days and in the manner herebefore appointed for payment thereof respectively without any deduction or abatement whatsoever on account of any present or future dividends or known or known losses or payments whatsoever (the Landlords property or income tax on the said rents or sums only excepted) or any other account whatsoever and will so pay the same according to the true intent and meaning of these presents And also will from time to time during the said term hereby granted pay and discharge all present and future Landlords and tenants taxes and assessments charges and payments whatsoever and will so pay the same according to the true intent and meaning of these presents

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And also

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will from time to time during the term hereby granted load and carry by means of the said Railways and Branches all such loads like bulm bundles cattle and goods as the said Duke his heirs assigns or requests in estate or any other party or parties whomsoever shall at any time or times during the said term require to be led or carried away but nevertheless only on payment to the said Company or their assigns of such dues and charges for the same loads like bulm bundles cattle and goods as the said Company or their assigns shall from time to time be entitled to charge for the same such charge being impartially made so as not to exceed the charge for like articles passing along the line under like circumstances and will in all other respects duly maintain keep open for public use and work the said Railways and Branches. And also will at the end of every month during the said term hereby granted make and deliver unto the said Duke his heirs assigns or requests in estate or his or their Agent or Agents (if thereto required by him or them) a true and perfect account in writing under the hands of two of the Directors of the said Company or their assigns of all such loads like bulm and bundles passengers cattle and goods as shall during such month have been carried and conveyed over and along the said Railways and Branches or any part thereof. And further that the said Duke his heirs assigns and requests in estate and his or their Agent or Agents from time to time and at all times during the said term hereby granted may have free access and liberty to inspect and view the said Railways and Branches and all other books and accounts relating to the getting and loading of loads like bulm and bundles and the conveyance of passengers cattle and goods over and along the said Railways and Branches or any part thereof. And also that the said Duke his heirs assigns and requests in estate may from time to time and at any time or times during the said term hereby granted at his own costs and charges employ any person or persons as a clerk or clerks at any of the stations to take an account in writing of all the quantities of loads like bulm and bundles which shall from time to time be led along the said Railways and Branches or any part thereof. And the said Duke so far as relates to the acts and deeds of himself his heirs assigns and requests in estate doth hereby for himself and them warrant with the said Company and their assigns that the said Company and their assigns paying the several rents or sums hereinafter reserved and observing and performing the several covenants conditions and agreements herein contained and in their first to be observed and performed may peaceably and quietly have held use occupy possess and enjoy all and every the liberties privileges powers authorities and franchises hereby granted and claimed in manner aforesaid according to the true intent and meaning of these presents at all times during the said term hereby granted without the least let suit hindrance or interruption or disturbance of the said Duke his heirs assigns or requests in estate or any person or persons lawfully claiming or to claim by from or under him them or any of them. Provided always that the expression the assigns of the said Company wherever in these presents contained shall include or extend to any and every Company into or with which the said Company shall at any time hereafter be merged or amalgamated and the expression the said Company wherever in these presents contained shall in the case of the said Company being dissolved and re-incorporated by the same or any other name include or extend to the Company constituted by such re-incorporation. And the said Duke so far as relates to the acts and defaults of himself his heirs assigns and requests in estate doth hereby for himself and them warrant with the said Company their assigns and the said Company so far as relates to the acts and defaults of themselves and their assigns do hereby for themselves and their assigns covenant with the said Duke his heirs and assigns that all the clauses and provisions contained in the Statute in that behalf made intitled Act 1846 which are inconsistent with the Blythe and Tyne Railway Act 1862 shall respectively so far as the same respectively may be repugnant to or inconsistent with any of the terms and provisions of these presents and in these respects subject to those terms and provisions operate and endure for the benefit of the said Duke his heirs assigns and requests in estate and the said Company and their assigns and all other persons whomsoever as fully and effectually to all intents and purposes whatsoever as if the said Company had taken and acquired the said lands in which the said Railways and Branches are made it being the true intent and meaning of the said Statute in that behalf made that the said Railways and Branches shall at all times during the term hereby granted be maintained and kept open for public use and worked with a due regard to the interests of the public according to those clauses and provisions and the provisions of the Blythe and Tyne Railway Act 1862. And also that if and so often as any dispute or difference shall at any time or times hereafter arise between the said Duke his heirs assigns or requests in estate or any of them and the said Company or their assigns on account of the breach or the supposed breach of any of the covenants conditions or agreements herein contained or otherwise touching or concerning the construction effect execution or consequences of these presents or any matter or thing relating thereto the matter of every such dispute or difference may by the parties interested therein or either of them be referred into arbitration and shall be determined by arbitration according to the clauses and provisions in that behalf made in the Statute in that behalf made intitled Act 1846 and these clauses and provisions shall accordingly be deemed to be part of these presents. In witness whereof the said Duke hath hereunto set his hand and seal and the said Company hath hereunto set their common seal the day and year first above written.

Witness my hand and seal this 11th day of September 1883

John Duke
His heirs

Northumberland

**Transcript of
Wayleave dated
10.05.1853**

TYPESCRIPT TRANSCRIPTION:

**SYON CATALOGUE
DOCUMENT M.XI.11A.h.**

This Indenture made the tenth day of May in the year of our Lord one thousand eight hundred and fifty three **Between** His Grace Algernon Duke and Earl of Northumberland Earl and Baron Percy Baron Lucy Poynings Fitz Payne Bryan Latimer Warkworth and Prudhoe and a Baronet Constable of Launceston Castle a Rear Admiral in Her Majesty's Royal Navy and Knight of the Most Noble Order of the Garter of the one part and The Blyth and Tyne Railway Company (hereinafter called "the said Company") of the other part **Witnesseth** that in consideration of the rents hereinafter reserved and of the covenants conditions and agreements hereinafter contained and on the part of the said Blyth and Tyne Railway Company and their assigns to be observed and performed The said Duke of Northumberland by these presents as well by virtue of any power enabling him in this behalf as in respect of his Estate and interest Doth grant demise and to farm let unto the said Company and their assigns (subject and without prejudice to all wayleave and other leases already made and entered into or already agreed to be made and entered into by the said Duke or his predecessors in Estate or any of them with the several or any of the persons composing the said Company or with any other Company or Companies whether incorporated or not incorporated person or persons whomsoever) **All** that wayleave or right of way over and along the Railway branches bye ways or side ways in through and over the lands and grounds of the said Duke in the Manor of Tynemouth in the County of Northumberland as the same are now in the occupation of the said Company Together with full power and authority to use the same and also to use the Branch Railway as now constructed joining the Newcastle and Shields Railway at the Percy Main Junction together with all the houses buildings liberties powers and authorities now used exercised or enjoyed with the said Railway and Branches in and upon the said lands and grounds together also with liberty power and authority to and for the said Company and their assigns to make and construct an additional line or additional lines of Railway adjoining and parallel with the said Railway and Branches and upon the lands described upon the plans and in the Books of Reference referred to in the Blyth and Tyne Railway Act 1852 but so that the said Company or their assigns shall not be entitled to occupy more than fourteen yards in width of such land in any part of the said lands excepting where cuttings and embankments may render a greater width necessary and then only so much thereof as shall be necessary (all which said Railway and Branches byeways sideways and additional Railway or Railways hereafter to be constructed are hereinafter called "the said Railways and Branches") and to enter upon and use and from time to time amend and repair the said Railways and Branches in the usual manner in through over and along the said lands and grounds of the said Duke for the leading conveying and carrying with engines waggons wains trucks and other Carriages over and along the said Railways and Branches of Coals Coke Culm Cinders Cattle and other Goods unto the shipping places now occupied by the said Company at Hayhole and whereat (subject and without prejudice as aforesaid and subject also to the provisions of the Tyne Improvement Act 1852) it shall be lawful for the said company and their assigns from time to time to ship the same and unto any other shipping place or shipping places or to any other place or places whatsoever And also for the leading conveying and carrying of carriages and passengers (Except and always reserved forth and out of this present demise as part of the

compensation for the wayleave rights and powers and privileges hereby demised or intended so to be full and free liberty licence and power for the said Duke his heirs assigns and sequels in Estate and his and their agents workmen and servants from time to time and at any time or times hereafter as often as he or they may think proper to construct use fix and repair other Railways and other ways and to make and lay the same respectively or any part or parts thereof over under or across the said Railways and Branches and to use the same respectively so always that the waggons and traffic of the said Company and their assigns on the said Railways and Branches or any part thereof be not thereby injuriously hindered and so always that the interests of the public be not thereby injuriously affected) **To have and to hold** the said Wayleaves liberties privileges and authorities and all and singular other the premises hereby granted and demised or expressed or intended so to be unto the said Company and their assigns from the twenty fifth day of March one thousand eight hundred and fifty two for the term of One thousand years from thenceforth next ensuing and fully to be complete and ended **Yielding and Paying** yearly and every year during the said term the rent or sum of Five shillings for every Ten of Coals Coke Culm or Cinders (each Ten being calculated for the purposes of these presents as containing seventeen and a half Newcastle Chaldrons of fifty three hundred weight each) which shall during the said term hereby granted pass over and along the said Railways and Branches or any part thereof and in respect of which identical Coals Coke Culm or Cinders there shall not for the time being be payable to the said Duke his heirs assigns or sequels in estate or any of them for passing over or along the said Railways and Branches or any part thereof any wayleave rent or other **Sum** reserved by any other Wayleave Lease or Agreement already or hereafter made and for the time being subsisting the said rent hereby reserved to be paid on the twenty fifth day of March and the twenty ninth day of September in every year for all such Coals Coke Culm and Cinders as shall have so passed during the half year immediately preceding every such respective half yearly day **And also yielding and paying** yearly and every year during the said term such rents or sums in respect of passengers cattle and goods (other than Coals Coke Culm and Cinders) which shall during the said term hereby granted pass over and along the said Railways and Branches or any part thereof as are next hereinafter specified (that is to say) for every year ending with a twenty fifth day of March in which year the rent or sums payable by the said Company or their assigns as aforesaid in respect of Coals Coke Culm and Cinders passing over and along the said Railways and Branches or any part thereof from the Cowpen Colliery and Collieries or Royalties situate to the Northward of the River Blyth amount to Five hundred pounds or upwards the rent of One shilling the same to be paid on such twenty fifth day of March and for every year ending with a twenty fifth day of March in which year the rent or sums payable by the said Company or their assigns as aforesaid in respect of such last mentioned Coals Coke Culm and Cinders shall not amount to Five hundred pounds a rent or sum equal to Two per Centum of the gross amount payable to or charged by the said Company or their assigns for or in respect of the passing and conveying along the said Railways and Branches or any part thereof in the same year of Passengers Cattle and Goods (other than Coals Coke Culm and Cinders) the same to be paid on such twenty fifth day of March and it being agreed that the said Company and their assigns shall in all cases take a money consideration and no other for the passing and conveyance over and along the said Railways and Branches or any part thereof of Passengers Cattle and Goods **Provided** always that in case the said rents or sums hereby reserved or any of them or any part thereof respectively shall be behind or unpaid for forty days next after any of the said days for payment thereof and for ten days after the same shall during or after such forty days have been legally demanded then and in every such case the said Duke his heirs assigns or sequels in Estate

may enter upon the said Railways and Branches and any other Railway or Railways and any lands and buildings for the time being occupied or used by the said Company or their assigns and distrain all or any of the Coals belonging to the said Company or their assigns that shall be found thereon **And also** the horses locomotive and other engines machines waggons carriages ropes rollers and other materials and things which shall be in or upon the said Railways and Branches and other Railway or Railways lands and buildings respectively and whether the same things respectively shall be in actual use or not and such distresses so found may take keep lead carry away and sell and dispose of in order to satisfy and pay the rents or sums so in arrear and also the reasonable costs and charges of such distresses and sales rendering the surplus if any on demand unto the said Company or their assigns **Provided** also that if the said rents or sums hereinbefore reserved or any of them or any part thereof respectively shall be behind or unpaid for Three Calendar months next after any of the said days for payment thereof and for two Calendar months after the same shall during or after such three Calendar months have been legally demanded then and in any and every such case and notwithstanding any waiver of any prior right of reentry under this proviso the said Duke his heirs assigns or sequels in estate if he or they shall think fit so to do into and upon the said Railways and Branches and other the premises hereby demised or intended so to be or holden or enjoyed by virtue of these presents or any part thereof in the name of the whole may reenter and the same thenceforth may repossess and enjoy and the rents issues and profits thereof may take and retain for his or their own benefit until thereby or otherwise he or they shall be fully repaid all such rents or sums so in arrear and all other rents or sums hereby reserved or made payable falling due during such repossession and all costs losses damages and expenses occasioned by such nonpayment reentry and repossession or incidental thereto Nevertheless he or they on demand after such full repayment permitting the said Company or their assigns again to possess and enjoy under these presents the said Railways and branches and premises and every part thereof **And** the said Company do hereby for themselves and their assigns covenant with the said Duke his heirs and assigns that the said Company and their assigns will from time to time during the said term hereby granted pay unto the said Duke his heirs assigns or sequels in Estate the said several rents and sums of money hereinbefore reserved on or at the several days and in the manner hereinbefore appointed for payment thereof respectively without any deduction or abatement whatsoever on account of any present or future Landlords or tenants taxes rates assessments charges or payments whatsoever (the Landlords property or income tax on the said rents or sums only excepted) or on any other account whatsoever and will so pay the same according to the true intent and meaning of these presents And also will from time to time during the said term hereby granted pay and discharge all present and future landlords and tenants taxes rates assessments charges and payments whatsoever for or in respect of the said premises hereinbefore granted and demised or the said rents or sums or any of them or any part thereof respectively (Landlords property or income tax on the said rents or sums only excepted) **And also** will from time to time during the term hereby granted lead and carry by means of the said Railways and Branches all such Coals Coke Culm Cinders Cattle and Goods as the said Duke his heirs assigns or sequels in estate or any other party or parties whomsoever shall at any time or time during the said term require to be led or carried away but nevertheless only on payment to the said Company or their assigns of such dues and charges for the same Coals Coke Culm Cinders Cattle and goods as the said Company or their assigns shall from time to time be entitled to charge for the same such charge being impartially made so as not to exceed the charge for like articles passing along the line under like circumstances and will in all other respects duly maintain keep open for public use and work the

said Railways and Branches **And also** will at the end of every month during the said term hereby granted make and deliver unto the said Duke his heirs assigns or sequels in estate or his or their Agent or Agents (if thereunto required by him or them) a true and perfect account in writing under the hands of two of the Directors of the said Company or their assigns of all such Coals Coke Culm and Cinders passengers cattle and goods as shall during such month have been carried and conveyed over and along the said Railways and Branches or any part thereof **And further** that the said Duke his heirs assigns and sequels in estate and his or their Agent or Agents from time to time and at all times during the said term hereby granted may have free access and liberty to inspect and at his or their own costs and charges to take copies of the whole or any part of the Viewers or Staithmans Books of presentment and leadings of Coals Coke Culm and Cinders and all other books and accounts relating to the getting and leading of Coals Coke Culm and Cinders and the conveyance of passengers cattle and goods over and along the said Railways and Branches or any part thereof **And also** that the said Duke his heirs assigns and sequels in estate may from time to time and at any time or times during the said term hereby granted at his and their own costs and charges appoint keep and employ any person or persons as a Clerk or Clerks at any of the staiths to take an account in writing of all the quantities of Coals Coke Culm and Cinders which shall from time to time be led along the said Railways and Branches or any part thereof **And** the said Duke so far as related to the acts and deeds of himself his heirs assigns and sequels in Estate doth hereby for himself and them covenant with the said Company and their assigns The said Company and their assigns paying the several rents or sums hereinbefore reserved and observing and performing the several covenants conditions and agreements herein contained and on their part to be observed and performed may peaceably and quietly have hold use occupy possess and enjoy all and every the liberties privileges powers authorities and premises hereby granted and demised in manner aforesaid according to the true intent and meaning of these presents at all times during the said term hereby granted without the lawful let suit hindrance interruption or disturbance of the said Duke his heirs assigns or sequels in estate or any person or persons lawfully claiming or to claim by from or under him them or any of them **Provided always** that the expression the "assigns" of the said Company wherever in these presents contained shall include or extend to any and every Company into or with which the said Company shall at any time hereafter be merged or amalgamated and the expression "the said Company" wherever in these presents contained shall in the event of the said Company being dissolved and reincorporated by the same or any other name include or extend or relate to the Company constituted by such reincorporation **And** the said Duke so far as relates to the acts and defaults of himself his heirs assigns and sequels in estate doth hereby for himself and them covenant with the said Company and their assigns and the said Company so far as relates to the acts and defaults of themselves and their assigns do hereby for themselves and their assigns covenant with the said Duke his heirs and assigns That all the clauses and provisions whatsoever of the Railways Clauses Consolidation Act 1845 which are incorporated with the Blyth and Tyne Railway Act 1852 shall except only so far as the same respectively may be repugnant to or inconsistent with any of the terms and provisions of these presents and in those respects subject to those terms and provisions operate and enure for the benefit of the said Duke his heirs assigns and sequels in estate and the said Company and their assigns and all other persons whomsoever as fully and effectually to all intents and purposes whatsoever as if the said Company had taken and acquired the said lands on which the said Railways and Branches are made it being the true intent and meaning of the said parties hereto that the said Railways and Branches shall at all times during the term hereby granted be maintained and kept open for public use and worked

with a due regard to the interests of the public according to those clauses and provisions and the provisions of "the Blyth and Tyne Railway Act 1852" And also that if and so often as any dispute or difference shall at any time or times hereafter arise between the said Duke his heirs assigns or sequels in estate or any of them and the said Company or their assigns on account of the breach or the supposed breach of any of the covenants conditions or agreements herein contained or otherwise touching or concerning the construction effect incidents or consequences of these presents or any matter or thing relating thereto the matter of every such dispute or difference may by the parties interested therein or either of them be reduced into writing and submitted to Arbitration and shall be determined by arbitration according to the clauses and provisions in that behalf of "the Lands Clauses Consolidation Act 1845" and those clauses and provisions shall accordingly be deemed to be part of these presents **In Witness** whereof the said Duke hath hereunto set his hand and seal and the said Company have hereunto affixed their Common Seal the day and year first hereinbefore written.

The Duke of Northumberland
to
The Blyth and Tyne Railway Company

**Extract from Grant of Alteration
in Wayleaves dated 29th July 1867**

| | |
|---|--|
| <p style="text-align: right;">1</p> <p>Standard of 15000 Tens p.a. at 5/- per ten.</p> <p>Standards of 10,000 tens per annum at 2/6 per ten.</p> <p>Rebate of 1/3 per ten for small indentures in the 15000 + 10000 standards. Rebate never to exceed the amount of rent deliver from the 2/6 ten.</p> <p>Rebate to be allowed on the 25 day of March in each year.</p> | <p>That from and after the 25th day of March 1867 the way leave rents by the said? indentures of lease reserved in respect of coals coke culm and cinders shall be altered and from and after that day there shall be paid by the company yearly and every year at the times and in manner by the said sealed indentures respectively provided for payment of the way leave rents coals coke culm And cinders thereby respectively reserved in being there of the way leave rents following that is to say for every ten of coals coke culm And cinders (each ten consisting 17½ Newcastle Chaldrons of 53 cwt each) which shall pass in each year over or along the railways of the company comprised in or referred to in the said sealed indenture or any part of such railways construction over or upon the land of the said Duke up to and not exceeding in the aggregate in each year 15000 tens the rent or sum of 5/- per ten and for every additional ten of coals coke culm and cinders exceeding 15000 tens which may pass in the same year come over and along the said railways or any part thereof up to and not exceeding 10,000 additional tens the rent or sum of 2/6 per ten. Provided that out of the way leave rent for such additional tens up to 10,000 tens a return shall in each year be made to the company of 1/3 for every ten of small coals indentures in the said 15000 tens as well as in the said additional quantity exceeding 15000 tens up to 10000 tens as aforesaid if the aggregates amount of the rent of 2/6^{sd} per ten in respect of the 10000 additional tens or of any additional quantity less than 10000 tens which shall so pass shall be sufficient to allow of each return being made but if not sufficient in any year to admit of the full return no return shall be made either in that or any other years in respect of that year beyond the said aggregate amount of the said rent of 2/6 per ten . Provided that such return of 1/3 per ten in respect of such small coals shall be considered to be due and payable to the company on the 25th day of March in each year and the half years rent due on the 29th day of Sept in each year shall be payable in full subject to such subsequent to return as aforesaid if any.</p> |
| <p style="text-align: right;">2</p> <p>For all coals to in excess of the quantities of the 5/- + 2/6 standards of 15000 ten + 10000 tens respectively – there shall be paid for.</p> | <p>And for every ten of coals coke culm or cinders which shall pass in the same year over or along the said Railways or any part thereof exceeding the quantity of 25000 tens (being the aggregates of the said 15000 tens and 10000 additional tens) the following way leave rents shall be payable by the company (that is to say) for all longer or round coals and for all coke culm and cinders the sum of 1/- per ten and for all small coals the sum of 6 per ten.</p> |
| <p style="text-align: right;">3</p> | <p>For the purposes of these presents "large of round coals" shall be taken to mean all coals that will not pass through a screen the wires of which are not more than 5/8 of an inch apart and</p> |

| | |
|---|--|
| | <p>"small coals" shall be taken to mean all coal that will pass through each screen.</p> |
| 4 | <p>Provided always that if any coal coke or cinders arising in or from any of the <u>lands edged round with a pink colour</u> on the plan hereunto a amend (and herein called "Extra Coals Coke Culm or Cinders") in respect of which identical coals coke culm or cinders there shall not for the time being be payable to the paid Duke his heirs assigns or sequels in estate any other way leave rent for passing over or long any way leave line of railway over or upon this or there lands other than any railway company or part thereof shall hereafter pass over or along any railways of the company or any part thereof comprised in or referred to in the paid seal indentures of lease then all such last mentioned coals coke culm and cinders shall never be indentures in or form or part of the before mentioned quality of 15000 tens or of the said other quantities in excess of the said 15000 tens but 5"/ per ten shall always be payable in respect of all such last mentioned coal coke culm and cinders provided further that if it shall happen that a way leave rent less than 5"/ per tens would have been payable to the said Duke his heirs assigns or sequel in estate in respect of any part of such extra coals coke culm or cinders in case the same had been conveyed by and had been the coals coke culm or cinders then usually conveyed by the way leave railway or tramway in use nearest to the place whence such part of such extra coal coke culm or cinders shall arise and passing over or through any of the lands of the said Duke sequel in estates or assigns other than any railways of the company or any part thereof then and in each such case in respect of such identical extra coal coke culm or cinders in lieu of 5"/ per ten there shall be payable and paid by the said company to the said Duke his heirs assigns or sequel in estate in respect thereof such an amount per ten as shall be equal to the way leave rent which he or they would have been entitled to if such identical extra coals coke culm or cinders had been actually conveyed by and had been coals coke culm or cinders usually conveyed by such way leave railways or tramway in use nearest as aforesaid over or through any of the lands of the lands of the said Duke his heirs assigns or sequels in estates other than as aforesaid but respect of all other extra coals coke culm or cinders 5"/ per ten shall be and continue to be payable and paid as aforesaid</p> |

**Wayleave
dated
30.07.1967**

This Indenture

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made the thirtieth day of July in the year of our Lord one thousand eight hundred and sixty seven, Between The Most Noble George Mackenzie, Esquire, of the one part and The Blyth and Tyne Railway Company Limited (by Company) of the other part Witnesses that on this day the said

[illegible]

Or

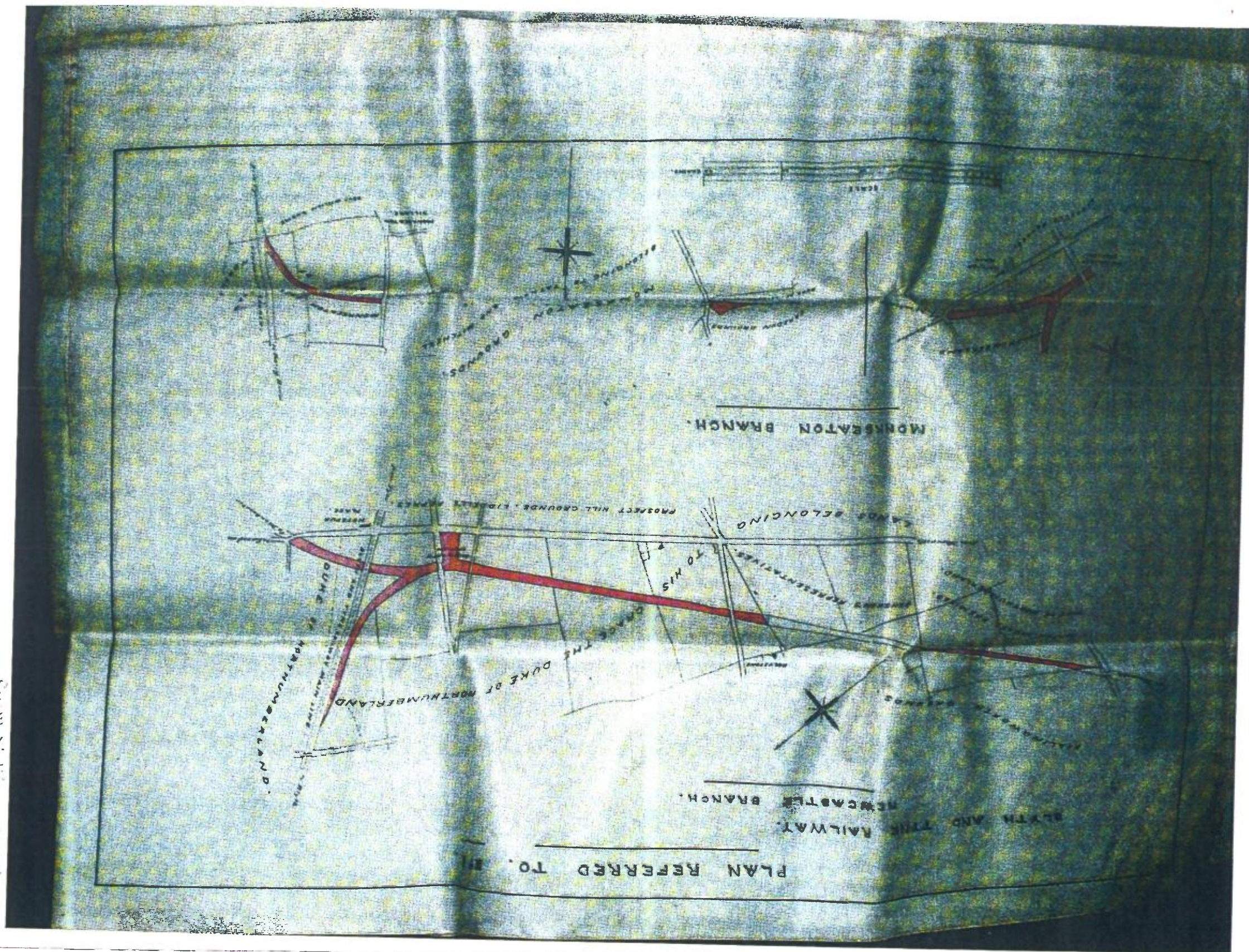
along

the said Branch Railways or any part thereof and in respect of which identical loads like bulm or binders there shall not for the time being be payable to the said Duke his heirs assigns or assigns in estate or any of them for passing over or along the said Blyth and Tyne Railway or any part thereof or the said Branch Railways or any part thereof any wayleave rent or other sum reserved by any other wayleave (base) or Agreement already made by the said George Duke of Northumberland or his predecessor Algernon late Duke of Northumberland and for the time being subsisting the following wayleave rents or sums that is to say For every Ten (calculated as aforesaid) of such other loads like bulm and binders which shall so pass in each year up to and not exceeding in the aggregate in each year fifteen thousand tens of such other loads like bulm and binders the rent or sum of Two shillings per Ten and if in the same year more than fifteen thousand tens of such other loads like bulm and binders shall so pass then for every such additional Ten which shall so pass in the same year in excess of such fifteen thousand tens up to and not exceeding ten thousand such Tens in excess as aforesaid the rent or sum of Two shillings and sixpence per Ten and if in the same year more than ten thousand additional Tens in excess as aforesaid shall so pass then for every such Ten which shall so pass in the same year in excess of such ten thousand Tens the rents or sums following that is to say for every such Ten of large or round loads and of like bulm and binders the rent or sum of One shilling and for every such Ten of small loads the rent or sum of Sixpence and all the rents or sums reserved by these wayleaves shall be payable and paid half yearly on the twenty ninth day of September and the twenty fifth day of March in each year and the yearly payment in each year shall be made on the twenty ninth day of September for the number of Tens as aforesaid which shall have so passed up to that day and the payment of the balance of such rents or sums due in respect of the whole of each year shall be made on the twenty fifth day of March and in ascertaining such balance the proviso next hereinafter contained shall apply **Provided always** And it is hereby agreed and declared between and by the parties hereto that in respect of each year in which more than fifteen thousand Tens of such other loads like bulm and binders shall so pass it shall be ascertained how many Tens of small loads were comprised in the said fifteen thousand Tens which shall so pass in that year and how many Tens of small loads were comprised in the said Tens in excess of fifteen thousand Tens up to and not exceeding ten thousand Tens so in excess and a return of One shilling and three pence for or in respect of every Ten of small loads so to be ascertained shall be made or allowed to the said Duke or his assigns in full of the rents or sums payable in respect of that year for the said Tens in excess of the said fifteen thousand Tens and such return shall not exceed Ten thousand Tens so in excess but such return shall not be made or allowed out of the rents or sums payable for the said fifteen thousand Tens nor out of the rents or sums payable for the said Tens beyond ten thousand Tens so in excess it being hereby expressly agreed and declared that if the rents or sums payable in that year for the said Tens in excess of the said fifteen thousand Tens up to and not exceeding ten thousand Tens so in excess shall not in the aggregate be of sufficient amount to provide such return in full then what would otherwise have been the aggregate amount of such return shall be reduced to and shall be deemed to be satisfied by the amount of the rents or sums payable in that year for the said Tens in excess of the said fifteen thousand Tens up to and not exceeding ten thousand Tens so in excess and if in any year there shall not be any such Tens in excess of such fifteen thousand Tens then no such return as aforesaid shall in that or any other year be made for or in respect of that year and for the purposes of these presents large or round loads shall be taken to mean all loads that will not pass through a screen the wires of which are not more than five eighths of an inch apart and small loads shall be taken to mean all loads that will pass through such screen And also **Loading and Unloading** yearly and every year during the said term in respect of Passengers cattle and goods other than coal like bulm and binders which shall during the said term hereby granted pass over and along the said Branch Railways or any part thereof as next hereinafter specified (that is to say) for every year ending with a twenty fifth day of March in which year the rents or sums payable by the company or their assigns as aforesaid in respect of loads like bulm or binders passing over and along the said Blyth and Tyne Railway or any part thereof and the said Branch Railways or any part thereof both or either of them from the Cowpen Colliery and Collieries or Royalties situate to the Northward of the River Blyth amount to Five hundred pounds or upwards the rent of One shilling the same to be paid on the twenty fifth day of March in each year and for every year ending with a twenty fifth day of March in which year the rents or sums payable by the company or their assigns as aforesaid in respect of such last mentioned loads like bulm and binders shall not amount to Five hundred pounds a rent or sum equal to Two per centum of the gross amount payable to or charged by the company or their assigns for or in respect of the passing and conveying along the said Branch Railways or any part thereof in the same year of such Passengers cattle and goods (other than loads like bulm or binders) the same to be paid on such twenty fifth day of March and it being agreed that the company and their assigns shall in all cases take a money consideration and nothing for the passing and conveyance over and along the said Branch Railways or any part thereof of Passengers cattle and goods **Provided always** that if any loads like bulm or binders being or arising in or from any of the lands edged round with a pale situate to the Northward of the River Blyth

[illegible]

Time or times

during the said term require to be led or carried away but nevertheless only on payment to the Company or their assigns of such dues and charges for the same loads (oke) bulm binders bottle and goods as the Company or their assigns shall from time to time be entitled to charge for the same such charge being only impartially made so as not to exceed the charge for like articles passing along the lines under like circumstances and will in all other respects duly maintain keep open for public use and work the said Branch Railways And also will at the end of every month during the said term hereby granted make and deliver unto the said Duke his heirs assigns or assigns in Estate or his or their Agent or Agents (if therunto required by him or them) a true and perfect account in writing under the hands of two of the Directors of the Company or their assigns of all such loads (oke) bulm binders bottle and goods as shall during such month have been carried away and along the said Branch Railways or any part thereof And further that the said Duke his heirs assigns and assigns in Estate and his and their Agent or Agents from time to time and at all times during the said term hereby granted may have full access and liberty to inspect and at his or their own costs and charges to take copies of the whole or any part of the Papers or Bulmman's Books of Presentment and loadings of loads (oke) bulm and binders and all other Books and Accounts relating to the carrying and leading of loads (oke) bulm and binders and the conveyance of Passengers bottle and goods over and along the said Branch Railways or any part thereof And also that the said Duke his heirs assigns and assigns in Estate may from time to time and at any time or times during the said term hereby granted at his and their own costs and charges appoint keep and employ any person or persons as a clerk or clerks at any of the Smiths to take an Account in writing of all the quantities of loads (oke) bulm and binders which shall from time to time be led along the said Branch Railways or any part thereof And the said Duke so far as relates to the acts and deeds of himself his heirs assigns and assigns in Estate shall and lawfully shall and lawfully shall covenant with the Company and their assigns that the Company and their assigns paying the several rents or sums hereafter reserved and observing and performing the several covenants conditions and agreements herein contained and on their part to be observed and performed may peaceably and quietly have hold use occupy possess and enjoy all and every the liberties privileges powers authorities and promises hereby granted in manner aforesaid according to the true intent and meaning of these Presents at all times during the said term hereby granted without the lawful let suit hindrance interruption or disturbance of the said Duke his heirs assigns or assigns in Estate or any person or persons lawfully claiming or to claim by him or under him or any of them Provided always that the expression the "assigns" of the Company wherever in these Presents contained shall include or extend hereafter to every Company into or with which the Company shall at any time hereafter be merged or amalgamated and the expression "the Company" wherever in these Presents contained shall in the event of the Company being dissolved and re-incorporated by the same or any other name include or extend or relate to the Company constituted by such re-incorporation And the said Duke so far as relates to the acts and defaults of himself his heirs assigns and assigns in Estate doth hereby for himself and theirs covenant with the Company and their assigns and the Company so far as relates to the acts and defaults of themselves and their assigns do hereby for themselves and their assigns covenant with the said Duke his heirs assigns and assigns in Estate that all the clauses and provisions whatsoever of "The Railways Clauses Consolidation Act 1845" which are incorporated with the North and Tyne Railway Amendment Act 1861 shall except only so far as the same respectively may be repugnant to or inconsistent with any of the terms and provisions of these Presents and in those respects subject to those terms and provisions operate and enure to the benefit of the said Duke his heirs assigns and assigns in Estate and the Company and their assigns and all other parties whomsoever as fully and effectually to all intents and purposes whatsoever as if the Company had taken and acquired the said lands on which the said Branch Railways are made or authorised to be made it being the true intent and meaning of the said parties hereto that the said Branch Railways shall at all times during the said term hereby granted be maintained and kept open for public use and worked with a due regard to the interests of the Public according to those clauses and provisions and the provisions of the Acts of the Company And also that if and so often as any dispute or difference shall at any time or times hereafter arise between the said Duke his heirs assigns or assigns in Estate or any of them and the Company or their assigns on account of the breach or the supposed breach of any of the covenants conditions or agreements herein contained or otherwise touching or concerning the construction effect incident or consequences of these presents or any matter or thing relating thereto the matter of every such dispute or difference may by the parties interested therein or either of them be referred and submitted to Arbitration and shall be determined by Arbitration according to the clauses and provisions in that behalf of the said Duke his heirs assigns and assigns in Estate and the Company and their assigns shall accordingly be deemed to be determined



Supervisors

Sy. M. XI. 1145 back cover

Seal of the Blyth and Tyne Railway Company
hereunto affixed in the presence of

John Anderson

Accountant to the Blyth & Tyne Railway Coy.

Signed sealed and delivered by the
within named George Duke of Northumberland
in the presence of

Richard Jameson Esq. on the

for the
James Gilson Esq. on the
Harrick Castle

Transcript of Wayleave dated 30 July 1867

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This Indenture made the 30th day of July in the year of our Lord one thousand eight hundred and sixty seven between the Most Noble George Duke of Northumberland of the one part and The Blyth and Tyne Railway Company (hereinafter called "the Company") of the other part witnesseth that in pursuance of a contract duly entered into between the Most Noble Algernon Late Duke of Northumberland (since deceased) and Joseph Laycock and Edward Nathaniel Grace two of the directors of the Company for and on behalf of the Company by Articles of Agreement dated the first day of May 1861 and in consideration of the rents hereinafter reserved and of the covenants conditions and agreements hereinafter contained and on the part of the Company and their assigns to be observed and performed the said George Duke of Northumberland by these present as well as by virtue of any power enabling him in this behalf as in respect of his estate and interest doth grant unto the Company and their assigns (subject nevertheless to the Company compensating all tenants and *[indistinguishable]* for all buildings which may be required to be taken or injuriously affected by the Company) full wayleave *[indistinguishable]* right of way and liberty power and authority to and for the Company and their assigns to make and construct so much and such part of the Railways and Works as are to pass through the lands and grounds of the said Duke and are comprised in the following description in the Blyth and Tyne Railway Amendment Act 1861 A Railway commencing by a junction with the Main Line of the Blyth and Tyne Railway at a point thereon in the Township of Backworth in the parish of Easton and terminating in or near a street or place called Picton Place in the parochial chapelry of St Andrew in the parish of St Nicholson in the Borough and County of Newcastle upon Tyne – A Railway commencing by a junction with such last mentioned intended Railway in the Township of Monkseaton in the parish of Tynemouth in the County of Northumberland and terminating by a junction with the Tynemouth Extension of the said Blyth and Tyne Railway in the said township of Monkseaton and parish of Tynemouth in the said County of Northumberland (and which said parts of the said Railways and Works as are to pass through the lands and grounds of the said Duke are hereinafter called and intended by the expression "the said Branch Railways"). Upon the lands of the said Duke in that behalf described upon the plans and in the Books of Reference referred to in the said Act being the "Blyth and Tyne Railway Amendment Act 1861" but so that the Company or their assigns shall not in constructing the said Branch Railways deviate from the line and situation laid down in a red colour on the plan no 1 drawn on these present without the consent of the said Duke, his heirs, assigns or sequels in Estate but with such consent the said Company or their assigns may in constructing the said Branch Railways deviate from the line and situation so laid down on the said last mentioned Plan provided that every deviation shall be made within the limits of deviation laid down upon the plan *[indistinguishable]* before mentioned and the Company or their assigns shall not be entitled without such consent to occupy more in width of such land or any part of the said lands than the widths respectively shown by a red colour on the said Plan No 1 drawn on these present and to enter upon and use and from time to time to amend and repair the said Branch Railways in the usual manner in through over and along the said lands and grounds of the said Duke upon which the said Branch Railways shall be so constructed for the leading conveying and carrying with engines, wagons, wains, trucks and other carriages over and along the said Branch Railways of coals coke culm cinders cattle and other goods unto any place or places whatsoever and also for leading, conveying and carrying of Carriages and Passengers (except and always reserved forth and out of this present demise as part of the compensation for the Wayleave rights powers and privileges hereby *[demised]* or intended so to be full and free liberty license and power for the said Duke his heirs assigns and sequels in estate and his and their *[agents workmen]* and servants from time to time and any time or times hereafter as often as he or they may think proper to construct use fix and repair other railways and other ways and to make and lay the same respectively or any part or parts thereof over under or across the said Branch Railways and to use the same respectively so always that the wagons and traffic of

the company and their assigns on the said Branch Railways or any part thereof be not thereby [indistinguishable] hindered and so always that the interests of the public be not thereby [indistinguishable] affected) to have and to hold the said wayleave liberties privilege and authorities and all singular [other] the premises hereby granted or expressed or intended so to be unto the company and their assign for the term of one thousand years to be computed from the 25th day of March 1862 and thenceforth next [ensuring] and fully to be complete and ended [yielding and paying] yearly and every year during the said term (each year to be considered as commencing from the 25th day of March) as follows that is to say for all coals coke culm and cinders hereinafter described as "the Extra Coals Coke Culm and Cinders which shall during each year of the said term hereby granted pass over or along the said Branch Railways or any part thereof and in respect of which identical Extra Coal Coke Culm and Cinders these shall not for the time being be payable to the said Duke his heirs assigns or sequels in Estate any other wayleave rent for passing over or along any wayleave line of railway over or through any of his or their land other than the Blyth and Tyne Railway or any part thereof and other than the said Branch Railways or any part thereof the rent or sum [indistinguishable] per ten (each ten being calculated for the purpose of these Presents as consisting of 17½ of [indistinguishable] and for all the coals cokes culm and cinders which shall during each year of the said term hereby granted pass over

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Or along the said Branch Railways or any part thereof and in respect of which identical Coals Coke Culm or Cinders there shall not for the time being be payable to the said Duke his heirs assigns or sequels in estate or any of them for passing over or along the said Blyth and Tyne Railway or any part thereof or the said Branch Railways or any part thereof any wayleave rent or other sum reserved by any other wayleave lease or Agreement already made by the said George Duke of Northumberland or his predecessor Algernon Late Duke of Northumberland and for the time being subsisting the following wayleave rents or sums that is to say for every ten (calculated as aforesaid) of such other Coals Coke Culm and Cinders which shall so pass in each year up to and not exceeding in the aggregate in each year 15,000 tons of such other Coals Coke Culm and Cinders for rent or sum of 5 shillings per ton and if in the same year more than 15,000 tons of such other Coals Coke Culm and Cinders shall so pass then for every such additional ton which shall so pass in the same year in excess of such 15,000 tons up to and not exceeding 10,000 such tons in excess as aforesaid with a rent or sum of 2 shillings and sixpence per ton and if in the same year more than 10,000 additional tons in excess of aforesaid shall so pass then for every such ton which shall so pass in the same year in excess of such 10,000 tons the rents or sums following that is to say that for every such ton of large or round Coals and of Coke Culm and Cinders be the rent or sum of 1 shilling and for every such ton small coals the rent or sum of sixpence and all the rent or sums reserved by these Presents shall be payable and paid half yearly on the 29th day of September and the 25th day of March in each year and the first half yearly payment in each year shall be made on the 29th day of September for the number of tons as aforesaid which shall have so passed up to that day and the payment of the balance of such rents or sums due in respect of the whole of each year shall be made on the 25th day of March and in ascertaining such balance the proviso next hereinafter contained shall apply

Provided always and it is hereby agreed and declared between and by the parties hereto that in respect of each year in which more than 15,000 tonnes of such other Coals, Coke, Culm and Cinders shall so pass it shall be ascertained how many tonnes of small coals were comprised in the said 15,000 tonnes which shall so pass in that year and how many tonnes of small coals were comprised in the said tonnes in excess of 15,000 tonnes up to and not exceeding 10,000 tonnes so in excess and a return of one shilling and three pence for or in respect of every tonne of small coals so to be ascertained shall be made or allowed to the Company out of the rents or sums payable in respect of that year for the said tonnes in excess of the said 15,000 tonnes up to and not exceeding 10,000 tonnes so in excess but such [when]

shall not be made or allowed out of the rents or sums payable for the said 15,000 tonnes not out of the rents or sums payable for any such tonnes beyond 10,000 tonnes so in excess it being hereby expressly agreed and declared that if the rents or sums payable in that year for the said tonnes in excess of the said 15,000 tonnes up to and not exceeding 10,000 tonnes so in excess shall not in the aggregate be a sufficient amount to provide such return in full than what would otherwise have been the aggregate amount of such return shall be reduced to and shall be deemed to be satisfied by the amount of the rents or sums payable in that year for the said tonnes in excess of the said 15,000 tonnes up to and not exceeding 10,000 tonnes so in excess and if in any year there shall not be any such tonnes in excess of such 15,000 tonnes then no such return as aforesaid shall in that or any other year be made for or in respect of that year and for the purposes of these Presents "large or round coals" shall be taken to mean all coals that will not pass through a screen the wires of which are not more than 5/8 of an inch apart and small coals shall be taken to mean all coals that shall pass through such screen and also yielding and paying yearly and every year during the said term in respect of Passengers, Cattle and Goods (other than Coal, Coke, Culm and Cinders) which shall during the said term hereby granted pass over and along the said Branch Railways or any part thereof as next hereinafter specified (that is to say) for every year ending with a 25th day of March in which year the rents or sums payable by the Company or their assigns as aforesaid in respect of Coals, Coke, Culm or Cinders passing over and along the said Blyth and Tyne Railway or any part thereof and the said Branch Railways or any part thereof both or either of them from the Cowpen Colliery and Collieries or royalties situate to the Northward of the River Blyth amount to £500 or upwards of the rent of one shilling the same to be paid on the 25th day of March in each year and for every year ending with the 25th day of March in which year the rents or sums payable by the Company or their assigns as aforesaid in respect of such last mentioned Coals, Coke, Culm and Cinders shall not amount to £500 a rent or sum equal to two per centum of the gross amount payable to or charged by the Company or their assigns for or in respect of the passing and conveying along the said Branch Railways or any part thereof in the same year of such Passengers, Cattle and Goods (other than Coals, Coke, Culm or Cinders) the same to be paid on such 25th day of March and it being agreed that the Company and their assigns shall in all cases take a money consideration and no other for the passing and conveyance over and along the said Branch Railways or any part thereof of Passengers, Cattle and Goods provided always that if any Coals, Coke, Culm or Cinders is being or arising in or from any of the lands edged round with a pink colour on the plan [indistinguishable]

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these present shall hereafter be conveyed over or along the said Branch Railways or any part thereof or other the railways of the Company or any part thereof then all such last mentioned Coals, Coke, Culm and Cinders which are intended to be hereby described as the "Extra Coals, Coke, Culm and Cinders" hereinafter referred to shall never be included in or form part of the before mentioned quantity of 15,000 tonnes or of the said other quantities in excess thereof but five shillings per ton shall always be payable in respect of such extra Coals, Coke, Culm and Cinders provided further that if it shall happen at a wayleave rent less than five shillings per ton would have been payable to the said Duke his heirs assigns or sequels in Estate in respect of any part of such extra Coals, Coke, Culm or Cinders if the same had been conveyed by and had been coals, coke, culm or cinders usually conveyed by the wayleave railway or tramway in use nearest to the place when such part of such extra coals, coke, culm or cinders shall arise and passing over or through any of the land of the said Duke, his heirs, assigns or sequels of the Estate other than any railways of the Company or any part thereof then and in each such case in respect of such identical Extra Coals, Coke, Culm or Cinders in lieu of [five] shillings per ton there shall be payable and paid by the said Company to the said Duke, his heirs, assigns or sequels in Estate in respect of thereof such an amount per ton as shall be equal to the wayleave rent which you or they would have been entitled to if such identical extra Coals, Coke, Culm or Cinders had been actually conveyed by and had

been Coals, Coke, Culm or Cinders usually conveyed by such wayleave, railway or tramway in use nearest as aforesaid over or through any of the lands of the said Duke, his heirs, assigns or sequels in Estate other than as aforesaid but in respect of all other extra coals, coke, culm or cinders five shillings per ton shall be and continue to be payable and paid as aforesaid provided also that in case the said rents or said sums hereby reserved or made payable or any of them or any part thereof respectively shall be behind or unpaid for 40 days next after any of the said days for payment thereof and for 10 days after the same shall during or after such 40 days have been legally demanded then and in every such case the said Duke and his heirs, assigns or sequels in Estate may enter upon the said Branch Railways and any other railway or railways and any lands and buildings for the time being occupied or used by the Company or their assigns and [*distrain*] or any of the coals belonging to the Company or their assigns that shall be found thereon and also the horses, locomotives and other engines, machines wagons carriages ropes rollers and other matters and things which shall be in or upon the said Branch Railways and other railway or railways, lands and buildings respectively and whether the same things respectively shall be in actual use or not and such distress so found may take keep lead convey away and sell and dispose of in order to satisfy and pay the rents or sums so in arrears and also the reasonable costs and charges of such distresses and sales rendering the surplus if any on demand unto the Company or their assigns provided also that if the said rents or sums hereinbefore [*indistinguishable*] or any of them or any part thereof respectively shall be behind or unpaid for three calendar months next after any of the said days for payment thereof and the two calendar months after the same shall during or after such three calendar months have been legally demanded then and in any and every such case and notwithstanding any waiver of any prior right of re-entry under this proviso the said Duke his heirs assigns or sequels in Estate if he or they shall think fit so to do into and upon the said Branch Railways and other the premises hereby granted or intended so to be or holden or enjoyed by virtue of these Presents of any part thereof in the name of the whole may re-enter and the same henceforth may repossess and enjoy and the rents issues and profits thereof may take and retain for his and their own benefit until thereby or otherwise he or they shall be fully repaid all such rents or sums so in arrears and all other rents or sums hereby reserved or made payable falling due during such repossession and all costs losses damages and expenses occasioned by such non-payment re-entry and repossession or incidental thereto nevertheless be or they on demand after such full repayment permitting the Company or their assigns again to possess and enjoy under these Presents the said Branch Railways the premises and every part thereof –and the Company do hereby for themselves and their assigns covenant with the said Duke his heirs assigns and sequels in Estate that the Company and the assigns will from time to time during the said term hereby granted pay unto the said Duke his heirs assigns or sequels in Estate the said several rents and sums of money reserved or made payable by these Presents and also the several rents and sums of money reserved by any other wayleave lease or agreement for the time being subsisting already executed by the said George Duke of Northumberland or Algernon late Duke of Northumberland as aforesaid subject to such return from time to time (if any) as hereinbefore mentioned on or at the several days or times and in the manner herein appointed for payment thereof respectively without any deduction or abatement whatsoever on account of any present or future landlords or tenants taxes rates assessments charges or payments whatsoever (for the land tax and landlord's profits or income tax from the said rents or sums only accepted) or on any other account whatsoever and will so pay the same according to the [*will*] intent and meaning of these present and also will from time to time during the said term hereby granted pay and discharge all present and future landlords and tenants taxes, rates, assessments charges and payments whatsoever for or in respect of the said premises hereinafter granted for the said rents or sums or any of them or any part thereof respectively (land) tax and landlord's property tax income tax on the said rents or sums only excepted and also will from time to time during the term hereby granted lead and [*cover*] by means of the said Branch Railways all such Coals Coke Culm Cinders Cattle and Goods as the said Duke, his heirs, assigns or sequels in Estate or any other party or parties whosoever shall at any

time or times during the said term require to be led or carried away but nevertheless only on payment with a Company or their assigns of such dues and charges for the same Coals Coke Culm Cinders Cattle and Goods as the Company or their assigns shall from time to time be entitled to charge for the same such charge in only impartially made so as not to exceed the charge for like articles passing along the lines under like circumstances and will in all other respects duly maintain keep open for public use and work the said Branch Railways And also will at the end of every month during the said term hereby granted make and deliver unto the said Duke and his heirs assigns or sequels in Estate or his or their agent or agents (if thereunto required by him or them) a time and perfect account in writing under the hands of two of the Directors of the Company or their assigns of all such Coals Coke Culm Cinders Passengers Cattle and Goods as shall during such month have been carried and conveyed over and along the said Branch Railways or any part thereof

And further that the said Duke his heirs assigns and sequels in Estate and his and their agent or agents from time to time and at all times during the said term hereby granted may have free access and liberty to inspect and at his or their own costs and charges take copies of the whole or any part of the [viewers or [indistinguishable] Books of Presentment and [leadings] of Coals Coke Culm and Cinders and all other Books and Accounts relating to getting and leading of Coal Coke Culm and Cinders and the Conveyance of Passengers Cattle and Goods over and along the said Branch Railways or any part thereof And also that the said Duke and his heirs assigns and sequels in Estate may from time to time and at any time or times during the said term hereby granted at his and their own costs and charges appoint keep and employ any person or persons as a clerk or clerks at any of the [staithes] to take an account in writing of all the quantities of Coals Coke Culm and Cinders which shall from time to time be led along the said Branch Railways or any parts thereof and the said Duke so far as relates to the acts and deeds of himself his heirs assigns and sequels in Estate doth hereby for himself and them covenant with the Company and their assigns that the company and their assigns paying the several rents or sums hereinbefore reserved and observing and performing the several covenants conditions and agreements herein contained and on their part to be observed and performed may peaceably and [quietly] have hold use occupy possess and enjoy all and every liberties privileges powers authorities and premises hereby granted in manner aforesaid [according] to the true intent and meaning of these Presents at all times during the said term hereby granted without the lawful [let suit] hindrance [interruption] or disturbance of the said Duke his heirs assigns or sequels in Estate or any person or persons lawfully claiming or [to claim] by from or under him or any of them Provided always that the expression the "assigns" of the Company wherever in these Presents contained shall include or extend hereafter to every Company into or with which the Company shall at any time hereafter be merged or amalgamated and the expression "the Company" wherever in these Presents contained shall in the event of the company being dissolved and incorporated by the same or any other name include or extend or relate to the company constituted by such [incorporation] And the said Duke so far as relates to the acts and defaults of himself his heirs assigns and sequels in Estate doth hereby for himself and them covenant with the company and their assigns and the company so far as relates to the acts and defaults of themselves and their assigns do hereby for themselves and their assigns covenant with the said Duke his heirs assigns and sequels in estate that all the clauses and provisions whatsoever of the "Railways Clauses Consolidation Act 1845" which are incorporated with the "Blyth and Tyne Railway Amendment Act 1861" shall accept only so far as the same respectively may be [repugnant to] to or inconsistent with any of the terms and provisions of these Presents and in those respects subject to those terms and provisions operate and inure to the benefit of the said Duke his heirs assigns and sequels in Estate and the Company and their assigns and all other parties whomsoever as fully and effectively to all intents and purposes whatsoever as if the Company had taken and acquired the said land on which the said branch railways are made or authorised to be made it in the intent and meaning of the said parties hereto that the

said Branch Railways shall at all times during the said term hereby granted be maintained and kept open for the public use and worked with a due regard to interests of the public [as] according to those clauses and provisions and the provisions of the acts of the Company And also that if and so often as any dispute or difference shall at any time or times hereafter arise between the said Duke his heirs assigns or sequels in Estate or any of them and the company or their assigns on account of the breach or the supposed breach of any of the covenants conditions or agreements herein contained or otherwise touching or concerning the construction effect incident or consequences of these Presents or any matter or thing relating thereto the matter of every such dispute or difference may by the parties interested therein or either of them be reduced into [*indistinguishable*]

Taken from handwritten transcript submitted to Land Registry in respect of title number TY404513:

...writing and submitted to Arbitration according to the Clauses and provisions in that behalf of the Lands Clauses Consolidation Act 1945 and those Clauses and Provisions shall accordingly be deemed to be part of these Presents In witness whereof the said Duke hath hereunto set his hand and seal and the said Company have hereunto affixed their Common Seal the day and year first above written