



PINS Document Number:
EN010140/APP/9.20

Summary statement from the Applicant setting out any outstanding matters

May 2025

Helios Renewable Energy Project

Summary statement of any outstanding matters

Planning Inspectorate Reference: EN010140

May 2025

Prepared on behalf of Enso Green Holdings D Limited

Project Ref:	33627	
Status:	Draft	Issue
Issue/Rev:	00	01
Date:	May 2025	May 2025
Prepared by:	AA	AA

Stantec
7 Soho Square
London
W1D 3QB

Tel: 020 7446 6888



COPYRIGHT

The contents of this document must not be copied or reproduced in whole or in part without the written consent of Stantec

All Stantec stationery is produced using recycled or FSC paper and vegetable oil-based inks.

CONTENTS

- 1. Introduction..... 3
 - 1.1. Overview..... 3
- 2. Outstanding Matters..... 4
 - 2.1. Network Rail 4

1. Introduction

1.1. Overview

- 1.1.1. This document provides a summary of any outstanding matters at the close of examination from Enso Green Holdings D Limited (the 'Applicant') in relation to the Development Consent Order Application (the 'DCO Application') for the Helios Renewable Energy Project (the 'Proposed Development').
- 1.1.2. The Statement of Commonality **[REP8-013]** and Annex A to ExQ2 [Deadline 9 Submission] set out the final status of matters which have been finalised as either agreed / not agreed. This document covers only matters which are outstanding and not included in a SoCG at Deadline 9 and which in the Applicant's opinion are unlikely to be resolved by the end of Examination.
- 1.1.3. References to the DCO Application documentation are provided in accordance with the referencing system as set out in the Planning Inspectorate's 'Helios Renewable Energy Project Examination Library'.

2. Outstanding Matters

2.1. Network Rail Limited (“NR”)

- 2.1.1. The Applicant has been liaising with legal representatives for NR throughout the examination process. Regular updates have been provided to the ExA but due to a lack of timely engagement by NR the Applicant has not been able to reach a position with NR so that they can withdraw their representations.

NR’s Representations

- 2.1.2. NR’s concerns about the Proposed Development are set out in its relevant representation **[RR-272]** and written representation **[REP2-033]** and focus on the following:
- a) Protection of NR’s Existing Rights and concerns over their extinguishment during the construction, operation and ongoing maintenance requirements of the Proposed Development as set out in the dDCO;
 - b) As a result of a) the detrimental effect of the Proposed Development on NR’s ability to maintain the safe and efficient operation of its railway infrastructure; and
- 2.1.3. Further to a) and b) a request for bespoke protective provisions.

NR Rights

- 2.1.4. The Book of Reference **[REP8-006]** identifies NR as having a Category 2 interest in respect of land parcels 55, 56, 57, 59 and 61 which are set out in the table below together with a description of the land for each plot and the works to be undertaken in that plot. All the plots are shown on Sheet 4 of the Land and Crown Plans **[REP4-003]**.

Table 2.1 – NR Rights

Plot	Details of Right	Description of the land (as per BoR [REP8-006])	Works to be undertaken (as per dDCO Schedule 1 [Deadline 9])
55	Right of entry relating to maintaining works and fences as contained in a Conveyance dated 27 June 1969 for the benefit of unknown land	Acquisition of rights over 2,726 square metres, or thereabouts, of railway, works and land under bridge carrying public adopted highway (A645) situated to the south of Drax Power Station, Selby	Work No. 5 – works including— (a) electrical cables up to 132 kilovolt connecting Work No. 3 to Work No. 6; (b) fencing, gates, boundary treatment and other means of enclosure; (c) laying down of internal access tracks, ramps, means of access, footpaths, roads, including the laying and construction of drainage infrastructure, signage and information boards; and (d) works required for crossing, moving, re-routing or over/undergrounding of existing utility assets (including water, gas, sewer pipes, electricity distribution/transmission cabling, telecommunications etc.).
56	Right of entry relating to maintaining works and fences as contained in a Conveyance dated 27 June 1969 for the benefit of unknown land	Acquisition of rights over 17,234 square metres, or thereabouts, of grass land, private access road, public footpath (35.17/6/1), golf course (Selby Golf Club, Mill Lane) and electricity substation situated to the south of Drax Power Station, Selby	Work No. 5 – works including— (a) electrical cables up to 132 kilovolt connecting Work No. 3 to Work No. 6; (b) fencing, gates, boundary treatment and other means of enclosure; (c) laying down of internal access tracks, ramps, means of access, footpaths, roads, including the laying and construction of drainage infrastructure, signage and information boards; and (d) works required for crossing, moving, re-routing or over/undergrounding of existing utility assets (including water, gas, sewer pipes, electricity distribution/transmission cabling, telecommunications etc.).

Helios Renewable Energy Project
Summary statement of any outstanding matters

57	Right of entry relating to maintaining works and fences as contained in a Conveyance dated 27 June 1969 for the benefit of unknown land	Acquisition of rights over 782 square metres, or thereabouts, of railway, works and land under bridge carrying public adopted highway (A645) situated to the south of Drax Power Station, Selby	Work No. 5 – works including— (a) electrical cables up to 132 kilovolt connecting Work No. 3 to Work No. 6; (b) fencing, gates, boundary treatment and other means of enclosure; (c) laying down of internal access tracks, ramps, means of access, footpaths, roads, including the laying and construction of drainage infrastructure, signage and information boards; and (d) works required for crossing, moving, re-routing or over/undergrounding of existing utility assets (including water, gas, sewer pipes, electricity distribution/transmission cabling, telecommunications etc.).
59	Right of entry relating to maintaining works and fences as contained in a Conveyance dated 27 June 1969 for the benefit of unknown land	Acquisition of rights over 13,895 square metres, or thereabouts, of car park and grassed area (Drax Sports and Social Club, Main Road), Selby	Work No. 8A – works including— (a) electrical cables up to 132 kilovolt connecting Work No. 3 to Work No. 6; (b) works required for crossing the railway using trenchless installation techniques; and (c) works required for crossing, moving, re-routing or over/undergrounding of existing utility assets (including water, gas, sewer pipes, electricity distribution/transmission cabling, telecommunications etc.).
61	Right of entry relating to inspecting, maintaining and repairing works and fences as contained in a Conveyance dated 27 June 1969 Personal covenant to	Acquisition of rights over 1,218 square metres, or thereabouts, of public adopted highway (A645) situated to the west of West End Bungalow, Selby	Work No. 5 – works including— (a) electrical cables up to 132 kilovolt connecting Work No. 3 to Work No. 6; (b) fencing, gates, boundary treatment and other means of enclosure; (c) laying down of internal access tracks, ramps, means of access, footpaths, roads, including the laying and construction of drainage infrastructure, signage and information boards; and

	maintain culverts, level crossings, lineside fences and other works in a conveyance dated 23 June 1969		(d) works required for crossing, moving, re-routing or over/undergrounding of existing utility assets (including water, gas, sewer pipes, electricity distribution/transmission cabling, telecommunications etc.).
--	--	--	--

- 2.1.5. The rights referred to above which are contained in the conveyance dated 27 June 1969 are not available at the Land Registry and NR have not provided the Applicant with details of the land which they benefit.

Interaction of the Proposed Development with the NR Existing Rights

- 2.1.6. The Applicant has provided NR with a shape file of the proposed Order Limits to facilitate them being able to identify their assets within the Order Limits. The Applicant has not received confirmation from NR of the assets about which they are concerned.
- 2.1.7. The Applicant has been unable to locate any NR property within with Order Limits. There is a railway to the southeast (but outside) of the Order Limits which the Applicant understands is an NR operated railway.
- 2.1.8. The railway to be crossed by the Proposed Development is a private railway owned by Drax Power Limited. The Applicant is working closely with Drax and they have not submitted a representation to the examination.
- 2.1.9. The Proposed Development is also seeking the acquisition of rights along the adopted highway where NR have rights of access. As the Applicant is not proposing to stop up any highways there is no change to the rights of NR to use the highways for access and it will not need to rely on its private proprietary rights. However, as the Applicant is proposing to take rights for access and the laying of cables (and associated works to facilitate this) there is no reason why the rights sought by the Applicant and those of NR cannot co-exist.
- 2.1.10. The Applicant has confirmed to NR that it has no intention of extinguishing any interests in the land which NR may have as it does not consider that these are inconsistent with the powers for which the Applicant will use the land.

Engagement between the Parties

- 2.1.11. Engagement between the parties' legal advisors commenced in November 2024 with a view to satisfactorily resolving NR's concerns before the end of the examination.
- 2.1.12. Further to the Applicant's confirmation that the NR Existing Rights would not be extinguished by the Proposed Development, NR confirmed to the Applicant that protective provisions will not be required. Since then the Applicant has liaised with NR to resolve its concerns so that it can withdraw its objection through a short private agreement.
- 2.1.13. NR is still in the process of confirming their affected rights which are outlined above and to assist them the Applicant was requested to send shapefiles of Order Limits which it did. The Applicant has maintained throughout the examination that the NR rights can co-exist without impeding the carrying out of the Proposed Development and there is therefore no need to extinguish the same and that they can be preserved.
- 2.1.14. On the 22 May 2025 NR's legal advisors informed the Applicant that they required their standard protective provisions to be on the face of the DCO although they were still prepared to enter into a separate agreement with the Applicant.

The Applicant's position

- 2.1.15. Protective provisions are normally imposed to safeguard the statutory undertaking of a statutory undertaker ('undertaker A') from a risk of serious detriment that might otherwise arise from the exercise by another statutory undertaker ('undertaker B') of powers conferred by subsequent legislation or, as in this case, a DCO. This ensures undertaker A can continue to discharge its statutory obligations, functions and duties in accordance with its governing legislation. In this case, there is no risk of detriment to the statutory undertaking of NR for the reasons set out in the following paragraphs. NR do not own, or have any property interest or apparatus in, any land included within the Order limits. In contrast to other undertakers benefiting from protective provisions in the dDCO, no land, interests or apparatus owned or held by NR for the purposes of their statutory undertaking would be affected.
- 2.1.16. Previous consideration of serious detriment has made clear that just acquiring rights or land is not in and of itself serious detriment (see for example the consideration of the Secretary of State in the Lake Lothing DCO decision).
- 2.1.17. While the Applicant does not consider that protective provisions are necessary in this

case if they are to be imposed they must be relevant and proportionate to the works which the DCO would consent. The Applicant further submits that NR's current drafting of its preferred provisions go considerably beyond this and are drafted as if the Applicant were undertaking permanent works to a NR railway. That drafting is inapplicable to the circumstances of the consent sought, is not reasonable with regards to the works to be controlled and unnecessarily risks creating confusion and disagreement at a later stage when it has to be argued by the Applicant's construction contractor that various insertions are not applicable or relevant.

- 2.1.18. The Applicant submits that it is necessary in considering protective provisions to have regard to the actual works and interactions for which consent is sought in the DCO. There are no works for which consent is sought that would affect the rights of access which NR benefit from.
- 2.1.19. The Applicant notes that the majority of the listed provisions are inapplicable to the works for which consent is sought and it accordingly objects to their inclusion. The Applicant understands why NR would prefer standard protective provisions across DCOs affecting its network, but submits that seeking to impose drafting clearly designed to address significant works to their assets where no such works are proposed is unreasonable.
- 2.1.20. The Applicant does not agree or accept that the compulsory acquisition powers sought in the DCO would result in serious detriment to NR. NR is a Statutory Undertaker for the purposes of section 127 of the Planning Act 2008 (PA2008) as it falls within the definition set out in section 8(1) of the Acquisition of Land Act 1981. Where a statutory undertaker has made a representation about the compulsory acquisition of land or rights over land which has been acquired for the purpose of their undertaking, and this representation is not withdrawn, s127 of the PA 2008 applies.
- 2.1.21. Section 127 of the PA2008 provides that:
- (1) This section applies in relation to land ("statutory undertakers' land") if—
 - (a) the land has been acquired by statutory undertakers for the purposes of their undertaking,
 - (b) a representation has been made about an application for an order granting development consent before the completion of the examination of the application, and the representation has not been withdrawn, and

- (c) as a result of the representation the Secretary of State is satisfied that—
 - (i) the land is used for the purposes of carrying on the statutory undertakers' undertaking, or
 - (ii) an interest in the land is held for those purposes.
- (2) An order granting development consent may include provision authorising the compulsory acquisition of statutory undertakers' land only to the extent that the Secretary of State is satisfied of the matters set out in subsection (3).
- (3) The matters are that the nature and situation of the land are such that—
 - (a) it can be purchased and not replaced without serious detriment to the carrying on of the undertaking, or
 - (b) if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on of the undertaking.
- (4) Subsections (2) and (3) do not apply in a case within subsection (5).
- (5) An order granting development consent may include provision authorising the compulsory acquisition of a right over statutory undertakers' land by the creation of a new right over land only to the extent that the Secretary of State is satisfied of the matters set out in subsection (6).
- (6) The matters are that the nature and situation of the land are such that—
 - (a) the right can be purchased without serious detriment to the carrying on of the undertaking, or
 - (b) any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to or available for acquisition by them.

2.1.22. The Applicant agrees:

- That NR is a statutory undertaker for the purposes of the PA2008;
- That the rights held by were acquired by NR for the purposes of its undertaking (s127(1)(a));
- That NR has submitted and prior to the completion of this submission has not withdrawn a representation under s127(1)(b); and
- The Secretary of State is therefore required to consider the application of section

127.

- 2.1.23. NR has submitted that it objects to the compulsory acquisition powers sought by the Applicant on the basis that they would result in serious detriment to its statutory undertaking.
- 2.1.24. The Applicant notes that this submission was made when NR was unclear about its interests in the Order Limits. The Applicant does not consider that NR could have made a reasoned, objective assessment of the impact of compulsory acquisition powers and determined that serious detriment would arise before it had even established the potential impact on its interests. The NR submission of serious detriment accordingly lacks any substance.
- 2.1.25. It is clear from previous considerations of section 127 in DCO decisions that what constitutes ‘serious detriment’ is a high bar. Just because there is any adverse impact or detriment will not mean that serious detriment exists.
- 2.1.26. For example, in the Lake Lothing DCO examination, Associated British Ports (“ABP”) (the port authority who were a statutory undertaker) argued that the proposals would cause serious detriment to their port undertaking at Port of Lowestoft. The proposals included:
- the permanent compulsory acquisition of 3,000m² of land side and bed of the lake;
 - 2,500m² of airspace and rights under bridge decks; and
 - 4,500m² of rights over the only access to the port;
- 2.1.27. ABP argued that the implications of the rights sought under the Lake Loathing DCO were that there would be a loss of 165m of berthing and that the proposals would seriously compromise the operational viability of the port by creating a constraint on the retention of existing and the attraction of new business. This would in turn cause damage to the strategic significance and the economic contribution of the port. ABP submitted therefore that the impact on the Lake Loathing DCO on the Port of Lowestoft amounted to serious detriment.
- 2.1.28. The Examining Authority in their recommendation report found that “the Proposed Development would cause material harm to the operational port. However, the extent of this harm, when considered in the context of the port operation as a whole, may be characterised as no more than moderate” (Examining Authority Recommendation

Report on the Lake Lothing Third Crossing Development Consent Order, paragraph 5.8.156).

- 2.1.29. In the decision letter, the Secretary of State concluded that the “effect of the Proposed Development on the operation of the port would not justify refusing development consent” (Secretary of State Decision Letter on the application for the proposed Lake Lothing Third Crossing Development Consent Order dated 30 April 2020, Paragraph 25).
- 2.1.30. The Secretary of State determined that “in the context of section 127 of the 2008 Act that the CA and [temporary possession] powers sought would be detrimental to the carrying out of ABP’s statutory undertaking but this detriment would not be serious” (Ibid, Paragraph 35).
- 2.1.31. The Applicant notes that there have been various considerations of the interaction between statutory undertakers over whom compulsory acquisition powers are sought in DCOs and the protective provisions which apply to them. In numerous instances it has been decided that some protective provisions are required to prevent the compulsory acquisition powers resulting in serious detriment. That does not however mean that the relevant protective provisions were granted in the form sought by the statutory undertaker or that serious detriment is only avoided where statutory undertakers have agreed such provisions. Rather, it is entirely open to the SoS to determine what provisions are appropriate to prevent serious detriment arising.
- 2.1.32. In the Hinkley Point C DCO, the compulsory acquisition of rights to install, operate and maintain an electricity line over NR infrastructure were sought. NR had objected to the compulsory acquisition of rights (in the form of an easement) over its operational land. The ExA concluded that NR had not demonstrated that the grant of a permanent easement “would in any way compromise or otherwise adversely affect the safe and efficient operation of the railway”.
- 2.1.33. The ExA concluded with regard to the interface with NR that “Apart from the construction phase, the only possible interference would be on those occasions when maintenance or emergency works were being carried out to the Applicant's equipment. The Panel is satisfied that rights required by the Applicant over the operational land in question could be taken without serious detriment to the carrying on of the undertaking”. This was subject to appropriate Protective Provisions being agreed. NR submitted that its preferred drafting of Protective Provisions was required to “ensure the safe operation of the railway and compliance with its Network Licence”

- 2.1.34. However, the Applicant did not agree that the NR drafting was appropriate. Therefore, while it was appropriate that NR's approval for the physical works was secured by Protective Provisions, there was no justification for a restriction on use of compulsory acquisition powers to require NR's consent. The ExA concluded "The Panel considers that it is not necessary, nor would it be reasonable, to include paragraph 4 of [NR's] preferred form of the protective provisions and that it could compromise the Applicant's ability to deliver the proposed development."
- 2.1.35. These cases demonstrate that protective provisions are to be bespoke to the development being consented and a statutory undertaker should not be permitted to impose standard protective provisions because it is more convenient to have a single set relating to its entire network.

Proposed Amendments to the dDCO

- 2.1.36. Whilst the Applicant maintains that the protective provisions are not necessary to prevent serious detriment to NR's statutory undertaking the Applicant does acknowledge that NR has rights which should not be extinguished by the Proposed Development. Given the late stage of the Examination the Applicant has endeavoured to take a proportionate approach to the protective provisions and has amended only two paragraphs of NR's standard protective provisions which were provided to the Applicant on the 22 May. These protective provisions however, can be found on the recently made East Yorkshire Solar Farm Development Consent Order 2025.
- 2.1.37. The first amendment is to remove limb (b) of the definition of NR property which stated:
- "railway property" means any railway belonging to Network Rail and-
- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail for the purposes of such railway or works, apparatus or equipment;
- 2.1.38. To include limb (b) would mean that all works in these plots would be subject to the entirety of the protective provisions. This includes land which is adopted highway. As set out above the level of works to be undertaken when considered against the access right that NR have over the land is entirely disproportionate and thoroughly

unjustified.

- 2.1.39. The Applicant has retained the definition of railway property so that in the highly unlikely event that NR do identify any actual railway property within the Order Limits that will be adequately protected.
- 2.1.40. The protective provisions (paragraph 92 (4)) maintain the complete prohibition on the Applicant's ability to unilaterally extinguish NRs rights over the plots identified above which addresses the concern raised by NR in their representation and therefore there is no detriment to NR and it's concerns should be considered resolved.
- 2.1.41. The second is to amend paragraph 108 in relation to the arbitration provisions. This amendment was also made on the East Yorkshire Solar Farm Development Consent Order 2025.
- 2.1.42. The Applicant considers that the approach it has taken to resolve NR's concerns is appropriate and proportionate and submits that the protective provisions included in the dDCO submitted at Deadline 9, if any, should be those on the made Order.