

Written Representations by Network Rail Infrastructure Limited in relation to The Tween Bridge Solar Farm Development Consent Order 202[*] (DCO)

Planning Inspectorate Reference Number: EN010148

Registration Identification Number: FFCFAE925

Applicant: RWE Renewables UK Solar and Storage Limited

Application: The Tween Bridge Solar Farm Development Consent Order 202[*]

Further to Network Rail Infrastructure Limited's (**Network Rail/NR**) relevant representation submitted on 2 January 2026, NR wishes to make this written representation in relation to RWE Renewables UK Solar and Storage Limited's (the **Promoter**) application (**Application**) for the above development consent order (**DCO**).

The draft DCO submitted with the Application includes provisions which would, if granted, authorise the Promoter to carry out works on, under and in close proximity to operational railway land in the control of NR and to permanently acquire new rights over NR's freehold interests in such land.

We have reviewed the updated draft DCO and the protective provisions included for the benefit of the railway (**Order PPs**). The Order PPs are not wholly consistent with the form of PPs requested by NR to be included in the draft DCO contained at Appendix 1 of NR's relevant representation submitted on 2 January 2026 (**NR PPs**).

Accordingly, the draft DCO (document reference number 3.1) **as currently drafted**, does not contain a form of protective provisions considered by NR to sufficiently protect its assets and to ensure the safe and efficient operation of the railway.

As set out in Network Rail's earlier relevant representation, the Book of Reference (document reference number 4.3) identifies the following plot of land over which NR own the freehold interest in. The relevant plot is as follows:

- 1) Freehold owner - Permanent acquisition of new rights over 10605 square metres of railway forming part of the South Humberside Main Line lying to the north of Sandhill Farm, Scunthorpe Road, Thorne, Doncaster, (Plot 3-24). (the **Plot**).

Protective Provisions

This representation sets out Network Rail's position in respect of the key variances between the Order PPs and the NR PPs.

CPO Restriction

The Applicant has proposed the deletion of the parts of NR's required form of provision 4 (as shown in red below) and has proposed the insertion of the wording in blue below:

~~4. (1) The undertaker must not exercise the powers conferred by—~~

~~(a) article 3 (development consent granted by the Order);~~

~~(b) article 4 (power to maintain the authorised development);~~

~~(c) article 14 (discharge of water);~~

~~(d) article 16 (authority to survey and investigate the land);~~

~~(e) article 17 (compulsory acquisition of land);~~

~~(f) article 19 (compulsory acquisition of rights);~~

~~(g) article 20 (private rights);~~

~~(h) article 22 (acquisition of subsoil only);~~

~~(i) article 23 (power to override easements and other rights);~~

~~(j) article 26 (temporary use of land for constructing the authorised development);~~

~~(k) article 27 (temporary use of land for maintaining the authorised development);~~

~~(l) article 28 (statutory undertakers);~~

~~(m) article 36 (felling or lopping of trees and removal of hedgerows);~~

~~(n) the powers conferred by section 11(3) (power of entry) of the 1965 Act;~~

~~(o) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;~~

~~(p) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;~~

~~(q) any powers under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017;~~

~~in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.~~

~~(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.~~

~~(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 28 (statutory undertakers), article 23 (power to override easements and other rights) or article 20 (private rights), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.~~

~~(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.~~

~~122(1)(5) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.~~

~~(6) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld or delayed but may be given subject to reasonable conditions but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).~~

(7) *The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work, subject to agreement not being unreasonably withheld or delayed by either party.*

The Promoter proposes to use compulsory powers to acquire permanent rights over plot 3-24 to install and lay underground cables. Plot 3-24 is land comprising **an operational railway line**.

Crucially, if the provisions at paragraphs (1)-(7) above are not included in the DCO (if granted), serious detriment to NR's statutory undertaking will be caused as a result of the Promoter being able to exercise compulsory acquisition powers to acquire rights over an operational railway line.

Absent the inclusion of sub-paragraph (1) - (4) and where NR has no ability to require its prior consent to such acquisition, it would give rise to a significant, unacceptable risk that the Promoter could compulsorily acquire rights over railway land without prior NR's consent. Such a proposition is patently unacceptable as this compulsory acquisition of rights over railway land would result in NR no longer having control over its operational railway land.

This clearly has the potential for catastrophic implications for the operational railway and poses a serious detriment to NR's carrying on of its statutory undertaking.

Although we understand the Applicant's concern that they do not wish to risk delays to the implementation of the DCO scheme, NR would not seek to delay consent unreasonably. NR's standard wording at paragraph 4 would provide sufficient comfort to the Promoter that NR is not to unreasonably withhold or delay the consent, and that this consent may be given subject to conditions.

NR is of course willing to engage with the Promoter and would be required to act reasonably in agreeing the terms of any easement by virtue of sub-paragraph (6). However, NR is under an overarching duty not to compromise the safe operation of the railway and to preserve the safety and integrity of the railway and so its consent to the acquisition of such rights must not be circumvented by the powers in the Order.

Indemnity

The Promoter has included at paragraphs 132 and 133(2) an exclusion for indirect and consequential losses as shown below in blue.

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

(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article 43 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail—

....

(e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development;

*and the undertaker must indemnify and keep indemnified Network Rail from and against all **reasonable** claims and demands arising out of or in connection with a specified work or any such failure, act or omission **subject to a cap of £25,000,000 (Twenty Five million pounds)**; and the fact*

that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) In no circumstances will the undertaker be liable to Network Rail under this paragraph 133 for any indirect or consequential loss (including, without limitation, loss of profit) howsoever arising, nor for any direct or indirect loss that may have been caused by a specified work or the carrying out of the authorised development more than six years after any specified work or the relevant part of the authorised development has been completed.

.....

(7) In this paragraph - d

"the relevant costs" means the costs, losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1), subject to a cap of £25,000,000 (twenty five million);

These references cannot be agreed as the indemnity required in NR's PPs includes recoverability for indirect costs incurred by NR pursuant to claims made by train operator companies under train operator company agreements. To provide some further context, NR is liable to train operators under Train Access Agreements (copies of which are publicly available) via automatic, formula-driven mechanisms defined in those agreements. Where the Promoter's authorised development works trigger an entitlement to compensation for a train operator under those agreements (for example where NR has agreed to book a track possession for the Promoter to carry out works and this disrupts a train operator service) NR automatically pays out compensation to the train operator in a regular payment cycle. Where third parties such as the Promoter trigger those compensation claims, the third parties must be liable for the disruption caused. The Order PPs need to provide that NR's liability is passed onto the third parties causing the disruption which is why there is a need to include "relevant costs", otherwise NR – as a public body – would be incurring significant losses as a result of third party schemes disrupting the railway. If such liabilities are not incurred by NR then the Promoter is not required to pay them under the indemnity and so the Promoter is no worse off by their inclusion. As such this wording needs to be deleted from the Order PPs.

These are standard items within NR's usual indemnity provision and are reasonably included for the purposes of recovering such costs if they are incurred.

Further, the Order PPs include an indemnity cap at paragraphs 133(1)(e) and 133(7) of £25 million. As a general principle, NR does not accept caps on its liability arising from third party DCO schemes. NR is a public body funded by public funds and so any risk of NR incurring liability from a private developer's scheme is not acceptable. There is no reason NR should take on the risk of incurring such liabilities above the Promoter's proposed cap when, but for the DCO scheme coming forward, NR would not incur such liabilities. NR therefore does not agree that a cap on the Promoter's liabilities to NR is reasonable or appropriate. NR accepts that such liabilities must be reasonably incurred and NR's proposed wording reflects this. As such, this wording in blue relating to indemnity caps should be deleted.

Costs Recovery for Protective Works and Additions

The Promoter has also deleted the below provisions in red in paragraphs 124(2), 127(1) and 128(a), which relate to the Promoter's requirement to pay compensation/costs to NR for losses related to the

Promoter's works, as well as the maintenance costs of protective works and/or alterations or additions necessitated as a result of the Promoter's works.

124 (1) Any specified work and any protective works to be constructed by virtue of paragraph 114(4) must, when commenced, be constructed—

(a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 123;

(b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little damage as is possible to railway property; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction ~~shall be~~ is caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put ~~and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.~~

127(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction or completion of a specified work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such

notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions ~~including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.~~

128 The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 123(3) or in constructing any protective works under the provisions of paragraph 123(4) ~~including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;~~

Further to the points raised in respect of the indemnity above, as the above protective works, additions and alterations would ultimately be necessitated by the Promoter's scheme in order to maintain railway safety, it is reasonable and appropriate that NR is able to recover these costs.

As such, the deleted sections in red above should be reinstated.

Reasonableness and Discretion

Throughout the Order PP's, various additions have been made to qualify approvals and opinions of NR and their employees by a standard of reasonableness, e.g. *in the reasonable opinion of the engineer.*

Although NR would of course intend to be reasonable and would not seek to unreasonably withhold or delay consent or approvals, NR is under an overarching duty not to compromise the safe operation of the railway and to preserve the safety and integrity of the railway. As such, they are bound to a significantly higher standard of reasonableness than that of an ordinary private entity or individual.

As such, any standard of reasonableness, should be a higher standard of a reasonably prudent railway undertaker in compliance with its railway undertaking. We propose including the following wording in the protective provisions as a new paragraph 121(3):

(3) Where under this Part of this Schedule Network Rail is required to act reasonably, any standard of reasonableness required to be exercised by Network Rail shall constitute the standard of reasonableness to be expected of a prudent railway statutory undertaker acting in compliance with its statutory and regulatory duties.

Further, in respect of matters of railway safety, in which NR is the expert, these should be at NR's absolute discretion.

S.127 and S.138 of the Planning Act 2008

In addition to the points set out above, without the inclusion of the restrictions on compulsory acquisition at paragraphs 121(1)-(7), NR must also maintain its objection to the DCO on the basis that the proposed compulsory acquisition of rights over railway property does not satisfy the test in section 127 Planning Act 2008 in that:

- a) the rights cannot be acquired without serious detriment to the carrying on of the undertaking;
and
- b) such detriment cannot be made good by Network Rail by use of other railway property.

The reason for which is that:

- 1) the Plot (over which rights are proposed to be compulsorily acquired) comprises of an operational railway line;
- 2) unless NR has the ability to require its prior consent and require the Promoter to enter into an asset protection agreement prior to the acquisition of such rights in order to ensure any such rights can be carried out in accordance with the necessary procedures to maintain railway safety the proposed rights/temporary use have the capacity to cause serious detriment to the carrying on of NR's undertaking as it could interfere with the operational railway line, in particular potentially compromising the safe running of trains and the safety of users of the railway. It is inconceivable that a third party should have compulsory powers to acquire the rights to use railway land without first seeking NR's consent; and
- 3) as this is an operational railway line such detriment cannot be made good as the line cannot be relocated to other land in the possession of NR (and not least to say requiring NR to relocate its operational railway to facilitate such rights would be entirely disproportionate both in cost and nature).

Accordingly, in order for such proposed compulsory acquisition and temporary possession of the Plot to pass the test in section 127 Planning Act 2008, paragraphs 121(1)-(7) of the Order PPs requiring NR's prior consent to be sought must be imposed before powers authorising the compulsory acquisition of such rights are exercised. Network Rail's position is that in the absence of such, the test in section 127 is not satisfied.

In addition, to the extent that the proposed compulsory acquisition of rights over the Plot does involve the extinguishment of any rights or the removal of any apparatus belonging to NR, NR submits that the test in section 138 is not satisfied on the same grounds as set out above.

NR's Position

NR continues to investigate the extent of the risk to its assets and is liaising with the Promoter in relation to any mitigation required and it is anticipated that this will continue during the examination process.

To be in a position to remove its objection, Network Rail requires the following:

- the NR PPs to be included within the DCO to ensure that its interests are adequately protected and to ensure compliance with the relevant safety standards. The content and format of the NR PPs is contained within Appendix 1 of the NR's relevant representations submitted on 2 January 2026.
- It is inconceivable that the proposed development should be carried out without sufficient protection afforded to Network Rail. As the current draft Order contains protective provisions which do not adequately protect Network Rail's interests and assets, Network Rail must maintain a strong objection to the granting of the DCO on the basis of the current draft Order and hereby requests that the Examining Authority does not grant the DCO in the absence of appropriate protective provisions being placed on the Order;
- Network Rail requires a private agreement to regulate the manner in which rights over railway property are to be granted and in which works are to be carried out in order to safeguard Network Rail's statutory undertaking. Engineers for Network Rail are continuing to review the extent of impacts on operational railway and Network Rail property and any mitigation required (including NR's review and prior approval of the design proposals for the parts of the DCO scheme which interface with the railway at detailed design and construction stages) will be considered in this agreement.
- The completion of the necessary deeds of easement and asset protection agreement to govern the construction, maintenance and, where appropriate, removal of the parts of the development proposed by the DCO which are located on or adjacent to operational railway land.

Network Rail and the Promoter are in discussions about the effects of the DCO in general and will continue to liaise to address all outstanding matters.

Until satisfactory agreement has been reached with the Promoter on all matters to its satisfaction, Network Rail will not be in a position to withdraw its objection to the making of the DCO. Network Rail reserves the right to be heard at an appropriate hearing to explain in detail the impacts of the scheme on its operations.