

Tween Bridge Solar Farm

8.23 Justification for the Applicant's preferred protective provisions

Planning Act 2008
Infrastructure Planning (Applications: Prescribed Forms
and Procedure) Regulations 2009

Deadline 4 21 July 2026

Revision 1

JUSTIFICATION FOR THE APPLICANT’S PREFERRED PROTECTIVE PROVISIONS

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1 Introduction

- 1.1. This document has been produced in response to matters discussed at the Compulsory Acquisition Hearing ("**CAH**") which took place on 24 June 2026 in relation to the Applicant's application for development consent for the Tween Bridge Solar Farm (**the "Scheme"**).
- 1.2. The Applicant has sought to engage with all affected Statutory Undertakers and other relevant parties at the pre-application stage and throughout the Examination to date in order to resolve representations made in relation to protective provisions for the protection of statutory undertakers in Schedule 14 to the **Draft DCO [Document Reference 3.1 Revision 7]**.
- 1.3. The Applicant has been negotiating bespoke protective provisions with the following parties:
 1. Cadent Gas (Cadent)
 2. Canal and River Trust (CRT)
 3. Environment Agency (EA)
 4. Exolum Pipeline System Limited (Exolum)
 5. National Grid Electricity Transmission plc (NGET)
 6. National Highways (NH)
 7. Network Rail (NR)
 8. Northern Powergrid (NPG)
- 1.4. In line with Government guidance "Guidance on the content of a Development Consent Order required for a Nationally Significant Infrastructure Project"¹, whilst the statutory undertakers in question have provided standard protective provisions, these have been reviewed in light of specific characteristics of the

¹ <https://www.gov.uk/guidance/planning-act-2008-content-of-a-development-consent-order-required-for-nationally-significant-infrastructure-projects>

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Scheme and the Applicant has proposed reasonable and appropriate amendments as a result, as well as more specific directions given in that Government guidance.

- 1.5. The Applicant has sought to reach an agreement with all parties, and will continue to do so, however there remain some areas of disagreement in relation to the protective provisions for all parties, with the exception of the EA. In relation to the EA, the Applicant has engaged positively with the EA and the protective provisions in the EA's favour have been agreed, with no matters outstanding. The Applicant notes that discussions with the Isle of Axholme and North Nottinghamshire Water Level Management Board and Doncaster East Internal Drainage Board on the protective provisions provided for the benefit of drainage authorities (Schedule 14, Part 3 of the Draft DCO) are at an early stage. An update on these protective provisions is not therefore included in this document, on the basis that points of disagreement, to the extent there might be any, have not currently been established. A further update to this document will be provided at Deadline 5 if matters have progressed to a material extent by that time.
- 1.6. The Applicant sets out below its position regarding those paragraphs of the protective provisions where there are still substantial differences between parties and that are not yet agreed.
- 1.7. The Applicant notes that there are commonalities across the outstanding issues of disagreement between the Applicant and each Statutory Undertaker. The main areas of disagreement relate to:
 1. the provision of a "veto" mechanism for exercising compulsory acquisition ("CA") powers;
 2. the scope of indemnity provisions; and
 3. the scope of the specified works to which the protective provisions apply.
- 1.8. In section 2 of this note, the Applicant has set out its overarching position in respect of point 1, above. This applies to all cases where statutory undertakers are seeking a veto mechanism in respect of the exercise of CA powers under the Draft DCO. Points 2 and 3 are addressed on a case by case basis in section 3 of this note,

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as there are some differences in the scope and nature of the indemnity and specified works provisions being sought by certain statutory undertakers.

2 A "veto" mechanism for exercising the CA powers

- 2.1. The following parties have requested that the Applicant include a "veto" mechanism over the exercise of CA powers under the Draft DCO.
 1. Cadent
 2. CRT
 3. NGET
 4. NH
 5. NR
 6. NPG
- 2.2. The Applicant does not agree that such a provision is justified given the wide-ranging nature of the protections afforded to statutory undertakers under the protective provisions. The Applicant's position is supported by Government guidance and by precedent. These matters are addressed in the remainder of this section.

Adequate protection is provided to these statutory undertakers

- 2.3. The Applicant's firm position is that a veto over CA powers in favour of statutory undertakers is neither necessary nor justified because the protective provisions proposed by the Applicant already provide, in each case, a comprehensive suite of protections for the benefit of each of the statutory undertakers concerned.
- 2.4. Those protections ensure that statutory undertakers' apparatus and interests cannot be adversely affected as a consequence of the exercise of CA powers without appropriate safeguards, controls and remedies. In those circumstances,

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there is no basis for the contention that an additional CA veto is required to prevent harm to the statutory undertaking in question.

- 2.5. In particular, the Applicant's preferred protective provisions contain detailed mechanisms governing the treatment of existing apparatus, including provisions relating to the retention, removal and replacement of apparatus where required by the Scheme. They further provide for the approval of relevant designs and methodologies, the protection of access rights, reimbursement of costs and expenses, and compensation for losses arising from the execution of works. Collectively, these provisions ensure that any interference with a statutory undertaker's undertaking is properly managed and that any impacts are minimised.
- 2.6. The effect of these protections is that the statutory undertakers are not exposed to the risk of uncompensated loss or unmitigated disruption as a result of the exercise of CA powers. Rather, the protective provisions require the Applicant to secure appropriate protection, or otherwise replacement and/or diversion of affected apparatus, before that apparatus can be removed or any rights of statutory undertakers interfered with. The relevant protections therefore directly address the matters which a veto on CA powers purports to protect.
- 2.7. In circumstances where the identified risks are already comprehensively addressed through specific protective measures, the inclusion of a separate CA veto right would serve no legitimate purpose and would instead operate as an unnecessary restriction on the exercise of powers that the Order seeks to confer, potentially undermining the Applicant's ability to assemble the land required to deliver this critical infrastructure.
- 2.8. The Applicant confirms that in each set of the Applicant's preferred protective provisions there are protections that ensure adequate protection for the statutory undertakers concerned. By way of illustration, with reference to the specific protective provisions for the benefit of Exolum contained in Schedule 14, Part 6 to the **draft DCO [Document Reference 8.7 Revision 6]**:
 - Exolum retains access to its apparatus (paragraph 60(1)(a));
 - Apparatus cannot be removed until alternative apparatus is in place and operating and the necessary rights have been secured in respect of the same in favour of the party affected (paragraphs 63–70);

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- Works in proximity to Exolum's apparatus require prior approval (paragraphs 76–79); and
- Exolum is protected against financial detriment (paragraphs 89–92).

2.9. The Applicant confirms that there are analogous provisions in each of the bespoke protective provisions afforded to the statutory undertakers. This demonstrates the breadth of protection already afforded to each of the statutory undertakers and underscores the lack of any justification for an additional CA veto mechanism.

Support for the refusal of a CA veto position in Government guidance

2.10. The Applicant does not consider it appropriate for third parties (even in the case of statutory undertakers) to have the ability to restrict the exercise of the CA powers in the DCO. This is a position supported by Government guidance.

2.11. In this regard, "Guidance on the content of a Development Consent Order required for a Nationally Significant Infrastructure Project" states at paragraph 12 (emphasis added):

"Most statutory undertakers have now developed their own preferred form of protective provisions which is very helpful to the preparation of the draft DCO. However, these must be adapted as necessary so they accurately reflect the proposed development. They should also not simply negate other provisions of the DCO, particularly concerning proposed compulsory acquisition of statutory undertakers' land."

2.12. The result of the veto provision sought by the statutory undertakers listed at paragraph 2.1 would be the effective disapplication of powers within the DCO and this is positively inconsistent with Government guidance on the drafting of DCOs.

2.13. While veto provisions relating to the CA of statutory undertaker land may be preceded in some DCOs, the relevant Government guidance now makes clear that protective provisions should not negate the Applicant's DCO powers, including with regards to CA.

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- 2.14. Furthermore, the Applicant does not accept the position which some statutory undertakers have adopted, namely that because the power may not be exercised unreasonably/without delay, it does not negate the provisions of the DCO.
- 2.15. This is because the statutory undertakers are given adequate protection via other provisions contained in the protective provisions, and therefore a further requirement for consent in respect of CA is not just duplicative and unnecessary, but could only be used to prevent – i.e., negate – the provisions of the DCO itself. In circumstances where the Secretary of State has granted development consent, and there are adequate protective provisions in place, there is no logical basis for the Applicant's ability to assemble the land interests and rights necessary to deliver the Scheme to be at the mercy of third parties, with the only obvious route of recourse available being to challenge the reasonableness of a statutory undertaker's conduct via arbitration. Such a position is highly unsatisfactory and directly in conflict with the need to expedite the delivery of infrastructure in respect of which there is a recognised critical national priority.
- 2.16. The Applicant would also highlight that the Secretary of State expressly considered a “veto” provision in relation to the HyNet Carbon Dioxide Pipeline Order 2024. In that case, the decision letter records *“The Applicant considers that it cannot agree to restriction of the use of compulsory powers unless the voluntary land agreement is in place, citing that this would create a ransom situation and create risk to the delivery of the Proposed Development... The Secretary of State agrees with the ExA and is of the view that the PPs provide sufficient protection to CRT.”*
- 2.17. Recent government guidance provided further support for the Applicant's position. The “Planning Act 2008: Guidance on preparing an application: Part 3 – Content of a Development Consent Order” published 3 July 2026², states at paragraphs 4.25 and 4.26 (emphasis added):
- “.... [Protective Provisions] should not simply negate the principal provisions of the DCO and thereby become an impediment to implementation of the project, for example by conferring unfettered plan approval procedures at detailed design

² <https://www.gov.uk/guidance/planning-act-2008-guidance-on-preparing-an-application-part-3-content-of-a-development-consent-order>

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stage that could be operated by the statutory undertaker to frustrate delivery of the project.

However, provisions exempting land belonging to a statutory undertaker from broad compulsory acquisition provisions within the draft DCO, for example to avoid engaging the additional requirements in section 127 of the Planning Act, may be acceptable **if** the applicant can demonstrate that the necessary land interests and rights **have been, or will be**, obtained by agreement with the statutory undertaker concerned."

- 2.18. The Applicant considers that the veto provisions sought by the statutory undertakers would fall squarely within the type of provision identified in the guidance as potentially impeding the implementation of a project. The exception identified in the guidance does not apply to the statutory undertakers identified at paragraph 2.1 (because the interests and rights have not been obtained by agreement and there is no certainty that they will be obtained, although the Applicant is making all reasonable efforts to do so). In those circumstances, the Applicant does not consider it appropriate for statutory undertakers to be afforded a power to prevent or restrict the exercise of CA powers authorised by the DCO.
- 2.19. Further, the Applicant notes that the recently published, Nuclear Regulatory Review 2025³ produced by a Taskforce led by John Fingleton, recommended that model provisions for DCO drafting should be reinstated to help solve common problems occurring in the consenting of NSIPs including incorporating acceptable protective provisions for statutory undertakers which do not, in accordance with government guidance, negate other provisions of the DCO. On 26 November 2025, the Prime Minister fully endorsed the recommendations of the Review, accepting *"the principle of all the recommendations it has set out"*.

Refusal of a CA veto power isprecedented

³ <https://assets.publishing.service.gov.uk/media/692080f75c394e481336ab89/nuclear-regulatory-review-2025.pdf>

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- 2.20. The Applicant notes that recent decisions for DCOs have expressly recognised that providing statutory undertakers with the ability to veto CA powers is disproportionate. For example:
- 2.20.1. The Canal and River Trust and National Highways requested a veto power over CA rights but neither party was afforded such provisions in The HyNet Carbon Dioxide Pipeline Order 2024;
- 2.20.2. HS1 Ltd, Network Rail, Northumbrian Water Limited and the Port of Tilbury requested a veto power over CA rights, but these were not approved in The A122 (Lower Thames Crossing) Development Consent Order 2025; and
- 2.20.3. Creyke Beck Solar Limited and Padero Solaer Limited requested a veto power over CA rights but these were not approved in The Dogger Bank South East and West Offshore Wind Farms Order 2026.

Conclusion

- 2.21. The Applicant acknowledges that there are examples where veto powers have been afforded to statutory undertakers via protective provisions but considers that any reliance placed by statutory undertakers on precedent should be treated with considerable caution.
- 2.22. There has been a clear evolution in approach. More recent examinations and decisions have increasingly recognised that protective provisions must strike an appropriate balance between safeguarding the legitimate interests of statutory undertakers and ensuring that powers granted pursuant to a DCO are capable of being exercised effectively. The principle that protective provisions should be no more onerous than is reasonably necessary to protect the undertaking concerned is established.
- 2.23. Against that background, the mere existence of earlier precedents containing CA veto provisions does not demonstrate that such provisions are justified. If anything, the clear direction of travel in recently issued guidance has been towards limiting provisions which unnecessarily fetter or frustrate the exercise of CA powers. The Applicant submits that this reflects a growing recognition that some protective provisions exceed that which is reasonably required to protect the relevant statutory undertakers' interests.

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- 2.24. The granting of a veto power to statutory undertakers is not necessary, proportionate or justified in the circumstances of the present case. The provision would negate provisions of the Draft DCO which are essential to the delivery of the Scheme. The protective provisions in Schedule 14 to the Draft DCO confer extensive protection for statutory undertakers and therefore any veto provision on CA powers goes beyond that which is required, on any reasonable understanding, to protect a statutory undertaker's undertaking.
- 2.25. The Applicant is continuing discussions with all statutory undertakers to seek to narrow the scope of any outstanding concerns which parties may have. However, the protective provisions should be confined to measures that are necessary and proportionate to safeguard the statutory undertaker's interests, without undermining the efficacy of the DCO itself. The Applicant's view is that necessarily means any veto powers over CA rights should be refused.

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3 Tables of status of protective provisions

3.1. The tables below set out the substantive provisions which are yet to be agreed between the Applicant and statutory undertakers. The Applicant has also provided commentary to justify why the Applicant's proposed amendments are necessary. There are certain provisions which are the subject of ongoing discussion and are not included here, on the basis that the Applicant anticipates that a compromise position will be agreed in due course

3.2. The following tables relate to each of the following statutory undertakers:

3.2.1. Table 1: Cadent

3.2.2. Table 2: CRT

3.2.3. Table 3: Exolum

3.2.4. Table 4: NGET

3.2.5. Table 5: NH

3.2.6. Table 6: NR

3.2.7. Table 7: NPG

Cadent

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- 3.3. The Applicant has been discussing bespoke protective provisions for the protection of Cadent and agreement has now been reached on most substantive issues with the exception of the remaining matter set out in Table 1. The Applicant can confirm that the version agreed in principle (minus the matters set out in Table 2) will be included in the Draft DCO at Deadline 5.

Table 1: Status of Protective Provisions for the benefit of Cadent

Provision in dispute	Applicant's proposed amendments to Cadent PPs	Applicant's position
Veto position over CA powers	<i>Acquisition of land</i> 1. (1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any interest in land or appropriate, acquire, extinguish, interfere with or override any easement or other interest in land of Cadent otherwise than by agreement. (2) As a condition of agreement between the parties in subparagraph (1), prior to the carrying out or maintenance of any part of the authorised works (or in such other timeframe as may be agreed between Cadent and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of Cadent and/or affects the provisions of any	The Applicant has set out its detailed position on this matter in section 2 of this note.

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Provision in dispute	Applicant's proposed amendments to Cadent PPs	Applicant's position
	enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent and variations upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and it will be the responsibility of the undertaker to procure and/or secure the consent to and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works. (3) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus, including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent and other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule will prevail.	

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Provision in dispute	Applicant's proposed amendments to Cadent PPs	Applicant's position
	(4) Any agreement or consent granted by Cadent under paragraph 8 or any other paragraph of this Part of this Schedule, will be taken to constitute agreement under sub-paragraph (1). (5) As a condition of an agreement under sub-paragraph (1) that involves de-commissioned apparatus being left in situ the undertaker must accept a surrender of any existing easement and/or other interest of Cadent in such decommissioned apparatus and consequently acquire title to such decommissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender. (6) Where an undertaker acquires land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 6 do not apply, the undertaker must – (a) retain any notice of Cadent's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and (b) (where no such notice of Cadent's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include	

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Provision in dispute	Applicant's proposed amendments to Cadent PPs	Applicant's position
	(with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of Cadent's easement, right or other interest in relation to such acquired land.	

CRT

- 3.4. Without prejudice to the Applicant's view that the protective provisions contained in Schedule 14, Part 4 (for the protection of the Canal and River Trust) are appropriate, the Applicant has been discussing the terms of these with the CRT and, whilst some positive progress has been made, agreement has not been reached with regard to the matters set out in Table 2. See conclusion to this note for the Applicant's intended next steps.

Table 2: Status of Protective Provisions for the benefit of CRT

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Provision in dispute	Applicant's proposed amendments to CRT PPs	Applicant's position
Need for consent from CRT in relation to surface water discharge	(2) The undertaker must not exercise any power conferred by this Order to discharge water into the waterway under article X (discharge of water) or in any way interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of the Canal & River Trust, save as to surface water discharge which will not require the consent of the Canal and River Trust.	This additional drafting would allow the undertaker to discharge surface water without requiring the prior consent of CRT. This caveat is widely precedented and ensures that the restriction is proportionate for both parties. This approach was taken in The West Burton Solar Project Order 2025, The Gate Burton Energy Park Order 2024, The Cottam Solar Project Order 2024, The Tillbridge Solar Order 2025 and The Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 DCOs. Surface water discharge would not affect river navigation. In addition, surface water drainage is controlled through Requirement 11 of the Draft DCO [Document Reference 3.1 Revision 7], which requires a surface water drainage strategy to be approved by the relevant planning authority for each phase of the development. This approval process would take place after consultation

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Provision in dispute	Applicant's proposed amendments to CRT PPs	Applicant's position
		with the relevant internal drainage board, the relevant lead local flood authority and the Environment Agency. As such, the Applicant considers there are sufficient and proportionate safeguards in place.
Veto position over CA powers	(1) The undertaker must not exercise any power conferred by article X (temporary use of land for constructing the authorised development) or article X (temporary use of land for maintaining the authorised development) in respect of the waterway unless such exercise is with the consent of the Canal & River Trust. (2) The undertaker must not exercise any power conferred by article X (compulsory acquisition of land), article X (compulsory acquisition of rights), X (acquisition of subsoil) or X (statutory undertakers) in respect of the Canal & River Trust's interests in the waterway unless such exercise is with the consent of the Canal & River Trust.	The Applicant has set out its detailed position on this matter in section 2 of this note.

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Provision in dispute	Applicant's proposed amendments to CRT PPs	Applicant's position
Temporary interruption to the Canal maintenance	The undertaker must not under the powers of this order do anything which would directly result in the waterway being incapable of being used, or which would result in the waterway being incapable of being maintained, save where such incapability of maintenance is temporary and arises as a necessary consequence of the carrying out of works authorised by this Order or which would affect the safe operation of the Canal & River Trust's Network, in the Canal & River Trust's reasonable opinion.	The Applicant notes that this paragraph does not appear in the equivalent protective provisions in The West Burton Solar Project Order 2025, The Gate Burton Energy Park Order 2024, The Cottam Solar Project Order 2024, The Tillbridge Solar Order 2025 and The Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 DCOs. In that context, the drafting which the Applicant proposes represents an appropriate compromise, which reflects the limited interface between the Scheme and the CRT waterway, and the works which are proposed beneath the waterway.

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Provision in dispute	Applicant's proposed amendments to CRT PPs	Applicant's position
		The intention of this wording is to cover a scenario in which the Applicant needs to occupy land adjacent to the waterway in order to install cabling beneath it using HDD, and where, as a necessary consequence of those works, it is temporarily not possible to carry out maintenance of that section of the waterway. The term "temporary" should be given its ordinary meaning and does not require further prescription or definition.
Aggregate cap of liability for capitalised sums	The aggregate cap of the undertaker's gross liability to pay capitalised sums and any other payments or liabilities under the terms of this Part of this Schedule shall be limited to £510,000,000 (five ten million pounds) for any one occurrence or all occurrences of a series arising out of the one original cause.	The CRT have proposed an aggregate cap on liability for capitalised sums of £100m. This is far in excess of the aggregate cap on liability to pay capitalised sums of £5 million, which was included in the protective provisions for the CRT's benefit in The West Burton Solar Project Order 2025, The Gate Burton Energy Park Order 2024, The Cottam Solar Project Order 2024, The Tillbridge

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Provision in dispute	Applicant's proposed amendments to CRT PPs	Applicant's position
		Solar Order 2025. No sound justification has been provided for the figure requested. The Applicant considers that a £5 million cap, which is widely precedented, is far more proportionate than the sum proposed by the CRT.

Exolum

- 3.5. Without prejudice to the Applicant's view that the protective provisions contained in Schedule 14, Part 6 (for the protection of Exolum Pipeline System Limited) are appropriate, the Applicant has been discussing the terms of these with Exolum and, whilst some positive progress has been made, agreement has not been reached with regards to the matters set out in Table 3. See conclusion to this note for the Applicant's intended next steps.

Table 3: Status of Protective Provisions for the benefit of Exolum

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Provision in dispute	Applicants proposed amendments to Exolum PPs	Applicant's position
The need for crossing consents	Prior to the carrying out of any Restricted Works or any works authorised by this Order that will affect the existing rights of Exolum, the parties shall use their reasonable endeavours to negotiate and enter into such deeds of consent (crossing consent) and (if necessary) variations to the existing rights upon such terms and conditions as may be agreed between Exolum and the undertaker acting reasonably and which must be no less favourable on the whole to Exolum than this Schedule, and it will be the responsibility of the undertaker to procure and / or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such works.	Exolum is proposing drafting which would require the undertaker, prior to carrying out specified works, to use reasonable endeavours to negotiate and enter into crossing consents and to secure any necessary variations to Exolum's existing rights. The Applicant does not consider this drafting necessary because the protective provisions already include provision requiring necessary rights and facilities to be afforded by Exolum where apparatus is removed so Exolum's concerns are already addressed elsewhere by the protective provisions in the Applicant's view.
Indemnity	Damage to property and other losses	The Applicant considers the indemnity as drafted by Exolum to be disproportionate and significantly broader than is necessary to

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Provision in dispute	Applicants proposed amendments to Exolum PPs	Applicant's position
	(1) Subject to sub-paragraphs (2) to (6), the undertaker shall: (a) indemnify Exolum for all reasonably incurred loss, damage, liability and direct costs and expenses suffered or reasonably incurred by Exolum arising out of the construction of any works authorised by this Schedule; the carrying out of works under this Schedule; the carrying out of the Authorised Development; the use or occupation of land over or in the vicinity of any Apparatus in connection with the carrying out the Authorised Development; any injury or damage whatsoever to any property, real or personal, including the property of Exolum; and	protect Exolum's legitimate interests. In particular, it extends to indirect and consequential losses and does not include standard and reasonable safeguards concerning the notification, conduct and settlement of claims. The Applicant's amendments are therefore proposed to align the provision with established commercial practice and ensure that the indemnity provides appropriate protection to Exolum without exposing the undertaker to unlimited or unreasonable liabilities. The Applicant notes that the proposed amendments reflect provisions that have appeared in recent Orders. In particular, the Exolum protective provisions included in the West Burton Solar Project Order 2025 contain qualifications relating to indirect or consequential losses and require Exolum to provide reasonable notice of claims. The Applicant therefore considers that the

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Provision in dispute	Applicants proposed amendments to Exolum PPs	Applicant's position
	any matters arising out of or in connection with the Order; (b) indemnify Exolum against any claim made against, or loss suffered by, Exolum as a result of any act or omission committed by the undertaker's officers, employees, contractors or agents whilst on or in the vicinity of any Apparatus for the purposes of carrying out any activity authorised by this Order; (c) pay to Exolum within 56 days of receipt of an invoice or claim from Exolum, in accordance with the terms of the provisions of this Part of this Schedule, on-demand the cost reasonably and properly incurred by Exolum in making good any damage to the Apparatus (other than Apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment or defects in Apparatus existing prior to the commencement of works) arising out of the carrying out of works under this	proposed amendments are consistent with established precedent, and represent reasonable and proportionate safeguards, rather than a diminution of the protection afforded to Exolum.

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Provision in dispute	Applicants proposed amendments to Exolum PPs	Applicant's position
	Schedule subject to provision of reasonable supporting evidence of the cost reasonably incurred and arising out of the Authorised Development; (d) pay to Exolum the cost reasonably incurred by Exolum in stopping, suspending and restoring the supply though its Apparatus in consequence of the carrying out of works under this Schedule or the carrying out of the Authorised Development; and (e) make reasonable compensation to Exolum for losses directly arising from damage to or interruption of its Apparatus, including reasonable third party claims—any other expenses, losses, damages, penalty or costs incurred by Exolum by reason or in consequence of any such damage or interruption of its Apparatus including all claims by third parties provided that: (a) the undertaker is given reasonable notice of	

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Provision in dispute	Applicants proposed amendments to Exolum PPs	Applicant's position
	such claims; and (b) Exolum does not settle any claim without the undertaker's consent (such consent not to be unreasonably withheld). (2) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of – (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of Exolum, its officers, contractors or agents; and (b) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable. (3) The fact that any act or thing may have	

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Provision in dispute	Applicants proposed amendments to Exolum PPs	Applicant's position
	been done by Exolum on behalf of the undertaker or in accordance with a Plan approved by Exolum or in accordance with any requirement of Exolum or under its supervision shall not, excuse the undertaker from liability under the provisions of sub-paragraph (1), except to the extent that such loss arises from the negligence or default of Exolum in line with sub-paragraph (2). (4) Exolum shall at all times take reasonable steps to prevent and mitigate any loss, damage, liability, claim, cost or expense (whether indemnified or not) which it suffers in connection with this Schedule and if reasonably requested to do so by the undertaker, Exolum, must provide an explanation of how the loss, damage, liability, claim, cost or expense has been mitigated, where relevant. (5) The undertaker warrants that it will use all reasonable endeavors to ensure:	

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to Exolum PPs	Applicant's position
	(a) the information it or any of its employees, agents or contractors provide to Exolum about the Plans or the Authorised Development and on which Exolum relies in the design of and carrying out of any works is accurate to the best of its knowledge; and (b) the undertaker or any of its employees, agents or contractors have exercised all the reasonable skill, care and diligence to be expected of a qualified and experienced member of their respective profession. (2) Exolum must- (a) give to the undertaker reasonable notice of any claim or demand to which this subparagraph applies as soon as reasonably possible after Exolum become aware of any claims or demands; (b) not admit liability or make any offer to settle or settle or compromise any such claim without	

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to Exolum PPs	Applicant's position
	the prior consent of the undertaker (which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand); and (c) keep the undertaker informed in relation to the progress of any such claims and demands and pay due regard to the undertaker's reasonable representations in relation to them.	

NGET

- 3.6. The Applicant has been discussing bespoke protective provisions with NGET and, whilst some progress has been made, agreement has not been reached with respect to the matters set out in Table 4. See conclusion to this note for the Applicant's intended next steps.

Table 4: Status of Protective Provisions for the benefit of NGET

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NGET PPs	Applicant's position
Definition of apparatus	(e) any electrical lines or electrical plant as defined in the Electricity Act 1989, any mains, pipes, plant or other apparatus belonging to, operated or maintained by National Grid Electricity Transmission Plc for the purposes of the construction, operation and maintenance of the NHHM Project, whether temporary or permanent, and includes, where the context so requires, apparatus constructed as part of the authorised development and intended for the beneficial use by National Grid Electricity Transmission Plc ("NHHM apparatus");	The Applicant considers that the protective provisions should apply to apparatus belonging to NGET and not future assets. The Applicant does not consider it is appropriate for provisions to apply to prospective schemes to afford onerous protective provisions which relate to unidentified land, or assets which are not constructed. The proposed apparatus relates to NGET's prospective North Humber to High Marnham DCO which is part of the Great Grid Upgrade and is currently at pre-application stage and in respect of which there are no known interactions between the Scheme and that project. Should the Tween Bridge DCO be made, and there are interactions between the Scheme and the North Humber to High Marnham DCO then the North Humber to High Marnham DCO would be capable of

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NGET PPs	Applicant's position
		addressing the interaction between the two schemes.
Veto position over CA powers	7. (1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or ((b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid Electricity Transmission Plc otherwise than by agreement. (2) Regardless of any provision in this Order or anything show on the land plans, the undertaker must not unless otherwise agreed in writing acquire any land forming part of a NHHM Site. (3) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid Electricity Transmission Plc and the undertaker) that	The Applicant has set out its detailed position on this matter in section 2 of this note.

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NGET PPs	Applicant's position
	is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid Electricity Transmission Plc or affect the provisions of any enactment or agreement regulating the relations between National Grid Electricity Transmission Plc and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid Electricity Transmission Plc reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid Electricity Transmission Plc and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid Electricity Transmission Plc unless otherwise agreed by National Grid Electricity Transmission Plc, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.	

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NGET PPs	Applicant's position
	(4) Save where otherwise agreed in writing between National Grid Electricity Transmission Plc and the undertaker the undertaker and National Grid Electricity Transmission Plc agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid Electricity Transmission Plc and/or other enactments relied upon by National Grid Electricity Transmission Plc as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail. (5) Any agreement or consent granted by National Grid Electricity Transmission Plc under paragraph 10 or any other paragraph of this Part of this Schedule,	

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NGET PPs	Applicant's position
	shall not be taken to constitute agreement under sub-paragraph (1).	
Indemnity	2.(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid Electricity Transmission Plc NGET, or there is any interruption in any service	The Applicant has amended the indemnity so that it would not be under an obligation to provide an alternative means of access to NGET's NHMM project. There are appropriate obligations as regards provision of alternative apparatus / rights and it is not necessary for it also to be included in the indemnity . In respect of any third party claims, the Applicant has amended the wording so that written notice must be given as soon as possible after NGET becomes aware of any claims and that no claims are settled without the consent of the Applicant. An obligation has also been included to

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NGET PPs	Applicant's position
	provided, or in the supply of any goods, by National Grid Electricity Transmission Plc NGET, or National Grid Electricity Transmission Plc NGET becomes liable to pay any amount to any third party, the undertaker will— (a) bear and pay on demand accompanied by an invoice or claim from National Grid Electricity Transmission Plc NGET the cost reasonably and properly incurred by National Grid Electricity Transmission Plc NGET in making good such damage or restoring the supply; and (b) indemnify National Grid Electricity Transmission Plc NGET for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid Electricity Transmission Plc NGET, by reason or in consequence of any such damage or interruption National Grid Electricity Transmission Plc NGET becoming liable to any third party and including STC Claims or an Incentive Deduction as aforesaid other than	require NGET to minimise any losses as far as possible. The obligations around what constitutes acceptable insurance have been moved from the definitions section of the agreement into the operative part of the agreement.

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NGET PPs	Applicant's position
	arising from any default of National Grid Electricity Transmission Plc NGET. (2) If as a result of the authorised development National Grid Electricity Transmission Plc's access to the NHHM Project or to any NHHM Site is materially obstructed, the undertaker must provide such alternative means of access that will allow National Grid Electricity Transmission Plc to maintain apparatus no less efficiently than was possible before the obstruction. (3) The fact that any act or thing may have been done by National Grid Electricity Transmission Plc NGET on behalf of the undertaker or in accordance with a plan approved by National Grid Electricity Transmission Plc NGET or in accordance with any requirement of National Grid Electricity Transmission Plc NGET or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid Electricity Transmission Plc NGET fails to carry out and execute	

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NGET PPs	Applicant's position
	the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan. (4) Nothing in sub-paragraph (1) will impose any liability on the undertaker in respect of- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid Electricity Transmission Plc NGET, its officers, servants, contractors or agents; (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out National Grid Electricity Transmission Plc NGET as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 8 (<i>consent to transfer benefit of Order</i>) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this sub-paragraphsection 3(b) will be subject to the full terms of this Part	

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NGET PPs	Applicant's position
	of this Schedule including this paragraph 12 in respect of such apparatus; and/or (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable; (5) National Grid Electricity Transmission Plc NGET must give the undertaker reasonable written notice of any such third party claim or demand as soon as reasonably practicable after NGET becomes aware of the claim or demand, and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without the prior consent of the undertaker (such consent not be unreasonably withheld or delayed) (which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceeding necessary to resist the claim or demand)first	

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NGET PPs	Applicant's position
	consulting the undertaker and considering their representations. (6) National Grid Electricity Transmission Plc NGET must use all reasonable endeavours to mitigate in whole or in part, and to minimise, any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies and if requested to do so by the undertaker, National Grid Electricity Transmission Plc NGET must provide an explanation of how the claim has been minimised, where relevant. The undertaker will only be liable under this paragraph for claims reasonably and properly incurred by National Grid Electricity Transmission Plc NGET (7) National Grid Electricity Transmission Plc NGET must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.	

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NGET PPs	Applicant's position
	(8) National Grid Electricity Transmission Plc NGET must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid Electricity Transmission Plc NGET's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid Electricity Transmission Plc NGET's control and if reasonably requested to do so by the undertaker National Grid Electricity Transmission Plc NGET must provide an explanation of how the claim has been minimised, where relevant. (9) The undertaker shall Not commence construction (or permit the commencement of such construction) of the authorised works on any land owned by National Grid Electricity Transmission Plc NGET or in respect of which National Grid Electricity Transmission Plc NGET has an easement or wayleave for its apparatus or any other interest or	

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NGET PP's	Applicant's position
	to carry out any works within 15 metres of National Grid Electricity Transmission Plc NGET's apparatus until the following conditions are satisfied: (a) unless and until National Grid Electricity Transmission Plc NGET is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid Electricity Transmission Plc NGET has confirmed the same to the undertaker in writing; and (b) unless and until National Grid Electricity Transmission Plc NGET is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid Electricity	

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NGET PPs	Applicant's position
	Transmission Ple NGET that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and prevent National Grid Electricity Transmission Ple NGET has confirmed the same in writing to the undertaker. (10) For the purposes of sub-paragraph (8))b) "acceptable insurance" means a general third party liability insurance policy effected and maintained by the undertaker which– (a) has a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event, unless otherwise agreed in writing by NGET; (b) is arranged with an insurer whose security or credit rating meets the same requirements as an acceptable credit provider; and	

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NGET PPs	Applicant's position
	(c) includes, without limitation– (i) a waiver of subrogation and an indemnity to principal clause in favour of NGET; and (ii) pollution liability for third party property damage and third party bodily damage arising from any pollution or contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate. (11) The undertaker must maintain the acceptable insurance– (a) during the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of	

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NGET PPs	Applicant's position
	the undertaker which constitute specified works. (12) In the event that the undertaker fails to comply with sub-paragraph(8) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Grid Electricity Transmission Plc NGET from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.	

NH

- 3.7. Without prejudice to the Applicant's view that the protective provisions contained in Schedule 14, Part 7 (for the protection of National Highways Limited) are appropriate, the Applicant has been discussing the terms of these with NH and, whilst some positive progress has been made, agreement has not been reached with regards to the matters set out in Table 5. See conclusion to this note for the Applicant's intended next steps.

Table 5: Status of Protective Provisions for the benefit of National Highways

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NH PPs	Applicant's position
Definitions of 'as built information' and 'detailed design information'	"as built information" means one electronic copy of the following information where National Highways deems reasonably necessary, so far as it is relevant to the specified works— (a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker; in compliance with Interim Advice Note 184 or any successor document; (b) list of suppliers and materials used, as well as any relevant test results and CCTV surveys (if required to comply with DMRB standards); (c) product data sheets and technical specifications for all materials used; (d) as constructed information for any utilities discovered or moved during the specified works; (e) method statements for the specified works carried out; (f) in relation to road lighting, signs, and traffic signals any information required by Series 1300 and 1400 of the Specification for Highway Works	The definitions of 'as built information' and 'detailed design information' which require the Applicant to provide certain information prior to and following completion of specified works. The Applicant considers that these definitions specify many matters which are simply not relevant to the actual works proposed. None of the items proposed to be removed from the definition of "as built information" by the Applicant are relevant or appropriate for inclusion in light of the nature of the works proposed. The Scheme involves the installation of cabling approximately 5 metres beneath the SRN only, with no works proposed to alter the SRN itself. Accordingly, there is no justification for the provision of such detailed design information. For example, given that the

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NH PPs	Applicant's position
	or any replacement or modification of it; (g) — organisation and methods manuals for all products used; (h) — as constructed programme; (i) — test results and records as required by the detailed design information and during construction phase of the project; (j) a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the undertaker and National Highways; the health and safety file; and (k) such other information, including CCTV surveys, as is reasonably required by National Highways to be used to update all relevant databases and to ensure compliance with National Highway's <i>Asset Data Management Manual</i> as is in operation at the relevant time or any successor of it. "detailed design information" means such of the following drawings specifications and	proposed works will not be altering the SRN, will not require any closures or traffic measures to the SRN etc. the Applicant does not understand why a Stage 3 road safety audit is necessary. The Applicant also notes the inclusion of a 'catch-all' provision, which enables NH to request further information if reasonably required. This provision is sufficient to ensure that NH can obtain any additional information it reasonably requires in relation to the specified works, while avoiding an overly prescriptive list that does not reflect the limited extent of the works proposed. Similarly, the proposed amendments to "detailed design information" relate to the fact that the only works proposed are the installation of cabling underneath the M180. No works are proposed to the SRN itself, nor will any of the works require road

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NH PPs	Applicant's position
	calculations as are relevant to the specified works— (a) site clearance details; (b) boundary, environmental and mitigation fencing; (c) road restraints systems and supporting road restraint risk appraisal process assessment; (d) drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys standards for Highways (e) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;	closures or have any impact on traffic using the SRN.

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NH PPs	Applicant's position
	(f) — pavement, pavement foundations, kerbs, footways and paved areas; (g) — traffic signs and road markings; (h) — traffic signal equipment and associated signal phasing and timing detail; (i) — road lighting (including columns and brackets); (j) — regime of California Bearing Ratio testing; (k) — electrical work for road lighting, traffic signs and signals; (l) — motorway communications as required by DMRB; (m) — highway structures and any required structural approval in principle;	

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NH PPs	Applicant's position
	(n) landscaping; (o) proposed departures from DMRB standards; (p) walking, cycling and horse riding assessment and review report; stage 1 and stage 2 road safety audits and exceptions agreed; (q) utilities diversions; (r) topographical survey; (s) maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;	

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NH PPs	Applicant's position
	(t) — health and safety information including any asbestos survey required by GG105 or any successor document; and (u) other such information that may be reasonably required by National Highways to be used to inform the detailed design of the specified works;	
Veto over compulsory acquisition powers	The undertaker must not exercise— (a) — article 5 (power to maintain the authorised development); (b) — article 11 (street works) (c) — article 13 (power to alter layout, etc. of streets); (d) — article 15 (temporary closure or restriction of streets and public rights of way); (e) — article 16 (access to works) (f) — article 19 (traffic regulation measures); (g) — article 20 (discharge of water);	The Applicant has set out its detailed position on this matter in section 2 of this note.

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NH PPs	Applicant's position
	(h) — article 21 (protective works to buildings); (i) — article 22 (authority to survey and investigate the land); (j) — article 23 (compulsory acquisition of land); (k) — article 26 (compulsory acquisition of rights and imposition of restrictive covenants); (l) — article 27 (Private Rights) (m) — article 32 (rights under or over streets); (n) — article 33 (temporary use of land for constructing the authorised development); (o) — article 34 temporary use of land for maintaining the authorised development); or (p) — article 41 (felling or lopping of trees and removal of hedgerows) of this Order, over any part of the strategic road network or land in which National Highways has an interest without the consent of National Highways, and	

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NH PPs	Applicant's position
	National Highways may in connection with any such exercise require the undertaker to provide details of any proposed road space bookings and submit a scheme of traffic management for National Highways' approval.	
The need for a provisional and final certification process, with defects period.	Provisional Certificate 10. (1) Following the completion of any specified works or prior to reopening any part of the strategic road network following any closure or partial closure, whichever shall be sooner, the undertaker shall notify National Highways who will carry out a site inspection to satisfy itself that the strategic road network is, in its opinion, safe for traffic and the undertaker must comply with any requirements of National Highways following the site inspection. (2) As soon as the undertaker considers that the provisional certificate may be properly issued it must apply to National Highways for the provisional certificate.	The Applicant considers that these provisions are excessive in light of the actual works proposed (HDD at significant depth beneath the SRN) and considers that requirements to carry out condition surveys following completion of specified works and obligations to make good defects caused at its own expense to be sufficient. The two stage certification process appears to anticipate works affecting the SRN itself, which is not the case for this Scheme. Given the nature of the works proposed, a provisional and final certification process, plus a defects period

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NH PPs	Applicant's position
	(3) Following an application for a provisional certificate, National Highways must as soon as reasonably practicable: (a) — inspect the specified works; and (b) — provide the undertaker with a written list of works that are required for the provisional certificate to be issued or confirmation that no further works are required for this purpose. (4) When— (a) a stage 3 road safety audit for the specified works has been carried out and all recommendations raised including remedial works have (subject to any exceptions agreed) been approved by National Highways; (b) the specified works incorporating the approved remedial works under subparagraph (4)(a) and any further works notified to the undertaker pursuant to subparagraph (3)(b) have been completed to the satisfaction of National Highways; (c) — the as built information has been provided to National Highways; and	of (at least) 12 months is excessive and unnecessary. There are already robust protective provisions covering pre-commencement, construction, and certification of the specified works, which are appropriate to the nature and extent of the works being proposed in this case. The Applicant notes that a two stage certification process has not been included in the protective provisions for NH's benefit in several recent DCOs including the Viking CCS Carbon Dioxide Pipeline Order 2025, and The HyNet Carbon Dioxide Pipeline Order 2024.

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NH PPs	Applicant's position
	(d) — the undertaker has paid the commuted sum to National Highways; National Highways must issue the provisional certificate. (5) Following the issue of the provisional certificate, National Highways shall reduce the bond sum in writing to 20% provided that in the event any claim or claims have been made against the undertaker or liability on its part has arisen under the bond sum (which here shall also include any claim or claims to which National Highways are joined howsoever they arise) before that date National Highways will be at liberty to retain a sufficient sum in addition to the 20% to ensure it does not have to meet any costs for and/or arising from and/or in connection with the specified works. (6) The undertaker must submit a stage 4 road safety audits as required by and in line with the timescales stipulated in the road safety audit standard. The undertaker must comply with the findings of the stage 4 road safety audit and must pay all costs of and incidental to such and provide updated as-built information to National Highways.	

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NH PPs	Applicant's position
The need for the provision of a security bond.	Security 15—(1) The specified works must not commence until the undertaker procures that the specified works are secured by the bond sum to indemnify National Highways against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of the exercise of the powers under this Order and the specified works under the provisions of this Part of this Schedule. (2) If at any time the undertaker is in breach of these provisions of this Part of this Schedule or becomes insolvent without prejudice to any other remedy National Highways is entitled upon giving notice to the undertaker to use such parts of the bond sum as National Highways considers necessary. For the avoidance of doubt should National Highways have to carry out works pursuant to this Part of this Schedule it may, at its sole discretion, use the bond sum to forward fund such works.	NH are proposing the provision of a security bond prior to commencement of specified works. The Applicant considers this to be disproportionate, especially in light of other financial obligations on the Applicant such as indemnity, insurance, and obligations to make good any defects at its own expense. The Applicant does not consider that an upfront financial commitment of this nature can be justified, having regard to the limited nature and extent of the proposed works, particularly when set against the other significant financial obligations being sought. The Applicant considers that the insurance and indemnity provisions already provide more than adequate protection for NH. In

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NH PPs	Applicant's position
		this context, a requirement to provide security equivalent to 200% of the cost of the specified works is disproportionate. The Applicant also notes that, under the certification procedures, the Applicant is obliged to make good any damage caused by the proposed works at its own cost. The Applicant further notes that in the Protective Provisions secured for the benefit of National Highways in the North Falls Offshore Wind Farm Order 2026 and the Five Estuaries Offshore Wind Farm Order 2025, this provision is limited to 'the SRN works', so defined as "so much of any work authorised by this Order which involve works to the carriageway or verge of any part of the strategic road network, or to operational assets ancillary thereto including highway drainage, and specifically including the alteration of a junction as authorised as part of Work No.

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NH PPs	Applicant's position
		9, and including any maintenance of that work, as is on, in, or over the strategic road network for which National Highways is the highway authority". As such, this provision does not apply, in the context of those Orders, to the "cable works" which are defined as "any works under this Order which consist of the installation of cables, cable ducts, tunnels for cables and cable ducts and related or associated works to those operations, all under the strategic road network and to be installed through the use of trenchless installation techniques where no works are required to or on the operational carriageway". The works proposed in this case would fall within the definition of "cable works" and, applying the same principles, should also

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NH PPs	Applicant's position
		fall outside the scope of any security provisions.

NR

- 3.8. Without prejudice to the Applicant's view that the protective provisions contained in Schedule 14, Part 8 (for the protection of Network Rail) are appropriate, the Applicant has been discussing the terms of these with NR and, whilst some progress has been made, agreement has not been reached with regards to the matters set out in Table 6. See conclusion to this note for the Applicant's intended next steps.

Table 6: Status of Protective Provisions for the benefit of Network Rail

Provision in dispute	Applicants proposed amendments to NR PPs	Applicant's position
Veto over compulsory acquisition powers	(1) The undertaker must not exercise the powers conferred by— (a) article 3 (development consent granted by the Order);	The Applicant has set out its detailed position on this matter in section 2 of this note.

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NR PPs	Applicant's position
	(b) article 5 (power to maintain the authorised development); (c) article 20 (discharge of water); (d) article 22 (authority to survey and investigate the land); (e) article 23 (compulsory acquisition of land); (f) article 26 (compulsory acquisition of rights and imposition of restrictive covenants); (g) article 29 (acquisition of subsoil only); (h) article 30 (power to override easements and other rights);	

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NR PPs	Applicant's position
	(i) article 33 (temporary use of land for carrying out the authorised development); (j) article 34 (temporary use of land for maintaining the authorised development); (k) article 35 statutory undertakers); (l) article [x] (private rights of way); (m) article 41 (felling or lopping of trees or shrubs); (n) article 42 (trees subject to tree preservation orders); (o) the powers conferred by section 11(3) (power of entry) of the 1965 Act; (p) the powers conferred by section 203 (power to override easements and	

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NR PPs	Applicant's position
	rights) of the Housing and Planning Act 2016; (q) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016; (r) 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	

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NR PPs	Applicant's position
	1990 Act, article 35 (statutory undertakers), article 30 (power to override easements and other rights or private rights of way) or article 27 (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.	
Decisions should be made subject to reasonableness	For the avoidance of doubt, any standard of reasonableness required to be exercised by Network Rail in these Protective Provisions shall constitute the standard of reasonableness of a reasonably prudent railway statutory undertaker	The Applicant has proposed, at various points throughout the protective provisions (PPs), wording requiring NR to act reasonably when making decisions on matters governed by the Protective Provisions. This is intended to ensure that the restrictions

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NR PPs	Applicant's position
	in compliance with its statutory undertaking and regulatory requirements. Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld or unreasonably 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).	contained within the Protective Provisions are proportionate, appropriately balance the interests of both parties, and do not unnecessarily restrict or delay the Scheme. NR has generally accepted the inclusion of obligations to act reasonably. However, it has also proposed additional wording seeking to define the standard of reasonableness and to include a carve-out allowing NR to withhold consent, in its absolute discretion, on operational safety grounds. The Applicant does not agree with these additions. In the Applicant's view, the proposed wording is unnecessary and would inappropriately extend the circumstances in which NR may refuse

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NR PPs	Applicant's position
		consent. In particular, the Applicant does not consider it justified for decisions relating to operational safety to be excluded from the general obligation on NR to act reasonably. It is unclear why an absolute discretion is required in these circumstances, and the Applicant considers that an obligation to act reasonably when determining matters affecting operational or railway safety provides sufficient protection for NR's interests.
Exclusion of consequential and indirect losses.	The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses (but always excluding any consequential or indirect loss) not otherwise provided for in this Part of this Schedule (subject to the remaining provisions of this part of this	The Applicant has proposed wording to make clear that the Applicant will only be liable for direct losses and not any consequential or indirect loss and that at all times, NR will be under an obligation to take reasonable steps to mitigate its loss. The Applicant's drafting is precededented in the A122

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NR PPs	Applicant's position
	Schedule and to article 35 (<i>no double recovery</i>)) which may be occasioned to or reasonably incurred by Network Rail—	(Lower Thames Crossing) Development Consent Order 2025.

NPG

- 3.9. The Applicant is discussing bespoke protective provisions for NPG however agreement has not been reached in relation to the substantive issues identified in Table 7. See conclusion to this note for the Applicant's intended next steps.

Table 7: Status of Protective Provisions for the benefit of Northern Powergrid (Yorkshire) PLC

Provision in dispute	Applicants proposed amendments to NPG PPs	Applicant's position
Introduction of the definition "Specified Works"	"Specified Works" means so much of the Authorised Development that is	The Applicant does not consider it appropriate for these protective

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NPG PPs	Applicant's position
	within 15 metres of any Apparatus, or will or may cause a materially adverse effect to any Apparatus.	provisions to apply to all works, they should apply to works that present a real risk of negatively impacting NPS's interests.
Veto over compulsory acquisition powers	5. Regardless of any provision in this Order or anything shown on the land plans, or contained in the book of reference, the undertaker shall not acquire any apparatus, or override any easement or other interest of Northern Powergrid otherwise than by agreement with Northern Powergrid such agreement not to be unreasonably withheld or delayed. 6. Regardless of any provision in the Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not	The Applicant has set out its detailed position on this matter in section 2 of this note.

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NPG PPs	Applicant's position
	interfere with any communications cables or equipment used by Northern Powergrid in relation to its apparatus nor shall acquire or interfere with rights or interests supporting the use, maintenance or renewal of such equipment including any easements other than by agreement of Northern Powergrid (such agreement not to be unreasonably withheld or delayed) and having regard to Northern Powergrid's existing and known future requirements for such land or interests.	
Exclusion of indirect/consequential loss from the indemnity.	(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of	The Applicant has included additional drafting to clarify the circumstances in which the Applicant would <i>not</i> be liable to indemnify NPG. These relate to

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to NPG PPs	Applicant's position
	(a) any damage or interruption to the extent that it is attributable to the neglect or negligence of Northern Powergrid, its officers, employees, servants, contractors or agents. (b) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable save to the extent that such losses are recoverable by a third party from Northern Powergrid	circumstances where NPG would be undertaking works under the powers of the Order. Where that is the case, it is not considered reasonable for the Applicant to be liable for works that NPG has undertaken. The indemnity is intended to deal with any damage that the Applicant causes and not for the works themselves. In addition, wording has been included to make clear that the Applicant is not liable for any indirect or consequential losses. Scenarios (b) is precededented in protective provisions for National Grid and National Gas in Schedule 14 to The East Yorkshire Solar Farm Order 2025.

Conclusion

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

- 3.9.1. The Applicant is continuing to engage proactively with affected parties with a view to agreeing bespoke protective provisions wherever possible. At Deadline 5, the Applicant will provide an update to the Examining Authority in respect of each outstanding set of bespoke protective provisions, including an indication of when the Applicant expects the relevant provisions to be incorporated into the draft DCO.
- 3.9.2. Where agreement has been reached, or the parties are sufficiently advanced in their negotiations (e.g., in the case of Cadent), the Applicant will seek to include the provisions, insofar as they are agreed, within the next submitted version of the draft DCO at Deadline 5. In all cases, however, the Applicant will provide a progress update and anticipated timetable for inclusion of any other protective provisions which are not provided at Deadline 5.
- 3.9.3. The Applicant is making a concerted effort to progress negotiations and remains committed to reaching agreement wherever reasonably possible.
- 3.9.4. The Applicant also acknowledges that, in a number of instances, the provisions of section 127 and section 138 of the PA 2008 would be engaged in respect of the statutory undertakers identified in this document. The Applicant is working diligently to agree protective provisions in order to enable objections to be removed. If objections were removed, then the test in section 127 would no longer apply. To the extent it is not possible to reach agreement, the Applicant proposes, at Deadline 6, to set out its position in full with respect to section 127 and section 138 of the PA 2008.