RWE

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

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JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

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1 ~~D5~~D6 update

1.1. The Applicant has continued to engage proactively with all affected Statutory Undertakers with a view to narrowing the outstanding areas of disagreement between the parties. The Applicant has sought, wherever possible, to accommodate the positions advanced by Statutory Undertakers. However, this cannot be at the expense of the Scheme or the effective exercise of the powers sought through the Order. The protective provisions must strike an appropriate balance between safeguarding the legitimate interests of Statutory Undertakers and ensuring that the powers conferred by the Order remain capable of being exercised effectively.

1.2. The Applicant ~~has also~~ amended the **Draft DCO [~~Document Reference 3.1 Revision 8~~]REP5-002]** at Deadline 5 to update and ~~(where relevant)~~, in the case of Cadent Gas Limited (**"Cadent"**) and City of Doncaster Council (**"CDC"**) as highway authority, include for the first time bespoke protective provisions for the protection of the ~~following~~ parties listed below. These protective provisions ~~incorporate~~incorporated changes agreed between the Applicant and the specific Statutory Undertaker~~,~~ but ~~may~~ also ~~include~~included areas of disagreement where an agreed position ~~has~~had not yet been reached. ~~The Applicant remains committed to ongoing engagement with a view to reaching agreement wherever possible.~~

1. Cadent ~~Gas Limited (Cadent)~~;
2. Canal and River Trust (CRT);
3. Exolum Pipeline System Limited (Exolum);
4. Network Rail (NR); and
5. ~~City of Doncaster Council as Local Highway Authority (~~CDC~~)~~.

1.3. The Applicant has also amended the Draft DCO [**Document Reference 3.1 Revision 9**] at Deadline 6 to update the protective provisions for Drainage Authorities (Doncaster East Internal Drainage Board (**"DEIDB"**) and Isle of Axholme & North Nottinghamshire Water Level Management Board (**"IANNWLMB"**)) at Part

3 of Schedule 14. These provisions reflect changes agreed between the Applicant and the Drainage Authorities to this point in time.

1.4. With the exception of the Drainage Authorities, the protective provisions in Schedule 14 of the Draft DCO have not been updated at Deadline 6 in respect of the parties listed above. To the extent there is a change in the parties' respective positions before the close of the examination resulting in further agreed drafting changes, this will be reflected in the final protective provisions which the Applicant will include in the Draft DCO at Deadline 8. However, at Deadline 6 an update on the status of negotiations with all relevant parties is provided in section 4 of this document. For each party concerned, the Applicant has also confirmed how it intends to record, via the Draft DCO and supporting submissions, its final position at Deadline 8 if an agreement with a party has not been reached by that date.

1.5. ~~**1.1.2. The**~~Furthermore, at Deadline 5 the Applicant ~~**has**~~did not ~~**included**~~include (or, in the case of National Highways, ~~**updated**~~update) the bespoke protective provisions for the parties listed below within the **Draft DCO [**~~**Document Reference 3.1 Revision 8] at this stage. Engagement with these parties remains**~~**REP5-002**]. This was because engagement with those parties remained ongoing and the Applicant ~~**considers**~~considered that further progress towards agreement ~~**is**~~was likely before the next iteration of the Draft DCO at Deadline 6. The Applicant ~~**has**~~ therefore deferred inclusion or update to these bespoke protective provisions at ~~**this**~~that stage to avoid presenting drafting which ~~**may**~~could shortly be superseded by ongoing negotiations.

1. National Grid Electricity Transmission plc (NGET)
2. Northern Powergrid (NPG)
3. National Highways (NH)

~~1.3. Section 4 of this note has been updated to identify the substantive provisions that continue to remain outstanding between the Applicant and the relevant Statutory Undertakers as at the date of this submission and should be read in conjunction with the updated **Draft DCO [Document Reference 3.1 Revision 8]**.~~

1.6. Discussions with these parties have continued beyond Deadline 5 and this will be the case for the remainder of the examination. As a result, the Applicant has as noted resolved to include or, as appropriate, update protective provisions for these parties in the final version of the Draft DCO to be submitted at Deadline 8, rather than to present drafting at Deadline 6 which is likely to be superseded in short order. The Applicant considers this to be a sensible and proportionate approach.

1.7. In the same way as for the parties listed at paragraph 1.2, an update on the status of negotiations with these parties is provided in section 4 of this document at Deadline 6. In respect of each party concerned, the Applicant has also confirmed how it intends to record, via the Draft DCO and supporting submissions, its final position at Deadline 8 if an agreement with a party has not been reached by that date.

1.8. Finally, this document has also been updated at Deadline 6 to record the Applicant's position insofar as the application of the tests in sections 127 and 138 of the Planning Act 2008 are concerned, for each party concerned. This is set out in section 5 of this document.

2 Introduction

2.1. This document ~~has been~~was originally produced ~~in~~ 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").**

2.2. 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 ~~8~~9]**.

2.3. ~~1.2.~~ The Applicant has been negotiating bespoke protective provisions with the following parties:

1. Cadent;

2. CRT;
3. EA;
4. Exolum;
5. NGET;
6. NH;
7. NR;
8. NPG;
9. CDC; and
10. the drainage authorities (DEIDB and IANNWLMB).

2.4. ~~2.3.~~ 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 Scheme and the Applicant has proposed reasonable and appropriate amendments as a result, as well as more specific directions given in that Government guidance.

2.5. ~~1.3.~~ 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 (together the IDBs) on the protective provisions provided for the benefit of drainage authorities (Schedule 14, Part 3 of the Draft DCO) and with CDC~~

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

~~as local highway authority (Schedule 14, Part 10 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 in due course, have not currently been established in sufficient detail. A further update to this document will be provided at Deadline 6 if matters have progressed to a material extent by that time.~~

2.6. The Applicant notes that discussions with CDC as local highway authority (Schedule 14, Part 10 of the Draft DCO) remain at an early stage, despite a number of attempts by the Applicant to make progress following Deadline 5. For example, the Applicant has only very recently received a response from CDC on the protective provisions which were returned to CDC on 30 July 2026. This has necessarily limited the degree to which any substantive progress could be made.

2.7. It should also be noted that North Lincolnshire Council (**"NLC"**) has recently confirmed that it would expect any protective provisions for the benefit of CDC as local highway authority to apply to NLC in respect of highways for which NLC is the local highway authority. This is a late development at this point in the examination, but the Applicant is seeking to liaise with officers at NLC to discuss the protective provisions, alongside the discussions which are taking place with CDC in parallel.

2.8. Accordingly, an update on the protective provisions for CDC and NLC is not included in this document at Deadline 6, on the basis that points of disagreement have not currently been established sufficiently in advance of Deadline 6 to enable their inclusion at the current time. The Applicant will continue to work with these parties to seek to reach agreement with them. The Applicant's proposed protective provisions for the local highway authorities will be included in the Draft DCO to be submitted at Deadline 8 and any known areas of disagreement will be recorded in the final version of this document submitted at Deadline 8. However, at Deadline 6, the Applicant has taken the preliminary step of extending the benefit of the protective provisions at Schedule 14, Part 10 of the **Draft DCO [Document Reference 3.1 Revision 9]** so that they apply both to CDC and NLC (as opposed to separate provisions applying to CDC and NLC).

3 Areas of negotiation

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

3.1. ~~2.4.~~ 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.

3.2. ~~2.5.~~ 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.

3.3. ~~2.6. In section 3 of this note, the~~The Applicant has set out below 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 4 of this note, as there are some differences in the scope and nature of the indemnity and specified works provisions being sought by certain statutory undertakers.

~~3~~ *A "veto" mechanism for exercising the CA powers*

3.4. ~~3.1.~~ 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; and
6. NPG.

3.5. ~~3.2.~~ 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

3.6. ~~3.3.~~ 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.

3.7. ~~3.4.~~ 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, there is no basis for the contention that an additional CA veto is required to prevent harm to the statutory undertaking in question.

3.8. ~~3.5.~~ 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.

3.9. ~~3.6.~~ 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.

3.10. ~~1.4.~~ 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.

3.11. ~~1.5.~~ 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 ~~8~~9]**:

- Exolum retains access to its apparatus (paragraph ~~60~~61(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~~62-64);
- Works in proximity to Exolum's apparatus require prior approval (~~paragraphs 76 - 79~~paragraph 64(1)); and
- Exolum is protected against financial detriment (paragraphs ~~89 - 92~~66-68).

3.12. ~~3.7.~~ 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

3.13. ~~3.8.~~ 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.

3.14. ~~3.9.~~ 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.*"

3.15. ~~3.10.~~ The result of the veto provision sought by the statutory undertakers listed at paragraph ~~3.4~~3.4 would be the effective disapplication of powers within the DCO and this is positively inconsistent with Government guidance on the drafting of DCOs.

3.16. ~~3.11.~~ While veto provisions relating to the CA of statutory undertaker land may be precedented 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.

3.17. ~~3.12.~~ 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.

3.18. ~~3.13.~~ 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.

3.19. ~~3.14.~~ 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."*

3.20. **~~3.15.~~** 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 2026[2], 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 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."

3.21. ~~3.16.~~ 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

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

identified in the guidance does not apply to the statutory undertakers identified at paragraph ~~3.4~~3.4 (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.

3.22. ~~3.17.~~ Further, the Applicant notes that the recently published, Nuclear Regulatory Review 2025[3] 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 is precedented

3.23. ~~3.18.~~ 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:

3.23.1. ~~3.18.1.~~ 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;

3.23.2. ~~3.18.2.~~ 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

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

3.23.3. ~~3.18.3.~~ 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

3.24. ~~3.19.~~ 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.

3.25. ~~3.20.~~ 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.

3.26. ~~3.21.~~ 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.

3.27. ~~3.22.~~ 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.

3.28. ~~3.23.~~ 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.

4 Tables of status of protective provisions

4.1. ~~1.6.~~ 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

4.2. ~~1.7.~~ The following tables relate to each of the following statutory undertakers:

- **Table 1: Cadent**
- **Table 2: CRT**
- **Table 3: Exolum**
- **Table 4: NGET**
- **Table 5: NH**
- **Table 6: NR**
- **Table 7: NPG**
- **Table 8: Drainage Authorities (DEIDB and IANNWMB)**

Cadent

4.3. ~~1.8.~~ The Applicant has been discussing bespoke protective provisions for the protection of Cadent and agreement has now been reached on ~~most substantive~~all 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 matter set out in Table 1) ~~have been~~was included in Schedule 14, Part 9 of the **Draft DCO** at Deadline 5 **[~~Document Reference 3.1 Revision 8]~~REP5-002]**. There is no prospect of the parties reaching agreement on this matter before the end of the examination and so this will be a matter for the Examining Authority's and Secretary of State's determination beyond examination.

4.4. Notwithstanding the Applicant's clear view that the protective provisions for Cadent contained in the Draft DCO are appropriate and afford comprehensive protection for Cadent, the Applicant is proposing to submit a without prejudice version of the protective provisions for Cadent's benefit at Deadline 8. This version will clearly identify, by reference to Table 1, drafting sought by Cadent as against that sought by the Applicant. This will enable the decision maker to incorporate such drafting as it considers appropriate (to the extent this differs from the provisions to be included in Schedule 14, Part 9 at Deadline 8), following consideration of the positions advanced by each party during the course of the examination. In all other respects, the without prejudice version of the protective provisions will be the same as that to be included in Schedule 14, Part 9 of the Draft DCO at Deadline 8.

4.5. The Applicant is proposing to adopt this approach because the version of the protective provisions which will be included at Schedule 14, Part 9 of the Draft DCO at Deadline 8 will be the product of extensive negotiations with Cadent during the course of the examination and will have been agreed in all respects with the exception of the single provision identified in Table 1. It is therefore correct that, in circumstances where the Secretary of State was

ultimately to decide in favour of Cadent on this discrete issue, any protective provisions included in the made Order should otherwise be consistent with those that have been discussed and agreed between the parties.

4.6. The without prejudice version of the protective provisions for Cadent will be submitted as a separate annex to this document.

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	~~*Acquisition of land*~~ ~~**1.** b) (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 sub-paragraph (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~~	The Applicant has set out its detailed position on this matter in section ~~2~~3 of this note.

Provision in dispute	Applicant's proposed amendments to Cadent PPs	Applicant's position
	~~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 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~~	

Provision in dispute	Applicant's proposed amendments to Cadent PPs	Applicant's position
	~~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.~~ ~~(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~~	

Provision in dispute	Applicant's proposed amendments to Cadent PPs	Applicant's position
	~~(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 (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.~~	

4.7. ~~4.1.~~ The Applicant has been discussing the terms of the protective provisions contained in Schedule 14, Part 4 (for the protection of the Canal & River Trust) with the CRT and ~~has~~ updated the **Draft DCO [**~~Document Reference 3.1 Revision 8~~**REP5-002]** at Deadline 5 to reflect the current status of those discussions. The protective provisions included in the Draft DCO are now ~~substantially~~much more closely aligned with the CRT's preferred protective provisions and incorporate a number of amendments agreed between the Applicant and the CRT. However, the version submitted at Deadline 5 also ~~includes provisions on which agreement has not yet been reached. A~~included (or in some cases omitted) provisions in circumstances where that inclusion or omission has not been agreed by the parties. A relatively small number of matters ~~therefore~~ remain unresolved~~, and the parties have not yet reached agreement in respect of the issues~~ in this regard, and are identified in Table 2.

4.8. ~~4.2.~~ 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 will continue to engage constructively with the CRT and remains open to compromise where possible. However, discussions to date suggest that while substantial progress has been made, the parties are unlikely to reach agreement on the matters identified in Table 2 and so these are likely to be matters for the Examining Authority's and Secretary of State's determination beyond the examination. the Applicant will continue to engage with the CRT with a view to resolving the outstanding matters and, where possible, reaching agreement on the remaining provisions.

~~4.3. . See the conclusion to this note for the Applicant's intended next steps.~~

4.9. Furthermore, notwithstanding the Applicant's clear view that the protective provisions for the CRT contained in the Draft DCO are appropriate and afford comprehensive protection for the CRT, the Applicant is proposing to

submit a without prejudice version of the protective provisions for the CRT's benefit at Deadline 8. This version will clearly identify, by reference to Table 2, drafting sought by the CRT as against that sought by the Applicant. This will enable the decision maker to incorporate such drafting as it considers appropriate (to the extent this differs from the provisions to be included in Schedule 14, Part 4 at Deadline 8), following consideration of the positions advanced by each party during the course of the examination. In all other respects, the without prejudice version of the protective provisions will be the same as that to be included in Schedule 14, Part 4 of the Draft DCO at Deadline 8.

4.10. The Applicant is proposing to adopt this approach because the version of the protective provisions to be included at Schedule 14, Part 4 of the Draft DCO at Deadline 8 will be the product of extensive negotiations with the CRT during the course of the examination and will be agreed with the exception of the matters listed in Table 2 (at most). It is therefore correct that, in circumstances where the Secretary of State was ultimately to decide in favour of the CRT on one or more of these matters, any protective provisions included in the made Order should otherwise be consistent with those that have been discussed and agreed in principle between the parties.

4.11. The without prejudice version of the protective provisions for the CRT will be submitted as a separate annex to this document.

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

Provision in dispute	Applicant's proposed amendments to CRT PPs	Applicant's position
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~~3 of this note.

Provision in dispute	Applicant's proposed amendments to CRT PPs	Applicant's position
Temporary interruption to the Canal maintenance	(2) Subject to sub-paragraph (3), the undertaker must not in the exercise of the powers conferred by this Order do anything which would directly result in the waterway being incapable of being used or maintained, or which would affect the safe operation of the Canal & River Trust's Network, without the consent of the Canal & River Trust. (3) The temporary occupation or use of land adjacent to the waterway, arising as a necessary consequence of carrying out the works authorised by this Order will not be treated as rendering the waterway incapable of being maintained for the purposes of paragraph (2) except where the relevant part of the authorised development is a specified work and an approval under paragraph 3(1) has not been provided by the Canal & River Trust.	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. The purpose of the caveat in sub-paragraph (3) is to address a specific and limited scenario in which the Applicant is required to temporarily occupy land adjacent to the

Provision in dispute	Applicant's proposed amendments to CRT PPs	Applicant's position
		waterway in order to install cabling beneath it using horizontal directional drilling ("HDD"), and where, as a necessary consequence of those works, maintenance of the relevant section of the waterway cannot temporarily be undertaken. Such works would constitute a "specified work" and, in accordance with the protective provisions, the Applicant would be required to obtain the CRT's approval of the relevant plans prior to carrying out the specified works. The Applicant therefore wishes to avoid a situation in which, having already obtained the CRT's approval for the specified works, it is required to seek a further consent because the use of land adjacent to the waterway to carry out those works may temporarily affect the CRT's ability to maintain the waterway.The Applicant's proposed drafting ensures that such

Provision in dispute	Applicant's proposed amendments to CRT PPs	Applicant's position
		temporary occupation, where it arises solely as a consequence of carrying out works authorised by the Order, is not taken to mean that the Canal is incapable of being maintained by the Trust. The drafting addresses this specific scenario, and does not create a more general exception.
Alterations to the Waterway	(1) If during the construction of a specified work or a protective work or during a period of twelve (12) ~~twenty four (24)~~ months after the completion of those works any alterations or additions, either permanent or temporary, to the waterway are reasonably necessary in consequence of the construction of the specified work or the protective work in order to avoid detriment, and the Canal & River Trust gives to the undertaker reasonable	The Applicant accepts the principle of this obligation but considers that a 24 month maintenance period is excessive, particularly given the limited nature of the proposed works, the limited interaction between the Scheme and the CRT waterway, and the fact that CRT is afforded oversight of the design and construction of the specified works through the protective provisions. In these circumstances, the Applicant considers that

Provision in dispute	Applicant's proposed amendments to CRT PPs	Applicant's position
	notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to the Canal & River Trust the reasonable costs of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the Canal & River Trust in maintaining, working and, when necessary, renewing any such alterations or additions.	a 12 month maintenance period would provide a reasonable and proportionate level of protection for CRT's interests.
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 £5~~100~~,000,000 (five ~~one hundred~~ million pounds) for any one occurrence or all	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

Provision in dispute	Applicant's proposed amendments to CRT PPs	Applicant's position
	occurrences of a series arising out of the one original cause.	Burton Solar Project Order 2025, The Gate Burton Energy Park Order 2024, The Cottam Solar Project Order 2024, The Tillbridge Solar Order 2025. ~~No sound justification has been provided for the figure requested.~~Whilst the Applicant recognises that the proposed crossing is beneath a man-made canal, that fact alone does not justify a capitalised sums cap that is approximately twenty times greater than the equivalent caps agreed in the protective provisions for comparable DCO projects, particularly where the justification advanced by the CRT appears to be that the level of the cap is simply being proposed on a precautionary basis. The Applicant considers that a £5 million cap, which is widely precedented, is far more proportionate than the sum proposed by the CRT.

Exolum

4.12. ~~4.4.~~ The Applicant has been discussing the terms of the protective provisions within Schedule 14 Part 6 (for the protection of Exolum Pipeline System Ltd) with Exolum and ~~has~~ updated Part 6 of Schedule 14 of the Draft DCO [~~Document Reference 3.1. Revision 8~~REP5-002] at Deadline 5 to reflect the current status of those discussions. The protective provisions included in the Draft DCO incorporate a number of amendments agreed between the Applicant and Exolum. However, the version submitted at Deadline 5 also ~~includes~~included (or in some cases omitted) provisions ~~on which agreement~~in circumstances where that inclusion or omission has not yet been ~~reached~~agreed by the parties. A number of matters therefore remain unresolved, ~~and the parties have not yet reached agreement in respect of the principal issues~~as identified in Table 3. The Applicant can confirm that it shared its latest comments on the draft protective provisions with Exolum ahead of Deadline 5 and received comments back from Exolum on 16 September 2026. The Applicant has updated Table 3 below where outstanding points of disagreement are now agreed between the parties.

4.13. ~~4.5.~~ 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 will continue to engage with Exolum with a view to resolving the outstanding matters and where possible, reaching agreement on the remaining provisions.~~ See the conclusion to this note for the Applicant's intended next steps.~~ A final version of the protective provisions for Exolum will therefore be included in the Draft DCO at Deadline 8 to reflect any further drafting

changes that may be agreed by the parties by that time, with any remaining matters of disagreement identified by way of an update to this document also to be submitted at Deadline 8.

4.14. Notwithstanding the Applicant's clear view that the protective provisions for Exolum contained in the Draft DCO are appropriate and afford comprehensive protection for Exolum, the Applicant is proposing to submit a without prejudice version of the protective provisions for Exolum's benefit at Deadline 8. This version will clearly identify, by reference to Table 3, drafting sought by Exolum as against that sought by the Applicant. This will enable the decision maker to incorporate such drafting as it considers appropriate (to the extent this differs from the provisions to be included in Schedule 14, Part 6 at Deadline 8), following consideration of the positions advanced by each party during the course of the examination. In all other respects, the without prejudice version of the protective provisions will be the same as that to be included in Schedule 14, Part 6 of the Draft DCO at Deadline 8.

4.15. The Applicant is proposing to adopt this approach because the version of the protective provisions which will be included at Schedule 14, Part 6 of the Draft DCO at Deadline 8 will be the product of extensive negotiations with Exolum during the course of the examination and will be agreed with the exception of the matters listed in Table 3 (at most). It is therefore correct that, in circumstances where the Secretary of State was ultimately to decide in favour of Exolum on one or more of these matters, any protective provisions included in the made Order should otherwise be consistent with those that have been discussed and agreed in principle between the parties.

4.16. The without prejudice version of the protective provisions for Exolum will be submitted as a separate annex to this document.

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

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~~	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

Provision in dispute	Applicants proposed amendments to Exolum PPs	Applicant's position
	~~deeds and variations by all other third parties with an interest in the land at that time who are affected by such works.~~	Exolum's concerns are already addressed elsewhere by the protective provisions in the Applicant's view.
~~The granting of alternative rights by lease~~	~~**Facilities and Rights for Alternative Apparatus**~~ ~~(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to Exolum facilities and rights for the construction of Alternative Apparatus and the grant of Alternative Rights, in substitution for Apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Exolum in accordance with this Schedule or in default of agreement settled by expert determination in accordance with paragraph 68.~~	~~The Applicant does not consider it necessary for the protective provisions to prescribe the legal mechanism by which appropriate replacement rights are granted. Requiring alternative rights to be granted exclusively by way of a 999 year lease could prevent rights which are entirely appropriate (i.e., permanent rights) being put in place.~~ ~~The **Draft DCO [Document Reference 3.1 Revision 8]** already contains the appropriate powers enabling the acquisition and creation of rights in land, including rights capable of being~~

Provision in dispute	Applicants proposed amendments to Exolum PPs	Applicant's position
	~~(2) Alternative Rights must be granted before any Alternative Apparatus is brought into operation.~~ ~~The parties agree that alternative rights shall be granted by way of a 999 year lease, substantially in the form of Exolum's precedent from time to time as amended by written agreement between the parties acting reasonably or such other form of agreement as the parties otherwise agree acting reasonably.~~ ~~(3) Nothing in this Schedule or contained in the Alternative Rights shall require Exolum to divert or remove any Alternative Apparatus.~~ ~~(4) If the facilities and rights to be afforded by the undertaker in respect of any Alternative Apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the Expert less favourable on the whole to Exolum than the~~	~~granted for the benefit of statutory undertakers.~~ ~~Such rights are capable of providing Exolum with substantially the same practical and legal protections as would be secured through a lease, without requiring the creation of a leasehold interest.~~

Provision in dispute	Applicants proposed amendments to Exolum PPs	Applicant's position
	~~facilities and rights enjoyed by it in respect of the Apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the Expert will make such provision for the payment of compensation by the undertaker to Exolum as appears to the Expert to be reasonable having regard to all the circumstances of the particular case.~~	
Indemnity	**Damage to property and other losses** (1) Subject to sub-paragraphs (2) to (6), the undertaker shall: (a) indemnify Exolum for all reasonably incurred loss, damage, ~~liability~~ costs and expenses suffered or reasonably incurred by Exolum arising out of; the carrying out of works under this Schedule;	The Applicant considers the indemnity as drafted by Exolum to be disproportionate and significantly broader than is necessary to 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

Provision in dispute	Applicants proposed amendments to Exolum PPs	Applicant's position
	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 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	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 proposed amendments are consistent with established precedent, and represent reasonable and proportionate safeguards, rather than a diminution of the protection afforded to Exolum.

Provision in dispute	Applicants proposed amendments to Exolum PPs	Applicant's position
	activity authorised by this Order ~~construction, maintenance or use of the Authorised Development~~; (c) pay to 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) arising out of the carrying out of works under this Schedule and arising out of the carrying out of the Authorised Development subject to provision of reasonable supporting evidence of the cost reasonably incurred; (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	

Provision in dispute	Applicants proposed amendments to Exolum PPs	Applicant's position
	Authorised Development; and (e) make reasonable compensation to Exolum for other losses directly arising from damages, penalty or costs incurred by Exolum by reason or in consequence of any such damage to or interruption of its Apparatus, including reasonable third-party claims (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 negligent act, neglect or default of Exolum, its officers, contractors or agents; and (b) 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	

Provision in dispute	Applicants proposed amendments to Exolum PPs	Applicant's position
	foreseeable. (3) The fact that any act or thing may have 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.	

Provision in dispute	Applicants proposed amendments to Exolum PPs	Applicant's position
	(5) The undertaker warrants that it will use ~~all~~ reasonable ~~endeavors~~endeavours to ensure: (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, ~~are~~care and diligence to be expected of a qualified and experienced member of their respective profession. (6) Exolum must- (a) give to the undertaker reasonable notice of any claim or demand to which this sub-paragraph applies as soon as reasonably possible after Exolum become aware of any	

Provision in dispute	Applicants proposed amendments to Exolum PPs	Applicant's position
	claims or demands; (b) not admit liability or make any offer to settle or settle or compromise any such claim without 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

4.17. ~~4.6.~~ 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 small number of matters set out in Table 4~~. The Applicant does not consider that there has been sufficient progress on the outstanding matters in Table 4 to justify inclusion of the protective provisions in the Draft DCO [Document Reference 3.1. Revision 8] at Deadline 5~~. The Applicant is committed to continued engagement with NGET ~~and will include~~. A final version of the protective provisions for NGET will therefore be included in the Draft DCO at Deadline ~~6. See conclusion to this note for the Applicant's intended next steps~~8, with any remaining matters of disagreement identified by way of an update to this document also to be submitted at Deadline 8.

4.18. In addition, notwithstanding the Applicant's clear view that the protective provisions for NGET contained in the Draft DCO are appropriate and afford comprehensive protection for NGET, the Applicant is proposing to submit a without prejudice version of the protective provisions for NGET's benefit at Deadline 8. This version will clearly identify, by reference to Table 4, drafting sought by NGET as against that sought by the Applicant. This will enable the decision maker to incorporate such drafting as it considers appropriate (to the extent this differs from the protective provisions to be included by the Applicant in Schedule 14 at Deadline 8), following consideration of the positions advanced by each party during the course of the examination. In all other respects, the without prejudice version of the protective provisions will be the same as that to be included in the Draft DCO at Deadline 8.

4.19. The Applicant is proposing to adopt this approach because the version of the protective provisions currently being negotiated by NGET and the Applicant and which will be included at Deadline 8 will be the product of

extensive negotiations between the parties during the course of the examination and will be agreed with the exception of the matters listed in Table 4 (at most). It is therefore correct that, in circumstances where the Secretary of State was ultimately to decide in favour of NGET on one or more of these matters, any protective provisions included in the made Order should otherwise be consistent with those that have been discussed and agreed in principle between the parties.

4.20. The without prejudice version of the protective provisions for NGET will be submitted as a separate annex to this document.

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

Provision in dispute	Applicants proposed amendments to NGET PPs	Applicant's position
Definition of apparatus	~~(c) any electrical lines or electrical plan 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 NHIHM Project, whether temporary of permanent, and includes, where the context so requires, apparatus constructed as part of the authorised development and intended for the beneficial use~~	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.~~prospective assets.

Provision in dispute	Applicants proposed amendments to NGET PPs	Applicant's position
	~~by National Grid Electricity Transmission Plc ("NHHM apparatus");~~	The proposed ~~apparatus relates~~assets relate 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 addressing the interaction between the two schemes. A further prospective scheme, the Keadby to Thorpe Marsh OHL reconfiguration project, may also interact with the Scheme although this is not currently confirmed. As with the North Humber to High Marnham DCO, the Applicant is of the view that as there are no known interactions between either project and so there is no justification for imposing

Provision in dispute	Applicants proposed amendments to NGET PPs	Applicant's position
		upon the Applicant potentially time intensive and costly secondary consenting obligations on what is an entirely precautionary basis. The Applicant has instead proposed to NGET that a commitment could be made via the Outline Construction Environmental Management Plan to enable an interface agreement to be entered into by the parties should any known interactions come to light at the detailed design stage. This is a more appropriate and proportionate approach and is consistent with the approach which has been agreed with National Highways in analogous circumstances with regards to the potential interface with the M180 renewal works. Amendments have therefore been made throughout the Protective Provisions to remove references to future projects on

Provision in dispute	Applicants proposed amendments to NGET PPs	Applicant's position
		the basis that this can addressed in an alternative and more appropriate way.
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~~	The Applicant has set out its detailed position on this matter in section ~~2~~3 of this note.

Provision in dispute	Applicants proposed amendments to NGET PPs	Applicant's position
	~~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 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~~	

Provision in dispute	Applicants proposed amendments to NGET PPs	Applicant's position
	~~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.~~ ~~(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,~~	

Provision in dispute	Applicants proposed amendments to NGET PPs	Applicant's position
	~~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, shall not be taken to constitute agreement under sub-paragraph (1).~~	
Duty on NGET to mitigate losses in indemnity	(7) 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, NGET must provide an explanation of how the claim has been	The Applicant is seeking to include wording in the protective provisions to require NGET to mitigate any losses it is seeking to claim against under the indemnity to ensure that there is some protection against potentially disproportionate or excessive costs being claimed. The mitigation wording sought

Provision in dispute	Applicants proposed amendments to NGET PPs	Applicant's position
	minimised, where relevant. The undertaker will only be liable under this paragraph for claims reasonably and properly incurred by NGET.	protects against this and is heavily precedented.

NH

4.21. ~~4.7.~~ 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 and a number of points agreed with respect to drafting matters, agreement has not been reached with regards to the matters set out in Table 5.

4.22. ~~4.8.~~ The Applicant is ~~still~~ awaiting an updated version of the protective provisions from NH, setting out its full proposed drafting and comments in response to the version which was sent by the Applicant on 21 August 2026. Accordingly, the Applicant ~~does not consider that there has been sufficient progress at this time to justify including~~

~~an updated~~is proposing to submit a final version of the protective provisions for NH in the Draft DCO ~~[Document Reference 3.1 Revision 8]. The absence of an updated draft should not be taken as an indication that discussions have ceased and engagement between the parties remains ongoing. See conclusion to this note for the Applicant's intended next steps.~~ at Deadline 8 to replace those currently at Schedule 14, Part 7, with any remaining matters of disagreement identified by way of an update to this document also to be submitted at Deadline 8. This will enable any further progress in negotiations to be reflected in the final version of the protective provisions submitted at Deadline 8.

4.23. In addition, the Applicant is also proposing to submit a without prejudice version of the protective provisions for NH's benefit at Deadline 8. This version will clearly identify, by reference to Table 5, drafting sought by NH as against that sought by the Applicant. This will enable the decision maker to incorporate such drafting as it considers appropriate (to the extent this differs from the provisions to be included in Schedule 14, Part 7 at Deadline 8), following consideration of the positions advanced by each party during the course of the examination. In all other respects, the without prejudice version of the protective provisions will be the same as that to be included in Schedule 14, Part 7 of the Draft DCO at Deadline 8.

4.24. The Applicant is proposing to adopt this approach because the version of the protective provisions which will be included at Schedule 14, Part 7 of the Draft DCO at Deadline 8 will be the product of extensive negotiations between the parties during the course of the examination and will be agreed with the exception of the matters listed in Table 5 (at most). It is therefore correct that, in circumstances where the Secretary of State was ultimately to decide in favour of NH on one or more of these matters, any protective provisions included in the made Order should otherwise be consistent with those that have been discussed and agreed between the parties.

4.25. The without prejudice version of the protective provisions for NH will be submitted as a separate annex to this document.

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

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;	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

Provision in dispute	Applicants proposed amendments to NH PPs	Applicant's position
	(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 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;~~, (k) a condition survey; (l) the health and safety file; and	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 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.

Provision in dispute	Applicants proposed amendments to NH PPs	Applicant's position
	(m) ~~(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 *Asset Data Management Manual* as is in operation at the relevant time or any successor of it. "detailed design information" means such of the following drawings specifications and 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;~~	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 closures or have any impact on traffic using the SRN.

Provision in dispute	Applicants proposed amendments to NH PPs	Applicant's position
	~~(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; ~~(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);~~	

Provision in dispute	Applicants proposed amendments to NH PPs	Applicant's position
	(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;~~ (n) landscaping; (o) proposed departures from DMRB standards; ~~(p) walking, cycling and horse riding assessment and review report;~~	

Provision in dispute	Applicants proposed amendments to NH PPs	Applicant's position
	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; (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;	

Provision in dispute	Applicants proposed amendments to NH PPs	Applicant's position
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);~~ ~~(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)~~	The Applicant has set out its detailed position on this matter in section ~~2~~3 of this note.

Provision in dispute	Applicants proposed amendments to NH PPs	Applicant's position
	~~(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 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	**Provisional Certificate**	The Applicant can accept the principle of a provisional and final works certification

Provision in dispute	Applicants proposed amendments to NH PPs	Applicant's position
final certification process, with defects period.	~~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. (3) Following an application for a provisional certificate, National Highways must as soon as reasonably practicable: (a) inspect the area of the highway within the strategic road network over the route of 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	process. However, it has proposed a number of amendments based on the works certification regime which applies to cabling works as set out in the North Falls Offshore Wind Farm Order 2026 and Five Estuaries Offshore Wind Farm Order 2025, both of which adopted a modified provisional and final certification process for cabling works beneath the SRN and therefore provide an appropriate and proportionate precedent for this Scheme. Whilst those certification processes incorporated a two-stage works certification process, neither included an additional defects period. The Applicant is not aware of any precedent for the inclusion of a defects period within a certification regime that applies to cabling works only. In addition, the protective provisions already provide extensive

Provision in dispute	Applicants proposed amendments to NH PPs	Applicant's position
	confirmation that no further works are required for this purpose. (4) When— (a) a condition survey ~~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 sub-paragraph (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~~ (d) ~~the undertaker has paid the commuted sum to National Highways,~~ National Highways must issue the provisional certificate.	protections for National Highways' benefit, including requirements for condition surveys and obligations on the Applicant to make good any damage identified through the provisional and final condition survey process. In the Applicant's view, the introduction of a separate defects period would duplicate protections that are already secured elsewhere in the protective provisions and would therefore impose an additional layer of process without delivering any corresponding benefit. ~~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~~

Provision in dispute	Applicants proposed amendments to NH PPs	Applicant's position
	~~(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.~~	~~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 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~~

Provision in dispute	Applicants proposed amendments to NH PPs	Applicant's position
		~~including the Viking CCS Carbon Dioxide Pipeline Order 2025, and The HyNet Carbon Dioxide Pipeline Order 2024.~~
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~~	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

Provision in dispute	Applicants proposed amendments to NH PPs	Applicant's position
	~~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.~~	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 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

Provision in dispute	Applicants proposed amendments to NH PPs	Applicant's position
		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. 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

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

NR

4.26. ~~4.9. 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.~~ At Deadline 5, the Applicant ~~has~~ included in Schedule 14, Part 8 (for the protection of Network Rail) of the **Draft DCO [~~Document Reference 3.1 Revision 8]~~ ~~an updated~~REP5-002]** a revised set of protective provisions for the protection of railway interests. These ~~incorporate changes to drafting which have been agreed between~~revisions incorporated elements of NR's preferred protective provisions that the Applicant ~~and Network Rail~~was prepared to accept. The ~~revisions included~~amendments made at Deadline 5 ~~are limited to those matters on which agreement has been reached.~~were limited to provisions taken from NR's preferred protective provisions and did not include any additional negotiated drafting beyond those aspects of NR's wording that the Applicant agreed to incorporate. However, agreement has not been reached with regards to the matters set out in Table 6. The Applicant has not received a response from Network Rail on the revised version of the protective provisions issued on 23 July 2026 and therefore no substantive progress has been made in relation to these outstanding matters since that time. Accordingly, the Applicant will await a response from NR before submitting any final version of the protective provisions for NR in the Draft DCO at Deadline 8. This will enable any further progress in negotiations to be reflected at that time.

4.27. The Applicant notes that NR's preferred position remains that its standard protective provisions should be included on the face of any made Order. The Applicant considers that, taking into account the nature and extent of the interface between the Scheme and the railway network, a number of amendments to those provisions are appropriate and justified. The Applicant's position is that any agreed amendments should be reflected in the protective provisions included in the Order itself. As noted, at Deadline 8 the Applicant will provide a further

update to the protective provisions for NR to reflect matters agreed or not agreed, as the case may be, at that time.

4.28. In addition, the Applicant is also proposing to submit a without prejudice version of the protective provisions for NR's benefit at Deadline 8. This version will clearly identify, by reference to Table 6, drafting sought by NR as against that sought by the Applicant. This will enable the decision maker to incorporate such drafting as it considers appropriate (to the extent this differs from the provisions to be included in Schedule 14, Part 8 of the Draft DCO at Deadline 8), following consideration of the positions advanced by each party during the course of the examination. In all other respects, the without prejudice version of the protective provisions will be the same as that included to be included in Schedule 14, Part 8 of the Draft DCO at Deadline 8.

4.29. The Applicant is proposing to adopt this approach because the version of the protective provisions which will be included at Schedule 14, Part 8 of the Draft DCO at Deadline 8 will be the product of extensive negotiations between the parties during the course of the examination and will be agreed with the exception of the matters listed in Table 6 (at most). It is therefore correct that, in circumstances where the Secretary of State was ultimately to decide in favour of NR on one or more of these matters, any protective provisions included in the made Order should otherwise be consistent with those that have been discussed and agreed between the parties.

4.30. The without prejudice version of the protective provisions for NR will be submitted as a separate annex to this document.

~~4.10. However, 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*);~~ ~~(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*);~~	The Applicant has set out its detailed position on this matter in section ~~2~~3 of this note.

Provision in dispute	Applicants proposed amendments to NR PPs	Applicant's position
	~~(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*);~~ ~~(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*);~~	

Provision in dispute	Applicants proposed amendments to NR PPs	Applicant's position
	(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 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	

Provision in dispute	Applicants proposed amendments to NR PPs	Applicant's position
	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 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.	

Provision in dispute	Applicants proposed amendments to NR PPs	Applicant's position
	~~(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 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~~	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 contained within the Protective Provisions are proportionate, appropriately balance the interests of both parties, and do not unnecessarily restrict or delay the Scheme.

Provision in dispute	Applicants proposed amendments to NR PPs	Applicant's position
	~~withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).~~	~~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~~NR's preferred protective provisions also includes a carve-out allowing NR to withhold consent, in its absolute discretion, on operational safety grounds. The Applicant does not agree with ~~these additions~~this wording . In the Applicant's view, the proposed wording is unnecessary and would inappropriately extend the circumstances in which NR may refuse consent. In particular, the Applicant does not consider it justified for decisions relating to operational safety to be excluded from the general

Provision in dispute	Applicants proposed amendments to NR PPs	Applicant's position
		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 Schedule and to article 35 *(no double recovery)*)	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 precedented in the A122 (Lower Thames Crossing) Development Consent Order 2025.

Provision in dispute	Applicants proposed amendments to NR PPs	Applicant's position
	which may be occasioned to or reasonably incurred by Network Rail—	

NPG

4.31. ~~4.11.~~ The Applicant ~~is~~has been discussing bespoke protective provisions for NPG ~~however~~and whilst some progress has been made, agreement has not been reached in relation to the ~~substantive issues~~matters identified in Table 7~~. The Applicant does not consider that there has been sufficient progress on the outstanding matters in Table 7 to justify including the protective provisions in the Draft DCO [Document Reference 3.1 Revision 8] at Deadline 5~~. The Applicant is committed to continued engagement with NPG ~~and will provide updated protective~~before the close of the examination. Protective provisions for NPG will be included in the Draft DCO at Deadline ~~6. See conclusion to this note for the Applicant's intended next steps~~8, with any remaining matters of disagreement identified by way of an update to this document also to be submitted at Deadline 8.

4.32. In addition, notwithstanding the Applicant's clear view that the protective provisions for NPG contained in the Draft DCO are appropriate and afford comprehensive protection for NPG the Applicant is proposing to submit a without prejudice version of the protective provisions for NPG's benefit at Deadline 8. This version will clearly identify, by reference to Table 7, drafting sought by NPG as against that sought by the Applicant. This will enable the decision maker to incorporate such drafting as it considers appropriate (to the extent this differs from the provisions to be included in the Draft DCO at Deadline 8), following consideration of the positions advanced by each party during the course of the examination. In all other respects, the without prejudice version of the protective provisions will be the same as that to be included in Schedule 14 of the Draft DCO at Deadline 8.

4.33. The Applicant is proposing to adopt this approach because the version of the protective provisions currently being negotiated by NPG and the Applicant is the product of extensive negotiations between the parties during the course of the examination and will be agreed with the exception of the matters listed in Table 7 (at most). It is therefore correct that, in circumstances where the Secretary of State was ultimately to decide in favour of NPG on one or more of these matters, any protective provisions included in the made Order should otherwise be consistent with those that have been discussed and agreed between the parties.

4.34. The without prejudice version of the protective provisions for NPG will be submitted as a separate annex to this document.

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

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

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 within 15 metres of any Apparatus, or will or may cause a materially adverse effect to any Apparatus.	The Applicant does not consider it appropriate for these protective 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.~~	The Applicant has set out its detailed position on this matter in section ~~2~~3 of this note.

Provision in dispute	Applicants proposed amendments to NPG PPs	Applicant's position
	~~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 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.~~	

Provision in dispute	Applicants proposed amendments to NPG PPs	Applicant's position
Exclusion of indirect/consequential loss from the indemnity	(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of (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	The Applicant has included additional drafting to clarify the circumstances in which the Applicant would *not* be liable to indemnify NPG. These relate to 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~~Scenario (b) is precedented in protective provisions for National Grid

Provision in dispute	Applicants proposed amendments to NPG PPs	Applicant's position
	such losses are recoverable by a third party from Northern Powergrid	and National Gas in Schedule 14 to The East Yorkshire Solar Farm Order 2025.

Drainage Authorities (DEIDB and IANNWLMB)

4.35. Throughout the Examination, the Applicant has engaged with the Drainage Authorities to understand their position on the protective provisions proposed for their benefit. The Applicant received the Drainage Authorities' comments on 17 September 2026 and was able to agree the majority of the amendments sought. Those agreed

amendments have been incorporated into Part 3 of Schedule 14 to the Draft DCO [**Document Reference 3.1, Revision 9**], submitted at Deadline 6.

4.36. Two areas of disagreement remain outstanding, where the Applicant has been unable to accept the Drainage Authorities' preferred drafting. These matters are identified in Table 8 below, together with the Applicant's reasons for maintaining its position. The Applicant remains committed to engaging with the Drainage Authorities in an effort to resolve these outstanding issues before the close of the Examination. An updated version of the protective provisions will be submitted with the Draft DCO at Deadline 8, and any remaining areas of disagreement will be reported in an update to this document submitted at the same deadline.

4.37. Furthermore, notwithstanding the Applicant's clear view that the protective provisions for the drainage authorities contained in the Draft DCO are appropriate and afford comprehensive protection for the drainage authorities, the Applicant is proposing to submit a without prejudice version of the protective provisions for the drainage authorities' benefit at Deadline 8. This version will clearly identify, by reference to Table 8, drafting sought by the drainage authorities as against that sought by the Applicant. This will enable the decision maker to incorporate such drafting as it considers appropriate (to the extent this differs from the provisions to be included in Schedule 14, Part 3 at Deadline 8), following consideration of the positions advanced by each party during the course of the examination. In all other respects, the without prejudice version of the protective provisions will be the same as that to be included in Schedule 14, Part 3 of the Draft DCO at Deadline 8.

4.38. The Applicant is proposing to adopt this approach because the version of the protective provisions which will be included at Schedule 14, Part 4 of the Draft DCO at Deadline 8 will be the product of negotiations with the drainage authorities during the course of the examination and will be agreed with the exception of the matters

listed in Table 8 (at most). It is therefore correct that, in circumstances where the Secretary of State was ultimately to decide in favour of the drainage authorities on one or more of these matters, any protective provisions included in the made Order should otherwise be consistent with those that have been discussed and agreed in principle between the parties.

4.39. The without prejudice version of the protective provisions for the drainage authorities will be submitted as a separate annex to this document.

Table 8: Status of Protective Provisions for the benefit of Drainage Authorities (DEIDB and IANNWLMB)

Provision in dispute	Applicants proposed amendments to the Drainage Authorities' PPs	Applicant's position
Maintenance of specified works	23(2) If any ~~specified~~ drainage work that the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the drainage authority, the drainage authority may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former	The Applicant does not consider it appropriate for these sub-paragraphs to refer to "specified work" rather than "drainage work". Paragraph 23 is concerned with ongoing maintenance of drainage works. Sub-paragraph (1) imposes maintenance obligations in respect of drainage works only. The substitution of "specified work" in sub-paragraphs (2) and (3) creates inconsistency with sub-paragraph (1) and widens the drainage authority's enforcement rights

Provision in dispute	Applicants proposed amendments to the Drainage Authorities' PPs	Applicant's position
	condition, to such extent and within such limits as the drainage authority reasonably requires. (3) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any ~~specified~~ drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the undertaker.	beyond the maintenance regime anticipated by the provision. The Applicant also notes that its preferred drafting is precedented in Part 3 of Schedule 11 to The Byers Gill Solar Order 2025, Part 4 of Schedule 7 to The Cleve Hill Solar Park Order 2020, and Part 7 of Schedule 16 to Norfolk Vanguard Offshore Wind Farm Order 2022.
Indemnity	26(1) Without limiting the other provisions of this Part, the undertaker must indemnify the drainage authority to a level not exceeding	It is the Drainage Authorities' view that this 10 million pound cap is removed from the provision. The Applicant cannot agreed to

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Provision in dispute	Applicants proposed amendments to the Drainage Authorities' PPs	Applicant's position
	£10,000,000 (ten million pounds) in respect of all claims, demands, proceedings, costs, damages, expenses or loss that may be made or taken against, recovered from or incurred by, the drainage authority by reason of— [continued].	provide an uncapped indemnity, as this would create uncertainty as to its potential financial exposure and the extent of any future claims. The Applicant is continuing to negotiate with the Drainage Authorities on this point.

5 Sections 127 and 138 PA 2008.

5.1. The Applicant 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.

5.2. The table below has been prepared in response to DCO.9.13 of the ExA's commentary on the draft DCO. The ExA requested that the Applicant set out its position in respect of all statutory undertakers' land with regard to section 127 of the PA 2008. The Applicant has also included any plots that trigger section 138. This information corresponds with that set out in the **Book of Reference [REP3-012].**

5.3. Section 127 only applies where the relevant statutory undertaker has made a representation. Section 127(2)/(3) relates to the compulsory acquisition of land and section 127(5)/(6) relates to the compulsory acquisition of rights.

5.4. The following statutory undertakers have a land interest within the Order Limits and have submitted a relevant representation (which has not been withdrawn):

1. Cadent;
2. CRT;
3. Exolum;
4. NGET;
5. NH;
6. NR;
7. NPG;
8. EA;

9. DEIDB; and

10. IANNWMB.

5.5. The Applicant has included bespoke protective provisions for the protection of all of the above parties in the **Draft DCO [Document Reference 3.1 Revision 9]** with the exception of NGET and NPG in respect of whom protective provisions have been extensively discussed during the course of the examination and will be included in the Draft DCO at Deadline 8. Subject to the protective provisions for the EA, these protective provisions are yet to be agreed in all respects with the relevant statutory undertakers, as set out in section 4.

5.6. The Environment Agency submitted a relevant representation, but agreement has been reached over the protective provisions in the **Draft DCO [Document Reference 3.1 Revision 9].**

5.7. For completeness, the following statutory undertakers have a land interest within the Order Limits but have not submitted a relevant representation and so section 127 of the Planning Act 2008 does not apply to these parties. The Applicants have included standard protective provisions in the **Draft DCO [Document Reference 3.1 Revision 9]** for the benefit of electricity, gas, water, sewerage and telecommunications undertakers which provide appropriate protection for their statutory undertakings and none of the parties listed have raised any concerns in this regard:

1. British Telecommunications PLC (Openreach)

2. Hutchinson 3G UK Limited

3. On Tower UK Limited

4. Yorkshire Water Services Limited

5. Severn Trent Warter Limited

6. RWE Renewables UK Onshore Wind Limited

5.8. In light of the protective provisions included in the **Draft DCO [Document Reference 3.1 Revision 9]** the Applicant does not consider that the powers of compulsory acquisition included in the Draft DCO would result in serious detriment

to the undertaking of the statutory undertakers or their ability to carry out their undertaking.

5.9. It should be noted that the procedure and test under section 127 only apply to compulsory acquisition of statutory undertakers' land and the compulsory acquisition of a right over statutory undertakers' land respectively. Accordingly, there is no need for the Secretary of State to be satisfied that there is no serious detriment in the case of temporary possession.

5.10. Section 138 (Extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) has a wider scope than section 127 and relates to any land where a statutory undertaker has a "relevant right" over it or has "relevant apparatus" on, under or over the land.

5.11. For the purposes of section 138, 'relevant right' means:

1. a right of way, or a right of laying down, erecting, continuing or maintaining apparatus on, under or over the land which is vested in or belongs to statutory undertakers for the purpose of carrying on their undertaking; or

2. is conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network.

5.12. 'Relevant apparatus' means:

1. apparatus vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking; or

2. electronic communications apparatus kept installed for the purposes of an electronic communications code network.

5.13. Section 138 of the PA 2008 provides that the DCO may include provisions for the extinguishment of the relevant right, or the removal of the relevant apparatus only if the Secretary of State is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the DCO relates. All land included in the order Limits is necessary to construct and operate the Scheme. In light of the protective provisions included in the **Draft DCO [Document Reference 3.1 Revision 9]** the Applicant considers that the rights and

apparatus of statutory undertakers are suitably protected and there is no detriment to those parties carrying out their undertaking. There may be instances where a statutory undertaker has apparatus in land that it is not the freehold owner of or does not have a leasehold interest in, in which case, s127 would not be engaged, only s138 and this is reflected in the table.

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Statutory Undertaker	S.127(2)/(3) PA 2008	S.127(5)/(6) PA 2008	S.138 PA 2008
Cadent	No plots subject to compulsory acquisition of land.	4/12, 4/13	4/12, 4/13
CRT	No plots subject to compulsory acquisition of land.	3/25, 3/26	3/25, 3/26
NR	No plots subject to compulsory acquisition of land.	3/24	3/24
NH	No plots subject to compulsory acquisition of land.	9/24, 10/33, 10/35, 10/36, 10/39	7/7, 7/13, 7/17, 11/22, 11/24, 12/14 9/24, 10/33, 10/35, 10/36, 10/39 12/6, 12/8, 12/9, 12/10,

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Statutory Undertaker	S.127(2)/(3) PA 2008	S.127(5)/(6) PA 2008	S.138 PA 2008
			12/11, 12/12, 12/13, 12/14, 12/15
Exolum	1/1, 1/3, 1/6, 1/8, 1/10, 1/24, 1/44, 1/47, 1/48, 2/7, 2/21, 2/24, 2/27, 2/35, 2/39, 2/42, 2/44, 2/46, 2/48, 2/49, 2/50, 2/71, 2/72, 5/3, 8/7, 9/23	1/15, 1/23, 5/1, 5/2, 8/10	1/1, 1/3, 1/6, 1/8, 1/10, 1/15, 1/23, 1/24, 1/44, 1/47, 1/48, 2/7, 2/21, 2/24, 2/27, 2/35, 2/39, 2/42, 2/44, 2/46, 2/48, 2/49, 2/50, 2/71, 2/72, 5/1, 5/2, 5/3, 8/7, 8/10, 9/23

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Statutory Undertaker	S.127(2)/(3) PA 2008	S.127(5)/(6) PA 2008	S.138 PA 2008
Environment Agency	11/13, 11/22	2/1, 2/67, 3/23, 3/32, 4/4, 5/14, 6/4, 6/5, 6/25, 7/10, 7/18, 7/22, 8/14, 8/15, 9/9, 9/13, 9/18, 10/7, 10/11, 10/37, 10/38, 10/48, 10/49, 10/50, 11/1, 11/2, 11/10, 11/11, 11/12, 11/14, 11/15, 11/16, 11/17, 11/18, 11/20, 11/21, 11/23, 12/1, 12/2, 12/3, 12/4, 12/5, 12/6, 12/7, 12/8, 12/9, 12/10, 12/11, 12/12, 12/13	2/1, 2/67, 3/23, 3/32, 4/4, 5/14, 6/4, 6/5, 6/25, 7/10, 7/18, 7/22, 8/14, 8/15, 9/9, 9/13, 9/18, 10/7, 10/11, 10/37, 10/38, 10/48, 10/49, 10/50, 11/1, 11/2, 11/10, 11/11, 11/12, 11/13, 11/14, 11/15, 11/16, 11/17, 11/18,

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Statutory Undertaker	S.127(2)/(3) PA 2008	S.127(5)/(6) PA 2008	S.138 PA 2008
			11/20, 11/21, 11/22, 11/23, 12/1, 12/2, 12/3, 12/4, 12/5, 12/6, 12/7, 12/8, 12/9, 12/10, 12/11, 12/12, 12/13
RWE Renewables	Not relevant – no representation made, so s127 is not engaged	Not relevant – no representation made, so s127 is not engaged	1/2, 1/3, 1/4, 1/5, 1/6, 1/7, 1/8, 1/9, 1/10, 1/11, 1/12, 1/13, 1/14, 1/15, 1/16, 1/17, 1/18, 1/19, 1/22, 1/23, 1/24, 1/25,

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Statutory Undertaker	S.127(2)/(3) PA 2008	S.127(5)/(6) PA 2008	S.138 PA 2008
			1/26, 1/27, 1/28, 1/29, 1/30, 1/32, 1/33, 1/34, 1/35, 1/36, 1/37, 1/38, 1/39, 1/40, 1/41, 1/42, 1/43, 1/44, 1/45, 1/46, 1/47, 1/48, 1/49, 1/50, 1/51, 1/52, 1/54, 1/56, 1/57, 1/58, 1/59, 1/60, 2/3, 2/4, 2/5, 2/6, 2/7, 2/9, 2/10, 2/11, 2/12, 2/13,

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Statutory Undertaker	S.127(2)/(3) PA 2008	S.127(5)/(6) PA 2008	S.138 PA 2008
			2/14, 2/15, 2/16, 2/17, 2/18, 2/19, 2/20, 2/21, 2/22, 2/23, 2/24, 2/25, 2/26, 2/27, 2/28, 2/29, 2/30, 2/31, 2/32, 2/33, 2/34, 2/35, 2/36, 2/37, 2/38, 2/39, 2/40, 2/41, 2/42, 2/43, 2/44, 2/45, 2/46, 2/47, 2/50, 2/51, 2/52, 2/53, 2/54, 2/55, 2/56, 2/59,

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Statutory Undertaker	S.127(2)/(3) PA 2008	S.127(5)/(6) PA 2008	S.138 PA 2008
			2/60, 2/61, 2/62, 2/63, 2/64, 2/65, 2/66, 2/67, 3/1, 3/2, 3/3, 3/4, 3/5, 3/6, 3/7, 3/8, 3/9, 3/10, 3/11, 3/14, 3/34, 1/E, 2/A, 3/A, 3B, 1/A, 1/B, 1/C, 1/D, 2/B, 3/C, 3/D, 3/E
British Telecommunications PLC (Openreach)	Not relevant – no representation made, so s127 is not engaged	Not relevant – no representation made, so s127 is not engaged	1/13, 1/14, 1/17, 1/18, 1/19, 1/20, 1/22, 1/23, 1/25, 1/26,

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Statutory Undertaker	S.127(2)/(3) PA 2008	S.127(5)/(6) PA 2008	S.138 PA 2008
			2/1, 2/2, 2/4, 2/5, 3/11, 3/13, 3/16, 3/17, 3/18, 3/21, 4/11, 4/12, 4/13, 5/10, 5/14, 6/2, 6/3, 6/5, 6/18, 6/22, 6/23, 7/2, 7/7, 7/9, 8/2, 8/4, 8/5, 8/6, 8/8, 8/9, 8/14, 8/15, 9/2, 9/6, 9/9, 9/12, 9/13, 9/14, 9/15, 9/18, 10/2, 10/4, 10/6,

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Statutory Undertaker	S.127(2)/(3) PA 2008	S.127(5)/(6) PA 2008	S.138 PA 2008
			10/7, 10/10, 10/17, 10/18, 10/19, 10/20, 10/38, 10/43, 10/45, 10/46, 10/48, 10/49, 11/10, 11/11, 11/19, 11/21, 11/22, 12/7, 12/9, 12/11, 12/12, 12/13, 12/14, 12/18 1/4, 1/5, 1/7, 1/9, 1/11, 1/12, 1/13, 1/15, 1/17, 1/18,

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Statutory Undertaker	S.127(2)/(3) PA 2008	S.127(5)/(6) PA 2008	S.138 PA 2008
			1/19, 1/22, 1/26, 1/28, 2/3, 2/5, 2/6, 2/9, 8/6
Hutchinson 3G UK Limited	Not relevant – no representation made, so s127 is not engaged	Not relevant – no representation made, so s127 is not engaged	10/41
On Tower UK Limited	Not relevant – no representation made, so s127 is not engaged	Not relevant – no representation made, so s127 is not engaged	10/21, 10/22, 10/23, 10/26
Severn Trent Water Limited	Not relevant – no representation made, so s127 is not engaged	Not relevant – no representation made, so s127 is not engaged	2/1, 4/4, 4/11, 4/12, 4/13, 5/14, 6/4, 6/5, 6/25, 7/10, 7/18, 7/22, 8/14,

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Statutory Undertaker	S.127(2)/(3) PA 2008	S.127(5)/(6) PA 2008	S.138 PA 2008
			8/15, 9/9, 9/18, 10/7, 10/37, 10/38, 10/48, 10/49, 10/50, 11/1, 11/2, 11/10, 11/11, 11/12, 11/14, 11/15, 11/16, 11/17, 11/20, 11/21, 11/22, 12/1, 12/2, 12/3, 12/4, 12/5,
National Grid Electricity Transmission	1/10, 1/32, 1/37, 1/44, 1/48, 1/56, 1/57, 1/58, 2/9, 2/20, 2/23, 2/26, 2/34, 2/37, 2/41, 2/43, 2/44, 2/48, 2/50, 2/52, 2/53, 3/1, 3/9, 3/17, 3/21, 3/22, 4/6, 4/8, 4/9, 4/10, 4/14, 1/3, 1/13, 1/24, 1/25, 1/26, 1/27, 1/34, 1/36, 1/40, 1/43,	1/15, 1/57, 2/52, 3/1, 3/17, 3/21, 4/4, 1/9, 1/11, 1/12, 1/13, 1/14, 1/16, 1/17, 1/18, 1/19, 1/22, 1/23, 1/28, 1/30, 1/33, 1/35, 1/38, 1/41, 1/42, 1/45, 2/3, 2/5, 2/6, 2/9, 2,11, 2/14, 2/28, 2/29,	1/3, 1/4, 1/5, 1/7, 1/9, 1/10, 1/11, 1/12, 1/13, 1/14, 1/15, 1/16, 1/17,

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Statutory Undertaker	S.127(2)/(3) PA 2008	S.127(5)/(6) PA 2008	S.138 PA 2008
	1/46, 1/50, 1/52, 1/59, 1/60, 2/10, 2/13, 2/15, 2/16, 2/27, 2/31, 2/33, 3/5, 3/7, 3/8, 3/10, 1/49, 2/27, 1/45, 1/58, 2/6	2/30, 2/32, 2/51, 3/6, 3/15, 3/18, 1/4, 1/5, 1/7, 1/49	1/19, 1/22, 1/23, 1/24, 1/25, 1/26, 1/27, 1/28, 1/30, 1/32, 1/33, 1/34, 1/35, 1/36, 1/38, 1/39, 1/41, 1/42, 1/43, 1/44, 1/45, 1/46, 1/48, 1/49, 1/50, 1/51, 1/52, 1/56, 1/57, 1/58, 1/59, 1/60, 2/3, 2/5, 2/6, 2/9, 2/10, 2/13, 2/14, 2/16, 2/27, 2/28,

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Statutory Undertaker	S.127(2)/(3) PA 2008	S.127(5)/(6) PA 2008	S.138 PA 2008
			2/29, 2/30, 2/31, 2/32, 2/33, 2/34, 2/50, 2/51, 2/52, 2/53, 3/5, 3/6, 3/7, 3/8, 3/9, 3/10, 3/15, 3/17
Yorkshire Water Services Limited	Not relevant – no representation made, so s127 is not engaged	Not relevant – no representation made, so s127 is not engaged	1/1, 1/20, 2/1, 2/2, 2/3, 2/4, 2/68, 2/70, 2/71, 4/11, 4/12, 4/13, 5/9, 5/11, 5/12, 5/13, 6/8, 7/7, 7/9, 7/10, 7/18, 7/22, 8/18,

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Statutory Undertaker	S.127(2)/(3) PA 2008	S.127(5)/(6) PA 2008	S.138 PA 2008
			9/9, 9/18, 10/2, 10/4, 10/6, 10/19, 10/20, 10/21, 10/38, 10/41, 10/42, 10/43, 10/44, 10/46, 10/49, 12/18
Northern Powergrid	1/1, 1/3, 1/6, 1/7, 1/8, 1/9, 1/10, 1/11, 1/12, 1/13, 1/14, 1/15, 1/16, 1/17, 1/18, 1/19, 1/22, 1/23, 1/25, 1/28, 2/4, 2/5, 2/6, 2/9, 2/12, 2/20, 2/23, 2/26, 2/34, 2/37, 2/41, 2/43, 2/44, 2/48, 2/50, 2/54, 2/56, 2/60, 2/62, 2/63, 2/64, 2/65, 2/66, 2/68, 2/70, 2/71, 2/75, 3/9, 3/17, 3/18, 3/19, 3/20, 3/22, 3/29, 4/2, 4/3, 4/5, 4/6, 5/17, 5/18, 6/23, 7/7, 7/16,	1/4, 1/6, 1/7, 1/8, 1/9, 1/10, 1/11, 1/12, 1/13, 1/14, 1/15, 1/16, 1/17, 1/19, 1/22, 1/23, 1/24, 1/25, 1/26, 1/27, 1/32, 1/34, 1/35, 1/36, 1,41, 1/42, 1/45, 1/49, 1/51, 1/57, 2/4, 2/7, 2/10, 2/11, 2/13, 2/14, 2/27, 2/28, 2/29, 2,30, 2/31, 2/32, 2/33, 2/34,	1/1, 1/3, 1/4, 1/5, 1/6, 1/7, 1/8, 1/9, 1/10, 1/11, 1/12, 1/13, 1/14, 1/15, 1/16, 1/17, 1/18, 1/19, 1/22, 1/23, 1/24, 1/25, 1/26, 1/27,

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Statutory Undertaker	S.127(2)/(3) PA 2008	S.127(5)/(6) PA 2008	S.138 PA 2008
	7/17, 7/20, 7/21, 7/24, 8/2, 8/4, 9/2, 9/5, 9/15, 9/23, 10/1, 10/3, 10/5, 10/19, 10/25, 10/26, 11/19, 11/22, 12/14, 1/24, 1/26, 1/27, 1/32, 1/40, 1/43, 1/44, 1/46, 1/48, 1/50, 1/52, 1/56, 1/58, 1/59, 1/60, 2/7, 2/10, 2/13, 2/15, 2/16, 2/27, 2/31, 2/33, 3/27, 1/33, 1/34, 1/36, 1/41, 2/32, 1/34, 1/36, 1/57, 2/11, 2/28	1/5,1/18, 1/28, 1/30, 1/33, 1/38, 2/3, 2/5, 2/6, 2/9	1/28, 1/30, 1/32, 1/34, 1/35, 1/36, 1/38, 1/39, 1/41, 1/42, 1/43, 1/44, 1/45, 1/46, 1/48, 1/49, 1/50, 1/51, 1/52, 1/56, 1/57, 1/58, 1/59, 1/60, 2/3, 2/4, 2/6, 2/7, 2/9, 2/10, 2/13, 2/14, 2/15, 2/16, 2/27, 2/28, 2/29, 2/30, 2/31, 2/32,

JUSTIFICATION FOR THE APPLICANT'S PREFERRED PROTECTIVE PROVISIONS

Statutory Undertaker	S.127(2)/(3) PA 2008	S.127(5)/(6) PA 2008	S.138 PA 2008
			2/33, 2/34, 3/1

6 Conclusion

6.1. ~~4.11.1.~~ The Applicant is making a concerted effort to progress negotiations and remains committed to reaching agreement wherever reasonably possible. ~~At Deadline 6, the Applicant will provide an updated version of this~~This document ~~setting~~sets out the progress made in resolving the outstanding points of disagreement on protective provisions with each relevant statutory undertaker. The Applicant ~~will also provide~~has provided an updated ~~Draft~~**draft** **DCO [Document Reference 3.1 Revision 9]** at Deadline 6, incorporating all revisions to protective provisions~~, including those not updated at Deadline 5 (NGET, NPG, NH and the IDBs), together with any further progress made in relation to the protective provisions for Cadent, CRT, Exolum, NR and CDC between Deadlines 5 and 6.~~. This document also confirms that the tests applicable under sections 127 and 138 of the Planning Act 2008 would be met in relation to all affected parties.

~~4.11.2. 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.~~

6.2. The Applicant is proposing to submit without prejudice versions of the protective provisions at Deadline 8. These without prejudice versions will clearly identify, by reference to the tables in section 4 of this note, the drafting sought by the relevant third party as against that sought by the Applicant. This will enable the decision maker to incorporate such drafting as it considers appropriate (to the extent this differs from the provisions to be included in Schedule 14 at Deadline 8), following consideration of the positions advanced by each party during the course of the examination. In all other respects, the without prejudice version of the protective provisions will be the same as that to be included in Schedule 14 of the Draft DCO at Deadline 8.

6.3. The Applicant is proposing to adopt this approach because the version of the protective provisions which will be included at Schedule 14 of the Draft DCO at Deadline 8 will be the product of extensive negotiations with the third parties during the course of the examination and will have been agreed in all respects with the exception of the provisions identified in the tables in section 4 of this note. It is therefore correct that, in circumstances where the Secretary of State was ultimately to decide in favour of the third parties on any discrete issues, that any protective provisions included in the made Order should otherwise be consistent with those that have been discussed and agreed between the parties.

6.4. The without prejudice versions of the protective provisions for third parties will be submitted as a separate annex to this document at Deadline 8.