



# Planning Inspectorate

## Application by Fosse Green Energy Limited for an order granting development consent for the Fosse Green Energy

### The Examining Authority’s (ExA) schedule of proposed changes to the applicant’s draft Development Consent Order (dDCO) (Revision 4) [[REP3A-004](#)]

Issued on: 23 April 2026

The ExA must send a recommended DCO to the Secretary of State along with its report, no matter what its recommendation is about the project. This schedule has therefore been prepared on a ‘without prejudice’ basis and should not be seen as an indication of the ExA’s final recommendation. The ExA’s suggested deletions of text are shown using double strike through, eg ~~abcd~~, while any changes to or insertions of text are shown in bold black text, eg **abcd**.

The numbering for Articles and Requirements etc used below follows that used in the Deadline 3A version of the dDCO. The renumbering of any Articles and Requirements, as necessary, **MUST** be undertaken by the applicant when it issues its final version of the dDCO.

Further amendments to the dDCO may be suggested by parties or made by the applicant before the close of the examination.

Comments on this schedule should be submitted by **Deadline 5A: 12 May 2026**

Article/ Schedule	ExA’s proposed changes Deletions shown as strike through ( <del>for example</del> ) Insertions shown in bold ( <b>for example</b> )	ExA’s reasoning and comments
<b>Articles</b>		
<b>Article 2</b> (Interpretation)	A definition for National Grid Electricity Transmission Plc (NGET) should be included in Article 2, given NGET has been named as a	In the interests of precision.



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	partial beneficiary of any made DCO under the provisions of Article 34 (Benefit of the Order), with NGET only subsequently being defined in paragraph 86 in Part 8 of Schedule 14 of the dDCO. With the addition of a definition for NGET in Article 2, consideration should be given to how NGET is defined in paragraph 86 in Part 8 of Schedule 14, that is in full (as is currently the case in [REP3A-004] or in a shorter form involving the making of a cross reference to Article 2.	
<b>Article 34</b> (Benefit of the Order)	"Subject to article 35 (consent to transfer the benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker save for Work No. <del>5A</del> <b>5B</b> in relation to ..."	In the interests of precision to be consistent with the nomenclature used in Schedule 1 and other parts of the dDCO.
<b>Article 38</b> (Planning permission, etc)	<b>Delete</b> the entirety of Article 38	The ExA notes: the submissions made by the applicant during Issue Specific Hearing 4 [section 2.4 in REP3-043] and in response to ExQ2 DCO.2.04 [REP3-045]; and the amendments that have been made to the Explanatory Memorandum (EM) [paragraphs 4.6.10 to 4.6.12 in REP3A-006]. Those submissions and the amendments to the EM seek to justify the inclusion of Article 38 on the basis of the potential need to obtain and implement a "drop in" type planning permission obtained under



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		<p>the provisions of the Town and Country Planning Act 1990 (as amended) and the Supreme Court's ruling in Hillside Parks Ltd v Snowdonia National Park Authority 2022 UKSC [30]. In that context a hypothetical example of needing to provide a fixed mains water supply for the purposes of firefighting because of a change to the Building Regulations following the making of any DCO for the proposed development has been referred to.</p> <p>As the ExA observed in asking ExQ2 DCO.2.04 [PD-016] the Secretary of State in recent decision making has consistently refused to include an article of Article 38's nature in a number of recently made DCOs. Whilst there might be a need to obtain drop in type planning permissions under the Town and Country Planning Act 1990 (as amended) to address any regulatory requirements following the making of any DCO for the proposed development, the ExA considers it extremely unlikely that the implementation of any such planning permissions would involve works of such a scale that would result in material conflicts with the development authorised by a made DCO, such that the latter could not lawfully be implemented without the inclusion of Article 38 in any made DCO</p>



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		<p>for the proposed development. For example, if it became necessary to install a fixed mains water supply that might affect the scale or layout of some of the proposed solar arrays or part of the battery energy storage system, however, any such development would be unlikely to have consequences that could not be addressed through the seeking of amendments under Requirement 4 of the dDCO for the design of any elements of the authorised development that had already received detailed approvals under other requirements included in Schedule 2 of the dDCO.</p> <p>Accordingly, the ExA is not persuaded that when regard is paid to the design flexibility embedded in the submitted application and the need for matters of detailed design to be approved under Schedule 2 of the dDCO Article 38's inclusion in a made DCO would be justified. The ExA therefore considers that Article 38 should be deleted from the dDCO, albeit the vacated article number should be retained and marked as an 'unused number' and left as such until the final version of the dDCO is submitted prior to the examination's conclusion.</p>



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<b>Article 40</b> (Trees subject to tree preservation orders)	“(1) The undertaker may fell or lop any tree within or overhanging land within the Order limits subject to a tree preservation order which was made after <del>10 April</del> <b>18 July 2025</b> ...”	In the interests of precision, changed to the date of the submission of the application for the proposed development having regard to the submission [REP4-022].
<b>Article 46</b> (Procedure in relation to certain approvals etc.)	<p>1) Amend sub-paragraph (1) to read:</p> <p><i>“Where an application is made to or request is made of, a consenting authority for any consent, agreement or approval required or contemplated by any of the provisions of the Order (<del>not including</del> <b>excluding the requirements stated in Schedule 2</b>), such consent, agreement or approval to be validly given, must be given in writing.”</i></p> <p>2) Amend sub-paragraph (3) to read:</p> <p><i>“Schedule 15 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals required, granted, refused or withheld in relation to the requirements <b>stated in Schedule 2 (Requirements)</b>.”</i></p>	<p>1) In the interests of precision.</p> <p>2) In the interests of precision.</p> <p>3) In the interests of precision.</p>



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	3) Amend sub-paragraph (6) to read:  "Schedule 15 (procedure for discharge of requirements) does not apply <del>in respect of</del> <b>to</b> any consents, agreements or approvals <del>contemplated by</del> <b>subject to</b> <del>by the provisions</del> <b>of</b> Schedule 14 (protective provisions)."	
<b>Schedules</b>		
<b>Schedule 2 (Requirements)</b>		
<b>Requirement 5 (Community Liaison Group)</b>	Amend to read:  <i>"(1) Prior to the commencement of the authorised development, <b>including any permitted preliminary works</b>, the undertaker must submit to the relevant planning authority for approval the terms of reference for a community liaison group in relation to the construction of the authorised development.</i>  <i>(2) The community liaison group must be established prior to commencement of the authorised development, <b>including any permitted preliminary works</b>, and must..."</i>	Given the potential for permitted preliminary works to be widespread, it is considered the community liaison group should be functioning prior to the commencement of those works.



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<p><b>Requirement 6</b> (Detailed design approval)</p>	<p>Amend to read:</p> <p>(1) “(1) ... <del>have been submitted to and approved in writing</del> <b>by the relevant planning Authority ...</b>”</p> <p>(2) “(6) <i>The Battery and Energy Storage System works <del>is</del> <b>authorised by</b> either Work No. 2 or Work No. 3 <b>must not be commenced</b> until written notification ...</i></p> <p>(3) “<i>The permitted preliminary works must be <del>carried out</del> <b>implemented</b> in accordance with the provisions of the permitted preliminary works environmental management plan.</i>”</p>	<p>(1) The wording is not necessary given Requirement 3 which confirms the need for written approval.</p> <p>(2) In the interests of precision.</p> <p>(3) To be consistent with phraseology used in other parts of this requirement and the other requirements in general.</p>
<p><b>Requirement 7</b> (Battery safety management)</p>	<p>Amend to read:</p> <p>“(1) <i>Work No. 2 or Work No. 3 <b>must not be commenced</b> until ...</i></p> <p>(5) <i>The battery safety management plan must be implemented as approved <b>throughout the operation of Work No. 2 or Work No. 3</b></i>”</p>	<p>In the interests of precision and enforceability.</p>
<p><b>Requirement 9</b> (Fencing and other means of enclosure)</p>	<p>Amend to read:</p>	<p>In the interests of precision, including enabling an individual construction site's temporary fencing to be removed once the use of a site ceases.</p>



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	<p><del>“(4) Any</del> <b>All construction sites</b> must remain securely fenced in accordance with the approved details under sub-paragraph (1) at all times <del>during</del> <b>when they are being used for the purposes of constructing</b> <del>the construction of</del> the authorised development.</p> <p>(6) Any permanent fencing, walls or other means of enclosure for that part approved under sub-paragraph (2) must be completed prior to the date of final commissioning <b>for that part of the authorised development.</b></p> <p>(7) Any permanent fencing, walls or other means of enclosure must be <del>properly</del> <b>retained and maintained</b> for the operational lifetime of the part of the authorised development to which it relates.”</p>	
<p><b>Requirement 10</b> (Surface and foul water drainage)</p>	<p>1) Amend sub-paragraph (1) to read:</p> <p><i>“No part of the authorised development is to be commenced until written details of the surface water drainage scheme and (if any) foul water drainage system have been submitted to and approved by <del>the lead local flood authority and the</del> relevant planning authority ...”</i></p>	<p>1) The reference to lead local flood authority appears to be unnecessary duplication because the discharging authority for the purposes of Requirement 10 would be Lincolnshire County Council, which is also the lead local flood authority for the area according to the submitted Flood Risk Assessment [paragraph 1.8.1 in REP3-012].</p>



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	<p>2) Amend sub-paragraph (3) to read:</p> <p><i>“Any scheme approved under sub-paragraph (1) must be implemented as approved <b>for the duration of the authorised development.</b>”</i></p>	<p>2) In the interests of precision and enforceability.</p>
<p><b>Requirement 11</b> (Archaeology)</p>	<p><i>“(1) ... (c) updates <del>are</del> <b>have been made</b> ...</i></p> <p><i>(2) The relevant part of the authorised development must be <del>carried out</del> <b>implemented</b> in accordance with the written scheme of investigation approved under sub-paragraph 1(c).”</i></p>	<p>To be consistent with the tense and/or phraseology used in the other parts of this requirement or other requirements in general.</p>
<p><b>Requirement 13</b> (Operational environmental management plan)</p>	<p>Amend Requirement 13 to read:</p> <p><i>“(1) Prior to the date of <b>the</b> final commissioning of the authorised development, an operational environmental management plan must be ...</i></p> <p><i>(3) The <del>operation of the</del> authorised development must be <del>carried out</del> <b>operated</b> and maintained in accordance with the approved operational environmental management plan.”</i></p>	<p>In the interests of precision.</p>



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<b>Requirement 14</b> (Construction Traffic Management Plan (CTMP))	Amend Requirement 14 to read:  <i>“(1) No part of the authorised development is to be commenced until a construction traffic management plan for that part has been submitted to and approved.</i>  <b>(a) Where the part of the authorised development would involve construction works affecting the local highway network, <del>by the</del> any construction traffic management plan shall be submitted to and approved by the relevant planning authority in consultation with National Highways.</b>  <b>(b) Where the part of the authorised development would involve construction works affecting the strategic highway network, any construction traffic management plan shall be submitted to and approved by National Highways in consultation with the relevant planning authority.</b>	While the ExA notes the applicant's view that National Highways should not be an approving authority for the CTMP, it considers there would be a potential for the deeming provisions to be triggered should Lincolnshire County Council fail to discharge any request for the approval under Requirement 14 within 10 weeks. A deemed approval could result in circumstances that would be prejudicial to National Highway's operation of the strategic highway network affected by the proposed development. In this regard the ExA is mindful that National Highways has been included as a discharging authority for the purposes of discharging part of Requirement 6 (CTMP) under the terms of the made DCO for the Viking CCS Carbon Dioxide Pipeline Order 2025.



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	<p>(2) <i>The construction traffic management plan <b>to be submitted under sub-paragraph (1)</b> must be substantially in accordance with the framework construction traffic management plan.</i></p> <p>(3) <i>The construction of any part of the authorised development must be <del>carried out</del> <b>implemented</b> in accordance with the approved construction traffic management plan for that part."</i></p> <p>Additionally, definitions for local highway network strategic road network will need to be added to paragraph 1 of Schedule 2 and National Highways will need to be added to Schedule 15 as necessary.</p>	
<b>Requirement 17</b> (permissive paths)	<p><i>"(1) ... relating to that part have been submitted to and approved <del>in writing</del> by the relevant planning authority in consultation with North Kesteven District Council...</i></p> <p>(2) <del>On</del> <b>No later than</b> the day following the date of final commissioning of the authorised development, <b>all of the permissive paths</b></p>	In sub-paragraph (1) the wording is not necessary given Requirement 3 which confirms the need for written approval. In sub-paragraph (2) the amendments are made to clarify the very latest date by which new or altered permissive paths must be available for use.



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	<i>approved under sub-paragraph (1) must be <del>made</del> open <del>to</del> <b>for use by</b> the public. ..."</i>	
<b>Requirement 18</b> (Public rights of way)	Amend new paragraph (4) to read:  <b>"(4) The replacement section for any public right of way to be permanently or temporarily closed as part of the authorised development must be made available for use prior to the permanent or temporary closure being implemented. Thereafter any:</b>  a) <b>permanent replacement section of a public right of way must be retained for the duration of the authorised development; and</b>  b) <b>temporary replacement section of a public right of way must be retained for the duration of the temporary closure of the affected public right of way."</b>	Text added because neither Requirement 18 nor the Framework Public Rights of Way Management Plan [REP3-026] make it clear that replacement sections for the public rights of way to be permanently or temporarily closed are to be made available prior to their permanent or temporary closure.
<b>Requirement 19</b> (Employment, skills and supply chain)	<i>"... (4) The employment, skills and supply chain plan approved under sub-paragraph (1) must be implemented as approved <b>throughout the</b></i>	In the interests of precision, to make it clear that the employment, skills and supply chain plan would be operative during all phases of the authorised



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	<b>construction, operation and decommissioning of authorised development.</b>	development, which would include repowering during the operational phase.
<b>Requirement 20</b> (Decommissioning)	<p>(1) <b>"The generation of electricity on a commercial basis must cease no later than 60 years from the date of final commissioning of the authorised development.</b> Decommissioning works must commence no later than 60 years following the date of final commissioning. ...</p> <p>(3) The decommissioning environmental management plan submitted and approved under subparagraph (2) must be substantially in accordance with the relevant part of the framework decommissioning environmental management plan <b>and must include a timetable for the completion of decommissioning.</b>"</p>	<p>The ExA notes the applicant's response to ExQ2 DCO.2.27 [REP3-045]. Nevertheless, the ExA considers the addition to sub-paragraph (1) to be necessary to ensure that operation of the proposed development would cease no later than 60 years. That would ensure there would be consistency with the assessments in the ES which, as the applicant has identified in response to ExQ2 DCO.2.27, have been conducted on the basis of an assumed period of 60 years following the date of final commissioning.</p> <p>The addition to paragraph (3) provides certainty that a timetable for decommissioning must be provided.</p>
<b>Schedule 6 (Streets and Public Rights of Way)</b>		
Parts 2, 3, 4 and 5	For every public right of way reference in Parts 2 to 5 <b>delete</b> "LL". Any plan showing public rights of way should similarly be amended.	In the interests of precision, having regard to the advice provided by Lincolnshire County Council in [REP3-049] relating to the definitive map naming convention used throughout Lincolnshire.



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<b>Schedule 14</b> <b>(Protective Provisions)</b>		
<b>Part 3</b> (Protection of Lincolnshire Fire and Rescue)	Within paragraph 17 (Interpretation) a definition for the "authorised development" or cross referencing to Article 2 and Schedule 1 is/are required, given the references to authorised development and "Work No. 2 and Work No. 3" in paragraphs 18 and 19.	In the interests of precision.
<b>Part 5</b> (Protection of National Highways)	<p>1) <b>Delete</b> either:</p> <ul style="list-style-type: none"> <li>• paragraph 37(3) "<i>References to any standards, manuals, contracts, Regulations and Directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.</i>"; <b>or</b></li> <li>• paragraph 40 "References to any standards, manuals, contracts, regulations and directives including to specific standards forming part of</li> </ul>	<p>1) Paragraphs 37(3) and 40 unnecessarily duplicate each other and the duplicated text only needs to be quoted once. Deleting paragraph 37(3) rather than paragraph 40 would avoid the need to renumber all of the subsequent paragraphs within Schedule 14.</p> <p>2) Unnecessary text that can be deleted.</p> <p>3) In the interests of precision.</p> <p>4) In the interests of precision.</p> <p>5) In the interests of precision, to make it clear which articles could not be exercised without National Highways' prior consent.</p>



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	<p>the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances."</p> <p>2) Paragraph 42(1)(c)(v) "...<i>Designing for walking, cycling and horse riding</i><del> and</del>"</p> <p>3) In paragraph 42(1)(f) "CV" needs to be defined (in paragraph 37 (Interpretation) or the long form quoted as this abbreviation is used only once.</p> <p>4) In paragraph 42(2) reverse the order for the cross referencing to articles 12 and 13.</p> <p>5) At the end of paragraph 42(2) separate item (r) from the remainder of the explanatory text to read:</p> <p><i>"... (r) over any part of the strategic road network or land in which National Highways has an interest</i></p> <p><i>without the consent of National Highways, and National Highways may in connection</i></p>	<p>6) The item header "(c)" to be deleted in the interest of precision, making clear what circumstances would need to arise prior to National Highways being able to issue a compliance notice.</p> <p>7) The item header "(e)" to be deleted in the interests of precision, making it clear what circumstances would need to arise prior to National Highways issuing of a provisional certificate.</p> <p>8) The item header (c) to be deleted in the interests of precision, making it clear what circumstances would need to arise prior to National Highways issuing of a final certificate.</p> <p>9) In the interests of precision.</p> <p>10) The item header (d) deleted in the interests of precision, making it clear that land rights powers relating to the strategic road network could not be exercised until National Highways has given its written consent.</p>



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	<p><i>with any such exercise require the undertaker to provide details of any proposed road space bookings and/or submit a scheme of traffic management for National Highways' approval."</i></p> <p>6) Amend paragraph 43(6) to read:</p> <p><i>"If any part of the specified works is constructed—</i></p> <p><del>(a)</del> <i>other than in accordance with the requirements of this Part of this Schedule; or</i></p> <p><del>(b)</del> <i>in a way that causes damage to the highway, highway structure or asset or any other land of National Highways</i></p> <p><del>(c)</del> <i>National Highways may by notice in writing require the undertaker, at the undertaker's own expense, to comply promptly with the requirements of this Part of this Schedule or remedy any damage notified to the undertaker under this Part of this Schedule, to the reasonable satisfaction of National Highways."</i></p>	



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	<p>7) Amend paragraph 45(4) to read:</p> <p><i>“When – .... (c) ...; and (d) the undertaker has paid the commuted sum to National Highways,</i></p> <p><del>(e)</del> <i>National Highways must issue the provisional certificate.”</i></p> <p>8) Amend paragraph 49(4) to read:</p> <p><i>“When National Highways is satisfied that: ...</i> <i>(b) the <del>the</del> <b>National</b> Highways costs have been paid to <del>National Highways</del> in full</i></p> <p><del>(e)</del> <i>National Highways must issue the final certificate after which the bond sum ... with the specified works.”</i></p> <p>9) Amend paragraph 54(3) to read:</p> <p><i>“The undertaker must comply with any requirements that National Highways may notify to the undertaker, such requirements to be notified to the undertaker not less than 7</i></p>	



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	<p><i>days' in advance of the planned commencement date of the maintenance works <b>of the specified works.</b></i></p> <p>10) Amend paragraph 55(3) to read:</p> <p><i>" ... (c) seek to impose or extinguish any restrictive covenants over;</i></p> <p><del>(d)</del> <i>any of the strategic road network, or extinguish any existing rights ..."</i></p>	
<p><b>Part 6</b> (Protection of Anglian Water Services Limited)</p>	<p>1) Amend paragraph 58 to read: "<i>(c) ... any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of <del>the</del> <b>the Water Industry Act 1991</b> or an agreement to adopt made under section 104 of that Act, ... and for the purpose of this definition, where words are defined by section 219 of <del>the</del> <b>Water Industry Act 1991</b>, they shall be taken to have the same meaning; ..."</i></p> <p>2) Paragraph 59 – the text within this paragraph needs to be amended to make it clear which of the 1991 Acts is being referred to.</p>	<p>1) In the interests of precision. The ExA presumes that the reference to "that Act" is to the Water Industry Act 1991 rather than any other piece of legislation.</p> <p>2) In the interests of precision. The ExA presumes that it is the New Roads and Street Works Act 1991 rather than the Water Industry Act 1991 that is being referred to. However, that is unclear from the current wording of paragraph 59 with only the former act being cited in Article 2 (Interpretation of the dDCO).</p>



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	<p>3) Amend paragraph 65(3) to read:</p> <p><i>“(a) apparatus of a better type, of a greater capacity ... <del>apparatus of a worse type, of a smaller capacity ...</del></i></p> <p><i>(b) apparatus (whether existing ... is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 43 (arbitration) to be necessary,</i></p> <p><i>then, if such placing involves cost in the construction of works under this Part of this Schedule ...”</i></p>	<p>3) In the interests of precision, the text within paragraph 65(3)(b) needs breaking up to separate the triggers (actions) in (a) and (b) from the text explaining the response.</p>
<p><b>Part 7</b> (Protection of National Grid Electricity Distribution (East Midlands) PLC)</p>	<p>1) Amend paragraph 77 (Removal of apparatus) to read as follows:</p> <p><i>“(4) If as a direct consequence of the removal or diversion of apparatus under sub-paragraphs (2) or (3) alternative apparatus is to be constructed in land owned or controlled by the undertaker then the undertaker must afford to NGED the necessary facilities, alternative rights and any necessary third party consent or approvals for the construction ...”</i></p>	<p>1) In the interests of precision.</p> <p>2) In the interests of precision.</p>



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	<p><del>“(5) If the undertaker or NGED requires to remove or divert</del> <b>require the diversion or removal of any apparatus placed within the Order land and alternative apparatus is to be constructed ...”</b></p> <p>2) Amend the wording of paragraph 80 (Expenses and costs) as follows:</p> <p><i>“... (3) If in accordance with the provisions of this Part of this Schedule NGED requires that alternative apparatus of a better type, of a greater capacity, of greater dimensions or at a greater depth is necessary in substitution for existing apparatus ...”</i></p> <p><i>”(4) ... (a) an extension of apparatus to a length greater than the length of <b>the</b> existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and ...”</i></p>	
<b>Part 8</b> (Protection of National Grid Electricity Transmission Plc)	<p>1) Amend paragraph 88 (On street apparatus) to read:</p> <p><i>“... and 95 (Indemnity) <b>of this Part</b> of this Schedule ...”</i></p>	<p>1) In the interests of precision.</p> <p>2) In the interests of precision.</p> <p>3) In the interests of precision.</p>



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	<p>2) Amend paragraph 90(2) to read: "...<i>the undertaker <del>must</del> <b>must</b> not unless otherwise agreed in writing ...</i>"</p> <p>3) Amend paragraph 91 to read:</p> <p><i>"(1) ... and is in operation to the reasonable satisfaction of National Grid Electricity Transmission Plc in accordance with sub-paragraphs (2) to (5)."</i></p> <p>4) Within paragraph 93 (Retained apparatus: protection) the terms "<i>rise of earth</i>" and "<i>earth rise</i>" have each been used once, however, neither of those terms have been defined in either paragraph 93 or any other paragraph within Part 8 of Schedule 14. Definitions for rise of earth and/or earth rise need to be included in Part 8 of Schedule 14.</p> <p>5) With respect to paragraph 93 sub-paragraph (4) ends abruptly, while sub-paragraph (5), has text just stating "<i>plan so submitted</i>". It appears that the text included in sub-paragraph (5) relates to sub-paragraph (4)</p>	<p>4) In the interests of precision.</p> <p>5) In the interests of precision.</p> <p>6) In the interests of precision.</p> <p>7) In the interests of precision.</p>



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	<p>and that those sub-paragraphs should be combined.</p> <p>The drafting of sub-paragraphs (4) and (5):</p> <ul style="list-style-type: none"><li>• require review; and</li><li>• if those paragraphs are combined then the following sub-paragraphs within paragraph 93 will need to be renumbered and crossing referencing of sub-paragraphs will also need to be checked and updated, including the accuracy of the cross referencing to sub-paragraph (8) within the sub-paragraph currently so numbered.</li></ul> <p>6) Amend paragraph 94(3)(a) to read:</p> <p><i>“apparatus of a better type, of a greater capacity or of greater dimensions is placed in substitution for existing apparatus of a worse type, of a smaller capacity or of smaller dimensions; or”</i></p> <p>7) With respect to paragraph 95 (Indemnity):</p>	



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	<p>a) In sub-paragraph (3) it is stated “... <del>(unless sub-paragraph (3) applies)</del> ...” The reference to sub-paragraph (3) appears to be an ‘internal’ reference to the same sub-paragraph and either the text needs to be amended to “<b>(unless this sub-paragraph applies)</b>” or another sub-paragraph number should be cited.</p> <p>b) Amend sub-paragraph (8) to read:  “<b>The undertaker shall not commence construction ...</b>”</p>	
<b>Part 9</b> (Protection for Prax)	Further to the ExA's issuing of <a href="#">[PD-019]</a> , which amongst other things, requires the applicant and Prax to have jointly submitted a set of protective provisions highlighting areas of agreement and disagreement (appended to their statement of common ground) no later than Deadline 5, the ExA considers it would be inappropriate for it to comment on the set of protective provisions in favour of Prax included in the extant version of the dDCO [REP3A-004].  The ExA will issue any comments it may have and/or seek further information relating to the intended protective provisions in favour of Prax once the parties have made their joint submission at Deadline 5.	



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<p><b>Schedule 15</b> (Procedure for discharge of requirements)</p>		
<p><b>Paragraph 2</b> (Applications made under requirement)</p>	<p>1) Amend sub-paragraph (1) to read:</p> <p>“Where an application ... ten weeks beginning with the latter of-</p> <p>(a) the <b>working</b> day immediately following <del>that</del> <b>the day</b> on which the application is received ...</p> <p>(b) the <b>working</b> day immediately following <del>that</del> <b>the day</b> on which the further information has been supplied ...”</p> <p>2) Amend sub-paragraph (5) to read:</p> <p><i>“Where an application has been made to the relevant planning authority for any discharge, the undertaker <del>will</del> <b>must</b> also submit a copy of that application to any requirement consultee. <del>and the requirement consultee will be given no less than 15 working days in</del></i></p>	<p>1) In the interests of precision.</p> <p>2) In the interests of precision, with the matter covered by the deleted text being addressed by the amendments made to sub-paragraph 3(3) (see below).</p>



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	<p><del>which to respond to the relevant planning authority."</del></p>	
<p><b>Paragraph 3</b> (Further information and consultation)</p>	<p>1) Amend sub-paragraph (2) to read:</p> <p><i>"... within 20 working day of <b>the</b> receipt of the application"</i></p> <p>2) Amend sub-paragraph (3) to read:</p> <p><i>"If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant planning authority must <del>issue the consultation to</del> <b>notify</b> the requirement consultee within 10 working days of <b>the</b> receipt of the application <b>that an application has been received. Thereafter the requirement consultee has 15 working days from the receipt of the notification in which to submit any representations relating to the application to the relevant planning authority.</b> <del>and</del> <b>The relevant planning authority must notify the undertaker in writing specifying any further</b></i></p>	<p>1) In the interests of precision.</p> <p>2) In the interests of precision.</p>



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	<p><i>information the relevant planning authority considers necessary <del>of that is</del> <b>has been</b> requested by the requirement consultee within 10 working days of <b>the</b> receipt of such a request from the requirement consultee <del>and</del> <b>or</b> in any event within 25 working days of <b>the</b> receipt of the application (or such other period as is agreed in writing between the undertaker and the relevant planning authority)."</i></p>	
<p><b>Paragraph 4</b> (Appeals)</p>	<p>1) Amend sub-paragraph (2) to read:</p> <p><i>"(a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or the determination, or (where no determination has been made) the expiry of the time period set out in paragraph 2(1)(a), giving rise to the appeal referred to in sub-paragraph (1)."</i></p> <p>2) Amend sub-paragraph (3) to read:</p> <p><i>"In the event that the appointed person considers that further information is necessary to <del>enable</del> <b>determine</b> the</i></p>	<p>1) In the interests of precision.</p> <p>2) In the interests of precision.</p> <p>3) In the interests of precision.</p> <p>4) The ExA notes the applicant's response to the first written question DCO.1.26(b) in [REP2-029]. However, the ExA considers a provision enabling the relevant planning authority to confirm any approval granted by the appointed person in identical form in writing would serve no meaningful purpose and would therefore be unnecessary. That is because: under paragraph 4(8) it is clearly stated that a decision given by the appointed</p>



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	<p><del>appointed person to consider the appeal, they</del> <b>the appointed person must within 10</b> <del>working days of the appointed person's their</del> <del>appointment,</del> <b>notify the appeal parties in</b> <del>writing specifying the further information</del> <del>required."</del></p> <p>3) Amend sub-paragraph (4) to read:</p> <p><i>"... The revised timetable for the appeal must <del>require</del> <b>provide the opportunity for the</b> submission of written representations <del>on</del> <b>to</b> the appointed person within 10 working days of the specified date, but otherwise the process and time limits set out in sub-paragraphs (2)(d) to (2)(f) of <del>sub-paragraph (2)</del> <b>2</b> apply."</i></p> <p>4) Amend sub-paragraph (9) to read:</p> <p><i>"If an approval is given by the appointed person pursuant to this Schedule, it is to be deemed to be an approval for the purpose of Schedule 2 (requirements) as if it had been given by the relevant planning authority. <del>The relevant planning authority may confirm any</del></i></p>	<p>person on appeal would be final and binding, a situation comparable with a planning permission being allowed on appeal under the provisions of the Town and Country Planning Act 1990 (as amended); and the first sentence in paragraph 4(9) explains the appointed person's approval would be deemed to be an approval for the purposes of Schedule 2 (Requirements) of any made DCO for the proposed development.</p>



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	<del>determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.</del>	