



Pearmtree Hill Solar Farm

Summary of Applicant's Oral Submissions at the Issue Specific Hearing 1 (ISH1)

Application Document Ref: EN010157/APP/8.19

October 2025

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1 Introduction

1.1 Background

- 1.1.1 This document summarises the oral submissions made on behalf of RWE Renewables UK Solar and Storage Limited (the **Applicant**) at the ISH1 on 21 October 2025 in relation to the Applicant's application for development consent for the Peartree Hill Solar Farm (the **Proposed Development**).
- 1.1.2 This document does not purport to summarise the oral submissions made by other parties at the ISH1 and references to submissions made by other parties are only included to give context to the Applicant's submissions in response. Where the comment is a post-hearing comment submitted by the Applicant, this is indicated.
- 1.1.3 This document uses the headings for each item in the agenda published for ISH1 by the Examining Authority on 13 October 2025 [**EV4-001**].

1.2 Agenda item 1 – Welcome, introductions and arrangements for the hearing

- 1.2.1 The Applicant was represented at ISH1 by Mustafa Latif-Aramesh, TLT LLP, Partner and Parliamentary Agent (**MLA**). The following persons were also introduced to the Examining Authority (**ExA**):
 - 1.2.1.1. Ben Twiss, Associate Director (EIA) at RWE (**BT**).
 - 1.2.1.2. Laura Tinker, Associate Director at DWD (**LT**).

1.3 Agenda item 2 – Articles and schedules (including requirements) of the draft DCO

The applicant will be asked to provide a brief overview of each part of the draft DCO (10-15 minutes).

- 1.3.1 The Applicant noted that, as a starting point, the **Explanatory Memorandum [REP2-064]** gives an explanation and justification in respect of each article. MLA confirmed that the **draft DCO [REP3-005]** has also been drafted having regard to guidance, including the Planning Inspectorate's Advice Note Fifteen: drafting Development Consent Orders, as well as precedent established in other made DCOs.

- 1.3.2 MLA explained that the **draft DCO [REP3-005]** includes 52 articles across six parts. There are also 14 schedules which are brought into effect by, or relate to, an article.
- 1.3.3 Part 1 Preliminary): sets out the definitions used in the **draft DCO [REP3-005]**.
- 1.3.4 Part 2 (Principal Powers): includes:
 - 1.3.4.1. Article 3 which grants development consent for the authorised development to be carried out subject to provisions of the **draft DCO [REP3-005]**, including the Requirements. This part also includes a number of provisions operation and maintenance of the authorised development.
 - 1.3.4.2. Article 10 which provides a defence to statutory nuisance. Article 10 intends to provide clarity (and specificity) to the available defence, to ensure that the undertaker can defend any statutory nuisance claim relating to noise if it is a consequence of the construction, operation/maintenance, decommissioning of the authorised development and it either
 - (a) cannot reasonably be avoided; or
 - (b) it is in accordance with a notice provided by the local planning authority or a consent to works under the Control of Pollution Act 1974.
- 1.3.5 Part 3 (Streets) – includes:
 - 1.3.5.1. powers relating to street works necessary for the authorised development including: carrying out works in streets under article 11;
 - 1.3.5.2. altering the layout of streets under article 13 which gives effect to Schedule 4 containing the streets and the proposed alterations;
 - 1.3.5.3. temporarily prohibiting or restricting the use of streets and public rights of way under article 15, giving effect to Schedule 5 where the streets and public rights of ways proposed to be restricted or temporarily closed are set out;
 - 1.3.5.4. forming new or improving existing means of access to works under article 16 with the proposed access ways set out in Schedule 6; and
 - 1.3.5.5. traffic regulation measures in article 18 giving effect to Schedule 7 which sets out the extent of the measures.
- 1.3.6 Part 4 (Supplemental powers) – includes three supplemental powers including:

- 1.3.6.1. protective works to buildings (article 20); and
- 1.3.6.2. the authority to survey and investigate land in connection with the authorised development (article 21).
- 1.3.7 Part 5 (Powers of acquisition) - these are required for the authorised development and include powers to compulsorily acquire land or rights in land in articles 22-25, with article 25 giving effect to Schedules 8 and 9, extinguish existing rights over land in articles 26 and 27 and take temporary possession of land (articles 33 and 34 with article 33 giving effect to Schedule 10). These articles relate only to the Order land, as shown on the **Land Plans [REP3-004]** which identify the type of acquisition sought.
- 1.3.8 Part 6 contains various miscellaneous and general provisions.
 - 1.3.8.1. These articles largely to give effect to the remaining schedules.
 - 1.3.8.2. Articles 44 and 45 cover the felling or lopping of trees and hedgerows in relation to the authorised development and the effect of trees subject to Tree Preservation Orders, with related Schedule 13 (hedgerows to be removed).
- 1.3.9 Each schedule identifies its operative article in the draft DCO **[REP3-005]**, in the top right of the schedule.
 - 1.3.9.1. Schedule 1 – sets out the works comprising the authorised development.
 - (a) Work No. 1 – is the Nationally Significant Infrastructure Project (the **NSIP**).
 - (b) Works Nos. 2 to 9 are associated development.
 - 1.3.9.2. Schedule 2 – sets out the Requirements which are controls akin to planning conditions found in planning permissions under the Town and Country Planning Act 1990.
 - (a) Requirement 2 - secures that the **draft DCO [REP3-005]** grants a time limited consent – 5 years from the Order coming into force.
 - (b) Requirement 3 - requires detailed design approval.
 - (c) Requirements 4-15 - set out provisions dealing with the approval and implementation of management plans. We will be returning to this issue in a later agenda item.
 - (d) Paragraphs 14-17 and the paragraphs set out in Part 2– set out various procedure provisions for the approval of documents under the Requirements and discharge of the Requirements

The applicant will be asked to briefly highlight key changes which have been made to the draft DCO since the original submission version.

1.3.10 MLA explained that the key changes were:

1.3.10.1. Deletion of what was Article 7 (limits of deviation) as it was considered duplicative of requirement 3.

1.3.10.2. The addition to various requirements of bodies to be consulted in response to relevant representations. To make sure they are consulted in relation to discharge of requirements.

1.3.10.3. Various amendments to Schedule 3 (local legislation) to narrow the scope of this schedule following a review by the Applicant, as discussed further under a later agenda point.

1.3.10.4. Various changes to give effect to the Change Requests.

1.3.10.5. Amendments to Schedule 8 and 10 to address inconsistencies between the **Land Plans [REP3-004]** and **Book of Reference [REP3-009]**.

The applicant will be asked to briefly explain how the draft DCO secures mitigation.

1.3.11 MLA confirmed that, in general, the Applicant has followed the approach of identifying relevant impacts as part of its environmental and traffic assessments and then sought to secure each a commitment under a relevant draft DCO Requirement contained in Schedule 2 **[REP3-005]**. The overall framework is to include those commitments in outline management documents, and in turn require a post-DCO approval of the final management document which reflects the outline document.

1.3.12 The consent which is sought was for a preliminary scheme design and not a detailed design. To ensure that the Applicant is not constrained in delivering the Proposed Development in an environmentally sensitive and cost-effective way, there is a need for a proportionate degree of flexibility, which the Applicant had sought to reflect in Schedule 2 to the **draft DCO [REP3-005]**.

1.3.13 MLA confirmed that, as well as securing the management plans and documents through Schedule 2 to the **draft DCO [REP3-005]**, the Applicant had baked in further consultation with relevant stakeholders in relation to those plans and documents. For example, as previously touched upon, requirements 4, 5, 8 and 9 Schedule 2 to the **draft DCO [REP3-005]** which, in a number of cases, provide for consultation with relevant stakeholders prior to the submission of a plan or document for the approval of the Secretary of State.

- 1.3.14 MLA also noted that, in a number of instances, the outline plans and documents themselves provided for the creation of working groups and forums during the construction and operational phases of the Proposed Development, where other parties would be able to participate and make their views known as the Proposed Development developed. For example, the Community Liaison Group referred to in the **Outline Construction Environmental Management Plan (CEMP) [REP3-026]** or the Traffic Management Working Group referred to in the **Outline Construction Traffic Management Plan (CTMP) [REP3-034]**.
- 1.3.15 More particularly, there are management plans secured in the requirements in Schedule 2 to the **draft DCO [REP3-005]**. In addition, there are a number of parameters secured under Schedule 2. For example, the **Design Parameters Document [REP3-018]** is a control document, which is secured by Requirement 3 of the **draft DCO [REP3-005]** and is common in solar DCOs. Under Requirement 3, the detailed design of the Proposed Development must accord with the Design Parameters Document. This is to ensure that those parameters were properly secured and considered at the start of the detailed design process itself.
- 1.3.16 MLA noted that paragraph 19 of Schedule 2 to the **draft DCO [REP3-005]** sets out that, where consultation was required under a particular requirement in Schedule 2, due consideration would be given to any responses to that consultation; and the Applicant would, in its application to the local planning authority for approval, need to include copies of any representations made about the proposed application and provide account of how those representations had been taken into account as part of the submission made to the local planning authority.
- 1.3.17 MLA confirmed to the ExA that these changes to the **draft DCO [REP3-005]** arose from a combination of consultation with interested parties and suggestions raised from the ExA via their questions.

The ExA will then ask questions in respect of articles, schedules and requirements of the dDCO, seeking responses where appropriate from the applicant and interested parties (IPs). This will include, but may not be limited to, questions in respect of the following:

Articles 3 and 5 – matters around excluding the phrase ‘within the Order limits’ (and associated consideration of articles 20 and 21 and the Article 2 definition of “authorised development” in this regard and how these reflect the wording other made solar DCOs).

- 1.3.18 In response to queries raised by the ExA on the need to exclude the phrase ‘within the Order limits’ in these articles, MLA made the following submissions:

- 1.3.19 The definition of “authorised development” provided in article 2 does not just reference the works included at Schedule 1 of the **draft DCO [REP3-005]**. It also refers to related activities as it sets out that: “*authorised development means...and other development authorised by this Order*”. Therefore, the starting point is that this definition relates to land within and outside of the Order Limits.
- 1.3.20 MLA noted that there are limited activities which the Applicant envisions may need to take place outside of the Order limits and this is provided for in the Order (namely, in articles 20, 21 and 44).
- 1.3.21 The ExA queried why it might be necessary to do protective works outside the Order limits. MLA explained that this could arise in an emergency, for example, during construction a solar panel could fall from a delivery vehicle. This power would permit the Applicant to enter the land where the panel had fallen, retrieve the panel and repair any damage caused. If the phrase “within the Order limits” was included then on strict application of the article, the Applicant would be confined in what they could do to remedy this situation.
- 1.3.22 The ExA then queried why it might be necessary to carry out surveys outside the Order limits. MLA explained that there are scenarios where ecological features and landscapes slightly traverse the Order limits.
- 1.3.23 The ExA raised the lack of precedent for this drafting. MLA acknowledged that the approach is not preceded in other made solar DCOs however, the Applicant notes that the Secretary of State has expressly endorsed the removal of “within the Order limits” in the A303 Amesbury to Berwick Down Correct Order stating: “*in recognition that the Order provides powers to carry out limited activities beyond the Order limits*”. The Applicant notes that the A303 Order was then quashed (for reasons unrelated to this amendment) and the made A303 Order was re-made with the amendment without the need for a correct, demonstrating the clear sense in its inclusion.
- 1.3.24 MLA explained that the reason for the drafting is to be upfront and clear. The Applicant wants to make sure there is no dispute about the effect of the provisions. The Applicant wants to be consistent with the principle and be clear that the Order would authorise development outside the Order limits. Whilst other DCOs include the phrase, there is a potential for a dispute to arise notwithstanding the clear terms of those Orders authorising activities outside of the Order limits.
- 1.3.25 The ExA questioned whether surveying land and protective works would fall under the definition of “development” as per the interpretation of the Town and Country Planning Act 1990.
- 1.3.26 MLA explained that this would be determined on a case-by-case basis. He explained that it is likely that a walkover survey would not be considered

development but if boreholes were dug or samples collected then that could fall within the definition. MLA noted that it is likely that protective works would constitute as development under the definition.

Part 3 and associated articles – matters around East Riding of Yorkshire Council's (ERYC) concerns at paragraphs 7.110 to 7.112 of its local impact report (should ERYC's concerns remain).

- 1.3.27 The ExA addressed this agenda item to the ERYC. ERYC raised their concerns that the 12-month period of maintenance proposed by the Applicant ahead of the transfer of responsibility back to the street authority was too short a time period. They noted that some highway works may take longer than 12 months to complete, and suggested this period be extended.
- 1.3.28 MLA explained that the 12 month period of maintenance would only begin, as per Article 14 of the **draft DCO [REP3-005]**, once the relevant highway works are “completed to the reasonable satisfaction of the street authority”. There is therefore a safeguard that streets would be transferred back to the street authority’s responsibility in an unsuitable condition.
- 1.3.29 ERYC acknowledged there had been a misunderstanding in relation to this mechanism and noted they considered this position reasonable in principle but would need to confirm with their highway specialist.
- 1.3.30 **Action 1:** Article 14(1) – further to the applicant’s clarification in ISH1 regarding maintenance, liaise around the acceptability of a 12-month period and provide your views on the matter.
- 1.3.31 **Post-hearing note:** The Applicant has contacted EYRC via email on 29 October 2025 confirming the Applicant’s position. EYRC responded stating that their position is that the maintenance period should commence following the completion of all construction works. The Applicant does not agree, given the works are carried out based on the assessed impact, that a protraction of the maintenance period is required. The Applicant notes that this would introduce an inappropriate liability on the Proposed Development, and would lead to a situation in which other solar developments would be advantaged. In this context, the Applicant notes that this is a highly precedented article with a 12-month period contained in the following recently made solar DCOs: The Byers Gill Solar Order 2025 (article 12), The East Yorkshire Solar Farm Order 2025 (article 10), The West Burton Solar Project Order 2025 (article 10), The Heckington Fen Solar Park Order 2025 (article 10). Whilst each dDCO must be justified on its own terms, the Applicant nonetheless considers that circumstances of this project are no different from those established precedents.

Article 31 – clarification of the need for this article and whether correct use of a comma in 31(1).

- 1.3.32 MLA clarified that the purpose of the provision is not to just carry out works for an undertaker but to ensure that interests and rights in land which are intended to benefit a third party, will vest in that third party instead of the Applicant, which would otherwise be the acquiring authority in respect of those interests and rights.
- 1.3.33 For example, Works No. 4A, 4B and 6 which relates to assets held by Northern Powergrid. Whilst it is possible to transfer the ability to carry out the works, in the event that the Applicant carried out these works, it would then need to provide Northern Powergrid with the rights necessary to operate and maintain those assets.
- 1.3.34 Without these provisions, transferring land to the third parties could be delayed and time-consuming, requirement acquisition of the land and rights by the Applicant, registering them at the Land Registry and then transferring the land to the relevant third party and further registration at the Land Registry. These are unnecessary processes which can be avoided via the provisions in this article and allowing statutory undertakers (**SUs**) uninterrupted access to their assets.
- 1.3.35 The ExA acknowledged that this drafting would increase the efficiency of the process but queried whether Article 1 and Article 25 of the **draft DCO [REP3-005]** could achieve the same outcome. MLA noted that the **draft DCO [REP3-005]** does not provide an explicit amendment to Compulsory Purchase (Vesting Declarations) Act 1981. He emphasised that the proposed drafting was intended to address lessons learnt from the implementation of previously made orders. MLA noted that there is not solar precedent for this drafting, but it is preceded in article 32 of the Lower Thames Crossing Development Consent Order, which is not just a highways order but included four utility NSIPs and therefore faced the same issues with transferring rights to undertakers that the Applicant will face.
- 1.3.36 MLA agreed that the comma needed to be corrected in the drafting of article 31(1).
- 1.3.37 **Action 2:** Article 31(1) – correct as necessary by removing comma/ amending wording.
- 1.3.38 **Post-hearing note:** To deal with the issue of the comma, the Applicant has inserted the word “and” after the comma. This change has been made to the version of the draft DCO submitted at Deadline 4 **[EN010157/APP/3.1 Revision 8]**.

Article 33 – clarification of the term ‘carrying out’.

- 1.3.39 MLA clarified that the term ‘carrying out’ is a reference to execution and therefore relates to construction and not operation. It is taken from terminology used in the Town and Country Planning Act 1990.

- 1.3.40 The ExA queried whether this power was intended to be restricted by article 33(4) of the **draft DCO [REP3-005]**. MLA agreed with the ExA that once the development's commissioned, which is when it starts producing electricity, the Applicant could only take temporary possession for a year beyond that. MLA clarified that there is a more explicit time limit at article 24(2) in relation to temporary possession under article 33

Article 37 – clarification of need for this article.

- 1.3.41 Together, the article and the Schedule 11, make provision for the Applicant to act on behalf of SUs in acquiring wayleaves, easements or other rights for the diversion or relocation of electricity, gas, water, sewerage or telecommunication apparatus. Experience has shown that SUs can be reluctant to exercise their own powers to acquire easements or wayleaves even where this would facilitate the undertaker's delivery of a project, due to the time, expense and compensation involved.
- 1.3.42 For context, under the protective provisions being negotiated with a number of SUs, as well as under the protective provisions under Part 1 of Schedule 12, there is a requirement that the Applicant must “afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus” (paragraph 6(2) of Sch 14).
- 1.3.43 MLA explained that the purpose of this article would provide an option which may be useful in some circumstances to both the undertaker and the relevant SU and may only be exercised where the relevant SU gives their consent to the undertaker. It would facilitate the timely and efficient implementation of the authorised development, and the diversion or relocation of utilities where required, both of which are in the public interest.
- 1.3.44 The drafting itself draws upon the drafting of equivalent powers which benefit electricity, gas, water, sewerage and telecoms undertakers under the Electricity Act 1989, the Gas Act 1986, the Water Industry Act 1991 and the Communications Act 2003. These existing statutory powers have been adapted only insofar as necessary to enable the undertaker to act on behalf of such SUs in seeking wayleaves through a compulsory process should they be needed in future. This ensures that any further acquisition is subject to the existing processes for a Compulsory Purchase Order but allows the undertaker to step into the shoes of the SU (with their consent) so that the Applicant can take it to completion. Save for the fact that all consideration or compensation due to landowners is required to be payable by the undertaker (rather than the relevant SU), the processes involved are otherwise unchanged and continue to reflect the statutory requirements.
- 1.3.45 In response to queries from the ExA, MLA confirmed that the inclusion of this schedule was becoming more common amongst applications currently in the system

- 1.3.46 **Post-hearing note: The Applicant can confirm that an equivalent schedule has been included at Schedule 10 of the recently made Tillbridge Solar Order 2025.**

Article 43 – clarification of need for this article.

- 1.3.47 MLA explained that the rationale for this provision arises from the Supreme Court's case in Hillside Parks. That case determined that where there was an overlap in planning permissions, then it is unlawful to carry out development under the second permission where the development permitted by the first permission would make it physically impossible to carry out development under the second permission.
- 1.3.48 In effect, there is a risk that where you have a parcel of land with overlapping planning permissions, that one of the permissions is incapable of being implemented, or enforcement action may be taken if it has been implemented or will be implemented. The fundamental reason for these provisions is to ensure that there's no risk of enforcement action arising as a result of the works authorised under the DCO being carried out.
- 1.3.49 MLA confirmed that sub-paragraph 1 of this Article relates to planning permissions issued that relate to the Proposed Development. Whereas sub-paragraph 2 and 3 relate to general planning permissions issued.
- 1.3.50 MLA added there was specific need for this article and explained that, by way of a practical example, there are a number of overlapping planning permissions near Creyke Beck and the Applicant does not wish there to be a risk of enforcement action. MLA added that, for reasons to be discussed in detail at the Compulsory Acquisition Hearing 1, there is also an overlap with the Field House Farm planning permission and this provision ensures no enforcement action is taken.
- 1.3.51 MLA set out the well-established precedent for this article. Precedent for article 43 paragraph (1) is found in article 7 of the M5 Junction 10 Development Consent Order 2025, article 8 of the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024, article 8 of the North Lincolnshire Green Energy Park Order 2025 and article 10(1) of the National Grid (Bramford to Twinstead Reinforcement) Order 2024.
- 1.3.52 The drafting of paragraph (2) of article 43 is substantially similar to article 10(2) of the Bramford to Twinstead Reinforcement Order 2024, article 45(3) of the London Luton Airport Expansion Development Consent Order 2025, and article 56(3) of the A122 (Lower Thames Crossing) Development Consent Order 2025. Paragraph (2) reflects the terminology used by the Supreme Court in the *Hillside* decision and confirms that planning permissions which conflict with the authorised development can proceed without the risk of enforcement action being taken notwithstanding any incompatibility between the authorised development and the development authorised under a planning permission.

1.3.53 The drafting of paragraph (3) of article 43 is based on article 10(3) of the Bramford to Twinstead Reinforcement Order 2024 and article 56(4) of the Lower Thames Crossing Development Consent Order 2025

1.3.54 **Article 44 – clarification of linkage between 44(4) and 44(2).**

1.3.55 MLA explained that the thinking behind this drafting is that a hedgerow is a line of trees/shrubs, but confirmed that the Applicant would be happy to amend this drafting for clarity if requested by the ExA.

1.3.56 Action 3: Article 44 – amend to provide clarification of linkage between 44(4) and 44(2).

1.3.57 **Post-hearing note:** Article 44(2) has been amended to make reference to paragraphs (4) and (5) and the updated draft DCO **[EN010157/APP/3.1 Revision 8]** will be submitted at Deadline 4.

Schedule 1, Work No.1 – whether this should cite ‘1B to 1F’ rather than ‘1B and 1F (further to ExQ2.2.12).

1.3.58 MLA confirmed that the Applicant agreed with the suggested amendment.

1.3.59 **Action 4:** Schedule 1, Work No.1 – amend the words ‘1B and 1F’ to ‘1B to 1F’

1.3.60 **Post-hearing note:** This change has been made to the version of the draft DCO submitted at Deadline 4 **[EN010157/APP/3.1 Revision 8]**.

Schedule 2, Part 1, requirements 4(1) and 8(1) – whether to amend ‘their’ to ‘its’ given singular bodies.

1.3.61 MLA confirmed that the Applicant agreed with the suggested amendment to requirement 4(1). It was agreed that an amendment to requirement 8(1) was not needed.

1.3.62 **Action 5:** Schedule 2, Part 1, requirement 4(1) – amend the word ‘their’ to ‘its’

1.3.63 **Post-hearing note:** This change has been made to the version of the draft DCO submitted at Deadline 4 **[EN010157/APP/3.1 Revision 8]**.

Schedule 2, Part 1, requirement 12(2) – whether the words ‘and maintained throughout the operation of the authorised development’ should be added.

1.3.64 MLA confirmed that the Applicant agreed to amend this. However, for clarity, the Applicant proposes to amend the suggested wording so that it states ‘and maintained for the period specified in that assessment’.

1.3.65 **Action 6:** Schedule 2, Part 1, requirement 12(2) - to include wording to the effect of ‘and shall be maintained throughout the operation of the authorised development for the duration of the relevant assessment period.’

1.3.66 **Post-hearing note:** This change has been made to the version of the draft DCO submitted at Deadline 4 [EN010157/APP/3.1 Revision 8].

Schedule 2, Part 1, requirement 15 – consideration of ExQ2.2.10b and the applicant’s response and subsequent update to the outline Operational Environmental Management Plan.

1.3.67 MLA explained that the Applicant amended the **Outline Operational Environmental Management Plan [REP3-030]** to include a process where an extended operational outage occurs and to require decommissioning in the specified circumstances. MLA noted that this is a prescriptive process and sets out what happens in various scenarios. He noted that the approach aligns with that in the Heckington Fen Solar Park Order 2025.

1.3.68 ERYC confirmed that it seemed this update addressed their concerns but noted they would need to confirm this in writing.

1.3.69 **Action 7 (for ERYC):** Schedule 2, Part 1, requirement 15 – confirm whether satisfied with the addition of Part 8 of the outline Operational Environmental Management Plan [REP3-030/ REP3-031] to alleviate concerns in respect of potential decommissioning timings.

Schedule 2, Part 1, requirement 17(3) – whether reasonable/ appropriate to make provision for amendments to certified documents and implications for any made DCO.

1.3.70 MLA clarified that the references to certified documents would be interpreted to mean the latest iteration of the document. MLA added that the Applicant would not be able to make amendments that give rise to materially new or different environmental effects.

1.3.71 In response to queries raised on whether it should be explicitly set out that ERYC would consult relevant parties in relation to any amendments, MLA welcomed confirmation from ERYC that they would carry out consultation as part of their usual process of decision-making. MLA considered that this relates to ERYC’s public duties and that public authorities are expected to follow procedure in line with their ordinary function. MLA confirmed he thought it was unnecessary for the DCO to restate this.

Schedule 2, Part 2, paragraph 22(1)(c) and (d) – whether these should rather refer to ‘paragraph 21’.

1.3.72 MLA confirmed that the Applicant agreed with the suggested amendment.

- 1.3.73 **Action 8:** Schedule 2, Part 2, paragraph 22(1)(c) and (d) – amend the words ‘paragraph 22’ to ‘paragraph 21’.
- 1.3.74 **Post-hearing note:** Following the addition of new Requirement 16, this change is no longer required as the cross-referencing in paragraph 22(1)(c) and (d) is now correct.

Schedule 3 – clarification for substantive changes to this list compared with original submission version of the draft DCO and whether likely to change further.

- 1.3.75 MLA explained that the original local legislation search carried out by the Applicant took a precautionary approach. Following submission, the Applicant took the view that this list could be refined based on the stage of design development. This resulted in the Applicant doing a secondary review which revealed that a number of enactments listed in Schedule 3 would not interfere with the authorised development and did not need to be disapplied. The list has since been refined and only the local legislation that carries risk of interference has been left on the list to be disapplied.
- 1.3.76 MLA flagged that these local enactments are only disapplied under article 9(1)(f) “insofar as the provisions are inconsistent with a provision, of or a power conferred by, this Order” and so there is an appropriate level of control over the disapplication.
- 1.3.77 MLA confirmed that the Applicant is awaiting two further sets of byelaws from the local authority which will be reviewed, and added if appropriate but the Applicant does not anticipate they will require inclusion and nor does it anticipate any further changes.

Schedule 5, Part 1 – accuracy of title of column (1)

- 1.3.78 MLA agreed that the title of the column should be changed, and the same amendment should be made for Part 2.
- 1.3.79 **Action 9:** Schedule 5, Parts 1 and 2 – add the words ‘or restricted’ to the title of column (1).
- 1.3.80 **Post-hearing note:** These changes have been made to the version of the draft DCO submitted at Deadline 4 [EN010157/APP/3.1 Revision 8].

Schedule 5, Part 2 – accuracy of title of column (1); and consideration of deletion of Riston Footpath No.2 and Wawne Footpath No.1 and applicant’s response to ExQ2.2.17a.

- 1.3.81 MLA explained that in relation to Riston Footpath No. 2 and Wawne Footpath No. 1, the Applicant has undertaken further checks. Whilst the public footpaths are not proposed to be diverted, they run through the Site and will be crossed by the proposed construction vehicle tracks requiring some temporary

restrictions to be in place. MLA agreed that updates would be made by the Applicant to more clearly reference this.

- 1.3.82 **Action 10:** Schedule 5, Part 2 - include reference to 'Riston Footpath No.2' and 'Wawne Footpath No.1' in column (1) and the relevant information for their restriction in column (2).
- 1.3.83 **Post-hearing note:** This change has been made to the version of the draft DCO submitted at Deadline 4 **[EN010157/APP/3.1 Revision 8]**.
- 1.3.84 **Action 11:** Applicant ES Chapter 13 paragraph 13.9.1 – amend to accord with action point 10.
- 1.3.85 **Post-hearing note:** This change has been made to the version of the ES Volume 2, Chapter 13: Population **[EN010157/APP/6.2 Revision 2]** submitted at Deadline 4.

Schedule 11 – clarification of need for this schedule.

- 1.3.86 It was agreed that this matter had been dealt with in relation to article 37.

Schedule 14 – matters around ensuring this is correct and up to date with each submission (for example, there appear to be some errors/ typos such as 'REP-075' and 'REP-079' and a reference to an updated outline Soil Management Plan in October 2025).

- 1.3.87 MLA assured the ExA that a comprehensive check of the schedule would be carried out.
- 1.3.88 **Action 13:** Schedule 14 – ensure accuracy of document names, dates and references (noting errors such as 'REP-075' and 'REP-079' and a reference to an updated outline Soil Management Plan in October 2025). Update accurately at each subsequent deadline as necessary.
- 1.3.89 **Post-hearing note:** Changes have been made to the version of the draft DCO submitted at Deadline 4 **[EN010157/APP/3.1 Revision 8]**.

Explanatory note – clarify reasons for changes to only include certain plans and the Book of Reference for inspection.

- 1.3.90 MLA explained that ahead of deadline 3, ERYC advised the Applicant that Beverley Library would be a more suitable deposit location to ensure that the documents would be easily accessible by the general public. However, the library has limited capacity to store the full suite of certified documents leading the Applicant to reflect on which documents are necessary to be held for inspection. The Applicant carried out a review of the approach on other recently made solar DCOs including the Byers Gill Solar Development Consent Order 2025 and the Oaklands Farm Solar Park Development Consent

Order 2025. The applicants on these schemes only held the book of reference and plans for inspection and the Applicant deems this approach appropriate.

- 1.3.91 MLA noted that the Applicant considered that the entire suite of documents would be available on the Planning Inspectorate website for 5 years and would also be available on the Applicant's website.
- 1.3.92 ERYC confirmed they were happy with the approach taken by the Applicant.

Third change request – whether any notable changes likely to the draft DCO as a result.

- 1.3.93 MLA confirmed that the Applicant is still expecting to submit a Change Application at Deadline 4 and that no changes to the **draft DCO [REP3-005]** are expected as a result of this.

IPs will be invited to ask questions of clarification in relation to draft DCO articles, schedules and requirements.

- 1.3.94 In response to comments raised by, East Riding Against Solar Expansion (**ERASE**), MLA confirmed that Humberside Fire and Rescue Service had been consulted by the Applicant in relation to the Application and that they are a statutory consultee under Schedule 1 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.
- 1.3.95 MLA also confirmed, in response to concerns surrounding the resourcing of Humberside Fire and Rescue Service, that they had not raised concerns in relation to fulfilling their activities under requirement 8.

1.4 Agenda item 3 – Schedule 12 – protective provisions

The applicant will be asked to provide an update on progress with parties regarding protective provisions (including Network Rail Infrastructure Limited (NRIL), National Gas Transmission plc (NGT), National Grid Electricity Transmission plc (NGET), Northern Powergrid (Yorkshire) plc and Yorkshire Water Services), an explanation of any important differences of view, a timescale for resolution and to explain any implications should agreement with any party not be reached by the close of the examination.

- 1.4.1 MLA explained that the Applicant is awaiting comments in relation to the protective provisions of NGET, National Gas and Northern Powergrid. MLA confirmed that the scope of disagreement is broadly limited to three outstanding issues:

- 1.4.1.1. the provision of a “veto” mechanism for exercising the compulsory acquisition powers;

- 1.4.1.2. the scope of the indemnity; and
- 1.4.1.3. the scope of the relevant works to which the protective provisions apply to.
- 1.4.2 In relation to Network Rail, negotiations are ongoing, and the Applicant has had difficulty getting comments back on the most recent iteration. The Applicant has been chasing for an update following the Applicant's response to their standard provisions. The Applicant is working diligently to resolve these issues and is attempting to reach agreement as soon as possible.
- 1.4.3 The Applicant confirmed that Yorkshire Water Service has not requested bespoke protective provisions for their benefit to be included in the DCO. In their **Relevant Representation [RR-016]**, they set out a request for further engagement in matters related to them. The Applicant provided a response to this in Table 2-16 of the Applicant's Responses to Relevant Representations submission **[REP1-071]**, where the Applicant agreed to further engagement, for example the Applicant has committed to consulting Yorkshire Water Services on documents such as Hydrogeological Risk Assessments. This commitment is secured via the **Outline CEMP [REP3-026]**, and requirement 4 of the **draft DCO [REP3-005]**.
- 1.4.4 The Applicant attempted to engage in August and again more recently directly with Yorkshire Water Services but has not yet had a response. MLA confirmed that whilst they do not have bespoke protective provisions, they would still benefit from the standard form of protective provisions set out in Part 1, Schedule 12 of the **draft DCO [REP3-005]**.
- 1.4.5 The Applicant confirmed they would keep attempting to engage with Yorkshire Water Services.

The applicant will be asked to clarify that the relevant protective provisions in the current dDCO are those agreed by the Environment Agency and Beverley and North Holderness Internal Drainage Board (noting there were no changes to these between the deadline 2 and deadline 3 versions).

- 1.4.6 MLA confirmed that the protective provisions for the benefit of the Beverley and North Holderness Internal Drainage Board in Part 3 of Schedule 12 to the **draft DCO [REP3-005]** are agreed and no further amendments are required. MLA also confirmed that the Environment Agency and the Applicant have reached agreement. The EA confirmed this in their **D3 submission [REP3-059]**. MLA agreed that there were no changes made between the versions submitted at Deadline 2 and Deadline 3.

The applicant will be asked to explain, having regard to paragraph 4.1 of the Planning Inspectorate's advice, why the dDCO does not include protective provisions for all parties who have indicated a need for them, including those that have provided standard wording (NRIL, NGT and NGET).

- 1.4.7 MLA explained that, in accordance with [Guidance](#) whilst statutory undertakers may have their own preferred form of protective provisions, these must be adapted as necessary to accurately reflect the Proposed Development and they should not simply negate other provisions in the **draft DCO [REP3-005]**. As such, the Applicant has been discussing the form of bespoke protective provisions to include in the **draft DCO [REP3-005]** for NGET, NGT and NRIL. The Applicant has been involved in extensive and significant negotiations to secure protective provisions.
- 1.4.8 **Action 12:** Schedule 12 – include protected provisions for all relevant statutory undertakers, with justification if deviating from their preferred versions, if provided.
- 1.4.9 **Post-hearing note:** The Applicant confirms that these protective provisions have been included in the draft DCO submitted at Deadline 4 **[EN010157/APP/3.1 Revision 8]**. The Applicant has provided justification relating to the form of these in Appendix 1 of this submission.
- 1.4.10 **Action 14:** Clarify which SUs/ plots s127(2)/ (3), s127(5)/ (6) and s138 of PA2008 applies and the reasoning for this.
- 1.4.11 **Post-hearing note:** The Applicant has provided a document to address this action at Appendix 2 of this submission.

The ExA will seek clarification that ERYC is not seeking protective provisions for any of its functions, such as local highways authority.

- 1.4.12 ERYC confirmed they are not seeking bespoke protective provisions from the Applicant.

Any statutory undertakers or other bodies present with an interest in protective provisions will be invited to make representations and to explain their positions.

- 1.4.13 No representations were made.

1.5 Agenda item 4 – Consents, licences and other agreements

The applicant will be asked to provide a brief update of any progress and timescales for completion.

- 1.5.1 MLA noted that the positions set out in **Other Consents and Licences [APP-151]** have not changed since submission of the application in February 2025. For context, the consents and licences therein relate to matters which would arise at the construction phase, following pre-construction surveys, or at a later stage of design development.

The applicant will be asked whether any European or other protected species mitigation licences would be required, whether any of these have been applied for (including in draft) and whether any impediments are envisaged (or whether any Letters of No Impediment from Natural England are expected).

- 1.5.2 BT confirmed that pre-construction surveys will be undertaken to determine whether a European Protected Species Licence (**EPSL**) is required, as outlined in **Other Consents and Licences [APP-151]**.
- 1.5.3 These surveys will generate the necessary up-to-date ecological data to support any potential EPSL application and are secured through the **Outline CEMP [REP3-026]**. At this stage, BT confirmed that no impediment to obtaining an EPSL is anticipated.
- 1.5.4 BT confirmed that the Applicant would need updated survey information to inform a licence application. Survey work would also be needed to inform the baseline otherwise data may be out of date.
- 1.5.5 Accordingly, the Applicant has not approached Natural England for a letter of no impediment, as the need for such a licence will depend on the outcomes of the forthcoming pre-construction surveys.
- 1.5.6 In response to queries from the ExA in regard to having seen draft licences in relation to other DCO applications, BT explained that mobile species surveys at this point would not be accurate and that pre-construction surveys would provide the most up-to-date data.
- 1.5.7 MLA confirmed that Natural England had not raised any residual points in relation to this approach.

The applicant will be asked to explain the proposed use of District Level Licencing and the procedures this involves (the ExA notes the Planning Inspectorate's advice on this).

- 1.5.8 BT explained that, to date, there is no evidence indicating the presence of great crested newts (**GCN**) within the Order limits. Consequently, it is considered unlikely that pre-construction surveys will identify GCN. Furthermore, the majority of habitat within the Order limits is deemed suboptimal for supporting GCN populations. Importantly, the proposed construction works will retain key habitat features—such as ditch edges and hedgerows—that are most likely to be used by GCN.
- 1.5.9 In the event that GCN are identified during preconstruction surveys, an application will be submitted to the East Riding of Yorkshire District Level Licensing (**DLL**) Scheme. Under this scheme, the relevant authority will determine the appropriate fee required to offset any potential impacts on GCN resulting from the Proposed Development. The Applicant will also implement

any necessary good practice measures, such as pre-clearance vegetation checks, as advised.

- 1.5.10 If the DLL scheme is unable to accommodate the application due to capacity constraints, the traditional EPSL Licencing route will be followed from Natural England as an alternative.
- 1.5.11 BT confirmed that this approach is available to developers to offset factors on GCN and is used quite frequently. ERYC confirmed that they are familiar with this process and the ecologist of ERYC has no issue with the Applicant's approach.

1.6 Agenda item 5 – Statements of common ground

The ExA will ask the applicant to provide a brief update on statements of common ground relevant to the draft DCO [REP3-005] and the likelihood of any outstanding concerns remaining at the end of the examination.

- 1.6.1 LT confirmed that there were only two matters raised in relation to the **draft DCO [REP3-005]** in the statements of common ground and that both were made by the Environment Agency, and both have now been resolved. These are EA32 and EA33 in the draft SoCG with the EA, and in the latest iteration, submitted at Deadline 4, these are marked agreed **[EN010157/APP/9.3 Revision 3]**.

1.7 Agenda item 6 – Review of issues and actions arising

- 1.7.1 The ExA will address how any actions placed on the applicant are to be met and consider the approaches to be taken to the examination of the **draft DCO [REP3-005]** and any changes to it, in the light of issues raised.

No.	Directed to	Action	Applicant's response
1	Applicant and ERYC	Article 14(1) – further to the applicant's clarification in ISH1 regarding maintenance, liaise around the acceptability of a 12-month period and provide your views on the matter.	The Applicant has contacted EYRC via email on 29 October 2025 confirming the Applicant's position. For the reasons set out above, the Applicant does not consider it necessary or proportionate to extend the maintenance period.
2	Applicant	Article 31(1) – correct as necessary by	To deal with the issue of the comma, the Applicant has inserted

		removing comma/ amending wording.	the word “and” after the comma. This change has been made to the version of the draft DCO submitted at Deadline 4 [EN010157/APP/3.1 Revision 8] .
3	Applicant	Article 44 - amend to provide clarification of linkage between 44(4) and 44(2).	Article 44(2) has been amended to make reference to paragraphs (4) and (5) and the updated draft DCO [EN010157/APP/3.1 Revision 8] will be submitted at Deadline 4.
4	Applicant	Schedule 1, Work No.1 – amend the words ‘1B and 1F’ to ‘1B to 1F’	This change has made to the version of the draft DCO submitted at Deadline 4 [EN010157/APP/3.1 Revision 8] .
5	Applicant	Schedule 2, Part 1, requirement 4(1) – amend the word ‘their’ to ‘its’	This change has made to the version of the draft DCO submitted at Deadline 4 [EN010157/APP/3.1 Revision 8] .
6	Applicant	Schedule 2, Part 1, requirement 12(2) - to include wording to the effect of ‘and shall be maintained throughout the operation of the authorised development for the duration of the relevant assessment period.’	This change has made to the version of the draft DCO submitted at Deadline 4 [EN010157/APP/3.1 Revision 8] .
7	ERYC	Schedule 2, Part 1, requirement 15 – confirm whether satisfied with the addition of Part 8 of the outline Operational Environmental Management Plan [REP3-030/ REP3-031] to alleviate concerns in respect of potential	N/A - ERYC action

		decommissioning timings.	
8	Applicant	Schedule 2, Part 2, paragraph 22(1)(c) and (d) – amend the words ‘paragraph 22’ to ‘paragraph 21’.	Following the addition of new Requirement 16, this change is no longer required as the cross-referencing in paragraph 22(1)(c) and (d) is now correct.
9	Applicant	Schedule 5, Parts 1 and 2 – add the words ‘or restricted’ to the title of column (1).	These changes have been made to the version of the draft DCO submitted at Deadline 4 [EN010157/APP/3.1 Revision 8].
10	Applicant	Schedule 5, Part 2 - include reference to ‘Riston Footpath No.2’ and ‘Wawne Footpath No.1’ in column (1) and the relevant information for their restriction in column (2).	These changes have been made to the version of the draft DCO submitted at Deadline 4 [EN010157/APP/3.1 Revision 8].
11	Applicant	Applicant ES Chapter 13 paragraph 13.9.1 – amend to accord with action point 10.	This change has been made to the version of the ES Volume 2, Chapter 13: Population [EN010157/APP/6.2 Revision 2] submitted at Deadline 4.
12	Applicant	Schedule 12 – include protected provisions for all relevant statutory undertakers, with justification if deviating from their preferred versions, if provided.	The Applicant confirms that these protective provisions have been included in the draft DCO submitted at Deadline 4 [EN010157/APP/3.1 Revision 8] . The Applicant has provided justification relating to the form of these in Appendix 1 of this submission.
13	Applicant	Schedule 14 – ensure accuracy of document names, dates and references (noting errors such as ‘REP-075’ and ‘REP-079’ and a reference to an updated outline Soil Management Plan in October 2025). Update accurately at each subsequent	These changes have been made to the version of the draft DCO submitted at Deadline 4 [EN010157/APP/3.1 Revision 8].

		deadline as necessary.	
14	Applicant	Clarify which SUs/ plots s127(2)/ (3), s127(5)/ (6) and s138 of PA2008 applies and the reasoning for this	The Applicant has provided a document to address this action at Appendix 2 of this submission.
15	ERYC	Provide a link to the East Riding Local Plan Update document.	East Riding Local Plan Update
16	Applicant	Provide comments on submissions [REP1-084] and [REP1-085].	The Applicant has responded to these submissions in its Response to Deadline 3 Submissions and Other Submissions [EN010157/APP/8.18]

1.8 Agenda item 11 – Any other matters

1.8.1 ***The ExA will ask the applicant and ERYC to signpost to any direct link provided in the application documents to the policies of the Local Plan Update referred to in the local impact report.***

1.8.2 The Applicant made no submissions under this item.

1.8.3 **Action 15** – Provide a link to the East Riding Local Plan Update document.

1.8.4 **Post-hearing note:** Please see link here: [East Riding Local Plan Update](#).

The ExA will ask ERYC whether it considers the proposed development would conflict with any policies of the Local Plan Update.

1.8.5 It was agreed that the proposed development does not conflict with any policies of the Local Plan Update. MLA signposted to matter ERYC53 within the SoCG which has been agreed as of Deadline 3:

1.8.5.1. 'ERYC are satisfied that all relevant policies in the ERLP SD have been identified with regard had to what were the current and emerging Local Plans at that time. It should be noted that the East Riding Local Plan Strategy Document 2016 has been superseded by the East Riding Local Plan Strategy Document Update (ERLP SD) 2025.

1.8.5.2. Whilst there is some conflict with aspects of certain policies, as highlighted in ERYC Local Impact Report, **overall, the proposed scheme complies with the development plan when read as a whole**'.

- 1.8.6 The ExA will ask the applicant to signpost to where it has responded to submissions **[REP1-084]** and **[REP1-085]**.
- 1.8.7 MLA confirmed that the Applicant will provide direct responses to these submissions at Deadline 4.
- 1.8.8 **Action 16** - Provide comments on submissions [REP1-084] and [REP1-085].
- 1.8.9 **Post-hearing note:** The Applicant has responded to these submissions in its **Response to Deadline 3 Submissions and Other Submissions [EN010157/APP/8.18]**.

The ExA will ask ERYC to clarify matters around documents it indicated a wish to speak about (if not addressed earlier in the ISH).

- 1.8.10 The Applicant made no submissions under this item.

1.9 Agenda item 12 – Closure of the hearing

2 Appendix 1

2.1 Justification for the Applicant's preferred protective provisions

- 2.1.1 This document has been produced in response to Action Point 12 arising from Issue Specific Hearing 1 (ISH1) which took place on 21 October 2025.
- 2.1.2 The Applicant has sought to engage with all affected Statutory Undertakers at preapplication stages and throughout the Examination to resolve representations made in relation to the draft DCO.
- 2.1.3 The latest iteration of the **Draft DCO [EN010157/APP/3.1 Revision 8]** includes the Applicant's preferred protective provisions. The Applicant in its discussions with statutory undertakers has been provided with proposed protective provisions from the following Statutory Undertakers in their standard terms:
- 1) National Grid Electricity Transmission (NGET)
 - 2) National Gas Transmission (NGas)
 - 3) Northern Power Grid (NPG)
 - 4) Network Rail (NR)
- 2.1.4 The Applicant has included in the **Draft DCO [EN010157/APP/3.1 Revision 8]** at deadline 4 the Applicant's preferred form of bespoke protective provisions it considers appropriate in relation to the Peartree Hill Project. In line with Government guidance "*Guidance on the content of a Development Consent Order required for a Nationally Significant Infrastructure Project*", whilst the statutory undertakers in question have provided standard protective provisions, these have been reviewed in light of the Project and the Applicant has proposed reasonable and appropriate amendments to reflect the Project as well as more specific directions given in that Government guidance¹.
- 2.1.5 The Applicant has sought to reach an agreement with all statutory undertakers however there remains some key areas of disagreement in relation to the form of protective provisions for NGET, NGT, NPG and NR. In addition, the Applicant has engaged with the relevant IDB and the Environment Agency and the protective provisions in favour of these parties have been agreed, with no matters outstanding.

¹ [Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects - GOV.UK](https://www.gov.uk/government/publications/planning-act-2008-content-of-a-development-consent-order-required-for-nationally-significant-infrastructure-projects)

- 2.1.6 The Applicant sets out below its position regarding those paragraphs of the protective provisions where there are still substantial differences and that are not yet agreed.
- 2.1.7 The Applicant notes that there is consistency across the outstanding issues of disagreements between the Applicant and each Statutory Undertaker. The main areas of disagreement relate to:
 - 2.1.7.1. the provision of a “veto” mechanism for exercising the compulsory acquisition powers;
 - 2.1.7.2. the scope of the indemnity; and
 - 2.1.7.3. the scope of the relevant works to which the protective provisions apply to.

Table 1: Status of Protective Provisions for the benefit of National Gas Transmission (NGT).

Ref	Provision in dispute	Applicants proposed amendments to NGT protective provisions	Applicant's position
Sch 12, Part 5, para 39	Definition of "acceptable insurance"	"acceptable insurance" means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event or such lower amount as may be agreed in writing by National Gas . Such insurance shall will be maintained (a) during the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an "acceptable credit provider", such insurance shall will include (without limitation):	The Applicant considers that there should be an option to agree a lower amount and this is preceded in other recently made DCOs for example the East Yorkshire Solar Farm Order 2025 and has added wording to that effect. Including the wording offers flexibility to both NGT and the Applicant and would only be allowed if NGT agreed to it.
Sch 12, Part 5, para 39	Definition of "authorised works"	"authorised works" has the same meaning as is given to the term "authorised development" in article 2 (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;	The Applicant has deleted this wording as it is considered superfluous in light of the definition of authorised development in the DCO which is sufficiently wide to cover associated development and any other development authorised by the DCO. Further, the application of the term 'authorised works' in the protective provisions allow, where appropriate, for reference to be made explicitly to

maintenance and use for example in the provision of consent under paragraph 42.

**Sch 12,
Part 5, para
39**

Definition of “specified works” and its application in the protective provisions at paragraphs 46 and 47 in relation to the indemnity and expenses offered.

“specified works” means any of the authorised works ~~or activities undertaken in association with the authorised works~~ which:

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 43(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 43(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Gas's policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Gas, High pressure Gas pipelines and associated installation requirements for third parties”).

The Applicant does not consider the additional wording in the definition proposed by NGT is needed as the definition of authorised development, which is how the authorised works are defined, is already drafted widely to encompass any relevant related activities that the Applicant undertakes. The words proposed by NGT are ambiguous as to what would be included and the Applicant needs to have clarity in light of the obligations under the protective provisions.

The Applicant has replaced ‘authorised works’ with ‘specified works’ in paragraphs 46 and 47. The Applicant considers that as the intention of the protective provisions is to address the position where the Applicant’s works are in proximity to NGT assets or otherwise adversely affect them and this is covered in the broad definition of specified works. Further the Applicant considers that it should only be liable to indemnify and cover expenses of NGT for specified works as this has been drafted widely and includes any works which would adversely affect NGT apparatus.

**Sch 12,
Part 5, para
42**

Protective works to
Buildings

42. Except in an emergency the undertaker, in the case of the powers conferred by article 20 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Gas **which must not unreasonably be withheld or delayed.**

The Applicant considers that the words 'Except in emergency' should be added and is considered a reasonable addition so that they can act quickly in the case of an emergency without being put at risk of delay in having to gain NGTs prior consent.

The wording "which must not unreasonably be withheld or delayed" is considered a reasonable addition and similar to that included in paragraph 68 of Part 6 of Schedule 14 to the A122 (Lower Thames Crossing) Development Consent Order 2025 and the Byers Gill Solar Order 2025.

**Sch 12,
Part 5**

Acquisition of Land

Acquisition of land

~~1. (1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (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 Gas otherwise than by agreement.~~

~~(2) — As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Gas and the undertaker) that is subject to the requirements of this Part of this~~

The Applicant and NGT disagree on the inclusion of a protective provision relating to the exercise by the Applicant of its powers of acquisition under the DCO. The Applicant does not consider there should be any restrictions on the use of the compulsory acquisition powers in the DCO.

Government guidance, "Guidance on the content of a Development Consent Order required for a Nationally Significant Infrastructure Project" states:

"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

~~Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Gas or affect the provisions of any enactment or agreement regulating the relations between National Gas 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 Gas reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Gas and the undertaker acting reasonably and which must be no less favourable on the whole to National Gas unless otherwise agreed by National Gas, 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.~~

~~(3) — Save where otherwise agreed in writing between National Gas and the undertaker the undertaker and National Gas agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Gas and/or other enactments relied upon by National Gas~~

the proposed development. They should also not simply negate other provisions of the DCO, particularly concerning proposed compulsory acquisition of statutory undertakers' land.

The result of this provision would be the effective disapplication of powers within the DCO and this is not consistent with Government guidance on the drafting of DCOs. *The Applicant does not consider that in the case of the Project this provision is necessary, particularly in light of the other protections in the protective provisions.*

The Applicant notes from the recent A122 Lower Thames Crossing DCO decision, that the Secretary of State/ExA did not permit an equivalent provision which would negate the powers sought. The same principle applies in this case, with the Examining Authority in that case finding that “The ExA concludes that a balance has to be struck between the HS1 role as a statutory undertaker managing its high speed railway and assets and the ability of the LTC undertaker to construct the Proposed Development, and declines to recommend the inclusion of a consent or veto provision: the protective provisions in the dDCO.”

~~as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.~~

~~(4) Any agreement or consent granted by National Gas under paragraph 9 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).~~

**Sch 12,
Part 5, para
43**

Removal of Apparatus

43.(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Gas ~~a minimum of 56 days' advance~~ written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Gas reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Gas to its reasonable satisfaction (taking into account paragraph 44(1) below) the necessary facilities and rights –

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

The Applicant considers that it is appropriate for a time frame to be added at para 43(2) for it to give notice to NGT as the term 'advance' can be interpreted widely. The Applicant has suggested a minimum of 56 days. This approach is precededented in the Byers Gill Solar Order 2025, which contains the same wording in the protective provisions for National Grid Electricity Transmission Plc.

(b) subsequently for the maintenance of that apparatus.

**Sch 12,
Part 5, para
43**

Removal of Apparatus

43.(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Gas ~~may in its sole discretion will~~, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation ~~shall~~ **must** not extend to the requirement for National Gas to use its compulsory purchase powers to this end unless it elects to so do.

The Applicant does not agree to the inclusion of the wording '*may in its sole discretion*'. To include such wording suggests that NGT may not assist the Applicant in getting any facilities and rights in land that would enable the Applicant to provide the alternative apparatus. This would be counterproductive to the intention of the protective provisions and would prevent the Applicant from fulfilling its obligations under the protective provisions. The Applicant's proposed wording is that NGT will take reasonable steps to assist the Applicant to obtain the necessary rights and facilities in land for alternative apparatus. This wording is also not contained in the same provision in the protective provisions for National Grid Electricity Transmission Plc in the Byers Gill Solar Order 2025.

**Sch 12,
Part 5, para
44**

Facilities and rights for apparatus

44. (1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Gas facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be

The Applicants position is that the is wording that has been deleted is not needed as the rights and facilities need to be agreed between the Applicant and NGT and it would be for NGT to decide at that time what was needed for the alternative apparatus. This

removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Gas ~~and must be no less favourable on the whole to National Gas than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Gas.~~

reflects the position for other undertakers in Part 1 of Schedule 12 to the Draft DCO.

**Sch 12,
Part 5, para
45**

Retained Apparatus

45.(4) Any approval of National Gas required under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (6) ~~provided that any conditions are communicated to the undertaker within a period of 42 days beginning with the date on which a plan is submitted to National Gas in accordance with sub-paragraph (1);~~ and,

(b) must not be unreasonably withheld ~~or delayed.~~

(5) In relation to any ~~specified~~ works to which sub-paragraphs (1) and/or (2) apply, National Gas may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of

The Applicant has programme constraints to meet connection dates and as a result it is important that approvals are given promptly. The Applicant has therefore included wording to note that any approval given may be subject to reasonable conditions provided they are communicated to the Applicant within 42 days. Further any modifications required must also be notified to the Applicant within 42 days. Timeframes have been added to provide clarity and are considered essential to enable the Applicant to programme its works.

access to any apparatus and National Gas must notify the undertaker of such modifications within a period of 42 days beginning with the date on which the plan required under sub paragraph (1) has been submitted to National Gas.

Sch12, Part 5, para 46. Expenses

46.(1) Save where otherwise agreed in writing between National Gas and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Gas within 30 days of receipt of an itemised invoice or claim from National Gas all charges, costs and expenses (but always excluding any consequential or indirect loss) reasonably anticipated within the following three months or reasonably and properly incurred by National Gas in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any specified authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Gas in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Gas as a consequence of National Gas:

The Applicant and NGT disagree on the scope of expenses that the Applicant should be liable for. The Applicant's proposed protective provisions make clear that the Applicant is not liable for any consequential or indirect loss. The Applicant does not consider it appropriate for the protective provisions to cover indirect and consequential loss; a principle well preceded in relation to indemnities and accepted by NGT in the protective provisions and therefore the Applicant considers it reasonable to extend to recoverable expenses as well. Further, the Applicant does not consider it reasonable for anticipated costs to be included if indirect and consequential loss is not excluded from the protective provisions. The exclusion of consequential or indirect losses has been preceded in the protective provisions for Network Rail contained in the HyNet Carbon Dioxide Pipeline Order 2024.

- (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 43(3); or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Gas;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

**Sch 12,
Part 5, para
47**

Indemnity

47.(1)(b) indemnify National Gas for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Gas, by reason or in consequence of any such damage or interruption or National Gas becoming liable to any third party ~~and including Network Code Claims as aforesaid~~ other than arising from any default of National Gas.

It is not acceptable for the Applicant to be liable for Network Code Claims. It is excessively broad, and the exclusion of Network Code Claims is well-precedented in other DCOs for example the A122 (Lower Thames Crossing) Development Consent Order 2025.

**Sch 12,
Part 5, para
47**

Indemnity

47.(4) National Gas must give the undertaker reasonable ~~written~~ notice of any such third party claim or demand ~~as soon as reasonably practicable after National Grid Electricity Plc become aware of any such claims or demands~~, and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without ~~the prior consent of the undertaker (such consent not be unreasonably withheld or delayed) (which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceeding necessary to resist the claim or demand) first consulting the undertaker and considering their representations.~~

The Applicant and NGT disagree on the role of the Applicant in managing third party claims that fall within the scope of the indemnity.

Whilst the Applicant welcomes communication from NGT as to any third party claims or demands, the Applicant's proposed wording ensures that the consent of the Applicant is needed before any settlement or compromise is reached. The Applicant considers that if it is to indemnify NGT then it is entirely reasonable that NGT do not settle or compromise on any claims before the Applicant has an opportunity to consider and give their agreement. Similar wording is included in the protective provisions for Network Rail on the National Grid (Richborough Connection Project) Development Consent Order 2017 and the A122 (Lower Thames Crossing) Development

Consent Order 2025. It also reflects the position in Part 1 of Schedule 12 to the Draft DCO.

**Sch 12,
Part 5, para
51**

Arbitration

48. ~~Save for differences or disputes arising under paragraph 44(2), 44(4) 45(1) and 46(1)a~~
Any difference or dispute arising between the undertaker and National Gas under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Gas, be determined by arbitration in accordance with article 48 (arbitration).

The Applicant does not agree and consider that there should be no carve outs and that the arbitration clause in the DCO is appropriate for all disputes. The Arbitration clause allows for expert evidence. Without clarity, the Applicant would be unable to progress with the project in a timely manner should there be dispute unresolved and no opportunity for arbitration. This is precededented in the protective provisions for NGT in the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024.

Table 2: Status of Protective Provisions for the benefit of National Grid Electricity Transmission (NGET).

Ref	Provision in dispute	Applicants proposed amendments to NGET protective provisions	Applicant's position
Sch 12, Part 6, Para 54	Definition of "acceptable insurance"	<p>"acceptable insurance" means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event unless otherwise agreed in writing by National Grid Electricity Transmission Plc. Such insurance shall be maintained (a) during the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised works by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an "acceptable credit provider", such insurance shall include (without limitation):</p>	<p>The Applicant considers that there should be an option to agree a lower amount. Including the wording offers flexibility to both NGET and the Applicant and would only be allowed if NGET agreed to it. This is preceded in other recently made DCOs for example the East Yorkshire Solar Farm Order 2025 and has added wording to that effect.</p>
Sch 12, Part 6, Para 54	Definition of "apparatus"	<p>"apparatus" means:</p> <p>(a) electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by National Grid Electricity Transmission Plc together with any replacement apparatus; and</p>	<p>The Applicant considers that the protective provisions should apply to apparatus <i>belonging</i> to NGET and not what they may have in the future. The Applicant does not consider it is appropriate for provisions to apply to prospective schemes to afford onerous</p>

(b) such other apparatus constructed pursuant to the Order that becomes operational apparatus of the undertaker for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or must be lodged or which gives or will give access to apparatus; and

~~(c) any electrical lines or electrical plant as defined in the 1989 Act, 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 North Humber to High Marnham Project, whether temporary or permanent, and includes, where the context so requires, apparatus constructed as part of the authorised works and intended for the beneficial use by National Grid Electricity Transmission Plc ("North Humber to High Marnham apparatus"); and~~

~~(d) any electrical lines or electrical plant as defined in the 1989 Act, 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 Wanlass Beck Project, whether temporary or permanent, and includes, where the context so requires, apparatus constructed as part of the authorised works and intended for the beneficial use by~~

protective provisions which relate to unidentified land, or assets which are not constructed. The Applicant considers paragraph 55 offers sufficient protection for NGET's future projects. Nonetheless, the Applicant has provided appropriate protections (see below). These additional provisions were not included in the protective provisions for NGET in the East Yorkshire Solar Farm Order 2025.

~~National Grid Electricity Transmission Plc ("Wanlass Beck apparatus");~~

**Sch 12,
Part 6, Para
54**

Definition of “authorised works”

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and includes any associated development authorised by the Order ~~and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;~~

The Applicant has deleted this wording as it is considered superfluous in light of the definition of authorised development in the DCO which is sufficiently wide to cover associated development and any other development authorised by the DCO.

**Sch 12,
Part 6, Para
54**

Definition of “specified works” and its application in the protective provisions at paragraphs 63 and 64 in relation to the indemnity and expenses offered.

“specified works” means any of the authorised works ~~or activities undertaken in association with the authorised works~~ which:

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 56(6) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 56(6) or otherwise; and/or
- (c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines”.

The Applicant does not consider the additional wording in the definition proposed by NGET is needed as the definition of authorised development, which is how the authorised works are defined, is already drafted widely to encompass any relevant related activities that the Applicant undertakes in connection with the powers sought under the dDCO. The words proposed by NGET are ambiguous as to what would be included and the Applicant needs to have clarity in light of the obligations under the protective provisions.

The Applicant has replaced ‘authorised works’ with ‘specified works’ in 63 and 64. The Applicant considers that as the intention of the protective provisions is to address the position where the Applicant’s works are in

proximity to NGET assets or otherwise adversely affect them and this is covered in the broad definition of specified works. Further the Applicant considers that it should only be liable to indemnify and cover expenses of NGET for specified works as this has been drafted widely and includes any works which would adversely affect NGET apparatus.

Sch 12,
Part 6, Para
56

Peartree Hill Project
works

Peartree Hill Project works

~~49. The undertaker must not construct except with the prior written agreement of National Grid Electricity Transmission Plc carry out the shared area works, or any part of it.~~

~~56. (1) The undertaker must not construct any Peartree Hill Project works Before beginning to construct any shared area works, or any part of it, without consulting the undertaker must submit to National Grid Electricity Transmission Plc on the proposed plans of the relevant Peartree Hill Project works shared area works (or part of it) and considering their representations such further particulars available to it as National Grid Electricity Transmission Plc may request within 21 days of receipt of the plans reasonably requested.~~

It has been agreed between the parties that this provision is to be headed Peartree Hill Project works from 'Shared area works' in light of agreed amendments to the definitions.

The Applicant does not consider it appropriate for NGET to have a power to refuse or impose requirements on any proposals for works no. 6 and 8. This would, in the Applicant's view, "negate" the provisions of the DCO which authorise those works, contrary to Government guidance which states that protective provisions "should also not simply negate other provisions of the DCO". There is a duty on the Applicant to cooperate with NGET on its future projects under paragraph 55 and to undertake certain steps to avoid any conflict with NGET's future projects. The protective provisions put forward by the Applicant include a duty to consult NGET on the

~~(3) Any shared area works must not be constructed except in accordance with such plans as may be approved in writing by National Grid Electricity Transmission Plc.~~

~~50.—(1) Any approval of National Grid Electricity Transmission Plc required under this Schedule—~~

~~(a) — must not be unreasonably withheld or delayed;~~

~~(b) — in the case of a refusal must be accompanied by a statement of grounds or refusal; and~~

~~(c) — may be given subject to such reasonable requirements as National Grid Electricity Transmission Plc may have in connection with the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the North Humber to High Marnham Project and/or the Wanlass Beck Project or otherwise for the protection of the North Humber to High Marnham apparatus and/or the Wanlass Beck apparatus;~~

~~provided always that in relation to a refusal under sub-paragraph (b) or any requirements requested pursuant to sub-paragraph (c) the undertaker shall be permitted to refer such matters to dispute resolution pursuant to paragraph [20]~~

(4) National Grid Electricity Transmission Plc must employ reasonable endeavours to respond to the submission of any plans within a period of 56 days from the date of submission of the plans.

proposed plans for works no.6 and 8, a duty to consider any representations received, an obligation to give NGET notice of its intention to commence construction and provide a copy of the final plans with NGET entitled to watch and inspect the construction of those works.

Without Works No. 6 and 8, the Project cannot progress given the solar farm must connect into the substation, and it is not considered appropriate for a Project that has undergone through examination and then given approval by the Secretary of State to then be placed at risk due to NGET having a power of approval over these works.

f National Grid Electricity Transmission Plc require further particulars, such particulars must be requested by National Grid Electricity Transmission Plc no later than 21 days from the submission of plans and thereafter National Grid Electricity Transmission Plc must employ reasonable endeavours to respond to the submission within 56 days from receipt of the further particulars.

(5) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid Electricity Transmission Plc notice as soon as is reasonably practicable and a plan of those works.

(6) The undertaker must give to National Grid Electricity Transmission Plc not less than 14 days' notice in writing of its intention to commence construction of any Peartree Hill Project works and provide a copy of the final plans for the Peartree Hill Project works and National Grid Electricity Transmission Plc will be entitled by its officer to watch and inspect the construction of such works.

(5) The undertaker must give to National Grid Electricity Transmission Plc ~~shared area works~~ and notice in writing of its completion of any Peartree Hill Project works not later than 7 days after the date on which it is completed ~~and National Grid Electricity Transmission Plc will be entitled by its officer to watch and inspect the construction of such works.~~

(6) If any part of the **Peartree Hill Project works** ~~shared area works~~ is constructed otherwise than in accordance with **the final plan provided under** sub-paragraph (1) above National Grid Electricity Transmission Plc may by notice in writing identify the extent to which the **Peartree Hill Project works** ~~shared area works~~ do not comply with the **final plans provided** ~~approved details~~ and request the undertaker at the undertaker's own expense carry out remedial works so as to comply with **the final plans provided** ~~the requirements of paragraph 5(2) of this Schedule~~ or such alternative works as may be agreed with National Grid Electricity Transmission Plc or as otherwise may be agreed between the parties.

Sch 12,
Part 6, Para
59 Protective works to
Buildings

59. Except in an emergency the undertaker, in the case of the powers conferred by article 21 (*protective work to buildings*), must exercise those powers so as not to obstruct or render **materially** less convenient the access to any apparatus, the Wanlass Beck Site or the Birkhill Wood Site without the prior written consent of National Grid Electricity Transmission Plc **which must not unreasonably be withheld or delayed.**

The Applicant considers that the words 'Except in emergency' should be added and is considered a reasonable addition so that they can act quickly in the case of an emergency without being put at risk of delay in having to gain NGETs prior consent. It is not considered appropriate to prevent emergency protective works, which would be a detriment to landowners and give rise to potential health and safety concerns.

The wording "which must not unreasonably be withheld or delayed" is considered a

Sch 12, Part 6

Acquisition of Land

Acquisition of land

~~51. (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 shown on the land plans, the undertaker must not unless otherwise agreed in writing with National Grid Electricity Transmission Plc appropriate, acquire or take temporary possession of any land forming part of the North Humber to High Marnham Site or the Wanlass Beck Site, (such agreement not to be unreasonably withheld or delayed) and/or any access thereto.~~

~~(3) — As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid Electricity Transmission Plc and the undertaker) that is subject to the~~

reasonable addition and similar to that included in the East Yorkshire Solar Farm Order 2025 and the Byers Gill Solar Order 2025 The Applicant and NGET disagree on the inclusion of a protective provision relating to the exercise by the Applicant of its powers of acquisition under the DCO. The Applicant does not consider there should be any restrictions on the use of the compulsory acquisition powers in the DCO.

Government guidance, “Guidance on the content of a Development Consent Order required for a Nationally Significant Infrastructure Project” states:

“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.”

The result of this provision would be the effective disapplication of powers within the DCO and this is not consistent with Government guidance on the drafting of DCOs. *The*

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

~~(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~~

Applicant does not consider that in the case of the Project this provision is necessary, particularly in light of the other protections in the protective provisions.

The Applicant notes from the recent A122 Lower Thames Crossing DCO decision, that the Secretary of State/ExA did not permit an equivalent provision which would negate the powers sought. The same principle applies in this case, with the Examining Authority in that case finding that “The ExA concludes that a balance has to be struck between the HS1 role as a statutory undertaker managing its high speed railway and assets and the ability of the LTC undertaker to construct the Proposed Development, and declines to recommend the inclusion of a consent or veto provision: the protective provisions in the dDCO.”

~~to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid Electricity Transmission Plc and/or other enactments relied upon by National Grid Electricity Transmission Plc as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.~~

~~(5) Any agreement or consent granted by National Grid Electricity Transmission Plc under paragraph 15 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).~~

**Sch 12,
Part 6, Para
60**

Removal of apparatus

60.(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid Electricity Transmission Plc ~~may in its sole discretion~~ **will**, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation ~~shall~~ **must**

The Applicant does not agree to the inclusion of the wording 'may in its sole discretion'. To include such wording suggests that NGET may not assist the Applicant in getting any facilities and rights in land that would enable the Applicant to provide the alternative apparatus. This would be counterproductive to the intention of the protective provisions and would prevent the Applicant from fulfilling its obligations under the protective provisions. The Applicant's proposed wording is that NGET will take reasonable steps to assist the Applicant to obtain the necessary rights and facilities in land for alternative apparatus. The

not extend to the requirement for National Grid Electricity Transmission Plc to use its compulsory purchase powers to this end unless it elects to so do.

Applicant's drafting is preceded in the Byers Gill Solar Order 2025.

**Sch 12,
Part 6, Para
62**

Retained apparatus:
protection of National
Grid Electricity Trans-
mission Plc as Electric-
ity Undertaker

The Applicant and
NGET disagree on the
need for timeframes to
be set out in approval
processes.

62. (5) Any approval of National Grid Electricity Transmission Plc required under sub-paragraphs (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8) **provided that any conditions are communicated to the undertaker within a period of 28 days beginning with the date on which a plan is submitted to National Grid Electricity Transmission Plc in accordance with sub-paragraph (1);** and,
- (b) may be given subject to such reasonable requirements as National Grid Electricity Transmission Plc may have in connection with the safe and efficient construction, commissioning, operation and maintenance of the Birkhill Wood Project or the Wanlass Beck Project **provided that any requirements are communicated to the undertaker within a period of 28 days beginning with the date on which a plan is submitted to National Grid Electricity Transmission Plc in accordance with sub-paragraph (1);** and

The Applicant has programme constraints to meet connection dates and as a result it is important that approvals are given promptly. The Applicant has therefore included wording to note that any approval given may be subject to reasonable conditions and reasonable requirements provided they are communicated to the Applicant within 28 days. Timeframes have been added to provide clarity and are considered essential to enable the Applicant to programme its works.

(c) must not be unreasonably withheld or delayed.

**Sch 12,
Part 6, Para
63**

Expenses

63.(1) Save where otherwise agreed in writing between National Grid Electricity Transmission Plc and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid Electricity Transmission Plc within 30 days of receipt of an itemised invoice or claim from National Grid Electricity Transmission Plc all charges, costs and expenses (but always excluding any consequential or indirect loss) ~~reasonably anticipated within the following three months~~ or reasonably and properly incurred by National Grid Electricity Transmission Plc in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised specified works including without limitation—

The Applicant's proposed protective provisions make clear that the Applicant is not liable for any consequential or indirect loss. The Applicant does not consider it appropriate for the protective provisions to cover indirect and consequential loss; a principle well preceded in relation to indemnities and accepted by NGET in the protective provisions and therefore the Applicant considers it reasonable to extend to recoverable expenses as well. Further, the Applicant does not consider it reasonable for anticipated costs to be included if indirect and consequential loss is not excluded from the protective provisions

**Sch 12,
Part 6, Para
64**

Indemnity

64.(1)(b) indemnify National Grid Electricity Transmission Plc for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid Electricity Transmission Plc, by reason or in consequence of any such damage or

The Applicant and NGET disagree as to the inclusion of STC Claims or an Incentive Deduction within the indemnity. It is not acceptable for the Applicant to be liable for STC Claims or an Incentive Deduction. It is excessively broad. The Applicant's drafting is

interruption or National Grid Electricity Transmission Plc becoming liable to any third party ~~and including STC claims or an Incentive Deduction as aforesaid~~ other than arising from any default of National Grid Electricity Transmission Plc.

precedented in the A122 Lower Thames Crossing Order 2025.

**Sch 12,
Part 6, Para
64**

Indemnity

The Applicant and NGET disagree on the role of the Applicant in managing third party claims that fall within the scope of the indemnity.

64.(4) National Grid Electricity Transmission Plc must give the undertaker reasonable **written** notice of any such third party claim or demand **as soon as reasonably practicable after National Grid Electricity Plc become aware of any such claims or demands**, and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made **without the prior consent of the undertaker (which must not be unreasonably withheld or delayed) (which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceeding necessary to resist the claim or demand) without first consulting the undertaker and considering their representations.**

Whilst the Applicant welcomes communication from NGET as to any third party claims or demands, the Applicant's proposed wording ensures that the consent (not to be unreasonably withheld or delayed) of the Applicant is needed before any settlement or compromise is reached. The Applicant considers that if it is to indemnify NGET then it is entirely reasonable that NGET do not settle or compromise on any claims before the Applicant has an opportunity to consider and give their agreement. Similar wording is included in the protective provisions for Network Rail on the National Grid (Richborough Connection Project) Development Consent Order 2017 and the A122 (Lower Thames Crossing) Development Con-sent Order 2025. It also reflects the position in Part 1 of Schedule 12 to the Draft DCO.

**Sch 12,
Part 6, Para
68**

Arbitration

The Applicant and NGET disagree on the procedure for dispute resolution.

~~Save for differences or disputes arising under paragraph 62(2), 62(4) 63(1) and 64(1)(a)~~ Any difference or dispute arising between the undertaker and National Grid Electricity Transmission Plc under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc, be determined by arbitration in accordance with article 48 (arbitration).

The Applicant does not agree that there should be any carve outs and considers that the arbitration clause in the DCO is appropriate for all disputes. The Arbitration clause allows for expert evidence. Without clarity, the Applicant would will unable to progress with the project in a timely manner should there be dispute unresolved and no opportunity for arbitration. This is precededented in the protective provisions for NGT in the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024.

Table 3: Status of Protective Provisions for the benefit of Network Rail (NR).

Ref	Provision in dispute	Applicants proposed amendments to NR protective provisions	Applicant's position
Sch 12, Part 7	References to an 'asset protection agreement'		The Applicants proposed drafting refers instead to a basic asset protection agreement as this is what is being discussed between NR and the Applicant.
Sch 12, Part 7, Para 71	Definition of "regulatory consents"	"regulatory consents" means any consent or approval required under: (a) the Railways Act 1993; (b) the network licence; and/or (c) any other relevant statutory or regulatory provisions; by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development;	The Applicant and NR disagree on the breadth of this definition. The inclusion of this wording cannot be accepted by the Applicant as it is excessively wide and uncertain.
Sch 12, Part 7, Para 71	Definition of "specified works"	"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the	The Applicant has deleted this wording as it is considered superfluous in light of the definition of authorised development in the DCO which is sufficiently wide to cover associated development and any other

Sch 12, Part 7,

Railway operational
powers

~~powers conferred by article [X] (maintenance of authorised development) in respect of such works.~~

~~(1) The undertaker must not exercise the powers conferred by—
—article [x] (development consent granted by the Order);~~

~~—article [x] (maintenance of authorised development);~~

~~—article [x] (discharge of water);~~

~~—article [x] (authority to survey and investigate the land);~~

~~—article [x] (compulsory acquisition of land);~~

~~—article [x] (compulsory acquisition of rights);~~

~~—article [x] (acquisition of subsoil only);~~

~~—article [x] (power to override easements and other rights);~~

~~—article [x] (temporary use of land for carrying out the authorised development);~~

~~—article [x] (temporary use of land for maintaining the authorised development);~~

development authorised by the DCO. The Applicant's drafting is preceded in the A122 (Lower Thames Crossing) Development Con-sent Order 2025.

As per the position set out in relation to NGT's/NGET's request for a veto. The Applicant would further note the nature of the interaction between the Project and NR land and assets is a cable beneath the railway. This means that there is no justification for including restrictions on compulsory acquisition powers. Further the Protective provisions require a BAPA to be entered into which is considered to be proportionate protection.

- ~~article [x] (statutory undertakers);~~
- ~~article [x] (private rights of way);~~
- ~~article [x] (felling or lopping of trees or shrubs);~~
- ~~article [x] (trees subject to tree preservation orders);~~
- ~~the powers conferred by section 11(3) (power of entry) of the 1965 Act;~~
- ~~the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;~~
- ~~the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;~~
- ~~any powers under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017;~~
- ~~in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.~~
- ~~(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.~~

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

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

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

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

~~(7) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.~~

**Sch 12,
Part 7, Para
73** Protective Works

73. (5) Network Rail must have regard to the proposed programme of works for the authorised development as may be made available to Network Rail by the undertaker and ensure that it does not unreasonably impede, interfere with or delay the authorised development.

The Applicant has included wording to make clear that NR must have regards to the any programme for the Project as made available to it by the Applicant so as not to unreasonably delay or impede the Project. This is considered a reasonable inclusion in light of the project being of critical importance.

**Sch 12,
Part 7, Para
73** Protective Works

73. (6) The undertaker is not required comply with sub-paragraph (1) in a case of emergency but in that case it must give to Network Rail notice as soon as is reasonably practicable.

The Applicant has added wording to make clear that in the case of emergencies it would not be in breach of the DCO. Similar wording was included in the HyNet Carbon Dioxide Pipeline Order 2024.

**Sch 12,
Part 7, Para
77** Alterations and Additional work

77.(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction or completion of a specified work during a period of 12 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified

The Applicant considers that it is reasonable to include a timeframe for this obligation to apply. The Applicant considers 12 months to be a reasonable timeframe as any alterations or additions needed as a result of the Project would become apparent within 12 months.

The Applicant has also added wording to the protective provisions to make clear that any notice from NR must include the reasonable cost of carrying out the required works and, where applicable, in maintaining etc them. This is considered a reasonable addition in

in the notice including details of the reasonable cost of carrying out, and where applicable in maintaining, working and, when necessary, renewing, those alterations or additions), the undertaker must pay to Network Rail the reasonable and proper cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably and properly incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the reasonable opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 73(3), pay to Network Rail all ~~reasonable-properly and reasonably~~ incurred expenses to which Network Rail may be put and compensation for any direct loss which it may suffer by reason of the execution by Network Rail of that specified work

light of the Applicants obligation to pay for them.

Lastly the Applicant has added wording to make clear that the Applicant will only be liable for direct losses and not any consequential or indirect loss and that at all times, NR will be under an obligation to take reasonable steps to mitigate its loss. The Applicant's drafting is precededented in the A122 (Lower Thames Crossing) Development Con-sent Order 2025.

provided that at all times Network Rail will be under an obligation to take reasonable steps to mitigate its loss and always excluding any consequential loss or indirect loss.

**Sch 12,
Part 7, Para
79**

Electromagnetic
Interference

~~(6) Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.~~

79. (6) The undertaker shall use reasonable endeavours not to allow the use or operation of

The Applicant has suggested alternative wording to these provisions that are predated in the recently made National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024. The wording proposed by the Applicant is considered to be more proportionate whilst offering NR the protections it requires.

the authorised development in a manner that causes EMI and which introduces an intolerable risk to the operation of the railway or the safety of the track workers (such intolerable risk would include introducing exposure to electric and magnetic fields in excess of the requirements of the Control of Electromagnetic field at Work Regulations 2016, unacceptable transferred voltage potentials and interference impacting the safe operation of the signalling equipment), until measures have been taken in accordance with this paragraph to reduce the risk to tolerable levels of EMI.

- (7) In the event of EMI having occurred –
- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
 - (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;
 - (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and
 - ~~(d) the undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been~~

~~taken in accordance with this paragraph to prevent EMI occurring.~~

**Sch 12,
Part 7**

Electromagnetic
Interference

~~(11) In relation to any dispute arising under this paragraph the reference in article [x] (Arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.~~

The Applicant considers that the arbitration clause in the DCO is appropriate for all disputes. The Arbitration clause allows for expert evidence.

**Sch 12,
Part 7, para
83**

Indemnity

83. (1) The undertaker must pay to Network Rail all reasonable ~~and properly incurred~~ 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 52 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail—

(a) by reason of the construction, maintenance or operation of a specified work or the failure thereof; or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

~~(c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to~~

The Applicant has included various additions to the drafting of this paragraph to make clear that the Applicant is not liable for any consequential loss or indirect loss.

Further the scope suggested by NR as to when the Applicant would be liable are considered to cause uncertain, indefinite and potentially significant liability on the Applicant and deletions have been made specifically to exclude any reference to an act undertaken by the undertaker or its employee or contractor whilst accessing to or egressing from the authorised development or for any damage caused to railway property as a result of access to or egress from the authorised development.

Further, that NR must notify the Applicant as soon as reasonably practicable on becoming aware of any claims or demands and must use reasonable steps to mitigate any liabilities relating to such claims and keep the Applicant

~~or egressing from the authorised development;~~

~~(d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;~~

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

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission ~~provided Network Rail will be under an obligation to take reasonable steps to mitigate its loss and always excluding any consequential loss or indirect loss~~ and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision ~~shall~~ **does**

informed of the progress of such claims and demands and have regards to the Applicants representations in relation to them. These additions are considered to be reasonable in light of Applicants obligations under the protective provisions to indemnify NR.

The Applicant has included an obligation on NR where applicable to take reasonable steps to mitigate their losses.

Similar drafting was included in the protective provisions for Network Rail in the A122 (Lower Thames Crossing) Development Consent Order 2025 and the HyNet Carbon Dioxide Pipeline Order 2024.

not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must –

(a) give the undertaker reasonable written notice of any such claims or demands **as soon as reasonably practicable after Network Rail became aware of any such claims or demands**

(b) **not admit liability or not** make any settlement or compromise of **any** such a claim or demand 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);**

(c) take **all** such **reasonable** steps ~~as are within its control and are reasonable in the circumstances~~ to mitigate any liabilities relating to such claims or demands; **and**

(d) **keep the undertaker informed in relation to the progress of any such claims and demands and have due regard to the undertaker's representations in relation to them.**

(3) The sums payable by the undertaker under sub-paragraph (1) **must include** ~~shall~~ if

relevant ~~include~~ a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

"the relevant costs" means the costs, ~~direct~~ losses and expenses (including loss of revenue) reasonably ~~and properly~~ incurred by

each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a **direct** result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1); and

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

**Sch 12,
Part 7, para
84**

Estimated ongoing expenses

84.(1) Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 83) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

(2) Network Rail must provide an itemised invoice to the undertaker of all charges, costs, fees damages and expenses which are claimed under this Part of this Schedule and any payment due to Network Rail under this Part of this

The Applicant has added the additional text to provide clarity over what is to be paid and when.

Sch 12. Application of article 48
Part 7, para (arbitration)
90

Schedule must be made within 30 days of receipt of the itemised invoice.

~~[In relation to any dispute arising under this part of this Part of this Schedule (except for those disputes referred to in paragraph 11) [the provisions of article [x] (Arbitration) shall not apply and] any such dispute, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) to the President of the Institution of Civil Engineers.]~~

Any difference under the provisions of this Part of the Schedule must be, unless otherwise agreed in writing between the undertaker and Network Rail, determined by arbitration in accordance with article 48 (arbitration).

Applicant has proposed a reference to Arbitration Article as this already refers to the Institute of Civil Engineers and is considered appropriate for all disputes. This is predated in the East Yorkshire Solar Farm Order 2025.

Table 4: Status of Protective Provisions for the benefit of Northern PowerGrid (NPG).

Ref	Provision in dispute	Applicants proposed amendments to Northern PowerGrid protective provisions	Applicant's position
Sch 12. Part 7, para 90	Definition of "authorised Works"	"authorised works" means so much of the works authorised by this Order which affect the operation or maintenance of existing Northern Powergrid's apparatus within the Order limits;	The Applicant considers that the definitions needs to be amended to add the words 'which affect the <i>operation or maintenance</i> of existing....'. The Applicant considers these words are needed for clarity.
Sch 12. Part 7, para 97	Removal of apparatus	97.— (1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed in or over which access to any apparatus is enjoyed or requires that Northern Powergrid's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Northern Powergrid to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided pursuant to a completed easement which shall include rights to retain and subsequently maintain the apparatus being replaced or diverted for the lifetime of that alternative	The Applicant does not agree that NPG should be given an easement which shall include 'rights to retain and subsequently maintain the apparatus being replaced or diverted for the lifetime of that alternative apparatus'. Instead it considers the protective provisions should place an obligation on the Applicant to provide an easement for a tenure no less than exists for the apparatus being relocated or diverted. The Applicant considers that it is not appropriate for the DCO to be used to secure rights that may be different to those currently enjoyed by NPG. The Applicant's proposed wording makes clear that NPG will be in no worse position and is preceded in other recently made Orders for example the Keadby 3 DCO.

~~apparatus for a tenure no less than exists to the apparatus being relocated or diverted~~, all to the reasonable satisfaction of Northern Powergrid in accordance with sub-paragraphs (2) to (5).

**Sch 12.
Part 7, para
97 and 99**

Timings

97. (2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Northern Powergrid ~~90~~ 56 days' advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Northern Powergrid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Northern Powergrid the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

99. (1) Not less than ~~90~~ 56 days before starting the execution of any authorised works in, on or

The Applicant has made proposed amendments to the timings included which are considered excessive in all instances. The Applicant has proposed timeframes consistent with other recently made DCOs and considers them appropriate for the Project, for example at paragraphs 67 and 69 in the protective provisions for NPG set out in Part 6, Schedule 11 of The Byers Gill Solar Order 2025.

under any land purchased, held, appropriated or used under this Order (including conducting any activities whether intentionally or unintentionally, through for example ground or machinery collapse, which may affect Northern Powergrid's apparatus or encroach on safety distances to live equipment) or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 97 (2), the undertaker must submit to Northern Powergrid a plan, section and description of the works to be executed and any such information as Northern Powergrid reasonably required relating to those works.

(3) Any requirements made by Northern Powergrid under sub-paragraph (2) must be made within a period of ~~42~~ 35 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than ~~42~~ 35 days before commencing the execution of any authorised works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the

provisions of this paragraph apply to and in respect of the new plan, section and description.

**Sch 12.
Part 7, para
97**

Removal of Apparatus

97.(3)(c) In the event that neither the undertaker nor Northern Powergrid can acquire all necessary land interest or rights which Northern Powergrid may reasonably require for the relocation and construction of alternative apparatus pursuant to paragraph 97 (3) (a) and /or (b), the undertaker shall seek to ~~utilise the process for acquiring an easement under paragraph 2 of Schedule 11 of this Order so that it can obtain amend the Order to include the relevant land and / or rights in the Order Land so that it can use~~ its powers of compulsory purchase powers ~~under the Order (where applicable)~~ for the acquisition of any such land or land rights unless otherwise agreed by arbitration under article 48 (arbitration) (and, for those purposes, paragraph 2 of Schedule 11 shall be construed so that it may authorise the acquisition of any land or rights in respect of which necessary land, interests or rights are required under this Part) unless-

(a) the undertaker and Northern Powergrid agree (or in default of agreement, it is determined through arbitration under article 48

The Applicant does not consider it appropriate for it to be made to amend the DCO in such circumstances. The Applicant also does not consider it necessary in light of Schedule 11 in the DCO which provides a process for obtaining the necessary rights.

(arbitration)) that the promotion of compulsory purchase powers under Schedule 11 to this Order by the undertaker would be significantly more onerous than the exercise of Northern Powergrid's own compulsory powers; or

(b) Northern Powergrid does not provide its approval under paragraph 2(1) of Schedule 11.

**Sch 12.
Part 7, para
101**

Indemnity

101. (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 authorised works and/or any other works authorised by this Part of this Schedule carried out by Northern Powergrid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 8 (consent to transfer benefit of Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not

The Applicant has included additional scenarios where 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. In those circumstances 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.

Scenario (b) is preceded in protective provisions for NPG in Part 11, Schedule 15 of The Tillbridge Solar Order 2025.

Scenarios (b) and (c) are preceded in protective provisions for National Grid and

falling within this sub-section 2(b) will be subject to the full terms of this Part of this Schedule including this paragraph in respect of such apparatus; and/ or

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

National Gas in Schedule 14 of The East Yorkshire Solar Farm Order 2025.

3 Appendix 2

3.1 Introduction

- 3.1.1 The table below has been prepared in response to action 14 from ISH1. The ExA requested that the Applicant clarify which statutory undertakers / plots section 127 (2)/(3), section 127(5)/(6) and section 138 of the Planning Act 2008 (**PA 2008**) applies and the reasoning for this. The table below sets out whether a statutory undertaker has plots under section 127(2)/(3), section 127(5)/(6) or section 138. This information corresponds with that set out in the **Book of Reference [REP3-009]**.
- 3.1.2 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.
- 3.1.3 The following statutory undertakers have a land interest within the Order Limits and have submitted a relevant representation (which has not been withdrawn):
- 3.1.3.1. Network Rail Infrastructure Limited (“NR”)
 - 3.1.3.2. National Grid Electricity Transmission PLC (“NGET”)
 - 3.1.3.3. National Gas Transmission PLC (“NGT”)
 - 3.1.3.4. Northern Powergrid (Yorkshire) PLC (“NPG”)
 - 3.1.3.5. Yorkshire Water Services Limited
- 3.1.4 The Applicant has included bespoke protective provisions for the protection of NR, NGET, NGT and NPG in the **draft DCO [EN010157/APP/3.1/ Revision 8]**. These additional bespoke protective provisions are yet to be agreed with the relevant statutory undertakers (see **Appendix 1**).
- 3.1.5 The Environment Agency and Beverley and North Holderness IDB both submitted a relevant representation, but agreement has been reached over the protective provisions in the **draft DCO [EN010157/APP/3.1/ Revision 8]**.
- 3.1.6 For completeness the table also includes the following statutory undertakers have a land interest within the Order Limits but have not submitted a relevant representation. The Applicants have included standard protective provisions in the **draft DCO [EN010157/APP/3.1/ Revision 8]** for the benefit of electricity, gas, water, sewerage and telecommunications undertakers which provide adequate protection for their statutory undertakings:

- 3.1.6.1. British Telecommunications
- 3.1.6.2. INEOS Manufacturing (Hull) Limited
- 3.1.6.3. KCOM Group Limited
- 3.1.6.4. Northern Gas Networks Limited
- 3.1.6.5. GTC Pipelines Limited
- 3.1.6.6. National Grid Gas Plc

3.1.7 In light of the protective provisions included in the **draft DCO [EN010157/APP/3.1/ Revision 8]** 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.

3.1.8 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.

3.1.9 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.

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

3.1.10.1. 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

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

'Relevant apparatus' means:

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

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

3.1.11 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 are necessary to construct and operate the Project. In light of the protective provisions included in the **draft DCO [EN010157/APP/3.1/ Revision 8]** the Applicant considers that the rights and apparatus of statutory undertakers is suitable protected and there is no detriment to them 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.

Statutory Undertaker	s.127(2)/(3) PA 2008	s.127(5)/(6) PA 2008	s.138 PA 2008
National Grid Electricity Transmission plc - Landowner	No plots subject to compulsory acquisition of land	17-5, 17-7, 17-11, 17-12, 17-13, 17-14, 17-15, 17-16, 17-17, 17-18, 17-19, 17-20, 17-21, 17-22, 17-23, 17-26	17-5, 17-7, 17-11, 17-12, 17-13, 17-14, 17-15, 17-16, 17-17, 17-18, 17-19, 17-20, 17-21, 17-22, 17-23, 17-26
Northern Powergrid (Yorkshire) plc -Tenant	No plots subject to compulsory acquisition of land	17-7, 17-9, 17-11, 17-14, 17-15, 17-19, 17-20, 17-22	1-7, 2-1, 2-3, 2-4, 2-8, 3-7, 3-9, 3-10, 4-1, 4-2, 4-7, 4-10, 5-6, 9-6, 9-7, 9-8, 9-10, 12-6, 12-8, 12-9, 13-3, 13-4, 13-5, 13-6, 13-7, 13-8, 14-1, 14-2, 14-3, 14-4, 14-5, 14-10, 14-13, 15-1, 15-2, 15-3, 15-5, 15-6, 15-7, 15-8, 16-2, 16-3, 16-4, 16-5, 16-6, 16-7, 16-8, 16-9, 16-10, 17-1, 17-2, 17-3, 17-7, 17-9, 17-11, 17-12, 17-14, 17-15, 17-18, 17-19, 17-20, 17-22
National Gas	12-8	14-6, 14-16	12-8, 13-3, 13-4, 13-5, 13-6, 13-7,

Transmis- sion Plc			13-8, 14-1, 14-6, 14-15, 14-16
Network Rail	No plots subject to compulsory acquisition of land	16-3	16-3, 16-10, 17-1, 17-6
British tel- ecomcommuni- cations	Not relevant – no objection/representation made so s127 is not engaged	Not relevant – no objection/representation made so s127 is not engaged	1-8, 1-9, 1-11, 2-1, 2-2, 2-3, 2-4, 2-5, 2- 6, 2-7, 2-13, 3-5, 3- 6, 3-7, 3-8, 3-10, 4- 1, 9-1, 9-3, 9-10, 9- 11, 12-1, 14-4, 14-5, 14-6, 16-7
KCOM Group Lim- ited	Not relevant – no objection/representation made so s127 is not engaged	Not relevant – no objection/representation made so s127 is not engaged	1-8, 1-9, 1-11, 14-1, 14-4, 14-5, 14-6, 14-7, 15-8, 15-9. 17-1, 17-3
Yorkshire Water Ser- vices	Whilst Yorkshire Water Services has made a representation, this did not relate to land or rights to be acquired, and the Applicant has responded to the issues. YWS has not requested protective provisions.		1-8, 1-9, 1-11, 2-1, 2-8, 3-5, 3-6, 3-7, 3- 8, 4-1, 10-10, 14-4, 14-5, 14-6, 15-8
Northern Gas Net- works Lim- ited	Not relevant – no objection/representation made so s127 is not engaged	Not relevant – no objection/representation made so s127 is not engaged	4-1, 12-1, 12-6, 12- 8, 14-4, 14-5, 16-4, 16-5, 16-6, 16-7
GTC Pipe- lines Lim- ited	Not relevant – no objection/representation made so s127 is not engaged	Not relevant – no objection/representation made so s127 is not engaged	14-4, 14-5, 14-6, 14-7, 14-8, 14-9, 14-10
Ineos Man- ufacturing	Not relevant – no objection/representation made so s127 is not engaged	Not relevant – no objection/representation made so s127 is not engaged	16-5, 16-9
National Grid Gas plc	Not relevant – no objection/representation made so s127 is not engaged	14-5, 14-8, 14-9	
Environ- ment Agency	Whilst the Environment Agency has made a representation, this did not relate to land or rights to be acquired,	3-14, 3-16, 3-18, 5-10, 5-11, 13-4, 13-7, 14-2	1-2, 3-2, 3-12, 3-13, 3-14, 4-1, 4-7, 4-11, 5-2, 5-3, 5-10, 5-11, 8-1, 8-2, 8-3, 13-4,

	and the Applicant has responded to the issues and agreed protective provisions.		13-7, 14-2, 17-2, 17-5, 17-9, 17-10
Beverley & North Holderness IDB	Whilst the Beverley and North Holderness IDB has made a representation, this did not relate to land or rights to be acquired, and the Applicant has responded to the issues and agreed protective provisions.		1-1, 1-11, 3-3, 3-7, 3-10, 3-13, 3-14, 3-16, 3-18, 3-19, 5-1, 5-3, 5-9, 5-11, 5-15, 8-1, 8-4, 9-7, 10-8, 14-6, 14-7, 14-8, 14-9, 14-10, 16-10

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