

Representation at Deadline 6 by Network Rail Infrastructure Limited in relation to The Peartree Hill Solar Farm Order 202[]

Planning Inspectorate Reference Number: EN010157

Registration Identification Number: F67EB834C

Applicant: RWE Renewables UK Solar and Storage Limited (RWE)

Application: The Pear Tree Solar Farm Order 202*

Introduction

Further to Network Rail Infrastructure Limited's (**Network Rail/NR**) Written Representations submitted on 27 August 2025 (**Written Representations**) which confirmed that NR was negotiating the form of protective provisions for the benefit of railway interests (**Protective Provisions**) and a private agreement with RWE (NR and RWE together referred to as the **Parties**), we are writing to provide a further update on this matter at Deadline 6.

Overview

Network Rail is the owner and operator of Great Britain's railway infrastructure. Network Rail is a statutory undertaker in respect of its railway undertaking, with statutory and regulatory obligations in respect of it.

The draft DCO submitted with the Application includes provisions which would, if granted, authorise RWE to carry out works on, under and in close proximity to operational railway land in the control of Network Rail and to permanently acquire new rights over NR's freehold interests in such land, as well as extinguish, suspend and/or interfere with NR's rights over and apparatus on third party land. At the date of the Written Representations, the draft DCO (document reference number 3.1) did not contain any protective provisions for the protection of the railway.

Protective Provisions

On 13 December 2025 (16 days before the final deadline of the Examination Process), RWE submitted an updated draft DCO which included protective provisions for the protection of the railway.

We have reviewed the updated draft DCO and the protective provisions included for the benefit of the railway (**Order PPs**). The Order PPs are not wholly consistent with the form of PPs requested by NR to be included in the draft DCO contained at Appendix 1 of NR's relevant representation submitted on 30 May 2025 (**NR PPs**).

Whilst negotiations are ongoing, the Parties have not yet been able to agree the form of Protective Provisions to be placed on the draft DCO.

This document sets out Network Rail's position in respect of the key variances between the form of protective provisions submitted by RWE (**Order PPs**) and Network Rail's standard protective provisions (**NR PPs**). A detailed justification for Network Rail's position on each proposed provision is provided in the table at Appendix 1. Whilst Network Rail is willing to accept certain less significant changes to the NR PPs where these are considered reasonable, there remain a number of provisions which are not acceptable to Network Rail for the reasons set out. Crucially, if the provisions at paragraphs 73(3)-(9) are not included in the DCO (if granted), serious detriment to NR's statutory undertaking will be caused as a result of RWE being able to exercise compulsory acquisition powers to acquire rights over an operational railway line.

Network Rail therefore requests that the Examining Authority gives due consideration to the matters raised in this submission and ensures that the final form of the protective provisions adequately safeguards Network Rail's operational interests and statutory obligations. A composite version of the Protective Provisions which includes changes proposed by RWE which are considered acceptable to NR are appended to this submission at Appendix 2 (**Proposed PPs**). NR hereby requests that these Proposed PPs (which seek to establish a fair and reasonable compromise on those matters which NR considers reasonable and acceptable) is incorporated into the Order (if granted).

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

In addition to the points set out above and the table at Appendix 1, without the inclusion of the restrictions on compulsory acquisition at paragraphs 73(3)-(9), NR must also maintain its objection to the DCO on the basis that the proposed compulsory acquisition of rights over railway property does not satisfy the test in section 127 Planning Act 2008 in that:

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

The reason for which is that:

- 1) all of the Plots (over which rights are proposed to be compulsorily acquired and temporary possession is proposed to be taken) comprise of, or is in close proximity of operational railway line;

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

Accordingly, in order for such proposed compulsory acquisition and temporary possession of the Plot to pass the test in section 127 Planning Act 2008, paragraphs 73(3)-(9) of the Proposed PPs requiring NR's prior consent to be sought must be imposed before powers authorising the compulsory acquisition of such rights are exercised. Network Rail's position is that in the absence of such, the test in section 127 is not satisfied.

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

Appendix 1

| Paragraph number | NR's proposed change in red | NR's justification for change |
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| 71 | <p>"basic asset protection agreement" means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail asset protection agreement or basic asset protection agreement, as the case may be, in Network Rail's standard form (as the same is amended from time to time) but amended to reflect the particular circumstances relating to the Order Works</p> <p>"railway property" means any railway belonging to Network Rail and-</p> <p>(a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and</p> <p>(b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail identified in the book of reference (evidence of which shall be provided by Network Rail to the undertaker as soon as reasonably practicable upon Network Rail's receipt of written request from the undertaker);</p> <p>"regulatory consents" means any consent or approval required under—</p> <p>(a) the Railways Act 1993;</p> <p>(b) the network licence; and/or</p> <p>(c) any other relevant statutory or regulatory provisions;</p> <p>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 or any access or beneficiary that may be required in relation to the authorised</p> | <p>The definition of "asset protection agreement" needs to cover both an assessment protection agreement and a basic asset protection agreement in Network Rail's standard form but amended to reflect the type of works proposed and circumstances. Please see the reasoning set out below for the inclusion of the proposed changes to paragraph 72(9).</p> <p>The deleted wording is not acceptable as it would not be appropriate for the extent of NR's interests, tenants and licensees to be determined by RWE's land referencing exercise in the book of reference. The proposed wording in red provides RWE with comfort that NR will appropriately evidence any interests which it claims to have.</p> <p>This wording needs to be included in the definition of "regulatory consents" in order to accommodate circumstances where any such other consents are required to be obtained by NR.</p> |

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| | development. | |
| 72 | <p>72.—(1) Where under this Part of this Schedule Network Rail is required to give its consent, agreement or approval in respect of any matter, that consent, agreement or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.</p> <p>(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—</p> <p>(a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and</p> <p>(b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.</p> <p>(3) The undertaker must not exercise the powers conferred by—</p> <p>(a) article 3 (Development consent etc. granted by this Order);</p> <p>(b) article 5 (Maintenance of authorised development);</p> <p>(c) article 19 (Discharge of water);</p> <p>(d) article 21 (Authority to survey and investigate the land);</p> <p>(e) article 22 (Compulsory acquisition of land);</p> <p>(f) article 25 (Compulsory acquisition of rights and imposition of restrictive covenants);</p> <p>(g) article 26 (Private rights over land);</p> <p>(h) article 27 (Power to override easements and other rights);</p> <p>(i) article 29 (Acquisition of subsoil only);</p> <p>(j) article 33 (Temporary use of land for carrying out the authorised development);</p> | <p><u>Paragraphs 72(3), (6) and (7)</u></p> <p>RWE proposes to use compulsory powers to acquire permanent rights over plot 16-3 and plot 16-11 to install and lay underground cables. Plot 16-3 is land comprising an operational railway line (the Yorkshire Coast Line).</p> <p>Absent the inclusion of sub-paragraphs (3), (6) and (7) and where NR has no ability to require its prior consent to such acquisition, it would give rise to a significant, unacceptable risk that RWE could compulsorily acquire rights over railway land without prior NR's consent. Such a proposition is patently unacceptable as this compulsory acquisition of railway land would result in NR no longer having control over its operational railway land. This clearly has the potential for catastrophic implications for the operational railway and poses a serious detriment to NR's carrying on of its statutory undertaking.</p> <p>For example, NR may require that rights granted to RWE are subject to reservations allowing NR to interrupt the exercise of such right in certain circumstances (such as enabling NR to deal with emergencies on the railway or carry out necessary works or the exercise of such rights or such temporary possession may not be safe to be exercised at certain times). Where NR's prior consent is not required before exercising these powers over railway land, there is a risk that any such rights or such temporary possession would not be subject to the required restrictions and as a result NR's control over its ability to appropriately manage the safety of the railway would be compromised. The consequences of NR not being able to effectively manage the safety of the railway could be catastrophic. Moreover, this could lead to a failure by NR to comply with its Network Licence which is not position which can be</p> |

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| <p>(k) article 34 (Temporary use of land for maintaining the authorized development);</p> <p>(l) article 35 (Statutory undertakers);</p> <p>(m) article 44 (Felling or lopping of trees and removal of hedgerows);</p> <p>(n) article 45 (Trees subject to tree preservation orders);</p> <p>(o) the powers conferred by section 11(3) (power of entry) of the 1965 Act;</p> <p>(p) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;</p> <p>(q) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;</p> <p>(r) any powers under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017;</p> <p>in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.</p> <p>(4) 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.</p> <p>(5) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 35 (Statutory undertakers), article 27 (Power to override easements and other rights) or article 26 (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.</p> <p>(6) 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.</p> | <p>accepted by NR, nor would it be acceptable to the Office of Rail and Road (ORR) as NR's regulator.</p> <p>NR is of course willing to engage with RWE and would be required to act reasonably in agreeing the terms of any easement by virtue of sub-paragraph (8). However, NR is under an overarching duty not to compromise the safe operation of the railway and to preserve the safety and integrity of the railway.</p> <p>NR would ask the ExA to consider; if RWE compulsorily acquires rights over an operational railway (without NR's consent), how can NR ensure that those rights are adequately controlled to preserve safety on the railway and in compliance with its Network Licence when the terms of the rights are not within NR's control?</p> <p>The acquisition of rights over railway land is not akin to acquiring rights over private land and requires special restrictions and controls, so for the reasons set out above the terms of any such rights to access railway land must be agreed by Network Rail first and sub-paragraph (3), (6) and (7) should be included in the draft DCO.</p> <p><u>Paragraph 72(4)</u></p> <p>Network Rail is required to maintain strict safety protocols under its Network Licence that is granted by the ORR. As mentioned above, NR is required to ensure compliance with a number of safety standards. For Network Rail to ensure compliance with such standards, Network Rail employees and contractors must have the ability to access to railway property and this access cannot be impeded by RWE in constructing or maintaining the DCO scheme.</p> <p><u>Paragraph 72(5)</u></p> |
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| | <p>(7) 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.</p> <p>(8) 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).</p> <p>(39) The undertaker must enter into an an basic asset protection agreement prior to the carrying out of any specified work.</p> | <p>The same reasons set above regarding maintain access to railway property apply whereby RWE should not have the ability to override easements or rights which NR has the benefit of for the purposes of accessing the railway in its capacity as railway undertaker without first obtaining NR's express consent.</p> <p><u>Paragraph 72(9)</u></p> <p>NR requires these amendments to sub-paragraph (9) (formerly (3)) and the definition of "asset protection agreement" in order to provide for NR to be able to determine whether RWE will need to enter into an asset protection agreement (APA) or a basic asset protection agreement (BAPA) or in some circumstances, both. A BAPA can be sufficient where the specified works are of a minor nature whereas more substantial works on railway property will require an APA. Where works begin as minor works but transition to more substantial works, both a BAPA and an APA may be required. The Protective Provisions should therefore cater for these scenarios and RWE's proposal for them to just refer to a BAPA being entered into is not sufficient.</p> |
| 73(5) | <p>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.</p> | <p>NR does not agree to the inclusion of this paragraph on the basis that its duty and concern is to carry on its statutory undertaking in compliance with its Network Licence. It's intention is not to impede, interfere with or delay the authorised development, but if such a scenario arises as a result of NR complying with its Network Licence then NR cannot be held to be in breach of the Protective Provisions. This paragraph should not give RWE the blanket opportunity to argue that NR is acting unreasonably in conducting its statutory undertaking where that causes the authorised development to be impeded, interfered with or delayed.</p> |
| 73(6) | <p>(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.</p> | <p>The inclusion of this paragraph is not acceptable to NR. If RWE bypasses the process in (1) in cases of emergency it could give rise to circumstances where risk to public safety on the railway is</p> |

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| | | <p>compromised. This paragraph has not need to be included on any other DCO so far as NR is aware. In the case of emergency, NR would work collaboratively with RWE to assist but this cannot enable RWE to circumvent the process for NR to approve its “plans” (package of works documents) before carrying out specified works as this is in place to safeguard railway land. If RWE needs to expedite the process in reaction to an emergency then this would need to be dealt with in liaison with NR on an ad-hoc basis, not circumvent the process altogether.</p> |
| 74(2) | <p>(2) If any damage to railway property or any such interference or obstruction shall be is caused by the carrying out of, or in direct consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses properly incurred to which Network Rail may be put and compensation for any direct loss which it may sustain by reason of any such damage, interference or obstruction</p> | <p>This reference to “direct” cannot be agreed as the indemnity provided at paragraph 83 includes indirect costs incurred by NR pursuant to claims made by train operator companies under train operator company agreements and this paragraph should replicate the scope of that indemnity.</p> |
| 77(1) | <p>(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 4236 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 in the notice including details an estimate 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</p> | <p>The minimum period which NR can accept as limiting its ability to request permanent or temporary alterations or additions to railway property in order to preserve railway safety is 3 years. The reason for this is because some issues / defects will not be immediately identifiable and only become apparent after a significant period of time. Further NR may not become aware of such issues until well over a year after specified works have been constructed or completed.</p> <p>NR is content to agree to providing an estimate of the reasonable cost of carrying out such works and can agree to the inclusion of the second revision to this paragraph accordingly.</p> |

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| | 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. | |
| 77(2) | (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 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 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 | As above, NR cannot agree to the inclusion of this wording on the basis that the indemnity at paragraph 83 includes indirect losses. |
| 78 | The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses agreed in advance with the undertaker and reasonably and properly incurred by Network Rail— | It is clearly not reasonable for NR to have to agree its costs in advance with RWE. Such a position is unduly onerous to NR as it will not know the full extent of its costs in advance. Such a position, to request that NR should need to agree its costs in advance of them being incurred with RWE, would be absurd. This is RWE's scheme and it is a standard position for the promoter to cover the reasonable and proper fees incurred by a statutory undertaker as a result of the scheme. RWE has the reassurance that NR's costs will be reasonably and properly incurred which is a standard and reasonable position. |
| 79(6) & (7) | (6) The undertaker shall use reasonable endeavours not to allow the use or operation of 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 | NR requires its form of wording in red which RWE has deleted in the Order PPs. For obvious reasons it is not acceptable for RWE to operate the authorised development where it causes a intolerable EMI risk. EMI issues can compromise safety to the general public |

~~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.~~

(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.

(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

and endanger lives. An intolerable risk is clearly one which goes beyond the threshold of what NR deems to be safe and if RWE is only using reasonable endeavours to cease the relevant part of the authorized development in such a scenario then it will be putting users of the railway at risk of life-threatening danger. NR's original wording must remain to preserve railway safety.

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| | <p>(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.</p> | |
| 83(1) | <p>(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 53 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail—</p> <p>(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 or egressing from the authorised development;</p> <p>(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;</p> <p>...</p> <p>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</p> | <p>(1) As above, indirect losses are included within the indemnity in this paragraph 83 (i.e. those incurred by NR pursuant to claims made by train operator companies under train operator company agreements) and so this wording needs to be deleted from the Order PPs.</p> <p>(c) & (d) – These provisions need to be re-instated in order to include these heads of losses which may be incurred by NR as a consequence of RWE's scheme within the indemnity. These are standard items within NR's usual indemnity provision and are reasonably included for the purposes of recovering such costs if they are incurred. If they are not incurred then they RWE is not required to pay them under the indemnity and so RWE is no worse off by the inclusion of them.</p> <p>As above, indirect losses are included within the indemnity in this paragraph 83 (i.e. those incurred by NR pursuant to claims made by train operator companies under train operator company agreements) and so this wording needs to be deleted from the Order PPs.</p> |

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| | <p>engineer's supervision does 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.</p> | |
| 83(2) | <p>(2) Network Rail must –</p> <p>(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</p> <p>(b) not admit liability or 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);</p> <p>(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</p> <p>(d) keep the undertaker informed where reasonably practicable to do so in relation to the progress of any such claims and demands and have due regard to the undertaker's representations in relation to them.</p> | <p>The proposed amendments by RWE to NR's standard wording which are acceptable to NR are shown in blue. NR is content that these are reasonable requests. However, NR cannot accept the principle that RWE will have sole conduct of any settlement or compromise. Such a position would clearly be perverse for RWE to handle claims made against NR as statutory undertaking of the railway.</p> |

Appendix 2

Proposed PPs

SCHEDULE 11

PROTECTIVE PROVISIONS

PART 7

FOR THE PROTECTION OF RAILWAY INTERESTS

70. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 83 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

71. In this Part of this Schedule—

"asset protection agreement" means an asset protection agreement or basic asset protection agreement, as the case may be, in Network Rail's standard form (as the same is amended from time to time) but amended to reflect the particular circumstances relating to the Order Works

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993;

"Network Rail" means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at Waterloo General Office, London SE1 8SW) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited's railway undertaking;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

"railway property" means any railway belonging to Network Rail and-

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail for the purposes of such railway or works, apparatus or equipment (evidence of which shall be provided by Network Rail to the undertaker as soon as reasonably practicable upon Network Rail's receipt of written request from the undertaker);

"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 or any access or beneficiary that may be required in relation to the authorised development;

"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.

72. (1) Where under this Part of this Schedule Network Rail is required to give its consent, agreement or approval in respect of any matter, that consent, agreement or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

(3) The undertaker must not exercise the powers conferred by—

- (a) article 3 (*Development consent granted by this Order*);
- (b) article 5 (*Maintenance of authorised development*);
- (c) article 19 (*Discharge of water*);
- (d) article 21 (*Authority to survey and investigate the land*);
- (e) article 22 (*Compulsory acquisition of land*);
- (f) article 25 (*Compulsory acquisition of rights and imposition of restrictive covenants*);
- (g) article 26 (*Private rights of over land*);
- (h) article 27 (*Power to override easements and other rights*);
- (i) article 29 (*Acquisition of subsoil only*);
- (j) article 33 (*Temporary use of land for carrying out the authorised development*);
- (k) article 34 (*Temporary use of land for maintaining the authorised development*);
- (l) article 35 (*Statutory undertakers*);
- (m) article 44 (*Felling or lopping of trees or shrubs*);
- (n) article 45 (*Trees subject to tree preservation orders*);
- (o) the powers conferred by section 11(3) (power of entry) of the 1965 Act;
- (p) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;
- (q) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;
- (r) any powers under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017;

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

(4) 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.

(5) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 35 (*Statutory undertakers*), article 27 (*Power to override easements and other rights*) or article 26 (*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.

(6) 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.

(7) 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.

(8) 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).

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

73. (1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 49 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the reasonable opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed (together with any adjoining part of the specified work which the undertaker reasonably requires to be constructed with that work), Network Rail must construct it without unreasonable delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be

approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's reasonable opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the reasonable expense of the undertaker in either case without unreasonable delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

74. (1) Any specified work and any protective works to be constructed by virtue of paragraph 73(4) must, when commenced, be constructed—

(a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 73;

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

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

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

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses properly incurred to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction (except for indirect losses are "relevant costs" (as defined in paragraph 83(7) below) which shall be recoverable by Network Rail under this paragraph).

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its

employees, servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

75. The undertaker must-

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

76. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

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 36 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 in the notice including an estimate 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 properly and reasonably incurred expenses to which Network Rail may be put and compensation for any loss which it

may suffer by reason of the execution by Network Rail of that specified work provided that at all times Network Rail will be under an obligation to take reasonable steps to mitigate its loss.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 78(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

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

(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 73(3) or in constructing any protective works under the provisions of paragraph 73(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of the reasonable approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;

(c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the reasonable opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and

(e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

79. (1) In this paragraph-

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 73(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)-

(a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 73(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 73(1) has effect subject to the sub-paragraph.

(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.

(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.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6) –

(a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;

(b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 74.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 83(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 78(a) any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that paragraph.

80. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.
81. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.
82. Any additional expenses which Network Rail may reasonably and properly incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.
83. (1) The undertaker must pay to Network Rail all reasonable and properly incurred costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to the remaining provisions of this part of this Schedule and to article 53 (*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 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) 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 or egressing from the authorised development;

(f) 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;

(g) 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 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 does 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 make any settlement or compromise of any such a claim or demand without the prior consent of the undertaker;

(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 where reasonably practicable to do so in relation to the progress of any such claims and demands and have due regard to the undertaker's representations in relation to them.

(4) The sums payable by the undertaker under sub-paragraph (1) must include if relevant a sum equivalent to the relevant costs.(5) 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.

(6) 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 (5).

(7) In this paragraph—

"the relevant costs" means the costs, 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.

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

85. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

86. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

(a) any railway property shown on the works and land plans and described in the book of reference;

- (b) any lands, works or other property held in connection with any such railway property; and
 - (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.
87. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.
88. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 9 (consent to transfer benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—
- (a) the nature of the application to be made;
 - (b) the extent of the geographical area to which the application relates; and
 - (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.
89. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 47 (certification of plans etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.
90. 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).