

# **The Keadby Next Generation Power Station Project**

**Document Ref: 8.16**

**Planning Inspectorate Ref: EN0110001**

**The Keadby Next Generation Power Station Development Consent Order [year]**

**Land at, and in the vicinity of, the existing Keadby Power Station (Trentside, Keadby, Scunthorpe DN17 3EF)**

## **Applicant's Response to Rule 17 Letter dated 19 May 2026 and Report on the Implications for European Sites**

**The Planning Act 2008**

**Applicant: Keadby Next Generation Limited**

**Date: June 2026**

**Revision:0**

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# 1. Introduction

## 1.1. Overview

- 1.1.1 This document ‘Applicant’s Response to the Rule 17 Letter dated 19 May 2026 and Report on the Implications for European Sites (RIES) **(Application Document Ref. 8.16, Rev. 0)** has been prepared on behalf of the Applicant, Keadby Next Generation Limited, in respect of an application (the ‘Application’) for a Development Consent Order (DCO) in respect of the Keadby Next Generation Power Station (the ‘Proposed Development’) that was submitted to the Secretary of State (SoS) for Energy Security and Net Zero under Section 37 of ‘The Planning Act 2008’ on 29 August 2025. The Application was accepted for Examination by the SoS on 22 September 2025. The Examination of the Application commenced on 21 January 2026.
- 1.1.2 The Applicant is seeking a DCO for the construction, operation and maintenance of a new combined cycle gas turbine (CCGT) electricity generating station on land at, and in the vicinity of, the existing Keadby Power Station, Trentside, Keadby, Scunthorpe, DN17 3EF (‘the Site’).
- 1.1.3 The Proposed Development is a new CCGT electricity generating station with a capacity of up to 910 megawatts electrical output. The CCGT electricity generating station will be designed to run on 100% hydrogen and able to run on 100% natural gas or a blend of natural gas and hydrogen and will be located on land to the west of the existing Keadby 1 and Keadby 2 power stations. The Proposed Development includes connections for cooling water, electricity, hydrogen, natural gas, and construction laydown areas and other associated development. It is described in full in **Environmental Statement (ES) Volume I Chapter 4: The Proposed Development [APP-038]**.
- 1.1.4 The DCO, if made by the SoS, would be known as ‘The Keadby Next Generation Power Station Order’ (‘the Order’).

## 1.2. The Purpose and Structure of this Document

- 1.2.1 The purpose of this document is to set out the Applicant’s response to the Examining Authority’s (ExA) Rule 17 letter, which was issued on 19 May 2026 **[PD-010]**. The Rule 17 letter contained the ExA’s further written questions (ExQ2) and also states the ExA had simultaneously published the Report on the Implications for European Sites (RIES) **[PD-011]** which contained questions for the Applicant. Table 2-1 of this document provides the Applicant’s response to ExQ2 and the ExA’s questions in the RIES. It includes the reference number for each relevant question, the ExA’s

comments and questions and the Applicant's responses to each of those questions.

## 2. Applicant’s Response to Rule 17 Letter dated 19 May 2026

**Table 2.1 Applicant’s Response to Rule 17 Letter dated 19 May 2026**

Question:	Applicant’s Response:
<p><b>Carbon Capture</b></p> <p>At the Issue Specific Hearing 1 held on Wednesday 20 January 2026 [EV3-001], the applicant explained that it would, during the course of the examination, remove requirements 30 (carbon capture readiness reserve space) and 31 (carbon capture readiness monitoring report) from the draft development consent order (DCO). The applicant explained that the forthcoming Decarbonisation Readiness Regulations would replace the Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013 and remove the need for the proposed development to be ‘carbon capture ready’. The applicant removed the said requirements at deadline 4 [REP4-003].</p>	<p>The EA stated in its response to PINS dated 3 June 2026 that: “<i>We do not concur with the removal of Requirements 30 and 31 in Rev</i>”</p>

**Question:**

**Applicant's Response:**

**Question 2.0.1:**

Could the Environment Agency provide a response confirming that it concurs with the removal of requirements 30 and 31 requirements. Indicate whether agreement on the removal of the requirements will form part of the signed statement of common ground due at the next deadline.

*4 of the draft DCO. The applicant is not providing a Decarbonisation Readiness report with the environmental permit application.”*

The Applicant notes that it submitted a Carbon Capture Readiness Statement alongside the DCO application, setting out how the Proposed Development is decarbonisation ready and that it also addresses hydrogen readiness. The same statement, including the hydrogen readiness appraisal, was also submitted in support of the environmental permit application submitted to the EA in November 2025, which was duly made on 12 March 2026.

The Applicant intended that the permit application would satisfy the Hydrogen Decarbonisation Readiness Route requirements and, following discussions with the EA permit case officer on 8 June 2026, it has been agreed that the permit application did include a hydrogen readiness appraisal and that the application does seek voluntary hydrogen readiness. It was also agreed that the Applicant will pay any additional fees and provide any additional information required in relation to decarbonisation readiness if requested by the EA through a ‘Schedule 5’ request.

The hydrogen readiness appraisal was submitted voluntarily as part of the permit application because the relevant EA rules and guidance were not available at the time of submission. The

Question:	Applicant's Response:
	<p>Applicant understands that, subsequently, in April 2026, the EA added Decarbonisation Readiness to the list of workstreams for which it proposes to charge in connection with the Applicant's separate environmental permit application.</p> <p>On the basis that the EA has yet to confirm that the permit application fully demonstrates compliance with the Decarbonisation Readiness permit requirements, the Applicant proposes to reinstate Requirements 30 and 31 in the final draft DCO at Deadline 6.</p>
<p><b>Question 2.0.2:</b> The ExA notes that Work No 11 (an area reserved for carbon capture readiness infrastructure) remains in the draft DCO. Could the applicant explain whether Work No 11 will be removed from the draft DCO, the Works plans and any other relevant documents. If not, why not.</p>	<p>Given the Applicant's intention to re-instate Requirements 30 and 31 as noted above (at Question 2.0.1), it follows that Work No 11 is also still required.</p>
<p><b>Air quality</b></p> <p>In its response at deadline 4, Natural England explained [REP4-018] that "we will continue to work with the applicant to resolve the</p>	

**Question:**

**Applicant's Response:**

outstanding impacts associated with air pollution". The applicant's response at deadline 4 (to deadline 3 responses) in respect to Natural England's comments states that "the applicant understand that Natural England is now satisfied on all matters raised". The ExA notes that Natural England did not provide a revised risk and issues log at deadline 4 but understands that HRA related matters have all been resolved (see the Report on Implications on European Sites).

**Question 2.0.3:** Could Natural England set out any outstanding matters specifically in respect to in-combination assessments (Natural England issue number NE11), construction traffic assessments (NE15), operational NOx and ammonia results (NE19) and operational nitrogen deposition and acid deposition results (NE20). If concerns remain, the ExA requests Natural England to set out what changes, if any, would be required to

Question:	Applicant's Response:
<p>the draft DCO and what the applicant needs to do to address them.</p>	
<p><b>Protective provisions</b></p> <p>The ExA notes the applicant's response at deadline 4 [REP4-013] in respect to the progress of protective provisions particularly with National Grid Electricity Transmission (NGET), National Gas Transmission (NGT), and Network Rail. In respect to NGET, the ExA thanks and notes the submission of NGET's suggested tracked changes of their protective provisions submitted at deadline 3 [REP3-036].</p> <p><b>Question 2.0.4:</b> The ExA asks the applicant to confirm that, aside from its comments at deadline 4, that all other suggested changes by NGET are acceptable. Confirm whether the agreed suggested changes will be included in the next iteration of the draft DCO.</p>	<p>Discussions between the Applicant and NGET have continued since Deadline 4. The Applicant has set out its position on each of the outstanding drafting points (i.e. those which are not acceptable to the Applicant) in its response to Question 2.0.5.</p> <p>The Applicant has updated the draft DCO that is submitted at Deadline 5 to capture all the points that have been agreed between the Applicant and NGET. The points that are not agreed (as identified in the Applicant's response to Question 2.0.5) are not included in the updated draft DCO. The Applicant has included its preferred wording in the updated draft DCO for the points that are not agreed.</p>

**Question:**

**Applicant's Response:**

**Question 2.0.5:** In respect to protective provisions for NGET, NGT and Network Rail, the ExA requests the applicant provide a side-by-side comparison for each disputed paragraph as identified as identified in its deadline 4 response to comments at deadline 3 [REP4-013]. Please note that should disagreement on protective provisions remain at the close of the examination, the ExA will make a recommendation to the Secretary of State on which changes, if any, should be made. The ExA will also recommend that the Secretary of State in making a decision need not undertake any further consultations on the matters as all parties would have had sufficient opportunities to resolve outstanding concerns during the examination.

The Applicant has prepared side-by-side comparisons of the disputed protective provisions for NGET, NGT and Network Rail and submits those as an appendix to this response for ease of reading.

Although not specifically requested by the ExA, the Applicant has also provided a side-by-side comparison of the disputed provisions for Northern Powergrid ('NPG') (Appendix B). The Applicant received comments on the draft protective provisions from NPG on 27 May, having provided them to NPG on 8 April. The Applicant returned comments to NPG on 2 June.

The first column of each comparison table sets out the statutory undertaker's preferred wording; the second column sets out the Applicant's preferred wording; the third column contains the Applicant's reasons for not agreeing with the statutory undertaker's wording; and the fourth column explains whether the disputed provision was included in the Keadby 3 Order and if not, why it is (or is not) required for the Proposed Development (as requested in Q2.0.6).

Negotiations with all four statutory undertakers are ongoing and it is therefore likely that some of the points that are currently not agreed (as set out in the tables appended to this response) will be

Question:	Applicant's Response:
	<p>agreed by the end of the examination. The Applicant proposes to update the ExA on progress at Deadline 6 on 16 June.</p>
<p><b>Question 2.0.6</b></p> <p>The ExA requests responses from the applicant, NGET, NGT and Network Rail to explain whether the disputed paragraphs in their respective protective provisions were accepted by the Secretary of State and therefore included in the Keadby 3 <b>DCO</b>. If not, explain why they are required for the proposed development.</p>	<p>This information is included in the comparison tables prepared by the Applicant in response to Q2.0.5. See the fourth and fifth columns of each table (Appendix B).</p>

### 3. Applicant’s Response to Questions in the RIES

**Table 3.1 Applicant’s Response to Questions in the RIES**

Question:	Applicant’s Response:
<p><b>RIES Q1</b> (to NE): Is NE content with the wording of DCO Requirement 5(1)(c)? If not, why not, and what changes does it propose?</p>	<p>The Applicant advised Natural England (NE) by email on 20/5/26 of its intention to change the wording of DCO Requirement 5(1)(c) at Deadline 5 to remove the words ‘the environmental effects will be no worse’ and replace with ‘there will be no materially new or materially different environmental effects’ to align with a related change that the ExA requested at Issue Specific Hearing 1, which was requested to improve clarity. Requirement 5(1)(c) will therefore read:</p> <p><i>Detailed design</i></p> <p><i>5.—(1) In relation to any part of the authorised development comprised in Work No. 1 (electricity generating station) no part may commence, save for the permitted preliminary works, until details of the following for that part, as relevant, have been submitted to and approved by the relevant planning authority—</i></p> <p>...</p> <p><i>(c) the siting and height of any stack AOD which must be sited and at a level at which <del>the environmental effects will be no worse</del> there will be no materially new or materially different environmental effects than those identified in chapter 8 of the environmental statement;</i></p>

Question:	Applicant's Response:
	<p>NE has indicated to the Applicant that this is considered to be acceptable.</p>
<p><b>RIES Q2</b> (to the applicant): Provide further justification of how the maximum adverse effect has been assessed for the Thorne and Hatfield Moor European sites, with respect to stack heights and operational emissions to air.</p>	<p>Emissions have been assessed assuming that they are at the applicable emission limit concentrations, with the Proposed Development operating at full load for 8,760 hours per year.</p> <p>Operation of the Proposed Development will be controlled to ensure that actual emission concentrations will be below the emission limits set in the Environmental Permit, otherwise the Proposed Development would be in constant risk of breaching the Permit conditions.</p> <p>In addition, the plant is anticipated to operate in dispatchable mode with periods of lower load (and therefore lower annual mass emissions), and there will also be periods when the Proposed Development is undergoing routine maintenance and therefore not be operational.</p> <p>A stack height assessment was carried out to determine the optimum stack height to ensure the protection of both human health and ecological receptors. The results were presented based on a stack height of 85m above ground level) and DCO Requirement 5(1)(c) states that the stack height could only be reduced if the resulting effects would not have materially new or materially different environmental effects from those already assessed in the Environmental Statement.</p>

Question:	Applicant's Response:
	<p>In addition, the draft DCO places a limit on where the stack can be located (within Work No 1A as shown on the Works Plans). DCO Requirement 5(1)(c) also ensures that the final location must have no materially new or different environmental effects than those assessed in the ES.</p> <p>The NOx impacts presented in the ES for Thorne and Hatfield Moors were significantly below the 1% screening criteria for insignificant impacts (0.3 and 0.2% respectively), in an environment where background concentrations are also well below the relevant critical levels.</p> <p>Impacts of ammonia would only occur if SCR abatement is required to ensure that the required NOx emission limit is achieved, however the assessment indicated that again, the impacts would be significantly below the 1% screening criteria for insignificant impacts (0.5% and 0.4% respectively at the two designated sites).</p> <p>Nitrogen deposition impacts were also well below the 1% screening threshold for the relevant critical loads at both sites.</p> <p>It is therefore considered that even with the maximum adverse impact being assessed, the impacts at the Thorne and Hatfield Moors were insignificant.</p>
<p><b>RIES Q3</b> (to the applicant): Regarding DCO Requirement 5(1)(c), how does the <b>applicant</b></p>	<p>As explained in response to RIES Q1, the Applicant has amended Requirement 5(1)(c) in response to this question. The amendment brings this</p>

Question:	Applicant's Response:
<p>define 'worse' and who is responsible for enforcing this?</p>	<p>part of the draft DCO into line with the rest of the DCO which uses the term 'materially new or materially different environmental effects'.</p> <p>The relevant planning authority is responsible for enforcing compliance with the DCO Requirements. This is the statutory position under Part 8 of the Planning Act 2008 and is reflected in the draft DCO. In the case of the Proposed Development, North Lincolnshire Council is the relevant planning authority.</p>
<p><b>RIES Q4</b> (to the applicant): Confirm the conservation status of the qualifying features of the Humber Estuary sites (favourable or unfavourable condition).</p>	<p>Natural England has published information<sup>1234</sup> on the condition (conservation status) of (a) the individual units of the Humber Estuary designations and (b) the condition of qualifying features. The reasons for the reported condition are also given.</p> <p>The closest units of the Humber Estuary designations to the Proposed Development (i.e. within the River Trent between Keadby and Amcotts) are Units 48, 49 and 181 (main habitat in all units is littoral sediment i.e. the mudflat habitats exposed at low tide). These units form part of the Humber</p>

<sup>1</sup> <https://designatedsites.naturalengland.org.uk/SiteSACFeaturesMatrix.aspx?SiteCode=UK0030170&SiteName=humber%20estuary>

<sup>2</sup> <https://designatedsites.naturalengland.org.uk/SiteSPAFeaturesMatrix.aspx?SiteCode=UK9006111&SiteName=humber%20estuary>

<sup>3</sup> <https://designatedsites.naturalengland.org.uk/SiteSPAFeaturesMatrix.aspx?SiteCode=UK11031&SiteName=humber%20estuary>

<sup>4</sup> <https://designatedsites.naturalengland.org.uk/SiteFeatureCondition.aspx?SiteCode=S2000480&SiteName=Humber%20Estuary%20SSSI>

**Question:**

**Applicant's Response:**

Estuary SAC, but a condition assessment has not been published specifically for the SAC. It is therefore necessary to rely on the assessment made for the Humber Estuary SSSI. These units do not form part of the Humber Estuary SPA, so they are not monitored in relation to the bird features of the SPA. However, they are monitored in relation to the bird features of the Humber Estuary SSSI. The SSSI assessment provides a proxy for the condition of the Humber Estuary Ramsar site (which does not have a published condition assessment). The published conditions and Natural England's associated rationale for these SSSI units are:

- Unit 48 is in Unfavourable – Declining condition (last published assessment dated 2025). This relates to population declines of the following non-breeding birds for which the SPA is also specifically designated: bar-tailed godwit (*Limosa lapponica*) and redshank (*Tringa totanus*). In addition, there have been declines in relation to the following species named in relation to the SSSI only: curlew (*Numenius arquata*), goldeneye (*Bucephala clangula*), pochard (*Aythya ferina*), ringed plover (*Charadrius hiaticula*), turnstone (*Arenaria interpres*), wigeon (*Anas penelope*). Natural England makes clear that this is a whole estuary assessment based on WeBS data for the whole estuary, not a unit specific assessment. REP4-009 clarifies that the Unit 48 specific WeBS data shows that these bird species are not present in internationally important numbers within the unit (paragraph 6.2.9).

**Question:**

**Applicant's Response:**

Natural England has raised no concerns in relation to the potential impacts on these bird species.

- Unit 49. As reported for Unit 48.
- Unit 181 is/was in Unfavourable – Recovering condition (last published assessment dated 2010). The reason given at that time for unfavourable recovering condition relates to *“water quality parameters have failed within the last six year due to the dissolved oxygen (DO) sag in the Humber which can affect [lamprey] migration. Reduction of the DO Sag has been a priority of the Environment Agency through the recent review of consent work.”* The Applicant’s EIA identifies no DO impacts upon the river from the Proposed Development, and the Environment Agency has raised no objections in relation to dissolved oxygen.

The above details also apply to the next Units downstream (River Trent between Amcotts and Luddington) from the Proposed Development i.e. Units 47, 50 (condition and reasons as reported above for Unit 48) and 180 (condition and reasons as reported above for Unit 181). Again, these units are not part of the SPA so they are not monitored in relation to that designation, but they are assessed in relation to the SSSI. REP4-009 clarifies, again referencing WeBS data, that these units/section of the river do not support the relevant bird species in internationally important numbers (paragraph 6.2.9).

**Question:**

**Applicant's Response:**

Natural England has raised no concerns in relation to the bird species named above.

The condition of the individual qualifying features of the designations is reported by Natural England in relation to the SSSI in its entirety<sup>5</sup> and also for the SPA in its entirety<sup>6</sup>. The results for the SPA are as follows:

<sup>5</sup> <https://designatedsites.naturalengland.org.uk/SiteFeatureCondition.aspx?SiteCode=S2000480&SiteName=Humber%20Estuary%20SSSI>

<sup>6</sup> <https://designatedsites.naturalengland.org.uk/SiteSPAFeaturesMatrix.aspx?SiteCode=UK9006111&SiteName=humber%20estuary>

**NATURAL ENGLAND**

## Designated Sites View

Search SSSI Introduction SSSI Guidance Protected Site Glossary

humber estuary

Feature	Condition
Avocet, <i>Recurvirostra avosetta</i> - A132-A, b	F
Avocet, <i>Recurvirostra avosetta</i> - A132-A, nb	F
Bar-tailed godwit, <i>Limosa lapponica</i> - A157, nb	UD
Bittern, <i>Botaurus stellaris</i> - A021, b	F
Bittern, <i>Botaurus stellaris</i> - A021, nb	F
Black-tailed godwit, <i>Limosa limosa islandica</i> - A616, nb	F
Dunlin, <i>Calidris alpina alpina</i> - A672, nb	UN
Golden plover, <i>Pluvialis apricaria</i> - A140, nb	F
Hen harrier, <i>Circus cyaneus</i> - A082, nb	F
Knot, <i>Calidris canutus</i> - A143, nb	F
Little tern, <i>Sterna albifrons</i> - A195, b	UN
Marsh Harrier, <i>Circus aeruginosus</i> - A081, b	F
Redshank, <i>Tringa totanus</i> - A162, nb	UD
Ruff, <i>Calidris pugnax</i> - A151, nb	UN
Shelduck, <i>Tadorna tadorna</i> - A048, nb	F
Waterbird assemblage	F

**Question:**

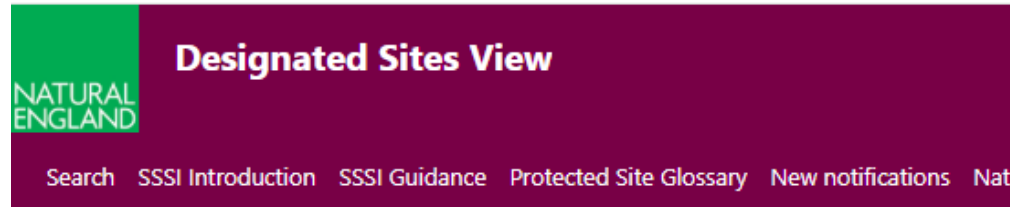
**Applicant's Response:**

Therefore, all bird species for which the SPA is designated are reported to be in favourable condition except bar-tailed godwit and redshank (unfavourable declining) and dunlin, little tern and ruff (unfavourable). Little tern is not relevant to the Proposed Development and Natural England agreed that it could be scoped out of the assessment (REP4-009, paragraph 6.2.8). The other named bird species are not likely to utilise habitats within the zone of influence of the Proposed Development (REP4-009, paragraph 6.2.9). The assessment of the bird qualifying species of the SSSI is too long to summarise here and instead is provided within Appendix A. In considering the information in Appendix A, refer back to the overarching condition assessment summarised above in relation to Units 47-50. The Applicant has identified no pathways likely to adversely affect the conservation status of these bird species.

There is no equivalent assessment for the SAC (as shown in the image below), so it is necessary to defer to the SSSI assessment. All qualifying features of the SAC designation, except for Natterjack toad (which is not subject to condition assessment), are covered by the SSSI features, albeit different habitat names have been used in some cases. The Ramsar site is not assessed but the data given for the SPA and SSSI can be utilised for this designation.

**Question:**

**Applicant's Response:**



humber estuary

Feature	Condition
H1110 Sandbanks which are slightly covered by sea water all the time	?
H1130 Estuaries	?
H1140 Mudflats and sandflats not covered by seawater at low tide	?
H1150 Coastal lagoons	?
H1310 Salicornia and other annuals colonising mud and sand	?
H1330 Atlantic salt meadows ( <i>Glauco-Puccinellietalia maritimae</i> )	?
H2110 Embryonic shifting dunes	?
H2120 Shifting dunes along the shoreline with <i>Ammophila arenaria</i> ('White dunes')	?
H2130 Fixed dunes with herbaceous vegetation ('Grey dunes')	?
H2160 Dunes with <i>Hippophae rhamnoides</i>	?
S1095 Sea lamprey, <i>Petromyzon marinus</i>	?
S1099 River lamprey, <i>Lampetra fluviatilis</i>	?
S1364 Grey seal, <i>Halichoerus grypus</i>	?

The only qualifying species features of the SAC that are likely to interact with the Proposed Development are river lamprey and sea lamprey. Neither

Question:	Applicant's Response:
	<p>species has been subject to condition assessment in relation to the SSSI designation, but they are addressed in relation to the condition assessment of Units 180 and 181 as summarised above. This is also the case for the estuary, littoral sediment and saltmarsh habitats, for which it is again necessary to rely on the assessment made in relation to Units 180 and 181 as summarised above.</p> <p>The assessment of the species and habitat qualifying features of the SSSI is provided within Appendix A. In considering the information in Appendix A, the Applicant notes the overarching condition assessment summarised above in relation to Units 180 and 181. The Applicant has identified no pathways likely to adversely affect the conservation status of these species and habitat features.</p>
<p><b>RIES Q5</b> (to NE): Confirm whether the additional details provided satisfy your concerns regarding SuDS design. If not, why not?</p>	<p>The Applicant has updated the draft SoCG with Natural England to include reference to agreement regarding SuDS and shared it with Natural England on 21 May 2026.</p>

## **Appendix A Condition (Conservation Status) of the Species and Habitat Qualifying Features of the Humber Estuary SSSI (SAC and SPA features highlighted in bold)**

Qualifying feature*	Date of the Natural England assessment	Condition status
Aggregations of non-breeding birds - Avocet, <i>Recurvirostra avosetta</i>	29/03/2022	Favourable
Aggregations of non-breeding birds - Bar-tailed godwit, <i>Limosa lapponica</i>	30/03/2023	Unfavourable - Declining
Aggregations of non-breeding birds - Bittern, <i>Botaurus stellaris</i>	30/03/2022	Favourable
Aggregations of non-breeding birds - Black-tailed godwit, <i>Limosa limosa islandica</i>	30/03/2022	Favourable
Aggregations of non-breeding birds - Brent goose (dark-bellied), <i>Branta bernicla bernicla</i>	30/03/2022	Favourable
Aggregations of non-breeding birds - Curlew, <i>Numenius arquata</i>	30/03/2022	Unfavourable - Declining

<b>Aggregations of non-breeding birds - Dunlin, <i>Calidris alpina alpina</i></b>	<b>30/03/2022</b>	<b>Unfavourable - No change</b>
<b>Aggregations of non-breeding birds - Golden plover, <i>Pluvialis apricaria</i></b>	<b>30/03/2022</b>	<b>Favourable</b>
Aggregations of non-breeding birds - Goldeneye, <i>Bucephala clangula</i>	30/03/2022	Unfavourable - Declining
Aggregations of non-breeding birds - Greenshank, <i>Tringa nebularia</i>	30/03/2022	Unfavourable - No change
Aggregations of non-breeding birds - Grey plover, <i>Pluvialis squatarola</i>	30/03/2022	Favourable
<b>Aggregations of non-breeding birds - Knot, <i>Calidris canutus</i></b>	<b>30/03/2022</b>	<b>Favourable</b>
Aggregations of non-breeding birds - Lapwing, <i>Vanellus vanellus</i>	30/03/2022	Unfavourable - No change
Aggregations of non-breeding birds - Oystercatcher, <i>Haematopus ostralegus</i>	30/03/2022	Favourable
Aggregations of non-breeding birds - Pochard, <i>Aythya ferina</i>	30/03/2022	Unfavourable - Declining
<b>Aggregations of non-breeding birds - Redshank, <i>Tringa totanus</i></b>	<b>30/03/2022</b>	<b>Unfavourable - Declining</b>

Aggregations of non-breeding birds - Ringed plover, <i>Charadrius hiaticula</i>	30/03/2022	Unfavourable - Declining
<b>Aggregations of non-breeding birds - Ruff, <i>Philomachus pugnax</i></b>	<b>30/03/2022</b>	<b>Unfavourable - No change</b>
Aggregations of non-breeding birds - Sanderling, <i>Calidris alba</i>	30/03/2022	Unfavourable - No change
Aggregations of non-breeding birds - Scaup, <i>Aythya marila</i>	30/03/2022	Unfavourable - Recovering
<b>Aggregations of non-breeding birds - Shelduck, <i>Tadorna tadorna</i></b>	<b>30/03/2022</b>	<b>Favourable</b>
Aggregations of non-breeding birds - Teal, <i>Anas crecca</i>	30/03/2022	Favourable
Aggregations of non-breeding birds - Turnstone, <i>Arenaria interpres</i>	30/03/2022	Unfavourable - Declining
Aggregations of non-breeding birds - Whimbrel, <i>Numenius phaeopus</i>	30/03/2022	Favourable
Aggregations of non-breeding birds - Wigeon, <i>Anas penelope</i>	30/03/2022	Unfavourable - Declining
Assemblages of breeding birds - Lowland open waters and their margins	22/04/2022	Favourable

<b>Estuaries</b>	<b>21/12/2010</b>	<b>Not Recorded</b>
Eutrophic lakes	20/03/2015	Not Recorded
<b>Fixed dune grassland</b>	<b>31/01/2022</b>	<b>Unfavourable - Declining</b>
<b>Grey seal, Halichoerus grypus</b>	<b>08/07/2024</b>	<b>Favourable</b>
<b>Humid dune slacks</b>	<b>01/01/1900</b>	<b>Not Recorded</b>
Invertebrate assemblage F1 unshaded early successional mosaic	05/05/2026	Favourable
Invertebrate assemblage M211 sandy beach	05/05/2026	Favourable
Invertebrate assemblage M311 saltmarsh and transitional brackish marsh	01/04/2025	Favourable
Invertebrate assemblage W211 open water on disturbed sediments	10/04/2025	Unfavourable - No change
Invertebrate assemblage W314 reed-fen & pools	11/04/2024	Favourable
<b>Littoral sediment</b>	<b>21/12/2010</b>	<b>Not Recorded</b>
<b>River lamprey, Lampetra fluviatilis</b>	<b>21/12/2010</b>	<b>Not Recorded</b>
<b>Saline coastal lagoons</b>	<b>23/03/2023</b>	<b>Favourable</b>

<b>Sand dune; strandline, embryo and mobile dunes (SD1-6)</b>	<b>31/01/2022</b>	<b>Unfavourable - Declining</b>
<b>Sea lamprey, Petromyzon marinus</b>	<b>21/12/2010</b>	<b>Not Recorded</b>
<b>SM4-28 - Saltmarsh</b>	<b>24/02/2022</b>	<b>Not Recorded</b>
Vascular plant assemblage	13/01/2026	Unfavourable - No change
*Qualifying features shared with the Humber Estuary SPA and SAC are highlighted in bold. Not all qualifying features of the latter designations are qualifying features of the SSSI.		

## Appendix B Side-by-side comparison of protective provisions

These tables form part of the Applicant’s response to ExA Question 2.0.5 which requests that the Applicant provide a side-by-side comparison for each disputed paragraph of the protective provisions for NGET, NGT and Network Rail. Although not requested by the ExA in Question 2.0.5, it also includes a comparison for the disputed provisions for Northern Powergrid, as comments on protective provisions were received from Northern Powergrid on 27 May 2026.

The final column of each table (headed “Statutory undertaker drafting included in Keadby 3 DCO?”) is included in response to ExA Question 2.0.6. The Applicant’s justification for any departures from the Keadby 3 DCO that the Applicant is seeking is included in the fourth column headed “Applicant commentary”.

Unless otherwise noted, paragraph / protective provision numbers referred to in the tables refer to numbering in the draft DCO as submitted at Deadline 5.

**Table 1: National Grid Electricity Transmission PLC (Part 1 of Schedule 9)**

Paragraph / Provision	Statutory undertaker drafting	Applicant drafting	Applicant commentary	Statutory undertaker drafting included in Keadby 3 DCO?
2 (interpretation)  Definition of “acceptable insurance”	“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 development by or on behalf of the undertaker which constitute specified works”	“Such insurance shall be maintained <u>for the duration of (a) during the construction period of the authorised works; and (b) after the construction period of the authorised works</u> <del>in respect of any use and maintenance of the authorised development by or on behalf of the undertaker</del> which constitute specified works”	Requiring the Applicant to maintain insurance after the construction period “in respect of any use and maintenance of the authorised development” is rejected as requiring the Applicant to hold and maintain a insurance policy for the lifetime of the authorised development covering “any use” is an ill-defined, and potentially onerous burden and an approach that is not preceded in recently made DCOs including the East Yorkshire Solar Farm Order 2025 and, pertinently, Keadby 3 (Carbon Capture	No – it is the Applicant’s preferred drafting which is preceded in the Keadby 3 DCO.

			<p>Equipped Gas Fired Generating Station) Order 2022.</p> <p>The Applicant stresses that as explained in the Application documents, the Keadby 3 scheme and the Proposed Development are alternative projects that occupy substantially the same site. In the Applicant's view it is inappropriate and unreasonable to add additional burdens which could impact that decision through the insertion of unattractive, and broad, protective provisions. The Applicant considers the protections afforded in the Keadby 3 in this context are appropriate. The Applicant has not repeated this critical point below, but it applies in all cases where the Applicant is following the approach in the Keadby 3 DCO. Where it is not, it has provided specific justification for the departure.</p>	
<p>2  (interpretation)</p> <p>Definition of "acceptable insurance"</p>	<p><i>"pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event..."</i></p>	<p><i>"pollution liability for third party property damage and third party bodily damage arising from any <u>sudden and accidental</u> pollution/contamination event..."</i></p>	<p>The Applicant's insurance adviser has confirmed that the reference to "any" pollution / contamination event is too wide and onerous because the insurance policies will invariably contain limitations and exclusions. The provision is therefore unreasonable.</p>	<p>Yes</p>

<p>2 (interpretation)</p> <p>Definition of “acceptable security”</p>	<p>““acceptable security” means either:</p> <p>(a) a parent company guarantee from a parent company in favour of National Grid Electricity Transmission Plc to cover the undertaker’s liability to National Grid Electricity Transmission Plc to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid Electricity Transmission Plc and where required by National Grid Electricity Transmission Plc, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or</p> <p>(b) a bank bond or letter of credit...”</p>	<p>““acceptable security” means either:</p> <p><del>(a) a parent company guarantee from a parent company in favour of National Grid Electricity Transmission Plc to cover the undertaker’s liability to National Grid Electricity Transmission Plc to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid Electricity Transmission Plc and where required by National Grid Electricity Transmission Plc, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or</del></p> <p><del>(b) a bank bond or letter of credit...”</del></p>	<p>As this is a joint venture finance project, the Applicant cannot provide this form of security in this case. There is, therefore, no single “parent company” in this case and the provision simply does not translate into the context of the Proposed Development.</p>	<p>Yes</p>
<p>2 (interpretation)</p> <p>Definition of “apparatus”</p>	<p>“(c) any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid Electricity Transmission Plc together with any replacement apparatus constructed as part of the Proposed NGET Projects, whether temporary or permanent and includes, where the context</p>	<p>“apparatus” means any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid, together with any replacement apparatus and such other apparatus constructed <del>as part of Proposed NGET Projects, whether temporary or permanent and includes, where the context</del></p>	<p>The Applicant does not agree that the protective provisions should operate to protect assets that do not yet exist. NGET has been unable to provide the Applicant with a plan showing the confirmed location of its future assets despite the Applicant first requesting this on 22 April 2026 and sending regular reminders to NGET that this information remains outstanding.</p>	<p>No – it is the Applicant’s preferred drafting which is preceded in the Keadby 3 DCO.</p>

	<p><i>so requires, apparatus constructed as part of the authorised development and intended for the beneficial use by National Grid Electricity Transmission Plc (“Proposed NGET Projects apparatus”);</i></p>	<p><del><i>so requires, apparatus constructed as part of the authorised development and intended for the beneficial use by National Grid Electricity pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus</i></del></p>	<p>Because NGET has not been able to confirm the location of its future assets, the Applicant has not been able to assess what the impact of those assets on the authorised development would be. The Applicant does not consider that it is reasonable for any statutory undertaker to request protective provisions in relation to future assets when it cannot confirm the location of those assets, nor whether any protection is in fact required.</p> <p>The most recent information the Applicant has on where the future NGET assets might be located is the information that was published as part of a previous NGET consultation on the NHHM project in February 2025. The main purpose of a consultation is to seek feedback on outline / indicative proposals and to subsequently use that feedback to inform changes to the project, so it is entirely possible that the routing of the NHHM project in the area of the authorised development may have changed. Absent up-to-date information from NGET, the Applicant has no way of knowing if protective provisions for future NGET assets are needed or what the impact of them on the authorised development might be. The Applicant’s strong view is that there is accordingly no justification for the inclusion of protective provisions for future assets in the DCO. If and</p>	
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			<p>when NGET progresses its DCO application for the NHHM project it will be able to take the authorised development into account as part of that process, and that will be the appropriate point for the interaction between the two projects (if any) to be considered and resolved in a manner that allows both to come forward.</p> <p>The Applicant notes that other DCO promoters have taken the same position in response to NGET requesting protective provisions for future assets: see for example the closing submissions [REP6-041] from Steeple Solar Farm Limited submitted at Deadline 6 of the examination into the Steeple Renewables Project application (paragraph 12.4 on). The Applicant agrees with and echoes those submissions. As noted in the closing submissions for Steeple, the most relevant precedent is the Secretary of State’s decision on the Viking CCS DCO application, in which the Secretary of State agreed with the Examining Authority’s recommendation and did not include the protective provisions for future assets requested by NGET in the DCO.</p> <p>Viking ExA Report paragraph 6.8.25:  <i>“The Applicant points out that the submission dates for the DCO applications for these two [NGET] projects are still some time away and it</i></p>	
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			<p>would, as a result, be premature for PPs to be included in the dDCO for the Proposed Development. The ExA accepts this position and takes the view that future projects which will not be determined for some time yet should not impinge on this DCO.”</p> <p>The Applicant requests that the ExA and Secretary of State take the same approach in this case as was taken in the Viking Recommendation Report and decision.</p> <p>The Applicant would stress that the definition of apparatus in the Applicant’s preferred drafting is sufficiently broad and includes “any electric lines or electrical plant as defined in the Electricity Act 1989(a), belonging to or maintained by National Grid...” meaning that there is already a broad definition which would apply to operational assets where relevant.</p>	
<p>2  (interpretation)</p> <p>Definition of  “Incentive  Deduction”</p>	<p>“<i>Incentive Deduction</i>” means any incentive deduction National Grid Electricity Transmission Plc receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which</p>	<p>Omit wording</p>	<p>This is excessively broad and the terms of NGET’s transmission licence can be updated without any opportunity for recourse or challenge for the undertaker which is not acceptable. [</p>	<p>No – it is the Applicant’s preferred drafting which is precedent in the Keadby 3 DCO.</p>

	<i>arises as a result of the authorised works;</i>			
2 (interpretation)  Definition of “NGESO”	<i>““NGESO” means as defined in the STC;”</i>	Omit wording	See below in relation to definition of “STC”	No – it is the Applicant’s preferred drafting which is precedented in the Keadby 3 DCO.
2 (interpretation)  Definition of “parent company”	<i>““parent company” means a parent company of the undertaker acceptable to and which shall have been approved by National Grid Electricity Transmission Plc acting reasonably;”</i>	Omit wording	As per the comments above, this is a joint venture finance project, the Applicant cannot provide this form of security in this case.	Yes
2 (interpretation)  Definition of “Proposed NGET Projects”	<i>““Proposed NGET Projects” means the North Humber to High Marnham Project”</i>	Omit wording	See above in relation to definition of “apparatus”	No – it is the Applicant’s preferred drafting which is precedented in the Keadby 3 DCO.

<p>2 (interpretation)</p> <p>Definition of “Proposed NGET Projects Sites”</p>	<p>“<i>Proposed NGET Projects Sites</i>” <i>include –</i></p> <p><i>(a) land on which any Proposed NGET Projects apparatus is situated; and</i></p> <p><i>(b) land on which Proposed NGET Projects apparatus is anticipated to be situated (in so far as the same has at any time been notified by National Grid Electricity Transmission Plc in writing to the undertaker);”</i></p>	<p>Omit wording</p>	<p>See above in relation to definition of “apparatus”</p>	<p>No – it is the Applicant’s preferred drafting which is preceded in the Keadby 3 DCO.</p>
<p>2 (interpretation)</p> <p>Definition of “STC”</p>	<p>“<i>“STC” means the System Operator Transmission Owner Code prepared by the electricity Transmission Owners and NGESO as modified from time to time;</i>”</p>	<p>Omit wording</p>	<p>This is excessively broad and the terms of NGET’s transmission licence can be updated without any opportunity for recourse or challenge for the undertaker which is not acceptable. [</p>	<p>No – it is the Applicant’s preferred drafting which is preceded in the Keadby 3 DCO.</p>
<p>2 (interpretation)</p> <p>Definition of “STC Claims”</p>	<p>“<i>“STC Claims” means any claim made under the STC against National Grid Electricity Transmission Plc arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector’s equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part</i></p>	<p>Omit wording</p>	<p>See above in relation to definition of “STC”</p>	<p>No – it is the Applicant’s preferred drafting which is preceded in the Keadby 3 DCO.</p>

	<i>of National Grid Electricity Transmission Plc's transmission system which arises as a result of the authorised works;"</i>			
2 (interpretation)  Definition of "Transmission Owner"	<i>"Transmission Owner" means as defined in the STC;"</i>	Omit wording	See above in relation to definition of "STC"	No – it is the Applicant's preferred drafting which is precedented in the Keadby 3 DCO.
6(1) (acquisition of land)	<i>"(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 <del>(such agreement not to be unreasonably withheld or delayed).</del>"</i>	<i>"(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 (such agreement not to be unreasonably withheld or delayed)."</i>	NGET should be required to behave reasonably in not withholding or delaying its agreement under this provision. This wording was agreed in the Keadby 3 DCO and NGET has provided no reasoning or justification for its deletion.	No – it is the Applicant's preferred drafting which is precedented in the Keadby 3 DCO.
6(5) (acquisition of land)	<i>"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 Transmission Plc acquire any land forming part of the Proposed NGET Projects (such agreement not to be unreasonably withheld or delayed."</i>	Omit wording	See above in relation to definition of "apparatus"	No – it is the Applicant's preferred drafting which is precedented in the Keadby 3 DCO.

7(2) (removal of apparatus)	<i>“If, for the purpose of executing any works in, on, under or over any land...”</i>	<i>“If, for the purpose of executing any <u>specified</u> works in, on, under or over any land...”</i>	This provision should relate to specified works only (i.e. relevant works that may affect NGET apparatus) rather than any and all works carried out under the DCO. The Keadby 3 DCO referred to “authorised works” which has the same effect as “specified works”.	No – it is the Applicant’s preferred drafting which is preceded in the Keadby 3 DCO.
7(2) (removal of apparatus)	<i>“...secure any necessary consents for the alternative apparatus and afford to National Grid Electricity Transmission Plc to its satisfaction...”</i>	<i>“...secure any necessary consents for the alternative apparatus and afford to National Grid Electricity Transmission Plc to its <u>reasonable</u> satisfaction...”</i>	NGET should be required to behave reasonably in confirming its satisfaction under this provision. This wording was agreed in the Keadby 3 DCO and NGET has provided no reasoning or justification for its deletion.	No – it is the Applicant’s preferred drafting which is preceded in the Keadby 3 DCO.
7(3) (removal of apparatus)	<i>“...National Grid Electricity Transmission Plc may in its sole discretion, 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...”</i>	<i>“...National Grid Electricity Transmission Plc <del>must</del> <del>may in its sole discretion</del>, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances <del>to assist the undertaker</del> in an endeavour to obtain the necessary facilities and rights in the land...”</i>	The purpose of this provision is to ensure that where the Applicant has sought to obtain the necessary facilities and rights pursuant to subparagraph (2) but does not succeed, NGET will then attempt to do so. To weaken the obligation under this provision in the manner suggested by NGET would render this provision largely redundant since NGET could essentially decide not to take any steps in this regard. The Applicant’s wording is standard and has extensive precedent, for example, in the DCOs for <a href="#">Drax Power Station</a> (pg.73), <a href="#">Longfield Solar Farm</a> (pg.100), and most relevantly <a href="#">Keadby 3</a> (pg.72).	No – it is the Applicant’s preferred drafting which is preceded in the Keadby 3 DCO.

9(5) (retained apparatus: protection)	<i>“(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 Proposed NGET Projects; and”</i>	Omit wording	See above in relation to definition of “apparatus”	No – it is the Applicant’s preferred drafting which is preceded in the Keadby 3 DCO.
9(5) (retained apparatus: protection)	<i>“(c) must not be unreasonably withheld.”</i>	<i>“(b) must not be unreasonably withheld <u>or delayed.</u>”</i>	NGET should not be able to unreasonably delay its approval under this provision. This wording was agreed in the Keadby 3 DCO and NGET has provided no reasoning or justification for its deletion.	No – it is the Applicant’s preferred drafting which is preceded in the Keadby 3 DCO.
9(8) (retained apparatus: protection)	<i>“Where National Grid Electricity Transmission Plc requires any protective works to be carried out by itself or by the undertaker”</i>	<i>“Where National Grid Electricity Transmission Plc requires any protective works to be carried out by itself or by the undertaker <u>pursuant to sub-paragraph (6)</u>”</i>	The Applicant’s amendment makes the scope of this provision clearer. It is appropriate for it to be read in conjunction with the preceding paragraphs so that it cannot be interpreted as authorising some additional or different process beyond that set out in the preceding paragraphs.	No – it is the Applicant’s preferred drafting which is preceded in the Keadby 3 DCO.
9(8) (retained apparatus: protection)	<i>“...must be carried out to National Grid Electricity Transmission Plc’s satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective</i>	<i>... must be carried out to National Grid Electricity Transmission Plc’s <u>reasonable</u> satisfaction prior to the commencement of any <del>authorised development</del> <u>specified</u>”</i>	NGET should be required to behave reasonably in confirming its satisfaction pursuant to this provision. This provision therefore merely confirms and regularises the position	Yes

	<i>works are required and National Grid Electricity Transmission Plc shall give notice its requirement for such works within 42 days...</i>	<i>works (or any relevant part thereof)</i>	across the Protective Provisions that behaviour should be reasonable.  This provision should relate to specified works only (i.e. relevant works that may affect NGET apparatus) rather than any and all works carried out under the DCO (see above).	
9(8) (retained apparatus: protection)	<i>“for which protective works are required and National Grid Electricity Transmission Plc shall give notice of its requirement for such works within 42 days...”</i>	<i>for which <u>the</u> protective works <u>in question</u> are required and National Grid Electricity Transmission Plc shall give notice of its requirement for such works within 42 days...”</i>	The Applicant’s amendments make the scope of this provision clearer.	Yes
9(10) (retained apparatus: protection)	<i>“...in no case less than 56 days before commencing the execution of the authorised development, a new plan...”</i>	<i>“...in no case less than 56 days before commencing the execution of the authorised development <u>in question</u>, a new plan...”</i>	This provision previously referred to “the specified works” rather than “the authorised development”. In line with comments above, the Applicant considers this provision should apply specifically to the works that have the potential to affect NGET’s apparatus, rather than any and all works carried out under the DCO. The Applicant is content to accept the change to “authorised development” provided “in question” is also included.	Yes
10(1) (expenses)	<i>“...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</i>	<i>“...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</i>	It is unreasonable for NGET to require the Applicant to pay costs that have not actually been incurred by NGET. There is no clarity as to how such costs would be calculated and no mechanism is suggested by NGET for	Yes

	<i>charges, costs and expenses reasonably <u>anticipated within the following three months or reasonably</u> and properly incurred by National Grid Electricity Transmission Plc...</i>	<i>charges, costs and expenses reasonably and properly incurred by National Grid Electricity Transmission Plc...</i>	the repayment of any anticipated costs that are not actually incurred.	
10(1) (expenses)	<i>“(a) any costs reasonably incurred...”</i>	<i>“(a) any costs reasonably <u>and properly</u> incurred...”</i>	Any costs to be paid by the Applicant should be both reasonably and properly incurred.	Yes
11(1) (indemnity)	<i>“(a) bear and pay on demand accompanied by an invoice or claim from National Grid Electricity Transmission Plc the cost reasonably and properly incurred by National Grid Electricity Transmission Plc in making good such damage or restoring the supply...”</i>	<i>“(a) bear and pay <u>within 14 days of</u> <del>on</del> demand accompanied by an invoice or claim from National Grid Electricity Transmission Plc the cost reasonably and properly incurred by National Grid Electricity Transmission Plc in making good such damage or restoring the supply...”</i>	It is unreasonable for NGET to require the Applicant to pay on demand and the amendment provides a reasonable time period for the Applicant to pay NGET’s invoices or claims.	No – it is the Applicant’s preferred drafting which is preceded in the Keadby 3 DCO.
11(1) (indemnity)	<i>“(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 interruption or National Grid Electricity Transmission Plc becoming liable to any third party and including STC Claims or an Incentive Deduction other than arising from</i>	<i>“(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 interruption or National Grid Electricity Transmission Plc becoming liable to any third party <del>and including STC Claims or an Incentive Deduction</del> other than arising from</i>	This is excessively broad and the terms of NGET’s transmission licence can be updated without any opportunity for recourse or challenge for the undertaker which is not acceptable. [A	No – only Network Code Claims are covered under Keadby 3, however as Keadby 3 concerned the same protective provisions for both NGET and NGT, this addition is not relevant here.

	<i>any default of National Grid Electricity Transmission Plc.”</i>	<i>any default of National Grid Electricity Transmission Plc.”</i>		
11(3) (indemnity)	<i>“(b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid Electricity Transmission Plc as an assignee, transferee or lessee of the undertaker with the benefit of 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 falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 11...”</i>	<i>“(b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid Electricity Transmission Plc as an assignee, transferee or lessee of the undertaker with the benefit of Order pursuant to section 156 of the Planning Act 2008 or article 8 (consent to transfer benefit of <u>the</u> Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 11...”</i>	The Applicant’s amendments make the scope of this provision clearer.	Yes
11(6) (indemnity)	<i>“(6) National Grid Electricity Transmission Plc must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid Electricity Transmission Plc’s reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third</i>	<i>“(6) National Grid Electricity Transmission Plc must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid Electricity Transmission Plc’s reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third</i>	The Applicant’s amendments are reasonably required to ensure that it has the appropriate documentation to understand how any potential claim has been mitigated or minimised by NGET. It is eminently reasonable, given the potential sums involved, that reasonable supporting documentation should be provided.	No – it is the Applicant’s preferred drafting which is precedented in the Keadby 3 DCO.

	<i>parties which is outside of National Grid Electricity Transmission Plc's control and if reasonably requested to do so by the undertaker National Grid Electricity Transmission Plc must provide an explanation of how the claim has been minimised, where relevant."</i>	<i>parties which is outside of National Grid Electricity Transmission Plc's control and if reasonably requested to do so by the undertaker National Grid Electricity Transmission Plc must provide an explanation of how the claim has been minimised, where relevant, <u>together with reasonable supporting documentation as may be required by the undertaker.</u>"</i>		
11(7) (indemnity)	<i>"(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid Electricity Transmission Plc or in respect of which National Grid Electricity Transmission Plc has an easement or wayleave for its apparatus or any other interest or to carry out any works within [15] metres of National Grid Electricity Transmission Plc's apparatus until the following conditions are satisfied:"</i>	<i>"(7) <del>Not to</del> <u>The undertaker must not</u> commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid Electricity Transmission Plc or in respect of which National Grid Electricity Transmission Plc has an easement or wayleave for its apparatus or any other interest or to carry out any works within <del>{15}</del> metres of National Grid Electricity Transmission Plc's apparatus until the following conditions are satisfied:"</i>	The Applicant's amendments make the scope of this provision clearer.	Yes
11(8) (indemnity)	<i>"(8) In the event that the undertaker fails to comply with 11 (7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Grid Electricity Transmission Plc from seeking injunctive relief (or</i>	<i>"(8) In the event that the undertaker fails to comply with <del>11</del> <u>sub-paragraph (7) of this Part of this Schedule</u>, nothing in this Part of this Schedule shall prevent National Grid Electricity Transmission Plc from seeking</i>	The Applicant's amendments make the scope of this provision clearer.	No

	<i>any other equitable remedy) in any court of competent jurisdiction.”</i>	<i>injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.”</i>		
13(1) (co-operation)	<i>“(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid Electricity Transmission Plc requires the removal of apparatus under paragraph 7(2) or National Grid Electricity Transmission Plc makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid Electricity Transmission Plc’s undertaking and National Grid Electricity Transmission Plc shall use its best endeavours to co-operate with the undertaker for that purpose.”</i>	<i>“(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid Electricity Transmission Plc requires the removal of apparatus under paragraph 7(2) or National Grid Electricity Transmission Plc makes requirements for the protection or alteration of apparatus under paragraph 9 (retained apparatus: protection), the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid Electricity Transmission Plc’s undertaking and National Grid Electricity Transmission Plc shall use its best endeavours to co-operate with the undertaker for that purpose.”</i>	The Applicant’s amendments make the scope of this provision clearer.	No
15 (arbitration)	<i>“15 Save for differences or disputes arising under paragraphs 7(2), 7(4), 8(1) and 9 any difference or dispute arising</i>	<i>“15 Save for differences or disputes arising under paragraphs 7(2), 7(4), 8(1) and 9 any difference or dispute arising</i>	The Applicant’s amendments make the scope of this provision clearer.	No

	<i>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 [] (arbitration)."</i>	<i>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)."</i>		
16 (notices)	<i>"16 Notwithstanding article [] (service of notices), any plans submitted to National Grid Electricity Transmission Plc by the undertaker pursuant to paragraph 9 must be submitted using the LSBUD system (<a href="https://lsbud.co.uk/">https://lsbud.co.uk/</a>) or to such other address as National Grid Electricity Transmission Plc may from time to time appoint instead for that purpose and notify to the undertaker in writing."</i>	<i>"16 Notwithstanding article [46] (service of notices), any plans submitted to National Grid Electricity Transmission Plc by the undertaker pursuant to paragraph 9 (<a href="#">retained apparatus: protection</a>) must be submitted using the LSBUD system (<a href="https://lsbud.co.uk/">https://lsbud.co.uk/</a>) or to such other address as National Grid Electricity Transmission Plc may from time to time appoint instead for that purpose and notify to the undertaker in writing."</i>	The Applicant's amendments make the scope of this provision clearer.	No
17 (interaction with the proposed NGET asset)	<i>"17. Without limiting any other provision of this Part of this Schedule, the undertaker must use reasonable endeavours to avoid any conflict arising between the carrying out, maintenance and operation of the authorised development and the Proposed NGET Projects. For the purposes</i>	Omit wording	See above in relation to definition of "apparatus"	No

	<p><i>of this paragraph, “reasonable endeavours” means—</i></p> <p><i>(a) undertaking consultation with National Grid Electricity Transmission Plc on detailed design and programming of the authorised works, taking into account such reasonable representations as National Grid Electricity Transmission Plc may provide in relation to proposed plans and timetables ;</i></p> <p><i>(b) having regard to the anticipated programme of works for the Proposed NGET Projects and facilitating a co-ordinated approach to construction programming, land assembly, and the carrying out of the authorised works and the Proposed NGET Projects where reasonably possible;</i></p> <p><i>(c) undertaking consultation on the detailed design and programming of the authorised development to ensure that the design and programme for the authorised development does not unreasonably impede or interfere with the NGET Projects;</i></p> <p><i>(d) where possible, undertaking the placing of ducting or making</i></p>			
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	<p><i>provision for the Proposed NGET Projects; and</i></p> <p><i>(e) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised works.”</i></p>			
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**Table 2: National Gas Transmission PLC (Part 2 of Schedule 9)**

Paragraph / Provision	Statutory undertaker drafting	Applicant drafting	Applicant commentary	Statutory undertaker drafting included in Keadby 3 DCO?
<p>17 (interpretation)</p> <p>Definition of “acceptable insurance”</p>	<p>“Such insurance shall be:</p> <p>(a) maintained for the duration of the construction period of the authorised works which constitute specified works;</p> <p>(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</p> <p>(c) arranged with an insurer whose security/credit rating meets the same requirements as an “acceptable credit provider”,”</p>	<p>“Such insurance shall be:</p> <p>(a) maintained for the duration of the construction period of the authorised works which constitute specified works;</p> <p><del>(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</del></p> <p><del>(e)</del> (b) arranged with an insurer whose security/credit rating meets the same requirements as an “acceptable credit provider”,”</p>	<p>As above in relation to NGET: Requiring an insurance policy to be held for the lifetime of the authorised development, covering “any use”, is an onerous burden and one that is not preceded in recently made DCOs (e.g., East Yorkshire Solar Farm Order 2025, Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022). Once constructed, the mere use of the authorised development should not interfere with NGT’s apparatus and there is accordingly no justification for requiring the Applicant to incur the costs associated with maintaining an ongoing insurance policy.</p>	<p>No – it is the Applicant’s preferred drafting which is preceded in the Keadby 3 DCO.</p>

Paragraph / Provision	Statutory undertaker drafting	Applicant drafting	Applicant commentary	Statutory undertaker drafting included in Keadby 3 DCO?
17 (interpretation)  Definition of “acceptable insurance”	“such insurance shall include (without limitation) a waiver of subrogation and an indemnity in principal clause in favour of National Gas, and pollution liability for third party property damage and third party bodily damage arising from any pollution / contamination event...”	“such insurance shall include (without limitation) a waiver of subrogation and an indemnity in principal clause in favour of National Gas, and pollution liability for third party property damage and third party bodily damage arising from any <u>sudden and accidental</u> pollution / contamination event...”	The Applicant’s insurance adviser has confirmed that the reference to “any” pollution / contamination event is too wide and onerous because the insurance policies will invariably contain limitations and exclusions. It may not therefore be possible to obtain insurance in the terms sought by NGT.	Yes
24(3) (retained apparatus: protection)	“Where reasonably necessary (in National Gas discretion) for the purpose of carrying out any specified works...”	“Where reasonably necessary <del>in National Gas discretion</del> for the purpose of carrying out any specified works...”	The wording NGT seeks to add in this sub-paragraph is unnecessary. It suggests that NGT has absolute discretion in this area, therefore it is not accepted. Any request from NGT under this provision should be reasonably necessary, as provided for at the start of the paragraph.	No – it is the Applicant’s preferred drafting which is preceded in the Keadby 3 DCO.

**Table 3: Network Rail Infrastructure Limited (Part 6 of Schedule 9)**

Paragraph / Provision	Statutory undertaker drafting	Applicant drafting	Applicant commentary	Statutory undertaker drafting included in Keadby 3 DCO?
64(6)	<p><i>“ 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, with due regard given to Network Rail’s functions in relation to the safe operation of the railway 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).”</i></p>	<p><i>“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, with due regard given to Network Rail’s functions in relation to the safe operation of the railway <del>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).</del>”</i></p>	<p>The Applicant commits in sub-paragraph 64(5) not to use Order powers in a way that would affect the safe running of trains, and NR’s consent will also be required for the exercise of a variety of Order powers.</p> <p>The Applicant’s proposed drafting therefore represents a reasonable balance, in place of NR’s preferred wording. The attempt to remove the requirement of reasonability in any context would set an unwelcome step in implementing the Proposed Development.</p>	<p>No – it is the Applicant’s preferred drafting which is preceded in the Keadby 3 DCO.</p>
64(7)	<p><i>“The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.”</i></p>	<p><i>“<u>If requested by Network Rail following submission of details to Network Rail pursuant to paragraph 62, the undertaker must enter into an asset protection agreement prior to the commencement of the construction of any part of a</u></i></p>	<p>The Applicant considers that a timeline is required to provide clarity and certainty, and that NR’s concern about a fixed 56-day period can be managed by including “unless otherwise agreed between the parties” to the end of the provision for flexibility.</p>	<p>No – it is the Applicant’s preferred drafting which is preceded in the Keadby 3 DCO.</p>

Paragraph / Provision	Statutory undertaker drafting	Applicant drafting	Applicant commentary	Statutory undertaker drafting included in Keadby 3 DCO?
		<p><i>specified work <a href="#">and Network Rail shall enter into such asset protection agreement with the undertaker within 56 days of such request unless otherwise agreed between the parties.</a></i></p>	<p>To adopt the NR’s proposed wording would be to create a potential impediment to delivery, and goes directly contrary to Government’s guidance that provisions should not “negate” the provisions of a DCO.</p>	
69(1)	<p><i>“If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction <u>or completion</u> of a specified 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...”</i></p>	<p><i>“If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction <del>or completion</del> of a specified work, <u>or during a period of 24 months after the completion of that specified work</u>, 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’ <u>written</u> notice.”</i></p>	<p>Placing a 24-month time limit on this liability is preceded in the Keadby 3 DCO and provides necessary clarity while giving sufficient time for issues to emerge without imposing an indefinite liability on the Applicant.</p> <p>Similarly, requiring NR’s 56-day notice to be in writing is preceded in the Keadby 3 DCO and aligns with other consents and notices to be given under various Order provisions.</p>	<p>No – it is the Applicant’s preferred drafting which is preceded in the Keadby 3 DCO.</p>

Paragraph / Provision	Statutory undertaker drafting	Applicant drafting	Applicant commentary	Statutory undertaker drafting included in Keadby 3 DCO?
69(1)	<p>“...(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), the undertaker must pay to Network Rail the reasonable 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 incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.”</p>	<p>“...56 days’ <i>[written]</i> notice <del>(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), the undertaker must pay to Network Rail the reasonable 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 incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.”</del></p>	<p>This wording is not preceded in the Keadby 3 DCO and NR has not justified why it is required in the present instance.</p> <p>Sub-paragraphs 69(2) to (4), which are preceded in the Keadby 3 DCO, make provision for the Applicant’s repayment of NR’s costs incurred for construction, maintenance, working or renewing, where NR considers these to be necessary as a consequence of any part of the specified work.</p>	<p>No – it is the Applicant’s preferred drafting which is preceded in the Keadby 3 DCO.</p>

Paragraph / Provision	Statutory undertaker drafting	Applicant drafting	Applicant commentary	Statutory undertaker drafting included in Keadby 3 DCO?
69(2)	<i>“If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker...”</i>	<i>“If during the construction of a specified work by the undertaker, Network Rail gives <u>written</u> notice to the undertaker...”</i>	Requiring NR’s notice under this subparagraph to be in writing is preceded in the Keadby 3 DCO and aligns with other consents and notices to be given under various Order provisions.	No
75(1)	<i>“The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule...”</i>	<i>“The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule <u>(but always excluding any consequential or indirect loss)...</u>”</i>	The Applicant considers that wording excluding consequential or indirect loss is required, because without it the Applicant’s liability is unacceptably broad.  Although the equivalent wording is not included in the Keadby 3 DCO, it is included in NR’s protective provisions within the recently made Five Estuaries Offshore Wind Farm Order 2025.	Yes
75(1)	Wording omitted	<i>“...<u>(subject to article 50 (no double recovery))...</u>”</i>	Following discussions on this drafting point with NR, the Applicant has included a new article 50 (no double recovery) in the draft DCO submitted at Deadline 5. This provision	No – it is the Applicant’s preferred drafting which is

Paragraph / Provision	Statutory undertaker drafting	Applicant drafting	Applicant commentary	Statutory undertaker drafting included in Keadby 3 DCO?
			previously contained an incorrect cross-reference to article 35, as per the Keadby 3 DCO. NR flagged this cross-reference as incorrect. The Applicant has accordingly replaced it with a correct cross-reference to article 50.	precedented in the Keadby 3 DCO.
75(2)	<i>“Network Rail must— (a) give the undertaker reasonable written notice of any such claims or demands...”</i>	<i>“Network Rail must— (a) give the undertaker reasonable written notice of any such claims or demands <u>as soon as reasonably practicable after Network Rail becomes aware of any such claims or demands...</u>”</i>	The Applicant considers this to be a reasonable addition as it is ultimately liable for such claims and should be made aware of them as soon as reasonably practicable.	Yes
75(2)	<i>“...(c) take such steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands...”</i>	<i>“...(c) take <del>such steps as are within its control and are reasonable in the circumstances</del> <u>all reasonable steps</u> to mitigate any liabilities relating to such claims or demands...”</i>	Wording requiring NR to take all reasonable steps to mitigate liabilities is precedented in the Keadby 3 DCO, so the Applicant considers that it can reasonably be replicated here.	No – it is the Applicant’s preferred drafting which is precedented in the Keadby 3 DCO.
75(2)	Wording omitted	<i>“... <u>and</u>”</i>	The Applicant considers this to be a reasonable addition as it is ultimately liable for such claims and should be	Yes

Paragraph / Provision	Statutory undertaker drafting	Applicant drafting	Applicant commentary	Statutory undertaker drafting included in Keadby 3 DCO?
		<u><i>(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."</i></u>	kept informed of them as they progress.	

**Table 4: Northern Powergrid (Part 7 of Schedule 9) [all TBC subject to SSE instruction]**

Paragraph / Provision	Statutory undertaker drafting	Applicant drafting	Applicant commentary	Statutory undertaker drafting included in Keadby 3 DCO?
83 and throughout	<i>"In this Schedule-"</i>	<i>"In this <a href="#">Part of this</a> Schedule-"</i>	<p>"Part of" needs to be retained because the NPG protective provisions are in Part 7 of Schedule 9 only and it needs to be clear that the definitions that follow this wording apply only to Part 7, not to the Parts of Schedule 9 containing protective provisions for other statutory undertakers.</p> <p>Same comment applies throughout the NPG protective provisions where NPG has erroneously deleted references to this Part of this Schedule.</p>	No
[86]	<i>"Regardless of any provision in the Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not interfere with any communications cables or equipment used by Northern Powergrid in relation to its apparatus nor shall acquire or interfere with rights or interests supporting the use, maintenance or renewal of such equipment"</i>	Omit wording	<p>The Applicant does not consider that the additional wording is required.</p> <p>Appropriate protection for NPG apparatus is already provided by paragraph [89], which requires the undertaker to provide plans and documentation well in advance of</p>	No

Paragraph / Provision	Statutory undertaker drafting	Applicant drafting	Applicant commentary	Statutory undertaker drafting included in Keadby 3 DCO?
	<p><i>including any easements other than by agreement of Northern Powergrid (such agreement not to be unreasonably withheld or delayed) and having regard to Northern Powergrid’s existing and known future requirements for such land or interests.”</i></p>		<p>carrying out any authorised works that may affect it.</p> <p>Under the same provision, NPG can impose reasonable requirements on how the undertaker carries out such works, and NPG is able to watch and inspect their execution. This provides ample protection.</p> <p>Additionally, the proposed wording is not included in the NGT, NGET and other undertakers’ PPs, nor in NPG’s protective provisions in the Keadby 3 DCO.</p>	
87(2)	<p><i>“...the undertaker must give to Northern Powergrid 90 days’ advance written notice of that requirement...”</i></p>	<p><i>“... the undertaker must, <u>unless otherwise agreed between the parties</u>, give to Northern Powergrid <u>42 90</u> days’ advance written notice of that requirement...”</i></p>	<p>A 42-day period was agreed in the Keadby 3 DCO and the Applicant considers this to be sufficient notice in the circumstances.</p>	<p>No – it is the Applicant’s preferred drafting (without the “unless otherwise agreed” wording) which is</p>

Paragraph / Provision	Statutory undertaker drafting	Applicant drafting	Applicant commentary	Statutory undertaker drafting included in Keadby 3 DCO?
				precedented in the Keadby 3 DCO.
89(1)	<i>“Not less than 90 days before starting the execution of any authorised works...”</i>	<i>“<u>Unless otherwise agreed between the parties, not</u> <del>Not</del> less than <u>48 90</u> days before starting the execution of any authorised works...”</i>	A 48-day period was agreed in the Keadby 3 DCO and the Applicant considers this to be sufficient notice in the circumstances.  The Applicant has offered to include “unless otherwise agreed between the parties” wording as a compromise.	No – it is the Applicant’s preferred drafting (without the “unless otherwise agreed” wording) which is precedented in the Keadby 3 DCO.
89(5)	<i>“Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 42 days before commencing the execution of any authorised works, a new plan, section and description...”</i>	<i>“No Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but <del>in no case</del> no less than <u>35 42</u> days before commencing the execution of any authorised works (<u>unless otherwise agreed between the parties</u>), a new plan, section and description...”</i>	A 35-day period was agreed in the Keadby 3 DCO and the Applicant considers this to be appropriate in the circumstances.	No – it is the Applicant’s preferred drafting (without the “unless otherwise agreed” wording) which is precedented in the Keadby 3 DCO.
91(2)	Omit wording	<i>“<u>or</u> <u>(b) any indirect or consequential loss of any third party (including</u></i>	The undertaker should not be made liable for indirect or consequential losses.	Yes

Paragraph / Provision	Statutory undertaker drafting	Applicant drafting	Applicant commentary	Statutory undertaker drafting included in Keadby 3 DCO?
		<p><i><u>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.</u></i></p>	<p>There is precedent for these losses being excluded from liability in protective provisions in the following recently made DCOs:</p> <p>The Dogger Bank South Offshore Wind Farms Order 2026 (see Parts 6 and 7 of Schedule 15);</p> <p>The North Falls Offshore Wind Farm Order 2026 (see Parts 11 and 13 of Schedule 14);</p> <p>The Springwell Solar Farm Order 2026 (see Part 7 of Schedule 15); and</p> <p>The Fenwick Solar Farm Order 2026 (see Part 7 of Schedule 14).</p>	