

**Representation at Deadline 7 by Network Rail Infrastructure Limited in relation to The National Grid (Sea Link) Order 202[ ]**

**Planning Inspectorate Reference Number:** EN020026

**Registration Identification Number:** [REDACTED]

**Applicant:** National Grid Electricity Transmission Plc

**Application:** The National Grid (Sea Link) Order

**Introduction**

Further to Network Rail Infrastructure Limited's (**Network Rail/NR**) Written Representations submitted on 21 November 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 NGET (NR and NGET together referred to as the **Parties**), we are writing to provide a further update on this matter at Deadline 7.

**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 NGET to carry out works on, under and in close proximity to operational railway land in the control of Network Rail, to permanently acquire new rights over NR's freehold interests in such land and take temporary possession over such land, as well as extinguish, suspend and/or interfere with NR's rights over and apparatus on third party land. The affected plots include land forming part of (or adjacent to) the operational railway (the Chatham and South Eastern line). There are also potential impacts on several bridges and level crossings due to proposed construction traffic routing and abnormal loads.

At the date of the Written Representations, the draft DCO (document reference number 3.1) does not contain an acceptable form of protective provisions for the protection of the railway.

**Protective Provisions**

We have reviewed the updated draft DCO submitted at Deadline 5 of the Examination Period 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 23 June 2025 (**NR PPs**).

The Parties have agreed the substantial proportion of the Protective Provisions which are to be included in the DCO (if made) noting that these are not the version included in the Draft Order at present. In any event, the Parties have not been able to agree the form of provision 4 (concerning the restriction on the use of compulsory powers without NR's prior consent (not to be unreasonably withheld)).

The Applicant has proposed the deletion of the parts of NR's required form of provision 4 (as shown in red below) and has proposed the insertion of the wording in blue below:

4. (1) *The undertaker must not exercise the powers conferred by—*

~~(a) article 3 (development consent granted by the Order);~~

~~(b) article 5 (maintenance of authorised development);~~

(c) article 17 (discharge of water);

(d) article 19 (authority to survey and investigate the land);

~~(e) article 21 (compulsory acquisition of land);~~

~~(f) article 23 (compulsory acquisition of rights);~~

~~(g) article 24 (private rights);~~

~~(h) article 26 (acquisition of subsoil only);~~

~~(i) article 27 (power to override easements and other rights);~~

~~(j) article 30 (temporary use of land for constructing the authorised development);~~

~~(k) article 31 (temporary use of land for maintaining the authorised development);~~

~~(l) article 32 (statutory undertakers);~~

(m) article 39 (felling or lopping of trees and removal of hedgerows);

(n) article 40 (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.*

(2) *The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.*

(3) *The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 32 (statutory undertakers), article 27 (power to override easements and other rights) or article 24 (private rights), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.*

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

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

(6) Where Network Rail is asked to give its consent pursuant to this paragraph:

~~(a) 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) in the circumstances:~~

~~(b) such consent must not be unreasonably delayed and if, by the end of such consent must not be unreasonably delayed and if, by the end of 28 days beginning with the date on which such request for Network Rail's consent was made, Network Rail has not intimated its refusal together with the grounds of any such refusal of consent, the undertaker may serve upon Network Rail written notice requiring Network Rail to intimate approval or disapproval within a further period of 14 days beginning with the date upon which Network Rail receives written notice from the undertaker. If by the expiry of the further 14 days Network Rail has not intimated consent or refusal of consent, Network Rail is deemed to have given consent for the exercise of the respective powers.~~

~~(7) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work, and Network Rail must act reasonably and expeditiously at all times in connection with the negotiation of, and entry into, such an asset protection agreement.~~

Crucially, if the provisions at paragraphs 4(1)-(7) are not included in the DCO (if granted), serious detriment to NR's statutory undertaking will be caused as a result of NGET being able to exercise compulsory acquisition powers to acquire rights over an operational railway line, and access rights over an operational private level crossing. Absent the inclusion of sub-paragraphs (1), (3) and (4) and where NR has no ability to require its prior consent to such acquisition, it would give rise to a significant, unacceptable risk that NGET could compulsorily acquire rights over railway land without prior NR's consent.

Such a proposition is patently unacceptable as the proposed compulsory acquisition of rights over 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. Moreover, this could lead to a failure by NR to comply with its Network Licence which is not position which can be accepted by NR, nor would it be acceptable to the Office of Rail and Road (ORR) as NR's regulator.

For example, NR may require that rights granted to NGET 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 NR's 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.

NR is of course willing to engage with NGET and would be required by its proposed Protective Provisions to act reasonably in responding to a request for consent by NGET (and thereby agreeing the terms of any

easement over railway property) by virtue of sub-paragraph (6). 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 and so its consent to the acquisition of such rights must not be circumvented by the powers in the Order.

NR would ask the ExA to consider; if NGET 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 and restrictions of how and when those rights are exercised are no longer within NR's control?

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 (1), (3) and (4) should be included in the draft DCO.

**Paragraph 4(3):** 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 NGET in constructing or maintaining the DCO scheme.

**Paragraph 4(4):** The same reasons set above regarding maintain access to railway property apply whereby NGET 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.

**Paragraph 4(5):** The wording included above in blue proposes a deemed consent provision in respect of NRIL's consent to the proposed powers being granted.

Although we understand the Applicant's concern that they do not wish to risk delays to the implementation of the DCO scheme, NR would not seek to delay consent unreasonably. NR's proposed wording at paragraph 4 would provide sufficient comfort to the applicant that NR is not to unreasonably withhold or delay the consent, and that this consent may be given subject to conditions. Ultimately, NR is not a typical landowner, and cannot accept deemed consent provisions in respect of compulsory acquisition powers. This would fetter NR's discretion and would give rise to the risk that the Applicant could proceed to exercise powers over an operational railway where the delay may be as a result of a shortage in resource at the relevant time or a notice being referred to the wrong team at NR. A deemed consent provision is therefore not appropriate in the context of NR's consent being obtained.

**Paragraph 4(7):** Further, although the requirement to enter into an asset protection agreement at 4(7) provides NR with some comfort, the additional wording in blue is not acceptable. While NR fully intends to act reasonably (to the standard of a reasonably prudent railway undertaker) and in as expeditious a manner as possible (while complying with its license obligations and statutory obligations), the requirement

to act “*expeditiously*” is subjective and may not account for the complexity of technical consultation required as part of this process.

This inclusion could give NGET the blanket opportunity to argue that NR is not acting expeditiously or reasonably enough when negotiating the asset protection agreement, particularly as this requires complex technical details to be discussed and consultation and the requirements ensuring compliance with their statutory obligations and maintain the safety of the railway.

## Electromagnetic Interference (EMI)

### **Paragraph 11(6)**

*(6) The undertaker shall ~~use reasonable endeavours not to allow the use or operation of the authorised development or any part, section and/or component of the authorised development (as applicable) 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 and passengers (such intolerable risks should be assessed in an Electromagnetic Compatibility (“EMC”) risk assessment report which will be submitted to Network Rail for review and acceptance and should cover) (but not restricted to) the EMI risks of ~~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. The acceptance of the EMC risk assessment report will be provisional and subject to the successful commissioning, verifying the conclusions of the EMC risk assessment report.~~*

NGET have removed NRIL’s proposed clause (6) and, proposed the above wording in blue. On instruction from NR’s EMI team, the clause as amended above in red could be acceptable to NR as a reasonable compromise and proposing a clear, structured process to follow while managing potential risks of EMI.

For obvious reasons it is not acceptable for NGET to operate the authorised development where it causes an intolerable EMI risk. EMI issues can compromise safety to the general public and endanger lives. An intolerable risk is clearly one which goes beyond the threshold of what NR deems to be safe and if NGET is only using reasonable endeavours to cease the relevant part of the authorised 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.

## Step In Rights

### **Paragraph 5(3):**

*(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 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, Network Rail must construct it without unnecessary 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.*

**Paragraph 9(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 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 5(3), pay to Network Rail all reasonable 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.

The applicant has deleted NR's step in rights at 9(2) and 5(3), as copied above. These enable NR to construct specified works (on notice), should these affect railway stability or safe operation of traffic on the railways. These rights are necessary to ensure that should the Applicant's proposed specified works and/or other additions affect the safety or stability of the railway, that NR can carry out these works at NGET's cost.

Ultimately, NR as the body possessing the necessary expertise to carry out works in respect of railway infrastructure, should at a minimum have the option to carry out these works and would not intend to, nor wish to, carry out works to electricity infrastructure or areas outside of its railway expertise.

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

In addition to the points set out above 1, without the inclusion of the restrictions on compulsory acquisition at paragraphs 4(1)-(7), 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 and/or assets;
- 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 4(1)-(7) 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.

### Conclusion

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.