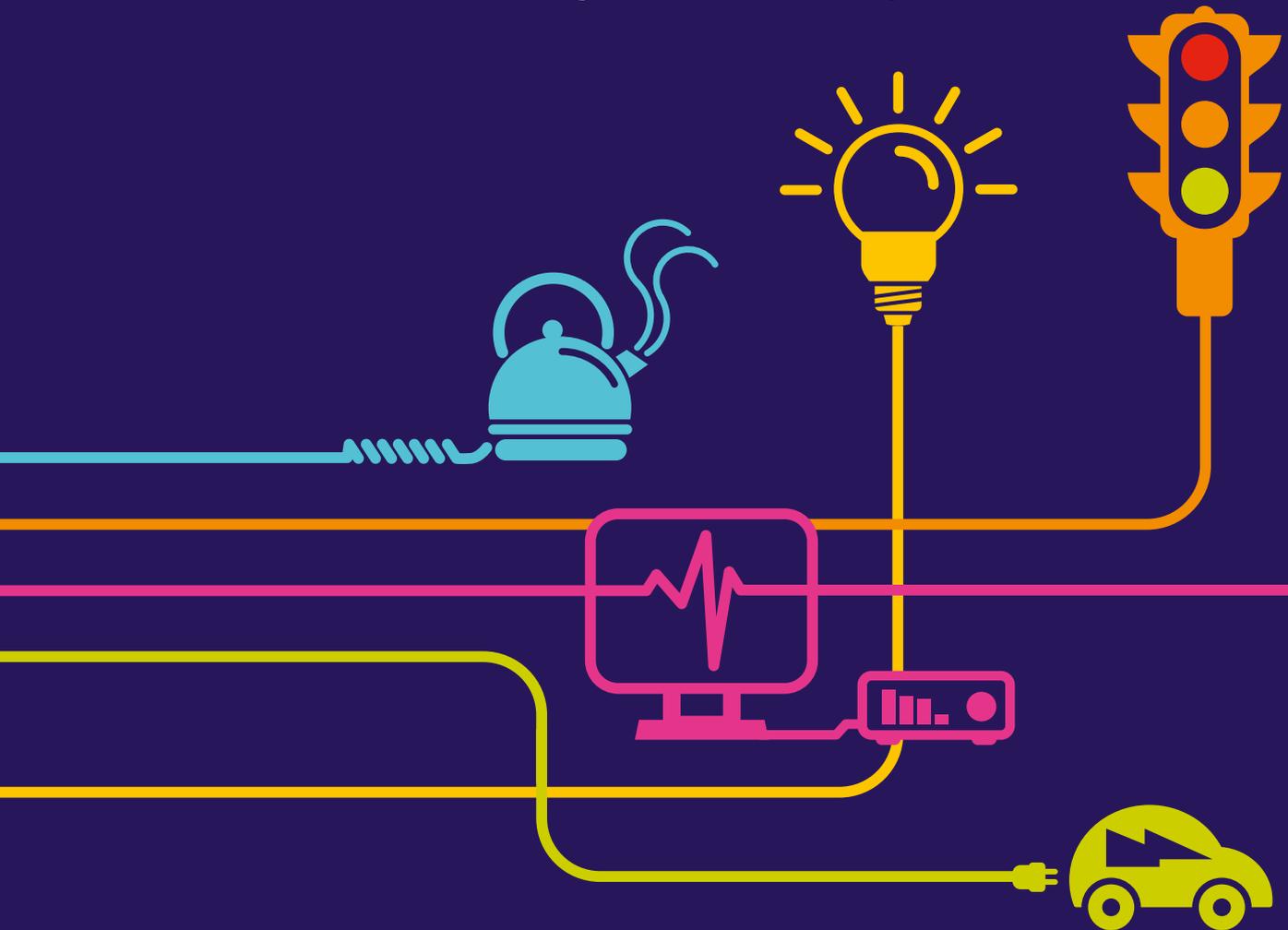


# Applicant's Written Summary of Case put forward orally at the Issue Specific Hearing on the Development Consent Order held on 28th July 2016

National Grid (Richborough Connection Project) Order





# **RICHBOROUGH CONNECTION PROJECT**

## **ISSUE SPECIFIC HEARING:**

### **DRAFT DCO AND OTHER AGREEMENTS TO SECURE MITIGATION**

**28 JULY 2016**

**DISCOVERY PARK, BUILDING 500 (LAWRENCE SUITE) SPITFIRE WAY,  
SANDWICH, CT13 9FR**

#### **1 Introduction**

- 1.1 This document summarises the case put by the applicant, National Grid Electricity Transmission plc (National Grid), at the hearing into the Development Consent Order (DCO) and other agreements to secure mitigation which took place at Discovery Park, Sandwich, Kent on Thursday 28 July 2016.
- 1.2 In what follows, National Grid's submissions on the points raised broadly follow the agenda set out in the Examining Authority (ExA)'s letter which was published on the Planning Inspectorate's website on 21 July 2016.
- 1.3 Agenda item 1 was concerned with a welcome, introductions and arrangements for the hearing
- 1.4 During the course of the hearing the ExA queried the drafting of certain articles and schedules in the DCO. National Grid confirmed for some points that, where appropriate, it would make amendments to the drafting of the DCO to reflect the discussions that had taken place during the hearing. In other cases, National Grid confirmed that it would consider further the point raised and reflect, where appropriate, any required changes in the next iteration of the draft DCO.
- 1.5 The ExA also invited stakeholders to submit to the examination proposed drafting changes and amendments to the draft DCO for Deadline 3 (4 August 2016). National Grid, through Counsel, confirmed that it would consider further such drafting amendments or points of clarification after they had been submitted.
- 1.6 Where amendments have been or will be accepted they will be incorporated into the next iteration of the draft DCO which will be submitted by National Grid at Deadline 4 (8 September 2016).

#### **2 Agenda Item 2: Articles and schedules of the DCO**

**The ExA will be asking questions and seeking responses from the Applicant and other Interested Parties to questions in respect of generic DCO powers and specific provisions**

- 2.1 Before considering individual articles of the draft DCO the ExA asked if National Grid will provide, in track changed and clean copy version, a final version of the explanatory

memorandum relating to the final draft version of the DCO as submitted at Deadline 7. It was confirmed that this was the intention of National Grid and that interim changes to the draft DCO will continue to be set out in the covering letter for each deadline of the Examination where a revised iteration of the draft DCO is required.

- 2.2 The ExA also asked that the reference to the Secretary of State for Energy and Climate Change be updated to reflect recent departmental changes. Counsel confirmed that this would be done.
- 2.3 The ExA confirmed that it was not proposing to ask questions and seek responses from the Applicant and other Interested Parties to every individual article and schedule of the draft DCO. The ExA made clear, however, that it would consider any additional query raised by an Interested Party in respect of any article or schedule not raised by the ExA.

#### Article 2 – Interpretation

##### 'Requirement'

- 2.4 Clarification was asked why the definition of 'Requirement' included the drafting "... and any numbered Requirement must be construed accordingly." It was explained that the revised definition had been added to the Hinkley Point C Connection Order 2016 (as made) but that National Grid was happy to reconsider the drafting and delete the additional text.

##### 'Maintain'

- 2.5 Concerns were raised that the definition of 'maintain' was drafted too widely and that this definition would allow for works to be constructed beyond those assessed in the Environmental Statement (**Doc 5.1-5.4**). The ExA also sought clarification that the extent of works provided for in the definition had been assessed.
- 2.6 It was confirmed that the extent of maintenance works had been environmentally assessed in general terms but that it was not possible to provide assessments for individual situations as each is determined by individual circumstances. In principle, Counsel confirmed that the environmental assessment had taken account of, and reflected, the maintenance of the project.
- 2.7 The detailed description of the Proposed Development is set out in the Environmental Statement (**Doc 5.2 (part 1)**). Maintenance access routes are shown on **Figure 3.16a-3.16d** within **Volume 5, Doc 5.3.3**. National Grid also submitted a Deadline 2 up-dated plans (**Document 8.12**) which show these more clearly. Maintenance activities that would be required for the Proposed Development are described in **Section 3.4** (see in particular from para 3.4.90).
- 2.8 Counsel confirmed that the definition of 'maintain' is based on the definition contained in the model provisions. The only additional activity included in addition to those included in the definition in the model provisions being to 'relay'. This has been included to allow for specific activities that might be required for electricity transmission connections in order to ensure that National Grid is able to provide a continuous service and 'keep the lights on'.
- 2.9 The National Farmers Union (NFU) queried the inclusion of 'alter' in the definition. It was explained that such a provision was required to enable National Grid to replace, over the

lifetime of the project old conductors with newer conductors. The definition would not allow the removal and replacement of towers.

- 2.10 Counsel confirmed that the definition of 'maintain' states "...but not so as to vary from the description of the authorised development in Schedule 1 and only to the extent assessed in the environmental assessment". Therefore the definition of maintain does not result in works being authorised which have not been assessed.

'CEMP'

- 2.11 The ExA queried the definition, in particular whether the documents underneath the CEMP should be a part of the CEMP as opposed to accompanying the CEMP.

- 2.12 Counsel confirmed that this issue was being re-considered by National Grid and whether the accompanying plans should be stated to be appendices of, and therefore incorporated into the CEMP or whether they should be more clearly defined as standalone documents.

'Environmental Statement'

- 2.13 In response to a question from the ExA Counsel confirmed that the definition of the Environmental Statement would be updated throughout the Examination so that the final version of the draft DCO would include a full and complete definition of the final document number of the Environmental Statement including all errata and updates.

'Outline Waste Management Plan'

- 2.14 Clarification was sought as to why the Waste Management Plan alone is described as 'Outline'. Counsel confirmed that this matter would be considered by National Grid and, where appropriate, reflect the position in the next iteration of the draft DCO to be submitted at Deadline 4.

Article 3 – Development consent etc. granted by the Order.

- 2.15 The ExA had asked in its first round of written questions if sub-paragraphs (2), (3) and (4) should be removed to follow practice in the Hinkley Point C Connection Order where it was removed by the Secretary of State as unnecessary given the terms of section 16 of the Planning Act 2008.

- 2.16 Counsel confirmed that these paragraphs had not been discussed during the examination of the Hinkley Point C Connection Order and had been removed by the Secretary of State. Counsel confirmed that section 16 refers to the 'installation' of an electric line above ground, but says nothing about 'keeping' the line installed. The concern of National Grid is that the removal of the sub-paragraphs of the Order would not explicitly authorise the 'keeping installed' of the overhead line.

- 2.17 Counsel stated that the view of the Department may be that the draft DCO provides for the maintenance of the authorised development and that such maintenance could not be provided for in the draft DCO without the keeping installed of the line – in effect National Grid's ability to keep installed the lines is implied.

- 2.18 Counsel confirmed that he had advised National Grid not to delete the sections from this article. Clearly, if the ExA or the Secretary of State choose to delete these sub-paragraphs then National Grid would be happy for such a deletion to take place. Counsel confirmed that it was his belief that the Department had not considered fully the implications of section 37(1)(b) of the Electricity Act 1989 and whether the removal of the text from the equivalent article of the Hinkley Point C Connection Order made clear that National Grid was able 'keep' installed lines.
- 2.19 It was acknowledged that this issue was not straightforward and it was agreed that that National Grid would submit at Deadline 3 a post-hearing note explaining to the ExA National Grid's position and legal reasoning for resisting the deletion of these sub-paragraphs.

#### Article 5 – Limits of Deviation

- 2.20 Counsel was asked to summarise, for the benefit of the other parties, the answer given by National Grid in response to question 1.5.4.
- 2.21 Counsel confirmed that National Grid's position is that the upwards, downwards and lateral Limits of Deviation (LoD) sought within the draft DCO are all a necessary and proportionate means of providing flexibility in the construction of the authorised development.
- 2.22 Downwards LoD are required so that construction works can reflect extant ground conditions. Upwards LoD are required to the statutory safety clearance distances (ENATS 43-8) for conductors, which will vary according to which items are on the ground. Lateral LoD are required to allow for localised constraints or unknown or unforeseeable issues that may arise during construction works and which would require a minor adjustment to the overhead line design and pylon positions.
- 2.23 In response to questions as the extent of the standard LoD Counsel confirmed that the lateral LoD are shown on the Works Plans and that these lateral limits have been restricted ('pinch points') where possible to minimise the area of land affected. Vertical LoD are limited to 4 metres which allows flexibility to construct an extra 'block' in the lattice pylon whilst there are no downwards limits (which is standard). Counsel referred parties to 'Explanation of Limits of Deviation' (**Doc 8.2.1 (Appendix G)**) for a more detailed consideration of the extent of LoD.
- 2.24 Interested Parties acknowledged the need for National Grid to be able to move pylon locations on engineering grounds but asked how such flexibility would be provided to landowners. The ExA asked for clarification as to how the final site position of each pylon would be confirmed.
- 2.25 Peter Bullen (National Grid) confirmed that a lands officer would be appointed for the project whose role would be to liaise between the design team and affected landowners. It was agreed that National Grid would submit at Deadline 3 a note explaining how National Grid liaises with landowners in such cases
- 2.26 Counsel confirmed that the LoD is primarily a means to provide operational flexibility in moving (micro-siting) pylons to reflect local ground conditions and that there is no obligation on National Grid to move pylons for operational farming reasons.
- 2.27 In response to confirming 'Pinch point' areas Peter Bullen referred the ExA to the document explaining the limits of deviation (**Appendix G: Doc 8.2.1**) which identifies such pinch points.

In Broad Oak the LoD between pylons PC7 to PC9 is limited to 5 metres southwards to keep the line away from residential properties at the edge of Broad Oak (the line can move 10m northwards).

Article 7 – Consent to transfer benefit of Order

- 2.28 National Grid confirmed it would consider further the drafting points raised by the ExA relating to whether consultation with the Marine Management Organisation should be in writing as well as time frames and procedures for notification of transfer.

Article 12 – Power to alter layout, etc. of streets

- 2.29 Counsel confirmed to the ExA that Bellmouths 33, 34, 35 and 37 were included in Schedule 6 but that they were found under 'Thanet District Council' at page 64 of the draft DCO.
- 2.30 The local authorities confirmed, when asked by the ExA, that they were content with the deemed consent provision of 28 days in this article.

Article 13 – Temporary stopping up of streets and public rights of way

- 2.31 Kent County Council (as highway authority) confirmed that it was happy with the plans and schedule relating to this article. Kent County Council also confirmed that it was content with the drafting of the article subject to points it had raised in responding with question 1.5.9.
- 2.32 Concern was expressed by the ExA that the powers set out in this article were wide ranging. Counsel for National Grid confirmed that this was an important article but that suitable safeguards are provided in that the accompanying schedule clearly identifies the streets and makes clear which part(s) can be stopped up limited by the extent identified on the relevant plans. For any street and PRoW not specifically identified in the draft DCO, but which are within the Order limits, then the consent of the street authority must be first obtained and the street authority can attach any reasonable conditions to that consent.
- 2.33 The ExA confirmed that it would await comments from Kent County Council on this article.

Article 16 – Discharge of Water

- 2.34 The Environment Agency confirmed that it had no issues or concerns with this article.

Article 18 – Authority to survey and investigate the land

- 2.35 The NFU stated that any notice issued under this article should have greater clarity regarding its content and scope. Counsel confirmed that National Grid was happy to consider these points further and, where appropriate, reflect the position in the next iteration of the draft DCO to be submitted at Deadline 4.

Article 22 – Crown rights

- 2.36 Counsel confirmed that the Crown Estate had not yet instructed solicitors but that National Grid's land agent had contacted the Crown Estate's land agents to explain that National Grid was seeking to include this article in the draft DCO. Counsel confirmed that the respective

lawyers of both parties would also clarify the position once the Crown Estate had appointed solicitors.

2.37 The ExA asked for clarification between escheat land and article 22. Counsel confirmed that discussions were ongoing but that it was understood that the Crown Estate was generally reluctant to engage and take a right in such land.

2.38 It was acknowledged by the ExA that the amount of escheat land was small in area but that an update on this matter would be helpful and useful. Counsel confirmed that it would be possible to provide an informal update by Deadline 3 with a more substantive update envisaged by Deadline 4.

#### Article 27 – Acquisition of part of certain properties

2.39 In response to a question from the ExA as to whether this article was needed Counsel stated that it could be that this article was a remnant from the Hinkley Pont C Connection Order which served as a template for this Order

2.40 Counsel confirmed that National Grid would review this point and, if appropriate, reflect the position in the next iteration of the draft DCO to be submitted at Deadline 4.

#### Article 29 – Temporary use of land by National Grid

2.41 Counsel confirmed that National Grid would review the drafting of this article to ascertain if the drafting could be made clearer and, if appropriate, reflect the position in the next iteration of the draft DCO to be submitted at Deadline 4.

2.42 Regarding concerns at only removing the top 1.5 metres of foundation below ground level Counsel confirmed that National Grid considered that this depth was widely recognised in allowing agricultural practices to take place. The point was made that the deeper one goes in removing foundations that the greater the disturbance that is caused to a farmers land and the environment.

2.43 The ExA asked if any discussions had taken place with South East Water (SEW) regarding its objection to National Grid removing only the top 1,5 metres of foundation. Counsel for National Grid confirmed that it was not believed that discussions on this point had taken place. National Grid pointed out to the ExA that SEW did not have any pylons on its land that were being removed.

2.44 It was confirmed that no new drains were considered necessary in cases where apparatus was being removed save that it was acknowledged that existing drains would be repaired if damaged.

2.45 Mark Chandler (land agent for PILs) acknowledged that there was no issue regarding the carrying out of normal agricultural practices where only the top 1.5 metres of foundation was removed. Though there may be certain areas which required greater removal of foundations and the installation of new drains.

2.46 Counsel confirmed that the issue of new drainage is normally considered when pylons are installed and not when they are removed. The point was acknowledged by the ExA but clarification sought as to what National Grid would do in special circumstances if the removal

of a foundation did, for some reason, require the installation of new drains. National Grid confirmed that it would submit a post hearing note on this issue at Deadline 3.

- 2.47 In response to a question, Counsel confirmed that liability for any foundation that remained in situ would remain with the land owner and not National Grid. Foundations are made from inert concrete and Counsel confirmed that he was not aware of any examples where contamination had resulted from such inert structures. Counsel confirmed that when the overhead line is taken down and the pylon removed that the rights in the land revert back to the landowner. Article 29(7) provides that land owners may be entitled to compensation for any loss or damage arising from leaving the foundations in situ.

#### Article 31 – Temporary use of land for maintaining the authorised development

- 2.48 It was stated that 'building' was a wide term and that 5 years is a long time for such occupation to occur. Counsel confirmed that building could mean something with 4 walls and a roof but that it was likely to be a portacabin. It was made clear that the 5 year period relates to the period of time over which the power can be exercised and not that a building would be erected for 5 years.
- 2.49 The drafting of the article includes a 'reasonableness test' (Requirement 31 (1)(a) and (b)) which requires any possession to be reasonably required and construction of temporary works where reasonably necessary.
- 2.50 Dover District Council referred back to article 29 and the reference to leaving a building. Counsel confirmed that the reference to building in both articles would be considered and, where appropriate or required, reflected in the next iteration of the draft DCO submitted at Deadline 4.
- 2.51 Counsel for National Grid confirmed that this article is concerned with short term possession of land for maintenance of the authorised development (the maintenance period is defined as 5 years in article 5(11)). This is, in essence, the 'snagging list' period to enable National Grid to remedy any initial issues arising out of the construction of the authorised development.
- 2.52 Long term maintenance of the authorised development is secured through article 21 (compulsory acquisition of rights) which confirms that National Grid may acquire the necessary rights, as identified in the book of reference, to maintain the authorised development.

#### Article 32- Special Category Land

- 2.53 Clarification was sought from the ExA as to the relationship between article 32 and the test set out in section 132 of the Planning Act 2008. Counsel confirmed that article 32 confirms that such land will be discharged from all rights and obligations as special category land should the Secretary of State be satisfied that test under section 132 is met and the land is "no less advantageous".

#### Article 33 – Statutory Undertakers

- 2.54 National Grid confirmed it would confirm at Deadline 3 a succinct update as to latest position regarding negotiations with statutory undertakers with further updates provided during the Examination.

Article 39 – Temporary closure of, and works in, the river Stour

- 2.55 The ExA asked if the intention was to notify the Environment Agency of any temporary closure of, and works, in the river. Counsel confirmed that the deemed marine licence (schedule 9) has been amended to include reference to National Grid notifying the Environment Agency, amongst other, in this regard.

Article 41 – Felling or lopping of trees

- 2.56 Counsel for National Grid confirmed that it does not believe that the reference to ‘near’ requires further definition in this article.
- 2.57 Article 41 is identical to Article 39 of the Model Provisions (Felling or lopping of trees). The reference to ‘near’ in the article is qualified by paragraphs 1(a) and (b) and so no further definition is required.
- 2.58 Kent County Council confirmed that it had no highway safety issues regarding this article. Counsel clarified for Dover District Council that the article covered works relating to the construction, operation and maintenance of the authorised development
- 2.59 The ExA asked what protection was provided to prevent excessive removal of shrubs and trees – especially at highways. Counsel confirmed that article 41(2) incorporated a test to make sure that any lopping or removal must not cause any ‘unnecessary damage’. Kent County Council confirmed that it would clarify its position at Deadline 3.
- 2.60 Regarding National Grid’s practice in implementing such powers it was confirmed that National Grid would submit at Deadline 3 a post hearing note confirming how, in practice, it exercises such powers.

Article 44 – Certification of plans, etc

- 2.61 Counsel for National Grid explained that it was not considered necessary for the Environmental Statement to be certified because documents are typically certified where they limit the Proposed Development. The Environmental Statement does not limit the Proposed Development but identifies the likely significant effects of the scheme. Where mitigation is mentioned, it would be captured in one of the documents that is certified in accordance with Article 44 (certification of plans, etc), such as the Construction Environmental Management Plan (**Doc 5.4.3C(A)**).
- 2.62 Furthermore it is the Secretary of State who is required to certify such a large document which is considered to be burdensome and unnecessary task. Counsel confirmed that the Secretary of State had accepted on the Hinkley Point C Connection Order that it was not necessary to certify such a document as it so clearly and accurately defined in the Order. When asked, the local authorities confirmed that they had no views on this issue.
- 2.63 The ExA asked if the intention was for the CEMP to be a certified document. Counsel confirmed that this was the intention as the CEMP informs Requirements 5 and 6 of the draft Order and so needs certifying as a benchmark so that parties know that they are considering the approved version of the document.

- 2.64 It was confirmed to the NFU that all parties would have access to the relevant plans and documents at the end of the examination and that the main purpose of certification was to ensure that a true copy of the plans and documents would be available for court proceedings.

Article 46 – Procedure regarding certain approvals, etc.

- 2.65 The local authorities confirmed to then ExA that they were content with the additional drafting to this article.

Schedule 1 – Authorised Development

- 2.66 Counsel for National Grid confirmed that Works described in **Para 3.4.59** of the Environmental Statement are minor works to low voltage lines which are necessary to accommodate the proposed development. As such, no specific reference is made to them in Schedule 1 because they fall within the definition of Associated Development.

- 2.67 National Grid confirmed it would consider the existing plans (including figures from the Environmental Statement) to ascertain if such detail relating to the undergrounding of 11kV and 33kV existing overhead lines is clearly shown on the plans/figures submitted.

**Schedule 3 - Requirements.**

Requirement 1 - Interpretation

- 2.68 Counsel for National Grid confirmed that the definition of 'commence' used in the draft DCO is usual and reflects a pared down list of activities that can be carried out without National Grid being constrained by the need to discharge certain pre-commencement requirements before it is able to do so. These are activities National Grid has to carry out and which are necessary in order to prepare the various site mitigation plans set out in Requirement 6.

- 2.69 The measures left in the definition relate to the necessary environmental and engineering monitoring or surveys or erection of fencing to enable such surveys and investigations to be undertaken.

- 2.70 The Local Authorities confirmed that they require greater clarification as to what works can be excluded from the definition of 'commence' – such amendments to be provided by Deadline 3.

- 2.71 Counsel confirmed that National Grid is very happy to consider any drafting amendments suggested by the Local Authorities as well as considering the approach taken in relation to the recently made A14 Development Consent Order. Counsel confirmed that National Grid's intention is not to circumvent the Requirements but to clarify those actions that can take place in order to allow the discharge of Requirements.

- 2.72 Council also confirmed that National Grid would consider the response submitted by Canterbury City Council in relation to the definition of bird flight diverters.

Requirement 3 – General Accordance with design drawings

- 2.73 Article 5 of the draft DCO provides that works may be carried out within LoD – both vertical (4 metres upwards and any extent downwards as may be found to be necessary or convenient)

from the levels shown on design drawings and laterally (within the limits of deviation shown on the works plans).

- 2.74 These lateral and vertical limits of deviation are to provide National Grid with a necessary but proportionate degree of flexibility in carrying out the works. This is especially important for the line of route of the overhead lines where local site conditions may ultimately influence the final position and height of a pylon.
- 2.75 Lateral and horizontal movements are secured and constrained by the LoD shown on Works Plans and Article 5 (Limits of Deviation).
- 2.76 Levels of pylons (authorised development) are shown on the Design Drawings Vertical limits are shown on the Design Drawings and regulated by Requirement 3. If the reference in Requirement 3 was to *...in accordance with the Design Drawings...* (i.e. the reference to 'general' was deleted) this would mean that National Grid would not be able to rely upon the vertical LoD specified in Article 5 (Limits of Deviation).

#### Requirement 4 – Stages of authorised development.

- 2.77 It was acknowledged that National Grid's response to question 1.5.33 had referred to stages being defined by the activities being undertaken and that this reference may have caused some confusion.
- 2.78 National Grid confirmed that it would review the answer given to question 1.5.33 and set out its position in a post hearing note to be submitted at Deadline 3.

#### Requirement 5 – Construction Environmental Management Plan (CEMP)

- 2.79 The ExA acknowledged that National Grid was considering further the relationship between the CEMP and the other plans referred to in that document.
- 2.80 Counsel confirmed that tailpieces are vital as they provide the opportunity for a promoter and local authority to agree minor revisions to details already approved. National Grid is seeking proportionate and limited flexibility in this requirement in order to ensure that the delivery of this nationally significant infrastructure project is not unduly delayed. Such flexibility is considered to be appropriate to enable National Grid to take into account any changes in circumstances which may warrant or necessitate small changes to the CEMP, with the agreement of the local authority and highway authority. This flexibility is considered to be necessary to account for a wide geographical area covered by this scheme and the associated differing ground conditions and environmental issues that may be encountered in delivery.
- 2.81 Requirement 1 (Interpretation) provides that where any requirement specified "unless otherwise approved" or "unless otherwise agreed" that such approval or agreement can only be given in relation to minor or immaterial changes and where it has been demonstrated that the change is unlikely to give rise to any materially new or different environmental effects. This is an important control as it limits the scope of any changes whilst providing the necessary flexibility in the discharge of requirements should regulations or procedures change slightly.

- 2.82 Dover District Council stated that any such changes to the CEMP (or other plan) should be subject to a formal procedural change.
- 2.83 National Grid reminded the ExA that a similar tailpiece clause was included in the equivalent requirement in Hinkley Point C Connection Order as made.
- 2.84 Counsel confirmed that National Grid would consider further the drafting of Requirement 5(4) and also whether there should be a reference to such consultation being in writing. If appropriate, National Grid would reflect the position in the next iteration of the draft DCO to be submitted at Deadline 4.
- 2.85 When asked, the Local Authorities confirmed that the content of the CEMP had been agreed with National Grid.

Requirement 6 - Approval and implementation of construction management plans

- 2.86 It was confirmed that these are the detailed site plans prepared by the contractor. It was noted that concerns had been raised that these plans did not contain sufficient information for parties to be able to ascertain the level of detail that will be provided along with clarification as to the process to be followed in implementing these plans.
- 2.87 National Grid confirmed that it may be possible to provide the additional detail required by referencing the site plans referred to in this requirement to the embedded mitigation schedule document (**Doc 5.4.3B(A)**).
- 2.88 The ExA confirmed that it knew that the detail of the plans could not be confirmed at this time but requested that an outline of the content of each plan could be provided by Deadline 3 with templates of the plans prepared by Deadline 4 so that the contents could be considered at the second Issue Specific Hearing on the draft DCO in September.

Requirement 7 – Construction hours

- 2.89 The Local Authorities and National Grid confirmed that matters are still outstanding. It was agreed that detailed consideration of this matter be postponed for consideration at the relevant Issue Specific Hearing when both parties would have their respective noise experts available.

Requirement 8 – Mitigation Planting

- 2.90 The Local Authorities confirmed that they had received from National the Concept Mitigation Planting Plans but as these had been submitted at Deadline 2 they had not had the chance to consider them. It was confirmed that the Local Authorities would submit comments on these plans at Deadline 3.
- 2.91 The ExA asked whether a definition of 'advance planting' was required. Counsel for National Grid confirmed that there is no definition in the draft DCO as this term is not used. It was acknowledged that the concept of advance planting was used on the Hinkley Connection C Order but that the position was different as that scheme involved the construction of buildings such as sub-stations on land to be owned by National Grid where advance planting could be considered. The draft DCO envisages National Grid identifying opportunities for early landscape and replacement planting.

2.92 National Grid confirmed that it was happy to consider further areas where advance planting could possibly take place.

2.93 When asked by the ExA if the Local Authorities if they had any comments on the maintenance period of 5 years as set out in Requirement 5 (2)(c) the response was that the Local Authorities were generally happy with the specified 5 year period.

#### Requirement 11 – Bird Flight diverters

2.94 Counsel for National Grid reiterated the position as set out in its response to question 1.5.40 in that agreement has been reached with Natural England that post construction monitoring is not required in this instance.

#### Requirement 13- Contaminated land and controlled waters

2.95 The Environment Agency confirmed that it was content with the revisions made to this requirement by National Grid.

#### Requirement 15- Removal of temporary watercourses

2.96 The Environment Agency confirmed that it was content with the drafting of this requirement.

#### Requirement 16 – Highway works

2.97 Counsel for National Grid confirmed that this matter had been considered further and that National Grid would suggest to Kent County Council (as Highway Authority) suggested drafting. Both parties confirmed to the ExA that they would endeavour to reach an agreed position by Deadline 3 and report the same to the ExA.

#### Requirement 17 – Clearance over the tidal River Stour

2.98 The Environment Agency confirmed that it had no problem with the requirement as National Grid has confirmed that it will apply for the necessary Flood Risk Activities Permits and so questioned whether this requirement was still required.

2.99 National Grid confirmed that it would consider this point further but that it would also have to review this position with the Marine Management Organisation.

#### Potential Additional Requirements

2.100 National Grid was asked if there should be an additional requirement for complaints handling. Counsel confirmed that National Grid would consider further whether such a requirement was needed and confirm this position to the ExA by Deadline 3. If appropriate, National Grid would reflect the position in the next iteration of the draft DCO to be submitted at Deadline 4.

2.101 National Grid also confirmed it would submit a note at Deadline 3 confirming the role of an Agricultural Liaison Officer. National Grid also confirmed that the CEMP would be updated to include a reference to both an Agricultural Liaison Officer and also a Lands Officer. This would be reflected in the next iteration of the CEMP when submitted to the Examination.

#### **Schedule 9 – Deemed Marine Licence**

- 2.102 National Grid confirmed that the River Method Statement appended to the Statement of Common Ground with the Marine Management Organisation was indicative and for information purposes. National Grid confirmed that a detailed method statement would be submitted to the Marine Management Organisation, for approval, at least 20 business days before the commencement of works.
- 2.103 National Grid confirmed that it would review the drafting of the deemed marine licence, in particular possible clarification on the definition of the Method Statement, details of timing and means of notification. If appropriate, National Grid would reflect the position in the next iteration of the draft DCO to be submitted at Deadline 4.

#### **Schedule 14 – Protective Provisions**

- 2.104 National Grid confirmed that it would prepare, for submission at Deadline 4, an explanatory memorandum for the protective provisions.
- 2.105 The ExA also requested an update to the document “Commonality on specific points between Statements of Common Ground” to provide more detail on the status of negotiations between National Grid and relevant statutory undertakers on the protective provisions.

### **3 Agenda Item 3: Temporary Possession**

***The ExA will be asking for an explanation of the purposes of and need for the various access routes and working areas which would be the subject of temporary possession over the length of the application route.***

- 3.1 The ExA confirmed that the information submitted by National Grid in its document “*Proposed Access Routes for Construction, Dismantling and Maintenance*” (**Doc 8.12**) submitted at Deadline 2 contained a significant amount of useful information and points of clarification that the ExA stated that there was no requirement to consider this agenda item at the hearing.
- 3.2 The ExA confirmed that if additional information or points of clarification were considered necessary that such issues would be raised in its second round of written questions.

### **4 Agenda Item 4: Consents, licences and other agreements**

**The ExA will be asking for a progress update as well as an indicative timescale for finalising agreements.**

- 4.1 Counsel for National Grid confirmed that, with regards the embedded environmental measures (mitigation) set out in the Environmental Statement (**Doc 5.2**), National Grid’s aim is, wherever possible, to agree voluntary rights with Persons with an Interest in Land (PILs) to undertake the necessary embedded measures (mitigation).
- 4.2 Counsel for National Grid added that, to allow for any difficulties in progressing the negotiation of embedded environmental measures with PILs, it was necessary for National Grid to retain in the draft DCO the powers to be able to acquire compulsorily the necessary rights and powers to be able to undertake and deliver all required embedded measures, to mitigate all adverse effects identified in the Environmental Statement.

- 4.3 The ExA asked if the enhancement measures set out in The Landscape and Habitat Enhancement Scheme (LHES) (**Doc 5.8**) are purely to be agreed with landowners. Counsel confirmed that all measures set out in the LHES are being agreed voluntarily with PILs) and non-PILs (for enhancement outside the Order limits) using a licence agreement as they are not secured through the DCO. The point was made by Counsel that, as the measures set out in the LHES cannot be guaranteed, these measures have not been relied upon for environmental impact assessment purposes.
- 4.4 The ExA asked for confirmation that there was no fall-back position in the LHES to allow for the possibility that it would not be possible to reach voluntary agreements with all landowners. Counsel confirmed that this was the case and emphasised the clear distinction between the embedded environmental measures secured by the draft DCO which can be delivered and relied upon and the enhancement measures which are not secured through the draft DCO.
- 4.5 Counsel for National Grid confirmed that the LHES was included as a schedule to the draft Section 106 Agreement currently subject to negotiations between the parties.
- 4.6 The ExA confirmed the importance of it being kept updated as to the status of negotiations with both PILs and non-PILs in this regard. Counsel stated that it was believed that National Grid will be in a position to provide a detailed confirmation of the position, by Deadline 4 rather than Deadline 3, a detailed position.
- 4.7 The ExA confirmed that an updated table of the latest position regarding negotiations with landowners was required by Deadline 3 with a more comprehensive position to be provided by Deadline 4, so that progress on negotiations with landowners can be considered at the next Issue Specific Hearing on the draft DCO in September.
- 4.8 The ExA asked for confirmation as to progress of the Section 106 Agreement between National Grid and the Local Authorities. The ExA confirmed that it will need to have the signed agreement before the close of the Examination if it is to reflect the terms on this agreement in its recommendation. Clarification was asked of all parties as regards the status of the agreement and indicative timetable for its completion.
- 4.9 Parties confirmed that the Section 106 Agreement was in its third draft and that it currently included the proposed LHES as well as a proposed Service Level Agreement for discharging of requirements. New schedules for inclusion in the agreement (relating to the Sturry Link Road and an outreach programme for the Archaeological Written Scheme of Investigation) had been proposed for consideration and that a revised section 106 agreement should be available for Deadline 4.
- 4.10 The Local Authorities stated that clarification had been sought as to whether they could actually sign the Section 106 Agreement as it currently included the LHES. The concern being that the Local Authorities are not land owners so not party to the LHES and whether the terms of the LHES could actually be enforced by them.
- 4.11 Counsel for National Grid confirmed the generality of discussions between parties. It was confirmed that National Grid could consider position regarding the Local Authorities not being land owners. Counsel made clear that it was important to note that the LHES was not binding with regards to actual land interests and that it required National Grid to use its reasonable endeavours to deliver the LHES.

- 4.12 Counsel confirmed that if the Local Authorities believed that the LHES cannot be included in the Section 106 Agreement then it would have to be removed from the agreement. It was made clear that the LHES cannot be included in the draft DCO as it relates to enhancement measures that are not, and cannot, be secured by the draft DCO.
- 4.13 Counsel for National Grid confirmed that it would review this position by Deadline 4 though ultimately that this was a decision that the Local Authorities had to take themselves based on their own legal advice.
- 4.14 Regarding other agreements with statutory undertakers it was confirmed that agreement has been reached with the Royal Mail with the agreement being engrossed for execution.

**5 Agenda Item 5: Action points arising from the hearing**

- 5.1 Action points were confirmed during the course of the hearing rather than being summarised at the end.

**6 Agenda Item 6: Any other business**

- 6.1 There was no additional business considered and the hearing was closed at 4-55 pm.