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Yorkshire Green Energy Enablement (GREEN) Project

Volume 8

Document 8.19 Applicant's Comments on Responses to Examining Authority's First Written Questions (ExQ1)

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Appendix A Practice Notes for the 2017 Edition of JCLA Landscape Maintenance Works Contract

Version History

Document	Version	Status	Description / Changes
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10/05/2023	A	Final	First Issue
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1. About this document

1.1 Introduction

- 1.1.1 This document provides National Grid Electricity Transmission plc's (National Grid) (the Applicant) comments on Interested Parties' responses to the Examining Authority's First Written Questions (ExQ1) made at Examination Deadline 2 for the Yorkshire Green Energy Enablement Project (Yorkshire GREEN or the Project).
- 1.1.2 The responses provided in this document are either in the form of a short response providing National Grid's latest position on the matter, a cross-reference to the most relevant documentation, or a more detailed response where this is considered relevant to clarify matters.
- 1.1.3 National Grid has sought to provide comments where it is helpful to do so, for instance where an Interested Party's response includes a request for further information or clarification from National Grid, or where National Grid considers that it would be appropriate for the Examining Authority to have National Grid's views in response to a matter raised.
- 1.1.4 Where issues raised within a response have been responded to previously by National Grid, for instance in response to a question posed by the Examining Authority or within one of the application documents submitted to the Examination, a cross reference to that response or document is provided to avoid unnecessary duplication. The information provided in this document should, therefore, be read in conjunction with the material to which cross references are provided.
- 1.1.5 National Grid has reviewed all ExQ1 responses made by Interested Parties, but has not provided comments on all responses if not deemed necessary. For the avoidance of doubt, where National Grid has chosen not to comment on matters raised by Interested Parties this is not an indication that National Grid agrees with the point or comment raised or opinion expressed.

2. Applicant's Comments on Responses to Examining Authority's First Written Questions (ExQ1)

2.1 Canal & River Trust

Table 2.1 – Canal & River Trust: Responses to the Examining Authority's Written Questions (ExQ1) [REP2-053]

Ref. No	Question	Interested Party Response	National Grid Comment
Q4.5.2	<p>Protective Provisions for The Canal and River Trust</p> <p>You have indicated in your RR [RR-004] that you are not in agreement with the Applicant's wording of Protective Provisions as set out in the dDCO [AS-011], Schedule 15.</p> <p>Provide copies of preferred wording for Protective Provisions, or if you have provided it elsewhere (such as in a SoCG), signpost where it can be found and explain why you do not agree to the wording as currently drafted.</p>	<p>The Trust has been negotiating the protective provisions for the Trust with the applicant, and the parties have reached agreement on several points. We are currently reviewing the latest comments from the applicant with the aim of reaching an agreement on the final wording of the provisions.</p> <p>Please find attached a copy of the latest draft of the protective provisions, as agreed with the applicant. Sections highlighted as tracked changes reflect the points yet to be agreed with the applicant. The Trust and the applicant are continuing to engage on these points, and hope to have agreed the provisions ready for the updated draft DCO that the applicant is seeking to submit at deadline 3.</p> <p>The Trust is of the opinion that the parties' positions are not very far apart, with the main outstanding issue being over notice periods for closures of the River Ouse.</p>	<p>National Grid continues to liaise with the Canal and River Trust (the Trust) regarding these Protective Provisions.</p> <p>Please see the Protective Provisions Progress Schedule (Document 8.12) [REP2-042] submitted at Deadline 2, which includes updates on the position for all statutory undertakers. The protective provisions on the face of the draft DCO (Document 3.1(C)) submitted at Deadline 3 are not agreed by the Trust. National Grid has reviewed the working version of the protective provisions submitted by the Trust at Deadline 2 [REP2-052] and in addition to the sections highlighted as tracked changes (which are yet to be agreed), some further changes will be sought by National Grid, and so this version should not be taken as otherwise agreed. These changes arise from ongoing discussions with the Trust in relation to notice requirements for works affecting the River Ouse, which will necessitate some further amendments to the scope and detailed wording of the protective provisions. However, negotiations are progressing and, whilst there are some points which are still yet to be fully agreed with the Trust, engagement is ongoing in this respect.</p> <p>Negotiations are continuing with a view to reaching a suitable update to be incorporated into the draft DCO at Deadline 5.</p>

2.2 City of York Council

Table 2.2 – City of York Council: Responses to the Examining Authority's Written Questions (ExQ1) [REP2-057]

Ref. No	Question	Interested Party Response	National Grid Comment
Q5.1.16	<p>Article 13: Power to alter layout, etc. of streets</p> <p>While this power is limited to those streets listed in the appropriate Schedules, it is potentially wide with authorisation potentially being given to any street within the Order Limits, subject to the need for consent from the street authority. This consent is subject to a 'guillotine' clause, with consent being deemed as given if the undertaker is not notified of the decision within 28 days.</p> <p>a) Provide your views on this article, if not set out elsewhere, or signpost where a response can be found.</p> <p>b) If you are not content with drafting as proposed, set out your reasons why and propose alternative drafting in response to this question, or signpost where you have provided that if included elsewhere.</p>	<p>The deemed consent after 28 days is an area of concern, as we have set out in various areas concerning the time limitations placed on the LPAs, the time limits appear to favour the applicant and place the onus upon the LPAs. We would like to see this period extended to 42 days (consistent with response provided to Q5.1.30).</p>	<p>The timescales included in the draft DCO (Document 3.1(C)) reflect the urgency of delivering the Project (as set out in section 4.8 of the Updated Need Case (Document 7.4) [APP-205]). This highlights the need for the Project to be operational by 2027 in order to enable the connection of customers; ensure the connection of renewable generation without incurring significant constraint costs; facilitate net zero; and meet National Grid's transmission licence obligations.</p> <p>Any delay that a street authority could place on National Grid would hinder this and is considered unnecessary in the context of the minimal nature of the street works anticipated and their potential impact on the road network as described in ES Chapter 3 Description of the Project paragraph 3.6 (Document 5.2.3) [APP-075].</p> <p>The streets which National Grid intend to carry out works to are listed within Schedule 7 (streets subject to alteration of layout). Therefore, the time limits for further consent relate to those streets which are not currently envisaged to need altering by National Grid but may require alteration as a result of the detailed design process (i.e. anything above and beyond the list in Schedule 7).</p> <p>As has been discussed with all of the affected street authorities, National Grid is committed to working closely with each LPA to ensure that the timescales set out in the draft DCO (Document 3.1(C)) (including Article 13) are met.</p> <p>National Grid will seek to work positively with the street authorities to ensure that they are aware of when applications under this article are likely to be submitted. National Grid will also ensure that any application pursuant to Article 13 will make it clear that it is a "deemed consent application" to remind CYC of the 28 day period. This is secured through updated drafting of Article 13 in the draft DCO (Document 3.1(C)) submitted at Deadline 3.</p> <p>For the reasons set out above, and discussed to date with CYC, National Grid considers that the timescales included in Article 13 are appropriate.</p>
Q5.1.30	<p>Article 45: Traffic Regulation</p> <p>Article 45 and Schedule 14 of the dDCO [AS-011] relate to traffic regulation.</p> <p>Are you content with the wording of Article 45 paragraph (8) whereby the traffic authority is deemed to have granted consent if it fails to notify the undertaker within 28 days of receiving an application for consent under paragraphs (1) and (2) of Article 45?</p>	<p>CYC Consider that the 28-day time period could be difficult to attain. Deemed consent after 28 days is also a concern. Given the nature and location of the works there will likely need to be a degree of co-ordination with colleagues in the neighbouring Highway Authority (North Yorkshire). At present we deal with such notifications within 6 weeks (42 days) and would be content if this particular article was amended to 42 days.</p> <p>The applicant may wish to propose a similar approach to that which has been outlined for the Requirements stage whereby a pre-application process is undertaken with the Authority before formal submission is made in interests of front loading the process.</p>	<p>Article 45(1) ties to details specified within Schedule 14. Article 45(2) allows for unforeseen circumstances where, as a result of detailed design, further TROs are required with the consent of the relevant traffic authority. National Grid do not anticipate a significant number of applications being made under Article 45(2) due to the comprehensive list provided within Schedule 14. Therefore, the 28 day notice period generally applies to details which are already set out within the draft DCO (Document 3.1(C)) and for which a notification only would be required.</p> <p>National Grid appreciates that there may be a need for CYC to liaise with NYC in respect of works that may overlap each authority. It is for that reason that National Grid is committed to working closely with each authority in advance of an application being made pursuant to Article 45(2) to ensure that each authority is clear of the works proposed and that comments received pre-application have been taken into account. The stage plan, secured through Requirement 4 of the draft DCO (Document 3.1(C)), will also allow the authorities to understand what works are taking place in which location, in advance. Article 45(6) requires that</p>

Ref. No	Question	Interested Party Response	National Grid Comment
			<p>National Grid consult the chief officer of police and the traffic authority in whose area the road is situated before the 28 day time period commences. Therefore, for applications under Article 45(2), the 28 day period must be considered in this context, i.e. additional to a period of consultation with the chief officer of police and the traffic authority.</p> <p>National Grid has also updated the wording of Article 45 in the draft DCO (Document 3.1(C)) at Deadline 3 to ensure that when an application is made pursuant to that Article that it is clear on its face that the deemed consent provisions apply, as a helpful reminder to each authority.</p> <p>As set out above, National Grid considers that the 28-day time period included in the draft DCO (Document 3.1(C)) reflects the urgency of the delivery of the project and is required to ensure that the Project is delivered within the projected timescales for the reasons set out in section 4.8 of the Updated Need Case (Document 7.4) [APP-205].</p> <p>The timescales proposed in Article 45 align with the precedented position in The National Grid (Hinkley Point C Connection Project) Order 2016 (article 40(8)) and The National Grid (Richborough Connection Project) Development Consent Order 2017 (article 39(8)).</p>
Q5.4.3	<p>Requirement 1: Pre-commencement works</p> <p>Bearing in mind that Requirement 6 would not apply to pre-commencement activities, do you consider the definition of activities comprising 'pre-commencement works' in Requirement 1(1) to be sufficiently clear and precise? If not, specify which items in the list (a) to (n) require tighter definition and explain why you take this view.</p>	<p>CYC have made representations in respect of this question in our response to the ISH1 Action Points via letter dated 4th April 2023.</p>	<p>National Grid has reviewed and notes the content of the letter from CYC dated 4 April 2023.</p> <p>National Grid notes the comments made by the Authority in respect of point (n) of Requirement 1 of the draft DCO. Requirement 1(n) has been removed from the draft DCO (Document 3.1(C)) which has been submitted at Deadline 3.</p>
Q5.4.5 e)	<p>Requirement 4: Stages of authorised development</p> <p>A number of the Requirements use the commencement of 'stages' of the authorised development as a control mechanism.</p> <p>a) Is it sufficiently clear to you what a 'stage' means in this context?</p> <p>b) Are you content with the drafting and practical application of Requirement 4?</p> <p>c) Should the written scheme be subject to approval by the relevant planning authorities?</p>	<p>e) CYC consider that this would be beneficial as it would assist with our understanding as to the overall progress of the scheme and also keep the LPA informed and allow us to answer possible questions or queries from residents who may not be fully aware of the scheme and what it involves.</p>	<p>National Grid notes that City of York Council have only responded to point e) in this question, therefore National Grid have only sought to clarify and respond to this point, as follows:</p> <p>e) National Grid does not consider it necessary for the Requirement to be updated to include for the notification to the relevant planning authorities when each stage is commenced and completed, as was the case on the Requirement included in the Richborough Connection Project Order 2017. National Grid has specifically drafted this Requirement taking on board lessons learnt and the practical implementation of previous recent DCOs in construction and found this requirement unnecessary as regular discussion and engagement was taking place with the LPAs to inform them of such progress and the Project was required to be implemented in accordance with the written scheme of stages. National Grid would have a regular programme of engagement with the LPA funded through a delivery Planning Performance Agreement (PPA) in which requirements to be discharged would be tracked, as well as providing general updates on project progress. As detailed in the Code of Construction Practice (Document 5.3.3B(B)) [REP2-020] National Grid will continue to host a</p>

Ref. No	Question	Interested Party Response	National Grid Comment
	<p>d) Should any amendments to the written scheme be subject to an approval process?</p> <p>e) Should there be a requirement to notify the relevant planning authorities when each stage is commenced and completed, as was the case in the parallel Requirement in the Richborough Connection Order (2017)?</p>		<p>Project website which would include details in respect of the Project programme, progress updates, and contact details for the Projects so that members of the public or businesses can request information or make an enquiry relating to the construction activities directly to National Grid.</p>
Q5.4.10	<p>Requirement 10: Retention and protection of existing trees</p> <p>a) Do the items listed in Requirement 10(2) as forming the contents of the Tree and Hedgerow Protection Strategy (THPS) provide sufficient detail for the Councils to discharge this Requirement? If not, specify what additional details you would expect to see provided as part of the THPS.</p> <p>b) Would links to the Arboricultural Impact Assessment (AIA) Report's [APP-102] to [APP-104] embedded environmental measures and mitigation or provision of an Outline THPS assist?</p>	<p>a) yes, these items are considered sufficient.</p> <p>b) A link back to the AIA embedded measures and Outline THPS would assist with reinforcing requirement 10.</p>	<p>National Grid notes City of York Council's response to part a) that the items listed in Requirement 10(2) are considered sufficient.</p> <p>National Grid notes the comments and has responded in part in its response to ExQ1 Q5.4.11 in Applicant's Response to Examining Authority's First Written Questions (Document 8.9.1) [REP2-038] where the key elements of the THPS are identified and addressed, and this is considered to be sufficient justification for why an outline THPS is not required at this stage.</p> <p>Save for the soil and aftercare management plan, no outline plans are being prepared for the plans listed in Requirement 6(1). As explained in response to ExQ1 Q5.4.11 of the Applicant's Response to Examining Authority's First Written Questions (Document 8.9.1) [REP2-038], uncertainties surrounding detailed design would mean that any outline plan produced would constitute an unreasonable volume of abortive work and the detail to be included in these plans will come forward through the detailed design by the Main Works Contractor.</p> <p>The THPS will include the following elements in accordance with Requirement 10(2) of the draft DCO (Document 3.1(C)):</p> <ul style="list-style-type: none"> a) Tree Protection Plan showing fence positions; b) Schedule of proposed tree and hedgerow removal and management; c) Specification for physical protection of trees; d) Auditable system of compliance with approved protection measures. <p>The submitted Arboricultural Impact Assessment (Document 5.3.3I) [APP-102 to APP-104] specifically includes outline information to address point b) (tree survey schedule included as Annex 3I.2), c) and d) (Outline Arboricultural Method Statement included as Annex 3I.4).</p> <p>In relation to point a), because the design and implementation of the Project is not fully fixed at this stage, plotting extensive fencing around all trees to be retained in proximity to areas of works would constitute an unreasonable volume of abortive work.</p> <p>Trees to be removed (which therefore would not require protection) are clearly shown on the Tree Removal and Protection Plans (Annex 3I.3 of the Arboricultural Impact Assessment (AIA), (Document 5.3.3I) [APP-104].</p> <p>In relation to the addition of links to the AIA's embedded measures and mitigation, the AIA's embedded measures include the THPS to set out how trees (including veteran trees) will be managed and protected.</p> <p>The Outline Landscape Mitigation Strategy illustrated in Figures 3.10 to 3.12 in ES Chapter 3 Description of the Project Figures (Document 5.4.3(C))</p>

Ref. No	Question	Interested Party Response	National Grid Comment
			<p>[REP2-031] and Landscape Scheme for Mitigation Planting secured by Requirement 8(1)a and b of the draft DCO (Document 3.1(C)) and the Biodiversity Mitigation Strategy (secured by Requirement 5(2)(c) of the draft DCO (Document 3.1(C)) contain mitigation in the form of reinstatement and new planting. In addition, the Order Limits and the Limits of Deviation for the linear works (as shown on the Works Plans (Document 2.6.1(B) to 2.6.6(B) [REP1-004 to REP1-009]) have been developed to avoid impacts to ancient woodland and veteran trees where possible.</p> <p>By requiring that the Tree and Hedgerow Protection Strategy (THPS) is prepared "in accordance with the Arboricultural Impact Assessment report" under Requirement 10(1), the THPS is already tied to the embedded measures therein.</p> <p>As such, it is not considered necessary to include specific links to this mitigation within Requirement 10(2).</p>
Q5.5.5	<p>Schedule 4: views of future discharging authorities</p> <p>a) Set out your views on Schedule 4, covering (but not limited to):</p> <ul style="list-style-type: none"> the proposed timescales for decisions provided for under paras 1(1), 1(3), 1(4), 2(2) and 3 of this Schedule; whether Requirements may be discharged in parts, and if so, how fees should be payable; the acceptability of the proposed appeal provisions set out at paragraph 3; and other points raised for the Applicant to consider above. <p>b) If you do not agree with the wording in this Schedule set out your reasons and any suggested amendments to the wording of this article.</p>	<p>The application period of 35 days is an area of concern given the potential implications it could have for the LPA. Particularly where consultations are required within technical advisors.</p> <p>Provision 1(4) feels somewhat counter productive and should as a minimum be amended to 7 days to match provision 1(1). The provision appears to set a shorter time requirement on the LPA in scenario where more work is involved namely liaising with the requirement consultee.</p> <p>The LPA would not be averse to partial discharge of requirements, if necessary, however our preference would be to wholly discharge requirements as this will likely be a cleaner approach.</p> <p>Fees should be payable to the LPA, ideally via BACS transfer or other suitable online/digital payment method. The LPA is happy to liaise with the applicant further on this matter.</p> <p>The primary concern of the LPA with the wording this schedule is the potentially onerous time requirements that would be placed upon the LPA. We note that the applicant has indicated their intention to front load this process and undertake pre-application discussions with the LPAs. This is welcomed however to provide security to the LPAs can the ExA consider incorporating this pre-application requirement into the DCO, should that be within their gift to do so?</p>	<p>Regarding the timescales set out in Schedule 4 of the draft DCO (Document 3.1(C)) National Grid notes the comments and has responded to this matter in response to ExQ1 Q 5.5.1 in Applicant's Response to Examining Authority's First Written Questions (ExQ1) (Document 8.9.1) [REP2-038]. It is not considered necessary to make the changes to the timescales requested by City of York Council given that full pre-application submissions would be made in advance of any formal application for discharge, and a timescale agreed with the Council for their response to that pre-application submission (of typically 3 to 4 weeks).</p> <p>Regarding comments on paragraph 1(4), National Grid assume that City of York Council consider this should be amended to match paragraph 1(3), as opposed to 1(1) as stated. The shorter timescale referred to relates to passing on information in respect of a request for further information which has, at that point, been received from the requirement consultee, so 3 business days as opposed to 7 business days is considered reasonable in these circumstances.</p> <p>Generally, National Grid consider that, partial discharge of requirements is unlikely, except in the case of Requirement 6 (Outline construction management plans), for which requests under Requirement 6(1)(a)- 6(1)(g) would form individual submissions, each with a separate fee. Given the scale and scope of information within the management plans, National Grid consider that separate documents would be more appropriate and manageable for the planning authority.</p> <p>National Grid are willing to liaise with the Council regarding payment methods.</p> <p>In terms of securing the provision of pre-application submissions, as per National Grid's response to ExQ1 Q5.5.1 in Applicant's Response to Examining Authority's First Written Questions (ExQ1) (Document 8.9.1) [REP2-038], National Grid propose this is secured via a Section 106 Agreement. National Grid consider this approach preferable, as the Section 106 Agreement can be worded in such a way to provide flexibility to all parties if needed. National Grid are drafting wording to be incorporated within the Section 106 Agreement for the Councils to review and will seek to progress discussions on this matter throughout the examination process.</p>

Ref. No	Question	Interested Party Response	National Grid Comment
Q14.0.3	<p>Traffic Management: Abnormal Loads</p> <p>In the joint Local Authorities' RR [RR-018], [RR-019], [RR-032] and [RR-034] reference is made to the likely requirement that some large items delivered to the site will be classed as abnormal loads and discussion with the Local Highway Authority will be required. The ExA also notes that an Abnormal Indivisible Load Assessment has been provided in Annex 3F.1 of the Construction Traffic Management Plan (CTMP) [APP-099]. Having regard to this:</p> <p>To Applicant and Local Highway Authorities:</p> <p>a) When is it envisaged that such discussions will take place?</p> <p>b) What mechanism will there be for public consultation and notification regarding the timing and routing of abnormal loads beyond that set out in Section 3.6 of [APP-099]?</p> <p>To Local Highway Authorities:</p> <p>c) Are you content with the measures set out in the CTMP or should an Outline Abnormal Loads Management Plan be submitted into this Examination in order to provide more detailed information on this matter?</p>	<p>CYC would refer the ExA to the draft statement of common ground in respect of this question.</p> <p>In specific response to point c) it would be beneficial for all parties if an Outline Abnormal Loads Management Plan were to be submitted. This could establish base principles for such movements and likely identify likely routing options. The applicant will presumably have knowledge of the equipment likely to form an abnormal load and the sites/locations these will be required at.</p>	<p>National Grid note the comments and has provided a response to ExQ1 Q14.0.3 in Applicant's Response to Examining Authority's First Written Questions (ExQ1) (Document 8.9.1) [REP2-038]. National Grid does not believe that an Abnormal Loads Management Plan is required to be submitted for the Application. The delivery of the AILs to site will be managed through the Electronic Service Delivery for Abnormal Loads (ESDAL) system managed by National Highways, as detailed in paragraph 3.6.3 of the Construction Traffic Management Plan (Document 5.3.3F) [APP-099].</p> <p>This system requires details for the load, including weight, size and routes of the AIL deliveries to be provided which is then subject to assessment by National Highways, and informs all relevant stakeholders, including the Local Highway Authorities. This system will be used once the details of the AILs are confirmed following detailed design, and confirmation of the delivery port and dates for delivery. The Local Highway Authority will be consulted and informed of this through the ESDAL system.</p>

2.3 Environment Agency

Table 2.3 – Environment Agency: Responses to the Examining Authority's Written Questions (ExQ1) [REP2-073]

Ref. No	Question	Interested Party Response	National Grid Comment
Q6.0.1	<p>Bridge and culvert crossings</p> <p>Do you consider that the proposals for the provision and design of bridges and culverts where watercourse crossings are required, as set out in [APP-084], would satisfactorily protect those watercourses?</p>	<p>There are no bridge or culvert crossings on main river, we therefore defer to both the LLFA and IDB's with respect to this (note, again the applicant is not looking to disapply consent under the Land Drainage Act 1991 and so these works will likely be considered during the consenting process by the relevant RMA's.)</p>	<p>It is correct that no bridge or culvert crossings of main rivers are proposed as part of the Project. There is a possibility that underground cabling beneath a main river, Cock Beck, in the vicinity of pylon XC498 as part of distribution network operator infringement works. These works have yet to be fully specified, but if works within 8m of the top of bank of Cock Beck are required they would be subject to approval of a Flood Risk Activity Permit by the Environment Agency.</p> <p>Temporary access crossings of ordinary watercourses are required for the construction phase of the project, as summarised in Annex 9D.3 of the Flood Risk Assessment (Document 5.3.9D) [APP-138]. Detailed designs for these crossings have not yet been developed, although it is envisaged that they would be consistent with the illustrative examples of a culvert and clear span bridge provided in Construction Plans (Document 2.16) [APP-065]. Final detailed design of the watercourse crossings would be developed post-grant of the DCO; these would be subject to approval by the relevant drainage authority, which would be either the LLFA, the Kyle and Upper Ouse Internal Drainage Board, or the Ainsty Internal Drainage Board. These approvals would either be via a land drainage consent issued under Section 23 of the Land Drainage Act 1991, or via the provisions National Grid are proposing to be included under Article 19 of the draft DCO in lieu of disapplied Internal Drainage Board byelaws (which are described Table 2.1 – Ainsty and Foss Internal Drainage Boards: Written Representations in Applicant's Comments on Written Representations (Document 8.20) submitted at Deadline 3.</p>
N/A	<p>General comment</p>	<p>It is assumed that the Flood Risk Assessment (App-138 / 5.3.9D Appendix 9D) and the Chapter 9 of the ES Hydrology (APP-081/ 5.2.9 ES) will be in the approved documents list of the DCO. As long as the works are carried out in accordance with these documents then we have no objections.</p> <p>You could consider a general requirement for the works to be carried out in accordance with the approved FRA, this would possibly help secure other areas which you have asked the applicant how they will be secured in the dDCO (see Q6.0.4 regarding how the level of the development platform will be secured).</p>	<p>National Grid does not consider a general requirement for works to be carried out in accordance with the approved FRA to be necessary, as the key flood mitigation measures set out in the FRA are already secured in the following ways:</p> <ul style="list-style-type: none"> • The flood resilience design level of 13.71mAOD is specified on drawing number DCO_DE/PS/14_03 in Document 2.15(B) Design Drawings [REP2-011] and the Design Drawings are secured under Requirement 3 of the draft Development Consent Order (DCO, Document 3.1(C)). • Detailed drainage design for both construction and operational phases of the development is secured via Requirements 6(1)(b) and 6(4) of the draft Development Consent Order (DCO, Document 3.1(C)). • Preparation of an emergency response plan for flood events for the construction phase of the Project is secured via Requirement 6(1)(e) of the draft Development Consent Order (DCO, Document 3.1(C)). • Other embedded flood mitigation measures for the construction phase of the Project are secured via the Code of Construction Practice (Document 5.3.3B) [REP2-020] under Requirement 5(2)(a) of the draft Development Consent Order (DCO, Document 3.1(C)).

2.4 Leeds City Council

Table 2.4 – Leeds City Council: Responses to the Examining Authority's Written Questions (ExQ1) [REP2-076]

Ref. No	Question	Interested Party Response	National Grid Comment
Q2.0.3	<p>Dust control measures</p> <p>In [RR-014] and [RR-020] concerns are raised regarding the potential dust impacts on Lumby. Residential areas also lie in relatively close proximity to the location of other proposed Works. Whilst the Code of Construction Practice [APP-095] contains some control measures neither Requirement 5 nor Requirement 6 of the dDCO [AS-011] contain the specific requirement for a Dust Management Plan to be submitted.</p> <p>In the absence of such a Plan are the measures set out in [APP-095] likely to be sufficient?</p>	<p>Good construction practice measures for air quality, including dust emissions, are referenced at the applicant's section 3.10 (Document 5.3.3B ES Chapter 3 Appendix 3B - Code of Construction Practice) [APP-095]. These measures are likely to be appropriate in reducing the likelihood of significant environmental effects. That said, in the absence of any specific Requirement and for enforceability reasons, it is considered prudent for a Dust Management Plan to be submitted by the applicant, having specific regard to the protection of residential amenity, highway safety, agricultural use and ecology within Leeds.</p>	<p>National Grid notes the comments and has responded in part to this matter in Table 2.4 of the Applicant's Response to Examining Authority's First Written Questions (ExQ1) (Document 8.9.1) [REP2-038]. National Grid concluded that a separate Dust Management Plan at this stage does not provide an additional benefit as all relevant measures that were identified in the ES Chapter 13: Air Quality (Document 5.2.13) [APP-085], to address dust emissions, have been included in Appendix 3B Code of Construction Practice (CoCP) (Document 5.3.3B) [APP-095], which is secured under Requirement 5(2)(a) of the draft DCO (Document 3.1(C)). The measures were selected in response to the risk of dust impacts that were in turn calculated based on the sensitivity of the area (i.e., proximity of receptors) and the level of activity (i.e., dust magnitude).</p> <p>It should be noted that according to the dust assessment only the Monk Fryston area is classed as having a high dust risk due to earthworks activities. However, the construction activities occur more than 300m from Lumby and according to the IAQM (2016) guidance at such distance dust soiling effects are unlikely to occur. Therefore, a dust management plan is not recommended to address potential dust soiling effects in Lumby. In all other areas (Tadcaster and North west of York) included in the dust assessment, the potential for dust soiling effects from demolition, earthworks and construction are considered low and therefore a dust management plan is not required.</p> <p>The CoCP will be amended and submitted at a future deadline, to provide clarity on the implementation of the dust measures including responsibilities and frequency of inspections.</p>
Q5.4.3	<p>Requirement 1: Pre-commencement works</p> <p>Bearing in mind that Requirement 6 would not apply to pre-commencement activities, do you consider the definition of activities comprising 'pre-commencement works' in Requirement 1(1) to be sufficiently clear and precise? If not, specify which items in the list (a) to (n) require tighter definition and explain why you take this view.</p>	<p>We consider that Requirement 1(1) should include 'Construction Traffic Management Plan', given that (h) and (l) are likely to include HGV traffic which requires traffic management along public highways.</p>	<p>Requirement 5(3) of the draft DCO (Document 3.1(C)) requires all pre-commencement works must be carried out in accordance with the construction management plans and the outline soil management plan.</p> <p>Requirement 5(2) lists the Construction Traffic Management Plan (CTMP) (Document 5.3.3F) [APP-099] as a construction management plan, which forms part of the application and is a certified document under Article 48 of the draft DCO (Document 3.1(C)).</p> <p>National Grid consider this to be sufficiently clear that all pre-commencement works will be carried out in accordance with the construction management plans which includes the CTMP and therefore it would be superfluous to include within Requirement 1(1).</p>
Q5.4.5	<p>Requirement 4: Stages of authorised development</p> <p>A number of the Requirements use the commencement of 'stages' of the authorised development as a control mechanism.</p>	<p>a) The definition of a 'stage' is defined at Requirement 1(1), in Schedule 3 of the dDOC. However, what development will take place under each stage of the authorised development is unclear.</p> <p>b) Yes, assuming that no LPA approval and only notification is required.</p>	<p>National Grid has sought to clarify and respond to a number of points in respect of Leeds City Council's response to Q5.4.5 as follows:</p> <p>a) As detailed in the Applicant's Written Summary of Oral Representations made at Issue Specific Hearing 1 (ISH1) (Document 8.4.1.2) [REP1-017] in respect of Table 3.9 Item 4.3, National Grid would define the stages of the authorised development once it has been determined how the Project will be delivered. The written scheme of stages would confirm the spatial scope (the area within which the works will take</p>

Ref. No	Question	Interested Party Response	National Grid Comment
	<p>a) Is it sufficiently clear to you what a 'stage' means in this context?</p> <p>b) Are you content with the drafting and practical application of Requirement 4?</p> <p>c) Should the written scheme be subject to approval by the relevant planning authorities?</p> <p>d) Should any amendments to the written scheme be subject to an approval process?</p> <p>e) Should there be a requirement to notify the relevant planning authorities when each stage is commenced and completed, as was the case in the parallel Requirement in the Richborough Connection Order (2017)?</p>	<p>c) Unsure, it would depend on the content of each stage.</p> <p>d) Unsure (as above).</p> <p>e) Yes, to enable progress to be tracked and triggers for other Requirements to be clear.</p>	<p>place), the temporal scope (when it is likely to commence and be completed), and the works it relates to. In response to ISH1 Action Point 26 in the Applicant's Response to OFH1 and ISH1 Hearing Action Points (Document 8.4.2) [REP1-018], National Grid has provided an example template to indicate how a written scheme of stages might be structured, which is included at Appendix E Template Structure of a Written Scheme of Stages – For Information, to Document 8.4.2 [REP1-018]. This template structure shows how information would be included in the written scheme of stages to explain how the Project has been divided into stages, with an outline programme provided for each stage and a detailed explanation of the construction activities associated with each stage. This would likely include a description of the temporary works, main works and landscaping/replacement planting associated with each stage, and a plan would be provided illustrating the extent of the stage and in relation to the other stages identified in the scheme.</p> <p>b) and c) National Grid notes Leeds City Council's response to point b) that it is content with the drafting and practical implementation of Requirement 4 but is unsure in respect of whether the written scheme of stages should be subject to approval. As detailed in the Applicant's Written Summary of Oral Representations made at Issue Specific Hearing 1 (ISH1) (Document 8.4.1.2) [REP1-017] the purpose of Requirement 4 is to give prior notice to the relevant planning authorities that National Grid are proposing to bring forward the Project and in the stages described in the written scheme of stages so that the LPA will be able to discharge the plans, schemes and strategies which subsequently come forward for approval under other Requirements in that knowledge. It is accepted that this is something that should be provided, but it is not appropriate for the LPA to approve the stages because National Grid should be able to define the way the Project is constructed. The purpose of the Requirement is to assist the local authorities in the subsequent discharge and approval process, rather than give controls over the proposed staging itself. Any control by the LPA in relation to matters such as other management plans are provided for in the approval required by other Requirements in the DCO. The LPA has an approval right in relation to plans, schemes, strategies submitted in relation to a specific Requirement, and if the LPA has concerns that the plan does not adequately cover the relevant 'stage' then this should be dealt with through approval of the plan for that stage.</p> <p>d) The Requirement as drafted includes the provision for any scheme subsequently amended to be notified to the relevant planning authority. As detailed above, National Grid does not consider it appropriate for Requirement 4 to be amended so it is subject to an approval process by the relevant planning authority, and this would be the same position for any subsequent amended written scheme of stages. To note, National Grid has updated Requirement 4 in the draft DCO (Document 3.1(C)) submitted at Deadline 3 in respect of the implementation of the written scheme of stages, to include that the authorised development must be constructed in accordance with the written scheme setting out the stages of the authorised development.</p>

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			<p>e) National Grid does not consider it necessary for the Requirement to be updated to include for the notification to the relevant planning authorities when each stage is commenced and completed, as was the case on the Requirement included in the Richborough Connection Project Order 2017. National Grid has specifically drafted this Requirement taking on board lessons learnt and the practical implementation of previous recent DCOs in construction and found this requirement unnecessary as regular discussion and engagement was taking place with the LPAs to inform them of such progress and the Project was required to be implemented in accordance with the written scheme of stages. As detailed above due to the approval right of the written scheme of stages being excluded from this Requirement the need for written notice for the commencement and completion of construction for each stage is also unnecessary as National Grid should be able to define the way the Project is constructed and the detailed programme for the Project. Furthermore, the commencement or completion of a stage would not act as a trigger for further stages, as stages will likely run concurrently or with a degree of overlap and not necessarily consecutively.</p>
<p>Q5.4.7 c)</p>	<p>Requirement 8: Landscaping and mitigation planting</p> <p>c) If not, what further information do you consider is required?</p>	<p>c) Recommend that permanent landscape works should be completed and retained in perpetuity via a maintenance condition and to ensure any failures are replaced within a 5 year period.</p>	<p>National Grid notes LCC consider that the proposed maintenance regime as outlined in Requirement 8(2)(c) of the draft DCO (Document 3.1(C)), i.e., to ensure any plant failures are replaced within a 5-year period, is adequate.</p> <p>National Grid is delivering permanent landscaping as part of the Project. An outline of the permanent landscaping proposed is shown on the Outline Landscape Mitigation Strategy in Figures 3.10 to 3.12 in ES Chapter 3 Description of the Project Figures (Document 5.4.3(C)) [REP2-031]. This will form the basis for the scheme for the landscape strategy which would be approved by the relevant LPA and implemented under Requirements 8 and 9 respectively of the draft DCO (Document 3.1(C)). It is intended to retain the permanent landscaping at Overton, Tadcaster and Monk Fryston for the lifetime of the Project in accordance with the landscape strategy as approved. It is not appropriate that its retention forms a requirement of the draft DCO as in the future it may be necessary to do other works in the vicinity of these non-linear sites which could impact on this permanent landscaping. However, if this was the case it would require its own permission outside of the DCO regime, and if this permission is granted it should not be necessary to seek an amendment to the DCO.</p> <p>However, it should be noted that replacement mitigation planting in accordance with the Arboricultural Impact Assessment (Document 5.3.3I) [APP-102 to 104] (for example where trees are removed to facilitate construction works and subsequently replaced on land which will not be permanently acquired by National Grid) will be maintained by National Grid for a period of 5 years to ensure its success but will subsequently be in the control of the relevant third party landowner, who would be entitled to manage the replacement planting as they consider appropriate – as is the case with that planting which currently exists.</p>
<p>Q5.4.7 e) and g)</p>	<p>Requirement 8: Landscaping and mitigation planting</p> <p>e) What else might be useful if not?</p>	<p>e) An up-to-date Tree/ Vegetation Survey based on a topographical plan. Including spot heights, RPA's and canopy extents, with an accompanying report and tree</p>	<p>The submitted Arboricultural Impact Assessment (Document 5.3.3I) [APP-102 to APP-104] includes root protection areas and canopy extents (as shown in the Tree Constraints Plan in Annex 3I.1 (Document 5.3.3I Part 2 of 3) [APP-103]) along with an accompanying report (Document 5.3.3I Part 1 of 3) [APP-102] and</p>

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	g) Are there any exemplar planting types/situations which you consider should be provided?	<p>schedule in accordance with sections 4.4.4.6 of BS 5837:2012.</p> <p>g) Oak.</p>	<p>tree schedule (Annex 31.2 (Document 5.3.3I Part 2 of 3) [APP-103]). National Grid has used a combination of National Tree Map data, GPS, aerial imagery and on site assessment to position tree features and considers that the approach to tree positioning (without reference to a topographical plan) is sufficient to allow the identification of tree constraints and likely impacts and that it is reasonable and proportionate given the nature and scale of the Project. This approach has been applied and accepted on numerous other large scale infrastructure projects (e.g. The Richborough Connection Project).</p> <p>National Grid notes the request to include oak species in proposed planting schemes. Pedunculate oak (<i>Quercus robur</i>) is included in the proposed species detailed in the Outline Landscape Mitigation Strategy illustrated in Figures 3.10 to 3.12 in ES Chapter 3 Description of the Project Figures (Document 5.4.3(C)) [REP2-031-017]. In accordance with Requirement 8(1) (a) and (b) of the draft DCO (Document 3.1(C)), the scheme for mitigation planting and landscape strategy would be submitted to the planning authority for approval so there would be an opportunity to review and comment on the proposed range of species.</p>
Q5.4.10	<p>Requirement 10: Retention and protection of existing trees</p> <p>a) Do the items listed in Requirement 10(2) as forming the contents of the Tree and Hedgerow Protection Strategy (THPS) provide sufficient detail for the Councils to discharge this Requirement? If not, specify what additional details you would expect to see provided as part of the THPS.</p> <p>b) Would links to the Arboricultural Impact Assessment (AIA) Report's [APP-102] to [APP-104] embedded environmental measures and mitigation or provision of an Outline THPS assist?</p>	<p>a) Yes if based on an up-to-date Tree/ Vegetation Survey, as identified in the answer to Q5.4.7(e) above.</p> <p>b) Yes.</p>	<p>a) Please see response to Q5.4.7 e) above. National Grid notes that aside from the comment raised in Q5.4.7 e) Leeds City Council consider that the items listed in Requirement 10(2) as forming the contents for the THPS provide sufficient detail for the Council to discharge this requirement.</p> <p>b) National Grid notes the comments and has responded in part in the Applicant's Response to EXQ1 Question 5.4.11 (Document 8.9.1) [REP2-038] where the key elements of the THPS are identified and addressed, and this is considered to be sufficient justification for why an outline THPS is not required at this stage.</p> <p>Save for the soil and aftercare management plan, no outline plans are being prepared for the plans listed in Requirement 6(1). As explained in response to ExQ1 Q5.4.11 of the Applicant's Response to Examining Authority's First Written Questions (Document 8.9.1) [REP2-038], uncertainties surrounding detailed design would mean that any outline plan produced would constitute an unreasonable volume of abortive work and the detail to be included in these plans will come forward through the detailed design by the Main Works Contractor.</p> <p>The THPS will include the following elements in accordance with Requirement 10(2) of the draft DCO (Document 3.1(C)):</p> <ul style="list-style-type: none"> a) Tree Protection Plan showing fence positions; b) Schedule of proposed tree and hedgerow removal and management; c) Specification for physical protection of trees; d) Auditable system of compliance with approved protection measures. <p>The submitted Arboricultural Impact Assessment (Document 5.3.3I) [APP-102 to APP-104] specifically includes outline information to address point b) (tree survey schedule included as Annex 31.2), c) and d) (Outline Arboricultural Method Statement included as Annex 31.4).</p>

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			<p>In relation to point a), because the design and implementation of the Project is not fully fixed at this stage, plotting extensive fencing around all trees to be retained in proximity to areas of works would constitute an unreasonable volume of abortive work.</p> <p>Trees to be removed (which therefore would not require protection) are clearly shown on the Tree Removal and Protection Plans (Annex 3I.3 of the Arboricultural Impact Assessment (AIA) (Document 5.3.3I) [APP-104].</p> <p>In relation to the addition of links to the AIA's embedded measures and mitigation, the AIA's embedded measures include the THPS to set out how trees (including veteran trees) will be managed and protected.</p> <p>The Outline Landscape Mitigation Strategy illustrated in Figures 3.10 to 3.12 in ES Chapter 3 Description of the Project Figures (Document 5.4.3(C)) [REP2-031] and Landscape Scheme for Mitigation Planting secured by Requirement 8(1)a and b of the draft DCO (Document 3.1(C)) and the Biodiversity Mitigation Strategy (secured by Requirement 5(2)(c) of the draft DCO (Document 3.1(C)) contain mitigation in the form of reinstatement and new planting. In addition, the Order Limits and the Limits of Deviation for the linear works (as shown on the Works Plans (Document 2.6.1(B) to 2.6.6(B)) [REP1-004 to REP1-009]) have been developed to avoid impacts to ancient woodland and veteran trees where possible.</p> <p>By requiring that the Tree and Hedgerow Protection Strategy (THPS) is prepared "in accordance with the Arboricultural Impact Assessment report" under Requirement 10(1), the THPS is already tied to the embedded measures therein.</p> <p>As such, it is not considered necessary to include specific links to this mitigation within Requirement 10(2).</p>
Q5.5.5	<p>Schedule 4: views of future discharging authorities</p> <p>a) Set out your views on Schedule 4, covering (but not limited to):</p> <ul style="list-style-type: none"> - the proposed timescales for decisions provided for under paras 1(1), 1(3), 1(4), 2(2) and 3 of this Schedule; - whether Requirements may be discharged in parts, and if so, how fees should be payable; - the acceptability of the proposed appeal provisions set out at paragraph 3; and - other points raised for the Applicant to consider above. 	<p>a) Please provide a definition for 'undertaker' and 'requirement consultee' in the dDCO.</p> <p>b) N/A.</p>	<p>Article 2 (interpretation) of the draft DCO (Document 3.1(C)) provides the relevant definition of undertaker as this term is used throughout the DCO:</p> <p><i>"the Undertaker"—</i></p> <p><i>(a) in relation to the authorised development, means National Grid;</i></p> <p><i>(b) in relation to the NPG Works and subject to Schedule 5 (benefit of the Order rules), includes NPG; and</i></p> <p><i>(c) in relation to the NGN Works and subject to Schedule 5 (benefit of the Order rules), includes NGN."</i></p> <p>The definition for "requirement consultee" appears at paragraph 5 of Schedule 4 (interpretation) of the draft DCO (Document 3.1(C)) and is defined to mean <i>"any body named in a Requirement which is subject of an appeal as a body to be consulted by the relevant authority in discharging that Requirement."</i></p>

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	<p>b) If you do not agree with the wording in this Schedule set out your reasons and any suggested amendments to the wording of this article.</p>		
Q7.0.4	<p>Level of detail of information where site-specific infrastructure is proposed</p> <p>a) Do you consider that the Applicant has provided sufficient detail in areas where site-specific infrastructure is proposed? (North Yorkshire County Council, you have previously mentioned detailed topographical surveys to understand and explain all the key features and characteristics of the existing site including levels and landform, buildings and structures, existing vegetation and screening, hard/ soft surfaces [APP-195], page 199 to 200).</p> <p>b) If not, what else do you consider is required?</p>	<p>a) No.</p> <p>b) Location of compounds and storage areas within Leeds.</p>	<p>a) National Grid notes the comments and consider that an appropriate level of detail has been provided for non-linear site specific infrastructure, with locations set out on the Work Plan Section D (Document 2.6.4(B)) [REP-007] relating to Leeds City Council and parameters, layouts and elevations of each site-specific infrastructure provided in the Design Drawings (Document 2.15(B)) [REP2-011]. National Grid has produced and submitted at Deadline 2 a Design Approach to Site Specific Infrastructure Document (Document 8.18) [REP2-049] which provides more detail on certain design elements of the non-linear site-specific infrastructure.</p> <p>b) National Grid notes the comment and can clarify that there are no temporary construction compounds or storage areas within the Leeds City Council administrative area.</p>
Q14.0.3	<p>Traffic Management: Abnormal Loads</p> <p>In the joint Local Authorities' RR [RR-018], [RR-019], [RR-032] and [RR-034] reference is made to the likely requirement that some large items delivered to the site will be classed as abnormal loads and discussion with the Local Highway Authority will be required. The ExA also notes that an Abnormal Indivisible Load Assessment has been provided in Annex 3F.1 of the Construction Traffic Management Plan (CTMP) [APP-099]. Having regard to this:</p> <p>To Applicant and Local Highway Authorities:</p> <p>a) When is it envisaged that such discussions will take place?</p> <p>b) What mechanism will there be for public consultation and notification regarding the timing and routing of abnormal loads beyond that set out in Section 3.6 of [APP-099]?</p> <p>To Local Highway Authorities:</p> <p>c) Are you content with the measures set out in the CTMP or should an Outline Abnormal Loads Management Plan be submitted into</p>	<p>a) As part of the final planning application</p> <p>b) Consultation should be carried out as part of the planning application</p> <p>c) Yes.</p>	<p>a) Regarding further discussions, National Grid welcomes further engagement with Leeds City Council if they have specific comments relating to AIL deliveries. Currently National Grid are not aware of any specific concerns/ comments.</p> <p>Further information in respect of how AIL information will be communicated is detailed in full in Q14.03 of the Applicant's Response to Examining Authority's First Written Questions (ExQ1) (Document 8.9.1) [REP2-038]. This response confirms that the National Highways Electronic Service Delivery for Abnormal Loads (ESDAL) system will be used to notify and consult with relevant parties, including the Leeds City Council in its capacity as local highway authority, at the appropriate time, following detailed design (once the appointed contractor has finalised the detailed construction programme of works).</p> <p>b) National Grid notes the comment from Leeds City Council regarding the expectation of consultation regarding the timing and routing of abnormal loads as part of the application.</p> <p>National Grid has responded to this matter in full within Q14.03 of the Applicant's Response to Examining Authority's First Written Questions (ExQ1) (Document 8.9.1) [REP2-038]. In summary, National Grid consider the ESDAL system and leaflet drops (which is secured in the Construction Traffic Management Plan at paragraph 3.6.3 (Document 5.3.3F) [APP-099]) along with notification to relevant local and parish councils, who can then disseminate information at a local level as appropriate, to be sufficient. National Grid also note that routing and timing details can only be provided once the Contractor has been appointed and has finalised the detailed construction programme of works.</p>

Ref. No	Question	Interested Party Response	National Grid Comment
	this Examination in order to provide more detailed information on this matter?		

2.5 Network Rail Infrastructure Limited

Table 2.5 – Network Rail Infrastructure Limited: Responses to the Examining Authority’s Written Questions (ExQ1) [REP2-082]

Ref. No	Question	Interested Party Response	National Grid Comment
Q4.5.8	<p>Protective Provisions for Network Rail Infrastructure Limited</p> <p>You have indicated in your RR [RR-001] that you are working with the Applicant on the wording of Protective Provisions as set out in the dDCO [AS-011], Schedule 15.</p> <p>a) The ExA requires further information on the way in which the rights sought might interfere with the safe and efficient operation of the Railway.</p> <p>b) If differences remain, provide copies of your preferred wording for Protective Provisions, or if you have provided it elsewhere (such as in a SoCG), signpost where it can be found and explain why you don’t want the wording as currently drafted to be used.</p> <p>c) Provide any comments on or suggested changes to the articles and/ or Requirements in the dDCO [AS-011].</p>	<p>(a) Please refer to NR's Written Representations submitted on even date which set out this detail.</p> <p>(b) A copy of NR's preferred wording for Protective Provisions is enclosed. The wording as currently drafted represents an outdated version of the Protective Provisions which NR has used historically. Significant updates have been made to these provisions since and so the wording as currently drafted is not fit for purpose. NR is in the process of seeking the agreement of the Promoter to the inclusion of the enclosed Protective Provisions in the dDCO.</p> <p>(c) NR has no comments on the articles and/or Requirements in the dDCO.</p>	<p>National Grid continues to liaise with Network Rail (NR) regarding these Protective Provisions.</p> <p>Please see the Protective Provisions Progress Schedule (Document 8.12) [REP2-042] submitted at Deadline 2, which includes updates on the position for all statutory undertakers. The protective provisions on the face of the draft DCO (Document 3.1(C)) are not agreed by NR. National Grid is not yet in a position to update the protective provisions for NR on the face of the draft DCO (Document 3.1(C)) but negotiations are continuing with a view to reaching a suitable update to be incorporated into the DCO at Deadline 5 if possible.</p>

2.6 North Yorkshire Council

Table 2.6 – North Yorkshire Council [REP2-083]

Ref. No	Question	Interested Party Response	National Grid Comment
Q1.2.2	<p>Cumulative effects: inter-project assessment</p> <p>Table 18.9 of [APP-090] contains a shortlist of developments for consideration in the inter-project assessment. Locations are depicted on ES Figure 18.1 [APP-194]. Table 18.4 of [APP-090] states that the shortlisted developments were agreed with relevant local authorities.</p> <p>a) Do the local authorities agree with the plans and projects shortlisted for inclusion within the cumulative effects assessment (ES Chapter 18 [APP-090])?</p> <p>b) Can the local authorities confirm whether they are aware of any other plans or projects that have come to light since August 2022 that should be included in the shortlist of developments for consideration in the inter-project assessment?</p>	<p>FROM THE LPA IN THE HARROGATE AREA</p> <p>Q1.2.2 (a) 19/00017/EIAMAJ Outline planning application for the construction of up to 4,000 residential dwellings (Use Class C2 and C3), employment land (Use Class B1, B2 and B8), a mixed-use local centre (Use Class A1, A3, A4, A5 and D1), two primary schools (Use Class D1), and associated infrastructure including site preparation, landscaping, open space, drainage, access roads, highways works and utilities with all matters reserved. Land Comprising Field At 444466 455810 Cattal is excluded. Undetermined.</p> <p>Q1.2.2.(b) There are no other plans or projects that have come to light since August 2022 that should be included in the shortlist of developments for consideration.</p> <p>THE SELBY PLANNING AREA can confirm that they are in agreement with the plans and projects shortlisted for inclusion within the cumulative effects assessment (ES Chapter 18 [APP-090]). The Applicant agreed this with North Yorkshire Council during the pre-application stage. It should be noted that ID40 was allowed at appeal in December 2022.</p> <p>North Yorkshire Council are aware of the following plans or projects that have come to light since August 2022 that should be considered for inclusion in the shortlist of developments for consideration in the inter-project assessment:</p> <p>- 2022/0732/FULM - Change of use of land to fish farm, installation of security fence and gates, hardstanding, erection of buildings, CCTV cameras and 4 lakes for holding sturgeon - Land South Of Electricity Substation, Rawfield Lane, Fairburn – currently awaiting decision.</p>	<p>a) National Grid note the outline planning application 19/00017/EIAMAJ provided in this response and can confirm that this has been considered as part of the Appendix 18A Cumulative Effects Assessment Long List of Other Developments (Document 5.3.18A) [APP-161] and is noted under development ID 68. The development is approximately 3.9km west of Yorkshire GREEN and was scoped out at Stage 1 from the short list, as described in Section 18.6 of the ES Chapter 18 Cumulative Effects (Document 5.2.18) [APP-090]. The reasons for this, as detailed in Document 5.3.18A [APP-161] are that, although the proposed development is a large-scale development, the closest elements of Yorkshire GREEN at this location comprise works to the existing overhead line and therefore no change in permanent landscape, visual and setting effects. Given this, along with the intervening distance, topography and vegetation, significant cumulative effects on setting, landscape or visual effects are not likely.</p> <p>National Grid note that the planning application reference 2022/0732/FULM comprises a retrospective planning application for a change of use from established and previously approved fishponds to sturgeon holding facility including a requirement for 2no. ancillary single storey buildings (already present on the site). Therefore, as a retrospective application, this development already forms part of the environmental baseline considered in the Environmental Impact Assessment and has therefore not been included in the Appendix 18A Cumulative Effects Assessment Long List of Other Developments (Document 5.3.18A) [APP-161]. This will therefore also not be included within the updated Appendix 18A Cumulative Effects Assessment Long List of Other Developments (Document 5.3.18A(B)), submitted at Deadline 3. It is also noted that Paragraph 9.5 of the Design and Access Statement, June 2022 states that; <i>“the proposed operation is entirely self-contained and creates no noise, water, or odour pollution. It is also creates minimal vehicular movements which consist only of daily employee commuting and not more than 2 annual commercial vehicle movements along an existing and previously approved road leading to Rawfield lane with the A1 (M) within 2miles.”</i></p>
Q2.0.3	<p>Dust control measures</p> <p>In [RR-014] and [RR-020] concerns are raised regarding the potential dust impacts on Lumby. Residential areas also lie in relatively close proximity to the location of other proposed Works. Whilst the Code of Construction Practice [APP-095] contains some control measures neither Requirement 5 nor Requirement 6 of the dDCO [AS-011] contain the specific</p>	<p>Q2.0.3 questions whether or not dust control measures set out within the Code of Construction Practice (CoCP), as secured by Requirement 5 of the dDCO, are sufficient to suitably control potential dust impacts on nearby residential receptors.</p> <p>It is stated that the implementation of the CoCP will be through contractors and fed into the relevant contracts for the Yorkshire GREEN construction works. The principal contractor will then be expected to prepare management plans detailing how some of the management measures and principles provided in the CoCP will be implemented and</p>	<p>National Grid notes the comments and has responded in part to this matter in Table 2.4 of the Applicant's Response to Examining Authority's First Written Questions (ExQ1) (Document 8.9.1) [REP2- 038]. This concluded that a separate Dust Management Plan does not provide an additional benefit as all relevant measures that were identified in ES Chapter 13: Air Quality (Document 5.2.13) [APP-085], to address dust emissions, have been included in the Code of Construction Practice (CoCP) (Document 5.3.3B) [APP-095], which is secured under Requirement 5(2)(a) of the draft DCO (Document 3.1(C)). The measures were selected in response to the risk of dust impacts that were in turn calculated based on the sensitivity of the area (i.e., proximity of receptors) and the level of activity (i.e. dust magnitude).</p>

Ref. No	Question	Interested Party Response	National Grid Comment
	<p>requirement for a Dust Management Plan to be submitted.</p> <p>In the absence of such a Plan are the measures set out in [APP-095] likely to be sufficient?</p>	<p>monitored effectively. Consequently, dust control measures within the CoCP are vague, for example Table 3.9 AQ01 'carry out regular site inspections (on and off-site) to monitor compliance' – how frequently and by whom? What is the threshold of acceptability and remedial action in the event of exceedance? It is suggested that 'dust suppression and stockpile management will be provided as necessary to minimise airborne emissions' (Table 3.6 GH02) but little detail beyond this despite dust suppression being a fundamental dust mitigation measure – where is the water supply coming from? At what point does dust suppression become necessary (proactive/reactive?).</p> <p>Overall, while the detail is vague, there is a commitment within the CoCP for contractors to prepare a dust mitigation strategy. There are no objections to this approach provided that there is a mechanism for formal consultation. I would also support a standalone Dust Management Plan as suggested.</p>	<p>It should be noted that according to the dust assessment only the Monk Fryston area is classed as having a high dust risk due to earthworks activities. However, the construction activities occur more than 300m from Lumby village and according to the IAQM (2016) guidance at such distance dust soiling effects are unlikely to occur. In all other areas (Tadcaster and North west of York) included in the dust assessment, dust soiling effects from demolition, earthworks and construction are considered low. Therefore a dust management plan is not required.</p> <p>National Grid would like to clarify that there is no commitment in the CoCP for a dust mitigation strategy to be produced by the appointed contractor. However, the CoCP will be amended and submitted at a future deadline, to provide clarity on the implementation of the dust measures including responsibilities and frequency of inspections.</p>
Q5.1.6	<p>Article 5: Limits of Deviation, sub-para (4)(a) and (4)(b): Parameter Plans</p> <p>Are you content that the parameter plans, contained within the Design Drawings [APP-064]</p> <p>provide the level of information you would require for approving future post-consent applications?</p>	<p>Parameter Plans-</p> <p>- MONK FRYSTON -DCO_DE/PS/15_01 -DESIGN DRAWING: SUBSTATION PARAMETER PLAN</p> <p>-DCO_DE/PS/19_01 DESIGN DRAWING: PARAMETER PLAN FOR TADCASTER WEST 275kV CABLE SEALING END COMPOUND</p> <p>-DCO_DE/PS/20_01-DESIGN DRAWING: PARAMETER PLAN FOR TADCASTER EAST 275kV CABLE SEALING END COMPOUND</p> <p>General comment- to all -the parameters plans are limited to the extent to of the substation area and intended position of main control buildings. Maximum heights are given but it doesn't include access, landscaping areas or construction areas which would normally be on a parameters plan for an outline type of application. The Authority would like to understand why the plans do not include this detail.</p>	<p>National Grid note the comments and do not believe that the access, landscaping areas or construction areas should be included on the parameter plans. The parameter plans provided (Document 2.15(B)) [REP2-011] set out the parameters for the non-linear works at substations and cable sealing end compounds to specify where specific equipment can be located within the sites. This is controlled via Requirement 3 (Design drawings), and through Article 5 (Limits of deviation) of the draft DCO (Document 3.1(C)).</p> <p>The landscaping areas are shown on the Outline Landscape Mitigation Strategy Figures, 3.10, 3.11 and 3.12 contained in the ES Chapter 3 Description of the Project Figures (Document 5.4.3(C)) [REP2-031] and secured under Requirement 8(1)(b) of the draft DCO (Document 3.1(C)).</p> <p>In accordance with Article 5(1)(e) (Limits of deviation) of the draft DCO (Document 3.1(C)), construction activities, including access tracks can be carried out anywhere within the Order Limits, as assessed in the Environmental Statement, subject to any restrictions set out in the Code of Construction Practice (Document 5.3.3B(B)) [REP2-020] which is secured via Requirement 5 of the draft DCO (Document 3.1(C)). The access tracks and construction areas will be subject to detailed design once the main works contractor is appointed.</p> <p>Finally, it should be noted that, if granted, the Order would provide full and not outline consent for the Project.</p>
Q5.1.15	<p>Article 12: Application of the 1991 Act</p> <p>In your capacity as the highways authorities and utility companies which might have apparatus in streets, do you have any comments on the powers conferred under article 12 as proposed?</p>	<p>The Authority does not support the inclusion of this Article in the DCO. For the wide ranging exclusions of the 1991 Act to be included in the DCO, the Authority would need to insist upon a mirroring of that act within the CTMP rendering its exclusion from the DCO meaningless and confusing.</p> <p>It is not acceptable to the Authorities.</p>	<p>National Grid understands that the Authority is concerned with the disapplication of certain provisions of the 1991 Act under paragraph (3) of Article 12. Further justifications for the disapplication of specific sections of the 1991 Act are included in National Grid's response to ExQ1 Q5.1.14 within the Applicant's Response to Examining Authority's First Written Questions (Document 8.9.1) [REP2-038].</p> <p>The disapplication of these provisions is appropriate given the scale of the works proposed under the DCO, the specific authorisation given for those works by the</p>

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			<p>DCO, and the specific provisions in the DCO which would regulate the carrying out of the works included in the DCO. There is a clear urgency of delivering to the Yorkshire GREEN earliest in service date (2027) and maintaining the programme, for which certain works must be carried out at particular times. Any delay that a street authority could place on National Grid would hinder this and is considered unnecessary in the context of the minimal nature of the street works anticipated and their potential impact on the road network as described in ES Chapter 3 Description of the Project Section 3.6 (Document 5.2.3) [APP-075].</p> <p>For the avoidance of doubt, National Grid are not seeking to dispense with the 1991 Act in its entirety and paragraph (4) of Article 12 specifically applies provisions of the 1991 Act. National Grid are only seeking to disapply provisions which would cause delays to the Project disproportionate to the scale of the street works being carried out.</p> <p>Comparable provisions have been included at Article 12(3) of the Southampton to London Pipeline Order and also at Article 15(2) of the Sizewell C (Nuclear Generating Station) Order 2022.</p>
Q5.1.16	<p>Article 13: Power to alter layout, etc. of streets</p> <p>While this power is limited to those streets listed in the appropriate Schedules, it is potentially wide with authorisation potentially being given to any street within the Order Limits, subject to the need for consent from the street authority. This consent is subject to a 'guillotine' clause, with consent being deemed as given if the undertaker is not notified of the decision within 28 days.</p> <p>a) Provide your views on this article, if not set out elsewhere, or signpost where a response can be found.</p> <p>b) If you are not content with drafting as proposed, set out your reasons why and propose alternative drafting in response to this question, or signpost where you have provided that if included elsewhere.</p>	<p>The Authority would expect to see this article or something similar within the DCO and the Authorities intend to cover the CTMP in detail with the Applicant to understand its limits.</p> <p>The Authority does object to the timescale proposed for the 'guillotine' clause and request the timescales are brought in line with other discharge of requirements which we have requested be put at 8 weeks.</p>	<p>National Grid notes the Authorities comments on the inclusion of Article 13 within the draft DCO (Document 3.1(C)) and also intends to continue to discuss the content of the Appendix 3F Construction Traffic Management Plan (Document 5.3.3F) [APP-099] in detail with the Authorities.</p> <p>In respect of the Authorities objection to the timescale of 28 days within Article 13(5) of the draft DCO (Document 3.1(C)); this timescale is considered necessary and appropriate by National Grid in order to ensure that the proposed development is not delayed unnecessarily. The current timescale also allows both flexibility and certainty in delivering the Project by 2027, given there is an urgent need to reinforce the network in Yorkshire by this date to enable the connection of customers; ensure the connection of renewable generation without incurring significant constraint costs; facilitate net zero; and meet National Grid's transmission licence obligations (as set out within the Updated Need Case (Document 7.4) [APP-205]).</p> <p>National Grid will also ensure that any application pursuant to Article 13 will make it clear that it is a "deemed consent application" to remind North Yorkshire Highways of the 28 day period. This is secured through Article 13(6) of the draft DCO (Document 3.1(C)).</p> <p>This timescale has also been accepted and included in other made DCOs such as The Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 and The National Grid (Richborough Connection Project) Development Consent Order 2017.</p>
Q5.1.30	<p>Article 45: Traffic Regulation</p> <p>Article 45 and Schedule 14 of the dDCO [AS-011] relate to traffic regulation.</p> <p>Are you content with the wording of Article 45 paragraph (8) whereby the traffic authority is deemed to have granted</p>	<p>North Yorkshire Highways is not content with the time limit proposed and would seek 8 weeks in line with other discharge of requirement timescales.</p>	<p>Article 45(1) ties to details specified within Schedule 14. Article 45(2) allows for unforeseen circumstances where, as a result of detailed design, further TROs are required with the consent of the relevant traffic authority. National Grid do not anticipate a significant number of applications being made under Article 45(2) due to the comprehensive list provided within Schedule 14. Therefore, the 28 day notice period generally applies to details which are already set out within the draft DCO (Document 3.1(C)) and for which a notification only would be required.</p>

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	<p>consent if it fails to notify the undertaker within 28 days of receiving an application for consent under paragraphs (1) and (2) of Article 45?</p>		<p>As has been discussed with all of the affected Authorities, including North Yorkshire Highways, National Grid is committed to working closely with each authority in advance of any application made pursuant to Article 45(2) to ensure that each authority is clear of the works proposed and that comments received have been taken into account. The stage plan, secured through Requirement 4 of the draft DCO (Document 3.1(C)), will also allow the authorities to understand what works are taking place in which location, in advance. Article 45(6) requires that National Grid consult the chief officer of police and the traffic authority in whose area the road is situated before the 28 day time period commences. Therefore, for applications under Article 45(2), the 28 day period must be considered in this context, i.e. additional to a period of consultation with the chief officer of police and the traffic authority.</p> <p>National Grid will also ensure that any application pursuant to Article 45(2) will make it clear that it is a “deemed consent application” to remind North Yorkshire Highways of the 28 day period. This is secured through Article 45(9) of the draft DCO (Document 3.1(C)).</p> <p>The 28 day timescale proposed in Article 45 (and consistent throughout the draft DCO (Document 3.1(C))) reflects the urgency of delivering the Project (as set out in section 4.8 of the Updated Needs Case (Document 7.4) [APP-205]). This highlights the need for the Project to be operational by 2027 in order to enable the connection of customers; ensure the connection of renewable generation without incurring significant constraint costs; facilitate net zero; and meet National Grid's transmission licence obligations.</p> <p>The timescales proposed in Article 45 align with the precedented position in The National Grid (Hinkley Point C Connection Project) Order 2016 (article 40(8)) and The National Grid (Richborough Connection Project) Development Consent Order 2017 (article 39(8)).</p> <p>For the reasons set out above, and discussed to date with North Yorkshire Highways, National Grid considers that the timescales included in Article 45 are appropriate and justified.</p>
Q5.2.2	<p>Other associated development</p> <p>The list a) to u) at the bottom of page 50 and on page 51 of the dDCO [AS-011] sets out other works and activities for which consent is sought as associated development. Do you consider the breadth of these works to be proportionate and sufficiently precise so as to be understood in your role as local planning authority? If not, specify any items for which you consider that the wording should be refined, and explain why you take this view.</p>	<p>This lists works which can be carried out to achieve the main development at Monk Fryston but which don't need any further consent or control is extensive and not all are sufficiently precise. Comments on specific items below;</p> <p>a) this could allow quite extensive works which could impact on the items listed and the LPA may receive complaints or queries if the details are not previously known or agreed.</p> <p>b) as above.</p> <p>g) this is too vague. It is difficult to understand what such works might encompass or who would assess whether they were for the benefit or protection of the environment</p> <p>i), j), k) highways and the footpath officers are likely to have safety concerns at some specific locations to be picked up in CTMP discussions.</p>	<p>National Grid considers that provisions (a) to (u) are necessary to include within the draft DCO (Document 3.1(C)) and should not be refined as they provide powers which are necessary for the construction and maintenance of the authorised works. The provisions intentionally do not reference specific works because they may be undertaken anywhere within the Order limits to facilitate the construction or maintenance of a number of those specific works. To ensure the provisions are not overly expansive and to provide necessary safeguards, the provisions are caveated with the important requirement that the works must be, “necessary or expedient for the purposes of or in connection with the construction or maintenance of the above Work Nos”. As with all associated development, these works cannot be undertaken outside of the Order limits.</p> <p>All of the works listed in provisions (a) to (u) will also be subject to the controls provided within the requirements. Requirement 3 requires that the authorised development (which includes the list in (a) to (u)) is in general accordance with the Design Drawings (Document 2.15(B)) [REP2-011]. Requirement 5 requires compliance with the construction management plans certified under the draft DCO (Document 3.1(C)). Requirement 6 requires compliance with the further</p>

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			construction management plans to be approved subsequently by the Authority (as relevant). Therefore the works in the list (a) to (u) will still be subject to necessary controls.
Q5.4.3	<p>Requirement 1: Pre-commencement works</p> <p>Bearing in mind that Requirement 6 would not apply to pre-commencement activities, do you consider the definition of activities comprising ‘pre-commencement works’ in Requirement 1(1) to be sufficiently clear and precise? If not, specify which items in the list (a) to (n) require tighter definition and explain why you take this view.</p>	<p>Requirement 1</p> <p>The Authorities would expect to see protection of vegetation.</p>	<p>National Grid considers that tree and hedgerow removal would not be included in pre-commencement works, however some vegetation management and clearance may be required but not to the extent that trees or hedgerows would be completely removed (e.g., potentially coppicing as a worst case). This may be required to facilitate a pre-commencement activity, for example to access a location for environmental surveys, or to undertake environmental mitigation works. All pre-commencement works must be carried out in accordance with Construction Management Plans detailed in Requirement 5(2) of the draft DCO (Document 3.1(C)), which includes the Biodiversity Mitigation Strategy (Document 5.3.3D) [APP-097].</p> <p>The Tree and Hedgerow Protection Strategy (THPS) will identify trees to be removed or managed and how retained trees are to be protected during construction and this is secured via Requirements 6 and 10 of the draft DCO (Document 3.1(C)).</p>
Q5.4.5	<p>Requirement 4: Stages of authorised development</p> <p>A number of the Requirements use the commencement of ‘stages’ of the authorised development as a control mechanism.</p> <p>a) Is it sufficiently clear to you what a ‘stage’ means in this context?</p> <p>b) Are you content with the drafting and practical application of Requirement 4?</p> <p>c) Should the written scheme be subject to approval by the relevant planning authorities?</p> <p>d) Should any amendments to the written scheme be subject to an approval process?</p> <p>e) Should there be a requirement to notify the relevant planning authorities when each stage is commenced and completed, as was the case in the parallel Requirement in the Richborough Connection Order (2017)?</p>	<p>“stage” means a defined stage of the authorised development, as described in a scheme submitted to the relevant planning authority pursuant to requirement 4 (stages of authorised development);</p> <p>a) It’s not clear how the ‘Stage’ relates to the Works No Areas. Will a written scheme be required for each work area?</p> <p>b) No because it doesn’t require any agreement by the LPA and is simply a notification process.</p> <p>c) Yes it should be subject to approval by the LPA as some stages many require the LPA involvement such as road closures or site inspections or to make notifications. The LPA should be able to impose reasonable requirements on the stages if needed.</p> <p>d) For the same reasons yes – amendments should be subject to LPA approval</p> <p>e) Yes preferably</p>	<p>National Grid has sought to clarify and respond to a number of points in respect of North Yorkshire Council’s response to Q5.4.5 as follows:</p> <p>a) National Grid confirms that a written scheme of stages would not be required for each work area. A written scheme of stages would be prepared under Requirement 4 which relates to the whole Project. A ‘stage’ does not necessarily relate to a work no. area as per Schedule 1 of the DCO and would be the stages as defined in the written scheme of stages as per the definition drafted in the DCO. As detailed in the Applicant’s Written Summary of Oral Representations made at Issue Specific Hearing 1 (ISH1) (Document 8.4.1.2) [REP1-017] in respect of Table 3.9 Item 4.3 National Grid would define the stages of the authorised development once it has been determined how the Project will be delivered. The written scheme of stages would confirm the spatial scope (the area within which the works will take place), the temporal scope (when it is likely to commence and be completed), and the works it relates to. In response to ISH1 Action Point 26 in the Applicant’s Response to OFH1 and ISH1 Hearing Action Points (Document 8.4.2) [REP1-018], National Grid provided an example template to indicate how a written scheme of stages might be structured, which is included at Appendix E Template Structure of a Written Scheme of Stages – For Information to Document 8.4.2 [REP1-018]. This template structure shows how information would be included in the written scheme of stages to explain how the Project has been divided into stages, with an outline programme provided for each stage and a detailed explanation of the construction activities associated with each stage. This would likely include a description of the temporary works, main works and landscaping/replacement planting associated with each stage, and a plan would be provided illustrating the extent of the stage and in relation to the other stages identified in the scheme.</p>

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			<p>b) and c) As detailed in the Applicant’s Written Summary of Oral Representations made at Issue Specific Hearing 1 (ISH1) (Document 8.4.1.2) [REP1-017] the purpose of Requirement 4 is to give prior notice to the relevant planning authorities that National Grid are proposing to bring forward the Project in the stages described in the written scheme of stages so that the LPA will be able to discharge the plans, schemes and strategies which subsequently come forward for approval under other Requirements in that knowledge. It is accepted that this is something that should be provided, but it is not appropriate for the LPA to approve the stages because National Grid should be able to define the way the Project is constructed. The purpose of the Requirement is to assist the local authorities in the subsequent discharge and approval process, rather than give controls over the proposed staging itself. Any control by the LPA in relation to matters such as highway access or other management plans are provided for in the approval required by other Requirements or notifications required by other articles in the DCO. It is not considered reasonable or appropriate for this to be managed through the written scheme of stages, as this document seeks to sets out only how National Grid intend to the deliver the Project. The level of detail indicated by North Yorkshire Council in its response would not be detailed in the written scheme of stages and would be managed as part of the relevant approval or notification process in the DCO. The LPA has an approval right in relation to plans, schemes, strategies submitted in relation to a specific Requirements, and if the LPA has concerns that the plan does not adequately cover the relevant ‘stage’ then this should be dealt with through approval of the plan for that stage.</p> <p>d) The Requirement as drafted includes the provision for any scheme subsequently amended to be notified to the relevant planning authority. As detailed above, National Grid does not consider it appropriate for Requirement 4 to be amended so it is subject to an approval process by the relevant planning authority and this would be the same position for any subsequent amended written scheme of stages. To note, National Grid has updated Requirement 4 in the draft DCO submitted at Deadline 3 (Document 3.1(C)) in respect of the implementation of the written scheme of stages, to include that the authorised development must be constructed in accordance with the written scheme setting out the stages of the authorised development.</p> <p>e) National Grid does not consider it necessary for the Requirement to be updated to include for the notification to the relevant planning authorities when each stage is commenced and completed, as was the case on the Requirement included in the Richborough Connection Project Order 2017. National Grid has specifically drafted this Requirement taking on board lessons learnt and the practical implementation of previous recent DCOs in construction and found this requirement unnecessary as regular discussion and engagement was taking place with the LPAs to inform them of such progress and the Project was required to be implemented in accordance with the written scheme of stages. As detailed above due to the approval right of the written scheme of stages being excluded from this Requirement the need for written notice for the commencement and completion of construction for each stage is also unnecessary as National Grid should be</p>

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			able to define the way the Project is constructed and the detailed programme for the Project.
Q5.4.7	<p>Requirement 8: Landscaping and mitigation planting</p> <p>a) Are you satisfied with the split that the Applicant has applied to areas that have been included for outline landscape mitigation strategies (Overton Substation, Monk Fryston Substation and Tadcaster CSECs) and those other areas where reinstatement planting is not identified and would be subject to future approvals by the relevant planning authority, which would be in accordance with the Arboricultural Impact Assessment (AIA) [APP-102] to [APP-104] as set out in dDCO Requirement 8. The Applicant confirmed this is the case at ISH1.</p> <p>b) Do you consider the permanent landscape works, which would be based on the outline landscape mitigation strategies to be adequately secured?</p> <p>c) If not, what further information do you consider is required?</p> <p>d) Are you satisfied that the information in the AIA provides you with the information that you would need to consider and approve the mitigation planting scheme for areas outside the outline landscape mitigation strategy areas?</p> <p>e) What else might be useful if not?</p> <p>f) Are there any other geographic areas where you consider outline plans should be provided?</p> <p>g) Are there any exemplar planting types/situations which you consider should be provided?</p>	<p>A) The Authorities understand the split with the areas of identified landscaping and that which will be subject to further approval. The issue with the landscaping is not of the split but with the nature of the landscaping provided at those locations which we do not consider compliment the surroundings as they should.</p> <p>B) Yes.</p> <p>C) –</p> <p>D) Yes</p> <p>E) –</p> <p>F) Not at this stage.</p> <p>G) The Authority will comment on the strategies as they come forward.</p> <p>H) The Authorities would expect to see a longer maintenance programme and would suggest a term of 30 years</p>	<p>a) National Grid notes the concerns that NYC have expressed on the nature of landscaping provided in the Outline Landscape Mitigation Strategy, that has been updated in Figures 3.10(B) to 3.12(B) (Document 5.4.3(C)) [REP2-031], however in the absence of further details it is unclear what specific concerns NYC have with the nature of the landscaping provided at these locations that they consider does not compliment the surroundings as they should.</p> <p>The design objectives and outline parameters of the landscaping are set out in the Design and Access Statement (Document 7.2) [APP-203] with the landscape strategies at Tadcaster described at paragraphs 6.10.24 to 6.10.26, for the Shipton CSECs at paragraph 6.10.10, for the Overton Substation at paragraphs 6.11.15 to 6.11.16, and for the Monk Fryston Substation at paragraphs 6.11.31 to 6.11.32.</p> <p>National Grid acknowledged that NYC at section 8.11 of the LIR [REP2-040] wish to work on the detailed aspects of the landscape and visual mitigation plan to ensure an appropriate response in keeping with local landscape character and the opportunity to integrate with existing habitats in the vicinity. Opportunity was provided to NYC in April 2022 to review and comment on the draft mitigation proposals and the feedback received was incorporated into the Outline Landscape Mitigation Strategy as set out in Appendix 6B: Technical Engagement on Landscape and Visual Assessment (Document 5.3.6C) [APP-109]. National Grid clarify that tThe detailed landscape mitigation that accords with the Outline Landscape Mitigation Strategy is secured under Requirement 8 (1) of the draft DCO (Document 3.1(C)) which would be submitted to the relevant planning authority for approval.</p> <p>Further information on the landscape scheme is also set out in the Design Approach to Site Specific Infrastructure (Document 8.18) [REP2-049] submitted at Deadline 2. A summary of the design approach is set out at paragraphs 1.4.15 to 1.4.16 and the baseline landscape context at the Shipton CSECs, Overton Substation, the Tadcaster CSECs and the Monk Fryston Substation is set out in Section 2.1. A description of the design evolution and scope for variation of the outline landscape mitigation is set out at paragraphs 4.1.31 to 4.1.36 for the Overton Substation, paragraphs 4.1.66 to 4.1.71 for the Monk Fryston Substation, paragraphs 4.2.22 to 4.2.23 for the Shipton CSECs and at paragraphs 4.2.46 to 4.2.50 for the Tadcaster CSECs. In the event that development consent is granted, Section 5 of the document sets out the strategy for the detailed landscape mitigation at paragraphs 5.1.9 to 5.1.11 for the Overton Substation and paragraphs 5.2.9 to 5.2.10 for the Monk Fryston Substation.</p> <p>h) National Grid consider that the 5-year maintenance period for the establishment of planting as set out in Requirement 8(2)(c) of the Draft DCO (Document 3.1 (C)) is adequate as this is the period recommended in the Landscape Institute JCLI Practice Note No. 9 (Revision 2: April 2017) under item 1: JCLI Landscape Maintenance Works Contract at page 2 (included as Appendix A) which states the maintenance contract should</p>

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	h) Are you content with the proposed five years for the maintenance regime as set out in sub-para 8(2)(c)?		<p>last for at least the rectification period in the construction contract (but ideally 5 years).</p> <p>National Grid is delivering permanent landscaping as part of the Project. An outline of the permanent landscaping proposed is shown on the Outline Landscape Mitigation Strategy in Figures 3.10 to 3.12 in ES Chapter 3 Description of the Project Figures (Document 5.4.3(C)) [REP2-031]. This will form the basis for the scheme for the landscape strategy which would be approved by the relevant LPA and implemented under Requirements 8 and 9 respectively of the draft DCO (Document 3.1(C)). It is intended to retain the permanent landscaping at Overton, Tadcaster and Monk Fryston for the lifetime of the Project in accordance with the landscape strategy so approved. It is not appropriate that its retention forms a requirement of the draft DCO as in the future it may be necessary to do other works in the vicinity of these non-linear sites which could impact on this permanent landscaping. However, if this was the case it would require its own permission outside of the DCO regime, and if this permission is granted it should not be necessary to seek an amendment to the DCO.</p> <p>However, it should be noted that replacement mitigation planting in accordance with the Arboricultural Impact Assessment (Document 5.3.3I) [APP-102 to 104] (for example where trees are removed to facilitate construction works and subsequently replaced on land which will not be permanently acquired by National Grid) will be maintained by National Grid for a period of 5 years to ensure its success but will subsequently be in the control of the relevant third party landowner, who would be entitled to manage the replacement planting as they consider appropriate – as is the case with that planting which currently exists.</p>
Q5.4.9	<p>Requirement 9: Implementation of landscaping and mitigation planting</p> <p>a) If not provided elsewhere, set out comments you may have on the wording of Requirement 9.</p> <p>b) Are you satisfied that five years is sufficient for replacement planting to be undertaken?</p>	The Authority welcomes the drafting of requirement 9 except as in answer to q5.4.7 the Authorities would expect to see a longer maintenance programme and would suggest a term of 30 years.	National Grid refers the Authority to the answer provided in Q5.4.7 (h) above, where it is considered that the five year maintenance period is adequate for the establishment of planting.
Q5.4.10	<p>Requirement 10: Retention and protection of existing trees</p> <p>a) Do the items listed in Requirement 10(2) as forming the contents of the Tree and Hedgerow Protection Strategy (THPS) provide sufficient detail for the Councils to discharge this Requirement? If not, specify what additional details you would expect to see provided as part of the THPS.</p>	Q5.4.10 – Is the Tree and Hedgerow Protection Strategy meant to incorporate an Arboricultural Method Statement (AMS) ; how the impacts noted in the Arboricultural Impact Assessment (AIA) and nominated arboriculturist ensures the AMS is implemented to include overseeing the replacement planting. An AMS is the practical options for overcoming the risks to trees noted in the AIA. A site of this complexity would require the retention of an arboricultural specialist to ensure the AMS is implemented. The AMS would need to cover elements such as specialist ground protection within or close to the RPA's e.g. ground protection boards with the	National Grid confirms that the THPS will include an Arboricultural Method Statement which will build on the Outline Arboricultural Method Statement included as Annex 3I.4 of the Arboricultural Impact Assessment Report (Document 3.3.I) [APP-102 to APP-104] . This will also include details of a schedule of all tree works, a specification for tree protection measures (including ground protection) and plans detailing positions and an auditable system of compliance. These elements are secured by Requirement 10(2) (a) to (d) of the draft DCO (Document 3.1(C)) . The strategy would be submitted to and approved by the relevant planning authority in accordance with Requirement 10(1) of the draft DCO .

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	<p>b) Would links to the Arboricultural Impact Assessment (AIA) Report's [APP-102] to [APP-104] embedded environmental measures and mitigation or provision of an Outline THPS assist?</p>	<p>appropriate axle weight to cover the plant required on site The AIA itself is very comprehensive and drawings show the root protection areas and tree locations.</p> <p>To secure the protection of the trees the following conditions are recommended</p> <p>(a) No development shall commence on site before the approved tree report detail (specified document) including root protection area (RPA) fencing in line with the requirements of British Standard BS 5837: 2012 (section 6.2.2 figure 2) Trees in Relation to Construction – Recommendations, or any subsequent amendments to that document, around the trees or shrubs or planting to be retained, as indicated on the approved plan. The developer shall maintain such fences until all development subject of this permission is completed.</p> <p>(b) Prior to commencement of an approved scheme an Arboricultural Method Statement (AMS) is to be submitted for approval. The AMS will provide the detail to address the divergences noted within the submitted AIA.</p> <p>(c) Before any development or construction work begins, a pre-commencement meeting shall be held on site and attended by the developers appointed arboricultural consultant, the site manager/foreman and a representative from the Local Planning Authority (LPA) to discuss details of the working procedures to ensure that all tree protection measures have been installed in accordance with the approved RPA. The development shall thereafter be carried out in accordance with the approved details or any variation as may subsequently be agreed in writing by the LPA.</p> <p>(d) The Arboricultural Method Statement (to be submitted and approved) presented in support of the application shall be adhered to in full and evidenced with written monthly comments to LPA arboricultural officer by the applicant's arboricultural agent. The completed schedule of site supervision and monitoring of the arboricultural protection measures as approved in condition (insert condition number) shall be submitted for approval in writing by the Local Planning Authority within 28 days from completion of the development hereby permitted. This condition may only be fully discharged on completion of the development, subject to satisfactory written</p>	<p>National Grid notes the NYC acknowledgement that the AIA is very comprehensive.</p> <p>The elements of NYC's proposed condition, set out in points a) to d) would generally be addressed by the THPS and therefore are already secured via Requirement 10.</p> <p>Due to the scale and nature of the Project and delivery timescales, site pre-commencement meetings involving the planning authority may not be appropriate for all sites or stages. However, details of an auditable system of compliance with the approved protection measures will be detailed in the THPS which will be submitted to the planning authority for approval under Requirement 10.</p>
Q5.4.12	<p>Requirement 12: Contamination of land or groundwater, etc</p> <p>Can the Councils explain whether the draft wording of Requirement 12 sufficiently addresses the points raised in their joint RRs [RR-018, RR-019, RR-032, RR-034]. If not, what additional information would</p>	<p>It is considered that an unexpected land contamination condition should be incorporated adapted from the Yorkshire and Lincolnshire Pollution Advisory Contaminated land Group planning guidance such as to apply to areas along the development site were land contamination is not expected but clearly it is not appropriate for areas were land contamination is already suspected or identified ;</p>	<p>National Grid notes that this matter is covered in Item 18.3 of Table 2.18 of Applicant's Response to Relevant Representations (Document 8.3) [REP1-015], and also in Item Q6.0.8 of Table 2.30 of the Applicant's Response to Examining Authority's First Written Questions (ExQ1) (Document 8.9.1) [REP2-038].</p> <p>The responses above explain National Grid's position on this matter. In summary, the wording of Requirement 12 of the draft DCO (Document 3.1 (B)) [AS-011]</p>

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	<p>you wish to see included in this Requirement?</p>	<p>In the event that contamination not previously identified by the developer prior to the grant of this planning permission is encountered during the development, all groundworks in the affected area (save for site investigation works) shall cease immediately and the Local Planning Authority shall be notified in writing within 2 working days. Groundworks in the affected area shall not recommence until either (a) a Remediation Strategy has been submitted to and approved in writing by the local planning authority or (b) the local planning authority has confirmed in writing that remediation measures are not required. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures. Thereafter remediation of the site shall be carried out and completed in accordance with the approved Remediation Strategy.</p> <p>Following completion of any measures identified in the approved Remediation Strategy a Verification Report shall be submitted to the local planning authority. No part of the site shall be brought into use until such time as the site has been remediated in accordance with the approved Remediation Strategy and a Verification Report in respect of those works has been approved in writing by the Local Planning Authority.</p>	<p>secures a thorough identification, assessment, reporting and verification process for dealing with any unexpected contamination. There is a variance between the wording of Requirement 12 and the condition suggested by North Yorkshire Council regarding the procedure for notifying the Local Planning Authority of unexpected contamination, with the wording of Requirement 12 providing the benefit that the Local Planning Authority is not informed of 'false alarms' before unexpected material has been tested and risk assessed. This eases the administrative burden on the Local Planning Authority and is National Grid's preferred approach.</p> <p>In conclusion, National Grid considers that Requirement 12 of the draft DCO (Document 3.1(C)) is suitably robust and practicable and does not consider that amendments to this Requirement are needed.</p>
Q5.5.5	<p>Schedule 4: views of future discharging authorities</p> <p>a) Set out your views on Schedule 4, covering (but not limited to):</p> <ul style="list-style-type: none"> - the proposed timescales for decisions provided for under paras 1(1), 1(3), 1(4), 2(2) and 3 of this Schedule; - whether Requirements may be discharged in parts, and if so, how fees should be payable; - the acceptability of the proposed appeal provisions set out at paragraph 3; and other points raised for the Applicant to consider above. <p>b) If you do not agree with the wording in this Schedule set out your reasons and any suggested amendments to the wording of this article.</p>	<p>North Yorkshire Council made comments on the wording of Schedule 4 of the dDCO in Section 18 of their Local Impact Report. North Yorkshire Council would wish to see the following changes to timescales:</p> <ul style="list-style-type: none"> • Article 1(1) – change 35 days to 8 weeks. • Article 1(3) – change 7 business days to 21 working days. • Article 1(4) – change 3 working days to 5 working days. • Article 2(2)(b) – change 35 days to 8 weeks and add in the following text – “unless a longer period of time for determination has been agreed with the undertaker in accordance with (1)(1)(c)”. <p>If requirements are to be discharged in parts, North Yorkshire Council are of the view that a fee should be payable as per Article (2)(1)(a) for each request to discharge part of a requirement. It is suggested that a definition of 'application' is added to the Article (5) to set out that a 'application' means an application for any consent, agreement or approval required by a requirement whether or not the application seeks to discharge a requirement in whole or in part. Whether it is appropriate to discharge a</p>	<p>Regarding the timescales set out in paragraphs 1(1), 1(3), 1(4), 2(2) and 3 of Schedule 4 of the draft DCO (Document 3.1(C)) National Grid notes the comments and has responded to this matter in response to ExQ1 Q5.5.1 in Applicant's Response to Examining Authority First Written Questions (Document 8.9.1) [REP2-038]. It is not considered necessary to make the changes to the timescales requested by North Yorkshire Council given that full pre-application submissions would be made in advance of any formal application for discharge, and a timescale agreed with the Council for their response to that pre-application submission (of typically 3 to 4 weeks).</p> <p>Regarding payment of fees, National Grid agrees with North Yorkshire Council, and has responded to this matter in response to ExQ1 Q5.5.2 in Applicant's Response to Examining Authority First Written Questions (Document 8.9.1) [REP2-038]. National Grid do not consider it necessary to change the wording to clarify this point which already requires a fee for each 'request' made.</p> <p>Regarding paragraph 1(5) of Schedule 4, National Grid consider that this paragraph of the Schedule is necessary to ensure the timely delivery of the Project, the urgency of which is detailed in full in response to written question 5.5.1 (part b) in Applicant's Response to Examining Authority First Written Questions (Document 8.9.1) [REP2-038]. Earlier parts of the Schedule (i.e., paragraphs 1(3) and 1(4)) allow the relevant authority to request additional information if necessary. Paragraph 1(5) is necessary to confirm that if a request for additional information is not made, it is deemed that the relevant authority has the information it requires. This will give National Grid the reassurance that works can progress, without the risk of late and unexpected requests for additional information, due to a breakdown in communication and is critical for the</p>

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		<p>requirement in part will depend upon the nature of the requirement.</p> <p>The proposed appeal provisions set out in Article (3) are considered to be acceptable by North Yorkshire Council.</p> <p>North Yorkshire Council would ask that Article 1(5) is removed as it is not clear what benefit this would have. If the relevant authority did not notify the undertaker of a request for further information within the specified period, but required further information in order to be able to positively discharge the requirement and the undertaker refused to comply with this request, the outcome would have to be for the relevant authority to refuse the request to discharge the requirement(s).</p>	<p>management of the programme in delivery so the timely discharge of requirements can be achieved.</p>
Q6.0.1	<p>Bridge and culvert crossings</p> <p>Do you consider that the proposals for the provision and design of bridges and culverts where watercourse crossings are required, as set out in [APP-084], would satisfactorily protect those watercourses?</p>	<p>Further details are required to understand the design of the bridges however the LLFA would expect the applicant to adequately secure the structures in line with the anticipated vehicle movements.</p>	<p>Temporary access crossings of ordinary watercourses are required for the construction phase of the project, as summarised in Annex 9D.3 of the Flood Risk Assessment (Document 5.3.9D) [APP-138]. Detailed designs for these crossings have not yet been developed, although it is envisaged that they would be consistent with the illustrative examples of a culvert and clear span bridge provided in Construction Plans (Document 2.16) [APP-065]. Final detailed design of the watercourse crossings would be developed post-grant of the DCO; these would be subject to approval by the relevant drainage authority, which would be either the LLFA, the Kyle and Upper Ouse Internal Drainage Board, or the Ainsty Internal Drainage Board. These approvals would either be via a land drainage consent issued under Section 23 of the Land Drainage Act, 1991, or via the provisions National Grid are proposing to be included under Article 19 of the draft DCO in lieu of disapplied Internal Drainage Board byelaws (which are described in Applicant's Comments on Written Representations and other Interested Parties' Deadline 2 Submissions – Ainsty and Foss Internal Drainage Boards).</p>
Q8.0.1	<p>Green Belts, Planning Statement [APP-202]</p> <p>The Applicant has made the case for the proposed development in the York and Leeds Green Belts in its Planning Statement in relation to the NPS [APP-202], Sections 7.3, the National Planning Policy Framework (NPPF) [APP-202], Section 7.4 and the local planning context [APP-202], Appendix C.</p> <p>It appears from your RRs [RR-018], [RR-018], [RR-032], [RR-034] that you disagree with the Applicant's differentiation between</p>	<p>A full response to this question is provided separate PDF. It should be noted that the response is provided on behalf of the Selby Planning area.</p>	<p>National Grid acknowledge and welcome that NYC agree that the reconductoring of the existing overhead line, modifications to the existing pylons including increases in height, and rewiring, replacement of existing infrastructure with similar infrastructure and underground cabling and infrastructure together with the temporary construction works would not be inappropriate development in the Green Belt.</p> <p>National Grid disagree with NYC in terms of their response for new overhead lines being structures rather than engineering operations. It is considered that the new overhead lines are engineering operations that would preserve openness and would not conflict with the purposed of including land within the Green Belt. The reasoning for this is set out within the Section 7.3.74 of the Planning Statement (Document 7.1) [APP-202].</p>

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	<p>overhead line (OHL) work in the Green Belts and substation and CSEC work in Green Belt in terms of whether they are inappropriate development and also whether it would conflict with the purposes of land in Green Belt [APP-202], page 90 to 91.</p> <p>Whilst acknowledging this information is likely to be provided in your Local Impact Report(s) (LIR) and/ or SoCG(s), to assist the ExA's Green Belt balancing exercise, you are asked to ensure your views on the following are provided in response to this question if not included elsewhere.</p> <p>a) Whether the Proposed Development (or any part of it) would, in your view, be inappropriate by reasons of effect on openness having regard to the NPPF and relevant development plan policies.</p> <p>b) Whether you consider that there are differences between any elements of the infrastructure proposed (substations/ CSECs/ new OHL/ modifications to existing OHL) in terms of being inappropriate or not inappropriate.</p> <p>c) Specifically, do you consider that the proposed raising the height of existing pylons would have an effect on openness?</p> <p>d) Whether any part of the Proposed Development would benefit from any of the exceptions set out in the NPPF (paras 149 to 150).</p> <p>e) Whether you consider that openness would be preserved or whether the Proposed Development would have a greater impact on the openness of the Green Belt than existing development.</p> <p>f) Identify the geographical areas where you consider openness would be harmed.</p> <p>g) Do you consider that there is any other non-Green Belt harm which should be</p>		<p>National Grid acknowledge that whilst engineering operations, the substations, and cable sealing end compounds by virtue of their density would be inappropriate development in the Green Belt as they would not preserve openness, and as such very special circumstances would need to be demonstrated. Further detail of this is set out in within Section 7.3.93 of the Planning Statement (Document 7.1) [APP-202].</p> <p>Further details on the very special circumstances are summarised in Section 3.3 of the Planning Statement (Document 7.1) [APP-202], and within the Updated Needs Case (Document 7.4) [APP-205].</p>

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	considered in the balance, if so set out what this would be.		
Q11.4.1	<p>Ongoing work on detailed aspects of the landscape and visual mitigation</p> <p>You said you want further information as to how the Applicant intends to address the mitigation of adverse effects on landscape and visual receptors (significant or not significant) and that you would welcome the opportunity to continue to work with the Applicant on detailed aspects of the landscape and visual mitigation, to ensure an appropriate response in keeping with local landscape character [RR-018], [RR-019], [RR-032], [RR-034]. If not set out elsewhere:</p> <p>a) Explain what further information is required, including clarification for long-term maintenance and management.</p> <p>b) Is this dialogue continuing during the Examination and if so what if any additional information do you anticipate submitting/ or expect the Applicant to submit?</p> <p>c) Are there mechanisms set up for this to continue post-consent if the Order is consented?</p>	<p><u>a) Outline Landscape Mitigation Strategy (proposed substation sites and Tadcaster CSEC)</u></p> <p>We would welcome an opportunity to continue to work with the Applicant on detailed aspects of the landscape and visual mitigation, to ensure an appropriate response in keeping with local landscape character and the opportunity to integrate with existing habitats in the vicinity. We would be able to clarify the further information required at a meeting with the Applicant.</p> <p>More specifically, we are concerned about the lack of mitigation to the perimeter of the fencing enclosure to the Tadcaster Tee West facility particularly as it is visible from the A659 (5.4.6 ES Chapter 3: Description of the Project, Figure 3.11: Outline Mitigation Strategy (Tadcaster)). We would welcome an opportunity to continue to work with the Applicant on this detailed aspect of the landscape and visual mitigation.</p> <p><u>a) Outline Landscape Mitigation Strategy</u></p> <p>There is no evidence in Chapter 6 Landscape and Visual as to how the significant adverse effects on the landscape receptors will be addressed or mitigated beyond the outline landscape mitigation strategy for the proposed substation sites and the Tadcaster CSECs. We would be able to clarify the approach to address significant adverse effects and further information required at a meeting with the Applicant.</p>	<p>National Grid acknowledges the concerns expressed by NYC concerning the visibility of the Tadcaster Tee West CSEC from the A659. At the time of writing, National Grid are awaiting a response from NYC to the offer of a meeting to discuss these matters and will update the ExA as soon as possible on the outcome of any meeting. The design approach to the mitigation strategy at the Tadcaster CSECs is provided in the Outline Landscape Mitigation Strategy, that has been updated in Figure 3.11(B) (Document 5.4.3(C)) [REP2-031]. The overall design objectives for the landscape mitigation are set out at paragraphs 1.4.15 to 1.4.16 in the Design Approach to Site Specific Infrastructure Document (Document 8.18) [REP2-049]. Within this document the baseline landscape context at the Tadcaster CSECs is set out in Section 2.1. A description of the design evolution and scope for variation of the outline landscape mitigation for the Tadcaster CSECs is set out at paragraphs 4.2.46 to 4.2.50. Particular attention is drawn to the proposals to reinforce the hedgerow along the A659 i.e. infill gaps and thicken the hedgerow where required and also plant standard hedgerow trees as illustrated in Figure 3.11(B) (Document 5.4.3(C)) [REP2-031]. National Grid consider that these landscape mitigation proposals would adequately restrict the visibility of the Tadcaster Tee West CSEC from the A659 and would not necessitate additional planting around the CSEC. National Grid also draw attention to the landowner challenge [RR-006]. The landowner is querying both the orientation of the Tadcaster West CSEC and the extent to which the Order Limits along the A659 impacts on farming operations. National Grid clarify that the Order limits on the A659 have been designed to allow sufficient space for hedgerow reinstatement and reinforcement set behind the visibility splays of the new access and associated access within the field for maintenance.</p>
Q12.0.2	<p>Noise Assessment Methodology</p> <p>In your joint Local Authorities' RR you have commented that;</p> <p>"The intention is to assess operational noise in accordance with document ref: 29 'National Grid (2021). Policy Statement PS(T)134 - Operational Audible Noise Policy for Overhead Lines. National Grid, London'. I am not familiar with this document nor am I able to locate it, but I did raise concerns regarding the overall</p>	<p>We are asked if there are any further comments regarding noise assessment methodology having regard to related documents. I would continue to express concerns that National Grid are proposing to adopt company-derived assessment methodology when there is a British Standard for rating and assessing industrial and commercial sound (BS 4142:2014+A1:2019). There is uncertainty regarding the peer review consultation process relating to National Grid assessment methodology and I would recommend that this is confirmed with the applicant.</p> <p>The key issue is centred around the trigger for Tier 3 assessment (when operational noise exceeds 37dBA). This</p>	<p><u>On the need for a new method:</u></p> <p>It is not appropriate to rely solely on BS 4142:2014 +A1:2019 for the assessment of overhead line noise.</p> <p>Although this is the first proposed Nationally Significant Infrastructure Project to use the new assessment method, the general principles contained within the methodology are based on guidance that has been used on all major (DCO) overhead line projects in recent years.</p> <p>In previous assessments, the methodology used for overhead line noise assessment was National Grid document TR(T)94 'A Method for Assessing the Community Response to Overhead Line Noise' which set out an approach for assessing overhead line noise during rain (wet noise). TR(T)94 is referenced in</p>

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	<p>assessment methodology which are yet to be agreed. Notably, the trigger for Tier 3 assessment being >37dBA without a full understanding of background LA90,T values during rainfall at sensitive receptors. BS 4142:2014+A1:2019 assessment methodology should be adopted in its entirety over National Grid criteria.</p> <p>In view of the above, I would advise that Noise and Vibration EIA assessment and methodology was raised as a matter for further discussion and yet to be agreed.”</p> <p>Having regard to Table 14.5 of ES Chapter 14: Noise and Vibration [APP-086] and Appendices 14F to 14H [APP-155] to [APP-157] do you have any further comments to make in relation to the Applicant’s noise assessment methodology?</p>	<p>is of particular concern due to the uncertainty surrounding existing background sound levels at sensitive receptors and the impact such noise levels will likely have. This is acknowledged in Appendix 14G – National Grid Technical Report (Section 7, para 3):</p> <p>Criteria set relative to background take account of the existing noise climate in the area and how likely it is that a noise will cause an adverse impact. This has the benefit of tailoring the noise criteria to each individual receptor. It has the drawback of being time-consuming to undertake the assessment, has risks of lone working, may overestimate the impact in areas with low background noise levels and does not give clear direction to the business on acceptable levels of noise from OHL’s.</p> <p>The background assumptions of 30dB LA90,T (day) and 25dB LA90,T (night) are realistic in this locality however, consequently, the methodology appears to permit noise impact of +7dB (daytime) and +12dB (night time) before progressing to Tier 3 assessment which is an indication of adverse (>5dB) and significant (>10dB) noise impacts in accordance with the standard. It is acknowledged that background levels increase with rainfall, and that operational noise increases with such, and this should be quantified in such a way that true noise impacts can be appreciated.</p>	<p>National Policy Statement for Electricity Networks (EN-5) paragraphs 2.9.8 and 2.9.9 ‘Applicants Assessment’.</p> <p><i>“2.9.8 While standard methods of assessment and interpretation using the principles of the relevant British Standards are satisfactory for dry weather conditions, they are not appropriate for assessing noise during rain, which is when overhead line noise mostly occurs, and when the background noise itself will vary according to the intensity of the rain.</i></p> <p><i>2.9.9 Therefore an alternative noise assessment method to deal with rain-induced noise is needed, such as the one developed by National Grid as described in report 1993. This follows recommendations broadly outlined in ISO 1996 (BS and in that respect is consistent with BS 4142:1997. The IPC is likely to be able to regard it as acceptable for the applicant to use this or another methodology that appropriately addresses these particular issues.”</i></p> <p>The methodology that has been used on Yorkshire GREEN is an evolution of the method originally described.</p> <p>As seen in the quote above, paragraph 2.9.9 of EN-5 states: “The IPC [Planning Inspectorate] is likely to be able to regard it as acceptable for the applicant to use this [TR(T)94] or another methodology that appropriately addresses these particular issues”.</p> <p>Originally written in 1993, TR(T)94 made reference to BS 4142:1997, (which although similar in appearance to BS 4142:2014 +A1:2019, has a much narrower scope and less room for contextual interpretation of noise). Both these documents are now withdrawn. TR(T)94 relied on an assessment approach that was not compatible with present day environmental noise assessment requirements as set out in the Noise Policy Statement for England (NPSE) and the National Planning Policy Framework (NPPF). The new suite of documents (Documents 5.3.14F, 5.3.14G and 5.3.11H) [APP-155] [APP-156] [APP157] addresses the changes in approach brought about by NPPF and NPSE whilst retaining the essence of the previous TR(T)94 methodology.</p> <p>The main difference between the two approaches is that National Grid document PS(T)134 (Document 5.3.14F Appendix 14F) [APP-155] formalises the approach to screening distances away from the overhead line, further from which, no significant noise effects would be experienced.</p> <p>It is worth noting that when following the approach outlined in TR(T)94 for overhead line projects, it was common practice to set the initial study area to 250 metres (comprised 200 metres plus 50m allowance for limit of deviation) either side of a proposed new overhead line.</p> <p>The new method (in Tier 1 and Tier 2) introduces a more robust approach to screening which takes into account both the OHL design and its location, while the Tier 3 assessment follows the BS 4142 approach which has been used on previous projects when following the TR(T)94 method.</p> <p>Therefore, the part of the methodology that is causing the NYC environmental health officers the greatest concern is not a completely new way of approaching</p>

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			<p>OHL assessment, but is a more evidential-based approach than previously used throughout England and Wales on all overhead line infrastructure.</p> <p>For Yorkshire GREEN, the nearest noise sensitive receptors are approximately 300 metres from the new overhead line, meaning all would have been screened out at the first stage of assessment had the previous TR(T)94 approach, endorsed by EN-5, been followed.</p> <p>Although the National Grid methodology has not formally been externally peer reviewed, during drafting, feedback from a selection of specialist noise consultants was sought and incorporated into the final documentation.</p> <p><u>On BS 4142:2014 as an assessment method for Overhead Line Noise</u></p> <p>Regarding the use of BS 4142:2014+A1:2019 as a method for assessing noise from high voltage overhead transmission lines, National Grid's position remains that this is not the most appropriate method for assessing this type of noise and it should only be considered where it can add value to the assessment process and the determination of significance.</p> <p>The principal reasons for this are set out below:</p> <ul style="list-style-type: none"> • Overhead lines are by their very nature linear infrastructure projects; and as for other types of linear infrastructure (roads, rail etc) BS 4142:2014 is not the primary assessment method. • Overhead lines are not inherently noisy, and the mechanism of noise generation is complex and principally related to external factors such as rainfall and conductor surface contamination. • Noise from overhead lines is not continuous: in the Yorkshire Green project area wet noise is anticipated to occur for approximately 600 hours per year or less than 7% of the time. The occurrence of dry noise is less easy to define but typically this occurs after long dry spells and therefore may only occur for a few days or a few weeks per year. • Overhead line noise prediction methods do not predict source sound power levels, meaning that data for more detailed noise assessment has to be derived, increasing uncertainty. Instead, the methods predict sound pressure levels at distances from the line which, for the proposed YN 400kV overhead lines is the data presented in the charts in ES Chapter 14 Appendix 14.E– Overhead Line Noise Assessment (Document 5.3 14E) [APP-154]. • Experience in National Grid and other electricity transmission companies is that commercially available overhead line noise prediction methods tend to over predict specific noise levels. The EFC400 method National Grid currently uses has been compared to the TR(T)94 method previously used; while close to that method, EFC400 does predict higher sound pressure levels and lower attenuation over distance which ensures increased conservatism during screening. • National Grid has extensive experience of operating high voltage transmission lines across England and Wales and has never experienced verified noise complaints from beyond approximately 200m from any overhead line, even in the quietest environments.

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			<p>Regarding the comments raised concerning the '37dB trigger value' for a Tier 3 (BS 4142) assessment, it must be noted that the trigger value has been set to take into account the factors listed above, and not only to protect the public from undue noise but also to protect National Grid from future noise complaints and give clear direction to the company on acceptable overhead line designs.</p> <p>It is not appropriate to compare the 37dB trigger value to a BS 4142 background sound level. The 37dB trigger assumes that noise would occur for 100% of the time: comprised of worst-case wet noise for 7% of the time, and dry noise occurring continuously for 93% of the time. In reality, overhead lines operate quietly for the majority of the time, a fact that would need to be considered if a BS 4142 assessment were to be undertaken. A BS 4142 assessment would not result in the +7dB (daytime) and +12dB (night-time) assessment levels that are suggested in the NYC response to the ExQ1 Q12.0.2 [REP2-083].</p> <p>It is perhaps best to take an example receptor and compare the BS4142 assessment.</p> <p>The nearest noise sensitive receptors are further than 300m from overhead lines (but this distance is used for ease of demonstration), and the noisiest new overhead line (400kV YN) within the Yorkshire GREEN project area is considered. Using the example of the assumed night-time background (25dB LA90,T) baseline sound level, being the assumed background noise level in the absence of suitable data in Section 14.4.33 of ES Chapter 14 Noise and Vibration (Document 5.2.14) [APP-086], an example BS 4142 assessment is given below. Wet noise and dry noise are considered separately:</p> <p>Please note that the Monk Fryston Travellers' encampment is closer to overhead lines than the 300m discussed below, but these receptors are adjacent to the section of lower sound intensity and currently existing XC 275kV overhead lines that is scoped out of the assessment. These receptors' impacts from overhead lines noise are discussed in paragraph 14.9.55 of ES Chapter 14 Noise and Vibration (Document 5.2.14) [APP-086].</p> <p><u>Wet Noise</u></p> <p>During rainfall, the background noise level including noise from rain (as previously explained in Applicant's Response to Relevant Representations (Document 8.3) [REP1-015]) would be deemed to be 41dB, which is the logarithmic sum of the noise due to rain (41dB) and the dry night-time background sound level of 25dB LA90 (the logarithmic summation of two additive sound levels of 41dB and 25dB is 41dB). Taking the predicted wet noise level from the chart presented in Figure 14E1.5 – 400kV Twin Rubus (YN Overhead Line) Tier 1 Graph (Document 5.3.14E) [APP-154], the worst-case wet noise level is predicted to be below 40dB beyond 200 metres from the line, therefore at 300 m the predicted level would be demonstrably below 40dB. Comparing this to the more detailed Tier 2 screening graph Figure 14E1.6, at 200m wet noise is predicted to be approximately 28 dB at the upper end of the rainfall band for the area (600 rain hours per year). At 300m from the line, this would be 26dB from purely geometric spreading without taking account of any air or ground absorption effects</p> <p>It must also be remembered the Tier 1 and Tier 2 charts are intended for screening purposes, and therefore depict worst-case noise levels, level which do</p>

Ref. No	Question	Interested Party Response	National Grid Comment
			<p>not occur all the time. Reproducing the curves as contour plots, which would take into account ground terrain and ground absorption, the predicted noise level at any receptor beyond 200 m would be significantly below 40dB, and at a level that would become increasingly inaudible further from the line, also meaning that a BS 4142 character correction of +6dB (Highly tonal) would not be appropriate and a less onerous correction should be applied. Hence the outcome for any BS 4142 assessment for wet noise would be significantly below the relevant background noise value for wet noise, even before the likely duration of wet noise is taken into account which would reduce the specific sound level further (an approach for non-continuous or intermittent specific sound levels is provided in BS 4142:2014 paragraph 7.3.14).</p> <p>Therefore, the outcome of a BS 4142 assessment for wet noise for night-time conditions would be below 0dB and not the +12dB as suggested in the NYC response to ExA question 12.0.2 [REP2-083] and therefore not significant even at the artificially low background level chosen for situations where the background is not available.</p> <p><u>Dry Noise</u></p> <p>For dry noise, where the assumed 25dB LA90,T night-time background sound level would apply, the dry noise Tier 1 curve falls below this value approximately 50 metres from the line, hence a BS 4142 prediction at a noise sensitive receptor at 300 metres from the line would be significantly below the night-time baseline sound level, even before the factors discussed above for wet noise are applied.</p> <p>The outcome of a BS 4142 assessment for dry noise during night-time conditions would not be +12dB, but would be 10dB below the background or lower, at times when dry noise is occurring, at the nearest receptor locations to the overhead lines. Please see Figure 14E1.5 – 400kV Twin Rubus (YN Overhead Line) Tier 1 Graph (Document 5.3 14E) [APP-154] for a visual clarification.</p> <p><u>Summary</u></p> <p>This is the principal purpose of the Tier 1 and Tier 2 approach; to screen out BS 4142 assessment where it would not add to the assessment of the project and where it would add no benefit to the determination of significance, as is the case here.</p> <p>Although conservative background levels of 25dB were considered in the absence of undertaking a much wider survey, baseline noise measurement data collected near the proposed Overton substation indicate that the noise sensitive receptors closest to the proposed YN 400kV overhead lines experience baseline background sound levels of 31dB LA90,T (night) which is 6dB higher than the worst case conservative levels used and referred to by NYC.</p>
Q14.0.3	<p>Traffic Management: Abnormal Loads</p> <p>In the joint Local Authorities' RR [RR-018], [RR-019], [RR-032] and [RR-034] reference is made to the likely requirement that some large items delivered to the site will be classed as abnormal loads and</p>	<p>Agree if this provides the LHA with more information and especially timings an Abnormal Loads management Plan should be provided.</p>	<p>National Grid note the comments and have provided a response to this in the Applicant's Response to Examining Authority's First Written Questions Q14.03 (Document 8.9.1) [REP2-038]. National Grid do not believe an Abnormal Loads Management Plan is required to be submitted as part of the application. The delivery of the AILs to site will be managed through the Electronic Service Delivery for Abnormal Loads (ESDAL) system managed by National Highways, as</p>

Ref. No	Question	Interested Party Response	National Grid Comment
	<p>discussion with the Local Highway Authority will be required. The ExA also notes that an Abnormal Indivisible Load Assessment has been provided in Annex 3F.1 of the Construction Traffic Management Plan (CTMP) [APP-099]. Having regard to this:</p> <p>To Applicant and Local Highway Authorities:</p> <p>a) When is it envisaged that such discussions will take place?</p> <p>b) What mechanism will there be for public consultation and notification regarding the timing and routing of abnormal loads beyond that set out in Section 3.6 of [APP-099]?</p> <p>To Local Highway Authorities:</p> <p>c) Are you content with the measures set out in the CTMP or should an Outline Abnormal Loads Management Plan be submitted into this Examination in order to provide more detailed information on this matter?</p>		<p>detailed in the Construction Traffic Management Plan paragraph 3.6.3 (Document 5.3.3F) [APP-099]</p> <p>This system requires details of the load, including weight, size and routes of the AIL deliveries to be provided which is then subject to assessment by National Highways, and informs all relevant stakeholders, including the Local Highway Authorities. This system will be used once the details of the AILs are confirmed following detailed design, and confirmation of the delivery port and dates for delivery. The Local Highway Authority will be consulted and informed of this through the ESDAL system.</p>
Q14.0.4	<p>Potential requirement for further off-site highway works</p> <p>The joint Local Authorities' RR [RR-018], [RR-019], [RR-032] and [RR-034] advise that "other site locations near Shipton may require further investigation with junction widening expected on East Lane and Corban Lane. Corban Lane at present has a 7.5 tonnes weight limit".</p> <p>a) Can you clarify more precisely the locations where additional highway improvement works might be required and in so doing whether these locations are within or outside the Order limits of the Proposed Development? If they are outside the Order limits then how can the ExA be confident that there would be an appropriate mechanism in place to ensure that the additional improvement works are undertaken?</p> <p>b) Can the Local Highway Authorities clarify whether it is their view that without</p>	<p>The layout of East Lane and Corban lane within North Yorkshire Council are likely to restrict large vehicles travelling along the length of the road. This is why a weight restriction order is in place. The order simply restricts the size of vehicles due to the alignment of the road and is therefore an environmental order not a weight limit as such.</p> <p>East lane has a number of bends along its alignment and large vehicles will over run the verge creating a hazardous situation assuming they will be able to make the maneuver in the first place. It is believed that any work required will be within the DCO area as East Lane & Carbon Lane have been included in DCO.</p> <p>If improvements were not made on the network close to this section of the project the LHA considers highway safety may be compromised. Vehicles are likely to over run the other side of the road or leave the carriageway which is not acceptable.</p>	<p>National Grid notes the comments and has responded to these matters in full in response reference 18.7 in Table 2.18 of the Applicant's Response to Relevant Representations (Document 8.3) [REP1-015].</p> <p>National Grid acknowledges the comments in relation to East Lane, however no HGV will use East Lane as set out in Appendix 3F Construction Traffic Management Plan (Document 5.3.3F) [APP-099].</p> <p>The AIL swept path for Corban lane is provided in Annex 3F.1.C of the Construction Traffic Management Plan (Document 5.3.3F) [APP-099].</p>

Ref. No	Question	Interested Party Response	National Grid Comment
	<p>such improvements, the development would result in unacceptable highway safety or would significantly affect the performance of the highway network?</p> <p>c) If you consider that these additional highway works are essential to avoid significant harmful effects, can you explain your assessment of the likely effects if they were not done.</p> <p>d) Can you explain the reasons why there is a weight restriction limit on Corban Lane and how this might impact on the Applicant's routeing strategy for construction and operational traffic?</p>		
Q14.0.6	<p>Routeing of construction traffic north of the A63 and west of Lumby</p> <p>Figure 3F.4 Sheet 11 of 11 (e-page 64) of the Construction Traffic Management Plan [APP-099] indicates the routeing strategy to access overhead line works north of the A63 and west of Lumby. Access is shown to be gained via Lumby Village and then via a long access track running west towards the A1(M).</p> <p>To the Applicant:</p> <p>a) Comment on the suitability of this route having regard to the nature of Lumby village and the configuration and design of the highway from the A63 to the proposed construction access path. b) Comment upon the consideration of alternative access options for the construction of Works Nos. 9 and 10.</p> <p>c) Provide the predicted vehicle movements associated with the construction of this part of the Proposed Development, and explain the engineering works to be carried out to the access track to ensure it is fit for purpose to facilitate the Proposed Development.</p> <p>To North Yorkshire County Council:</p> <p>d) What are your views on the suitability of this route having regard to the nature of Lumby village and the configuration and</p>	<p>This route is not acceptable and unfortunately not highlighted to the Authority. The Authority would expect the developer to use the works corridor as a haul road to access the site</p>	<p>National Grid note the comment from NYC stating that the LHA does not believe the route via Lumby to be acceptable and expect the works corridor to be used as a haul road for access.</p> <p>National Grid is satisfied that the route via Butts Lane (Lumby) to the existing track at Redhill Lane is suitable for the proposed use during the construction period as it is required to serve Work No.9 for pylon XC520 only. This is detailed in full in National Grid's response to Q14.0.6 Applicant's Response to the Examining Authority's First Written Questions (EXQ1) (Document 8.9.1) [REP2-038]. In summary, the proposed route is suitable for the proposed purpose given:</p> <ul style="list-style-type: none"> - The temporary and short duration of use; - The limited HGV and total traffic movements proposed along the route and; - In the 5 year period 2015-2019 only two accidents were recorded which demonstrates that there are no highway safety concerns relating to the use of this route (as reported in the ES Chapter 12 Traffic and Transport at Table 12.11 (Document 5.2.12) [APP-084]). <p>There has been pre-application engagement with NYC relating to traffic and transport matters, as set out in Table 2.1 of the Statement of Common Ground between National Grid and North Yorkshire Council Draft Version 1 (Document 8.5.2) [REP1-022]. This record of engagement includes agreement between National Grid and NYC on 11 May 2022 of the routing of HGVs presented at PEIR which included the route via Butts Lane (Lumby). For the reasons outlined above, National Grid remain of the opinion that the routing of construction traffic along Butts Lane (Lumby) is acceptable. Furthermore, the use of a haul road as proposed by NYC would likely result in additional environmental impacts such as vegetation loss, soil disturbance, fragmentation of land parcels, and additional vehicle movements associated with constructing a haul road.</p>

Ref. No	Question	Interested Party Response	National Grid Comment
	design of the highway from the A63 to the proposed construction access path?		
Q14.0.7	<p>Construction Management Plans</p> <p>In the joint Local Authorities' RR [RR-018], [RR-019], [RR-032] and [RR-034] it is stated that the Local Highway Authority “sees the importance of further discussions with the developer to formulate the production of the construction management plan and construction travel plan as well as the Development Consent Order (DCO).”</p> <p>a) Is your reference to the “construction management plan” a generic term to cover all the construction and traffic plans (ie the same as the heading used in Requirement 5 of the dDCO [AS-011])? Or did you instead mean to refer specifically to the Construction Traffic Management Plan [APP-099]?</p> <p>The ‘Construction Management Plans’ are in effect a combination of the proposed Requirements 5 and 6 in the dDCO [AS-011]. Requirement 5 refers to specific plans and strategies, whilst Requirement 6 relates to the submission of further details for approval by the relevant authorities prior to the commencement of each stage of the Proposed Development relevant to the topic headings that are set out.</p> <p>b) Do you consider the submitted ‘Construction Management Plans’ and the submission of further details in Requirement 6 of the dDCO to be sufficient to satisfactorily control and manage the transportation and highway aspects of the development and if not, can you clarify what you consider to be inadequate or unclear?</p> <p>c) If you believe improvements and amendments are needed to either the suite of management plans or the dDCO can you submit to the ExA your proposed changes for consideration.</p>	<p>Requirement 6 gives a list of number of plans but are not reliant as far as the LHA understands and would look to the Construction Management plan for the development to provide information relating to methods of construction, traffic management proposals and safety assessments. Each site would need review and a general method to construction would be required. The authority as it understands believes the Construction management Plan needs to be developed to include this information and method. Surface water discharge on site may also need to be managed and again would seek clarification from the developer.</p>	<p>National Grid seek to clarify that Requirement 5 of the draft DCO (Document 3.1(C)) sets out a number of management plans which have been submitted as part of the DCO application. Requirement 5(1) provides that all construction works (including pre-commencement work) for the authorised development must be carried out in accordance with the construction management plans referred to in paragraph 2, unless otherwise agreed with the relevant authority.</p> <p>Paragraph 2 of Requirement 5 includes the Construction Traffic Management Plan, which is submitted as part of the application (Document 5.3.3F) [APP-099].</p> <p>Requirement 5(2)(a) also includes the Code of Construction Practice (Document 5.3.3.B) [APP-095], which covers a range of matters relating to construction practices. All documents prepared under Requirement 6 will need to adhere to these measures.</p> <p>Requirement 6 sets out additional construction management plans to be approved which will need to be produced by National Grid’s appointed contractor and discharged by the relevant authority prior to works on that stage of the Project commencing.</p> <p>These management plans must be produced in accordance with the relevant management plans set out within Requirement 5, and must be complied with.</p> <p>The management plans set out in Requirement 6 cannot be produced to sufficient detail until the main works contractor is appointed, and detailed design is developed.</p> <p>Requirement 6 includes the requirement for a drainage management plan (6)(1)(b) which would include surface water discharge where necessary.</p> <p>Methods of construction, and safety aspects will be covered within management plans, where applicable, for example Requirement 6(1)(e) <i>emergency response plan for flood events</i> will cover safety of personnel during a flood event. In addition, aspects relating to construction and safety are covered in the Code of Construction Practice (Document 5.3.3.B) [APP-095].</p>

Ref. No	Question	Interested Party Response	National Grid Comment
Q14.0.9	<p>Public Rights of Way Management Plan</p> <p>Table 12.12 of ES Chapter 12 [APP-084] states that the Public Rights of Way Management Plan (PRoWMP) would include a commitment to condition surveys of PRoWs on affected sections before, during and after construction to support reinstatement of the PRoW post-construction to the same condition or better.</p> <p>To the Applicant:</p> <p>a) Can the PRoWMP can be revised to provide clarity of the commitment to reinstate</p> <p>PRoWs, including confirmation of the expected location, timing/ frequency of condition surveys, who the results would be reported to, and the timescales for reinstatement (if required) post-construction and the ongoing monitoring and, if required, maintenance of restored PRoWs?</p> <p>To Local Highway Authorities:</p> <p>b) Do you consider that there is sufficient clarity in the PRoWMP regarding the expected</p> <p>locations, timing and frequency of condition surveys and timescales for reinstatement work (if required) post-construction to adequately secure this commitment?</p>	<p>NYC would agree that there is a lack of detail regarding the condition surveys and would encourage further discussion between the parties to understand how details will be captured and recorded. NYC would stress the importance of recording surveys in a way sensitive to the resources of the Council's public rights of way team.</p>	<p>National Grid notes the comments from NYC and highlight that the Public Rights of Way Management Plan (PRoWMP) (Document 5.3.3G) [APP-100] has been revised to clarify details of the PRoW condition surveys.</p> <p>The updated PRoWMP was Submitted at Deadline 2 (Document 5.3.3G(B) [REP2-024]) and clarifies, in paragraphs 3.5.1, that surveys will include photographic records and written descriptions.</p> <p>Paragraph 5.3.1 and 5.3.2 of the updated PRoWMP (Document 5.3.3G(B) [REP2-024] outlines that surveys will be undertaken prior to and during construction. Within paragraph 3.6.1, of the updated PRoWMP (Document 5.3.3G(B)) it is stated that post the completion of construction works, surveys will be undertaken between the contractor and Rights of Way Officer(s) if required.</p> <p>The PRoWMP (Document 5.3.3G(B) [REP2-024] Section 3 (particularly paragraphs 3.1.10 and 3.4.1) and the Applicant's Response to Relevant Representations Table 2.18 Response Reference 18.7 (Document 8.3) [REP1-015] also outline that the Rights of Way Officers at NYC will be consulted as the application and construction progress to ensure agreement is in place relating to PRoW management measures and methods.</p>

2.7 Northern Powergrid (Yorkshire) Plc & Northern Powergrid (Northeast) Plc

Table 2.7 – Northern Powergrid (Yorkshire) Plc & Northern Powergrid (Northeast) Plc: Responses to the Examining Authority’s Written Questions (ExQ1) [REP2-130]

Ref. No	Question	Interested Party Response	National Grid Comment
Q4.5.10	Do you agree with the Applicant’s wording of Protective Provisions as set out in the dDCO Schedule 15	<p>No</p> <p>An Asset Protection Agreement with specific protective provisions to protect NPG’s apparatus is currently being negotiated on to be entered into between the parties. The protective provisions will apply to both NPG (Yorkshire) Plc and NPG (Northeast) PIC entities.</p>	<p>National Grid continues to liaise with Northern Power Grid (Yorkshire) Plc & Northern Power Grid (Northeast) Plc (collectively NPG) regarding these Protective Provisions.</p> <p>Please see the Protective Provisions Progress Schedule (Document 8.12) [REP2-042] submitted at Deadline 2, which includes updates on the position for all statutory undertakers. The protective provisions on the face of the draft DCO (Document 3.1(C)) are not agreed by NPG. National Grid is not yet in a position to update the protective provisions for NPG on the face of the draft DCO (Document 3.1(C)) but negotiations are continuing with a view to reaching suitable bespoke protective provisions to be incorporated into the DCO at Deadline 5 if possible.</p>
Q4.5.13	Provide copies of preferred wording for Protective Provisions or if provided it elsewhere signpost where it can be found and explain why you do not what the wording currently drafted used.	<p>An Asset Protection Agreement with specific protective provisions to be inserted into the draft DCO is currently being negotiated on with National Grid. The protective provisions will relate to Northern Powergrid (Yorkshire) Plc and Northern Powergrid (Northeast) Plc and both NPG entities will enter the same agreement.</p> <p>The NPG entities have concerns over the current proposed protective provisions contained within the dDCO as they do not take into account site specific issues or NPG’s approach to the replacement of apparatus which means there will be no betterment and therefore the cost cannot be covered by NPG.</p> <p>National Grid must also indemnify NPG in respect of any claim arising from the works undertaken under the DCO, any damage caused to apparatus or an interruption to the service provided by NPG.</p> <p>NPG has discussed its concerns with National Grid and the parties are working closely to reduce the project’s impacts on Northern Powergrid’s apparatus.</p> <p>A draft Asset Protection Agreement with protective provisions is in circulation between the parties and is at an advanced stage.</p>	<p>As confirmed above at Q4.5.10, National Grid continues to liaise with NPG regarding these Protective Provisions and concur that the Asset Protection Agreement and bespoke protective provisions are at an advanced stage.</p>
Q5.6.2	<p>a) Do you consent to the terms of Schedule 5?</p> <p>b) If not, set out the reasons why you disagree and provide your preferred drafting where appropriate. If set out elsewhere, signpost where this information can be found.</p>	<p>a) No</p> <p>b) The draft protective provisions (currently under negotiations) allow for National Grid’s authorised works to be undertaken by National Grid or a third party and therefore Schedule 5 would conflict with the protective provisions between NPG and National Grid.</p>	<p>Due to the scale and nature of works required to NPG apparatus as part of the Project, NPG has direct powers as undertaker under the DCO. This is in respect of NPG Works only and is subject to Schedule 5. In the absence of Schedule 5, the mechanism through which National Grid could undertake NPG Works, should NPG fail to do so, would be unclear. This would be a significant risk to the Project and potentially hinder deliverability.</p> <p>Whilst the protective provisions make allowance for a third party to undertake works, this is not the same as taking direct benefit from the DCO itself as</p>

Ref. No	Question	Interested Party Response	National Grid Comment
	c) Do you agree that the arbitration provisions (article 53) should apply here in respect of any dispute?	c) Yes	<p>undertaker, which NPG have the ability to do under Article 6 of the draft DCO (Document 3.1(C)). They also do not allow provision for National Grid to undertake the NPG Works as undertaker, which is the scenario facilitated and clarified in Schedule 5.</p> <p>National Grid does not consider there to be a conflict between Schedule 5 and the protective provisions currently being negotiated.</p>

Appendix A Practice Notes for the 2017 Edition of JCLA Landscape Maintenance Works Contract



JCLI PRACTICE NOTE No. 9

Revision 2: April 2017

**Practice Notes for the 2017 Edition of
JCLI Landscape Maintenance Works Contract (JCLI LMWC)**

Notes:

This JCLI Practice Note No 9 Revision 2 supersedes No 7 (December 1998, and all subsequent revisions), No 9 (August 2008) and No 9 Revision 1 (June 2012 and its Amendment 1 April 2015).

This document should be read in conjunction with the JCLI Landscape Maintenance Works Contract 2017 Edition, including its footnotes and Guidance Notes.

Care has been taken in preparing this Practice Note but it should not be treated as a definitive legal interpretation or commentary. Users are reminded that the effect in law of the provisions of the JCLI Landscape Maintenance Works Contract 2017 Edition is, in the event of a dispute as to that effect, a matter for decision in adjudication, arbitration or litigation.

This Practice Note and the Model Forms document for the JCLI LMWC 2017 are also applicable to the JCLI Scottish LMWA 2017, other than as noted in the Guidance in the Scottish Agreement.

This Practice Note and the following documents related to the JCLI LMWC 2017 are available free from the JCLI pages at [\[redacted\]](#): Model Certificates and Other Forms for use with JCLI LMWC 2017, with guidance; the two Novation Agreements in Schedules 3 and 4 as separate documents (see item 7 below); the JCLI Scottish Landscape Maintenance Works Agreement 2017 and the two Scottish Novation Agreements; and any Amendments and/or Corrections documents for the Contract and Scottish Agreement (see item 26 below); and a document indicating the differences between JCLI LMWC 2017 and JCLI LMWC 2012. Additionally a document indicating the differences between JCLI LMWC 2017 and JCLI LWC 2017 is available free to purchasers of the JCLI LWC, LWCD or LMWC 2017.

1. JCLI Landscape Maintenance Works Contract

The JCLI Landscape Maintenance Works Contract (JCLI LMWC) is appropriate for all types of landscape maintenance projects of any value.

It incorporates considerable flexibility to accommodate varying circumstances. One particular circumstance is that it can be used for the establishment maintenance of a project during the rectification period after practical completion of a landscape

construction contract undertaken under the JCLI Landscape Works Contract, the JCLI Landscape Works Contract with Contractor's Design, JCT, RIBA, NEC, or other standard forms of construction contract.

The JCLI Landscape Works Contract (JCLI LWC) and JCLI Landscape Works Contract with Contractor's Design (JCLI LWCD) specifically omit the maintenance of plants after practical completion. If a rectification period is required for the plants (clause 2.10A in JCLI LWC and clause 2.11A in JCLI LWCD) a separate contract between the Contractor and Employer is required to cover the care of plants during the rectification period after practical completion. The JCLI Landscape Maintenance Works Contract (JCLI LMWC) is recommended for this situation.

Where the JCLI LMWC is to be used in conjunction with a landscape construction contract:

- the maintenance contract should last for at least the rectification period in the construction contract (but ideally 5 years);
- if partial possession is implemented it will cause phased commencement of the maintenance contract, but the end of the maintenance should be the same for all parts. Such phased commencement will constitute a variation which may or may not have cost implications depending on the circumstances;
- the construction and maintenance tender documents and contracts should be separate but tendered together, accepted together and signed at the same time;
- the same contractor must be used for both contracts in order to maintain the plant guarantee. See also item 18 Plant Replacement below.

The JCLI LMWC makes no provision for implementing landscape construction works as part of the maintenance contract, for example there is no provision for commencement and completion date for the construction work, extension of time, liquidated damages for late completion, a rectification period or retention. If significant landscape construction work is required it should be implemented as a separate contract using the JCLI LWC, or similar construction works contract.

For sites located in Scotland the JCLI Scottish Landscape Maintenance Works Agreement (JCLI SLMWA) should be used.

2. Contract Documents (Second Recital)

The list of documents which comprise the Contract Documents includes options for a List of Items of Maintenance Work and a Schedule of Liquidated Damages as well as Drawings, Specification, Work Schedules and Schedule of Rates.

Work Schedules means a list of items giving quantities, as necessary, and descriptions of work required, prepared in accordance with an appropriate method of measurement (defined in the tender documents) which will be priced by tenderers and subsequently form part of the contract. Detailed information on materials and workmanship should be contained in the specification.

The List of Items of Maintenance Work may be appropriate as a less detailed (and unpriced) alternative to Work Schedules.

The Schedule of Liquidated Damages should list liquidated damages for various types of work (see item 12 below).

3. CDM Regulations (Fourth Recital)

The following advice has been agreed with the Health and Safety Executive (HSE) and is based on the Construction (Design and Management) Regulations 2015 (CDM Regulations 2015), the associated document "Managing Health and Safety in Construction: Construction (Design and Management) Regulations 2015: Guidance on Regulations L153" published by the HSE, and written advice from the HSE.

The CDM Regulations 2015 apply to "construction work" as defined in the Regulations. Additionally, HSE has advised that planting and general horticultural work are not "construction work".

The HSE has advised that "construction work" as defined in the CDM Regulations 2015 includes earthworks, all hard landscape works, installation of pipes and pipelines, demolition, dismantling, and preparation for such works (including site clearance and excavation) and the maintenance of such works. Demolition, dismantling and site clearance are "construction work" when the items concerned are within the scope of the "construction work" definition in the CDM Regulations, even when undertaken in preparation for planting and general horticultural work.

The HSE has advised that planting and general horticultural work includes topsoiling, grading, amelioration, planting, grassing, agricultural fencing, tree work, soft landscape maintenance and associated preparation (including excavation and site clearance but excluding site clearance of "construction work"). These works are therefore not "construction work" and the CDM Regulations 2015 do not apply to them.

However, even if the CDM Regulations do not apply the Health and Safety at Work Act (HASAW Act) and other Health and Safety Regulations made under the HASAW Act (e.g. the Management of Health and Safety at Work Regulations) will still apply. The requirements of the HASAW Act and the other Regulations are very similar to those of the CDM Regulations, except for the specific appointments made under the CDM Regulations. The HSE has advised that where good health and safety practice is being followed the differences between a project where the CDM Regulations apply and one where they do not are likely to be minimal.

When soft landscape maintenance work is part of a construction project, unless the soft landscape maintenance work can be segregated from the "construction work" physically or by time, it will be part of the construction project. Therefore although there will be no duties under the CDM Regulations associated with the soft landscape maintenance work, there will be duties relating to health and safety on the construction site.

Therefore, for example, in circumstances when another contractor (or contractors) who is carrying out "construction work" as defined in the Regulations is using the same (or adjoining) areas or the same access as a landscape maintenance contractor who is undertaking work to which the Regulations do not apply, the landscape maintenance contractor would need to comply with health and safety instructions from the Principal Contractor appointed for the "construction work". Wherever possible the landscape maintenance contractor should be advised in the tender documents of any particular situation where it is expected this may occur. Additionally, the "designers" responsible for preparing the tender documents for the "construction work" should minimise the conflicts with other contractors (e.g. landscape and/or maintenance contractors) by the segregation of sites, accesses, etc. Also in these circumstances the "designer" for the landscape maintenance

contract would need to cooperate and coordinate with the Principal Designer appointed for the other project in order to minimise and manage health and safety risks.

The CDM Regulations 2015 have special arrangements concerning domestic clients, i.e. clients who have work done on their own home (or garden) or the home of a family member, which is not done in connection with a business. However, without modification the JCLI Landscape Maintenance Works Contract (JCLI LMWC) is not appropriate for projects for domestic clients.

The interpretation of the extent to which the Regulations apply to maintenance contracts which include "construction work" (e.g. the maintenance of hard landscape, drainage or buildings) depends on whether the maintenance contract is considered as a project or whether different elements of work are considered as 'projects'. The current interpretation is that the Regulations do not apply to the contract as a whole but that items of "construction work" or maintenance of "construction work" included in a landscape maintenance contract (e.g. a small new footpath, resurfacing footpaths, painting the tractor shed, clearing out drainage system) should be considered as 'projects' in themselves for the purposes of the Regulations. If only one contractor will be involved with an item of "construction work" then option b below applies, but if more than one contractor is required to do the item then option c below applies. These individual items of "construction work" will normally not exceed the criteria for notification (see below).

A construction project should not be split up and absorbed into a maintenance contract in order to avoid the CDM Regulations 2015 because the Regulations will apply. Also the Conditions of Contract in JCLI LMWC do not include adequate provisions for construction work (for example: no start or completion dates, liquidated damages, insurance of the works, rectification period or retention).

In the JCLI LMWC, the extent to which the CDM Regulations apply to the project is to be stated in the Contract Particulars. The JCT Minor Building Works Contract 2016 includes two options, which are whether the project is notifiable to HSE or not. The JCLI LMWC 2017 includes three additional options:

- a. The CDM Regulations do not apply, is for projects where none of the work is "construction work" as defined in the CDM Regulations 2015. This option will only apply to projects which only include the maintenance of soft landscape (i.e. do not include the maintenance of any "construction work").

See the guidance above concerning the definition of "construction work".

The wording in the Contract Particulars, Articles 4 and 5 and clause 3.9 allows for the possibility that circumstances may change (for example the addition of work to which the CDM Regulations apply). Hence Articles 4 and 5 and clause 3.9 should not be deleted.

- b. The CDM Regulations apply but only one contractor will be required on site at any one time, is for projects which include "construction work" as defined in the CDM Regulations 2015, but where there will be only one contractor on site undertaking "construction work" at any one time. Sub-contractors are counted as contractors for this assessment.

This means that if there will be two (or more) contractors only one of whom is doing "construction work" then there is only one contractor in terms of the CDM Regulations, whether one is a sub-contractor to the other or not.

See the guidance above concerning the definition of “construction work” and the application of the Regulations to landscape maintenance contracts.

The wording in the Contract Particulars, Articles 4 and 5 and clause 3.9 allows for the possibility that circumstances may change (for example an instruction for additional “construction work” which necessitates the use of a sub-contractor). Hence Articles 4 and 5 should not be deleted.

A Principal Designer, Principal Contractor, and a Health and Safety File are not required for items of “construction work” requiring only one contractor. However, a Construction Phase (Health and Safety) Plan is required for each item of “construction work”.

- c. The CDM Regulations apply and there will be more than one contractor on site, is for projects which include one or more items of "construction work" and at least one of these items will require more than one contractor. Sub-contractors are counted as contractors for this assessment.

See the guidance above concerning the definition of “construction work” and the application of the Regulations to landscape maintenance contracts.

A Principal Designer, Principal Contractor, a Construction Phase (Health and Safety) Plan and a Health and Safety File are all required for items of “construction work” requiring more than one contractor.

Regardless of how many contractors are involved doing an item of “construction work”, the item of work is notifiable to HSE if it involves:

either, more than 30 days of “construction work” and more than 20 persons carrying out “construction work” simultaneously at any time during the project;
or, more than 500 person days of “construction work”.

Since notification of one or more items of “construction work” to HSE might apply to both options b and c above, the JCLI LMWC 2017 also includes an item to indicate whether the project is notifiable to HSE or not. Any items of “construction work” for which notification is envisaged should be listed (or reference made to a list in a contract document) in the space provided in the Contract Particulars. The list should be reviewed with the Contractor prior to commencement and regularly during the duration of the contract.

4. Contract Sum (Article 2)

Article 2 includes two options for the contract sum: either A, a sum divided as required (e.g. £x/year divided into equal instalments), or B, a sum calculated from the Work Schedules or Schedule of Rates.

Option A has flexibility to vary the instalments relative to seasons as appropriate for the project by completing the space provided, or to vary the annual sums where the amount of work varies from year to year (typically during establishment). For example: Year 1 £x; Year 2 £y; Year 3 £z ...each divided into equal instalments. The frequency of instalments is stated in the Contract Particulars against Clause 4.2.

Where the contract sum is a lump sum divided as required (i.e. option A) the tender documents must clearly state whether any provisional sums/items (and provisions for inflation, bonus and contingencies) are to be included in the lump sums or not. Inflation adjustment, bonus and contingency would not normally be included in the sums.

Therefore, if the provisional sums are not included in the lump sums, the annual budget for the work will generally not be simply the contract annual sum but will need to be the contract annual sum plus allowances for bonus, inflation adjustment, provisional sums/items and contingency as appropriate.

For option A the tender documents must advise on how the sums will be divided for payment and the frequency stated in the Contract Particulars against clause 4.2.1, as well as require the tenderers to submit tender sums in the format required to complete Article 2.

5. Commencement and duration (clause 2.2)

Maintenance contracts are normally let for between 3 and 5 years. However, when the contract is let in conjunction with a construction contract, commencement should be the date of practical completion of the construction contract and the maintenance contract should continue at least until the end of the rectification period in the construction contract, but at least for 1 year and ideally for 5 years particularly when trees are included in the construction contract.

The Contract Particulars should be completed with the commencement date (either the actual date if known or 'the date of practical completion of the landscape works contract') and the end date or the duration.

6. Correction of inconsistencies (clause 2.4)

This does not provide that every correction is to be treated as a variation.

Where there are priced Work Schedules any correction which results in a revision to the quantities and/or rates in the Work Schedules will result in a variation.

Where there are no priced Work Schedules it may be necessary for the Landscape Architect/Contract Administrator to determine which of two inconsistent documents is the ruling document or which of two inconsistent statements prevails and such determination shall be treated as a variation under clause 3.6 if the ruling document/statement is changed.

7. Novation (clause 3.1)

It is more essential in maintenance contracts than in construction contracts for the Employer to be able to hand over the contract to a third party, for example for situations when a developer hands over to a tenant or landowner or when tenants change. This concept of passing over all of the benefits of the contract (e.g. the right to have the Contractor carry out the landscape maintenance works) as well as all of the Employers obligations (e.g. the obligation to continue to pay the Contractor for the landscape maintenance works) to another party is novation (not assignment as only the benefit of a contract can be assigned and not the obligations).

In order for novation to be effective the 3 parties (i.e. the 2 existing parties to the contract and the party taking the novation) should enter into a novation agreement. Agreements for Employer Novation and Contractor Novation are included as Schedule 3 and Schedule 4 respectively in the JCLI LMWC 2017. By signing the Contract with Schedule 3 and Schedule 4 attached the Contractor and Employer agree to the terms of the Novation Agreements. By signing one of the Novation Agreements each party confirms that all the benefits and obligations of the Contract have passed to the party taking the novation, and the Contractor (or Substitute Contractor if it is Contractor Novation) confirms his agreement to carry out the works

for the Substitute Employer (or Employer if it is Contractor Novation).

The Novation Agreements in Schedules 3 and 4 are available free from [REDACTED] as separate documents, JCLI Employer Novation Agreement and JCLI Contractor Novation Agreement. These documents include notes on completion of the Agreements.

The Novation Agreements are worded so that it is not necessary for an annual account to be prepared at the date of novation but any work carried out during the current year of maintenance but not yet certified for payment is included on the next periodic payment certificate. At the time of novation payment should have been made of all outstanding amounts certified by periodic payment certificates and annual certificates. Additionally, the parties novating and taking the novation should agree the apportionment of the cost of the maintenance works for the year in which the novation takes place and in the case of Employer Novation the party novating should pay the party taking the novation (or visa versa in the case of Contractor Novation) any outstanding amount of his contribution in full and final settlement of his obligations.

In the case of Employer Novation, clause 3.1.4 gives the party taking the novation (the Substitute Employer) the opportunity to terminate the Contract by giving 3 months notice within 14 days of novation. See also item 15 below.

8. Non-compliance with Instructions (clause 3.5)

Clause 3.5 is the same as in the JCLI Landscape Works Contract except that the period for the contractor to respond to the notice requiring compliance with an instruction can be varied in the Contract Particulars if the default (5 Business Days) is too long for the particular project. In the case of maintenance work, if the Contractor is not doing work adequately (i.e. not in accordance with the Contract Documents) and fails to respond to initial verbal requests to correct the work such work should be scheduled and the Contractor instructed to carry it out within a certain period. Continued failure to respond enables use of the procedure of notification and using another contractor in accordance with clause 3.5. This procedure can be shortened where the specification is a performance specification by instructing the Contractor at commencement to carry out the works in accordance with the Contract Documents, then any subsequent failure can result in the issue of a notice under clause 3.5 following a lack of response to verbal requests to correct the work.

9. Payment (Section 4)

The Construction part of the Local Democracy, Economic Development and Construction Act 2009 (which came into force on 1 October 2011) amends the Construction part of the Housing Grants, Construction and Regeneration Act 1996 (HGCRA). The revisions resulted in significant changes to Section 4 of the 2012 edition of JCT MW and the 2012 editions of JCLI LWC, LWCD and LMWC. Although the amended HGCRA applies to construction projects and not to soft landscape contracts or soft landscape maintenance contracts, the provisions in JCLI LMWC have been drafted to comply with the spirit of the amended HGCRA. (The potential issues of non-compliance arise due to the segregation of payment certificates and notices between annual account periods.)

Note that the periods of days stated in JCLI LMWC and below include weekends (but exclude public holidays).

The main revision in Section 4 (Payment) of JCLI LMWC 2017 compared to the 2012 edition is that payment certificates must state the amount of each adjustment.

Adjustments are defined as amounts under clauses 3.5 (additional costs due to non compliance with instruction), 3.6 (variations), 3.7 (provisional sums), 4.6 (suspension), 4.7 (liquidated damages), 4.9 and 4.10 (inflation and fluctuations). Additionally, for the annual certificates adjustments include amounts under clause 4.8 (bonus). This is accommodated (including information on other adjustments) on the 2017 Model Forms for payment (including pay less notices) by reference to an attachment where each adjustment should be listed.

Guidance on the issue of payment certificates and pay less notices, as well as model forms for both, is given in the Model Certificates and Other Forms for JCLI LMWC 2017 document available free at [\[REDACTED\]](#).

There are significant differences in the way that JCLI LMWC 2017 deals with the issues associated with the amended HGCRAs compared to the way they are dealt with in JCLI LWC and JCLI LWCD 2017. The differences originate because valuations are undertaken differently. For example, there are 3 model pay less notices rather than the 2 for JCLI LWC. See also item 10 below.

The guidance in the Model Certificates document should be strictly followed by the Landscape Architect/Contract Administrator in order to avoid problems. The guidance is essentially to:

- Issue all payment certificates on time.
- Ensure that all payment certificates and notices state the basis of the calculation of the amount due including the amount of each adjustment.
- If the Employer wishes to deduct anything from amounts certified, in order to avoid a valuation of work done between the due date and the date of the pay less notice, issue the payment certificate and the associated pay less notice together on the payment due date (not within 5 and 9 days respectively of the payment due date). The pay less notice must not be issued before the certificate.
- If the Employer wishes to make any deductions which are not appropriate for deduction on certificates (e.g. contra-charges) they can be made on a pay less notice issued against a payment certificate or one issued against a Contractor's payment notice. Only include such deductions on a pay less notice after receiving written authorisation from the Employer for each individual deduction with the reason for each individual deduction.
- If a payment certificate is not issued on time do not issue it late unless the Contractor has not issued a payment notice and the Contractor and Employer both agree to the late issue of the certificate (otherwise it will be invalid).
- If the Contractor issues a payment notice due to a payment certificate not being issued on time, which is for more than the Contractor would be due at the date of the pay less notice, then issue a pay less notice against the Contractor's notice at least 5 days before the final date for payment, i.e. for JCLI Contracts within 4 days of the Contractor's notice; see the Model Certificates and Forms document (which includes pay less notices) with the associated guidance.

10. Periodic payments (clause 4.2)

The selection of payment period (which is to be stated in the Contract Particulars) normally depend on the value of the Works. Smaller value contracts tend to have longer periods between payments. Longer periods increase tender prices, shorter periods increase the Employer's and Landscape Architect/Contract Administrator's administrative costs.

See item 9 above.

Clause 4.2.1 enables periodic payments for works properly executed at the intervals stated in the Contract Particulars. Clauses 4.2.2 and 4.2.3 ensure that payment certificates and notices for any particular period only include work undertaken during that period.

Where option A applies in Article 2 the value of any work which has not been properly executed in the payment period should be deducted (and any provisional sums/items not used during that period, if such provisional sums/items are included in the lump sums, should also be deducted) from the defined payment, as well as the other deductions listed in clause 4.2.1.2. See the guidance in the Model Certificates document.

If the Contractor has issued one or more payment notices (which may or may not have been reduced by associated pay less notices) since the last Periodic Certificate then the calculation for the next Periodic Certificate in that year and the Annual Certificates will be more complicated, see clause 4.2.1 and 4.4 in JCLI LMWC 2017.

Note that valuations and certificates for periodic payments are only for work done since the last valuation (rather than being all work done to date minus previous amounts certified, which is the case for construction contracts). This also means that the restrictions on which type of deductions can be made on different types of pay less notice which apply for JCLI LWC 2017 do not apply for JCLI LMWC 2017.

Also note that liquidated damages are deducted on certificates (rather than being deducted at the discretion of the Employer from the certified amount using a pay less notice issued against the certificate by the Landscape Architect/Contract Administrator, which is the case for construction contracts).

11. Annual accounts (clause 4.4)

See item 9 above.

This Contract has annual accounts which are final for the year concerned and an annual account at the end of the Contract Period which may not be for a full year but is final for the period concerned.

Note that the annual account includes any bonus and liquidated damages as well as inflation, variations, etc. but is only for works properly executed.

12. Liquidated damages (clause 4.7)

The approach to liquidated damages allows flexibility in the items to which damages can apply and how the damages apply. For example:

£x per hectare of grass not cut to the length specified

£y per football pitch not prepared for a match

£z per day late that a particular item is carried out (e.g. snow clearance).

Hence the Schedule of Liquidated Damages can be tailored to provide a whole range of damages across a wide range of items of maintenance. However, the liquidated damages procedure should only be used in respect of items where it is clear whether or not the Contractor is in breach. It is possible to clearly establish that there has been a breach if there is a deadline by which the work must be carried out, for example the date of the football match, or if work must be carried out within a particular timescale, for example snow must be cleared within 1 day of notification. This becomes more difficult if it is applied to, for example, cutting grass to the length stated in the specification as it is difficult to measure the grass and breach is not as clear, for example if the grass is measured at 1 centimetre longer than stated in the specification this would technically be a breach but it would be difficult to show that that breach had caused the Employer losses.

The amount of liquidated damages should not represent a penalty but must be a genuine pre-estimate of the loss which will be suffered by the Employer due to the Contractor's failure. If the Employer would not suffer any losses due to a particular breach liquidated damages should not be used, for example the Employer may want snow cleared within 1 day of notification of its presence but if the Employer would not suffer any losses if the snow was not cleared until 2 days after notification applying liquidated damages would be construed as a penalty. An estimation of losses can include professional fees (additional checking, telephone calls, letters, notices, etc) and should also include any other loss the Employer may incur (e.g. loss of revenue from a cancelled football game). A detailed note of the pre-estimate calculations should be filed.

13. Bonuses (clause 4.8)

A bonus payment on each annual account is payable provided that the Contractor has performed well, which is measured by the number of Failure Events during the account period, i.e. the number of notices issued requiring compliance with an instruction under clause 3.5 and the number of items resulting in deductions under clause 4.7 (liquidated damages). See also Guidance Note 20 in JCLI LMWC 2017.

Note that one failure could result in both a notice under clause 3.5 and a deduction under clause 4.7 and hence would count as two Failure Events.

14. Inflation adjustment (clause 4.9)

The most recently published Retail Price Index percentage change for the previous year is available from www.ons.gov.uk. An alternative published index appropriate for landscape maintenance works may be used by entering it in the Contract Particulars. If the alternative index fully takes account of contribution, levy and tax changes then JCLI LMWC clause 4.11 should be deleted.

15. Termination (Section 6)

Clause 6.4.3 enables termination by the Employer if the Contractor persistently fails to perform. The number of Failure Events and the period as appropriate for the particular project need to be completed in the Contract Particulars. This is likely to depend on the size of the project, the extent of the Schedule of Liquidated Damages, and the importance of performance for the particular project. Note that one failure could constitute two Failure Events for the purposes of this clause. (See items 8, 12 and 13 above).

Clauses 6.8.2 and 6.10.1 refer to the Contract Particulars for the suspension period so that a longer period than the standard one month can be chosen for small maintenance projects which may on occasions involve no work within a one month period.

When the maintenance contract is for maintenance following a construction contract using the same contractor, clause 6.12 enables termination if the contractor's employment under the construction contract is terminated. In order to get the benefit of clause 6.12 the Employer for the construction and maintenance contracts needs to be the same at least until practical completion of the construction contract.

Some Employers may wish to have the option to terminate the maintenance contract before the end date. Various factors should be considered before adding such a clause. For example:

- For a maintenance contract following a construction contract it is advantageous to accept a tender for a 5 year maintenance contract and terminate after 2, 3 or 4 years if desired;
- The option to terminate early may affect the viability of large maintenance contracts because of the investment necessary by the Contractor, in which case the option to terminate may only be appropriate after at least 3 years;
- The period of notice needs to reflect the size of the maintenance contract but 3 months should be a minimum;
- The option to terminate after novation is included in clause 3.1.4 (see item 7 above).

Any additional clause(s) should be included as an additional Article and an Amendment attached to the Agreement. For example:

Add after Article 9:

"Article 10: The conditions shall have effect as modified by Amendment A attached hereto."

Amendment A might be:

"Amendment A

Add clause:

Employer's option to terminate

6.13 *Without prejudice to any other right contained in this Contract the Employer may terminate this Contract at any time after from the Commencement Date on giving months notice to the Contractor.*

Any notice given under this clause 6.13 shall be delivered in accordance with clause 6.2. In the event of this Contract being terminated under this clause 6.13 an annual account shall be prepared in accordance with clause 4.4."

16. Supplemental Provisions (Schedule 5)

The Supplemental Provisions in JCLI LMWC 2017 are, except for minor modifications due to the different type of work, the same as those in JCLI LWC 2017. See Guidance Note 17 at the back of JCLI LMWC 2017.

Several of these provisions, in combination with specification requirements, are extremely useful for medium and long term landscape maintenance contracts, particularly:

- Collaborative working is essential to achieve the objectives of a 3-5 year maintenance contract, including continuous improvement, performance and best value.
- Cost savings and value improvements: This provision enables the contractor to suggest alternative ways of achieving the objectives and include reducing cost and frequency (and sharing the saving).
- Sustainability and environmental considerations: This provision enables the contractor to suggest changes to achieve better environmental or more sustainable performance and it links with the cost saving and value improvements provision.
- Performance indicators and monitoring. Performance indicators are extremely useful for landscape maintenance contracts and this provision enables them to be specified and monitored. Performance against such indicators can also be rewarded by bonus by adding to clause 4.8 and its associated Contract Particulars entry (and any other consequent modifications). Revisions should only be made to the Conditions after consulting a solicitor.
- Notification and negotiation of disputes. Early notification and swift resolution of potential disputes is very desirable in a landscape maintenance contract in order for performance to continue without faltering.

17. Temporary Protection

Temporary protective measures are the responsibility of the Contractor but any specific requirements should be specified; for example, the risk and requirements for segregation of the public (or others) from particular items of work for health and safety reasons.

18. Plant Replacement

Any requirement for the replacement of plants which fail to thrive and the extent of the responsibility needs to be clearly defined in the Contract Documents (normally in the specification preliminaries). The Contractor can either be paid for any replacements which are necessary (typical for many contracts for maintaining an established scheme) or the Contractor is responsible for replacements often excluding theft, vandalism, vehicle damage and the like (typical for a maintenance contract following a construction contract carried out by the same contractor, or a performance specification for an established scheme). See also item 19 Watering and item 20 Frost Damage below.

The criteria for replacement also need to be stated, e.g. all trees and individual specimen shrubs which fail to thrive to be replaced, shrub and groundcover replacements only to fill gaps, plant sizes to be the same as originally planted (or to match the size of adjacent plants of the same species). The frequency of replacement should be stated with the time between inspection and replacement, e.g. annually with inspection October and replacement before Christmas, or monthly inspection with replacement within a month, or even weekly/weekly for highly prestigious projects (which may need a stock of replacement plants maintained off site).

19. Watering

Any requirements for watering (e.g. to ensure establishment, to ensure plant survival, or to maintain a bowling green playable and green) need to be clearly specified and the responsibility and requirements for replacement resulting from losses due to failure to water need to be clearly defined both for normal circumstances and when restrictions on watering apply.

The Landscape Institute Technical Bulletin on Water Restrictions and Watering Specification (May 1996) will be revised shortly to bring it up to date. However, the Landscape Industry has generally accepted the approach of 3 options for specifying watering which was in the Bulletin. At the time of preparing the tender documents a decision should be made as to which of the three options will apply to the particular contract:

- i. Performance: the Contractor is entirely responsible for watering and for plant losses whatever the circumstances, with no provision for the Employer to pay for extra watering.
- ii. Performance plus: the Contractor is entirely responsible for normal watering to ensure plant survival and for plant losses whatever the circumstances, but additional watering may (or may not) be instructed during periods of very dry weather and/or when restrictions on watering apply.
- iii. Operation: watering is specified and paid for by operation.

The advantages and disadvantages of each option and appropriateness for particular projects were outlined in the 1996 Bulletin as were water quantities and a typical method of measurement for watering by operation.

20. Frost Damage

Any requirements for the protection of plant material against frost need to be clearly specified and the responsibility and requirements for replacement resulting from losses due to failure to protect plants from frost need to be clearly defined. This should either be by performance or operation or an intermediate approach, for example:

- i. Performance: the Contractor is entirely responsible for providing protection as necessary and for replacing plants which are significantly damaged by frost.
- ii. Performance plus: protection is specified for specific plants and the Contractor is not responsible for replacing any of the specifically protected plants due to frost damage (unless the protection is not installed as specified), but is responsible for replacing any other plants which are significantly damaged by frost (and can protect any of the other plants if he wishes).
- iii. Operation: protection is specified for specific plants and the Contractor is not responsible for replacing plants which are damaged by frost, unless the protection is not installed as specified.

21. Design/Management Objectives

A design/management objectives statement and/or a mission statement can be included with tender documents. Typically it would outline the objectives in terms of the evolution of the landscape and in terms of the provision of a service to public/users/occupiers/client, etc. See also item 16 above.

22. TUPE

This Contract makes no provision for the Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE) or the Acquired Rights Directive 1977. If applicable or if they are likely to be applicable the Employer and tenderers/ Contractor should take legal advice.

23. Programme

This Contract does not require the provision of a programme but one should be required by the specification (preliminaries). The specification should also include any programme constraints and requirements. For larger projects a draft programme should be provided by tenderers with their tender (which should be included as a requirement in the instructions to tenderers). In some situations the application of liquidated damages will operate by measuring performance against an agreed programme.

24. Use of Employer's Premises/Equipment

If the Contractor will be using the Employer's premises, (e.g. a shed for storage) and/or the Employer's equipment and/or services (water, electricity, etc.) in order to undertake the Works, details should be provided in the preliminaries but revisions/additions may also be required to the Conditions (e.g. the insurance provisions). In this situation a solicitor (and in the case of insurance, the Employer's and Contractor's insurance brokers) should always be consulted because other issues may be involved. Additionally, revisions should only be made to the Conditions after consulting a solicitor.

25. Use of site

During maintenance contracts the site is in constant use by others (Employer, public, other contractors etc). The extent of such use needs to be explained in the specification (preliminaries). In some situations it may be necessary to have procedures for access, e.g. notification for security reasons or to check that it is not inconvenient for the work to be done. While in other circumstances it may be necessary to specify and subsequently agree standards for dealing with the public (e.g. mowing round sunbathers). As much information as possible concerning such constraints should be included in the specification.

26. Amendments

Amendments to the JCLI Landscape Maintenance Works Contract are occasionally issued by JCLI. The latest revision of the Contract should always be used with the latest Amendments current at the time of tender. The latest Amendments can be downloaded free from the Landscape Institute web-site [\[REDACTED\]](#)

Amendments should be incorporated into the Contract by adding an Article and attaching the Amendment as described in item 15 above.

Revisions in JCLI Practice Note No 9 Revision 2: April 2017

- 1 Updates throughout, but particularly in the introduction, to update from the 2012 editions to the 2017 editions/revisions of JCLI documents. Addition of references to JCLI Scottish documents added and updates to cross references to other documents.
- 2 Item 1: JCLI Scottish Agreement added , and other minor amendments.
- 3 Item 3: Updated for CDM 2015 by incorporating Amendment 1 to JCLI PN9 Rev1 (June 2012)..
- 4 Item 5in PN8 Rev1 (Principal Contractor): deleted and subsequent items renumbered.
- 5 Item 9: Details to 2012 revisdions to payment clauses reduced and 2017 revisions added.
- 6 item 19: second paragraph revised including modification to options I and ii.
- 7 Item 20: option ii added.
- 8 Item 24: additional phrase in brackets added concerning insurance in penultimate sentence.
- 9 Minor clarification, additions or omissions, e.g. in items 1 and 20 and to a lesser extent in other items.

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