

YG-DCO-129

Yorkshire Green Energy Enablement (GREEN) Project

Volume 8

**Document 8.26 CIL Compliance Statement for S106 Agreement
Pursuant to Section 106 of the Town and Country Planning Act 1990**

**Final Issue A
July 2023**

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**Infrastructure Planning (Applications: Prescribed Forms and Procedure)
Regulations 2009 Regulation 5(2)(q)**

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Version History

Document	Version	Status	Description / Changes
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11/07/2023	A	Final	First Issue
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1. Introduction

- 1.1.1 National Grid considers that the use of a section 106 agreement is an appropriate mechanism to allow the directly affected local planning authorities within the local area (noting their current policy requirements) to oblige National Grid to provide 10% Biodiversity Net Gain (BNG) in line with its corporate commitment.
- 1.1.2 The section 106 agreement also includes obligations for ongoing engagement with the local authorities to manage the process and costs associated with the discharge of Development Consent Order (DCO) requirements and other consents required pursuant to the Articles of the DCO.
- 1.1.3 It is National Grid's preference to secure BNG by way of section 106 Agreement, as opposed to a DCO requirement to provide certainty to the delivery of BNG. The DCO could only apply to land outside the Order limits if National Grid has agreements with landowners in the specific locations required for BNG, which may not be possible by the end of Examination.
- 1.1.4 The transitional arrangements set out in the draft National Policy Statement (NPS) NPS EN-1 (at paragraph 1.6) make it clear that any DCO application accepted will be determined in accordance with the NPS designated at that the point in time (which for the Project will be the current NPS). However, the emerging Energy NPSs are still capable, under section 104(2)(d) of the Planning Act 2008 (the Act), of being important and relevant considerations which the Secretary of State (SoS) must have regard to in the decision-making process even if not designated at the point of acceptance.
- 1.1.5 Local planning policies and the Local Impact Reports submitted by the affected local planning authorities are also capable of being important and relevant considerations in the decision-making process for which the SoS must also have regard pursuant to section 104(2)(b) of the Act.
- 1.1.6 In addition to the above, the introduction of the Environment Act 2021 (providing a legal framework for environmental governance) also includes provisions for BNG. Although these provisions are not yet in force, the Environment Act 2021 will require Nationally Significant Infrastructure Projects (NSIPs), such as the Project, to achieve a minimum 10% uplift in biodiversity value which is to be calculated using an appropriate biodiversity metric and maintained for a specific period.
- 1.1.7 To the extent that the planning obligations contained within the section 106 agreement are a reason for the grant of planning permission, then the obligations must meet the current legal tests within Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (CIL Regulations).
- 1.1.8 Regulation 112 states:
- A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is –
 - (a) *necessary*
 - (b) *directly related to the development; and*
 - (c) *fairly and reasonably related in scale and kind to the development.*

- 1.1.9 Paragraph 57 of the National Planning Policy Framework (NPPF) reiterates the Regulation 122 test. National Grid submits this CIL Compliance statement to demonstrate compliance with the relevant tests (set out above). Schedule 1 outlines each main obligation in turn and provides a headline explanation of how the obligation is necessary, directly related to the development, and fairly and reasonably related in scale and kind to the development.

2. Policies

- 2.1.1 National Grid, whilst submitting its application for development consent, has reviewed the NPSs (including draft NPSs) and Local Policies for all Councils that are relevant to the Project in respect of Biodiversity.
- 2.1.2 NPSs are statutory documents published in accordance with the Act and set out the Government's policy on particular types of nationally significant infrastructure projects (NSIPs). The Project is an NSIP and whilst the current Overarching National Policy Statement for Energy (EN-1) (adopted in 2011) and the NPS for Electricity Networks (EN-5) have effect for the purposes of Section 104(1) and Section 104(2)(a) of the Act, they do not specifically refer to BNG.
- 2.1.3 However, the Government revised and published the draft NPS EN-1 in September 2021 for consultation which refers to BNG (updated on 25 March 2023). As set out above, the draft NPS EN-1 is capable of being an important and relevant consideration in the SoS's decision-making process.
- 2.1.4 The following policies within the draft Energy NPSs have been referred to in support of the case that the proposed planning obligations meet the CIL tests:

Table 2.1 – Policies within the draft Energy NPSs

National Policy Statement	Policy reference	Assessment
Draft NPS EN-1	'Environmental and Biodiversity Net Gain' notes that projects should seek opportunities to contribute to and enhance the natural environment by providing net gains for biodiversity where possible, encouraging applicants to use "the most current version of the Defra biodiversity metric" (paragraph 4.5.2). It also highlights that "any habitat creation or enhancement delivered for biodiversity net gain should generally be maintained for a minimum period of 30 years (paragraph 5.4.22)".	By agreeing to deliver BNG, the Project is seeking to enhance the natural environment by providing net gains using the most up to date version of the DEFRA metric. The S106 secures the monitoring and management of BNG delivered for 30 years.

National Policy Statement	Policy reference	Assessment
Draft NPS EN-5	<p>“recognition that the linear nature of electricity networks infrastructure allows excellent opportunities to:</p> <p>reconnect important habitats via green corridors, biodiversity stepping zones, and reestablishment of appropriate hedgerows; and/or</p> <p>connect people to the environment, for instance via footpaths and cycleways constructed in tandem with biodiversity enhancements.” (section 2.8)</p>	The Project seeks to deliver on the opportunities included in section 2.8 through delivery of BNG through the S106 agreement.

- 2.1.5 Local planning policies and the Local Impact Reports submitted by the affected local planning authorities are also capable of being important and relevant considerations in the decision-making process for which the SoS must also have regard pursuant to section 104(2)(b) of the Act.
- 2.1.6 The following policies within the relevant Local Plans have been referred to in support of the case that the proposed planning obligations meet the CIL tests:

Table 2.2 – Policies within Local Plans

Local Planning Authority	Local Planning Document	Policy Reference	Assessment
North Yorkshire Council; Hambleton Area	HLP 2022	E3: The Natural Environment 6.36 that “All development will be expected to demonstrate the delivery of a net gain for biodiversity”.	The Project accords with the requirements identified in local planning policy relating to biodiversity which are set out in table 3.1 below. .
		NE3: Protecting the Natural Environment NE7: Trees and Woodland	

Local Planning Authority	Local Planning Document	Policy Reference	Assessment
Leeds City Council	LCS 2019	G2: Creation of new tree cover	
		G8: Protection of important species and habitats	
		G9: Biodiversity Improvements	
		<p>Part 1 that "development will be required to demonstrate:</p> <ol style="list-style-type: none"> 1. That there will be an overall net gain for biodiversity commensurate with the scale of the development, including a positive contribution to the habitat network through habitat protection, creation and enhancement; 2. The design of new development, including landscape, enhances existing wildlife habitats and provides new areas and opportunities for wildlife; and 3. That there is no significant adverse impact on the integrity and connectivity of the Leeds Habitat Network." <p>In addition to the above, Leeds City Council are also developing a new Local Plan which will update the Core Strategy referred to above, which currently refers to all new developments providing a minimum of 10% BNG in line with the Environment Act 2021.</p> 	
North Yorkshire Council; Selby Area	SDCSLP 2013	SP18: Protecting and Enhancing the Environment	
	SDLP 2005	ENV9: Sites of Importance for Nature Conservation (Saved Policy)	
	SDNLP Preferred Options 2021	NE4: Protecting Designated Sites and Species (Emerging Plan)	
		NE6: Trees, Woodlands and Hedgerows (Emerging Plan)	
	CYDLP 2005	NE1: Trees, Woodlands and Hedgerows	

Local Planning Authority	Local Planning Document	Policy Reference	Assessment
York City Council		NE2: River and Stream Corridors, Ponds and Wetland Habitats	
		NE3: Water Protection	
		NE4a: International and National Nature Conservation Sites	
		NE5a: Local Nature Conservation Sites	
		NE6: Species Protected by Law	
		NE7: Habitat Protection and Creation	
		NE8: Green Corridors	
	CYLPPDP 2018	GI2: Biodiversity and Access to Nature (Emerging Plan)	
		GI4: Trees and Hedgerows (Emerging Plan)	
UPNPNP 2017	PNP10: Protection of Wooded areas and hedgerows (Made Upper Poppleton and Nether Poppleton Neighbourhood Plan)		
North Yorkshire Council	NYMWJP 2022	<p>D07: Biodiversity and Geodiversity</p> <p>"proposals should seek to contribute positively towards the delivery of agreed biodiversity and/or geodiversity objectives, including those set out in agreed local Biodiversity or Geodiversity Action Plans, or in line with agreed priorities of any relevant Local Nature Partnership, with the aim of achieving net gains for biodiversity or geodiversity and supporting the development of resilient ecological networks".</p>	

3. Proposed Planning Obligations

3.1.1 The proposed planning obligations, included within the section 106 agreement, cover BNG achieving a minimum of 10% BNG on all infrastructure projects, monitoring of this will also take place for 30 years.

Table 3.1 –Planning obligations

Obligation	Necessary	Directly related to development	Fair and reasonable
Biodiversity Net Gain (BNG)			
<p>Delivery of Net Gain Assessment Within six months of the date on which the Construction Period ends for the Authorised Development, National Grid must submit, following consultation with Natural England, an updated Biodiversity Net Gain Assessment to the Councils for approval. (Schedule 2 paragraph 2.1)</p>	<p>The provision of at least 10% BNG across the Project will be provided in order to benefit the development in accordance with planning policy.</p>	<p>Whilst the provision of BNG does not form part of the DCO being sought, National Grid is committed to seeking to deliver a 10% net gain in BNG above the current baseline. A comprehensive Biodiversity Mitigation Strategy (Document 5.3.3D) [APP-097]) has been prepared by National Grid which sets out the environmental measures that National Grid will implement during the construction phase of the Project. National Grid have also produced a comprehensive Biodiversity Net Gain Report (Document 7.9) [APP-210]) to accompany their application to</p>	<p>The updated BNG assessment will look at impact of the development along the route. The relevant sections of the Act have not yet come into force. Nevertheless, National Grid is committed to deliver at least 10% BNG. It is fair and reasonable for National Grid to submit an updated BNG Assessment following the completion of the Project. This will show that the commitment National Grid has made on BNG will be implemented and a gain produced.</p>

Obligation	Necessary	Directly related to development	Fair and reasonable
		the Secretary of State for the DCO.	
<p>Biodiversity Offsetting Scheme If the Biodiversity Net Gain Assessment demonstrates that less than 10% biodiversity net gain has been achieved overall across the administrative areas of the Councils following construction of the Authorised Development; National Grid must include a Biodiversity Offsetting Scheme within the Biodiversity Net Gain Assessment (Schedule 2 paragraph 2.2)</p>	<p>The provision of at least 10% BNG across the Project will be provided in order to benefit the development in accordance with planning policy.</p>	<p>Biodiversity enhancements are required by local planning policy and therefore directly related to the development</p>	<p>Despite the provision of BNG not being a legal requirement for DCO applications until 2025, the provision of 10% has been offered by National Grid as a benefit of the development. The net gain improvement has been informed by the Biodiversity Net Gain Report (Document 7.9) [APP-210] identified as being deliverable. It is therefore considered both fair and reasonable to include this obligation.</p>
<p>Where a Biodiversity Offsetting Scheme is required to be produced, no later than the date falling 25 Business Days after the date on which it received a submission from National Grid in accordance with paragraph 2.1, the relevant Councils shall notify National Grid whether or not it approves the Biodiversity Offsetting Scheme.</p> <p>(Schedule 2 paragraph 2.3)</p>	<p>It is necessary for the Councils to notify National Grid as to whether or not the Biodiversity Offsetting Scheme is approved.</p>	<p>The provision of a Biodiversity Offsetting Scheme within the Biodiversity Assessment has been agreed with the Council as being directly related to the development.</p>	<p>It is fair and reasonable for the Councils to confirm to National Grid whether the required Biodiversity Net Gain Assessment is approved.</p>
<p>Where a Biodiversity Offsetting Scheme is not required to be</p>	<p>It is necessary for the Councils to notify National</p>	<p>The provision of a Biodiversity Net Gain Assessment has been</p>	<p>It is fair and reasonable for the Councils to confirm to National</p>

Obligation	Necessary	Directly related to development	Fair and reasonable
<p>produced, no later than the date falling 25 Business Days after the date on which it received a submission from National Grid in accordance with paragraph 2.1, the relevant Councils shall notify National Grid whether or not it approves the Biodiversity Net Gain Assessment. (Schedule 2 paragraph 2.4)</p>	<p>Grid as to whether or not the Biodiversity Net Gain Assessment is approved</p>	<p>agreed with the Council as being directly related to the development.</p>	<p>Grid whether the required Biodiversity Net Gain Assessment.</p>
<p>The Biodiversity Offsetting Scheme must be implemented by National Grid, as approved, unless otherwise agreed in writing with the Councils, on:</p> <ol style="list-style-type: none"> 1. the Order Land; or 2. land within National Grid's control, or 3. any other land by agreement with the relevant Council or its partners <p>(Schedule 2 paragraph 2.5)</p>	<p>It is necessary that the Biodiversity Offsetting Scheme, where required, is implemented</p>	<p>It has been agreed with the local planning authorities to submit a Biodiversity Offsetting Scheme as part of the Biodiversity Net Gain Assessment. Submission of the Biodiversity Net Gain Assessment is therefore directly related to the development.</p>	<p>It is fair and reasonable for the local planning authorities to require National Grid to submit a Biodiversity Offsetting Scheme, and if required, to implement that Scheme.</p>
<p>Upon satisfactory completion of the Biodiversity Offsetting Scheme, as agreed with the BNG Monitoring Body, National Grid will submit the Completion Report to the Councils. (Schedule 2 paragraph 2.6)</p>	<p>It is necessary that the submission of a Completion Report is submitted to the BNG Monitoring Body to confirm delivery of the Biodiversity Offsetting Scheme, where required, to be implemented</p>	<p>The submission of a Biodiversity Offsetting Scheme is required to be included in the submission of the Biodiversity Net Gain Assessment and is directly related to the development.</p>	<p>It is fair and reasonable for the local planning authorities to require National Grid to submit a Completion Report related to the delivery of the Biodiversity Offsetting Scheme.</p>

Obligation	Necessary	Directly related to development	Fair and reasonable
National Grid will be responsible for ensuring the biodiversity enhancements are delivered pursuant to the Biodiversity Offsetting Scheme for a period of not less than thirty years from the date of delivery of the relevant biodiversity enhancement provided. (Schedule 2 paragraph 2.7)	It is necessary that any BNG identified is delivered	Any BNG delivered will be related to the development	It is fair and reasonable for National Grid to be responsible for the delivery of any BNG proposed that is to be delivered.
National Grid will submit a BNG Habitat Monitoring Report to the relevant BNG Monitoring Body on the anniversaries of 1, 3, 5, 10, 20 and 30 years unless otherwise agreed with the BNG Monitoring Body from the date of delivery of the biodiversity enhancement (Schedule 2 paragraph 2.8)	The submission of a Habitat Monitoring Report is submitted to the BNG Monitoring Body for the purpose of monitoring any BNG enhancements to be delivered during the 30-year period of maintenance.	The Habitat Monitoring Report will report on the biodiversity enhancements delivered as a requirement of the Project and is therefore directly related to the development.	It is fair and reasonable to monitor the delivery of any biodiversity enhancements delivered at regular intervals during the agreed maintenance period.
Upon submission of the BNG Habitat Monitoring Report National Grid will pay the BNG Monitoring Fee to the relevant BNG Monitoring Body. (Schedule 2 paragraph 2.9)	It is considered necessary for a BNG Monitoring Fee to be paid to the Council to cover the cost of the BNG Monitoring Body	The BNG Monitoring Fee is considered directly related to the development	It is fair and reasonable to cover the Council's costs for monitoring the biodiversity enhancements delivered.
Service Level Agreement (SLA)			
The Parties hereby agree that discussions and engagement relating to the discharge of Requirements and Other Consents shall continue between National Grid and the	It is considered necessary to include an obligation requiring continued engagement with the Councils to ensure that	The engagement required to discharge DCO requirements and other consents required by the DCO Articles is directly	It is fair and reasonable to include this obligation to ensure that the process for discharge of requirements and other consents required by the DCO

Obligation	Necessary	Directly related to development	Fair and reasonable
<p>relevant Council(s) during the Pre-Decision Period and in particular that monthly meetings between the Parties shall continue to take place, either in person or by telephone or other virtual means (such as Microsoft Teams), as appropriate, in accordance with the provisions of this Schedule.</p> <p>(Schedule 4 paragraph 3.1)</p>	<p>DCO requirements and other consents required by the DCO Articles can be discharged efficiently and proactively.</p>	<p>related to the development as required by the DCO.</p>	<p>Articles is agreeable to both parties and ensures efficiently delivery of the development in accordance with available resources of the Councils.</p>
<p>The Parties hereby agree that National Grid may provide Draft Submissions to the relevant Council(s) during the Pre-Decision Period.</p> <p>(Schedule 4 paragraph 3.2)</p>	<p>This is necessary for efficient discharge of requirements and other consents required by the DCO Articles.</p>	<p>The engagement required to discharge DCO requirements and other consents required by the DCO Articles is directly related to the development.</p>	<p>This is fair and reasonable to ensure that DCO requirements and other consents required by the DCO Articles are efficiently discharged.</p>
<p>Upon receipt of a Draft Submission from National Grid, the relevant Council(s) shall:</p> <ol style="list-style-type: none"> 1. review the information provided within the Draft Submission and advise National Grid whether further information or clarification would be required in order to determine the relevant Requirement or Other Consent, were a Final Submission to be made on the same terms; 	<p>This is necessary for efficient discharge of DCO requirements and other consents required pursuant to the DCO Articles.</p>	<p>The process set out in this obligation is required to discharge DCO requirements and other consents required pursuant to the DCO Articles is directly related to the development.</p>	<p>This is fair and reasonable to ensure that DCO requirements and other consents required pursuant to the DCO Articles are efficiently discharged.</p>

Obligation	Necessary	Directly related to development	Fair and reasonable
<p>2. undertake such consultation with internal and external consultees as it would normally have been undertaken had the Draft Submission been a Final Submission; and</p> <p>3. issue a letter in writing to National Grid advising whether or not the Draft Submission has been Discharged in Principle and if the relevant Council(s) advise that the Draft Submission has not been Discharged in Principle to provide reasons for this opinion</p> <p>(Schedule 4 paragraph 3.3)</p>			
<p>Upon receipt of a letter from the relevant Council(s) pursuant to paragraph 3.3.3 above in respect of any Draft Submission, National Grid shall consider the advice received and, should it consider it beneficial to do so, National Grid may prepare and submit a further Draft Submission which the relevant Council(s) shall further consider in accordance with its obligations under paragraph 3.3 above.</p> <p>(Schedule 4 paragraph 3.4)</p>	<p>This is necessary for efficient discharge of DCO requirements and other consents required by the DCO Articles.</p>	<p>The process set out in this obligation is required to discharge DCO requirements and other consents required by the DCO Articles is directly related to the development.</p>	<p>This is fair and reasonable to ensure that DCO requirements and other consents required by the DCO Articles are efficiently discharged.</p>

Obligation	Necessary	Directly related to development	Fair and reasonable
<p>National Grid shall reimburse each Council in respect of its Reasonable Costs:</p> <ol style="list-style-type: none"> 1. following receipt of an invoice together with appropriate evidence of the Reasonable Costs incurred by that Council; and 2. provided always that each Council shall firstly submit a draft of any invoice to National Grid for consideration and approval in accordance with paragraph 4.2 below <p>(Schedule 4 paragraph 4.1)</p>	<p>This is necessary for efficient discharge of DCO requirements and other consents required by the DCO Articles.</p>	<p>This is directly related to the discharge of DCO requirements and other consents required by the DCO Articles which are directly related to the development.</p>	<p>This is fair and reasonable to ensure that DCO requirements and other consents required by the DCO Articles are efficiently discharged.</p>

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