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Yorkshire Green Energy Enablement (GREEN) Project

Volume 8

Document 8.30.3 Proposed Protective Provisions to benefit National Gas Transmission

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Version History

Document	Version	Status	Description / Changes
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28/07/2023	A	Final	First Issue
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1. About this document

1.1 Introduction

- 1.1.1 As Action Point 17 arising from Compulsory Acquisition Hearing 2, The Examining Authority (ExA) requested that National Grid Electricity Transmission (National Grid) (the Applicant) provide precise drafting differences between its proposed protective provision drafting and the preferred wording of relevant statutory undertakers.
- 1.1.2 The Applicant had included standard protective provisions for the benefit of gas undertakers including National Gas Transmission (NGT) in its **draft DCO (Document 3.1(D)) [REP5-004]**, but NGT have requested that their own bespoke provisions are to be used. National Grid have now included bespoke protective provisions for the benefit of NGT at Part 7 of Schedule 15 to the **draft DCO (Document 3.1(E))** submitted at Deadline 6. To the extent that points of difference remain between the parties at Deadline 6, this has been set out in Table 2.1.
- 1.1.3 Table 2.1 sets out the following columns:
- Column 1 establishes the relevant paragraph number and title;
 - Column 2 shows an extract of the clean protective provisions which have been included on the face of the **draft DCO (Document 3.1(E))** at Deadline 6 and reflect National Grid's position;
 - Column 3 sets out an explanation of the justification for National Grid's approach;
 - Column 4 shows the change in drafting desired by NGT in red track changes in the instances required; and
 - Column 5 sets out the NGT justification for their proposed updated drafting.

1.2 National Grid overview of position

- 1.2.1 As a promoter of a nationally significant infrastructure project (NSIP), National Grid appreciates its obligation to ensure that statutory undertakers are protected through the provision of protective provisions appropriate to each statutory undertaker's undertaking. However, as a statutory undertaker in their own right, with a regulated obligation to act in the best interests of the electricity consumer, National Grid needs to ensure that the provisions entered into within Schedule 15 of the **draft DCO (Document 3.1(E))** are fully justifiable, will not unduly inhibit delivery of this critical infrastructure and do not apply an unreasonable cost burden which will be ultimately borne by the consumer.
- 1.2.2 National Grid has, therefore, sought to take a pragmatic approach which sufficiently protects each respective statutory undertaker from serious detriment, whilst ensuring the Project is delivered in the public best interest. This is the basis upon which the more specific drafting justifications set out below are justified.

1.3 National Gas Transmission (“NGT”) overview of position

- 1.3.1 As custodian of the national gas transmission network, NGT has an obligation to ensure the safe and efficient operation of its network. As a statutory undertaker with a regulated obligation to act in the best interests of the gas consumer, NGT needs to ensure the provisions entered into within Schedule 15 of the draft DCO are fully justifiable, will not unduly inhibit NGT from operating and maintaining its critical infrastructure and do not apply an unreasonable cost burden which will ultimately be borne by the consumer.
- 1.3.2 NGT has, therefore, sought to take the well-established and industry recognised approach which sufficiently protects NGT’s apparatus from serious detriment, whilst ensuring the Project is delivered. This is the basis upon which the more specific drafting justifications set out below are justified.

2. Proposed Protective Provisions to benefit National Gas Transmission

Table 2.1 – Summary of proposed changes to the Protective Provisions in favour of National Gas Transmission

Paragraph number	Clean extract from Part 7 of Schedule 15 to the draft DCO (Document 3.1(E)) at Deadline 6	National Grid's Justification for drafting of provision	Statutory Undertaker proposed changes shown in tracks	Statutory Undertaker's justification for proposed change
1. Application	<p>(1) For the protection of National Gas Transmission PLC (“NGT”) as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and NGT.</p> <p>(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and NGT, where the benefit of this Order is transferred or granted to another person under article 7 (Consent to transfer benefit of the Order) –</p> <p>(a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between NGT and the transferee or grantee (as the case may be); and</p>	Provision is agreed.	No proposed changes.	Provision is agreed.

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	<p>(b) written notice of the transfer or grant must be given to NGT on or before the date of that transfer or grant.</p> <p>(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to NGT (but without prejudice to 11(3)b).</p>			
2. Interpretation	<p>In this Part of this Schedule—</p> <p>“1991 Act” means the New Roads and Street Works Act 1991;</p> <p>“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than:</p> <p>(i) “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc.;</p> <p>“acceptable insurance” means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £25,000,000.00 (twenty five million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be</p>	<p><u>Insurance:</u></p> <p>National Grid can only commit to insurance limits and indemnities which are proportionate to the interferences with the proposed development and potential risks to third party apparatus resulting from those interferences. National Grid has a duty to be economic and efficient because costs will ultimately be borne by the electricity consumer.</p> <p>The works that are being undertaken on or near NGT buried apparatus are all non-intrusive works. This is only at</p>	<p>...</p> <p>“acceptable insurance” means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £2550,000,000.00 (twenty five fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained (a) during the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified</p>	<p><u>Insurance:</u></p> <p>NGT insists that where any application for development consent presents a potential interaction with NGT apparatus, the promotor of the scheme maintains an insurance policy of £50million pounds. This application is no different. NGT acknowledges the Applicant’s position that the risk to NGT’s apparatus is low; but as the operator of high pressure, major accident hazard pipelines (“MAHP”) and a gas compound located within close proximity to the</p>

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	<p>maintained (a) during the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an “acceptable credit provider”, such insurance shall include (without limitation):</p> <p>(a) a waiver of subrogation and an indemnity to principal clause in favour of NGT</p> <p>(b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;</p> <p>“acceptable security” means either:</p>	<p>three sites along the whole route of the project.</p> <p>Where National Grid are intending to construct temporary construction access roads to enable these works that will oversail/cross NGT apparatus then suitable due diligence in accordance with NGT specifications in regard to safe systems of work / codes of practice when work near high pressure gas mains will be adhered to at all times to ensure that no detrimental effects occur to NGT apparatus during the course of the Project.</p> <p>The Project acknowledges that, although the risk is considered low, an acceptable and justifiable limit of insurance should be secured and set this sum at £25million.</p> <p>In the absence of any Project specific justification for why this sum should be elevated,</p>	<p>works and arranged with an insurer whose security/credit rating meets the same requirements as an “acceptable credit provider”, such insurance shall include (without limitation):</p> <p>(a) a waiver of subrogation and an indemnity to principal clause in favour of NGT</p> <p>(b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;</p> <p>...</p> <p>“Network Code Claims” means:</p> <p>(a) any claim made against NGT by any person or loss suffered by NGT under the Network Code arising out of any failure by NGT to make</p>	<p>proposed works, the potential consequences of any damage caused to NGT’s apparatus by the proposed development are severe. It is both difficult and impractical for NGT to try and quantify the financial consequences of any such damage, but as a matter of policy NGT requires promoters to maintain insurance cover of £50m, a figure recognised by the gas industry to represent the standard level of cover that ought to be maintained as a minimum. NGT does not accept a reduction in this sum and is not aware of any gas undertakers having done so previously in respect of any made DCO. £50million pounds is a sum that is widely available on the insurance market and in</p>

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	<p>(a) evidence provided to NGT’s reasonable satisfaction that NGET has a tangible net worth of not less than £100,000,000.00 (One Hundred Million Pounds) (or an equivalent financial measure); or</p> <p>(b) bank bond or letter of credit from an acceptable credit provider in favour of NGT to cover the undertaker’s liability to NGT for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to NGT);</p> <p>“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of NGT to enable NGT to fulfil its statutory functions in a manner no less efficient than previously;</p> <p>“apparatus” means any mains, pipes or other apparatus belonging to or maintained by NGT for the purposes of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of NGT for</p>	<p>National Grid cannot agree to an increased sum.</p> <p><u>Network Code Claims</u> The potential interpretation of liability is considered too wide and potentially exposes National Grid to liability which does not result from the Project.</p> <p>National Grid believe that this liability should be directly related to the Project and as a direct result of the authorised works.</p>	<p>gas available for off take at, or a failure to accept gas tendered for delivery from, any entry point to or exit point from the gas national transmission system as a result of the authorised works; or</p> <p>(b) any costs and/or expenses incurred by NGT as a result of it taking action (including purchase or buy back of capacity)- for the purpose of managing constraint or potential constraint on the gas national transmission system which has arisen as a direct result of the authorised works;</p>	<p>NGT’s opinion does not represent an unreasonable requirement on the Promoter.</p> <p><u>Network Code Claims:</u> Any costs and/or expenses that are incurred by NGT as a result of taking action to manage constraints on NGT’s system which arises <i>as a result of the authorised works</i> must be borne by NGET as promoter. This is entirely reasonable and reflects the standard position between DCO promoter and gas undertaker. The inclusion of the word “direct” into the protective provision adds unwarranted ambiguity as to what costs/expenses are covered by the indemnity and presents an unreasonable and unjustifiable burden on NGT to potentially be</p>

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	<p>the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;</p> <p>“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;</p> <p>“commence” and “commencement” in this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;</p> <p>“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements,</p>			<p>responsible for bearing costs/expenses which it has not caused.</p>

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	<p>agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;</p> <p>“functions” includes powers and duties;</p> <p>“ground mitigation scheme” means a scheme approved by NGT (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;</p> <p>“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for NGT's approval a ground mitigation scheme;</p>			

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	<p>“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;</p> <p>“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;</p> <p>“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of NGT: construct, use, repair, alter, inspect, renew or remove the apparatus;</p> <p>“NGT” means National Gas Transmission PLC (Company Number 02006000) whose registered office is at National Grid House Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;</p>			

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	<p>“Network Code” means the network code prepared by NGT pursuant to Standard Special Condition A11(3) of its Gas Transporter’s Licence, which incorporates the Uniform Network Code, as defined in Standard Special Condition A11(6) of NGT’s Gas Transporter’s Licence, as both documents are amended from time to time;</p> <p>“Network Code Claims” means:</p> <p>(a) any claim made against NGT by any person or loss suffered by NGT under the Network Code arising out of any failure by NGT to make gas available for off take at, or a failure to accept gas tendered for delivery from, any entry point to or exit point from the gas national transmission system as a result of the authorised works; or</p> <p>(b) any costs and/or expenses incurred by NGT as a result of it taking action (including purchase or buy back of capacity) for the purpose of managing constraint or potential constraint on the gas national transmission system which has arisen as a direct result of the authorised works;</p>			

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	<p>“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the specified works to be executed;</p> <p>“parent company” means a parent company of the undertaker acceptable to and which shall have been approved by NGT acting reasonably;</p> <p>“specified works” means any of the authorised works which:</p> <p>(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or</p> <p>(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or</p> <p>(c) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (NGT's policies for</p>			

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	<p>safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22) to the extent that such activities may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise.</p> <p>“undertaker” means the undertaker as defined in article 2(1) of this Order;</p>			
3. On Street Apparatus	<p>3. Except for paragraphs 4 (Apparatus of NGT in stopped up streets), 9 (Retained apparatus: protection), 10 (Expenses) and 11 (Indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of NGT, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and NGT are regulated by the provisions of Part 3 of the 1991 Act.</p>	Provision is agreed.	No proposed changes.	Provision is agreed.

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4. Apparatus of NGT in stopped up streets	<p>4.—(1) Where any street is permanently stopped up under any article of this Order, if NGT has any apparatus in the street or accessed via that street NGT has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to NGT, or procure the granting to NGT of, legal easements reasonably satisfactory to NGT in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or NGT to require the removal of that apparatus or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works.</p> <p>(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 14 (Temporary stopping up of streets, cycle tracks and public rights of way), NGT is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as are reasonably</p>	Provision is agreed.	No proposed changes.	Provision is agreed.

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	necessary to carry out at the time of the temporary stopping up to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.			
5. Protective works to buildings	5.The undertaker, in the case of the powers conferred by article 20 (<i>Protective work to buildings</i>), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of NGT.	Provision is agreed.	No proposed changes.	Provision is agreed.
6. Acquisition of land	6. (1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or ((b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of NGT otherwise than by agreement. (2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the specified works (or in such other	Provision is agreed.	No proposed changes.	Provision is agreed.

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	<p>timeframe as may be agreed between NGT and the undertaker) that will cause any conflict with or breach the terms of any easement or other legal or land interest of NGT or affect the provisions of any enactment or agreement regulating the relations between NGT and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as NGT reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between NGT and the undertaker acting reasonably and which must be no less favourable on the whole to NGT unless otherwise agreed by NGT, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.</p> <p>(3) Save where otherwise agreed in writing between NGT and the undertaker the undertaker and NGT agree that where there is any</p>			

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	<p>inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by NGT and/or other enactments relied upon by NGT as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.</p> <p>(4) Any agreement or consent granted by NGT under paragraph 9 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under subparagraph (1).</p>			
7. Removal of apparatus	7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of NGT to maintain that	Provision is agreed.	No proposed changes.	Provision is agreed.

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	<p>apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of NGT in accordance with sub-paragraph (2) to (5).</p> <p>(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to NGT advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order NGT reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to NGT to its satisfaction (taking into account paragraph 8(1) below) the necessary facilities and rights</p> <p>(a) for the construction of alternative apparatus in other land</p>			

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	<p>of or land secured by the undertaker; and</p> <p>(b) subsequently for the maintenance of that apparatus.</p> <p>(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in subparagraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, NGT may in its sole discretion, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for NGT to use its compulsory purchase powers to this end unless it elects to so do.</p> <p>(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this</p>			

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	<p>Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between NGT and the undertaker acting reasonably.</p> <p>(5) NGT must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to NGT of any such facilities and rights as are referred to in subparagraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.</p> <p>(6) The provisions of this paragraph 7 only apply to the extent that the apparatus to be removed by the undertaker forms part of NGT's undertaking and has not already been abandoned or decommissioned by NGT and any existing rights in respect of the abandoned or</p>			

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	decommissioned apparatus have been surrendered.			
8. Facilities and rights for alternative apparatus	<p>(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for NGT facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker acting reasonably and NGT and must be no less favourable on the whole to NGT than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by NGT.</p> <p>(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to NGT than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and</p>	Provision is agreed.	No proposed changes.	Provision is agreed.

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	<p>conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 15 (Arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to NGT as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.</p>			
9. Retained apparatus: protection	<p>9.—(1) Not less than 28 days before the commencement of any specified works the undertaker must submit to NGT a plan and, if reasonably required by NGT, a ground monitoring scheme in respect of those works.</p> <p>(2) In relation to specified works the plan to be submitted to NGT under sub-paragraph (1) must include a method statement and describe—</p> <p>(a) the exact position of the works;</p> <p>(b) the level at which these are proposed to be constructed or renewed;</p>	<p>National Grid is requesting 28-days' notice in relation to specified works on or near National Gas Transmission infrastructure.</p> <p>This is sufficient notice due there being a singular crossing of National Gas Transmission's pipeline. National Grid will not break the surface of the land and are not carrying out any works to the apparatus itself.</p> <p>Due to the tight programme National Grid need to secure</p>	<p>9.—(1) Not less than 2856 days before the commencement of any specified works the undertaker must submit to NGT a plan and, if reasonably required by NGT, a ground monitoring scheme in respect of those works.</p> <p>...</p> <p>(4) Any approval of NGT required under sub-paragraph (3)—</p> <p>(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (6); and,</p>	<p>NGT operates MAHP. NGT insists upon a minimum 56-day review period to ensure NGT personnel are afforded adequate time to review the information provided and assess the health and safety implications of the proposed development on NGT's apparatus. As part of that process, NGT may need to undertake further assessments before reaching a conclusion on whether the proposed works can be approved without</p>

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	<p>(c) the manner of their construction or renewal including details of excavation, positioning of plant etc;</p> <p>(d) the position of all apparatus;</p> <p>(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and</p> <p>(f) any intended maintenance regimes.</p> <p>(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until NGT has given written approval of the plan so submitted.</p> <p>(4) Any approval of NGT required under sub-paragraph (3)—</p> <p>(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (6);</p> <p>(b) must not be unreasonably withheld; and</p> <p>(c) will be deemed to have been given if no response is provided within 28 days of the submission of a plan by the undertaker under sub-paragraph (1).</p>	<p>appropriate timescales for plan approvals down to 28 days. However, it not intended to be from first engagement and that National Grid intend to work collaboratively providing as much notice of an intended submission to ensure when plans are sent in for approval that these can be approved within the 28-day window.</p> <p>As with other approvals processes within the draft DCO, deemed consent has been provided for to ensure that there are no onerous delays associated with the approvals process. NGT do have the ability to request modifications within 21 days of receipt of an application which is considered a reasonable period to review the information.</p>	<p>(b) must not be unreasonably withheld; and (b)(c) will be deemed to have been given if no response is provided within 28 days of the submission of a plan by the undertaker under sub-paragraph (1).</p> <p>(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, NGT may require, within 21 days of submission of a plan by the undertaker under sub-paragraph (1), such modifications to be made to the plans as is may be reasonable necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.</p> <p>...</p> <p>(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 2856 days before</p>	<p>further modification, and anything shorter than 56-days would not provide a sufficient timeframe within which to do so. Given the health and safety implications of any damage to NGT's MAHP and NGT's statutory obligations to ensure the gas transmission network is operated and maintained safely, NGT cannot be rushed into reaching decisions simply because a developer wishes to expedite their development. All DCOs made with protective provisions in favour of NGT (or its predecessor National Grid Gas plc) include the timeframe of 56-days.</p> <p>Any suggestion by NGET that deemed approval should be included is wholly unacceptable and as a matter of principle</p>

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	<p>(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, NGT may require, within 21 days of submission of a plan by the undertaker under sub-paragraph (1), such modifications to be made to the plans as is reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.</p> <p>(6) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (5), as approved or as amended from time to time by agreement between the undertaker and NGT and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by NGT for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and NGT will be entitled to watch and inspect the execution of those works.</p>		<p>commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.</p>	<p>simply cannot be accepted by NGT. Regardless of the purported level of interaction between the proposed development and NGT's apparatus, to have a deemed approval in respect of MAHP presents and unnecessary and unreasonable health and safety risk. In addition, the Applicant seeking to reduce insurance cover and cap indemnities makes it even more important that deemed approval is not given.</p>

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	<p>(7) Where NGT requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to NGTs' satisfaction prior to the commencement of any specified works for which protective works are required and NGT must give notice of its requirement for such works within 21 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).</p> <p>(8) If NGT in accordance with subparagraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).</p> <p>(9) Nothing in this paragraph precludes the undertaker from</p>			

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	<p>submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.</p> <p>(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to NGT notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub paragraph (11) at all times;</p> <p>(11) At all times when carrying out any specified works NGT must comply with NGT's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties</p>			

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	<p>T/SP/SSW22” and HSE’s “HS(~G)47 Avoiding Danger from underground services”.</p> <p>(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that NGT retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 10.</p>			
10. Expenses	10.(1) Save where otherwise agreed in writing between NGT and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to NGT within 30 days of receipt of an itemised VAT invoice or claim from NGT all charges, costs and expenses reasonably and properly incurred by NGT in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which	Provision is agreed.	No proposed changes.	Provision is agreed.

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	<p>is required in consequence of the execution of any authorised works including without limitation—</p> <p>(a) any costs reasonably incurred by or compensation properly paid by NGT in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by NGT as a consequence of NGT;</p> <p>(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 7(3); or</p> <p>(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting NGT;</p> <p>(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;</p> <p>(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;</p> <p>(d) the approval of plans;</p>			

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	<p>(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;</p> <p>(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.</p> <p>(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.</p> <p>(3) If in accordance with the provisions of this Part of this Schedule—</p> <p>(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type,</p>			

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	<p>of smaller capacity or of smaller dimensions; or</p> <p>(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,</p> <p>and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 15 (Arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to NGT by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is</p>			

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	<p>not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.</p> <p>(4) For the purposes of sub-paragraph (3)—</p> <p>(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and</p> <p>(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.</p> <p>(5) Any amount which apart from this sub-paragraph would be payable to NGT in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on NGT any financial benefit</p>			

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	by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.			
11. Indemnity	11. (1) Subject to sub-paragraphs (2) and (3), if by reason or in direct consequence of the construction of any works authorised by or in direct consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such authorised works, including works carried out by the undertaker under this Part of this Schedule or any subsidence resulting directly from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of NGT, or there is any loss resulting directly from interruption	<p>National Grid require a proportionate and reasonable indemnity provision in line with the nature of the works and level of risk being undertaken on or near National Gas Transmission infrastructure.</p> <p>National Grid cannot agree to an uncapped liability provision without clear justification in the facts of the interfaces with the apparatus in question. Justification has been sought from NGT by National Grid but no Project specific justification has been provided to date. National Grid has a duty to be economically efficient because costs will ultimately be borne by the electricity consumer.</p>	11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in direct consequence of the construction of any works authorised by or in direct consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such authorised works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting directly from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for	<p>Please refer to NGT's response to Action 18 from CAH2: (<i>Provide reasoning as to why an unlimited indemnity is being sought, with reasoning including the impact on assets</i>) for NGT's justification.</p> <p>NGT has a duty to be economic and efficient because costs will ultimately be borne by the gas consumer if National Grid's position is adopted and capped indemnity insufficient.</p>

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	<p>in any service provided, or in the supply of any goods or energy, by NGT, or NGT becomes liable to pay any amount to any third party, the undertaker will—</p> <p>(a) bear and pay on demand accompanied by an invoice or claim from NGT the cost reasonably and properly incurred by NGT in making good such damage or restoring the supply; and</p> <p>(b) indemnify NGT for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from NGT, by reason or in consequence of any such damage or interruption or NGT becoming liable to any third party and including Network Code Claims other than arising from any default of NGT.</p> <p>For the avoidance of doubt, these indemnities shall not apply to penalties; or any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working) arising from any such</p>	<p>National Grid notes that there are examples of DCOs where no indemnity has been provided for gas undertakers. For example, the Thurrock Flexible Generation Plant Development Consent Order 2022 – Part 5 Protection of National Grid as for the protection of National Grid as electricity and gas undertaker. However, the indemnity provisions for the draft DCO on this Project need to reflect the interfaces with NGT apparatus on this Project and not compare the drafting with precedents from Orders with different works.</p>	<p>the purposes of the authorised works) or property of NGT, or there is any loss resulting directly from interruption in any service provided, or in the supply of any goods or energy, by NGT, or NGT becomes liable to pay any amount to any third party, the undertaker will—</p> <p>(a) bear and pay on demand accompanied by an invoice or claim from NGT the cost reasonably and properly incurred by NGT in making good such damage or restoring the supply; and</p> <p>(b) indemnify NGT for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from NGT, by reason or in consequence of any such damage or interruption or NGT becoming liable to any third party and including Network Code Claims other than arising from any default of NGT.</p> <p>For the avoidance of doubt, these indemnities shall not apply</p>	

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	<p>damage or interruption, which is not reasonably foreseeable.</p> <p>(2) The fact that any act or thing may have been done by NGT on behalf of the undertaker or in accordance with a plan approved by NGT or in accordance with any requirement of NGT or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless NGT fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.</p> <p>(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of-</p> <p>(a) any damage or interruption to the extent that it is attributable to the neglect or default of NGT, its officers, servants, contractors or agents;</p> <p>(b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by NGT as an assignee, transferee or</p>		<p>to penalties; or any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working) arising from any such damage or interruption, which is not reasonably foreseeable.</p> <p>...</p> <p>(9) any indemnity under this part of Schedule 15 shall be limited to a maximum aggregate liability of the Undertaker to NGT for all claims limited to a sum of £30,000,000 (thirty million pounds sterling).</p>	

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	<p>lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 7 (Consent to transfer benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 11; and/or</p> <p>(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable;</p> <p>(4) NGT must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the</p>			

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	<p>undertaker and considering their representations.</p> <p>(5) NGT must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.</p> <p>(6) NGT must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within NGT's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of NGT's control and if reasonably requested to do so by the undertaker NGT must provide an explanation of how the claim has been minimised, where relevant.</p> <p>(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by NGT</p>			

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	<p>or in respect of which NGT has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of NGT's apparatus until the following conditions are satisfied:</p> <p>(a) unless and until NGT is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and NGT has confirmed the same to the undertaker in writing; and</p> <p>(b) unless and until NGT is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to NGT that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of</p>			

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	<p>the authorised works) and NGT has confirmed the same in writing to the undertaker.</p> <p>(8) In the event that the undertaker fails to comply with 11(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent NGT from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.</p> <p>(9) any indemnity under this part of Schedule 15 shall be limited to a maximum aggregate liability of the Undertaker to NGT for all claims limited to a sum of £30,000,000 (thirty million pounds sterling).</p>			
12. Enactments and agreements	Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between NGT and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and NGT in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.	Provision is agreed.	No proposed changes.	Provision is agreed.

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13. Co-operation	<p>13.(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or NGT requires the removal of apparatus under paragraph 7(2) or NGT makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of NGT's undertaking and NGT shall use its best endeavours to co-operate with the undertaker for that purpose.</p> <p>(2) For the avoidance of doubt whenever NGT's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.</p>	Provision is agreed.	No proposed changes.	Provision is agreed.
14. Access	14. Subject to paragraph 4, if in consequence of the agreement reached in accordance with paragraph 6(1) or the powers	Provision is agreed.	No proposed changes.	Provision is agreed.

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	granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable NGT to maintain or use the apparatus no less effectively than was possible before such obstruction.			
15. Arbitration	15. Any difference or dispute arising between the undertaker and NGT under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and NGT, be determined by arbitration in accordance with article 53 (Arbitration).	National Grid require a consistent dispute resolution mechanism across all provisions within the DCO. If there is any potential for dispute, a means of resolution needs to be set out and this should be done under the DCO's arbitration provision not a bespoke one for this statutory undertaker.	15. Save for differences or disputes arising under paragraph 7(2), 7(4) 8(1) and 9 -any difference or dispute arising between the undertaker and NGT under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and NGT, be determined by arbitration in accordance with article 53 (Arbitration).	The clauses excluded relate to absolute requirements on National Grid. There should be no ambiguity about the need to comply with those requirements and there should be no process by which an arbitrator can determine an outcome which contravenes the sole discretion of National Gas Transmission as the owner of the apparatus in question.
16. Notices	16. Notwithstanding article 49 (Service of Notices), any plans	Provision is agreed.	No proposed changes.	Provision is agreed.

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	submitted to NGT by the undertaker pursuant to paragraph 9 must be submitted to https://lsbud.co.uk/ or such other address as NGT may from time to time appoint instead for that purpose and notify to the undertaker in writing.			

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