



Application by National Grid Electricity Transmission (NGET) Plc for the Yorkshire Green Energy Enablement (GREEN) Project
The Examining Authority's commentary and questions on the draft Development Consent Order (DC1)
Issued on 16 August 2023

The following table sets out the Examining Authority's (ExA's) commentary and questions in relation to the latest version of the draft Development Consent Order (dDCO) [REP6-025] and Explanatory Memorandum [REP6-027].

This document takes into account the evidence submitted to the Examination to date. Some aspects of the dDCO are under active discussion between the parties. The ExA will consider any further evidence that is submitted before the close of the Examination in making its recommendation to the Secretary of State (SoS).

Column 1 assigns each row a unique reference number. When you are answering a question, please start your answer by quoting the unique reference number.

Column 2 of the table indicates to which Interested Parties (IPs) and other persons each question is directed. Please answer all questions directed to you, providing a substantive response, or indicating that the question is not relevant to you for a reason. This does not prevent an answer being provided to a question by a person to whom it is not directed, should the question be relevant to their interests.

If you are responding to a small number of questions, answers in a letter will suffice. If you are answering a larger number of questions, it will assist the ExA if you use a table based on this one to set out your responses. An editable version of this table in Microsoft Word is available on request from the case team: please contact YorkshireGreen@planninginspectorate.gov.uk and include 'Yorkshire GREEN – DC1' in the subject line of your email.

Responses are due by Deadline 7: Wednesday 6 September 2023.

Parties are reminded that the ExA may close the Examination before the end of the statutory six month period if it is satisfied that all relevant matters have been addressed. **Deadline 8 is the final opportunity for submissions. Any matters (including Protective Provisions) not concluded / agreed and fully documented as such by Deadline 8 will fall to be adjudicated by the ExA through its Recommendation.**



Abbreviations frequently used:

BoR	Book of Reference	LPA	Local Planning Authority
CA	Compulsory Acquisition	NPS	National Policy Statement
dDCO	Draft DCO	NSIP	Nationally Significant Infrastructure Project
EM	Explanatory Memorandum	PA2008	The Planning Act 2008
ES	Environmental Statement	RR	Relevant Representation
ExA	Examining Authority	SI	Statutory Instrument
ISH	Issue Specific Hearing	SoS	Secretary of State
LIR	Local Impact Report	TP	Temporary Possession

The Examination Library

References in these questions set out in square brackets (e.g. [APP-010]) are to documents catalogued in the [Examination Library](#). The Examination Library is updated as the Examination progresses.



Index

1.	General and Cross-Cutting Questions	4
2.	Part 1: Preliminary	4
3.	Part 3: Streets	5
4.	Part 4: Supplemental Powers	6
5.	Part 5: Powers of Acquisition	7
6.	Part 6: Miscellaneous and General	7
7.	Schedule 1: Authorised Development	8
8.	Schedule 3: Requirements	9
9.	Schedule 4: Discharge of Requirements	14
10.	Schedule 15: Protective Provisions	15
	10.0 Overarching matters	15
	10.1 Part 4 – For the Protection of Railway Interests	15
	10.2 Part 6 – For the Protection of National Highways Limited.....	21
	10.3 Part 7 – For the Protection of National Gas Transmission PLC as Gas Undertaker	27
	10.4 Part 8 – For the Protection of Northern Gas Networks Limited’s Apparatus.....	29
11.	Related matters	31

DC1	Question to:	Question:
1. General and Cross-Cutting Questions		
Q1.01	The Applicant	<p>Format of final dDCO and Explanatory Memorandum</p> <p>In addition to the 'clean' and tracked changed version of the dDCO showing changes since the last version, can the Applicant submit a track changed version of the final dDCO which shows a composite of all the changes made to the submission version [APP-066] up to and including Deadline 7.</p> <p>As per the Examination Timetable, the Applicant's final dDCO should be accompanied by a version submitted in Microsoft Word and must have been validated against the Statutory Instrument template.</p> <p>The final dDCO should be accompanied by a final Explanatory Memorandum (EM). In addition to the 'clean' and tracked changed version of the EM showing changes since the last version, can the Applicant submit a version which shows in tracked changes all the amendments that have been made since the submission version [APP-067] up to and including Deadline 7.</p>
Q1.02	The Applicant	<p>Drafting consistency: environmental effects</p> <p>Can the Applicant review all instances of flexibility being limited by the effects identified in the Environmental Statement (ES) (including but not limited to the Article 2 definition of "maintain", Article 5, the description of associated development within Schedule 1 and Requirements 1(3) and 3(2)) and amend to ensure consistency of drafting in relation to new or different environmental effects.</p> <p>The ExA's preferred wording is "<i>do not give rise to any materially new or materially different environmental effects from those identified in the environmental statement</i>".</p>
2. Part 1: Preliminary		
Q2.01	The Applicant	<p>Article 2: Interpretation – "environmental statement"</p> <p>Some of the documents comprising the submitted Environmental Statement (ES) (Documents 5.1 to 5.4.18) have been superseded by updated versions during the Examination. The ExA has some concerns that as currently drafted, it is not sufficiently clear which are the versions of all ES documents to be certified</p>

DC1	Question to:	Question:
		<p>under Article 48. Some made Orders contain a Schedule specifying the ES chapters (including version references) that form the document to be certified.</p> <ul style="list-style-type: none"> a) Can such an approach be taken in this Order? If so, include this as a new Schedule to the final dDCO. b) If not, why not, and what additional drafting could be included in Article 2 to provide certainty about the correct versions of the ES documents to be certified? c) In addition, for precision, amend the definition of “environmental statement” to include the final version references for the ES Errata and Addenda documents, eg “(Document 5.2.19(D))”.
<p>3. Part 3: Streets</p>		
Q3.01	National Highways	<p>Articles 11, 12 and 13: Streets</p> <p>In its earlier submissions [REP4-029], National Highways has stated an objection to Articles 11(1), 11(2) and 11(3) (Street works), Article 12(3) (Application of the 1991 Act) and Articles 13(1), 13(2), 13(4), 13(5) (Power to alter layout etc. of streets), whereas these Articles are not referred to in [REP6-076].</p> <p>Does National Highways maintain an objection in relation to the above Articles?</p>
Q3.02	National Highways and the Applicant	<p>Article 14: Temporary stopping up of streets, cycle tracks and public rights of way</p> <ul style="list-style-type: none"> a) To National Highways: your submissions [REP6-076] that the undertaker would have a power to temporarily stop up the Strategic Road Network (SRN) and National Highways would only have the benefit of its Protective Provisions if there were associated “works” are noted. Can you give practical examples of activities that you consider the undertaker might foreseeably wish to carry out under these powers that are not associated with a specific ‘works’ within Schedule 1 of the dDCO. b) Can the Applicant respond to National Highways’ submissions [REP6-076] in respect of Article 14.
Q3.03	National Highways	<p>Article 16: Access to works</p> <p>In its earlier submissions [REP4-029], National Highways has stated an objection to Articles 16(1) and 16(2) (Access to works), whereas Article 16 is not referred to in [REP6-076].</p> <p>Does National Highways maintain an objection in relation to Article 16?</p>

DC1 4.	Question to:	Question:
Q4.01	The Applicant	<p>Article 19: Discharge of water Can the Applicant respond to National Highways' submissions [REP6-076] in respect of Article 19.</p>
Q4.02	The Applicant	<p>Article 19: Discharge of water The ExA notes the Applicant's submissions (Appendix D and Appendix E, line 7 of [REP6-062] and Table 2.1 of [REP6-058]) in respect of the remaining matter in disagreement with Ainsty Internal Drainage Board (IDB) in relation to Article 19(12).</p> <ul style="list-style-type: none"> a) Can the Applicant provide a detailed response to the submissions of Ainsty IDB at Deadline 6 [REP6-067]. b) Appendix D of [REP6-062] indicates that all of the overhead line crossings would (subject to detailed design) exceed the requested 10.5 metre clearance, with the exception of that relating to back tower number XC459. The penultimate paragraph of Ainsty IDB's [REP6-067] suggests that it may be an acceptable approach to require consent from the IDB only if overhead lines have a clearance of less than 10.5 metres, which on the basis of Appendix D would be in a single instance. Is there any change to the Applicant's position on the basis of this analysis? c) If disagreement on this matter remains at Deadline 7, can the Applicant provide without prejudice wording that is capable of being inserted into Article 19(12) to satisfy the penultimate paragraph of Ainsty IDB's [REP6-067], specifically to provide that no consent under the relevant IDB byelaw is required for any overhead lines which are 10.5 metres or more above ground but that consent is required for any overhead lines with a clearance of less than 10.5 metres. d) What would be the practical implications (in terms of the construction programme and any other aspects, including any potential requirement for arbitration) of such a provision being included within Article 19?
Q4.03	Ainsty Internal Drainage Board	<p>Article 19: Discharge of water The ExA notes the submissions of Ainsty IDB [REP6-067] with regard to Article 19(12) and the justification for requiring consent under the relevant IDB byelaw for overhead line works with a clearance of less than 10.5 metres above ground level when crossing IDB maintained watercourses. This figure is calculated using the 7 metres height for overhead lines exceeding 132,000 volts but not exceeding 275,000 volts as</p>

DC1	Question to:	Question:
		<p>stated in Schedule 2 of the Electricity Safety, Quality and Continuity Regulations 2002 <u>plus</u> the maximum 3.5m height of equipment used by Ainsty IDB.</p> <ul style="list-style-type: none"> a) Can Ainsty IDB respond to the Applicant's latest submissions on this matter, set out at Appendix D and Appendix E, line 7 of [REP6-062] and Table 2.1 of [REP6-058]. b) Appendix D of [REP6-062] indicates that all of the overhead line crossings would exceed 10.5 metres, with the exception of that relating to Pylon XC459. The Applicant notes that these figures should be treated as indicative since they are subject to final detailed design. Is there any change to Ainsty IDB's position in response to this analysis? c) Should wording be inserted into Article 19(12) to provide that no consent under the relevant IDB byelaw is required for any overhead lines which are 10.5 metres or more above ground but that consent is required for any overhead lines with a clearance of less than 10.5 metres, would this remove Ainsty IDB's objections to Article 19? If not, explain why and set out drafting that would address your remaining concerns.
Q4.04	The Applicant	<p>Article 20: Protective work to land, buildings, structures, apparatus or equipment Article 20 is not included in Appendix E of [REP6-062]. Can the Applicant respond to National Highways' submissions [REP6-076] in connection with Article 20.</p>
Q4.05	The Applicant	<p>Article 21: Authority to survey and investigate the land Can the Applicant respond to National Highways' submissions [REP6-076] in connection with Article 21.</p>
5.	Part 5: Powers of Acquisition	
Q5.01	The Applicant	<p>Articles 22, 25, 26, 36, 37, 38 and 39: Powers of Acquisition Articles 22 and 25 are not included in Appendix E of [REP6-062]. Can the Applicant respond to National Highways' submissions [REP6-076] in relation to Articles 22, 25, 26, 36, 37, 38 and 39.</p>
6.	Part 6: Miscellaneous and General	
Q6.01	The Applicant	<p>Article 45: Traffic regulation</p>

DC1	Question to:	Question:
		Can the Applicant respond to National Highways' submissions [REP6-076] with regard to Article 45.
Q6.02	The Applicant	<p>Article 46: Felling or lopping of trees and removal of hedgerows</p> <p>The ExA notes the Applicant's response to Issue Specific Hearing 4 (ISH4) Action Point 23 [REP6-062] and has no further questions.</p>
Q6.03	The Applicant	<p>Article 51: Removal of human remains</p> <p>The ExA notes the Applicant's response to ISH4 Action Point 24 [REP6-062] and has no further questions.</p>
<p>7. Schedule 1: Authorised Development</p>		
Q7.01	The Applicant	<p>Deletion of Work Nos. U4 and U8</p> <p>The ExA notes the deletion of Works No. U4 and U8 from the Schedule 1 description of the authorised development and the consequential renumbering of the other 'U number' works, which reflects the Change Application and discussion at ISH4 and Compulsory Acquisition Hearing 2 (CAH2). We note that the relevant plots have been removed from Schedules 12 and 13 of the dDCO and annotated within the Book of Reference to indicate that CA powers are no longer sought. The ExA has no further questions.</p>
Q7.02	The Applicant	<p>Other associated development</p> <p>National Highways has submitted that Schedule 1 could be amended to exclude works to the SRN from the scope of works constituting other associated development. The ExA notes the Applicant's justification for seeking to address the concerns of National Highways through Protective Provisions rather than amendments to Schedule 1. However, in the absence of Protective Provisions, the ExA needs to consider all drafting options to achieve the required outcomes.</p> <p>Therefore, if Protective Provisions are not agreed with National Highways by Deadline 7, provide without prejudice drafting that is capable of being inserted into the Schedule 1 description of associated development to exclude works affecting the SRN to the satisfaction of National Highways.</p>

DC1 8.	Question to:	Question:
Q8.01	The Applicant	<p>Requirement 1: Interpretation</p> <p>Justify the inclusion of “<i>environmental mitigation works</i>” within the definition of “<i>pre-commencement works</i>” and explain the nature of works that might reasonably be expected to fall within this definition.</p>
Q8.02	The Applicant	<p>Requirement 5: Construction management plans – Construction Traffic Management Plan</p> <p>The ExA notes the Applicant’s response to ISH4 Action Point 8 in relation to an alternative haul road proposal for construction access to Pylon XC520.</p> <ul style="list-style-type: none"> a) Does the alternative haul road proposal fall within the scope of works assessed in the ES? If so, provide references. If not, explain the timescales for, and scope of, any additional assessment work that may be required. b) If a further update to the Construction Traffic Management Plan (CTMP) is planned to cover this matter, which we note would be subject to final land agreement, then it should be submitted at Deadline 7. c) Deadline 8 is the final opportunity for the submission of confirmation that a voluntary agreement with the landowner has been reached (and signed). In the absence of such confirmation, the ExA will not be able to give full weight to the alternative haul route. The ExA notes the Applicant’s in-principle case that the original proposal of routeing via AP8 is acceptable and satisfactory. d) Comment on North Yorkshire Council’s (NYC) [AS-025] suggestion that it may be possible to access Red Hill Lane by crossing Butts Lane via Old Quarry Lane, including confirmation as to whether or not a weight restriction order is in place for this road. e) Respond to NYC’s points relating to the CTMP on pages 4 and 5 of [AS-025].
Q8.03	North Yorkshire Council	<p>Requirement 5: Construction management plans – Construction Traffic Management Plan</p> <p>At Deadline 6 the Applicant has submitted an updated Construction Traffic Management Plan [REP6-041]. In pages 4 and 5 of your response to ISH4 Action Points document [REP6-077] you have referenced a number of matters for consideration in the CTMP including the need for NYC to be consulted on each proposed access and on the routeing for abnormal indivisible loads, and a risk assessment of all overhead crossings within the highway.</p>

ExA's DCO Commentary: 16 August 2023

Responses due by Deadline 7: Wednesday 6 September 2023

DC1	Question to:	Question:
		<ul style="list-style-type: none"> a) Having regard to the wording of the latest version of the CTMP [REP6-041], are you content that all the matters contained in your Deadline 6 comments are adequately reflected in the CTMP? b) If not, and bearing in mind the advanced stage of the Examination, the ExA encourages you to work with the Applicant without delay on this matter, in order to allow the Applicant to make any final updates to the CTMP by Deadline 7. c) If your concerns remain at Deadline 7, then specify what additional detail/ commitments you would wish to see in the CTMP, and why.
Q8.04	The Applicant	<p>Requirement 7: Construction hours</p> <p>Comment on NYC's submissions [AS-025] that "<i>The ABC approach is limited in so far as the lowest noise threshold of 65dB LAeq,T significantly exceeds existing background levels in quiet rural areas as is the case here</i>", with particular reference to the area surrounding the proposed Monk Fryston substation.</p>
Q8.05	North Yorkshire Council	<p>Requirement 7: Construction hours</p> <p>Comment on the Applicant's justification for the current drafting in respect of weekend working within Requirement 7, set out in its response to ISH4 Action Point 14 [REP6-062].</p>
Q8.06	North Yorkshire Council	<p>Requirement 7: Construction hours</p> <p>NYC's objections [AS-025] to Sunday and Bank Holiday working focus on the effects of construction works in connection with the proposed Monk Fryston substation.</p> <ul style="list-style-type: none"> a) With reference to para 1 of NYC's response to ISH4 Action Point 13 [AS-025], can the Council identify on a map or by reference to property addresses the "<i>nearby receptors</i>" at which significant noise impacts are predicted in the Monk Fryston area as a result of Sunday / Bank Holiday working. b) Specifically which Work No. or Nos. within Schedule 1 of the dDCO [REP6-025] does the Council consider to be likely to give rise to significant construction noise effects? c) Would the Council be content with a provision within Requirement 7 that restricts consecutive Saturday and Sunday working on alternate weekends solely in relation to Work No.11 (Monk Fryston Substation)?

DC1	Question to:	Question:
Q8.0.7	The Applicant	<p>Requirement 7: Construction hours</p> <p>The ExA notes the Applicant's justification for the construction working hours set out at ISH4 and in [REP6-062].</p> <ul style="list-style-type: none"> a) In light of the sustained objections of NYC with a particular focus on the proposed Monk Fyston Substation, how does the Applicant respond to the suggestion of a provision within Requirement 7 that restricts consecutive Saturday and Sunday working on alternate weekends (an analogous approach to that taken in R7(2) of The National Grid (Richborough Connection Project) Development Consent Order 2017), solely in relation to Work No.11 (Monk Fyston Substation)? b) Even if the Applicant considers that such a provision is not necessary, provide drafting on a without prejudice basis that could be inserted into Requirement 7, if deemed necessary, to achieve the following alternative outcomes: <ul style="list-style-type: none"> i. restrict consecutive Saturday and Sunday working on alternate weekends in an equivalent manner to that secured by R7(2) of The National Grid (Richborough Connection Project) Development Consent Order 2017 for the whole project; and, ii. restrict consecutive Saturday and Sunday working on alternate weekends in an equivalent manner to that secured by R7(2) of The National Grid (Richborough Connection Project) Development Consent Order 2017 solely in relation to Work No.11 (Monk Fyston Substation).
Q8.0.8	The Applicant North Yorkshire Council	<p>Requirement 7: Construction hours</p> <p>Should disagreement remain on the matter of construction hours at Deadline 7, then the final Statement of Common Ground between the Applicant and NYC should be as specific as possible about the final positions of the respective parties to assist the ExA in making its recommendation.</p>
Q8.0.9	The Applicant	<p>Requirement 8: Landscaping at Overton, Tadcaster and Monk Fyston</p> <p>Give further consideration to the wording of Requirement 8(2)(d) to ensure that it is clear that it covers not just proposed levels, but also the detailed fine-tuning of the landform, as discussed at ISH2 in relation to the Design Approach to Site Specific Infrastructure (DASSI). Note, the ExA is content that this matter would be secured in this Requirement.</p>

DC1	Question to:	Question:
Q8.0.10	North Yorkshire Council	<p>Requirements 8, 9 and 10:</p> <p>Revisions have been made to these three requirements. The latest Statement of Common Ground (SoCG) between NYC and the Applicant states that NYC is to consider the amended wording for Requirements 8, 9 and 10 [REP5-031], ID 5.1.1.</p> <p>The revised maintenance regimes are set out in Requirement 8(2)(c). The five-year replacement of diseased, dead, or removed vegetation is set out in Requirements 8(4) and 10(5). The Applicant confirmed at ISH4 that where hedgerows fall within the permanent land-take that they would be retained by the undertaker and therefore maintained by the undertaker as part of its usual estate maintenance practice during operation. But that the requirements would not, in and of themselves, require any maintenance or management beyond five years. The Applicant has included management up to a 15-year period, for woodland planting on land remaining within the undertaker's control and thus subject to the ordinary maintenance approach beyond the 15 years [REP6-060], page 36 to 37. Planting outside the control of the undertaker would be subject to a five-year maintenance regime and a five-year replacement of dying, diseased or removed vegetation.</p> <ul style="list-style-type: none"> a) Provide any further update on the Council's views on the amended Requirements 8, 9 and 10 from that provided at ISH4. Specifically, are you content with the revised Requirements, 8(2)(c), and 10(5)? b) Set out your continued disagreement if the Council still considers that 30 years maintenance and 30 years for replacement of diseased, dead etc vegetation is required.
Q8.0.11	The Applicant North Yorkshire Council	<p>Requirement 10: Replacement planting</p> <p>The Applicant's response to Action point 26 [REP6-062] does not set out the points Mr Furber made on behalf of the Applicant at ISH4 regarding the replacement planting not being like for like and potentially delivering more in terms of numbers, diversity and quality, and being subject to the relevant planning authority's approval. It was also referred to as a note for submission to explain [REP6-060], page 37. North Yorkshire Council indicated at ISH4, that it was keen to see/ consider this wording. The ExA invited the Applicant to consider where this statement could be secured.</p> <ul style="list-style-type: none"> a) Applicant: As this requested statement is different from the points made in the response to Action point 26 [REP6-062], the ExA repeats its request that the Applicant submits suitable wording together with a proposal as to where this could be secured.

DC1	Question to:	Question:
		<p>b) Both: Given that the Examination is now at an advanced stage, the ExA encourages both parties to discuss and agree this wording without delay in order that an agreed form of words can be submitted at Deadline 7, together with a proposal for how it can be secured.</p>
Q8.0.12	The Applicant North Yorkshire Council	<p>Requirement 18: Design Approach to Site Specific Infrastructure Requirement 18 provides that the approval of details must “<i>have regard to</i>” the DASSI, whereas other, similar requirements in the dDCO generally stipulate that details must be “<i>in accordance with</i>” approved plans, schemes and strategies. The Applicant’s submissions [REP6-060] that the DASSI seeks to inform, rather than prescribe, are noted.</p> <p>a) Does the Applicant object to replacement of the words “<i>having regard to</i>” with “<i>in accordance with</i>” in Requirement 18(2)? If so, why?</p> <p>b) Does North Yorkshire Council wish to comment on this?</p>
Q8.0.13	The Applicant North Yorkshire Council	<p>Requirement 18: Design Approach to Site Specific Infrastructure Differences remain over whether certain design elements in the DASSI should be secured in Requirement 18 [REP6-062], Appendix E, No. 18.</p> <p>a) Applicant: Respond to NYC’s comments in its response to action points from ISH4 [AS-025], action point 30 regarding the fencing and the potential for delay to post-consent approvals of the landscape mitigation strategies. Provide an update on any further discussions on this matter.</p> <p>b) Applicant: Having updated the wording in the DASSI to state that all fencing would be galvanised steel, how could the SoS allow for an alternative type/ colour of fencing to be considered if they felt this flexibility to be necessary?</p> <p>c) Applicant: Provide on a without prejudice basis additional/ amended wording to Requirement 18, to achieve increased flexibility over fencing type and colour. Ensure this is consistent with the DASSI.</p> <p>d) North Yorkshire Council: Further to the Council’s response to the Applicant’s justification for specifying and not consulting on galvanised metal fencing, set out in full [REP5-083], response to ExQ2 7.0.1 and précised in [REP6-062], Appendix E, No. 18, you indicated further discussions would take place with the Applicant. Provide an update on this and confirm if the Council still considers that fencing should be a matter for post-consent approvals via Requirement 18.</p> <p>e) North Yorkshire Council: Does the Council have any further comments to make regarding whether NYC considers that the materials for surfacing roads and footpaths within the substations should be subject to post-consent approvals? The Applicant states its case in [REP6-062], Appendix E, No. 18</p>

DC1	Question to:	Question:
		<p>and the Applicant's drainage expert explained about the permeability of surface materials and the approach to SUDS at ISH4 [REP6-060], page 38.</p> <p>f) North Yorkshire Council: Is the Council content over the explanation regarding relocated buildings, being covered by the term permanent buildings in Requirement 18 [REP6-062], Appendix E, No. 18?</p> <p>g) Applicant: Is there any reason not to add "including relocated buildings" to Requirement 18(1). Suggest (on a without prejudice basis, if you do not agree) precise additional wording to cover this.</p>
Q8.0.14	Mr Carruthers	<p>Requirement 19: Site Specific Mitigation Scheme</p> <p>This Requirement has been added to the dDCO to address construction stage matters at the Travellers' Site between the A1(M) and the A63, which would require a mitigation scheme to be approved by North Yorkshire Council prior to Work No.10 commencing. Additionally, the Applicant has included wording in the updated Code of Construction Practice (CoCP), which can be easily seen in the track changed version and covers liaison with hard-to-reach groups, including the residents of the Travellers' Site, and liaison with the Travellers' representative over the site-specific mitigation plan, prior to its approval [REP6-038], para 2.2.11.</p> <p>Provide any comments you wish to make on behalf of the traveller community on this Requirement and the additions to the CoCP.</p>
<p>9. Schedule 4: Discharge of Requirements</p>		
Q9.0.1	<p>North Yorkshire Council</p> <p>The Applicant</p>	<p>Time period for the discharge of requirements</p> <p>Appendix E of [REP6-062] indicates that NYC has agreed the timescales specified in Schedule 4 for the discharge of consents pursuant to articles of the dDCO but that it was still considering its position in relation to the timescales specified for the discharge of requirements.</p> <p>a) What is the status of agreement between the Applicant and NYC on this matter?</p> <p>b) If not agreed by Deadline 7, can both parties submit final position statements at Deadline 7 to inform the ExA's adjudication of the matter.</p>
Q9.0.2	The Applicant	<p>Interpretation of Schedule 4</p>

DC1	Question to:	Question:
		The addition at Deadline 6 of a definition of the term “application” is noted.
10. Schedule 15: Protective Provisions		
10.0 Overarching matters		
Q10.0.1	The Applicant, Network Rail Infrastructure Limited, National Highways, National Gas Transmission PLC, Northern Gas Networks Limited	<p>Resolution of Protective Provisions yet to be agreed <u>Deadline 8 (Wednesday 13 September 2023) is the final opportunity for submissions.</u> After this deadline, the ExA will close the Examination.</p> <p>Any Protective Provisions that have not been agreed between the parties and fully documented as such by the close of Examination will fall to be adjudicated by the ExA through its Recommendation.</p>
Q10.0.2	The Applicant	<p>Updated Statement of Reasons ExQ1 4.0.2 requested an update to the submitted Statement of Reasons by Deadline 8. In order to allow a final opportunity for IPs to comment on this document, and to bring its submission into line with the deadline for final updated versions of other land rights documents, the ExA requests that the updated Statement of Reasons is submitted by Deadline 7 (Wednesday 6 September 2023).</p>
Q10.0.3	The Applicant	<p>Schedule 15: minor drafting inconsistency Ensure that there is consistency regarding the capitalisation or otherwise for the word “undertaker”/ “Undertaker”, when meaning the undertaker delivering the authorised development and whether there is a difference in meaning between “statutory undertaker”/ “Statutory undertaker”. Currently there are inconsistencies between different Parts of this Schedule 15.</p>
10.1 Part 4 – For the Protection of Railway Interests		
The following questions seek to assist the ExA (and the SoS) to adjudicate positions in the scenario that disagreement on Protective Provisions remains at the close of Examination. If agreement between the parties is reached and agreed Protective		

DC1	Question to:	Question:
<p>Provisions are submitted in full at Deadline 7, then responses to the following questions will not be necessary, with the exception of questions Q11.1.2, Q11.1.3 and Q11.1.4.</p> <p>The ExA notes that discussions have taken place to give more precision over areas of disagreement, moving on from the position as stated in the most recent SoCG [REP5-049], Tables 5.1 and 5.3.</p> <p>References are made to the Applicant's Proposed Protective Provisions to benefit Network Rail Infrastructure Limited (Network Rail) [REP6-063], which helpfully sets out where differences still exist between parties. However, it is noted that the paragraph numbering in that document differs from that in the dDCO [REP6-025] so both are used where applicable. Where responses are made, reference should be to the dDCO paragraph numbers.</p>		
Q10.1.1	Network Rail	<p>S127 and s138 response</p> <p>The ExA asked Network Rail to “<i>provide any comments you may wish to make, with reasoning, on the s127 and s138 cases (as appropriate) that will have been submitted by the Applicant</i>” [PD-011], ExQ2 4.2.3b). You indicated that you would respond at Deadline 6 [REP5-116], response to ExQ2 4.2.3b), but there was no update received at Deadline 6.</p> <ul style="list-style-type: none"> a) If Network Rail's objection still stands at Deadline 7, provide commentary on the Applicant's Application under section 127 and 138 Planning Act 2008 – Network Rail Infrastructure Limited [REP5-086]. b) Confirm your agreement or otherwise to the plots included in the Application under section 127 and 138 Planning Act 2008 – Network Rail Infrastructure Limited [REP5-086]. In particular, plots E6-22 and E6-36 are not included in Network Rail's RR [RR-001], nor in the Written Representation [REP2-081], but Network Rail is shown as the reputed owner in the Book of Reference [REP6-031] and the plots are included in the s127 and s138 Application.
Q10.1.2	The Applicant Network Rail	<p>Framework Agreement</p> <ul style="list-style-type: none"> a) Network Rail: Does the Framework Agreement include the Basic Asset Protection Agreement (BAPA) [REP5-116], or is the BAPA an agreement that can be entered into prior to carrying out any work, but post-consent [REP6-025], para 28(3)? Explain what the two agreements are. b) Network Rail: You indicated that if the Framework Agreement is not agreed that you would submit the points in contention between parties a week prior to the close of the Examination [REP5-116],

DC1	Question to:	Question:
		<p>response to Q4.2.10. If needed, ensure that this is submitted, with reasoning, no later than Deadline 8, Wednesday 13 September. This is the last deadline for submissions.</p> <p>c) The Applicant: If the Framework Agreement is not agreed, also set out the points of contention with reasoning from the Applicant's point of view.</p> <p>d) Both: If any progress in agreeing the Framework Agreement has enabled further agreement on paragraphs in the Protective Provisions, set this out here.</p>
Q10.13	The Applicant Network Rail	<p>Property documents</p> <p>a) Both: Provide an update on the required property documents, which are referred to in Network Rail's Deadline 5 submission where it was indicated that they would be agreed within six weeks from 11 July 2023, ie 22 August 2023 [REP5-116], response to Ex2 Q 4.2.10, well before Deadline 7.</p> <p>b) Applicant: Are the property documents referred to by Network Rail [REP5-116], those which are referred to by the Applicant as the voluntary agreements with all persons with interests in land [REP6-063], pages 8 to 10? If not, what are they?</p> <p>c) Both: Are the easement documents referred to in the latest SoCG [REP5-049], part of the property documents? Is it the easement documents which contain the disagreed "lift and shift" provisions?</p> <p>d) Both: If the property documents are agreed, list what changes/ areas of disagreement would be removed from those set out at present [REP6-063]. Would any areas of disagreement be sustained?</p>
Q10.14	The Applicant Network Rail	<p>Property documents and Framework Agreement</p> <p>Both: Would agreement need to be reached on both the property documents and the Framework Agreements before agreement could be reached on the Protective Provisions?</p>
Q10.15	The Applicant Network Rail	<p>Applicant's Proposed Protective Provisions to benefit Network Rail</p> <p>a) Network Rail: Confirm that in the event that agreement is not reached between yourself and the Applicant, you are in agreement that the form of wording contained in Applicant's Proposed Protective Provisions to benefit Network Rail [REP6-063], with the Network Rail amendments, would be acceptable as opposed to using the Network Rail Protective Provisions which you submitted at Deadline 2, because we note that you said they were out of date [REP2-082].</p>

DC1	Question to:	Question:
		<p>b) Both: A response to the point above regarding the basis for Protective Provisions is crucial to the ExA, in order that it can make a recommendation to the SoS in the event that agreement is not reached between parties. Our understanding is that we could not rely on the Network Rail Deadline 2 submission and could not therefore recommend as described as Network Rail's overview position [REP6-063] para 1.3.3 to 1.3.4. If this is not the case, set out why not and provide detail of any further detailed differences.</p>
Q10.1.6	The Applicant Network Rail	<p>Para 27 (dDCO [REP6-025])/ para 2 [REP6-063]: definition of “asset protection agreement”</p> <p>a) Applicant: Provide any comments/ alternative drafting or confirm the wording for the definition of asset protection agreement, in the event that later use of the term is required under para 39 (additional (e) shown as 14(e) and referred to as 15(e) [REP6-063]).</p> <p>b) Both: Agree wording, even in light of the Applicant's view that this definition would be redundant.</p>
Q10.1.7	The Applicant Network Rail	<p>Para 28 (dDCO [REP6-025])/ para 3 [REP6-063]</p> <p>a) Applicant: Explain why you disagree with the removal of the words “<i>in good faith</i>” in dDCO para 28(2)(a) [REP6-025], (REP6-063], para 3(2)(a), page 8.</p> <p>b) Network Rail: What is the justification for removal of the words “<i>in good faith</i>” dDCO para 28(2)(a) ([REP6-063], para 3(2)(a), page 8)?</p> <p>c) Network Rail: Confirm whether the proposed additions which are shown for insertion as para 28(4), 28(5) and 28(6) in the dDCO ([REP6-063], para 3(4), 3(5) and 3(6), pages 11 to 12) are the same as those which Network Rail includes in its standard Protective Provisions.</p> <p>d) Network Rail: Set out specific evidence to show that the powers sought under each of the articles and powers under various acts listed under the Network Rail proposed dDCO para 28(4)(1) to 28(4)(5) ([REP6-063], para 3(4), page 8 to 11) would compromise or otherwise adversely affect the safe and efficient operation of the railway. How in practice would that be compromised, in the context of and on the facts of this scheme?</p> <p>e) Applicant: Set out details of how the Network Rail Protective Provisions proposed under dDCO para 28(4) ([REP6-063], para 3(4), page 11) would impact on the undertaker's ability to deliver the project in terms of the rights sought in the vicinity of the railways.</p>

DC1	Question to:	Question:
		<p>f) Network Rail: Explain the need for the broad-brush exclusion powers sought under proposed dDCO para 28(4)(6) and 28(4)(7) ([REP6-063], para 3(4)(6) and 3(4)(7), page 11 to 12) which could undermine the purpose of the rights being sought.</p> <p>g) Applicant: Provide comments on the Network Rail proposed additional paragraphs dDCO 28(4)(6) and 28(4)(7) ([REP6-063], para 3(4)(6) and 3(4)(7), page 11 to 12).</p> <p>h) Network Rail: Those DCOs cited as including Network Rail's standard Protective Provisions [REP6-063], para 1.3.4 may have been made on the basis of their own facts and merits but what are the distinguishing facts in this case that justify this treatment?</p>
Q10.1.8	The Applicant Network Rail	<p>Para 29 (dDCO [REP6-025])/ para 4 [REP6-063]</p> <p>a) Both: It would assist the ExA if agreement could be reached between parties on the time by which the engineer must intimate disapproval etc dDCO para 29(2) ([REP6-063], para 4(2), page 14).</p> <p>b) Network Rail: Provide your final consideration (as indicated) whether the wording in dDCO para 29(4)(3) as set out in [REP6-063], para 4(4)(3), page 15 to 16 is acceptable. The ExA understands the consideration of wording to be over that shown as deleted in brackets referring to adjoining parts of specified works.</p> <p>c) Applicant: Comment on the proposed deletion of words from dDCO para 29(4)(3) as set out in [REP6-063], para 4(4)(3), page 15 to 16.</p>
Q10.1.9	The Applicant Network Rail	<p>Para 30 (dDCO [REP6-025])/ para 5 [REP6-063]</p> <p>a) Applicant: Comment on Network Rail's point that describing expenses as 'reasonable' justifies the removal of the description of losses as 'foreseeable' in dDCO para 30(2) ([REP6-063], para 5(2), page 18).</p> <p>b) Both: If agreement can be reached by setting out more detail of limits of financial exposure, as stated by the Applicant, provide that [REP6-063], page 18.</p>
Q10.1.10	The Applicant Network Rail	<p>Para 33 (dDCO [REP6-025])/ para 8 [REP6-063]</p> <p>a) Applicant: Notwithstanding the fact that there is disagreement over the deletions and additions in dDCO para 33(1) ([REP6-063], para 8(1), page 20 to 21) over costs of alterations, if the SoS was</p>

DC1	Question to:	Question:
		<p>mind to include the wording proposed by Network Rail, what is your opinion on the precise wording included and the payment terms of 14 days?</p> <p>b) Applicant: Elsewhere in the dDCO 'undertaker' appears as a single entity. For the Applicant's preferred wording should 'their' read as 'its' in dDCO para 33(1)?</p> <p>c) Both: Confirm that you are content with the flow of meaning if the Network Rail deletions and additions were to be included at dDCO para 33(1) as shown [REP6-063], para 8(1) page 21. If not provide alternative drafting.</p> <p>d) Both: Is one option to revert to the Network Rail standard Protective Provision wording [REP2-081], para 9?</p>
Q10.1.11	The Applicant Network Rail	<p>Para 35 (dDCO [REP6-025])/ para 10 [REP6-063]: Electromagnetic Interference (EMI) testing</p> <p>a) Applicant: Do you agree that testing is required prior to commencement and if so explain where else this is secured. Respond to Network Rail's position as stated with regards to dDCO para 35(6) ([REP6-063], para 10(6), page 25 to 26).</p> <p>b) Applicant: In connection with your view that dDCO para 35(7) is duplication, respond to the point made by Network Rail that dDCO para 35(3) covers design and construction and not operation of the authorised development [REP6-063], para 10(7) page 26 to 27.</p> <p>c) Network Rail: Explain the need for the exclusion powers sought under proposed dDCO para 35(7)(d) ([REP6-063], para 10(7)(d), page 27), responding to the Applicant's position that it duplicates the purpose of the rights being sought under dDCO para 35(3).</p> <p>d) Applicant: Explain why it is proposed that EMI matters fall outside the indemnity, providing reasoning based on the distinguishing facts in this case, rather than reliance on the Richborough Order as a precedent, in response to Network Rail's proposed addition at dDCO para 35(9), and linking this to the wording in dDCO para 43(1) ([REP6-063], para 10(9), page 28).</p> <p>e) Network Rail: Explain more fully the concerns over the wording in dDCO para 43(1) ([REP6-063], para 15(1)) which in your opinion has necessitated the addition of proposed dDCO para 35(9) ([REP6-063], para 10(9), page 27).</p>
Q10.1.12	The Applicant Network Rail	<p>Para 43 (dDCO [REP6-025])/ para 14 [REP6-063]</p> <p>a) Applicant: Is the contention that the additions Network Rail proposes at dDCO para 43(1)(c), 43(1)(d), and 43(1)(e) ([REP6-063], para 14 (1)(c),(d),(e), page 33 to 34) are costs which Network</p>

DC1	Question to:	Question:
		<p>Rail would not have a direct contractual obligation to pay? Set out further explanation of your disagreement to the inclusion of these three sub-sub paras.</p> <p>b) Network Rail: Provide any further justification that you consider necessary for the inclusion of proposed dDCO para 43(1)(c), 43(1)(d), and 43(1)(e) ([REP6-063], para 14 (1)(c),(d),(e), page 33 to 34).</p> <p>c) Applicant: Respond to Network Rail's case regarding the unreasonableness of disclosure at the outset, of all train operator agreements which might be relevant [REP6-063], page 33 to 34.</p> <p>d) Both: Note that the numbering of sub-paras differs between the dDCO and [REP6-063] for para 43(2) onwards.</p> <p>e) Network Rail: The removal of the word "that" prior to "sub-paragraph" does not appear to assist the meaning, dDCO para 43(4), ([REP6-063], para 14(3)(sic), page 35).</p> <p>f) Applicant: Set out the reasoning for your disagreement with Network Rail's deletions to dDCO para 43(4) and 43(5) [REP6-063], para 14(3) and 14(4), page 35 to 36.</p> <p>g) Network Rail: Explain the reasons and justify the proposed deletions to dDCO para 43(4) and 43(5) ([REP6-063], para 14(3)(sic) and 14(4)(sic), page 35 to 36).</p>

10.2 Part 6 – For the Protection of National Highways Limited

The following questions seek to assist the ExA (and the SoS) to adjudicate positions in the scenario that disagreement on Protective Provisions remains at the close of Examination. If agreement between the parties is reached and agreed Protective Provisions are submitted in full at Deadline 7, then responses to the following questions will not be necessary. However points of clarity mentioned in the questions below should be addressed

The ExA notes that progress has been made since the hearings in July (CAH2 and ISH4). However there still seems to be some considerable distance between parties on some matters, which in the ExA's view must arise on works to other overhead line crossings of the SRN. The ExA notes the annotated version of the Applicant's Protective Provisions provided by National Highways, which sets out reasoning for its proposed changes [REP6-076], Appendix 1.

References are made to the Applicant's Proposed Protective Provisions to benefit National Highways [REP6-064], which helpfully sets out where differences still exist between parties. However, it is noted that the paragraph numbering in that document differs from that in the dDCO [REP6-025] so both are used where applicable. Where responses are made, reference should be to the dDCO paragraph numbers.

The ExA notes that discussions are now taking place outside the Examination regarding land rights, which would negate the need for Compulsory Acquisition (CA).

DC1	Question to:	Question:
Q102.1	The Applicant	<p>Para 59 [REP6-076] Review National Highways' point regarding deletion of "which" for grammatical purposes in dDCO para 59.</p>
Q102.2	The Applicant	<p>Para 60 (dDCO [REP6-025]): definition of "highway detailed design information" "Site clearance details" is without a letter in the sub-sub para brackets.</p>
Q102.3	The Applicant National Highways	<p>Para 60 (dDCO [REP6-025]/ para 2 [REP6-064]): definition of "reconductoring detailed design information" It is noted that National Highways proposes inclusion of three more items in dDCO para 60(2) under definition of "reconductoring detailed design information"; namely at (c) road restraints systems, (e) earthworks and (f) landscaping [REP6-064], page 8 and [REP6-076], Appendix 1. These descriptions are covered later under "highway detailed design information", but not for the reconductoring.</p> <ul style="list-style-type: none"> a) Applicant: Your explanation covers the differentiation between the works above and below 5.5m, but does not explain your objection to inclusion of these sub-sub paras [REP6-064], page 3 to 4. Provide such an explanation. b) Applicant: comment on the "as are relevant to the development" point made by National Highways [REP6-064], page 4. c) Both: based on National Highways' comments regarding situations where scaffolding would not interfere with the existing road restraints systems [REP6-064], pages 4 to 5, is there a need for further definition to cover this difference? If so, provide precise wording and indicate where it would be included in the dDCO. d) National Highways: Why is "landscaping" needed?
Q102.4	The Applicant National Highways	<p>Para 61 and 62 (dDCO [REP6-025]/ para 3 and 4 [REP6-064]): General The ExA notes the addition of para 61 regarding highway and maintenance operations contractors under design, build, finance and operate (DBFO) contracts having the benefit of this "Part of Schedule 15".</p>

DC1	Question to:	Question:
		<p>a) Applicant: It is not clear to which Part of Schedule 15 this refers. Is it all of Part 6? This requires clarification in the dDCO.</p> <p>b) Applicant: Would the deletion of the words “when constructed” as proposed by National Highways [REP6-064], para 7(1), page 19 to 20, which is included in dDCO para 65(1) alter the differentiation that you seek with regards works under 5.5m and above 5.5m of the surface of the SRN? If so, suggest precise wording to resolve this matter, agreed with National Highways, to resolve the ambiguity to which it refers. Respond to the point made regarding increased ambiguity [REP6-076], Appendix 1.</p>
Q102.5	The Applicant National Highways	<p>Para 65 (dDCO [REP6-025]/ para 7 [REP6-064]): Prior approvals and security</p> <p>a) Applicant: As above, would the deletion of the words “when constructed” as proposed by National Highways which is included in dDCO para 65 alter the differentiation that you seek with regards works under 5.5m and above 5.5m of the surface of the SRN? If so, suggest precise wording to resolve this matter, agreed with National Highways to resolve the ambiguity to which it refers [REP6-064], page 19 to 20.</p> <p>As there is no difference between parties indicated in the wording of dDCO para 65(1) and para 65(2), other than the point above, the ExA assumes that the parties agree over the two-tier differentiation of works under 5.5m and above 5.5m of the surface of the SRN. The ExA had understood the purpose of this differentiation – which the Applicant has sought in order to effect a streamlined approach, <i>“to ensure that NH is afforded appropriate protections but not at the expense of following burdensome and unnecessary processes for the standard scaffold and reconductoring works”</i> [REP6-064], para 1.2.3 to 1.2.4.</p> <p>b) National Highways: Explain further the need for the broad-brush exclusion powers sought under proposed dDCO para 65(3) ([REP6-064], para 7(3), page 26 to 28) which could undermine the purpose of the rights being sought.</p> <p>c) Applicant: Set out details of how the National Highways additional drafting proposed under dDCO new para 65(3) would hinder progress and fetter rights to the undertaker’s ability to deliver the authorised development in terms of the rights sought in the vicinity of the SRN [REP6-064], para 7(3), page 21 and page 26 to 28.</p> <p>d) Both: Respond to National Highways’ addition of dDCO new para 65(3) ([REP6-064], para 7(3), page 26 to 27) which would remove the right for the undertaker to exercise rights under Articles 14, 19, 20, 21, 22, 25, 25, 35, 36, 38, 39, 45 over the SRN without National Highway’s consent - as</p>

DC1	Question to:	Question:
		<p>questioned under Schedule 1, what would be the precise wording required here if Schedule 1 was amended to exclude works to the SRN from the description of associated development? Would the Applicant's wording then be acceptable to National Highways?</p> <p>e) Both: What is progress on the Land Rights heads of terms. Has agreement been reached by Deadline 7? If not when? Would the agreement over land rights remove the disagreement over dDCO new para 65(3) ([REP6-064], para 7(3), page 26 to 28) and the need for its inclusion?</p> <p>f) Applicant: Explain why the additional wording regarding National Highways notifications to the undertaker regarding exercise of powers under dDCO existing para 65(3) is a point of difference [REP6-064], para 7(4), page 28.</p> <p>g) National Highways: If the two-tier approach is agreed, explain why the shorter time period, which is suggested for deletion from dDCO existing para 65(4)(d) and part 65(4)(e) is not required [REP6-064], para 7(5)(d) and (e), page 29 to 30.</p> <p>h) National Highways: Presumably the collateral warranties have National Highways as the third party dDCO existing para 65(6) [REP6-064], para 7(6), page 30 and [REP6-076], Appendix 1, comment PB8? Is this set out somewhere? Would the benefit also be for DBFO contractors? If not would wording be required to preclude them?</p> <p>i) Applicant: Explain your objection to the proposed wording regarding collateral warranties, in light of National Highways comment that collateral warranties procured for National Highways has been agreed [REP6-076], Appendix 1, comment PB8. Is it the case that collateral warranties would be procured for National Highways? Do you have any other suggested wording to provide the comfort sought by National Highways? Also consider the point above regarding DBFO contractors.</p>
Q1026	The Applicant National Highways	<p>Para 66 (dDCO [REP6-025]/ para 8 [REP6-064]): Construction of the specified works</p> <p>a) Both: Regarding National Highways' concern about land over which it has rights that is not part of the SRN and the proposed general additional wording to dDCO para 66(5)(b), ([REP6-064], para 8(5)(b), page 34 and [REP6-076], Appendix 1, comment PB9), is one way forward to define land more narrowly by naming/ defining the balancing pond site, rather than adding "any other land of National Highways"?</p> <p>b) Applicant: Propose agreed wording if this is the case.</p> <p>c) National Highways: Explain why you consider it necessary to add in reference to payment under dDCO para 66(7) in light of payments under dDCO para 67 (below) ([REP6-064], para 8(7), page 35 to 36). Or is the point that this needs to be paid more quickly than other payments, which the</p>

DC1	Question to:	Question:
		<p>Applicant is proposing to be 42 days? (The ExA acknowledges that there is disagreement between parties over terms of 30 or 42 days).</p> <p>d) Applicant: Consider if the word “reinstatement” in para dDCO 66(9) is consistent with glossary definitions, and if it matters if it is not, and if it needs any further description in this place.</p>
Q102.7	The Applicant	<p>Para 67 (dDCO [REP6-025]/ para 9 [REP6-064]): Payments</p> <p>The ExA notes that there is disagreement over timescales for payments in dDCO para 66(4) and 66(6) ([REP6-064], para 9(4) and 9(6), page 41 to 42).</p> <p>Applicant: Provide a response to the point made by National Highways that the Applicant requires payment itself within 30 days when roles are reversed. What are the distinguishing facts in this case that justify this longer timescale?</p>
Q102.8	The Applicant National Highways	<p>Para 70 (dDCO [REP6-025]/ para 12 [REP6-064]): Final condition survey</p> <p>a) Applicant: It is not clear to the ExA to which some of the sub-paragraph references within the body of para dDCO 70 apply. Are some of the references to dDCO para 65(1) and 65(2)? Provide clarity over sub-paragraph numbering (which was clearer in [REP6-064] and [REP6-76]).</p> <p>b) Applicant: Respond to National Highways’ point regarding the need for a final condition survey after reconductoring works resulting in the addition of dDCO 65(1) (we think) to the stated (2) which we think is 65(2) in dDCO para 70(1) [REP6-064], para 12, page 45 to 46.</p> <p>c) Both: What implications would this addition of the reconductoring works have on the delivery of the authorised development?</p>
Q102.9	The Applicant	<p>Para 72 (dDCO [REP6-025]/ para 14 [REP6-064]): Final Certificate</p> <p>a) Applicant: Should the “paragraph (2)” cited in dDCO para 72(1) be paragraph 65(2)?</p> <p>b) Applicant: As above, cross refer to previous answer or provide a response to the point made by National Highways that the Applicant requires payment itself within 30 days when roles are reversed, indicating if there are any relevant special circumstances which apply to this project.</p>

DC1	Question to:	Question:
Q102.10	The Applicant	<p>Para 73 dDCO [REP6-025] Should the “paragraph (2)” cited in dDCO para 73(1) be paragraph 65(2)?</p>
Q102.11	The Applicant National Highways	<p>Para 75 (dDCO [REP6-025]/ para 20 [REP6-064]): Indemnity</p> <ul style="list-style-type: none"> a) Applicant: Set out your response to National Highway’s proposed removal of the word “directly” from dDCO para 75(1) ([REP6-064], para 20(1), page 53) and [REP6-076]. b) National Highways: Set out your rationale for the exclusion of the word “directly” from dDCO para 75(1) ([REP6-064], para 20(1), page 53) and explain under what circumstances other liabilities might arise based on the facts of this case. c) Both: Set out your respective positions regarding the need or otherwise for setting a timescale of 14 days on demand for the indemnity in para dDCO 75(1) ([REP6-064], para 20(1), page 53). <p>The ExA notes that there are differences regarding the need for an indemnity to be limited to a maximum aggregate amount, dDCO para 75(2) ([REP6-064], para 20(2), page 53).</p> <ul style="list-style-type: none"> d) Applicant: Respond to the point made by National Highways regarding the fact that the Applicant does not agree to caps on indemnities in the reverse situation and has thus proposed removal of dDCO para 75(2) ([REP6-064], para 20(2), page 53). e) Both: What would be the risks associated with the powers and rights sought for the authorised development and its interface with the SRN that are relevant to your respective positions regarding capping or not capping the indemnity.
Q102.12	The Applicant National Highways	<p>Para 77 (dDCO [REP6-025]/ para 19 [REP6-064]): Land</p> <ul style="list-style-type: none"> a) Both: Regarding the proposed National Highways change to “the” final certificate in dDCO para 77(1) ([REP6-064], para 19(1), page 54), is there a difference of opinion over whether there would be more than one final certificate? If so, set this out and explain how this could be resolved in the wording. b) Applicant: Should the “paragraph (2)” cited in para dDCO 77(1) be paragraph 65(2)? c) Both: Clarify if, and why the words “approved under dDCO para 7(2)” at the end of dDCO para 77(1), ([REP6-064]), para 19(1) page 55) in are proposed for deletion. These words remain in National Highways’ commentary on the Protective Provisions [REP6-076].

DC1	Question to:	Question:
		<p>d) National Highways: In addition to comments in your commentary on the dDCO [REP6-076], Appendix 1, comment PB17, set out evidence to show how the powers sought under the Order would cause serious detriment to National Highway undertaking in the context of and on the facts of the authorised development.</p> <p>e) Applicant: Provide any further specific points which are relevant to the authorised development.</p>
<p>10.3 Part 7 – For the Protection of National Gas Transmission PLC as Gas Undertaker</p>		
<p>The following questions seek to assist the ExA (and the SoS) to adjudicate positions in the scenario that disagreement on Protective Provisions remains at the close of Examination. If agreement between the parties is reached and agreed Protective Provisions are submitted in full at Deadline 7, then responses to the following questions will not be necessary. However points of clarity mentioned in the questions below should be addressed.</p> <p>References are made to the Applicant's Proposed Protective Provisions to benefit National Gas Transmission [REP6-065], which helpfully sets out where differences still exist between parties. However, it is noted that the paragraph numbering in that document differs from that in the dDCO [REP6-025] so both are used where applicable. Where responses are made, reference should be to the dDCO paragraph numbers.</p> <p>The ExA acknowledges receipt of National Gas Transmission plc's Deadline 6 submissions: Preferred Protective Provisions [REP6-072] and Response to CAH2 action points [REP6-073] and [REP6-074], [REP7-075].</p>		
Q10.3.1	The Applicant	<p>DCOs with Protective Provisions for National Gas Transmission plc</p> <p>a) Applicant: Consider National Gas Transmission's submission of other made DCOs [REP6-075] and its preferred Protective Provisions [REP6-072], explain further what specific aspects of the authorised development would trigger varying these Protective Provisions.</p> <p>b) Applicant: Respond to the National Gas Transmission's s127 and s138 response and explain the nature of the works proposed in the vicinity of apparatus and interests set out [REP6-073], para 2.</p>

DC1	Question to:	Question:
		<p>c) National Gas Transmission: Clarify the proximity of the apparatus and interests referred to in the response to the Applicant's s127 and s138 case to the Order limits of the authorised development and the nature of the detriment which you consider could take place [REP6-073].</p>
Q10.32	The Applicant National Gas Transmission	<p>Para 80 (dDCO [REP6-025]/ para 2 [REP6-065]): Interpretation</p> <p>a) Both: Under definition of “acceptable insurance” it would assist the ExA and the SoS if parties could reach agreement on a figure to be included to limit the third-party liability insurance in dDCO para 80, ([REP6-065], para 2, page 4).</p> <p>b) Applicant: Respond to National Gas Transmission’s case that £50million cover is the standard level of cover in these situations. Are there distinguishing facts in this case that justify a different level?</p> <p>c) National Gas Transmission: Under definition of “Network Code Claims” explain further the nature of the ambiguity that National Gas Transmission considers could arise with the inclusion of the word “direct” in dDCO para 80(a) [REP6-065], page 6.</p> <p>d) Applicant: Is there some sub-para lettering missing?</p>
Q10.33	The Applicant National Gas Transmission	<p>Para 87 (dDCO [REP6-025]/ para 9 [REP6-065]): Retained apparatus protection</p> <p>a) Applicant: Set out details of how the National Gas Transmission proposed changes to dDCO para 87(1), 87(4)(a), 87(4)(b), 87(4)(c), 87(5) and 87(9) would impact on the undertaker’s ability to deliver the authorised development in terms of the rights sought in the vicinity of the one crossing of a National Gas Transmission pipeline [REP6-065], page 21 to 23.</p> <p>b) Applicant: Respond to National Gas Transmission’s case against deemed approvals and standard timeframes of 56 days in dDCO para 87(1), 87(4)(c), 87(5) and 87(9) ([REP6-065], para 9(1), 9(4), 9(5) and 9(9), page 21 to 22).</p> <p>c) National Gas Transmission: Respond to the Applicant’s point that the authorised development would only comprise one crossing of a National Gas Transmission pipeline and would not break surface of the land; and that the undertaker would engage in pre-application engagement before approvals are sought [REP6-065], page 22.</p>

DC1	Question to:	Question:
Q10.34	The Applicant National Gas Transmission	<p>Para 89 (dDCO [REP6-025]/ para 11 [REP6-065]): Indemnity</p> <p>a) Applicant: Provide a response to the case set out by National Gas Transmission for not capping the indemnity as set out in its response to CAH2 action point 18 [REP6-074], which supports the changes proposed for dDCO para 89(1) which relate to deletion of references to “direct” and “directly” and adding a “without limitation” wording; deletion of dDCO para 89(2) and deletion of dDCO para 89(10) [REP6-065], para 11(1) and 11(9), page 31 to 33.</p> <p>b) National Gas Transmission: Comment on the Applicant’s case that indemnity provisions need to reflect the interfaces with National Gas Transmission apparatus, not just comparing other Orders [REP6-065], page 32.</p>
Q10.35	The Applicant National Gas Transmission	<p>Para 93 (dDCO [REP6-025]/ para 15 [REP6-065]): Arbitration</p> <p>a) The Applicant: Respond to National Gas Transmission’s case regarding arbitration in connection with its apparatus justifying its additions to dDCO para 93 [REP6-065], para 15, page 39.</p> <p>b) National Gas Transmission: Set out why arbitration would be handled differently for National Gas Transmission solely, with all other dispute resolution following that set out in the dDCO.</p>
<p>10.4 Part 8 – For the Protection of Northern Gas Networks Limited’s Apparatus</p>		
<p>The following questions seek to assist the ExA (and the SoS) to adjudicate positions in the scenario that disagreement on Protective Provisions remains at the close of Examination. If agreement between the parties is reached and agreed Protective Provisions are submitted in full at Deadline 7, then responses to the following questions will not be necessary.</p> <p>References are made to the Applicant’s Proposed Protective Provisions to benefit Northern Gas Networks Limited [REP6-066], which helpfully sets out where differences still exist between parties. However, it is noted that the paragraph numbering in that document differs from that in the dDCO [REP6-025] so both are used where applicable. Where responses are made, reference should be to the dDCO paragraph numbers.</p>		
Q10.4.1	Northern Gas Networks Limited (Northern Gas)	<p>Applicant’s PA2008 s127 and s138 application to satisfy the Secretary of State</p> <p>ExQ2 4.2.3 requested that Northern Gas Networks Limited provide any comments you may wish to make, with reasoning, on the s127 and s138 cases (as appropriate) that will have been submitted by the</p>

DC1	Question to:	Question:
		<p>Applicant [PD-011], ExQ2 4.2.3b). The case was submitted by the Applicant [REP5-089]. No response has been received from Northern Gas.</p> <p>Submit any comments you wish to make by Deadline 7. Also indicate if you have no comment and/ or if you agree with the Applicant's case.</p>
Q10.4.2	Northern Gas Networks Limited	<p>Para 99 (dDCO [REP6-025]/ para 5 [REP6-066]): Acquisition of land</p> <p>Explain the reasons for the proposed deletion of the reference to apparatus that is owned by Northern Gas, which would then refer to "any apparatus" in dDCO para 99 ([REP6-066], para 5, page 5 to 6). Respond to the Applicant's point that it should not be fettered in its ability to acquire apparatus or other interests owned by other Statutory Undertakers.</p>
Q10.4.3	The Applicant Northern Gas Networks Limited	<p>Para 100 (dDCO [REP6-025]/ para 6 [REP6-066]): Removal of diversion of apparatus</p> <ul style="list-style-type: none"> a) Northern Gas: Set out the case for your proposed removal of the words at the end of dDCO para 100(1), ([REP6-066], para 6(1), page 6). b) Northern Gas: The ExA would be most assisted if timescales could be agreed with the Applicant for dDCO para 100(2) ([REP6-066], para 6(2), page 7). If agreement cannot be reached, set out what timescale you consider would be reasonable and the reasons for the timescale proposed in the context of and on the facts of the authorised development. c) Applicant: Set out details of how the Northern Gas deletion of timescale proposed under dDCO para 100(2) ([REP6-066], para 6(2), page 7) would hinder progress to the undertaker's ability to deliver the authorised development in terms of the rights sought in the vicinity of Northern Gas diversions. d) Both: set out respective positions with regards the proposed removal of the words "for the Undertaker's approval" at the end of dDCO para 100(8) ([REP6-066], para 6(8),page 7).
Q10.4.4	The Applicant Northern Gas Networks Limited	<p>Para 102 (dDCO [REP6-025]/ para 8 [REP6-066]): Retained apparatus: protection</p> <ul style="list-style-type: none"> a) Applicant: Set out the reasons for the timescale proposed in dDCO para 102(1), ([REP6-066], para 8(1), page 11) in the context of and on the facts of the authorised development and its interference with and rights associated with Northern Gas' apparatus. b) Northern Gas: Justify the need for 56 days in dDCO para 102(1), ([REP6-066], para 8(1), page 11) in the context of and the facts that would apply to the authorised development.

DC1	Question to:	Question:
		<p>c) Northern Gas: Explain the reason for wishing to remove the definition of “close to” in dDCO para 102(2) e) ([REP6-066], para 8(2)(1)(e) (sic), page 12). Respond to the Applicant’s point that the 15m is defined earlier in dDCO para 102(2) ([REP6-066], page 12).</p> <p>d) Northern Gas: Explain why you wish to remove the reference to Northern Gas’ right to approve a subsidence mitigation scheme, if required in dDCO para 102(7)(c), ([REP6-066], para 8(7)(c), page 12).</p> <p>e) Both: If the case for 28 days or 56 days in dDCO para 102(8) differs from that above in dDCO para 102(1) set out the reasons here.</p>
<p>11. Related matters</p>		
<p>Q11.01</p>	<p>The Applicant</p>	<p>Overall Location Plan [APP-005] Can the Applicant submit an updated version of the Overall Location Plan [APP-005] to reflect the administrative boundaries following local government reorganisation.</p>
<p>Q11.02</p>	<p>The Applicant</p>	<p>New Institute of Environmental Management and Assessment guidance In July 2023, the Institute of Environmental Management and Assessment published a new guidance document called Environmental Assessment of Traffic and Movement. The guidance replaces the Guidelines for the Environmental Assessment of Road Traffic (1993), which were used to inform assessment in the Environmental Statement (ES), for example in ES Chapter 12 Traffic and Transport [APP-084]. Can the Applicant advise what are the implications (if any) of the new guidance for the assessment of the Proposed Development in the ES.</p>