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# Yorkshire Green Energy Enablement (GREEN) Project

**Volume 8**

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THE PROPOSED NATIONAL GRID (YORKSHIRE GREEN ENERGY ENABLEMENT PROJECT)  
DEVELOPMENT CONSENT ORDER 202\*

EXPLANATORY MEMORANDUM

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# 1. Introduction

## 1.1 Summary

- 1.1.1 This memorandum accompanies an application for development consent (the **Application**) by National Grid Electricity Transmission plc (**National Grid**) for works to construct, operate and maintain the Yorkshire Green Energy Enablement (GREEN) Project (referred to as the **Project** or **Yorkshire GREEN**) in Yorkshire, with the most northerly components approximately 1.5km north-east of the village of Shipton and approximately 10km north-west of York city centre, and the most southerly components at Monk Fryston Substation, located to the east of the A1 and immediately south of the A63. National Grid, together with Northern ~~Power Grid~~Powergrid (Northeast) PLC ~~(and Northern Powergrid (Yorkshire) PLC (together NPG))~~ and Northern Gas Networks Limited (**NGN**), makes up the 'undertaker' as so defined within the DCO (**undertaker**).
- 1.1.2 The authorised development is required to provide sufficient transmission capacity to enable the connection of new electricity generation and interconnection projects in the region, and to carry out all associated works.
- 1.1.3 This memorandum explains the purpose and effect of each Article of, and Schedule to, the draft National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 202\* (the **DCO**), as required by regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009<sup>1</sup> (**APFP Regulations**).
- 1.1.4 In compliance with The Planning Inspectorate's Advice Note 15: Drafting Development Consent Orders<sup>2</sup>, this memorandum should assist the Examining Authority, Secretary of State and any third parties in understanding the powers and accompanying restrictions sought within the DCO in respect of the authorised development.
- 1.1.5 ~~The~~At the time of submission of the Application, the Project ~~currently falls~~fell within six local authority boundaries:
- Hambleton District Council;
  - City of York Council;
  - Harrogate Borough Council;
  - Selby District Council;
  - Leeds City Council; and
  - North Yorkshire County Council.
- 1.1.6 On 1 April 2023, as a result of Local Government Reorganisation, North Yorkshire County Council, Hambleton District Council, Selby District Council, Ryedale District Council, Scarborough Borough Council, Harrogate Borough Council, Craven District Council and Richmondshire District Council ~~are expected~~joined together to form a new

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<sup>1</sup> S.I. 2009/2264.

<sup>2</sup> [Advice Note Fifteen: Drafting Development Consent Orders | National Infrastructure Planning \(planninginspectorate.gov.uk\)](https://www.planninginspectorate.gov.uk/advice-note-15-drafting-development-consent-orders/) (accessed 18 October 2022).

single council (The North Yorkshire Council) ~~on 1 April 2023 as~~, which is a result of ~~Local Government Reorganisation~~ unitary authority.

1.1.7 Following the Local Government Reorganisation, the Project now falls within the local authority boundaries of City of York Council (a unitary authority), North Yorkshire Council (a unitary authority) and Leeds City Council (a metropolitan district council).

## 1.2 Approach regarding the Model Provisions

- 1.2.1 The Localism Act 2011<sup>3</sup> (the **Localism Act**) removed the requirement for the decision maker to have regard to the prescribed Model Provisions as per The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009<sup>4</sup> (the **Model Provisions**). The Localism Act also removed the requirement on an applicant to explain in the explanatory memorandum divergences from the Model Provisions. However, the Model Provisions have been used as a base for a number of other DCOs and their adoption is seen as established practice by promoters.
- 1.2.2 Where there is a significant departure from the general Model Provisions, or an Article is based on other precedent orders, an explanation of the new provision is provided. In general, the precedents followed for the DCO are other development consent orders for electric lines (the National Grid (Hinkley Point C Connection Project) Order 2016<sup>5</sup> (**Hinkley Connection Order**) and the National Grid (Richborough Connection Project) Order 2017<sup>6</sup> (**Richborough Order**) as well as development consent orders and Transport and Works Act Orders (**TWAO**) for other linear schemes, such as pipeline and highway schemes.
- 1.2.3 The DCO does not include Model Provisions which are not relevant or applicable to the Project and this memorandum does not seek to explain further their omission.

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<sup>3</sup> 2011 c.20.

<sup>4</sup> S.I. 2009/2265.

<sup>5</sup> S.I. 2016/49.

<sup>6</sup> S.I. 2017/817.



## 2. Purpose of the ~~draft~~ DCO

- 2.1.1 The purpose of the DCO is to grant the undertaker development consent for a Nationally Significant Infrastructure Project (**NSIP**).
- 2.1.2 The Project will comprise both new infrastructure and works to existing transmission infrastructure and facilities. The Project is divided into six sections for ease of reference as described below.
- 2.1.3 Section A (Osballdwick Substation): Minor works at the existing Osballdwick Substation comprising the installation of a new circuit breaker and isolator along with associated cabling, removal and replacement of one gantry and works to one existing pylon. All substation works would be within existing operational land.
- 2.1.4 Section B (North west of York Area): Works would comprise:
- reconductoring of 2.4km of the 400kV Norton to Osballdwick (2TW/YR) overhead line and replacement of one pylon on this overhead line; the new 400kV YN overhead line (2.8km), north of the proposed Overton Substation;
  - the new Shipton North and South 400kV cable sealing end compounds (CSECs) and 230m of cabling to facilitate the connection of the new YN 400kV overhead line with the existing Norton to Osballdwick YR overhead line;
  - a new substation (Overton 400kV/275kV Substation approximately 1km south of Shipton by Beningbrough);
  - two new sections of 275kV overhead line which would connect into Overton Substation from the south (the 2.1km XC overhead line to the south-west and the 1.5km SP overhead line to the south-east);
  - works to 5km of the existing XCP Poppleton to Monk Fryston overhead line between Moor Monkton in the west and Skelton in the east comprising a mixture of decommissioning, replacement and realignment. To the south and south-east of Moor Monkton the existing overhead line would be realigned up to 230m south from the current overhead line and the closest pylon to Moor Monkton (340m south-east) would be permanently removed. A 2.35km section of this existing overhead line would be permanently removed between the East Coast Mainline (ECML) Railway and Woodhouse Farm to the north of Overton.
- 2.1.5 Section C (Moor Monkton – Tadcaster - existing 275kV Poppleton to Monk Fryston (XC) overhead line north of Tadcaster (Section D)): Works proposed to this existing 275kV overhead line include replacing existing overhead line conductors, replacement of pylon fittings, strengthening of steelwork and works to pylon foundations.
- 2.1.6 Section D (Tadcaster Area): Two new CSECs (Tadcaster East and West 275kV CSECs) would be installed approximately 3km south-west of Tadcaster and northeast of the A64/A659 junction where two existing overhead lines meet. One pylon on the existing 275kV Tadcaster Tee to Knaresborough (XD/PHG) overhead line would be replaced.
- 2.1.7 Section E (Tadcaster – Monk Fryston - existing 275kV Poppleton to Monk Fryston (XC) overhead line south of Tadcaster (Section D)): Works proposed to the existing 275kV

overhead line include replacing existing overhead line conductors, replacement of pylon fittings, strengthening of steelwork and works to pylon foundations.

- 2.1.8 Section F (Monk Fryston Area): A new substation would be constructed to the east of the existing Monk Fryston Substation which is located approximately 2km south-west of the village of Monk Fryston and located off Rawfield Lane, south of the A63. A 1.45km section of the 275kV Poppleton to Monk Fryston (XC/XCP) overhead line to the west of the existing Monk Fryston substation and south of Pollums House Farm would be realigned to connect to the proposed Monk Fryston Substation. East of the existing Monk Fryston Substation the existing 4YS 400kV Monk Fryston to Eggborough overhead line, which currently connects to the existing substation, would be connected to the proposed Monk Fryston Substation.
- 2.1.9 A more detailed explanation of the Project is set out in **Environmental Statement Chapter 3: Description of the Project (Volume 5, Document 5.2.3)** which accompanies the Application.
- 2.1.10 The Project also requires the compulsory acquisition of land and rights over land as well as temporary possession. A justification for the use of compulsory acquisition powers is set out in the **Statement of Reasons (Volume 4, Document 4.1)** which accompanies the Application.

# 3. Construction and operation of the Proposed Development

## 3.1 Nationally Significant Infrastructure Project

- 3.1.1 The DCO will provide consent for upgrading and reinforcing the high-voltage power network above 132kV, so that more clean energy reaches homes and businesses in Yorkshire and further afield. It comprises new electricity infrastructure, such as new overhead lines, substations, cables and equipment to connect overhead lines to buried cables, known as CSECs, as well as works to existing overhead lines and substations. Schedule 1 to the DCO contains a list of numbered works comprising the NSIP and, as explained further below, the associated development.
- 3.1.2 In order to future proof the Project, rating values (**kV**) for the overhead lines and substations have not been specified within Schedule 1 of the DCO. In addition, 'operational use' has been defined within the DCO as "when that part first transmits electricity at 275kV or above".
- 3.1.3 This approach to drafting has been taken because positive future developments, which allow an increase in output from renewable energy sources, may necessitate higher transmission values to ensure that reaching carbon reduction targets are not inhibited by the transmission network. Future developments in overhead line technology may allow for this increase without any material changes to infrastructure, or therefore consequent material changes to likely significant effects. The environmental impact assessment has been conducted on the basis of the intended transmission value of 400kV or 275kV for overhead lines and 400kV/275kV for substations. However, it is not considered necessary to specify the transmission value in the DCO as a parameter in order to control environmental effects, as these are properly controlled by all other parameters of the DCO. For these reasons, the description of development at Schedule 1 of the DCO has been drafted so as not to specify a transmission value or, therefore, inhibit the operation of a different transmission value than currently envisaged in the future.
- 3.1.4 The authorised development falls within the definition of an NSIP for the purposes of sections 14 and 16 of the Planning Act 2008<sup>7</sup> (the **Act**) because it forms the installation of an electric line above ground which will be wholly within England, of a nominal voltage greater than 132 kilovolts and longer than two kilometres.
- 3.1.5 As the Project itself is an NSIP, development consent must be obtained from the Secretary of State to authorise it, and an application for a development consent order must be made to the Secretary of State, care of the Planning Inspectorate, under section 37 of the Act.

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<sup>7</sup> 2008 c.29.

## 3.2 Associated development

- 3.2.1 Pursuant to section 115 of the Act, development consent can be granted for both the NSIP and associated development.
- 3.2.2 The Secretary of State for Levelling Up, Housing and Communities (as was named Secretary of State for Communities and Local Government at time of publication) issued guidance entitled "Guidance on associated development applications for major infrastructure projects" (April 2013)<sup>8</sup>, which sets out the defining characteristics of, and illustrates the types of development that may qualify as associated development. In summary, associated development must not be an aim in itself; it must be subordinate to and necessary for the effective operation of the NSIP, and may include measures that support construction or operation of the NSIP, or measures that are necessary to mitigate the effects of the primary development. Associated development should generally be proportionate to the nature and scale of the NSIP. The guidance clarified that it is for an applicant to decide whether to include something that could be considered as associated development in an application for development consent or whether to apply for consent for it by other means.
- 3.2.3 Associated development forming part of the Project may include:
- ramps, means of access, footpaths, cycleways, bridleways and trackways;
  - embankments, bridges, aprons, abutments, foundations, retaining walls, drainage, wing walls, headwalls, culverts and fencing including stock-proof fencing;
  - ~~works to alter the position of apparatus, including mains, sewers, drains, conductors and cables;~~
  - works to alter the course of, or otherwise interfere with a watercourse, drainage works, attenuation ponds, and culverts;
  - landscaping and other works to mitigate any adverse effects of construction, maintenance, operation or use, together with means of access;
  - tree, hedgerow and vegetation planting and maintenance works;
  - works for the benefit or protection of the environment;
  - works for the benefit or protection of land, structures, apparatus or equipment affected by the authorised development (including earthing and works for monitoring);
  - works required for the strengthening, improvement, maintenance, or reconstruction of any streets;
  - works to streets and any alteration, removal or installation of street furniture, traffic signage and signals, and road lining, including where required to facilitate the construction of temporary accesses;
  - site preparation works, site clearance (including scaffolding, fencing, vegetation removal, demolition of existing buildings or structures and the creation of alternative footpaths, cycleways, bridleways and trackways);

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<sup>8</sup> Department for Communities and Local Government, "Guidance on associated development applications for major infrastructure projects" April 2014, available [here](#) (accessed 18 October 2022).

- earthworks (including soil stripping and storage, site levelling, ground improvement, berms and bunding);
- works within temporary construction compounds, comprising temporary laydown, assembly and storage areas, temporary offices, security cabins, temporary vehicle parking, construction fencing, gates and hoarding, perimeter enclosure, security fencing, construction related buildings, welfare facilities, construction and security lighting and haulage roads, provision of services, generators, lighting, waste management facilities, drainage works, attenuation ponds, access roads, wheel cleaning facilities, biosecurity measures, fencing and hoarding;
- works within cable sealing end compounds and substations, comprising the installation of switchgear, above and below ground services, troughs and cables, perimeter fencing, gates and hoarding, drainage systems, attenuation ponds, pollution control, generators, earthing and protection control systems, supervisory control and data acquisition communications, lighting, waste management facilities, drainage works, attenuation ponds, access roads, wheel cleaning facilities, biosecurity measures, parking areas;
- works to allow for the provision of services, including power supplies, electric vehicle charging points and communication equipment;
- installation of wires, cables, ducts, pipes and conductors including establishment of winching points;
- the changing of name plates;
- such other works, including scaffolding and crossing protection, working areas, and works of demolition (which includes but is not limited to demolition of residential properties), as may be necessary or expedient for the purposes of or in connection with the construction of the authorised development and which do not give rise to any materially different environmental effects from those assessed in the environmental statement;
- the construction and installation of permanent vehicle access roads, gates and fencing, hardstanding, and drainage;
- works to place, alter, divert, relocate, protect, remove or maintain the position of apparatus (including statutory undertakers' apparatus), services, plant and other equipment in, under or above a street, or in other land, including mains, sewers, drains, pipes, lights, conductors, cables, fencing and other boundary treatments; and
- such other works as may be necessary or expedient for the purposes of or in connection with the construction, installation, operation or maintenance of the authorised development and which do not give rise to any materially different environmental effects from those assessed in the environmental statement.

3.2.4 In some cases, there may be some overlap between associated development and works which form part of the NSIP. Given this potential for overlap between the two categories, there is a danger that separating this out in the DCO could potentially lead to an error, incorrectly defining it one way or another.

3.2.5 Noting that there is no requirement for a DCO to distinguish between these two categories, National Grid has therefore chosen not to differentiate the NSIP and associated development works in Schedule 1 to the DCO. All elements of the authorised development either constitute part of the NSIP or are associated

development within the meaning of section 115(2) of the Act, and so can properly be authorised by the DCO.

- 3.2.6 In order to ensure that the authorised development is constructed efficiently and without impediment, the DCO contains the powers to carry out the other associated works listed in paragraphs (a) – (ut) of Schedule 1. The use of such measures is preceded in previous National Grid Orders, such as the Richborough Order<sup>9</sup>.

### **3.3 Works affecting scheduled monuments**

- 3.3.1 An access required to erect scaffolding to undertake reconductoring works to the existing XC 275kV overhead line (Work No. 9) will affect a scheduled monument (NHLE List Entry: 1020326 Medieval manorial complex, garden and water management features, St Mary's chapel, and a linear earthwork forming part of the Aberford Dyke system). However, in accordance with Section 33 of the Act, where development consent is granted, it is not necessary to obtain a separate consent under section 2(3) of the Ancient Monuments and Archaeological Areas Act 1979. Paragraph 17 of DCMS guidance published in 2013, 'Scheduled Monuments and nationally important but non-scheduled monuments' states:

*"development that is likely to affect Scheduled Monuments or their setting that forms part of a nationally significant infrastructure project under the terms of the Planning Act 2008, and which is subject to an application for a Development Consent Order, does not require SMC to be obtained too, but should not commence unless and until that Order has been granted and any pre-commencement conditions appended to it have been fully complied with."*

- 3.3.2 Therefore, if granted, the DCO will provide the required consent for those works which would affect the scheduled monument.

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<sup>9</sup> S.I. 2017/817.

## 4. Preliminary Provisions

- 4.1.1 The preamble to the DCO sets out some key legislative provisions and, if made, will explain that an application under section 37 of the Act has been made to the Secretary of State for an order granting development consent and that the application has been examined by a single appointed person or panel appointed by the Secretary of State pursuant to Chapter 3 of Part 6 of the Act and the Infrastructure Planning (Examination Procedure) Rules 2010<sup>40</sup>.
- 4.1.2 If made, the DCO will go on to explain that the Secretary of State has considered the Examining Authority's report and recommendation, has taken into account the environmental information submitted with the Application in accordance with regulation 3 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations)<sup>41</sup>, and has had regard to the documents and matters referred to in section 104(2) of the Act (which include the National Policy Statements and Local Impact Reports that will be prepared by the relevant planning authorities) in deciding to make the DCO.
- 4.1.3 Articles 1 and 2 of the DCO contain preliminary provisions.

### 4.2 Article 1 (Citation and commencement)

- 4.2.1 This Article provides for the commencement and citation of the DCO. It includes the date on which the DCO will come into force.

### 4.3 Article 2 (Interpretation)

- 4.3.1 This Article provides for the interpretation of the DCO and sets out specific definitions relating to the Project. The "authorised development" is defined as the development and the associated development, the components of which are listed in Schedule 1 (authorised development) of the DCO.
- 4.3.2 It should be noted that Schedule 3 (requirements) also contains some further definitions of certain terms that relate specifically to the requirements, and Schedule 4 contains further definitions of certain terms that relate specifically to the procedure for discharge of requirements.
- 4.3.3 Definitions to note include:
- ~~• "Commence" is defined in Schedule 3 (requirements) and makes clear that a number of works that would constitute a 'material operation' under the Act do not mean that the authorised development has been 'commenced' for the purposes of triggering some of the requirements. This enables the undertaker to undertake certain preparatory works prior to the submission of relevant details for approval under certain requirements, such as requirement 6 (outline construction management plans). The works that are excluded from the definition of 'commence'~~

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<sup>40</sup> ~~S.I. 2010/103.~~

<sup>41</sup> ~~S.I. 2017/572.~~

~~are either de minimis or have minimal potential for adverse impacts. They may, in some cases, need to be carried out in order to comply with pre-commencement requirements (for example, to inform assessments and proposals required to be submitted for approval). The undertaker should be permitted to carry out low impact preparatory works following the grant of the DCO whilst it is working to discharge the pre-commencement requirements, thereby helping to minimise the construction timetable. In any event, the pre-commencement works must be carried out in accordance with the construction management plans and the outline soil management plan which are listed in requirement 5 (construction management plans). This is considered to be a proportionate approach which allows some flexibility for pre-commencement works to be undertaken prior to approval of all construction plans and which is within the scope of the environmental impact assessment.~~

- "building" is defined differently to section 235 of the Act. Whereas section 235 of the Act cross refers to section 336(1) of the 1990 Act describing a building as "includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building", the definition in the DCO "includes any structure or erection or any part of a building, structure or erection". This definition is necessary to give full effect to Article 20 (protective work to buildings).
- "environmental statement" has been defined to make clear that this document also includes the environmental statement addendum and consolidated errata. The environmental statement will also be a certified document. The definition references Part 8 of Schedule 2 which lists the final versions of all environmental statement documents.
- "linear works" and "non-linear works" are defined for the purposes of Article 5 (limits of deviation) of the DCO. The linear works are defined as the works shown on the works plan as having a centre line. This includes, for example, the overhead line (temporary and permanent) and supporting pylons and temporary structures, and underground cables and utilities. Non-linear works are defined as the works identified on the works plan as non-linear works, comprising substations and cable sealing end compounds.
- "maintain" includes inspect, repair, adjust, alter, dismantle, remove, clear, refurbish, re-tension, paint, surface treat, decommission, improve, reconstruct or replace any or all of the authorised development including through the use of robots, drones, gadgets or similar devices either remote controlled or autonomous, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement. This is broadly reflective of the precedented position for previously made orders, such as the Richborough Order<sup>12</sup>, but with the advancement of technology, also facilitates robots, drones, gadgets and similar devices to accommodate National Grid's current working practices.
- "NPG" has been defined to incorporate both entities relevant to the Project (Northern Powergrid (Northeast) PLC and Northern Powergrid (Yorkshire) PLC). This is tied to the relevant NPG Work to which the relevant provision of the DCO applies. "NPG Works" has been defined by reference to the specific 'U' works that each NPG entity will be undertaking.

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<sup>12</sup> S.I. 2017/817.



- "undertaker" is expressed to include National Grid in relation to the authorised development in its entirety, and NPG and NGN have been named as undertakers in relation to certain specified works. The authorised development includes diversion of NPG's and NGN's apparatus (undergrounding of overhead distribution lines and diversion of a gas pipeline respectively) and as, in practice, it is likely that NPG and NGN will undertake those diversion works, they have specifically been named as an 'undertaker' for the purposes of undertaking and operating their relevant works. The NPG works and the NGN works are also defined in the DCO. It should be noted that the NPG and NGN works are associated development, and do not amount to an NSIP in their own right.

- 4.3.4 Article 2(2) clarifies that any rights over land that are granted by the DCO include references to rights to do or to place and maintain anything in, on or under land, or in the air-space above its surface.
- 4.3.5 Article 2(3) provides that all distances, directions and lengths referred to in the DCO are approximate, which allows for some flexibility in the event that it transpires there will be marginal differences in any of the dimensions and ensures they are permitted under the terms of the DCO.
- 4.3.6 Article 2(4) clarifies that all areas described in square metres in the book of reference are approximate.
- 4.3.7 Article 2(5) clarifies that any reference to a work number in the DCO is to be construed by reference to that work number as set out in Schedule 1.
- 4.3.8 Article 2(6) explains that unless otherwise stated, letters referenced in the DCO are references on the relevant plans.
- 4.3.9 Article 2(7) provides that the term "includes" is non-limiting.
- 4.3.10 Article 2(8) provides that references to "document" followed by numbers are documents in support of the Application.
- 4.3.11 Article 2(9) confirms that "operational use" of any part of the authorised development occurs when that part first transmits electricity at 275kV or above.
- 4.3.12 Article 2(10) confirms that references to primary or secondary legislation are construed as a reference to the primary or secondary legislation as amended.

## 4.4 Operative Provisions

- 4.4.1 Articles 3 to [5554](#) of the DCO contain provisions for and relating to the Project, and miscellaneous and general provisions.

## Part 2 Principal Powers

### 4.5 Article 3 (Development consent etc. granted by the Order)

- 4.5.1 This Article would grant development consent for the authorised development within the Order limits, thereby authorising the construction of the development. The authorised development means the development described in Schedule 1 (authorised development). This includes further works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and

which fall within the scope of the work assessed by the environmental statement. Article 3 is based on the Model Provisions as well as the Richborough Order<sup>13</sup>. As explained under Article 2 (interpretation) above, specific reference is made to granting development consent to NPG for the NPG Works and to NGN for the NGN works.

4.5.2 Article 3(8) incorporates wording which confirms that the authorised development must be constructed and installed in the lines shown on the Works Plan (Document 2.6.1-2.6.6).

4.5.3 Article 3(9) includes provision which clarifies that any ‘enactment applying to land within or adjacent to the Order Limits’ has effect subject to the provisions of the DCO. This provision ensures that the modifications made in the Order apply to any enactments that may affect the authorised development and further ensures consistency with legislation more generally. There is no precedent for use of this wording within previous overhead line development consent orders but it has been included within previous highways DCOs, such as The A19 Downhill Lane Junction Development Consent Order 2020 and The A30 Chiverton to Carland Cross Development Consent Order 2020.

## 4.6 Article 4 (Maintenance of authorised development)

4.6.1 This Article sets out the scope within which the undertaker may maintain the authorised development. It is based on the general Model Provisions Article 3. “Maintain” is defined in Article 2 (interpretation). Article 4 follows the approach taken for the Richborough Order<sup>14</sup> as amended to reflect that the undertaker also includes NPG and NGN.

## 4.7 Article 5 (Limits of deviation)

4.7.1 This Article would allow for the lateral deviation of works within the lines and situations shown on the works plan and the design drawings. A centre line is included on the works plan, and the linear works (as defined in the DCO and explained in Article 2 (interpretation) above) may deviate laterally from the centre line within the limits of deviation shown on the works plan. The non-linear works (also defined in the DCO and explained in Article 2 (interpretation) above) are also shown on the works plan, as well as the design drawings, ~~but the.~~ The lateral limits of deviation for the non-linear works are shown ~~only~~ on the design drawings and the works plan as relevant.

4.7.2 Vertical limits of deviation (upwards) are included for the overhead lines, pylons and ~~their supporting temporary~~ structures, which can deviate to any extent not exceeding 6 metres upwards. To prevent this provision for vertical deviation applying to underground apparatus, ‘overhead lines and ~~their supporting any pylon and temporary~~ structures’, are specified as opposed to ‘linear works’ as so defined. Any linear works can also deviate vertically to any extent downwards ~~and construction.~~ Whilst not expressly stated in Article 5(1)(c), the 6 metre limit of vertical deviation in respect of linear works does not apply to existing pylons. Reconductoring of a pylon does not involve works to raise a pylon’s height, and the works authorised under the description in Schedule 1 specify which works amount to reconductoring. In this respect, the undertaker is restricted by the description of the authorised development in Schedule 1.

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<sup>13</sup> S.I. 2017/817.

<sup>14</sup> Ibid.

4.7.3 Vertical limits of deviation for non-linear works are specified by reference to the heights shown on the parameter plans, as measured from the finished site levels shown on the corresponding elevation plans.

4.7.24.7.4 Construction activities may be carried out anywhere within the Order limits.

4.7.34.7.5 The maximum limits of deviation laterally for both linear and non-linear works as well as vertically upwards for overhead lines and supporting any pylon and temporary structures will not apply if the Secretary of State is satisfied, and certifies, that deviation in excess of this would not give rise to any materially new or materially different environmental effects to those assessed in the environmental statement.

4.7.44.7.6 An explanation as to how limits of deviation have been assessed, including the downwards vertical deviation is explained at Chapter 3 of the environmental statement. The purpose of including limits of deviation is to provide the necessary flexibility when constructing the authorised development, reducing the risk that the Project as approved cannot later be implemented for unforeseen reasons, such as engineering, environmental or geological reasons. A similar approach has been adopted on the Hinkley Connection Order<sup>15</sup> and the Richborough Order<sup>16</sup>.

4.7.54.7.7 Both the works plan and design drawings (showing the limits of deviation) are certified under Article 48 (certification of plans, etc.) of the DCO.

## 4.8 Article 6 (Benefit of the Order)

4.8.1 This Article overrides section 156(1) of the Act (as permitted by section 156(2)) to give the benefit of the DCO to National Grid, NPG (in respect of the NPG Works) and NGN (in respect of the NGN Works) rather than anyone with an interest in the land. It would be impracticable for a variety of landowners to implement parts of the authorised development in an uncoordinated manner, which might be the case if section 156(1) were to remain.

4.8.2 The purpose of paragraph (2) is to clarify the exceptions where the provisions of the DCO will self-evidently benefit others, for example, by granting rights for statutory undertakers to operate and maintain their apparatus and granting rights to accommodation works for the benefit of existing landowners and occupiers. Without this provision, only the undertaker could benefit from these works. This is required, for example, in respect of alterations to apparatus and equipment of statutory undertakers which are not specified as a separate Work No. but are included as part of the authorised development. For example, in the case of telecommunications apparatus which is altered, it would not be necessary to transfer the benefit of the DCO to the telecoms operator in order for them to carry out the diversion works or to benefit from rights to operate and maintain their diverted equipment. When read together, article 6(2) and 7(7) allow National Grid and the relevant statutory undertaker to elect to either enable the statutory undertaker to gain benefit under article 6(2) or be specifically transferred the benefit of the DCO under article 7(7), should this be the preferred option. There may be practical circumstances surrounding individual works under the DCO which would benefit from each approach.

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<sup>15</sup> S.I. 2016/49.

<sup>16</sup> S.I. 2017/817.

- 4.8.3 Article 6 is based on the approach taken for the Southampton to London Pipeline Development Consent Order<sup>17</sup> 2020 (Southampton to London Pipeline Order~~)(Article 7)~~ and the Richborough Order<sup>18</sup> (Article 6).
- 4.8.4 Given the inclusion of NPG and NGN in Article 6, it is tied to Schedule 5 (benefit of the Order rules). Schedule 5 governs the relationship between National Grid, NPG and NGN in constructing the authorised development. For example, National Grid's consent is required (and may be subject to reasonable conditions) before NPG and NGN can carry out their respective works. In addition, a process is included in the event that NPG or NGN fail to carry out their works (either at all or in accordance with National Grid's conditions) which would allow National Grid to undertake the works and mean that NPG and NGN cease to be undertakers for the purposes of the DCO. The rules have been included in a separate schedule to simplify the drafting of the Article.

## 4.9 Article 7 (Consent to transfer benefit of the Order)

- 4.9.1 This Article provides for the transfer of the whole or part of the benefit of the DCO with the consent of the Secretary of State, subject to certain exceptions. Article 7 is based on the approach taken for the Southampton to London Pipeline Order<sup>19</sup> (Article 8) and also broadly mirrors that of the Richborough Order<sup>20</sup> (Article 7).
- 4.9.2 Specific statutory undertakers have been listed under paragraph 7, who are permitted to be transferred the benefit of the DCO without prior consent of the Secretary of State. Each of the bodies listed under this sub-paragraph is a statutory undertaker and licence holder with associated duties to install or maintain a safe supply in relation to their relevant licence and apparatus/ equipment. Accordingly, each of the bodies has been judged as fit and proper to undertake the corresponding works identified and would normally undertake their own diversions and installations in the course of their usual operations. In addition, and by virtue of their relevant statutory rights, each body listed is also an 'undertaker' entitled to carry out installation, inspection or ongoing maintenance of their relevant apparatus/equipment within a 'street' for the purposes of section 48(5) of the New Roads and Street Works Act 1991<sup>21</sup>. As a statutory undertaker, each of the bodies is also authorised to make a compulsory purchase order for the purposes of its undertaking.
- 4.9.3 Notwithstanding the inclusion of powers for the listed statutory undertakers to carry out works to their apparatus under the transferred benefit of the DCO, it is still possible that they could carry out these related works under their own statutory powers outside of the DCO. These related works to statutory undertaker apparatus have been included within the DCO to ensure there is no inhibition to the implementation of the Project. However, this does not mean that all works would necessarily be required to be carried out under the powers of the DCO.

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<sup>17</sup> S.I. 2020/1099.

<sup>18</sup> S.I. 2017/817.

<sup>19</sup> Ibid.

<sup>20</sup> S.I. 2017/817.

<sup>21</sup> 1991 c.22.

## 4.10 Article 8 (Planning permission)

4.10.1 Article 8(1) permits certain development authorised by a planning permission granted under the Town and Country Planning Act 1990<sup>22</sup> (**1990 Act**) that is within the Order limits to be carried out pursuant to the terms of the planning permission without breaching the Order. For example, it may be that certain statutory undertaker diversions are carried out under permitted development rather than in accordance with the 'U' works of Schedule 1 to the DCO (this may be done by NPG under their Permitted Development rights for the NPG Works). If the final alignment of these works differs from the alignments shown on the Works Plan, this article confirms that this would not be a breach of the DCO. There might also be planning permissions obtained for access or enabling works, which whilst not anticipated at present, have been secured on previous overhead line DCOs.

4.10.2 Without this provision, there may be uncertainty as to whether a breach would occur if a separate planning permission was implemented without compliance with, for example, the requirements of the DCOs. This wording clarifies that, where the DCO overlaps with a planning permission that is required to complete or enable the construction, use or operation of any part of the Project, there would be no incompatibility resulting in a breach of the DCO.

4.10.14.10.3 This provision is not a model provision, but ensures that the undertaker does not breach section 161 of the Act in carrying out certain development pursuant to a grant of planning permission.

4.10.24.10.4 This Article is not preceded in other overhead line orders but is based on Article 11 of the M42 Junction 6 Order<sup>23</sup>.

## 4.11 Article 9 (Application of the 1990 Act)

4.11.1 This Article applies to specified works which, though temporary in nature, would be in place for a considerable period of time (e.g. temporary construction compounds). The Article applies section 57(2) of the 1990 Act to those works to clarify that planning permission is not required for the resumption, at the end of that period, of the purpose for which that land was normally used before the development consent was granted. Temporary construction works are defined in Article 2 (interpretation) as the temporary construction ~~compounds~~works described in Schedule 1 (authorised development). This Article was contained within the Richborough Order<sup>24</sup> (Article 8).

4.11.2 Paragraph (2) follows Article 36 of the general Model Provisions and provides that for the purposes of section 264(3)(a) of the 1990 Act, the development consent granted by the DCO shall be treated as specific planning permission. This means that the land subject to the authorised Project will be operational land of the undertaker as a statutory undertaker and, therefore, is land on which the undertaker is permitted to carry out its undertaking. Statutory undertakers can make an application for planning permission on their operational land under section 266 of the 1990 Act which may be dealt with by the Secretary of State and the appropriate Minister. In addition, in respect of operational land certain permitted development rights may apply. This is appropriate and

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<sup>22</sup> 1990 c.8.

<sup>23</sup> S.I. 2020/528.

<sup>24</sup> S.I. 2017/817.

proportionate for inclusion in the ~~draft~~ DCO as it will mean that, once constructed and into their operational phase, the works are treated as part of the wider network of which they will be part, on an equivalent legal basis. This provision is also included at Article 37 of the Hinkley Connection Order<sup>25</sup> and Article 36 of the Richborough Order<sup>26</sup>.

- 4.11.3 Additional provision has also been made at paragraph (3) to provide for planning permission in relation to powers to carry out certain street works (pursuant to Article 11(2)). This is because such matters may be outside of the Order limits, and hence the Article provides that such works are not deemed to constitute development. Article ~~89~~(2) and (3) mirror the provisions of Article 51 of The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014<sup>27</sup>, and Article ~~89~~(2) is also included at Article 37 of the Hinkley Connection Order<sup>28</sup>.
- 4.11.4 Article 9(4) provides for an extension for the implementation of the DCO in the event that a decision by the Secretary of State to grant development consent is subject to a challenge. This wording ~~parallels~~resembles sections 91(3A) and (3B) of the 1990 Act<sup>29</sup> and section 5B of the Vesting Declarations Act<sup>30</sup>, so seeks to ~~carry through~~achieve the same aim as a helpful element of the town and country planning and compulsory purchase regime into the NSIP regime. Under the 1990 Act, sections 91(3A) and (3B) only apply to planning permissions for the development of land in England. The effect of these provisions is that if there is a legal challenge to the Order, the time limit in Article 24 (time limit for exercise of authority to acquire land compulsorily) and the time within which the authorised development must be commenced (requirement 2) are extended by an equivalent period (or one year if shorter) to account for the delay resulting from the legal challenge. In light of the importance of ensuring that requirements of implementation do not lapse this drafting is considered necessary to include within the DCO.

## 4.12 Article 10 (Application of the Community Infrastructure Levy Regulations 2010)

- 4.12.1 This Article clarifies that, for the purposes of the Community Infrastructure Levy Regulations 2010 (**CIL Regulations**)<sup>31</sup>, any building forming part of the authorised development falls within the exemption under regulation 6 and will not be considered as “development” for the purposes of levying CIL. Precedent for this approach can be found in Schedule 19 to the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014<sup>32</sup> and Article 36(3) of the Southampton to London Pipeline Order<sup>33</sup>.

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<sup>25</sup> S.I. 2016/49.

<sup>26</sup> S.I. 2017/817.

<sup>27</sup> S.I. 2014/2384.

<sup>28</sup> S.I. 2016/49.

<sup>29</sup> 1990 c. 8.

<sup>30</sup> 1981 c. 66.

<sup>31</sup> S.I. 2010/948.

<sup>32</sup> S.I. 2014/2384.

<sup>33</sup> S.I. 2020/1099.

## Part 3 Streets

### 4.13 Article 11 (Street works)

- 4.13.1 This Article allows works to be carried out in or upon streets identified in Schedule 56 (streets subject to street works) within the Order limits and follows the general Model Provisions except in the following respects:
- Article 8(3) of the general Model Provisions is deleted as this may cause confusion. Instead Article 11 has been extended, which applies selected provisions of the New Roads and Street Works Act 1991<sup>34</sup> (**1991 Act**) to temporary stopping up of streets even if no street works are being carried out;
  - a new sub-paragraph (1)(c) has been included to reflect the street works powers available to the undertaker in paragraph 1(b)(iii) of Schedule 4 to the Electricity Act 1989<sup>35</sup> (Electricity Act); and
  - a new sub-paragraph (5) has been included to make it clear that any powers conferred by this Article do not prejudice those granted to licence holders under the Electricity Act.

~~1.1.1. This Article was contained within the Richborough Order<sup>36</sup> (Article 10).~~

4.13.2 Whilst there is no exact precedent to the drafting proposed for Article 11, it is very similar to the wording within article 11 of The Southampton to London Pipeline Development Consent Order 2020 (which includes deemed consent provisions) and article 10 of The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014.

### 4.14 Article 12 (Application of the 1991 Act)

- 4.14.1 This Article departs from the Model Provisions to provide that relevant provisions of the 1991 Act shall apply to a temporary stopping up of a street under Article 12, even if no street works (within the meaning of the 1991 Act) are being carried out. This would, for example, require the undertaker to make arrangements, so far as practicable, for utilities to gain access to their apparatus. Comparable provisions are commonly included in TWAOs and also appeared in Article 10 of the Richborough Order<sup>37</sup>.
- 4.14.2 This prevents confusion as to whether works in respect of a temporarily stopped up street are 'street works' for the purposes of the 1991 Act and also simplifies the implementation of those works by providing for a single process in respect of streets which are stopped up and those which are not.
- 4.14.3 Article 12(3) provides that certain provisions of the 1991 Act as listed will not apply, as well as any equivalent or modified provisions in any permit scheme. Section 73A, 73B and 73C are prospective provisions that will be applied through Section 55 of the Traffic Management Act 2004. These provisions are not yet in force, but should they become legislation, then these provisions are disapplied for the purpose of the Project and

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<sup>34</sup> 1991 c.22.

<sup>35</sup> 1989 c.29.

~~<sup>36</sup> S.I. 2017/817.~~

<sup>37</sup> Ibid.

anticipated timescales. Section 78A is a prospective provision that will be applied through Section 57 of the Traffic Management Act 2004. This provision is not yet in force, but should it become legislation, then this provision is disapplied for the purpose of the Project and anticipated timescales. The disapplication of these provisions (which are designed primarily to regulate the carrying out of street works by utility companies in respect of their apparatus) is appropriate given the scale of works proposed under the DCO, the specific authorisation given for those works by the DCO, and the specific provisions in the DCO which would regulate the carrying out of the works included in the DCO.

4.14.4 In general, Section 120(5) of the Planning Act 2008 allows for an Order granting development consent to apply, modify or exclude a statutory provision which relates to any matter (s120(5)(a)) and would allow the Secretary of State to allow the inclusion of any provision that appears necessary (s120(5)(c)).

4.14.5 The table included at Appendix A provides an overview of the provisions within the 1991 Act that the Order would disapply.

4.14.44.14.6 Comparable provisions have been included at Article 12(3) of the Southampton to London Pipeline Order<sup>38</sup> and also at Article 15(2) of the Sizewell C (Nuclear Generating Station) Order 2022<sup>39</sup>.

## 4.15 Article 13 (Power to alter layout etc. of streets)

4.15.1 This Article allows the undertaker to alter the layout of existing streets within the Order limits for the purpose of constructing and maintaining the authorised development. The streets to be altered permanently are listed in Part 1 of Schedule 7 (streets subject to permanent alteration of layout), and the streets to be altered temporarily are listed in Part 2 of Schedule 7 (streets subject to temporary alteration of layout), together with a description of the layout alterations proposed. In the majority of cases, this relates to the creation of bellmouths for means of access (with one instance of widening and one instance of creating passing places). Requirement 14 of the DCO requires that works to construct or temporarily alter any new or existing means of access must not commence until written details of the design and layout of the means of access have been approved by the relevant highway authority.

4.15.2 In addition, paragraph 2 allows the undertaker to permanently or temporarily alter the layout of any street within or adjacent to the Order limits (i.e. streets which are not specified in Schedule 7). However, this power is subject to the consent of the street authority who must be given 28 days' notice in advance of exercising the power, with consent deemed if the street authority does not respond within 28 days- of receipt of the application. Any notice under this Article will confirm to the street authority that their consent will be deemed if they fail to respond within 28 days.

4.15.3 There is a requirement in this Article 13 (power to alter layout etc. of streets) to restore any streets temporarily altered to the reasonable satisfaction of the street authority.

4.15.4 This Article is necessary under section 120(5)(c) of the Act to give full effect to Articles 3 (Development consent etc granted by the Order) and 4 (Maintenance of authorised development).

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<sup>38</sup> S.I. 2020/1099.

<sup>39</sup> S.I. 2022/853.



4.15.5 Article 13 is based on Article 12 of the Richborough Order<sup>40</sup>.

## 4.16 Article 14 (Temporary stopping up of streets, cycle tracks, and public rights of way)

4.16.1 This Article provides for the temporary stopping up, alteration or diversion of streets, cycle tracks, or public rights of way shown on the access, rights of way and public rights of navigation plan or within the Order limits. In relation to those streets and public rights of way listed in Schedule 8, the undertaker must first consult with the relevant street authority. In relation to streets, cycle tracks and public rights of way not listed in Schedule 8, the consent of the street authority (which may impose reasonable conditions) must first be obtained (such consent not to be unreasonably withheld or delayed), and will be deemed within 28 days if the street authority fails to notify its decision within this period. Any notice under this Article will confirm to the street authority that their consent will be deemed if they fail to respond within 28 days of receipt of the application. Requirement 5 of the DCO also requires construction works to be undertaken in accordance with the public rights of way management plan, which is certified under Article 48 (certification of plans, etc.) of the DCO.

4.16.2 Schedule 8 of the DCO and the Public Rights of Way Management Plan include consistent references to public rights of way as they are referred to on the Access, Rights of Way and Public Rights of Navigation Plans.

4.16.24.16.3 This Article is based on Article 13 of the Richborough Order<sup>41</sup> and also the approach adopted in the National Grid (King's Lynn B Power Station Connection) Order 2013<sup>42</sup> and the Hinkley Connection Order<sup>43</sup>.

## 4.17 Article 15 (use of private roads for construction)

4.17.1 This Article authorises the temporary use, in common with other users, of private roads within the Order limits by persons or vehicles, for the purposes of, or in connection with, the construction and maintenance of the authorised development, without the need for the undertaker to acquire a permanent right of way over that land or take temporary possession of the land under Articles 36 to 38 of the DCO (for example, there may be private farm roads within the Order limits that provide key access routes to parts of the authorised development). The undertaker will be liable to compensate any person who has suffered loss or damage as a result of the exercise of this power.

4.17.2 This Article, therefore, creates a power to “use” a private road for a temporary period that is proportionate to the limited nature of the use, rather than extinguishing, suspending or permanently interfering with the private rights of a landowner (through the acquisition of a permanent right). This is akin to the powers for temporary use under Articles 36 (temporary use of land for carrying out the authorised development) to 38 of the Order; however, it is distinguished because the undertaker does not require the exclusive use and possession of the private roads whilst exercising this power.

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<sup>40</sup> S.I. 2017/817.

<sup>41</sup> Ibid.

<sup>42</sup> S.I. 2013/3200.

<sup>43</sup> S.I. 2016/49.

- 4.17.3 This wording contains precedent in the London to Southampton Pipeline Order<sup>44</sup> (Article 14) and Silvertown Tunnel Order 2018<sup>45</sup> (Article 13).

## 4.18 Article 16 (Access to works)

- 4.18.1 This Article allows the undertaker to improve or form means of accesses to and from the public highway within the Order limits.
- 4.18.2 Such accesses to which Article 16 apply are listed in Schedule 9 (access to works). For accesses not listed in Schedule 9 (access to works) the consent of the relevant planning authority, in consultation with the relevant highway authority, is required. Consent is deemed within 28 days of receipt if a decision is not notified (as explained above), but otherwise, the article follows the general Model Provision. Any notice under this Article will confirm to the street authority that their consent will be deemed if they fail to respond within 28 days. This Article is based on Article 14 of the Richborough Order<sup>46</sup> and the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014<sup>47</sup>.

## 4.19 Article 17 (Construction, alteration and maintenance of streets)

- 4.19.1 This Article requires any streets constructed under the DCO to be completed to the reasonable satisfaction of the street authority. It also confirms that the altered streets resulting from the authorised development will be maintained by the street authority and, 12 months following its completion, will be dedicated as public highway.
- 4.19.2 This Article has precedent in the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016<sup>48</sup> and similar provisions have appeared in other DCOs for highway schemes. This Article is considered necessary to clarify construction and maintenance liabilities as a result of the permanent widening proposed to Overton Road, comprised in the authorised development.

## 4.20 Article 18 (Agreements with street authorities)

- 4.20.1 This Article allows the undertaker and the relevant street authority to enter into agreements about the street works necessitated by the Project which would allow the relevant street authority to carry out such works under the terms of that agreement.
- 4.20.2 This power is separate to any agreements made under section 278 of the Highways Act 1980<sup>49</sup> which do not relate to powers under the DCO but to a relevant street authority devolving its powers (under section 278 of that Act).
- 4.20.3 This Article is based on Article 15 of the Richborough Order<sup>50</sup>.

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<sup>44</sup> S.I. 2020/1099.

<sup>45</sup> S.I. 2018/574.

<sup>46</sup> S.I. 2017/817.

<sup>47</sup> S.I. 2014/2384.

<sup>48</sup> S.I. 2016/547.

<sup>49</sup> 1980 c.66.

<sup>50</sup> S.I. 2017/817.

## Part 4 Supplemental Powers

### 4.21 Article 19 (Discharge of water)

- 4.21.1 This Article enables the undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the authorised development with the approval and superintendence (if provided) of the authority to which the watercourse, public sewer or drain belongs (such approval not to be unreasonably withheld) and subject to other conditions. Consent is deemed if a decision is not notified within 28 days. ~~This of receipt of the application. Any notice under this Article follows the Model Provisions and will confirm to the Richborough Order<sup>54</sup> (Article 16)-street authority that their consent will be deemed if they fail to respond within 28 days.~~
- 4.21.2 ~~Paragraph (12) of this Article amends section 66 of the Land Drainage Act 1991<sup>52</sup> so that provisions requiring consent not to be unreasonably withheld and deemed consent for applications under Section 66 Byelaws apply. This mirrors the principle set out in Paragraph (3) of Section 23 to the Land Drainage Act 1991 but with timescales consistent to the deeming provisions throughout the DCO. In addition, Paragraph (12) confirms the position that no consent for byelaws made under Section 66 of the Land Drainage Act 1991, will be required for works which constitute only an oversail of an overhead line above a watercourse, provided the oversail meets the minimum statutory clearances contained in Schedule 2 of the Electricity Safety, Quality and Continuity Regulations 2002. This operates as a disapplication of byelaw 17 of the IDB byelaws for works which are solely an oversail of an overhead line, provided statutory clearances are adhered to. This is considered appropriate given that National Grid would be complying with the relevant national legislation in respect to overhead line clearance distances and so no further protections should be required.~~
- 4.21.3 ~~This Article follows the Model Provisions and the Richborough Order<sup>53</sup> (Article 16), save for the addition of paragraphs (11) and (12).~~

### 4.22 Article 20 (Protective work to land, buildings, structures, apparatus or equipment)

- 4.22.1 This Article sets out the circumstances in which protective works can be carried out to buildings within the Order limits that it is considered might be damaged by the works. Except in an emergency, 14 days' notice must be given to the owner of the building, and the owner can seek arbitration by serving a counter-notice. The power lasts until five years after the relevant part of the project comes into operation. There is an entitlement to compensation for loss or damage.
- 4.22.2 The Article is identical to Article 15 in the Model Provisions except that the words 'first opened for use' has been replaced with 'becomes operational' to better reflect the nature of the authorised development.

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<sup>54</sup> ~~Ibid.~~

<sup>52</sup> ~~c.23.~~

<sup>53</sup> ~~Ibid.~~

- 4.22.3 Similar mechanisms are found in the Hinkley Connection Order<sup>54</sup> (Article 17 (Protective work to buildings)) and the Richborough Order<sup>55</sup> (Article 17 (Protective work to buildings)) which have been built upon in line with the precedented position in the London to Southampton Pipeline Order<sup>56</sup> (Article 19).
- 4.22.4 The DCO extends the power to carry out protective works from just buildings to land, buildings, structures, apparatus, equipment and the authorised development, and allows the undertaker access to land within or outside of the Order limits to exercise this power (where reasonably necessary). This wording is similar to Article 21 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014<sup>57</sup> and is necessary given the linear nature of the authorised development and also given the range of potential items that might necessitate protective works (which are defined in sub-paragraph (12) as being both protective and remedial works), and, in particular, the inclusion of this provision will help to mitigate the risk of unforeseen circumstances prejudicing the delivery of this NSIP.
- 4.22.5 Paragraph (11) applies section 13 of the Compulsory Purchase Act 1965<sup>58</sup> (**1965 Act**), thereby providing an enforcement mechanism (by way of a warrant) where entry onto, or possession of, land under the Article is refused. Equivalent provision is found in the Southampton to London Pipeline Order<sup>59</sup> and in the A303 (Amesbury to Berwick Down) Development Consent Order 2020<sup>60</sup>.

## 4.23 Article 21 (Authority to survey and investigate the land)

- 4.23.1 This Article confers upon the undertaker a power to survey and investigate land, including the ability to make trial holes, boreholes or excavations, to use and leave apparatus on the land in question and to enter onto land. The Article also makes provision in relation to the payment of compensation and the notice period that must be given to owners and occupiers of land ahead of any surveys.
- 4.23.2 The Article is based on the Hinkley Connection Order<sup>61</sup> (Article 18). Paragraph (1)(b) includes the power to survey and investigate land or buildings to establish the effect of the authorised development or to enable the authorised development to begin. Paragraph (1)(e) allows equipment used for ecological or archaeological investigations to be left on the land (along with other apparatus used in connection with the survey, monitoring or investigation of land). These two additional powers are adapted from the provisions of the London to Southampton Pipeline Order<sup>62</sup> (Article 20) and are necessary to ensure that this Article provides authority for the types of activities that are likely to be necessary in respect of the authorised development.

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<sup>54</sup> S.I. 2016/49.

<sup>55</sup> S.I. 2017/817.

<sup>56</sup> S.I. 2020/1099.

<sup>57</sup> S.I. 2014/2384.

<sup>58</sup> 1965 c.56.

<sup>59</sup> S.I. 2020/1099.

<sup>60</sup> S.I. 2020/1297.

<sup>61</sup> S.I. 2016/49.

<sup>62</sup> S.I. 2020/1099.

- 4.23.3 In addition, the power in the general Model Provisions is extended to include the ability to take, and process, samples of water, air, soil or rock, flora, bodily excretions, non-human dead bodies, or any non-living thing present as a result of human action found on, in or over the land. This wording reflects the wording of section 53(3A) of the Act which clarifies that the right to enter land for the purposes of surveying includes the power to take and process certain types of samples. This may be included in a DCO under section 120(4) and paragraph 12 of Part 1 of Schedule 5 of the Act, which makes particular provision for the inclusion of powers for carrying out surveys or taking of soil samples.
- 4.23.4 Article 21(4) ensures that landowners are provided with details of the undertaker's purpose for surveying, monitoring or investigating the land before the undertaker enters the land, and authorises the undertaker to take necessary vehicles and equipment onto the land to carry out the survey, monitoring or investigations.
- 4.23.5 The provision relates to, or is ancillary to, the authorised development within the scope of section 120(3) of the Act and, in accordance with section 120(4) is a matter specifically identified in paragraph 12 of Part 1 of Schedule 12 of the Act, which states that a development consent order can provide for the carrying out of surveys or taking of soil samples.

## Part 5 ~~Compulsory Powers of Acquisition~~ Powers

### 4.24 Article 22 (Compulsory acquisition of land)

- 4.24.1 This Article authorises the acquisition of land by compulsory purchase. It grants the power to acquire the land that is required for the Project. This is subject to Articles 36 (temporary use of land by National Grid ~~for carrying out the authorised development~~), 37 (temporary use of land by NPG ~~for carrying out the authorised development~~) and 38 (temporary use of land by NGN ~~for carrying out the authorised development~~), which are explained below.
- 4.24.2 This Article is based on Article 18 of the Model Provisions.

### 4.25 Article 23 (Compulsory acquisition of land – incorporation of the mineral code)

- 4.25.1 This Article incorporates Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981<sup>63</sup> (**1981 Act**), exempting existing rights in minerals from the scope of compulsory acquisition unless they are expressly named and conveyed. It also makes provision for a situation where the owner of mines or minerals wishes to work such mines and minerals.
- 4.25.2 This Article was included in the Model Provisions as Article 19 and is also based on the Richborough Order<sup>64</sup>.

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<sup>63</sup> 1981 c.67.

<sup>64</sup> S.I. 2017/817.

## 4.26 Article 24 (Time limit for exercise of authority to acquire land and rights compulsorily)

- 4.26.1 This Article gives the undertaker five years to issue notices to treat or to execute a general vesting declaration to acquire the land that may be compulsorily acquired under the DCO. These are the two main procedural methods by which the process of compulsorily acquiring land may be undertaken should the DCO be made.
- 4.26.2 The Article also sets a 5 year time limit on the power of National Grid to take temporary possession of land under Article 36 (as well as NPG and NGN), although it does not prevent them remaining in possession of land after that time if it took possession within the 5 year limit (this has consistently been approved by the Secretary of State, see for example Article 20 of the Richborough Order<sup>65</sup>).
- 4.26.3 This Article was included in the Model Provisions as Article 20.

## 4.27 Article 25 (Compulsory acquisition of rights)

- 4.27.1 This Article allows the undertaker to acquire rights over the DCO land, including by creating new rights for the purpose of the authorised development.
- 4.27.2 Paragraph (1) provides that the undertaker may acquire or create rights as described in the book of reference and shown within Schedule 13 (land in which only new rights and restrictive covenants etc. may be acquired) with the general nature and extent of these rights also shown in the land plan.
- 4.27.3 As well as providing for the acquisition of rights, the Article enables the undertaker to impose restrictions (as described in the book of reference) over the Order land for the purposes of the authorised development. This power to impose restrictions on the use of land is considered a proportionate means of protecting the authorised development whilst minimising the extent of land to be compulsorily acquired. This power has appeared in Orders made under the Transport and Works Act 1992<sup>66</sup> (1992 Act), particularly in contexts where it is necessary to restrict use of land or airspace above or beneath an authorised development which consists of a viaduct or tunnel. The power to impose restrictions is appropriate in the context of the authorised development to restrict use of land or airspace above or beneath the overhead electric lines or underground cables. The plots and the restrictions to be imposed are confirmed and described in the book of reference.
- 4.27.4 General model provision paragraph (2) has not been included as similar provision is instead included in Article 23 (Extinguishment and suspension of private rights). Paragraph (3) provides that where National Grid, NPG or NGN needs only to acquire rights over land, it shall not be obliged to acquire any greater interest in that land.
- 4.27.5 Paragraph (4) and Schedule 10 impose modifications to the compulsory purchase and compensation provisions under general legislation. They do not affect the entitlement to compensation, but generally ensure that the compensation procedure applies to the additional categories of acquisition covered by the DCO – the creation of new rights and the imposition of restrictions in particular. This is a consequence of the extension of land acquisition powers to these categories (done to allow lesser land interests to be

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<sup>65</sup> S.I. 2017/817.

<sup>66</sup> 1992 c.42.

acquired), and is commonplace in TWAOs and other compulsory purchase orders made by local authorities. For the purpose of section 126(2) of the Act, the relevant compensation provisions are modified only to the extent necessary to ensure that they apply properly to the acquisition of rights, and not to affect the amount of compensation to which landowners would be entitled.

4.27.6 Paragraphs (5) and (6) provide that the undertaker, with the consent of the Secretary of State, may transfer to statutory undertakers its power to acquire rights or impose restrictions, where the diversion, replacement or protection of apparatus is required on Order land. The benefit of this is that it would avoid possible delay and uncertainty by statutory undertakers being required to exercise their own powers. For them to do so would be unnecessary given that the action taken would be no different than if the powers were created within the DCO.

4.27.7 This Article is based on Article 21 of the Richborough Order [but with the update explained above](#)<sup>67</sup>.

## 4.28 Article 26 (Extinguishment and suspension of private rights)

4.28.1 As outlined above in the commentary to Article 25, this Article has expanded upon the Model Provision so as to apply to private rights generally and not just to rights of way.

4.28.2 It provides for the extinguishment of private rights over land subject to compulsory acquisition and the extinguishment of private rights over land subject to the compulsory acquisition of rights (in so far as the continuance of the existing right would be inconsistent with the right acquired) from the date of the acquisition rights. This includes the plots shown on the extinguishment of easements, servitudes and other private rights plan. The plots shown on the extinguishment of easements, servitudes and other private rights plan are only included for the purposes of extinguishing those rights and are described as Class 2A rights in the book of reference. Private rights on land already owned by the undertaker within the Order limits would be extinguished on the [commencement](#)[carrying out](#) of any activity authorised by the DCO which interferes with or breaches such rights. This draws on the approach taken in Article 23 of the Richborough Order<sup>68</sup>. It allows the undertaker to “clear title” on land it already owns.

4.28.3 All private rights over land that is temporarily occupied by National Grid, NPG or NGN are suspended and unenforceable for the duration of the occupation (save as provided for in Article 28 below).

4.28.4 The Article makes provision in relation to the payment of compensation.

4.28.5 There is a saving for statutory undertakers. Private rights are defined in Article 24(9). This builds on the definition of rights given in Article 21(2) of the general Model Provisions and includes the wider definition used in Article 18(3) of the Richborough Order<sup>69</sup>.

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<sup>67</sup> S.I. 2017/817.

<sup>68</sup> Ibid.

<sup>69</sup> Ibid.

## 4.29 Article 27 (Extinguishment of private rights and restrictive covenants relating to apparatus removed from land subject to temporary possession)

- 4.29.1 All private rights over land that is temporarily occupied by the undertaker are suspended and unenforceable for the duration of the occupation insofar as inconsistent with the exercise of the DCO powers. Rights in relation to apparatus which is removed from the land are extinguished when the undertaker no longer remains in lawful possession of the land. This Article is not a Model Provision<sup>70</sup>, but is identical to Article 24 of the Hinkley Connection Order<sup>70</sup>.
- 4.29.2 Paragraph (3) provides that the extinguishment of any right does not give rise to a cause of action relating to any foundations save for those which lie less than 1.5 metres underground. Whilst the intention is to remove apparatus from the land, the foundations (below 1.5 metres underground) will be left in situ and this paragraph is intended to confirm that leaving the foundations in the ground would not result in a cause of action of trespass in relation to the foundations once the right to leave the foundations in the ground is extinguished.
- 4.29.3 A new paragraph (4) is included, in line with the approach in the Richborough Order<sup>71</sup>, to explicitly give effect to Schedule 11 (extinguishment of private rights and restrictive covenants relating to apparatus removed from land subject to temporary possession).

## 4.30 Article 28 (Power to override easements and other rights)

- 4.30.1 This Article provides a power to override easements and other rights and reflects the terms of section 120(3) and (4), and paragraphs 2 and 3 of Part 1 of Schedule 5 to the Act. It provides statutory authority for carrying out any authorised activity that interferes with any of the interests listed in paragraph (2) including restrictions on user of land arising by the virtue of a contract. Paragraph (3) provides for compensation to be payable where the interests listed in paragraph (2) are overridden.
- 4.30.2 Notwithstanding the coming into force of section 203 of the Housing and Planning Act 2016<sup>72</sup> (**2016 Act**), the power to override easements and other rights is required in respect of the exercise of Articles 21 (authority to survey and investigate land), 20 (protective work to buildings) and 46 (felling or lopping of trees and removal of hedgerows) in circumstances where the undertaker has not acquired the land.
- 4.30.3 The principle of this Article has precedent in Article 30 of the Sizewell C (Nuclear Generating Station) Order 2022<sup>73</sup>.

## 4.31 Article 29 (Disregard of certain interests and improvements)

- 4.31.1 This Article provides for the Lands Tribunal to disregard certain interests in and enhancements to the value of land for the purposes of assessing compensation with respect to its compulsory acquisition where the creation of the interest or the making of

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<sup>70</sup> S.I. 2016/49.

<sup>71</sup> S.I. 2017/817.

<sup>72</sup> 2016 c.22.

<sup>73</sup> S.I. 2022/853.



the enhancement was designed with a view to obtaining compensation or increased compensation.

- 4.31.2 It complies with section 126 of the Act as it does not have the effect of modifying or excluding the application of an existing provision relating to compulsory purchase compensation. The Article has precedent in the River Humber Gas Pipeline Replacement Order 2016<sup>74</sup> and TWAOs such as the London Underground (Northern Line Extension) Order 2014<sup>75</sup> and the Midland Metro (Wolverhampton City Centre Extension) Order 2016<sup>76</sup>.
- 4.31.3 The wording of this Article mirrors section 4 (assessment of compensation) of the 1981 Act. It is necessary to specifically apply the effect of section 4 of the 1981 Act in the DCO. This is because the 1981 Act only applies to a compulsory purchase to which any other statutory instrument has applied its provisions and the Act (nor standard Order provisions) does not apply these. Sections 120(3) and 120(5)(a) and Schedule 5 (by virtue of section 120(3)) of the Act allow the application in a DCO of statutory provisions which relate to the payment of compensation.

### **4.32 Article 30 (Set-off for enhancement in value of retained land)**

- 4.32.1 This Article provides that in assessing the compensation payable to any person in respect of the acquisition of any land, the Lands Tribunal shall set off against the value of the land any increase in value of any contiguous or adjacent land belonging to that person arising out of construction of the authorised development.
- 4.32.2 This Article complies with section 126(2) of the Act as it does not have the effect of modifying the application of an existing provision relating to compulsory purchase compensation. The Article has precedent in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014<sup>77</sup> and TWAOs such as the London Underground (Northern Line Extension) Order 2014<sup>78</sup> and the Midland Metro (Wolverhampton City Centre Extension) Order 2016<sup>79</sup>.
- 4.32.3 The principle in this Article is established in section 7 of the Land Compensation Act 1961<sup>80</sup> (effect of certain actual or prospective development of adjacent land in same ownership), which needs to be applied. Sections 120(3) and 120(5)(a) of and Schedule 5 (by virtue of section 120(3)) to the Act allow the application in a DCO of statutory provisions which relate to the payment of compensation.

### **4.33 Article 31 (No double recovery)**

- 4.33.1 This Article provides that compensation is not payable both under this DCO and other compensation regimes for the same loss or damage. In addition, the Article provides

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<sup>74</sup> S.I. 2016/853.

<sup>75</sup> S.I. 2014/3102.

<sup>76</sup> S.I. 2016/684.

<sup>77</sup> S.I. 2014/2384.

<sup>78</sup> S.I. 2014/3102.

<sup>79</sup> S.I. 2016/684.

<sup>80</sup> 1961 c.33.

that there is not to be double recovery under two or more different provisions of this DCO.

4.33.2 The principle of equivalence, namely that a claimant in a compulsory purchase matter shall be compensated for no more than and no less than their loss, is long established and no part of the compensation code conflicts with this principle.

4.33.3 This Article has precedent in the Richborough Order<sup>81</sup> and the North London Heat and Power Generating Station Order 2017<sup>82</sup>.

#### **4.34 Article 32 (Modification of Part 1 of the 1965 Act)**

4.34.1 The purpose of this Article is to ensure consistency between the terms of the DCO and the 1965 Act (as amended by the 2016 Act) as applied by section 125 of the Act.

4.34.2 This Article has precedent in Article 26 of the London to Southampton Pipeline Order<sup>83</sup>.

#### **4.35 Article 33 (Application of the 1981 Act)**

4.35.1 This Article applies (with minor modifications to make the provisions appropriate to the context of acquisition under powers in a development consent order) the provisions of the Compulsory Purchase (Vesting Declarations) Act 1981<sup>84</sup> to compulsory acquisition under the DCO so that the undertaker has the option to acquire land via the vesting declarations procedure.

4.35.2 Vesting declarations are one of two ways of acquiring land that is subject to compulsory purchase. The other method involves serving a notice to treat on the landowner to commence the process of establishing the acquisition price, after which title in the land is transferred. The date on which title will transfer is uncertain under the notice to treat method.

4.35.3 A vesting declaration, in contrast, sets the date on which title in the land is transferred to the acquiring authority. Compensation is negotiated or determined and paid later. Vesting declarations, therefore, allow title in the land to pass to the acquirer more quickly than using the notice to treat method, and also allow several parcels to be acquired at once. Their use is subject to serving notices and observing time limits as required by the 1981 Act (as amended by the 2016 Act).

4.35.4 The modifications ensure consistency with the standard five year period sought under the DCO for acquisition of rights. It further ensures that the appropriate references are made to the Act. The Article is based on Article 23 of the Model Provisions, and is similar to previous National Grid orders such as the Hinkley Connection Order<sup>85</sup> (Article 25) as well as the Richborough Order (Article 25)<sup>86</sup>.

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<sup>81</sup> S.I. 2017/817.

<sup>82</sup> S.I. 2017/215.

<sup>83</sup> S.I. 2020/1099.

<sup>84</sup> 1981 c.66.

<sup>85</sup> S.I. 2016/49.

<sup>86</sup> S.I. 2017/817.

## 4.36 Article 34 (Acquisition of subsoil or airspace only)

- 4.36.1 This Article allows the undertaker to acquire or create rights in land below the surface or above the surface, rather than having to acquire all of the land.
- 4.36.2 The purpose of this Article is to give the undertaker the flexibility to minimise so far as is possible the extent of interests to be acquired, with consequently less impact on affected landowners and lower payments of compensation, both of which are in the public interest. Any subsoil or airspace acquired under this provision can only be used for the same purposes for which the undertaker could have acquired all of the land. This provision allows acquisition of the minimum interest needed to deliver the Project.
- 4.36.3 This Article is based on Article 24 of the Model Provisions, which related to subsoil only, and previous National Grid orders such as the Richborough Order<sup>87</sup> (Article 26) and the Hinkley Connection Order<sup>88</sup> (Article 26).

## 4.37 Article 35 (Use of subsoil under or airspace over streets)

- 4.37.1 The purpose of this Article is to allow the undertaker to appropriate and use land above or below streets within the Order limits, without having to acquire the street or any right or easement in it. The exercise of this power, without full acquisition, is prohibited in the circumstances set out in paragraph (3). Compensation is payable for any loss or damage caused to an owner or occupier of land affected by the power of appropriation where no acquisition has taken place.
- 4.37.2 The Article was included in the Model Provisions as Article 27 and also appears in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (Article 48)<sup>89</sup>.

## 4.38 Article 36 (Temporary use of land by National Grid)

- 4.38.1 This Article which applies only to National Grid follows, in part Article 28 of the Model Provisions and allows the land set out in Part 1 of Schedule 12 to be occupied temporarily by National Grid while the works are carried out. A modification to the Model Provision has been made to allow National Grid to also take temporary possession of any of the Order land which may be subject to compulsory acquisition of land or rights but in respect of which National Grid has not yet served a notice of entry or made a general vesting declaration. This provision has appeared in Orders made under the 1992 Act.
- 4.38.2 It allows National Grid to occupy land to construct the authorised development without having to acquire the land, or a right over the land. Once constructed, that land, or rights in the land, may be compulsorily acquired. This means that National Grid will be able to compulsorily acquire rights to retain, operate and maintain the authorised development over an area of land which matches the final footprint of the authorised development. This provides flexibility to National Grid and, for the landowner, minimises the area of land required for the compulsory acquisition of land or rights, which has a lesser impact

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<sup>87</sup> S.I. 2017/817.

<sup>88</sup> S.I. 2016/49.

<sup>89</sup> S.I. 2014/2384.

on the landowner. There is a consequent amendment to paragraph (3) to refer to the two different categories of land.

- 4.38.3 Paragraph (1)(d) has also been added to the Model Provision to allow specified works to be constructed on the land listed in Part 1 of Schedule 12.
- 4.38.4 Paragraph (4) provides that National Grid must provide written notice of the date of completion of the work for which possession was taken.
- 4.38.5 Paragraph (5) provides that before giving up temporary possession of land listed in Part 1 of Schedule 12 National Grid must remove all temporary works and restore the land save for the exceptions listed in sub-paragraphs (a) to (d) which has been amended to allow works of mitigation and other works (such as the pylons) to be constructed and left on the land, without a requirement for these to be removed. This would apply, for example, where mitigation is provided but National Grid does not need to retain a permanent interest in the land and has precedent in the Richborough Order. The provision would allow National Grid to leave, in place, foundations more than 1.5 metres below adjoining ground level. Novel drafting has been included to clarify that it is not necessary for any archaeological artefacts identified within temporarily acquired land to be returned to the land. This is necessary because the Archaeological Written Scheme of Investigation (secured under Requirement 5 of the DCO) provides that artefacts should be removed if this is in line with the professional body's standards.
- 4.38.6 Paragraph (6) is similar to paragraph (5) but provides that where temporary possession has been taken over land which may be subject to compulsory acquisition but in respect of which National Grid has not yet served a notice of entry or made a general vesting declaration, National Grid must acquire the interest on, over or in the land or remove the temporary works.
- 4.38.7 Paragraph (9) has been amended to make clear that compensation payable under this Article is compensation payable for injurious affection which would normally arise under section 10 of the 1965 Act but which, by virtue of section 125(3)(b) of the ~~2008~~-Act is payable under section 152 of the Act instead.
- 4.38.8 Paragraph (12) makes clear that the power in this Article can be exercised on more than one occasion. This change is intended to clarify the intention behind the model provision rather than to expand its scope.
- 4.38.9 Paragraph (13) disappplies the provisions of the Neighbourhood Planning Act 2017 in insofar as they relate to temporary possession of land under this article 36, article 37 (temporary use of land by NPG), article 38 (temporary use of land by NGN) and article 39 (temporary use of land for maintaining the authorised development) of the DCO.
- 4.38.94.38.10 The amended Article reflects the wording of the Richborough Order<sup>90</sup>.

## 4.39 Article 37 (Temporary use of land by NPG)

- 4.39.1 This Article mirrors Article 36 (Temporary use of land by National Grid) and provides that NPG may, in connection with the carrying out of the NPG Works (only) take temporary possession of the Order land specified in Part 2 of Schedule 12.

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<sup>90</sup> S.I. 2017/817

## 4.40 Article 38 (Temporary use of land by NGN)

4.40.1 This Article is similar to Article 36 (Temporary use of land by National Grid), subject to amendments which accommodate the different types of works which NGN will be carrying out, and provides that NGN may, in connection with the carrying out of the NGN Works (only) take temporary possession of the Order land specified in Part 3 of Schedule 12.

## 4.41 Article 39 (Temporary use of land for maintaining the authorised development)

4.41.1 This Article provides that the undertaker may take temporary possession of land within the Order limits, as required for the purpose of maintaining the authorised development, at any time within a period of five years from the date on which that part of the authorised development is first opened for use.

4.41.2 Paragraph (1)(c) authorises the construction of such temporary works and buildings on the land as may be reasonably necessary for that purpose. Under paragraph (65) all temporary works must be removed before the undertaker gives up possession under this Article and the land must be restored to the reasonable satisfaction of the owners.

4.41.3 This power does not apply in relation to houses, gardens or any other buildings for the time being occupied (paragraph (2))~~).~~

4.41.4 Paragraph (3) requires at least 28 days' notice of intended entry to be served on the owners and occupiers of the land in question save in the circumstances outlined in paragraph (4).

4.41.5 Paragraphs (86) to (108) provide for compensation to be paid to owners and occupiers of land of which temporary possession is taken under this Article.

4.41.6 This Article is substantially based on the wording used in the Richborough Order<sup>91</sup> (see Article 30) and Hinkley Connection Order<sup>92</sup> (see Article 31). It is also based on Article 29 of the Model Provisions.

4.41.7 This Article is required to enable the undertaker to carry out maintenance during the maintenance period and is considered appropriate as it would impose a lesser burden than permanently acquiring rights to achieve the same purpose.

## 4.42 Article 40 (Statutory undertakers)

4.42.1 This Article allows the undertaker to extinguish rights of statutory undertakers and remove and reposition their apparatus. Reference is made to the Order land so that this power is not restricted to apparatus which has been specifically shown on the land plan and described in the book of reference. In practice it is impractical to show and describe all such apparatus and so a general power for the extinguishment of rights and the removal or relocation of apparatus belonging to statutory undertakers over or within any of the Order land is required.

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<sup>91</sup> S.I. 2017/817.

<sup>92</sup> S.I. 2016/49.

- 4.42.2 As the land over which this power may be exercised is shown on the land plan, and the beneficiaries of such rights are described in the book of reference, the requirements of Regulations 5(2)(i)(iii) and 7(1)(c) of the APFP Regulations are satisfied.
- 4.42.3 Paragraph (2) restricts the undertaker's power to extinguish rights or remove or reposition apparatus by excluding apparatus in streets. If the streets in question are to be stopped up as part of the authorised development then the provisions of Article 40 will apply.
- 4.42.4 This Article is based on Article 31 of the Model Provisions and the Richborough Order<sup>93</sup> (Article 33).

#### **4.43 Article 41 (Recovery of costs of new connections)**

- 4.43.1 This Article provides that if any statutory undertaker's apparatus is removed and this interrupts the supply from that apparatus to owners or occupiers of premises such that they have to seek a connection to other apparatus, then their reasonable costs in obtaining a new supply can be claimed from the undertaker.
- 4.43.2 This Article was included in the Model Provisions as Article 33 as well as the Richborough Order (Article 33) and Hinkley Connection Order (Article 34).

### **Part 6 Miscellaneous and General**

#### **4.44 Article 42 (Application of landlord and tenant law)**

- 4.44.1 This Article governs the leasing of land by the undertaker to any other person. It allows the terms of the lease to override any statutory provisions relating to landlord and tenant law. The Article is identical to the general Model Provisions Article 35 as well as the Richborough Order (Article 35) and Hinkley Connection Order (Article 36).

#### **4.45 Article 43 (Defence to proceedings in respect of statutory nuisance)**

- 4.45.1 Section 158 of the Act confers statutory authority for the purposes of a defence in statutory nuisance generally. This Article amends the terms of the defence in the case of noise nuisance (other types of nuisance continue to have the general defence afforded by section 158). The defence is available if the noise relates to the construction or maintenance of the project and is in accordance with any controls imposed by the local authority under the Control of Pollution Act 1974<sup>94</sup> or cannot reasonably be avoided, or the use of the project is in accordance with any scheme of monitoring or attenuation of noise agreed with the relevant local authority or cannot reasonably be avoided.
- 4.45.2 This Article is based on the general Model Provision Article 7 except that paragraph (1)(b)(i) has been amended to reflect that a noise and vibration management plan may be agreed but is not required. The noise and vibration management plan has been secured separately under Requirement 5 of the DCO and is a certified document under

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<sup>93</sup> S.I. 2017/817.

<sup>94</sup> 1974 c.40.

Article 48 (certification of plans, etc) of the DCO. This approach has precedent in the Richborough Order (Article 38) and Hinkley Connection Order (Article 38).

#### 4.46 Article 44 (Maintenance of drainage works)

- 4.46.1 The purpose of this Article is to make it clear that any realignment of drainage works or other works to them that are carried out as part of the authorised development do not affect the existing allocation of responsibility for maintenance of those drains, unless this is agreed between the undertaker and the responsible party. Responsibility for maintenance of drainage works may sit with the Environment Agency, an internal drainage board, a lead local flood authority or a landowner.
- 4.46.2 This provision is well precedented (see for example Article 5 of the London to Southampton Pipeline Order<sup>95</sup> and Article 5 of the Testo's Junction Alteration Order 2018<sup>96</sup>).

#### 4.47 Article 45 (Traffic Regulation)

- 4.47.1 This Article allows the undertaker, with the consent of the traffic authority, to make traffic regulation orders so that it can implement traffic management measures and regulate traffic necessary to construct the authorised development. The traffic management measures are required to ensure the safe and efficient construction of the authorised development and to the extent specified in Schedule 14 (traffic regulation) or to any other extent that is expedient or necessary for the construction of the authorised development.
- 4.47.2 The Article is not in the general Model Provisions but has precedent in the Richborough Order<sup>97</sup> (Article 40) and the Hinkley Connection Order<sup>98</sup> (Article 40). It is necessary for the purpose of the construction of the authorised development.
- 4.47.3 A provision has been added to provide that consent from the traffic authority is deemed to have been given if the authority fails to notify the undertaker of its decision within 28 days of receipt of the application. Any notice under this Article will confirm to the street authority that their consent will be deemed if they fail to respond within 28 days.

#### 4.48 Article 46 (Felling or lopping of trees and removal of hedgerows)

- 4.48.1 This Article allows any tree or shrub that is near the Project to be felled or lopped, or have its roots cut back, if it is considered to obstruct the construction, operation or maintenance of the Project or endanger anyone using it. Compensation is payable for any loss or damage caused.
- 4.48.2 Further, this Article also authorises the removal of any hedgerow as defined in the Hedgerow Regulations 1997<sup>99</sup> (**Hedgerow Regulations**). The Project includes DCO

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<sup>95</sup> S.I. 2020/1099.

<sup>96</sup> S.I. 2018/994.

<sup>97</sup> S.I. 2017/817.

<sup>98</sup> S.I. 2016/49.

<sup>99</sup> S.I. 1997/1160.

allows for the removal of a number of identified hedgerows (as set out in ~~the Trees and Hedgerows Potentially Affected Plan (Volume 2, Document 2.11.1-2.11.6)~~ Schedule 17 but it does not limit the application also makes provision for agreement to be reached with the relevant planning authority for removal of this Article to those hedgerows only not included within Schedule 17. This wider application reflects the powers that the undertaker would otherwise be able to exercise under the Hedgerow Regulations to remove any hedgerows when carrying out its functions.

4.48.3 Article 46(4) provides for the application of Regulation 14 (exceptions) of The Town and Country Planning (Tree Preservation) (England) Regulations 2012 to the DCO. This regulation provides that "nothing in regulation 13 shall prevent— (a) the cutting down, topping, lopping or uprooting of a tree—... (vii) so far as such work is necessary to implement a planning permission (other than an outline planning permission or, without prejudice to paragraph (iii)(cc), a permission granted by or under the Town and Country Planning (General Permitted Development) Order 1995) granted on an application under Part III of the Town and Country Planning Act 1990 (control over development), or deemed to have been granted (whether for the purposes of that Part or otherwise);...". Regulation 13 prevents cutting down, topping, lopping or uprooting of a tree to which a Tree Preservation Order relates. Therefore, paragraph (4) of Article 46 clarifies that the DCO will be treated as if it were a planning permission for the purposes of the Regulation 14 exception to the prohibition of cutting down, topping, lopping or uprooting of a tree protected by a Tree Preservation Order.

4.48.4 Article 46(7) removes the need for consent under the Hedgerows Regulations 1997 to remove both hedgerows listed within Schedule 17 and, subject to consultation, any other hedgerow within the Order limits which needs to be removed for the purposes of the authorised development. This approach aligns with that for planning permissions under the Hedgerows Regulations 1997. Regulation 6(1)(e) of the Hedgerows Regulations states "The removal of any hedgerow to which these Regulations apply is permitted if it is required—... (e) for carrying out development for which planning permission has been granted or is deemed to have been granted, except development for which permission is granted by article 3 of the Town and Country Planning General Permitted Development Order 1995 in respect of development of any of the descriptions contained in Schedule 2 to that Order other than Parts 11 (development under local or private Acts or orders) and 30 (toll road facilities);".<sup>100</sup> Therefore, this paragraph seeks to apply the same principle so as not to create an enhanced burden to this Project above and beyond what the Hedgerow Regulations allow for planning permissions generally. Consultation is required in respect of hedgerows not listed in Schedule 17 to both inform the local planning authority of the removal and also allow for any input or requests relating to the specifics of the removal, which National Grid would consider when constructing the authorised development. The local planning authority would not be able to prevent removal of the hedgerow, however neither would the local planning authority be able to prevent removal of a hedgerow under the Hedgerow Regulations where planning permission had been granted.

4.48.24.48.5 This Article is based on Article 39 of the Model Provisions and recent orders such as the A14 Order (Article 36) and the North Wales Wind Farms Connection Order 2016<sup>101</sup>.

<sup>100</sup> The Town and Country Planning General Permitted Development Order 1995 has been superseded by the Town and Country Planning (General Permitted Development)(England) Order 2015 but the reference to the 1995 Order is still the legislation referenced within the Hedgerows Regulations 1997.

<sup>101</sup> S.I. 2016/818.



## 4.49 Article 47 (Protection of interests)

- 4.49.1 This Article provides that Parts 1 to ~~46~~ of Schedule 15 (protective provisions) has effect; ~~and that Part 5 of Schedule 15 has effect in respect of the NPG Works and NGN Works only.~~

## 4.50 Article 48 (Certification of plans, etc.)

- 4.50.1 This Article requires the undertaker to submit the final versions of the plans for certification to the Secretary of State. The Article is based on the general Model Provision which has been amended to refer to the names of the plans that are part of the Application and referred to in the DCO.

This approach is in line the Hinkley Connection Order 2016<sup>102</sup> (Article 44) and the Richborough Order<sup>103</sup> (Article 43).

## 4.51 Article 49 (Service of notices)

- 4.51.1 This Article governs how any notices that may be served under the DCO shall be deemed to have been served properly. In particular, it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner. Although the Article is not in the general Model Provisions it is common within previous DCOs, such as the Richborough Order<sup>104</sup> (Article 44) and Hinkley Connection Order<sup>105</sup> (Article 45). The provision is necessary because the service of notice provisions under sections 229 and 230 of the Act would not apply to notices served under a DCO.

## 4.52 Article 50 (Procedure regarding certain approvals, etc.)

- 4.52.1 This Article contains additional provisions in respect of any approval, consent or agreement which is required to be given under the DCO. It provides that any such approval, consent or agreement given by the relevant body must be given in writing.
- 4.52.2 It also provides that the procedures set out in Schedule 4 apply to any consent, agreement or refusal which needs to be obtained under the requirements set out in Schedule 3 and, in respect of paragraphs 3 to 5 of Schedule 4, any other consents required under the DCO. The Article clarifies the procedure which applies in respect of these additional consents.
- 4.52.3 Schedule 4 sets out the appeal process in relation to such matters and where an appeal can be made to the Secretary of State to discharge matters including the requirements in Schedule 3 (requirements) and other consents or approvals required under the DCO.
- 4.52.4 This Article and associated Schedule 4 (discharge of requirements) reflect the approach taken in the National Grid (North London Reinforcement Project) Order 2014<sup>106</sup> (Article

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<sup>102</sup> S.I. 2016/49.

<sup>103</sup> S.I. 2017/817.

<sup>104</sup> Ibid.

<sup>105</sup> S.I. 2016/49.

<sup>106</sup> S.I. 2014/1052.

45 and Schedule 3), the Richborough Order<sup>107</sup> (Article 45 and Schedule 4) and the Hinkley Connection Order<sup>108</sup> (Article 46, Schedule 4).

- 4.52.5 This appeal process is considered proportionate and justified in light of the size and scale of the authorised development proposed by the DCO to ensure the delivery of the authorised development.

## 4.53 Article 51 (Removal of human remains)

- 4.53.1 The purpose and effect of this Article is to disapply section 25 of the Burial Act 1857<sup>109</sup> (offence of removal of body from burial ground) in accordance with section 120(5)(a) of the Act and replace it with an alternative procedure for managing the removal of any human remains disturbed during the course of carrying out the authorised development. As an alternative procedure is included in the DCO, it is not considered necessary to include any additional requirements or protective provisions in this respect. This Article is based on a Model Provision and is required to ensure that the appropriate treatment of such remains does not delay the implementation of the authorised development. Inclusion of the alternative procedure also helps to minimise the risk of disturbance or damage to any burials which are identified during the course of the works; it is important that these are recorded, excavated and removed to a safe location without any delay in order to avoid risks such as 'nighthawking'.
- 4.53.2 This Article departs from the model provision in that paragraph (12) excludes the requirement to give notice before the removal of remains which the undertaker is satisfied were interred more than 100 years ago and that no relative or personal representative of the deceased is likely to object to their removal. This approach has precedent in the Crossrail Act 2008<sup>110</sup>. Paragraph (13) requires that the undertaker seeks and complies with direction from the Secretary of State under paragraph (14) regarding the treatment of such remains following their removal.
- 4.53.3 Paragraph (17) applies section 239 of the 1990 Act to land, and rights over land, acquired under the DCO and permits the use of such land notwithstanding any obligation or restriction imposed under ecclesiastical law or law relating to burial grounds, save as provided for in the remainder of the Article. Paragraph (18) excludes the application of Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950<sup>111</sup>. The drafting in paragraphs (17) and (18) has precedent in the River Humber Gas Pipeline Replacement Order 2016<sup>112</sup>, although the DCO does not apply section 238 (use and development of consecrated land) of the 1990 Act as there is no consecrated land within the Order limits.
- 4.53.4 Taken together the effect of this Article is to replace the existing and disparate regimes for regulating the removal of human remains and consolidate the applicable provisions in a single Article in the DCO. It is required by the undertaker to ensure that

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<sup>107</sup> S.I. 2017/817.

<sup>108</sup> [S.I. 2016/49](#).

<sup>109</sup> ~~1857 c.81.~~

<sup>110</sup> 2008 c.18.

<sup>111</sup> S.I. 1950/792.

<sup>112</sup> S.I. 2016/853.

archaeological remains are recovered appropriately without causing unacceptable delay to the implementation of this NSIP.

4.53.5 Disapplication of legislative controls is appropriate in this instance. It is not uncommon to find human remains during the construction of long linear projects, and it is important to include a process which enables these to be dealt with swiftly to minimise risks to the remains as well as allow construction works to proceed in a timely manner. The approach is preceded in the approach which has been followed in other DCOs, such as The Sizewell C (Nuclear Generating Station) Order 2022 (article 78), The Norfolk Vanguard Offshore Wind Farm Order 2022 and The A428 Black Cat to Caxton Gibbet Development Consent Order 2022. National Grid is of the view that the disapplication of legislative controls is appropriate in this instance.

## 4.54 Article 52 (Amendment of local legislation)

4.54.1 This Article is similar in effect to Article 6 of the Model Provisions and seeks to exclude local legislation and byelaws listed in Schedule 15 further to section 120(5) of the ~~2008~~ Act. There is precedent in the Richborough Order (Article 46) and the Hinkley Connection Order (Article 47)<sup>113</sup>.

4.54.2 This Article is limited in scope in only seeking to identify legislation of local application, which may prohibit the delivery of this NSIP. It is, therefore, considered proportionate to exclude such legislation which may serve to impede the delivery of the authorised development.

4.54.3 The DCO does not remove the requirement to obtain any consents or permits which are prescribed for the purposes of section 150 of the ~~PA-2008~~ Act under the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010. Therefore, no consent is required from a relevant body to the inclusion of Article 52 of the DCO.

## 4.55 Article 53 (Arbitration)

4.55.1 This Article governs what happens when two parties disagree over the implementation of any provision of the DCO. The matter is to be settled by arbitration, and if the parties cannot agree on whom the arbitrator should be, this is decided by the Secretary of State. The Article is based on the general Model Provision with the insertion of the Secretary of State as the appropriate body to reflect the agreed position in recently made DCOs.

## 4.56 Article 54 (Temporary closure of, and works in, the river Ouse)

4.56.1 This Article provides for temporary suspension of the public right of navigation over the River Ouse within the Order limits in order to enable installation of the new overhead line, as well as removal of a section of the existing overhead line that will become redundant, over the River Ouse. It requires the power to Save where required on grounds of health and safety, the power is exercisable subject to protective provisions included for the benefit of the Canal and River Trust in Schedule 15 of the Order. In addition, the power must be exercised in a way which minimises the extent of the river

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<sup>113</sup> S.I. 2016/49.

affected by the closure and also that any period of closure is minimised. Compensation is payable for any person who suffers loss as a result of the suspension of any private right of navigation under this Article.

## ~~1.2. **Article 55 (Trees subject to tree preservation orders)**~~

~~1.2.1. This Article enables the undertaker to fell or lop the roots of any tree which is subject to a tree preservation order to prevent it obstructing or interfering with the construction, maintenance or operation of the authorised project. Compensation is payable if loss or damage is caused. Whilst there are no trees currently subject to tree preservation orders being affected by the Project, paragraph (2) of this Article clarifies that if any tree preservation orders are made in the future within the Order limits, this will not prevent felling or lopping of any tree which is made subject to a tree preservation order following the date survey data was collected for the purposes of identifying relevant trees. Paragraph (3) controls and restricts the powers of paragraph (2).~~

# 5. Schedules

## 5.1 Schedule 1 (Authorised development)

- 5.1.1 This Schedule specifies numbered works comprised in the authorised development for which development consent is sought and other associated development works. The works should be read alongside the works plan.
- 5.1.2 Certain utilities works to be undertaken by NPG and NGN, including undergrounding of overhead distribution lines and a pipeline diversion, have been separated out into specific works as identified with a 'U' before the work number. This allows clarity over which works will be carried out by National Grid and which will be carried out by either NGN or NPG.
- 5.1.3 Where necessary and appropriate, each Work No. is split into components identified by subparagraphs in the works description. These correlate to different elements of the respective work. For example, Work No.1 contains four components, the first component "*installation of conductors, insulators and fittings from YR001A to YR001C*" is identified by labelling the "*Centreline of new YR OHL within Work No. 1*". As the subparagraphs form part of a single Work No., they are not labelled individually on the works plan, and only the separate Work Nos. are shown on the works plan.

## 5.2 Schedule 2 (Plans ~~and~~ drawings and environmental statement)

- 5.2.1 This Schedule lists the design drawings, works plan, land plan, access, rights of way and public rights of navigation plan, outline landscape mitigation strategy and other plans submitted with the application and to be certified by the Secretary of State in accordance with Article 48 (certification of plans etc.).
- ~~5.2.2 For the avoidance of doubt, **Section A of the Traffic Regulation Order (TRO) Plan (Document 2.12.1)** is included within Schedule 2, Part 5 of the DCO for completeness, to ensure the full Project and full suite of Traffic Regulation Order plans is shown, and to make it clear that no TROs are sought in this location.~~
- ~~5.2.3 Part 8 of Schedule 2 has been included for completeness and to make it sufficiently clear which version of the environmental statement documents are to be certified in accordance with Article 48 (certification of plans etc.).~~

## 5.3 Schedule 3 (Requirements)

- 5.3.1 This Schedule contains draft requirements corresponding to conditions which, under section 120(2) of the Act, could have been imposed on the grant of planning permission for the authorised development had it not fallen within the regime of the Act. The requirements have a similar purpose to planning conditions.

~~1.2.2. Requirement 1 (Interpretation) provides for the interpretation of words and phrases used in this Part of the Schedule.~~

5.3.2 Tailpieces are included in a number of the Requirements to allow for necessary but proportionate and limited flexibility in order to ensure that the delivery of this Nationally Significant Infrastructure Project is not unduly delayed. Such flexibility is also considered to be justified to enable any changes in circumstances which may warrant or necessitate minor changes to plans, schemes or strategies with the agreement of the relevant planning authority. This flexibility is considered to be necessary to account for the wide geographical area in which the Project is located, the associated differing ground conditions, changing baseline conditions, updates to best practice and/or legislation, issues that may be encountered in delivering the Project and/or if there is an improvement in techniques which would allow the development to be constructed more efficiently or effectively. Section 17 of Advice Note 15 Drafting Development Consent Orders makes clear that a Requirement should not allow the discharging authority to vary the scheme in writing such that the scheme then departs from the principles fixed by the application. Requirement 1(3) (Interpretation) Schedule 3 of the DCO provides that where any requirement specifies “unless otherwise approved”, “unless otherwise agreed” or “that may subsequently be approved”, such approval or agreement can only be given where it has been demonstrated to the satisfaction of the relevant highway authority or the relevant planning authority that the subject matter of the approval or agreement sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the Environmental Statement. Requirement 1 (Interpretation) provides for the interpretation of words and phrases used in this Part of the Schedule. Within this "Commence" is defined in Schedule 3 (requirements) and makes clear that a number of works that would constitute a 'material operation' under the Act do not mean that the authorised development has been 'commenced' for the purposes of triggering some of the requirements. This enables the undertaker to undertake certain preparatory works prior to the submission of relevant details for approval under certain requirements, such as requirement 6 (construction management plans to be approved). The works that are excluded from the definition of 'commence' are either de minimis or have minimal potential for adverse impacts. They may, in some cases, need to be carried out in order to comply with pre-commencement requirements (for example, to inform assessments and proposals required to be submitted for approval). The undertaker should be permitted to carry out low impact preparatory works following the grant of the DCO whilst it is working to discharge the pre-commencement requirements, thereby helping to minimise the construction timetable. In any event, the pre-commencement works must be carried out in accordance with the construction management plans and the outline soil management plan which are listed in requirement 5 (construction management plans). This is considered to be a proportionate approach which allows some flexibility for pre-commencement works to be undertaken prior to approval of all construction plans and which is within the scope of the environmental impact assessment.

5.3.25.3.3 Requirement 2 (Time limits) accords with the model requirement in providing that the authorised development must be commenced within 5 years of the date of the DCO.

5.3.35.3.4 Requirement 3 (~~design~~Design drawings) provides that the authorised development shall be carried out in general accordance with the design drawings so as to allow the necessary but proportionate degree of flexibility in the construction of the authorised development. The Requirement makes clear that any departures from the design drawings which would give rise to materially new or materially different significant effects would not be 'in general accordance', as is also stated in paragraph 1(4) (interpretation) of Schedule 3 (requirements).

5.3.45.3.5 Requirement 4 (Stages of authorised development) provides for the production of a single staging plan for the authorised development before development can commence

and for any amendments to this staging plan to be notified to the relevant planning authority. The undertaker must comply with the staging plan as submitted.

5.3.55.3.6 Requirement 5 (Construction management plans) requires all construction works for the authorised development to be carried out in accordance with the construction management plans. These are full plans, which have been submitted as part of the DCO application, will be in final form at the end of the Examination, and are to be certified by the Secretary of State in accordance with Article 48 of the DCO. The construction management plans include those plans, scheme and strategies listed in requirement 5(2). Sub-paragraph (3) provides that all pre-commencement works (as defined in paragraph 1 (interpretation) of Schedule 3 (requirements)) must be carried out in accordance with the construction management plans specified at paragraph 5(2). Paragraph 5(3) also requires the pre-commencement works to be carried out in accordance with the outline soil management plan. Post commencement, soil management procedure controls will be secured through the soil and aftercare management plan secured under Requirement 6(1) and for that reason, the outline soil management plan is not included in the list of construction management plans in Requirement 5(2). Although Requirement 5(1) allows the relevant planning or highway authority to deviate from the construction management plans, this can only be done if it would not give rise to materially new or materially different effects from those assessed in the environmental statement as made clear in paragraph 1(3) (interpretation) of Schedule 3 (requirements)). This may be required, for example, in the event that baseline conditions change, there are updates to best practice, or there is an improvement in techniques which would allow the development to be constructed more efficiently or effectively. It would enable minor changes in circumstances which would otherwise warrant or necessitate changes to the construction management plans. This is necessary given the wide geographical area covered by the Project and, for example, the associated differing ground conditions that may be encountered in delivering the Project. This Requirement includes a tailpiece 'unless otherwise agreed'. This is necessary as it provides the opportunity for minor revisions to be made as may be appropriate to the plans, schemes and strategies listed in Requirement 5(2). For example, it allows for the possibility of changes in legislation, guidance or best practice and baseline conditions to be reflected in the Code of Construction Practice (Document 5.3.3B).

5.3.65.3.7 Requirement 6 (~~Outline construction~~ Construction management plans to be approved) provides for the submission to, and approval by, the relevant planning authority of the plans listed in the requirement, which must accord with the relevant construction management plans as referred to within Requirement 5. The construction works must be carried out in accordance with those plans (or any amended plans) once approved. Paragraph (2) confirms that the soil and aftercare management plan must be substantially in accordance with the outline soil management plan. The outline soil management plan provides a framework for the future development of the detailed soil and aftercare management plan and would apply to pre-commencement works prior to the detailed soil and aftercare management plan being submitted and approved. Therefore, it does not contain detailed provisions for aftercare, which is why the full plan is named differently to the outline soil management plan. Paragraphs 6(4) and 6(5) make clear that the drainage management plan and the lighting strategy must include details of both temporary and permanent works, and therefore include operational as well as construction requirements. This Requirement includes a tailpiece 'that may subsequently be approved', which, for the same reasons as Requirement 5, provides the opportunity for minor revisions to be made as may be appropriate to the plans,

schemes and strategies listed in Requirement 6(1) following approval by the relevant planning authority.

~~5.3.75.3.8~~ Requirement 7 (Construction hours) confirms construction hours during which construction work may be carried out. Core working hours are set out in paragraphs 7(1) and 7(2) as defined in paragraph 1 (interpretation) of Schedule 3 (requirements). Paragraph 7(3) sets out the circumstances in which certain works can be undertaken outside of the core working hours.

~~4.2.3~~ Requirement 8 (Landscaping at Overton, Tadcaster and Monk Fyston and ~~Mitigation planting~~ Monk Fyston) confirms arrangements for necessary landscaping ~~and mitigation planting, including a mitigation planting scheme and landscape mitigation strategy~~ in connection with the non-linear works at Overton, Tadcaster and Monk Fyston. It requires the provision of a landscape strategy, which accords with the outline landscape mitigation strategy, to be approved by the relevant planning authority. Paragraph 8(2) sets out the details ~~which that~~ the ~~mitigation planting scheme and landscape mitigation~~ strategy must include.

~~5.3.85.3.9~~ Requirement 9 (~~Implementation of landscaping and mitigation planting~~) ~~is concerned with the implementation of the mitigation planting and landscaping requirements set out in requirement 8. There is a five-year obligation for all landscaping and mitigation planting regime, including monitoring and management, and the management regime for any woodland planting in years six to fifteen. This Requirement includes a tailpiece to ensure flexibility should the landscape strategy approved under Requirement 8 need minor changes with the approval of the relevant planning authority, to ensure that the most effective landscape strategy is put in place to reflect on-site conditions at the time of construction.~~

~~5.3.10~~ Requirement ~~409~~ (Retention and protection of existing trees) requires the preparation of a Tree and Hedgerow Protection Strategy (THPS) for each relevant stage to be submitted to and approved by the relevant planning authority ~~with the~~. The relevant stage of the authorised development ~~must not to~~ commence until the approved protection measures are in place. ~~Paragraph 40~~ The THPS must be prepared in accordance with the Arboricultural Impact Assessment report (Document 5.3.3I) and BS 5837:2012 (Trees in relation to design, demolition and construction) identifying the trees and groups of trees to be retained during each stage. Sub-paragraph (2) sets out the details that the Tree and Hedgerow Protection Strategy THPS must include, and sub-paragraph 40(3) provides that those requires adherence to the THPS unless otherwise agreed in writing with the local planning authority.

~~5.3.95.3.11~~ Requirement 10 (Replacement planting) confirms arrangements for necessary replacement planting, including a scheme for replacement planting which accords with the principles of the Code of Construction Practice (Document 5.3.3B). This replacement planting must replace the trees and groups of trees hedgerows identified must to be removed in the THPS and is subject to approval of the relevant planning authority. This requirement does not be felled in connection with the construction ~~ef~~ apply to the non-linear works at Overton, Tadcaster and Monk Fyston to the extent that replacement planting is included in the landscape strategy because relevant mitigation in this respect is secured through Requirement 8. Sub-paragraph (3) sets out the details that the replacement planting scheme must include. The replacement planting would be implemented during the first available planting season after the authorised development is first brought into operational use and a five year aftercare period applies to all replacement planting. The term 'replacement planting' is used within Requirement 10 to reflect the fact that the new planting to be provided in place of the planting which is being removed may not be in the exact same location or of the exact same species mix as that which was previously present on site. The Environmental



Statement and certified management plans use both 'replacement' and 'reinstatement' to refer to this. Therefore, any reference to 'reinstatement' where planting is removed in the Environmental Statement or certified plans will not necessarily be like for like and should be interpreted in this context.

5.3.105.3.12 Requirement 11 (Reinstatement schemes) provides for the reinstatement of land subject to the provisions of Articles 36 (temporary use of land by National Grid), 37 (temporary use of land by NPG), 38 (temporary use of land by NGN) and Article 39 (temporary use of land for maintaining the authorised development).

5.3.145.3.13 Requirement 12 (Contamination of land or groundwater and controlled waters) provides that where contamination unexpectedly occurs, and it is likely to cause a significant possibility of significant harm to persons or pollution of controlled waters or the environment, then no further development can be undertaken (except in the case of emergency) until a written scheme to identify and remediate the contamination is approved by the relevant planning authority, following consultation with the Environment Agency. Once approved, remedial measures must be undertaken and a verification report submitted to the relevant planning authority.

5.3.125.3.14 Requirement 13 (Removal of temporary bridges and culverts) provides for the removal of such temporary structures within 12 months (or longer if agreed) of completion of the construction of that stage of the authorised development for which it was required. This Requirement includes the tailpiece mechanism 'or such further time as may be approved'. In practice, any temporary bridge or culvert would be removed as soon as practicably possible, but due to weather constraints and flooding which can occur in particular areas of the Project, such removal will be dependent on the timing of the construction programme and may not be possible to take place until, for example, weather constraints allow. Therefore, this tailpiece is required to allow for these constraints.

5.3.135.3.15 Requirement 14 (Highway works) provides that no work to construct or temporarily alter any new or existing means of access to a highway may commence until written details have been submitted and approved by the highway authority. The highway accesses must be constructed as approved, unless otherwise agreed with the relevant highway authority (subject to paragraph 1(3) (interpretation) of Schedule 3 (requirements)) as set out above. Paragraph 14(2) includes a tailpiece mechanism for the highway accesses to be constructed in accordance with the details approved unless otherwise agreed in writing. The written details to be submitted under Requirement 14(1) will be prepared based on the detailed design of the Project by the Main Works Contractor and whilst it is not expected that this would change, a tailpiece has been included to provide the flexibility should an unforeseen circumstance arise in construction which required the revision of the details of the highway access and their subsequent approval by the relevant highway authority.

5.3.145.3.16 Requirement 15 (Removal of existing overhead line) provides that all sections of existing overhead line to be dismantled must be removed no later than 12 months after the authorised development is first brought into operational use. This Requirement includes the tailpiece mechanism 'unless otherwise agreed'. For the same reasons as explained with regards Requirement 13, this tailpiece is required to allow for ecological and other constraints.

5.3.155.3.17 Requirement 16 (Decommissioning) provides that in the event that any part of the authorised development (except for those parts comprised of the dismantling and removal of existing infrastructure) is to be decommissioned, a written scheme of

decommissioning must be submitted for approval by the relevant planning authority at least six months prior to the commencement of any decommissioning works.

5.3.165.3.18 Requirement 17 (Clearance over the River Ouse) sets a minimum height of 10 metre clearance over the River Ouse.

5.3.19 Requirement 18 (Approval of details having regard to the Design Approach to Site Specific Infrastructure) provides that details must be provided of the external colour and surface finish of the permanent new substations and the acoustic enclosures to the relevant planning authority for approval. Any details approved must be provided having regard to the **Design Approach to Site Specific Infrastructure (Document 8.18)**. The permanent new substations and the acoustic enclosures must then be finished in accordance with the details so approved.

5.3.20 Requirement 19 (Site specific mitigation scheme) secures the relevant planning authority's approval of a site specific mitigation scheme to mitigate impacts of construction works which would affect a traveller's encampment located near to the Monk Fryston substation. The scheme must be approved prior to the commencement of any part of Work No.10 that affects plots E7-34 and E7-40 on Section E of the Land Plan (Document 2.5.5) (if these plots are being occupied as a travellers' encampment). The scheme for site specific mitigation must include details of the approach to liaison for the travellers' encampment during the construction period. This Requirement includes a tailpiece, which allows for alternative agreement with the relevant planning authority. This is necessary because the nature of use and occupation of the travellers' encampment may vary and so the site specific mitigation scheme would also need to vary accordingly. If National Grid have made provision for a specific construction approach at a specific location, but then circumstances change or there comes a time where occupation occurs in a different way than was envisaged or known at the date the site specific mitigation scheme was approved, National Grid would need flexibility to allow for some variation to respond to that change, with the agreement of the relevant planning authority.

## 5.4 Schedule 4 (Discharge of Requirements)

5.4.1 This Schedule applies to any consent, agreement or refusal which needs to be obtained under the Requirements set out in Schedule 3 or under any other provision of the DCO. It clarifies the procedure which applies in respect of these additional consents.

5.4.2 This Schedule is based on Schedule 4 of the Richborough Order<sup>114</sup>.

## 5.5 Schedule 5 (~~Transfer of Benefit~~ of the Order Rules)

5.5.1 This Schedule governs the relationship between the three undertakers granted the benefit of the DCO. The provisions mirror those previously included in the 'Benefit of the Order' Article from the Richborough Order and Hinkley Connection Order but have been separated out into a schedule to make the drafting clearer.

## 5.6 Schedule 6 (Streets subject to street works)

5.6.1 This Schedule sets out the streets referred to in Article 11 subject to street works.

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<sup>114</sup> S.I. 2017/817.

## 5.7 Schedule 7 (Streets subject to alteration of layout)

5.7.1 This Schedule sets out the streets, referred to in Article 13, the layouts of which are subject to permanent (Part 1) or temporary (Part 2) alterations.

## 5.8 Schedule 8 (Streets, cycle tracks or public rights of way to be temporarily stopped up)

5.8.1 This Schedule sets out the streets, cycle tracks and public rights of way which are subject to temporary stopping up under Article 14.

5.8.2 There is no direct cross-referencing between this Schedule and the **Public Rights of Way Management Plan (Document 5.3.3G)**. Both Schedule 8 and the Public Rights of Way Management Plan include consistent references to the relevant public rights of ways as they appear on the **Access, Rights of Way and Public Rights of Navigation Plans (Document 2.7.1-2.7.6)**.

## 5.9 Schedule 9 (Access to works)

5.9.1 This Schedule sets out the locations, referred to in Article 16, where access would be taken from the public highway, for construction and/or operation / maintenance purposes.

## 5.10 Schedule 10 (Modification of compensation and compulsory purchase enactments for creation of new rights)

5.10.1 This Schedule, pursuant to Article 32, sets out the modifications to the statutory provisions applicable to compensation and compulsory purchase under the Order.

## 5.11 Schedule 11 (Extinguishment of private rights and restrictive covenants relating to apparatus removed from land subject to temporary possession)

5.11.1 This Schedule sets out those plots where rights in relation to removed apparatus are to be extinguished under Article 27.

5.11.2 This Schedule, together with Schedule 12 and Schedule 13 have been split into the relevant areas of City of York Council, Leeds City Council and North Yorkshire ~~County Council~~. ~~This is in anticipation of the new single council (North Yorkshire Council) which will be formed on 1 April 2023 as a result of Local Government Reorganisation. The newly formed North Yorkshire Council will cover the same geographical area as the current North Yorkshire County Council (and the respective districts which will be disbanded) and, therefore, the decision has been taken to pre-empt this in the drafting of these schedules of the DCO. Notwithstanding this, Schedule 1 does split out the authorised development so that it is clear to each district (and members of the public) which elements of the works will affect their authority area at the time of application.~~Council.

## 5.12 Schedule 12 (Land of which temporary possession may be taken)

5.12.1 This Schedule sets out the land referred to in Articles 36 to 38 which National Grid, NPG and NGN may temporarily occupy and the purpose for which that temporary possession may be taken.

## 5.13 Schedule 13 (Land in which only new rights and restrictive covenants etc. may be acquired)

5.13.1 This Schedule sets out the land referred to in Article 25 over which National Grid, NPG and NGN may acquire new rights and restrictive covenants.

## 5.14 Schedule 14 (Traffic regulation)

5.14.1 This Schedule sets out the streets that are subject to traffic regulation measures further to Article 45. The Traffic Regulation Order plan tied to this Schedule show traffic regulation orders which commence and terminate at points outside of the Order limits. This is necessary to give full effect to the measures and enable the safest passage of traffic in and around the Project. This reflects the wording in Article 45, which gives effect to these powers and is preceded in previous projects brought forward by National Grid, including the Richborough Order<sup>115</sup>.

## 5.15 Schedule 15 (Protective Provisions)

5.15.1 This Schedule sets out the standard provisions for the protection of statutory undertakers whose equipment may be affected by the authorised development. The undertaker has engaged with the relevant statutory undertakers: Network Rail Infrastructure Limited (NRIL), Northern Gas Networks (NGN), Yorkshire Water (YW), National Grid-Gas (~~NGG~~ Transmission (NGT)), Northern Power Grid (NPG), the Canal and River Trust (~~CRT~~), ~~Cellnet~~ the Trust), Cellnex, Hutchinson/Three/EE, ~~and~~ Vodafone and National Highways and will continue to do so ~~following submission of the Application throughout examination~~. The current format of Protective Provisions within the DCO are split into ~~four~~ six parts:

5.15.2 Part 1 sets out standard protective provisions for the protection of water, gas and electricity undertakers. In summary, these provisions provide as follows:

- All other provisions of this Schedule do not apply to apparatus whereby the undertaker and statutory undertaker relationship is regulated by the provisions of Part 3 of the 1991 Act <sup>146</sup>.
- Alternative apparatus is to be provided where a statutory undertaker's apparatus needs to be removed under the DCO.

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<sup>115</sup> S.I. 2017/817.

~~<sup>146</sup> 1991 c.22.~~

- Before removing or diverting a statutory undertaker's apparatus, 28 days' notice, alongside a plan of the proposed works, will be provided to the statutory undertakers and complied with, subject to cases of emergency.
- Proper and reasonable expenses accrued by the statutory undertaker pursuant to works to their apparatus under the DCO will be reimbursed by the undertaker, deductible by the value of the apparatus removed and any additional costs incurred as a result of the statutory undertaker's specific request (such as a replacement asset being of higher quality than the existing).
- all disputes are to be resolved through the procedure outlined in Article 53 (arbitration).

5.15.3 Part 2 sets out standard protective provisions for the protection of operators of electronic communications code networks. In summary, these provisions provide as follows:

- the exercise of powers under Article 40 (statutory undertakers) is subject to paragraph 23 of Schedule 2 to the Telecommunications Act 1984<sup>447</sup>.
- if the works of the Project result in damage to any statutory undertaker apparatus, (other than apparatus not requiring repair in view of its intended removal for the purposes of those works, or other property of a statutory undertaker) the undertaker must pay for making good any such damage.
- the undertaker has no liability for damage caused by an act or omission of the statutory undertaker.
- notice must be given of any claims the statutory undertaker brings and any disputes will be resolved pursuant to Article 53 (arbitration).
- Specific exclusions apply where the undertaker and statutory undertaker relationship is regulated by the provisions of Part 3 of the 1991 Act<sup>448</sup> or any damage, or any interruption, is caused by electro-magnetic interference arising from the construction or use of the Project. Further, nothing in Schedule 15, Part 2, overrides the provisions of any enactment or agreement regulating the relations between the undertaker and Statutory Undertaker to date.

5.15.4 Part 3 sets out protective provisions for the protection of ~~CRT~~the Trust. Article 54 (temporary closure of, and works in, the river Ouse) provides the necessary powers required to string (and remove) the overhead line over the River Ouse. This is required by virtue of Work No. 6. The associated protective provisions ensure that certain conditions will be adhered to throughout this process, which benefit ~~CRT~~the Trust. In summary, these protections include:

- 28 days' notice will be given to ~~CRT~~the Trust before any obstruction or interference with navigation rights.
- Unless otherwise agreed, any obstruction or interference with navigation rights is only permitted between:
  - 10pm and 6am during the months April to October; or

<sup>447</sup> ~~1984 c.12. Paragraph 23 of Schedule 2 has been repealed by the Digital Economy Act 2017 (c. 30), Part 2 Section 4(1) and subject to the transitional provisions specified in section 4(10) and Schedule 2 and S.I. 2017/1008 regs 3 and 5.~~

<sup>448</sup> ~~1991 c.22.~~

o 7pm and 7am during the months November to March.

- The Trust have an approval right over plans which relate to works over the River Ouse. As built drawings will also be provided.
- The undertaker must comply with the Trust's Code of Practice when carrying out specified works.
- Certain requirements must be met when doing works which affect the waterway, such as being in such manner as to cause as little detriment as is reasonably practicable.
- The waterway must be restored to the same condition following the works within the waterway, subject to the existence of the new overhead line and National Grid the undertaker will make good any damage caused.
- Any differences will be settled through arbitration in accordance with Article 53 (arbitration).

5.15.5 Part 4 sets out protective provisions for the benefit of railway interests. This is necessary because the Project crosses the railway line. In summary, these provisions provide as follows:

- Prior to commencing works within 15 metres of a railway line, the undertaker must gain approval of plans for these works from an engineer for Network Rail, such plans having been provided 28 days prior to commencement of these works.
- The undertaker must construct works around the railway line to prevent electromagnetic interference.
- The undertaker is under an obligation to maintain the constructed work in a manner which will not adversely affect the railway.
- No illumination will be provided by the undertaker in the vicinity of the railway.
- Reasonable costs incurred by Network Rail will be paid for by the undertaker.

5.15.6 Part 5 sets out protective provisions for the benefit of NPG. This is necessary because the Project crosses and involves the diversion of a number of NPG's assets. In summary, these provisions provide as follows:

- Prior to commencing works within 15 metres of NPG's apparatus, the undertaker must gain approval of plans for these works from an engineer for Network Rail, such plans having been provided 48 days prior to commencement of these works.
- The undertaker will not override any interest of NPG otherwise than by agreement.
- Any rights over NPG apparatus must not be extinguished until an alternative has been provided for.
- Reasonable costs incurred by NPG will be paid by the undertaker.

5.15.7 Part 6 sets out protective provisions for the benefit of National Highways Limited. This is necessary because the Project involves reconductoring over the strategic road network. National Grid proposes two tiers of protection for National Highways:

- A more streamlined approvals process without the need for a bond for scaffolding and reconductoring works (works outside of the 5.5m envelope) which are planned as part of the Project (established through paragraph 65(1)); and

- A full set of protection which closely align with the National Highways template protective provisions for any works which would be made directly to or fall within 5.5m vertically of the strategic road network (established through paragraph 65(2)). This includes any temporary oversailing equipment which falls below the 5.5m height temporarily during construction, provided that such equipment's installed position is above 5.5m. This wider protection is aimed at ensuring that National Highways' undertaking is adequately protected in the event that unforeseen works are undertaken in line with the powers of associated development contained within Schedule 1.

5.15.8 Part 7 sets out protective provisions for the benefit of National Gas Transmission plc (NGT). This is necessary because the Project crosses NGT's pipelines in three locations. None of the crossings involve a change in ground level and all relate to reconductoring works. In summary, these provisions provide as follows:

- 28 days before any specified works (works within 15m of NGT apparatus and which may affect NGT apparatus) National Grid must submit a plan to NGT for approval. Such approval must not be unreasonably withheld and will be deemed if not given within 28 days. There is provision for further information to be requested by NGT within 21 days of submission of the plan.
- NGT expenses must be paid to them within 30 days of demand, unless otherwise agreed.
- An indemnity is provided for the benefit of NGT capped at £30million.
- National Grid will not obstruct NGT access to its apparatus and, if it does obstruct any access, an alternative will be provided by National Grid to NGT.
- Any difference or dispute will be settled through Article 53 (arbitration).

5.15.9 Part 8 sets out protective provisions for the benefit of Northern Gas Networks Limited (NGN). This is necessary because the Project crosses and involves the diversion of NGN's asset. In summary, these provisions provide as follows:

- Any rights over NGN apparatus must not be extinguished until an alternative has been provided for.
- 28 days before any works that will or may affect any apparatus, National Grid must submit a plan to NGN for approval. Such approval must not be unreasonably withheld.
- NGN expenses must be paid to them as soon as reasonably practicable.
- An indemnity is provided for the benefit of NGN capped at £10million.
- Any difference or dispute will be settled through Article 53 (arbitration).
- Cathodic protection testing is provided for.

## 5.16 Schedule 16 (Amendment of local legislation)

5.16.1 This Schedule lists the local legislation and byelaws the undertaker seeks to exclude in relation to the authorised development further to Article 52. The specific legislation to be disapplied has been carefully selected to reflect only those local acts and byelaws which will potentially impede the Project. ~~For example, because the Project crosses the River Ouse the related byelaws of the internal drainage boards controlling this part of the~~

~~watercourse have been disappplied to the extent they may contradict anticipated works at that location.~~ The disappplied provisions include provisions of the West Yorkshire Act 1980 relating to culverting of streams and dust from operations; and provisions of the Leeds City Council Byelaws for Good Rule and Governance relating to preservation of road margins, mud and noise; ~~provisions of the Ainsty (2008) Internal Drainage Board Byelaws 2022 and Kyle and Upper Ouse Internal Drainage Board Byelaws 1996 relating to obstructions on the edge of a water course, vehicles being driven on a bank, storage on banks, and those regarding pylons and cables across watercourses.~~ The mitigations measures secured through the Requirements of the DCO and further expanded upon in the **Embedded Measures Schedule (Volume 5, Document 5.3.3A)** are the most efficient means of providing the necessary protections for the anticipated activities of the undertaker.

5.16.2 Appendix B sets out more detailed justification for disapplication of each local act and byelaw under the DCO.

## **5.17 Schedule 17 (Hedgerows which may be removed)**

5.17.1 Schedule 17 confirms the hedgerows which may be removed under Article 46 of the DCO. This schedule identifies the hedgerows by reference to **Figure 8.6 (Document 5.4.8)**. This schedule also identifies those hedgerows which are important hedgerows for the purposes of the Hedgerow Regulations.



## Appendix A Justification for disapplication of provisions within the 1991 Act

<u>Provision</u>	<u>Purpose</u>	<u>Body</u>	<u>Effect of disapplication</u>	<u>Necessity and justification</u>
<u>s.53</u>	<u>the street works register</u>	<u>Street authority</u>	<u>The street authority will not be required to update the street works register in relation to works carried out within the Order Limits of the DCO.</u>	<p><u>Schedule 6 (streets subject to street works) of the DCO contains all the relevant information regarding street works to be undertaken as part of the authorised development and will be in the public domain.</u></p> <p><u>Therefore, to the extent relevant to the streets works register and where the information is otherwise not required to be given under the dis-application of the article, this information will not need to be replicated in the street works register.</u></p> <p><u>As Article 11 and Schedule 6 of the DCO provide the relevant information, protective provisions are not required.</u></p>
<u>s.56</u>	<u>power to give directions as to timing of street works</u>	<u>Street authority</u>	<u>The street authority will not be able to mandate times or days where works may take place to avoid disruption to the road network.</u>	<p><u>Whilst this provision is disappplied, a number of street works provisions are applied under paragraphs (4) and (5) of Article 12, including (a) provision of advance notice of works; (b) notice of starting date of works; (d) general duty to co-ordinate works and (e) general duty of undertakers to co-operate. This, together with the mitigation contained in the <b>Construction Traffic Management Plan (Appendix 3F)</b> (as secured by Requirement 5(2)(d) of the DCO) will ensure that works can be co-ordinated such that disruption to the road network will be avoided. In addition,</u></p>

<u>Provision</u>	<u>Purpose</u>	<u>Body</u>	<u>Effect of disapplication</u>	<u>Necessity and justification</u>
				<p><u>Requirement 7 of the DCO controls the construction hours of the Project.</u></p> <p><u>There is a clear urgency of delivering to the Yorkshire GREEN earliest in service date (2027) and maintaining the programme, for which certain works must be carried out at particular times. Any delay that a street authority could cause would hinder this and is considered unnecessary in the context of the minimal nature of the street works anticipated and their potential impact on the road network as described in <b>ES Chapter 3 Description of the Project paragraph 3.6 (Document 5.2.3).</b></u></p> <p><u>As the DCO and the <b>Construction Traffic Management Plan (Appendix 3F)</b> provide the necessary controls, protective provisions are not required.</u></p>
<u>s.56A</u>	<u>power to give directions as to placing of apparatus</u>	<u>Street authority</u>	<u>The street authority will not be able to direct the undertaker not to place apparatus in the street or direct them to place apparatus in another street if they deem it necessary to do so.</u>	<p><u>The diversion and placement of apparatus is secured through the <b>Works Plan (Document 2.6.1-2.6.6)</b> and <b>Design Drawings (Document 2.15)</b>, in accordance with Articles 3, 5, 48 and Requirement 3 of the DCO.</u></p> <p><u>Therefore, it would not be appropriate for the street authority to have the power to direct apparatus either not to be placed in a street or to be placed within a different street to those for which powers have been granted by the DCO.</u></p>

<u>Provision</u>	<u>Purpose</u>	<u>Body</u>	<u>Effect of disapplication</u>	<u>Necessity and justification</u>
				<u>As the DCO contains necessary controls on placement of apparatus, protective provisions are not required.</u>
<u>s.58</u>	<u>restrictions on works following substantial road works</u>	<u>Street authority</u>	<u>The street authority will not be able to restrict the execution of works following any substantial road works.</u>	<u>There is a clear urgency of delivering to the Yorkshire GREEN earliest in service date (2027) and maintaining the programme. Any restrictions that a street authority could cause would hinder this. Dis-application of this provision will allow works required for the Project to be completed without delay following any substantial road works which are undertaken. Noting the minimal nature of the street works proposed as part of the Project, and that there are no substantial road (or street) works anticipated which, if followed by works for the Project, would cause disruption to the road network.</u>
<u>s.58A</u>	<u>restriction on works following substantial street works</u>	<u>Street authority</u>	<u>This will disapply Schedule 3A (see further information below).</u>	<u>See the summary for section 58 above.</u>
<u>s.73A</u>	<u>power to require undertaker to re-surface street</u>	<u>Street authority</u>	<u>This will stop the street authority being able to issue a re-surfacing notice to the undertaker for them to be required to re-surface a street as per notice demands.</u>	<u>Requirement 11 of the DCO provides for reinstatement of any land used temporarily for construction within the Order Limits to its former condition within 12 months of completion of the relevant stage of works (or such other timescales approved). In addition, section 71 (materials, workmanship and standard of reinstatement) is applied by paragraphs (4) and (5) of Article 12. Therefore, a separate control is not required.</u>

<u>Provision</u>	<u>Purpose</u>	<u>Body</u>	<u>Effect of disapplication</u>	<u>Necessity and justification</u>
				<u>Additionally, paragraphs 7.3.10 and 7.3.11 of the <b>Construction Traffic Management Plan (Document 5.3.3F)</b> require highway condition surveys to be undertaken.</u>
<u>s.73B</u>	<u>power to specify timing etc. of re-surfacing</u>	<u>Street authority</u>	<u>This will stop the street authority specifying the timing of such re-surfacing works.</u>	<u>This part of the Act is not currently in force. However, see the summary for s.73A above in relation to reinstatement. In addition, Requirement 7 of the DCO controls the construction hours of the Project. Therefore, a separate control is not required.</u>
<u>s.73C</u>	<u>materials, workmanship and standard of re-surfacing</u>	<u>Street authority</u>	<u>This will stop the street authority from prescribing the tools, materials and standards that such re-surfacing needs to be executed.</u>	<u>See the summary for s.73A above in relation to reinstatement which must be undertaken at the undertaker's expense.</u>
<u>s.78A</u>	<u>contributions to costs of re-surfacing by undertaker</u>	<u>Street authority</u>	<u>By disapplying this provision it will mean that no contributions would need to be paid by an undertaker for the costs of re-surfacing if notice of such is given by the street authority.</u>	<u>See the summary for s.73A above in relation to reinstatement which must be undertaken at the undertaker's expense.</u>
<u>Sch. 3A</u>	<u>restriction on works following substantial street works</u>	<u>Street authority</u>	<u>By disapplying this provision the street authority will not be able to place restrictions on works that follow substantial street works, this will enable the Project to</u>	<u>See the summary for s.58 above.</u>

<u>Provision</u>	<u>Purpose</u>	<u>Body</u>	<u>Effect of disapplication</u>	<u>Necessity and justification</u>
			<u>progress and ensure completion without limiting or delaying the works that will be necessary under the DCO.</u>	

## Appendix B Justification for disapplication of provisions listed within Schedule 16

<u>Title</u>	<u>Section / Byelaw</u>	<u>Corresponding provision</u>	<u>Summary of provision</u>	<u>Justification (including equivalent provisions provided for within the DCO)</u>	<u>Links to embedded measures schedule (Document 5.3.3A)</u>
<p><u>West Yorkshire Act 1980</u> <u>(made under s262 and s239 of the LGA 1972)</u></p>	<p><u>9</u></p>	<p><b><u>9.— Culverting streams before development.</u></b> <u>Where plans of any proposed work are in accordance with building regulations deposited with a district council, the district council if they consider that any watercourse or ditch whether on the land on which the proposed works are to be carried out or any land abutting on the same should be wholly or partially filled up or covered over or piped or culverted may, as a condition of passing the plans, require that before any works are commenced any such watercourse or ditch shall be wholly or partially filled up or covered up or piped or culverted with all necessary gullies and other means of</u></p>	<p><u>The district council may, as a condition of approving building regulations, require that any watercourse or ditch shall be filled, covered, piped or culverted before any works are commenced.</u></p>	<p><u>Construction works will be undertaken in accordance with the <b>Code of Construction Practice (Document 5.3.3B)</b> and a drainage management plan will be approved by the relevant planning authority prior to works commencing.</u> <u>This is secured in Requirements 5(2)(a) and 6(1)(b) of the DCO.</u> <u>To the extent building regulations are</u></p>	<p><u>Measures have been proposed to mitigate effects on watercourses from operations within the <b>Embedded Measures Schedule (Document 5.3.3A)</b>. Please see measures proposed under CoCP ID HY1, HY2, TT03.</u> <u>This includes inspection and monitoring good working practices, consistent with best practice guidance to protect the surface water environment, the inclusion of a stand-off from watercourses, and a crossing schedule will be</u></p>

<u>Title</u>	<u>Section / Byelaw</u>	<u>Corresponding provision</u>	<u>Summary of provision</u>	<u>Justification (including equivalent provisions provided for within the DCO)</u>	<u>Links to embedded measures schedule (Document 5.3.3A)</u>
		<p><u>conveying surface-water into and through it.</u></p> <p><u>Section 64 (2) and section 65 (2) to (5) of the Act of 1936 (notice of rejection or passing of plans and enforcement of requirements) shall apply as if this section were a section of the Act of 1936.</u></p> <p><u>Any person by whom or on whose behalf plans of any proposed work were deposited with the district council who is aggrieved by the action of the district council in imposing a requirement under subsection (1) above may appeal to the Secretary of State.</u></p> <p><u>Section 69 of the Health and Safety at Work etc. Act 1974 (appeals to Secretary of State) shall apply to an appeal under this subsection as if it were such an appeal as is mentioned in subsection (1) of that section.</u></p>		<p><u>required to be approved for any works, it would not be appropriate to require further works to watercourses at that stage which might prevent or delay the authorised development, as an NSIP, coming forward.</u></p>	<p><u>prepared which will include all crossing methodology for every crossing.</u></p> <p><u>The delivery mechanisms for all of the proposed measures are the <b>Code of Construction Practice (Document 5.3.3B)</b> and the <b>Construction Traffic Management Plan (Document 5.3.3F).</b></u></p>

<u>Title</u>	<u>Section / Byelaw</u>	<u>Corresponding provision</u>	<u>Summary of provision</u>	<u>Justification (including equivalent provisions provided for within the DCO)</u>	<u>Links to embedded measures schedule (Document 5.3.3A)</u>
		<p><u>Provided that this paragraph shall not have effect until rules of court relating to any such proceedings as are mentioned in subsection (5) of the said section 69 are in operation.</u></p> <p><u>Nothing in this section shall empower a district council to require the execution of works upon the land of any person other than the owner of the land upon which the proposed works are to be carried out without the consent of that person or prejudicially to affect the rights of any person not being the owner of the land upon which the proposed works are to be carried out.</u></p> <p><u>The powers conferred by subsection (1) above shall not be exercised with respect to any watercourse or ditch except with the consent of, and in accordance with any reasonable conditions imposed by, the water authority.</u></p>			



<u>Title</u>	<u>Section / Byelaw</u>	<u>Corresponding provision</u>	<u>Summary of provision</u>	<u>Justification (including equivalent provisions provided for within the DCO)</u>	<u>Links to embedded measures schedule (Document 5.3.3A)</u>
		<p><u>Before giving any consent or imposing any condition under paragraph (a) above with respect to any watercourse or ditch under the control of an internal drainage board, the water authority shall consult the internal drainage board.</u></p> <p><u>A consent required under paragraph (a) above shall not be unreasonably withheld and shall, if neither given nor refused within four weeks after application for it is made, be deemed to have been given.</u></p> <p><u>Any question arising under this subsection whether the consent of the water authority is unreasonably withheld or whether any condition imposed by the water authority is reasonable shall be referred to a single arbitrator to be agreed between the district council and the water authority or, failing such agreement, to be appointed by the President of the Institution of Civil</u></p>			

<u>Title</u>	<u>Section / Byelaw</u>	<u>Corresponding provision</u>	<u>Summary of provision</u>	<u>Justification (including equivalent provisions provided for within the DCO)</u>	<u>Links to embedded measures schedule (Document 5.3.3A)</u>
		<u>Engineers on the application of either party after giving notice to the other.</u>			
	44	<p><b><u>44.— Dust, etc., from building operations.</u></b></p> <p><u>This section applies to any building operation, including any work of demolition or the cleansing of any building or structure, which is either carried out in the open air or carried out in such circumstances that dust from the operation is emitted into the open air.</u></p> <p><u>Except as provided in subsection (6) below, a district council may give notice to any person carrying out, or controlling the carrying out of, an operation to which this section applies in their district requiring him, within such time as is specified in the notice, to take such reasonably practicable steps as are so specified to reduce the</u></p>	<p><u>The district council may require any person carrying out works to take steps to reduce emissions of dust. Failure to adhere to the requirement will be a criminal offence and, upon conviction, will result in a fine of up to £200 and a daily fine of £20.</u></p> <p><u>The person carrying out the proposed works may apply to the district council, giving details of the proposed</u></p>	<p><u>Emissions of dust will be controlled under the <b>Code of Construction Practice (Document 5.3.3B)</b> secured under requirement 5(2)(a) of the DCO.</u></p> <p><u>It is therefore appropriate to disapply these provisions so that any provisions in relation to dust and nuisance are governed in accordance with the DCO.</u></p>	<p><u>Numerous measures have been proposed to mitigate dust from operations within the <b>Embedded Measures Schedule (Document 5.3.3A)</b>. Please see measures proposed under CoCP ID AQ01 through to AQ37.</u></p> <p><u>This includes proposed measures such as regular on and off site inspections to monitor compliance, ensure all vehicles switch off when stationary, avoid the use of diesel and petrol powered generators, only use cutting, grinding or sawing equipment fitted or in conjunction</u></p>

<u>Title</u>	<u>Section / Byelaw</u>	<u>Corresponding provision</u>	<u>Summary of provision</u>	<u>Justification (including equivalent provisions provided for within the DCO)</u>	<u>Links to embedded measures schedule (Document 5.3.3A)</u>
		<p><u>emission of dust from the operation.</u></p> <p><u>In considering what steps are reasonably practicable for the purposes of subsection (2) above, the district council shall have regard, amongst other matters, to the requirements of safety and safe working conditions, any relevant provisions of any code of practice approved under section 16 of the Health and Safety at Work etc. Act 1974 and to the financial implications.</u></p> <p><u>Any person aggrieved by a notice under subsection (2) above may appeal to the county court and the judge may make such order, either confirming or quashing or varying the notice as he thinks fit but shall not so vary the notice that it is more onerous than the notice given by the district council.</u></p>	<p><u>works, method of operation and measures to reduce dust, upon which the district council may grant their consent to the works to be carried out in line with the application.</u></p>		<p><u>with suitable dust suppression techniques, use enclosed chutes and conveyors and covered skips, plan site layout to ensure that machinery and dust causing activities are located away from receptors as far as possible, consider the use of solid screens, remove materials from site that could cause dust as soon as practicably possible and use water assisted dust sweepers. This list is non-exhaustive and further information can be found within the <b>Embedded Measures Schedule (Document 5.3.3A).</b></u></p> <p><u>The delivery mechanisms for all of the proposed</u></p>

<u>Title</u>	<u>Section / Byelaw</u>	<u>Corresponding provision</u>	<u>Summary of provision</u>	<u>Justification (including equivalent provisions provided for within the DCO)</u>	<u>Links to embedded measures schedule (Document 5.3.3A)</u>
		<p><u>Subject to any order made on appeal under subsection (4) above, any person who fails to comply with a notice under subsection (2) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding £200 and to a daily fine not exceeding £20.</u></p> <p><u>In any proceedings under this subsection it shall be a defence to show that the quantity of dust emitted into the open air was not materially greater than would have been emitted if the notice had been complied with.</u></p> <p><u>If, before the carrying out of any operation to which this section applies, the person who intends to carry it out applies to the district council for their consent to the operation giving particulars of the operation and the method by which it is to be carried out; and</u></p>			<p><u>measures are the Code of Construction Practice (Document 5.3.3B) and the Construction Traffic Management Plan (Document 5.3.3F).</u></p>

<u>Title</u>	<u>Section / Byelaw</u>	<u>Corresponding provision</u>	<u>Summary of provision</u>	<u>Justification (including equivalent provisions provided for within the DCO)</u>	<u>Links to embedded measures schedule (Document 5.3.3A)</u>
		<p><u>the steps proposed to be taken to reduce the emission of dust from the operation;</u></p> <p><u>and the district council consider that, on the carrying out of the operation in accordance with the application, they would not serve a notice under subsection (2) above in respect of that operation, the district council may give their consent to the operation for the purposes of this section, either unconditionally or subject to such conditions as may be specified in the consent.</u></p> <p><u>In acting under this subsection the district council shall have regard to the matters specified in subsection (3) above.</u></p> <p><u>If the district council do not, within twenty-one days from the receipt of an application under this subsection, give to the applicant a consent, with or without conditions, which is</u></p>			

<u>Title</u>	<u>Section / Byelaw</u>	<u>Corresponding provision</u>	<u>Summary of provision</u>	<u>Justification (including equivalent provisions provided for within the DCO)</u>	<u>Links to embedded measures schedule (Document 5.3.3A)</u>
		<p><u>acceptable to the applicant, he may appeal to the county court.</u></p> <p><u>On any appeal under this subsection the judge may make such order either confirming the refusal of the consent or varying any conditions subject to which the consent has been given or ordering the giving of the consent with or without conditions as he thinks fit but shall not so vary any conditions that they are more onerous than those specified by the district council.</u></p> <p><u>In this section “dust” includes chemicals in solution and grit.</u></p> <p><u>Nothing in this section shall prejudice or affect the operation of any of the relevant statutory provisions as defined in Part I of the Health and Safety at Work etc. Act 1974.</u></p>			

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<p><u>Byelaws for the good rule and government of the City of Leeds and for the prevention of nuisances made by the Council of the City in pursuance of Section 235 of the Local Government Act 1972</u></p>	<p><u>10</u></p>	<p><b><u>10. Preservation of road margins</u></b></p> <p><u>(1) No person shall without lawful authority drive or place a vehicle (other than a heavy commercial vehicle, as defined by section 36A of the Road Traffic Act 1972) or cause a vehicle to be driven or placed, upon any road margin to which this byelaw applies.</u></p> <p><u>(2) This byelaw applies to any road margin which is:</u></p> <p><u>(i) in or beside a public road other than a trunk road vested in the Secretary of State;</u></p> <p><u>(ii) laid or sown with grass or planted with trees, shrubs or plants, and maintained constantly in good order for ornamental purposes; And</u></p> <p><u>(iii) indicated to be a margin to which this byelaw applies by means of notices conspicuously displayed on or</u></p>	<p><u>No person may drive or park in a grassed, signposted margin by the side of a local public road.</u></p>	<p><u>The street authority will approve any alterations to layout of streets used for the authorised development under article 13 (where not listed in Schedule 6).</u></p> <p><u>Access to works is authorised under article 14 (with the relevant accesses listed in Schedule 9), and where any changes to accesses are required, these need to be approved under Requirement 14 of the DCO.</u></p> <p><u>To the extent that access is required over any road margin, this should</u></p>	<p><u>Measures have been proposed to mitigate impact on road margins under the <b>Embedded Measures Schedule (Document 5.3.3A)</b>. Please see measures proposed under CoCP ID TT02, TT02.</u></p> <p><u>These measures include signage and/or temporary diversions to be provided during construction, including rights of navigation. Highways condition surveys will be undertaken before, during and after the construction phase and repairs conducted as a result of HGVs on the highways. Construction access will be provided with visibility splays</u></p>

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		<u>near the said margin by the Council.</u>		<p><u>not be prevented and would be approved by the street authority under the DCO. Any land used temporarily under the DCO must also be reinstated to the condition approved by the relevant planning authority, so to the extent that any margins are affected, their reinstatement is secured under Requirement 11 of the DCO.</u></p>	<p><u>designed to DRMB or local standards.</u></p> <p><u>The active management of crossing points and shared accesses will be temporary in nature and will require site specific signage to inform the public and construction vehicle drivers.</u></p> <p><u>Where required, temporary traffic management measures such as traffic signals and manned stop/go boards will be used. Temporary highway signage would provide routing information for construction vehicles and avoid use of short cuts.</u></p> <p><u>The relevant delivery mechanisms include</u></p>



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					<p><b><u>Code of Construction Practice (Document 5.3.3B), Public Right of Way Management Plan (Document 5.3.3G) and Construction Traffic Management Plan (Document 5.3.3F).</u></b></p>
	<p><u>11</u></p>	<p><b><u>11. Mud, etc, falling from vehicles to the highway</u></b>  <u>(1) When, to the knowledge of a person in charge of a vehicle, any mud, clay, lime or similar material has fallen on a highway from the vehicle, such person shall, if such fallen material is likely to cause obstruction or danger to persons using the highway or injury to the surface of the highway, remove or cause to be removed all such fallen material from the highway as</u></p>	<p><u>No person shall bring a vehicle onto the road which may deposit material to be an obstruction on the road (mud or clay) without first removing this material.</u></p>	<p><u>This will be controlled under the <b>Code of Construction Practice (Document 5.3.3B)</b> secured under Requirement 5(2)(a) of the DCO and it is appropriate to disapply the provision to ensure there no confusion as to what regime applies to the</u></p>	<p><u>Measures have been proposed to mitigate mud etc from operations within the <b>Embedded Measures Schedule (Document 5.3.3A)</b>. Please see measures proposed under CoCP ID AQ16, AQ36.</u></p> <p><u>Site runoff will be avoided from water or mud and a wheel washing system will be implemented with</u></p>

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		<p><u>completely and as soon as is reasonably practicable.</u></p> <p><u>(2) The person in charge of a vehicle shall not bring the vehicle or permit it to be brought upon a highway unless there has been removed from the wheels thereof as completely as is reasonably practicable all mud, clay, lime and similar material which is likely, if not so removed, to cause obstruction or danger to persons using the highway or injury to the surface of the highway.</u></p> <p><u>(3) In this byelaw -</u></p> <p><u>- "the person in charge of a vehicle" means the person who whether as owner or otherwise has the charge or control of a vehicle or being present is entitled to give orders to the person having charge or control;</u></p>		<p><u>authorised development.</u></p>	<p><u>rumble grids to dislodge accumulated dust and mud prior to vehicles leaving site locations.</u></p> <p><u>The delivery mechanisms for all of the proposed measures are the <b>Code of Construction Practice (Document 5.3.3B)</b> and the <b>Construction Traffic Management Plan (Document 5.3.3F).</b></u></p>

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		<p>- <u>"vehicle" includes any trailer and any agricultural implement or machine.</u></p> <p><u>"wheels" includes axles, runners and tracks</u></p>			
	<p><u>17</u></p>	<p><b><u>17. Noise</u></b></p> <p><u>Between the hours of 8 am and 9 pm no person shall by operating or causing or suffering to be operated, any wireless set, gramophone, amplifier or similar instrument in any street or public place, make or cause or suffer to be made any noise which is so loud and so continuous or repeated as to give reasonable cause for annoyance to other persons.</u></p>	<p><u>Not to make a noise which is so loud and so continuous or repeated as to give reasonable cause for annoyance to other persons.</u></p>	<p><u>Construction noise is controlled through the <b>Noise and Vibration Management Plan (Document 5.3.3H)</b> under Requirement 5(2)(f) of the DCO and construction hours are controlled under Requirement 7 of the DCO. Given its NSIP status, the authorised development will also have a defence to statutory nuisance in the circumstances set</u></p>	<p><u>Measures have been proposed to mitigate noise within the <b>Embedded Measures Schedule (Document 5.3.3A)</b>. Please see measures proposed under CoCP ID NV01 – NV14.</u></p> <p><u>These measures include all construction activities to be undertaken within the Order Limits. Prior to construction works, the detailed design, working methods and mitigation proposals will be developed and approved to minimise adverse effects of construction noise.</u></p>

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				<p><u>out in article 43 of the DCO. It is therefore appropriate to disapply these provisions so that any provisions in relation to noise and nuisance are governed in accordance with the DCO.</u></p>	<p><u>There will be a system for recording of any noise or vibration complaints and procedures for investigating and acting appropriately. A screening strategy of noise contributing equipment is required in certain locations. Where required, all compressors and generators are to be 'sound reduced' models fitted with acoustic covers.</u></p> <p><u>Machines in intermittent use shall be shut down in intervening periods where possible and plant with directional noise characteristics positioned to minimise noise. Static equipment and machinery is to be</u></p>

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					<p><u>sited as far as is practicable from inhabited buildings.</u></p> <p><u>Temporary access roads will be well maintained to minimise noise. Activities are to be located away from sensitive receptors and materials will be handled in a manner that minimises noise. Prior warning is to be given for night-time work close to receptors. Training is to be provided to minimise disruption.</u></p> <p><u>The delivery mechanisms include the DCO Work plans and Limits of Deviation and the <b>Noise and Vibration Management Plan (Document 5.3.3H).</b></u></p>

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