

A66 Northern Trans-Pennine Project

TR010062

7.12 Statutory Undertakers Status of Negotiations Schedule (Rev 3)

Infrastructure Planning (Examination Procedure) Rules 2010

Planning Act 2008

Deadline 8

16 May 2023

Infrastructure Planning

Planning Act 2008

**The Infrastructure Planning
(Examination Procedure)
Rules 2010**

A66 Northern Trans-Pennine Project
Development Consent Order 202x

**7.12 STATUTORY UNDERTAKERS STATUS OF
NEGOTIATIONS SCHEDULE (REV 3)**

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1 Introduction

1.1 Purpose of this document

- 1.1.1 This Statutory Undertakers Status of Negotiations Schedule relates to National Highways' application to the Planning Inspectorate under the Planning Act 2008 (the "2008 Act") for the A66 Northern Trans-Pennine project Development Consent Order 202x ("DCO"). If made, the DCO would grant consent for the Applicant to undertake the A66 Northern Trans-Pennine project (the "Project").
- 1.1.1 A detailed description of the Project can be found in Case for the Project (APP-008).
- 1.1.2 This Schedule has been prepared and submitted in accordance with the Examining Authority's Examination Timetable as outlined in the Rule 8 letter dated 8 December 2022.
- 1.1.3 This Schedule should be read in conjunction with the Book of Reference (AS-015 to AS-022), Land Plans (APP-304 to APP-311, AS-013 and AS-014), the Statement of Reasons (APP-299), the Compulsory Acquisition and Temporary Possession Schedule (APP-300) and the draft DCO (submitted at Deadline 2).
- 1.1.4 The Applicant submitted a change request application (CR1-001 to 18) at Deadline 6 which was accepted by the Examining Authority on 18 April 2023. As a result of the change application, this Schedule should also be read in conjunction with the Book of Reference (REP7-095 to REP7-098), Land Plans (REP7-105 and REP7-106), Statement of Reasons (REP7-099) and the Compulsory Acquisition and Temporary Possession Schedule (submitted at Deadline 8).
- 1.1.5 The Book of Reference (AS-015 to AS-022 and REP7-095 to REP7-098) includes details of the interests belonging to the statutory undertakers listed in this Schedule that are within the Order limits or affected by the Project. Further information on how the Project will impact on interests belonging to statutory undertakers is set out in Section 8.5 of the Statement of Reasons (REP7-099).
- 1.1.6 Paragraphs 8.5.2 and 8.5.3 of the Statement of Reasons (REP7-099) set out the tests in section 127 of the Planning Act 2008. In summary, where a representation has been made by a statutory undertaker objecting to the acquisition of statutory undertakers' land (or rights over land), the Secretary of State must be satisfied that the land or right can be replaced or rights can be acquired without any serious detriment to the carrying on of the undertaking.
- 1.1.7 The Applicant's position is that the protective provisions contained in Part 9 of the draft DCO (submitted at Deadline 8) are adequate to protect each statutory undertaker's undertaking and to ensure that it suffers no serious detriment. Therefore, in the event that any representations made by statutory undertakers remain outstanding at the end of the Examination, the Secretary of State can be satisfied that the tests set out in section 127 of the Planning Act 2008 have been met.

1.1.8 Version 3 of this Schedule provides an update on the status of negotiations with statutory undertakers as at Deadline 8.

2 Statutory Undertakers Status of Negotiations Schedule

No: (1)	Statutory undertaker or other similar body: (2)	Status of negotiations with statutory undertaker: (4)
1	National Gas Transmission plc	<p>Schedule 9, Part 4 has been updated in the version of the draft DCO submitted at Deadline 2 to include protective provisions for the benefit of National Gas Transmission plc (NGT) (as requested by NGT).</p> <p>Discussions are ongoing in respect of a separate side agreement with NGT and the Applicant's solicitors have recently received a draft agreement which is under review. The Applicant is confident that agreement will be reached prior to the end of the Examination.</p> <p>Update for Deadline 5: Discussions are ongoing regarding the timing of relocation works. A draft side agreement has been provided by NGT's solicitors which is being considered by the Applicant. The Applicant remains confident that agreement will be reached prior to the end of the Examination.</p> <p>Update for Deadline 8: The agreement is in a substantially agreed form awaiting final internal approval from NGT. It is hoped that NGT's representation will be formally withdrawn prior to the end of the Examination. In any event, protective provisions for the benefit of NGT are included in Schedule 9, Part 4 to the draft DCO and the Applicant is confident that there will not be any serious detriment to NGT's undertaking as a result of the Project.</p>
2	National Grid Electricity Transmission plc	<p>Schedule 9, Part 3 has been updated in the version of the draft DCO submitted at Deadline 2 to include updated protective provisions for the benefit of National Grid Electricity Transmission plc (NGET) (as requested by NGET).</p> <p>Discussions are ongoing in respect of a separate side agreement with NGET and the Applicant's solicitors are waiting to receive a draft agreement for review from NGET's solicitors. Technical discussions are ongoing.</p> <p>The Applicant is confident that agreement will be reached prior to the end of the Examination.</p> <p>Update for Deadline 5: Technical discussions are ongoing including discussions relating to impacts associated with the Applicant's non-material change request which is due to be submitted on 24 March 2023. The Applicant's solicitors have recently received a draft side agreement from NGET's solicitors. The Applicant remains confident that agreement will be reached prior to the end of the Examination.</p> <p>Update for Deadline 8: The agreement is in a substantially agreed form awaiting final internal approval from NGET. It is hoped that NGET's representation will be formally withdrawn prior to the end of the Examination. In any event,</p>

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		protective provisions for the benefit of NGET are included in Schedule 9, Part 3 to the draft DCO and the Applicant is confident that there will not be any serious detriment to NGET's undertaking as a result of the Project.
3	Network Rail Infrastructure Limited	<p>Protective provisions for the benefit of Network Rail have been included in Schedule 9, Part 6 to the draft DCO submitted at Deadline 2 (as requested by Network Rail).</p> <p>The Applicant has confirmed to Network Rail that it will not exercise any powers of compulsory acquisition in respect of Network Rail's land or interests.</p> <p>Discussions are ongoing in respect of a framework agreement with Network Rail and a draft agreement is currently being negotiated.</p> <p>The Applicant is confident that agreement will be reached prior to the end of the Examination.</p> <p>Update for Deadline 5: The Applicant's solicitors have recently received comments on the draft framework agreement from Network Rail's solicitors and these are being considered by the Applicant. The Applicant remains confident that agreement will be reached prior to the end of the Examination.</p> <p>Update for Deadline 8: The agreement is in an agreed form and engrossments are being circulated for signature. It is hoped that Network Rail's representation will be formally withdrawn prior to the end of the Examination. In any event, protective provisions for the benefit of Network Rail are included in Schedule 9, Part 6 to the draft DCO and the Applicant is confident that there will not be any serious detriment to Network Rail's undertaking as a result of the Project.</p>
4	Northern Powergrid Yorkshire plc	<p>Protective provisions for the benefit of electricity undertakers are included in Schedule 9, Part 1 to the draft DCO. Discussions are ongoing in respect of a separate side agreement with Northern Powergrid and the Applicant's solicitors are waiting to receive a draft agreement for review from Northern Powergrid's solicitors.</p> <p>The Applicant is confident that agreement will be reached prior to the end of the Examination.</p> <p>Update for Deadline 5: The Applicant's comments and proposed amendments to the draft side agreement and protective provisions are currently with the Northern Powergrid's solicitors for comments. The Applicant remains confident that agreement will be reached prior to the end of the Examination.</p>

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		<p>Update for Deadline 8: The agreement is in a substantially agreed form awaiting final internal approval from Northern Powergrid. It is hoped that Northern Powergrid's representation will be formally withdrawn prior to the end of the Examination. In any event, protective provisions for the benefit of Northern Powergrid are included in Schedule 9, Part 1 to the draft DCO and the Applicant is confident that there will not be any serious detriment to Northern Powergrid's undertaking as a result of the Project.</p>
5	Northern Gas Networks	A side agreement was entered into between the Applicant and Northern Gas Networks plc dated 18 October 2022.
6	United Utilities Water Limited	<p>Protective provisions for the benefit of water undertakers are included in Schedule 9, Part 1 to the draft DCO.</p> <p>Discussions are ongoing in respect of a separate side agreement with United Utilities and the Applicant's solicitors are waiting to receive comments back on a draft agreement sent to United Utilities in November 2022.</p> <p>The Applicant is confident that agreement will be reached prior to the end of the Examination.</p> <p>Update for Deadline 5: The Applicant continues to engage with United Utilities and is seeking comments on the draft side agreement. The Applicant remains confident that agreement will be reached prior to the end of the Examination.</p> <p>Update for Deadline 8: The Applicant continues to engage with United Utilities on the draft side agreement but anticipates that this will now be completed post DCO consent once the detailed design has been confirmed. Protective provisions for the benefit of United Utilities (as a water undertaker) are included in Schedule 9, Part 1 to the draft DCO (submitted at Deadline 8), which provide protection for United Utilities' apparatus and operations in respect of any interfaces with the Project. and the Applicant is confident that there will not be any serious detriment to United Utilities' undertaking. The Applicant's position is that any rights of access belonging to United Utilities that are being extinguished as a result of the Project will be adequately replaced and access will be provided throughout the construction period. The Applicant refers to its response (REP7-160) to United Utilities' submission (REP6-046) in respect of the Change Application which sets out the reasons for the change. Since United Utilities' submission at Deadline 7 (REP7-207), engagement with United Utilities has continued with meetings held on 27 April 2023, 4 May 2023 and 9 May 2023. The Applicant considers that it has provided United Utilities with sufficient detail of the proposed design and explained why the proposed access to United Utilities treatment plant will not result in any serious detriment to United Utilities' undertaking. The Applicant is therefore confident that there will not be any serious detriment to United Utilities' undertaking.</p>
8	Yorkshire Water Limited	Protective provisions for the benefit of water undertakers are included in Schedule 9, Part 1 to the draft DCO.

No: (1)	Statutory undertaker or other similar body: (2)	Status of negotiations with statutory undertaker: (4)
		<p>Discussions are ongoing in respect of a separate side agreement with Yorkshire Water. The Applicant has been informed that the side agreement will be progressed once Yorkshire Water has obtained a cost estimate for the works from its contractor.</p> <p>The Applicant is confident that agreement will be reached prior to the end of the Examination.</p> <p>Update for Deadline 5: The Applicant continues to engage with Yorkshire Water and is seeking comments on the draft side agreement. The Applicant remains confident that agreement will be reached prior to the end of the Examination.</p> <p>Update for Deadline 8: The Applicant continues to engage with Yorkshire Water on the draft side agreement but anticipates that this will now be completed post DCO consent once the detailed design has been confirmed. It is noted that Yorkshire Water did not submit a representation objecting to the DCO Application and therefore s127 of the Planning Act 2008 is not engaged. In any event, protective provisions for the benefit of Yorkshire Water are included in Schedule 9, Part 1 to the draft DCO and the Applicant is confident that there will not be any serious detriment to Yorkshire Water's undertaking as a result of the Project.</p>
9	Electricity North West Limited	<p>Protective provisions for the benefit of electricity undertakers are included in Schedule 9, Part 1 to the draft DCO.</p> <p>Electricity North West Limited has confirmed to the Applicant that the protective provisions in Schedule 9, Part 1 to the draft DCO are sufficient.</p>
10	Northumbrian Water Limited	<p>Protective provisions for the benefit of water undertakers are included in Schedule 9, Part 1 to the draft DCO.</p> <p>Discussions are ongoing in respect of a separate side agreement with Northumbrian Water and the Applicant's solicitors are waiting to receive comments back on a draft agreement recently sent to Northumbrian Water's solicitors.</p> <p>The Applicant is confident that agreement will be reached prior to the end of the Examination.</p> <p>Update for Deadline 5: The Applicant has recently received comments back from Northumbrian Water's solicitors on the draft agreement which are being considered. The Applicant remains confident that agreement will be reached prior to the end of the Examination.</p> <p>Update for Deadline 8: The agreement is in an agreed form and engrossments are being circulated for signature. It is noted that Northumbrian Water did not submit a representation objecting to the DCO Application and therefore s127 of the Planning Act 2008 is not engaged. In any event, protective provisions for the benefit of Northumbrian Water are</p>

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		included in Schedule 9, Part 1 to the draft DCO and the Applicant is confident that there will not be any serious detriment to Northumbrian Water's undertaking as a result of the Project.
11	Cellnex	<p>Protective provisions for the benefit of electronic communications code network operators are included in Schedule 9, Part 2 to the draft DCO.</p> <p>The Applicant has been in contact with Cellnex and no amendments to the protective provisions or separate side agreement have been requested by Cellnex.</p>
13	Vodafone	<p>Protective provisions for the benefit of electronic communications code network operators are included in Schedule 9, Part 2 to the draft DCO.</p> <p>Discussions are ongoing in respect of a separate side letter with Vodafone.</p> <p>The Applicant is confident that agreement will be reached prior to the end of the Examination.</p> <p>Update for Deadline 5: The side letter is in an agreed form, has been signed by the Applicant and is in the process of being signed by Vodafone. The Applicant remains confident that agreement will be reached prior to the end of the Examination.</p> <p>Update for Deadline 8: The side letter has been signed by both the Applicant and Vodafone. It is noted that Vodafone did not submit a representation objecting to the DCO Application. In any event, protective provisions for the benefit of Vodafone are included in Schedule 9, Part 2 to the draft DCO and the Applicant is confident that there will not be any serious detriment to Vodafone's undertaking.</p>
14	Virgin Media	<p>Protective provisions for the benefit of electronic communications code network operators are included in Schedule 9, Part 2 to the draft DCO.</p> <p>The Applicant has been in contact with Virgin Media and no amendments to the protective provisions or separate side agreement have been requested by Virgin Media.</p>
15	BT/Openreach	<p>Protective provisions for the benefit of electronic communications code network operators are included in Schedule 9, Part 2 to the draft DCO.</p> <p>BT/Openreach has confirmed to the Applicant that the protective provisions in Schedule 9, Part 2 to the draft DCO are sufficient.</p>

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16	Zayo Group Limited	<p>Protective provisions for the benefit of electronic communications code network operators are included in Schedule 9, Part 2 to the draft DCO.</p> <p>A meeting took place on 27 October 2022 between the Applicant and Zayo to discuss the protective provisions and a further meeting took place between legal representatives on 2 November 2022.</p> <p>No amendments to the protective provisions or separate side agreement have been requested by Zayo Group.</p>
17	Energis Communications Limited	<p>Protective provisions for the benefit of electronic communications code network operators are included in Schedule 9, Part 2 to the draft DCO.</p> <p>The Applicant has been in contact with Energis Communications and no amendments to the protective provisions or separate side agreement have been requested by Energis Communications.</p>
18	Neos Networks Limited	<p>Protective provisions for the benefit of electronic communications code network operators are included in Schedule 9, Part 2 to the draft DCO.</p> <p>The Applicant has been in contact with Neos Networks and no amendments to the protective provisions or separate side agreement have been requested by Neos Networks.</p>
19	Environment Agency	<p>Protective provisions for the benefit of the Environment Agency have been included in Schedule 9, Part 5 to the draft DCO.</p> <p>Whilst the current draft protective provisions remain the subject of discussion with the Environment Agency; it is anticipated that an agreed final form of Protective Provisions will be included in the draft DCO by or before the close of the examination.</p> <p>Update for Deadline 8: The Applicant has received the Environment Agency's updated standard protective provisions and are in substantially agreed form. The outstanding issue relates to the terms of an indemnity. The Applicant remains confident that agreement will be reached prior to the close of the examination and that being the case, the Applicant intends to submit at Deadline 9 a further iteration of the draft DCO containing the agreed protective provisions.</p>
20	North Cumbria Integrated Care NHS Foundation Trust	<p>Discussions are ongoing between the Applicant and North Cumbria Integrated Care NHS Foundation Trust.</p> <p>Update for Deadline 8: The Applicant has recently engaged with North Cumbria Integrated Care NHS Foundation Trust ("the Trust") regarding a proposed change to the DCO application (Change reference DC-03 – reorientation of Kemplay Bank junction). The Trust agreed to the inclusion of 'additional land' in the Order limits in support of this</p>

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		<p>proposed change, which was accepted into the examination of the application by the Examining Authority on 18 April 2023 (PD-014). The 'additional land' required for DC-03 comprised land which was previously proposed to be subject only to powers of temporary possession, but which is now proposed to be acquired compulsorily; however, negotiations for the acquisition of the land by agreement have progressed well, such that Heads of Terms are currently in the process of being agreed and solicitors have been instructed. The Trust has not requested bespoke protective provisions or a separate side agreement.</p>
21	Shell Chemicals UK Limited	<p>Shell is the owner and operator of a high-pressure oil pipeline located within the Order limits. Shell is not a statutory undertaker for the purposes of the Planning Act 2008.</p> <p>The Applicant has been in contact with Shell and is waiting to receive confirmation from Shell as to whether bespoke protective provisions or separate side agreement is required.</p> <p>Update for Deadline 5: The Applicant continues to engage with Shell and is requesting specifically as to whether bespoke protective provisions or separate side agreement is required prior to the DCO being granted or if a Crossing Agreement post DCO consent is more suitable.</p> <p>Update for Deadline 8: The Applicant continues to engage with Shell and it is anticipated that a Crossing Agreement post DCO consent will be entered into. As noted above, Shell is not a statutory undertaker and therefore s127 and s138 of the Planning Act 2008 are not engaged.</p>