Cambridge Waste Water Treatment Plant Relocation Project
Anglian Water Services Limited

Applicant's comments on Deadline 7 submissions

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Contents

1 Introduction

1.1 Introduction

This document provides Anglian Water Services Limited (the Applicant) comments on the submissions received at Deadline 7 for the Cambridge Waste Water Treatment Plant Relocation Project (CWWTPRP).

This document does not seek to respond to every submission made at Deadline 7 (published 17th April 2024) or to repeat matters which are already set out in documents available to the examination – rather its purpose is to address any new concerns which may have arisen, correct any omissions or provide signposting of clarification were deemed necessary.

The Applicant has reviewed the submissions from the following parties and believes that there is either no response required from the Applicant or the Applicant has already addressed the points raised in its previous Deadlines, including Deadline 7, at Issue Specific Hearings 1, 2, 3, 4 & 5 and in its response to the ExA Action Points and ExQ1, ExQ2 and ExQ3:

- Save Honey Hill Group
    - Comments on any submissions received at D6
    - Closing submissions
- Jennie Pratt – Closing submissions
- Cadent Gas Limited – Closing submission
- CPRE Cambridgeshire and Peterborough – Closing submission
- Teversham Parish Council – Closing submission
- Cambridgeshire County Council
    - Closing Statement
    - Comments on any submissions received at D6
    - Response to a request for further information
    - Written summary of oral submissions made at ISH5
- Mrs J J Conroy – Closing submissions
- South Cambridgeshire District Council – Written summary of oral submissions made at ISH5
- Cambridge City Council & South Cambridgeshire District Council – Joint Closing Submission
- Fen Ditton Parish Council –

    - Closing submissions
    - Comments on any submissions received at D6
- Liz Cotton –
    - Closing submissions
    - Comments on any submissions received at D6
- Matthew Stancombe – Closing submissions
- Friends of the Cam –
    - Closing submission
    - Comments on the proposals
- Cambridge City Council – Written summary of oral submissions made at ISH5
- Mr Peter C E Halford – Closing submissions
- Quy Fen Trust – Closing submissions
- Sue Woodsford – Closing submissions

2 Applicant's comments on submissions received from the Environment Agency at Deadline 7

The Applicant's comments on the Deadline 7 submission from the Environment Agency can be found in **Appendix A** below.

3 Applicant's comments on submissions received from National Highways at Deadline 7

The Applicant received a copy of National Highways' Deadline 7 submission via email on 13 April 2024 at 12:24 am. Paragraph 2 of the document entitled 'Deadline 7 Submission of National Highways Limited' states that if the Examining Authority is not minded to agree to National Highways' submission "regarding the Applicant's rights to undertake work under the New Roads and Street Works Act 1991 and Water Industry Act 1991", National Highways would ask that the Development Consent Order is made with the provisions for the protection of National Highways "attached to the submission". That same document contains an Appendix 1 entitled 'NH standard protective provisions'. However, no such provisions are attached.

The Applicant has been provided with a document entitled 'CWWDCO DDCO Part 5 for the Protection of National Highways D7' ("the Tracked Protective Provisions") which appears to be a track changed version of an old version of the protective provisions discussed between the parties up until August 2022. It is not clear whether National Highways' position is that the Tracked Protective Provisions are National Highways' preferred provisions, subject to the making of the tracked changes.

Furthermore, the Applicant is surprised and disappointed that National Highways is now changing its position on what had been confirmed (in the Statement of Common Ground (App Doc Ref 7.14.7) and orally by NH at ISH4) as agreed protective provisions save for the provision relating to land (paragraph 19). These are appended to Appendix 2 of the Statement of Common Ground ("the Agreed Protective Provisions"). The Agreed Protective Provisions have been subject to extensive negotiation with National Highways, including during a number of meetings attended by the legal team and technical experts and the Applicant is satisfied that they are both appropriate and reasonable. As the Applicant has already explained during the course of examination and as detailed in the Explanatory Memorandum (App Doc Reg 2.2, updated at Deadline 7), the Applicant previously negotiated bespoke protective provisions with National Highways but these had to be substantially redrafted in light of a change of position from National Highways which required their standard protective provisions to be included on the face of all development consent orders. The Statement of Common Ground states, at page 11, that:

The Applicant and National Highways have not been able to agree protective provisions in full. The protective provisions which the Applicant has included in the DCO are at Appendix 2 These are agreed with National Highways, save for paragraph 19. National Highways Standard Protective Provisions are at Appendix 3. Paragraph 20 of the National Highways standard protective provisions show at paragraph 20 the standard wording which National Highways seeks in place of the Applicant's paragraph 19.

In any event, the Applicant has reviewed the red tracked wording in the Tracked Protective Provisions. For ease of reference, please see the table at **Appendix B** which sets out where an addition in the Tracked Protective Provisions can already be found in the Agreed Protective Provisions. Unless expressly stated below, the Applicant notes some slight

differences in wording in some instances between the two versions of the protective provisions but submits that the effect, and therefore the protection for National Highways, is the same. The Applicant adds the following comments:

i. The Tracked Protective Provisions do not contain express reference to a bond or cash deposit. The provision of these has been agreed with National Highways and is included in the Agreed Protective Provisions.

ii. The addition of the wording at paragraph 4(1) in the Tracked Protective Provisions relating to any specified work which involves 'tunnelling, boring or otherwise installing the pipeline under the strategic road network' is not necessary. The definition of 'specified work' in the Agreed Protective Provisions already covers the installation and maintenance of such parts of the authorised development which are 'under or over the strategic road network (including any structure).' National Highways' reference to specific methods of installation does not add anything to the already broad definition of 'specified work' and which would capture works under the SRN, irrespective of how they are installed.

iii. Paragraph 4(1) of the Tracked Protective Provisions requires a specified work to be designed 'in accordance with DMRB CD622'. The definition of 'detailed design information' in the Agreed Protective Provisions provides:
   a. *earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;*
   b. The detailed design information must be provided for National Highways' approval pursuant to paragraph 61 of the Agreed Protective Provisions. Further, pursuant to paragraph 65, the Applicant must
   …as soon as reasonably practicable after making its application for a provisional certificate pursuant to paragraph 63(2), arrange for the highways structures and assets that were the subject of the condition survey to be re-surveyed and must submit the re-survey to National Highways for its approval. The re-survey will include a renewed geotechnical assessment required by DMRB CD622 or its equivalent if the specified works include any works beneath the strategic road network.
   c. In light of the above, the Applicant considers that DRMRB CD622 is appropriately addressed in the Agreed Protective Provisions.

iv. Paragraph 4(2) replicates protections already contained within the Agreed Protective Provisions. Prior to commencing works, the Applicant must already provide the items and comply with (a), (b) and (c). In fact, the Applicant specifically negotiated and agreed the wording at paragraph 60(1) with National Highways which states that:
   a. *the specified works must not commence until in respect of that part of the specified work, save where an item in (a) to (j) is agreed by National Highways and the undertaker as not being relevant to that part of the specified works*

b. This was requested by the Applicant on the grounds that given the nature of the tunnelling works (i.e. being underground), not all of the detailed information required for an above ground work which will be used by the public will be relevant. This was agreed by National Highways.

v. The wording at paragraph 5(3) of the Tracked Protective Provisions appears word for word in the Agreed Protective Provisions save for the addition of 'acting reasonably' to the final sentence and therefore the Applicant notes that the proposed drafting from National Highways is actually more favourable to the Applicant.

vi. As to the addition in track at paragraph 12 of the Tracked Protective Provisions, this adds the same wording as has been added at paragraph 4 save that it is under the heading 'part (b) of the specified works'. This relates to an old draft of the protective provisions which passed between the parties pre-submission of the DCO Application as the Applicant considered it appropriate to apply slightly different provisions for the works on the SRN and those beneath the SRN (which were then known as the 'part (a)' and 'part (b) works'). This was initially agreed by National Highways but its position later changed and the Applicant accepted this, subject to the compromise wording at paragraph 60(1) (see paragraph 1.4.3 of this note).

vii. Paragraph 13 is particularly jumbled and despite being headed 'construction of part (b) of the specified works' (and which as noted above, relates to drafting dropped by the Applicant), it actually makes several references to the part (a) works. Nonetheless, as can be seen below paragraph 13 is already addressed in the Agreed Protective Provisions.

NRSWA 1991

In response to National Highways' submission that there is no justification for compulsory acquisition as the Applicant has statutory rights under the New Roads and Street Works Act 1991 and the Water Industry Act 1991, the ExA is aware that the Applicant does not agree with this position. The Applicant has already addressed this on several occasions and does not propose to reiterate its submissions here. The Applicant refers to:

i. paragraph 2 of 'Applicant's Comments on Deadline 4 Submission' [**REP5-112**];
ii. paragraph 3.5 of 'Applicant's comments on Deadline 5 Submissions' [**REP6-115**];
iii. its response to ExQ3 8.1 and 8.4 (App Doc Ref 8.27) [**REP6-117**]; and
iv. Section 32 and 33 of the Deadline 7 Closing Submissions (App Doc Ref 8.33).

4 Applicant's comments on submissions received from Network Rail at Deadline 7

The Applicant confirmed in its Deadline 7 submissions (paragraph 10.20 of the Explanatory Memorandum (App. Doc. Ref 2.2 Revision 07 and paragraphs 32.33 and 32.34 of the Applicant's Closing Submissions (App. Doc. Ref. 8.33) that there remained only a few outstanding points between the parties in respect of the protective provisions included in the Applicant's final dDCO and the Applicant explained that, despite repeated attempts to engage with Network Rail ("NR") in relation to the land arrangements, NR has failed to engage substantively on the land acquisition required by the Applicant, leaving the Applicant with no choice but to require powers to compulsorily acquire the land and rights it needs to deliver the Proposed Development.

The Applicant is surprised that NR seeks to submit information to the Examination at such a late stage in an attempt to demonstrate for the first time why, for the purposes of s127 PA2008, it considers that the Applicant's proposed acquisition of sub-soil and rights would cause serious detriment to the railway and to NR's undertaking. The Applicant considers that Network Rail has not provided evidence to specifically address why the powers sought by the Applicant present a serious detriment to NR's undertaking. NR's comments are generic and are not tailored to the powers sought in the dDCO nor to the Proposed Development. The submissions fail to recognise that the sub-soil acquisition for the Transfer Tunnel is at a significant depth below the surface of the land, and that the Waterbeach Pipeline, for which new rights and a restrictive covenant are sought, will similarly relate to buried infrastructure which does not require use of the surface railway land during construction.

The Applicant further notes that paragraph 1 of page 4 of the submissions refers to reserved rights which NR 'may' require. No such request has been made by NR of the Applicant for a particular form of rights (or indeed any rights) and the Applicant remains willing to discuss any particular terms that are reasonable and appropriate in the circumstances. NR has not engaged in the detail of the land and rights sought, nor responded to the Applicant's proposed heads of terms or provided any alternative terms for discussion.

NR simply state in their submissions that they require prior consent to the acquisition of land rights, the absence of which gives rise to "*significant, unacceptable risk…*". This is not the case. NR's operation of the railway is protected by the requirement that the Applicant must enter into asset protection agreements before it commences work. The exercise of the compulsory acquisition and temporary possession provides only powers relating to land interests and not the physical interaction with the railway.

NR misrepresents the position that has been agreed between the parties and suggests that the Applicant is resisting some provisions which the Applicant has clearly agreed and included in its final dDCO. For completeness, the Applicant does agree and has included paragraphs (5) – (7) of Network Rail's requested protective provisions (these are included at paragraph 37(3) – (5) of Schedule 15 of the Applicant's final dDCO submitted at Deadline 7). This position was confirmed to Network Rail on 11 April 2024.

The protective provisions included in the Applicant's final dDCO require the Applicant to enter into agreements dealing with the technical clearances required for the works and the Applicant would highlight that terms of basic asset protection agreements have been agreed with NR in respect of the Waterbeach Pipeline Works (North and South). The acquisition of land rights has no bearing upon and does not override the Protective Provisions.

As explained at Deadline 7, the Applicant cannot accept the remainder of NR's requested provisions in the absence of agreed land arrangements; to do so would be to risk the certainty of deliverability of the Proposed Development. In circumstances where NR has so far failed to engage with the Applicant on these matters the Applicant considers this to be fundamentally unreasonable and unacceptable.

NR cites examples of other DCOs where NR's requested provisions have been accepted but provides no detail on the extent of private treaty land negotiations that had been reached with the promoters of those DCOs – the Applicant would expect that each of those respective promoters, and the relevant Examining Authorities in recommending and Secretaries of State in determining those Orders, would have satisfied themselves that the provisions were reasonable and appropriate in those circumstances. The Applicant has not had time at this late stage to examine those examples or any submissions made to those applications in any detail. The Applicant is however aware of a more recent DCO (The National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024[1]) (**Appendix C** of this document) where the Examining Authority and Secretary of State did not agree that NR's standard requested wording to prevent the exercise of compulsory acquisition was necessary and that the promoter's protective provisions afforded appropriate protection without presenting a serious detriment to NR's undertaking. See paragraphs 6.7.41-6.7.50 of the Examining Authority's report, and Part 4 of Schedule 15 to that DCO for the protective provisions.

Furthermore, the Applicant notes that an equivalent position was adopted by the Examining Authority and Secretary of State in recommending and making the Net Zero Teesside Order 2024 (**Appendix D** of this document). Paragraph 8.27 of the Examining Authority's Report records that NR sought protection from the exercise of compulsory acquisition powers over their operational land and required their standard protective provisions to be included in the DCO which included a provision that prevented compulsory acquisition without consent. It is notable from paragraph 8.27.6 of that Report and paragraph 6.42 of the Secretary of State's decision letter that NR had not substantively engaged in the Examination of that DCO and the Examining Authority and Secretary of State were satisfied that the applicant's protective provisions provided the necessary safeguards for NR's interests and assets. The Secretary of State agreed with the Examining Authority. See paragraphs 6.40-6.42 of the decision letter and Part 11 of Schedule 12 to that DCO for the protective provisions.

The Applicant rejects the proposition that the consequence of the grant of compulsory acquisition powers could be "*significantly and catastrophically adverse*". As stated above, the safe operation of the railway is protected through the technical asset protection agreements that are required before works can commence and the exercise of powers dealing with land arrangements does not compromise that position. It is, in the Applicant's view, fundamentally unreasonable for a statutory undertaker to fail to engage in voluntary discussions with the Applicant and then, at the close of Examination, to make submissions

seeking to ransom the Applicant's ability to deliver the Proposed Development by claiming that, without its consent, the development would cause serious detriment to NR's undertaking.

The Applicant's position remains that protective provisions clearly provide the appropriate protection for NR's undertaking and that the tests in sections 127 and 138 of the PA 2008 are met.

[1] S.I. 2024 No. 393

5 Applicant's comments submissions received from The Cam Conservators at Deadline 7

The Applicant takes this opportunity to respond to the 'four points' which the Conservators state are not resolved in relation to Article 44 and the protective provisions in Part 7 of Schedule 15 of the DCO ("the Protective Provisions") and to address the purported lack of engagement.

5.1 Temporary suspension of navigation rights under Articles 44(1) and 44(3)

The Applicant disputes the Conservators' claim that the drafting of Article 44(1) means that the Applicant will have unfettered and enduring control of the part of the River Cam as shown with blue hatching on the rights of way plans. To call this power unfettered is a gross mischaracterisation of the wording of this Article. The Applicant is constrained in the exercise of this power in the following ways:

> (a) the power to interfere with the rights of navigation or other rights on this part of the river can only be, as per the wording in Article 44(1), for the "purposes of the construction, operation, use and maintenance of the *authorised development*." In interfering with such rights, the Applicant's purpose must therefore be related to the authorised development and only the authorised development, which is defined and the details of which are to be approved pursuant to the various relevant requirements; and
> (b) importantly, the Protective Provisions (for the benefit of the Conservators), to which the exercise of the powers in Article 44(1) is subject.

Unlike Article 44(3), the Applicant does not agree that the consent of the Conservators should be required every time the Applicant needs to interfere with rights of navigation for the purposes of use, maintenance, or operation of the authorised development (pursuant to articles 44(1) and (2)). This is because Article 44(3) is not limited to a particular pre-defined area and therefore the Applicant accepts that consent in those circumstances is appropriate. The Conservators again refer to an 'unfettered control' by the Applicant yet the drafting of Article 44 does not provide this, nor has it at any point been sought by the Applicant. This was discussed at ISH4 and is detailed in paragraph 2.2 of the Post Hearing Note [**REP6-118**] where the Applicant explained that it is seeking a 'pre-authorisation' to interfere with rights in relation to two defined areas: the blue hatching on the rights of way plans and over plot 019a on the land plans. Were the Conservators' consent be required for each occasion on which the Applicant needs to temporarily interfere with rights on the river Cam, it would be akin to seeking a licence and would not give the Applicant the authority needed to take actions necessary for the satisfactory implementation and operation of the authorised development. The Applicant's drafting makes use of the 'one stop shop' approach and negates the need for separate licences.

In light of the allegation from the Conservators that the Applicant's power to interfere would be unfettered, the Applicant addressed this at ISH4 and for completeness states as follows with specific reference to paragraphs within the Protective Provisions:

- the Protective Provisions provide a process for the Applicant to provide to the Conservators plans of the works to the river showing the detailed design, work programme and any associated temporary or permanent interference (paragraph 109);
- pursuant to paragraph 109(2), the Conservators may provide comments on such plans and the Applicant must have reasonable regard to those comments insofar as they relate to the maintenance of the safe movement of traffic on the river Cam;
- paragraph 109(3)(a) and (c) secure the carrying out the works to the river in accordance with the details provided to the Conservators and the reasonable requirements of the Conservators; and
- paragraph 109(b) requires works to be carried out so that the movement of river traffic on the river Cam is not restricted more than is reasonably practicable.

Further, the Applicant notes that the drafting of Article 44 as a whole has been the subject of much discussion between the parties. It can be seen from the DCO Changes Tracker (App Doc Ref 2.4, submitted at Deadline 7) that the Applicant amended Article 44 at the following examination deadlines:

- at Deadline 1 to accommodate a request from the Conservators in relation to a requirement for notice of the exercise of the powers in Article 44(1) and (2); and
- at Deadline 3, to amend the notice provisions further to 'take account of discussions with the Conservators of the River Cam'.

The Applicant also agreed to add the Conservators as an express consultee to Requirement 10 in respect of the details relating to the Outfall Management and Monitoring Plan. This was done at Deadline 7 in the Applicant's final dDCO.

5.2 Permanent extinguishment of navigation rights under Article 44(2)

It is the Applicant's position that the drafting of Article 44(2) is appropriate on the basis that it limits the exercise of the power for the purposes of '…the authorised development' and therefore the Conservators' concern about this power having no limitation is not correct. The purpose of the extinguishment of the permanent rights is not limited to construction. It will not be physically possible to navigate part of the river Cam once the outfall is constructed (as addressed below) and therefore permanent extinguishment is also necessary for use, operation, and maintenance.

5.3 Limitation of consent requirements under Article 44 (3) temporary suspension procedure

For ease of reference, the wording to which the Conservators refer under this heading is paragraph 110(1) to (2) of the Protective Provisions:

(1) The undertaker must, at the same time as the provision of the plans pursuant to paragraph 109(1)(a) of this Part of this Schedule, provide for the approval of the relevant navigation authority—

(a) details of the extent of any temporary suspension of rights of navigation required pursuant to article 44(3) in order to carry out the relevant river work and the undertaker must not interfere with any rights of navigation pursuant to article 44(3) except in accordance with this paragraph 110; and

(b) details of any temporary or permanent signage required in connection with the river work.

(2) The relevant navigation authority must respond in writing within 42 days of the request for approval under sub-paragraph (1) to either give approval to the details as submitted or suggest amendments to the details provided, but any such amendment must not materially affect or delay the efficient delivery of the relevant river work and must be suggested only where the relevant navigation authority considers such amendment necessary (acting reasonably) in accordance with its functions and duties in its capacity as the relevant navigation authority.

The Applicant's position is that the purpose of this wording is to ensure that the delivery of the river work is not delayed. The Conservators' proposed wording could have this effect. As has been explained to the Conservators and their legal advisors on several occasions, the construction of the authorised development is subject to a detailed and complex construction programme for a variety of reasons: certain works must take place at certain times due to the timing of archaeology, ecology and other surveys, agreements with third parties, the need for licences, reducing disturbance to wildlife, measures to reduce flood risk and other mitigation measures as detailed in the Code of Construction Practice Part A and Part B (App Doc Refs 5.4.2.1 and 5.4.2.2, submitted at Deadline 7). The Applicant must ensure that any delays or changes to that programme are kept to a minimum.

As an aside, the Applicant points out that the Conservators have the ability to comment on the exercise of the powers under Article 44(1) and 44(2) pursuant to paragraph 109 of the Protective Provisions, have, the ability to approve interference with rights of navigation pursuant to Article 44(3) under paragraph 110 and are also a consultee under Requirement 10 (Outfall). Taken together, there are a range of measures and opportunities for the Conservators to input on and have control over the exercise of the powers in Article 44. The Applicant is satisfied that this is sufficient and reasonable. No amendments to the Protective Provisions are required.

5.4 General costs and indemnity provisions in the draft Protective Provisions

The Applicant does not dispute that the Conservators should have the ability to recover costs it incurs as a result of the works to the river and the Protective Provisions make two allowances for this as follows:

Details for approval

110(5) The undertaker must pay the relevant navigation authority a sum equal to the whole of any costs and expenses reasonably and properly incurred by the relevant navigation authority in relation to any approvals sought under this paragraph 110 within 30 days of written evidence of such costs and expenses.

Expenses

112. Any reasonable and proper additional expenses not otherwise provided for in this Part of this Schedule which the relevant navigation authority incurs in managing or maintaining the river under any powers existing at the making of this Order by reason of the construction of any river work or temporary river work must be repaid by the undertaker to the relevant navigation authority (but subject to the submission to the undertaker, to its reasonable satisfaction, of written evidence that the additional expenses are a direct result of the construction of the river work or temporary river work and on the proviso that there will be no double recovery).

The wording at paragraph 110(5) has been included in the DCO since Deadline 5. In relation to paragraph 112, the Conservators were informed at Deadline 7 that the above wording would be included following failure to agree a costs position with the Conservators. The difference between the parties seems to relate to the Conservators' request for a lump sum for costs that may be incurred during construction (such sum to be paid on commencement with no evidence or justification of the amount) (which is not referenced in its submission). The Applicant cannot agree to payment on such terms and considers that the Conservators should be treated as other statutory undertakers which have the benefit of protective provisions, namely costs are recoverable if and when they are reasonably and properly incurred as a result of the authorised development and are evidenced in writing.

As for the indemnity, the Applicant confirms that this is also provided for in the Protective Provisions, as per paragraph 113 and therefore the Conservators' statement on page 3 that the Applicant is unwilling to agree to an indemnification clause is plainly incorrect. The indemnity wording was added at Deadline 3, albeit it was amended at Deadline 7 to widen the scope to losses sustained as a result of any act or omission of the Applicant (and those working on its behalf) whilst engaged in the construction *and* 'maintenance' of the authorised development. This update was explained to the Conservators' legal advisors on 9 April and the Applicant has received no response to this.

5.5 Engagement with the Conservators

The Applicant disputes in the strongest terms the Conservators' contention that it is unwilling to clarify the reasoning behind its stance and that the Applicant has not taken the Conservators' statutory role seriously. The Applicant refers to Appendix 1 of the (unsigned) Statement of Common Ground (App Doc Ref 7.14.13, submitted at Deadline 7) which outlines the table of meetings. There has been additional extensive correspondence between the Applicant's and the Conservators' legal advisors and the Applicant has spent a considerable amount of time explaining matters to the Conservators, over and above what would normally be required when an undertaker is legally represented. The Applicant disputes the implication that it has not properly engaged with the Conservators, noting specifically that the Applicant has covered over £11,000 of the Conservators' legal fees for engaging in the process, the Applicant questions how that can reasonably be suggested to be the case. The Applicant has explained, on several occasions, that the draft DCO cannot be read in isolation. It must be read alongside the drawings and the management plans referred to therein.

The Applicant notes the Conservators' statement that the permanent extinguishment of navigational rights impacts its ability to support its 'limited income stream'. The Applicant has, during the course of Examination, refined the area of permanent extinguishment resulting in a considerable reduction. The Applicant prepared a note for the Conservators after ISH1 which explained this. A copy of that note was appended to the Applicant's ISH1 Post Hearing Submission at Appendix A [**REP1-082**]. In any event, the Conservators have not explained how this small area of permanent extinguishment as a result of a marginal encroachment from sheet piles (see Design Plans – Outfall (Sheet 4.13.4) [**APP-027**]) will impact its income stream.

Finally, the Conservators' statement on page 3 and numbered '7' that it has not seen or received any evidence from the Applicant regarding the need to for the permanent extinguishment of navigational rights is completely incorrect yet also surprising, given the discussions at ISH4. At that hearing, in response to an explanation from the Applicant as to the level of interference with the river (which was explained with reference to Sheet 4.13.4), the representative for the Conservators stated "*we potentially have no ongoing issue if it's just simply related to the structure*" and it accepted that there will be a limited physical obstruction in the river "*which may protrude fractionally but not materially*" recognising that navigation rights would not be physically possible for this limited area (see lines 740 to 856 of Part 1 of the transcript of ISH4 Day 1).

6 Appendix A: The Applicant's response to the Environment Agency’s Deadline 7 submission

AW Position in FRA	EA Position at D7	D8 Response
No increase in flood risk either to the Proposed Development or elsewhere in the "without population growth" scenario FRA para 4.1.17: *Modelled flood extents for the proposed WWTP (Appendix B, Figure 14) demonstrate that the land required for the construction of the proposed WWTP would not be at risk in any of the fluvial flood events assessed, inclusive of the 1 in 100 year (1%) with climate change (Appendix B, Figure 15). Therefore, development within the proposed WWTP would not increase fluvial flood risk elsewhere. In addition, the 'Water compatible' infrastructure (outfall and below-ground pipelines and tunnel) associated with the Proposed Development would not be expected to increase fluvial flood risk elsewhere.*	Rule 17 response: Response to Q21 *We agree that the actual relocation of the works for the current day will not result in an increase flood risk.*	The Applicant is pleased to see from the EA's Deadline 7 response to Question 21 of the ExA's Rule 17 letter, that the EA are content that the Proposed Development will not give rise to any increased flood risk in the current day scenario.
In the "with population growth" scenario. There will be a negligible increase in flood risk within Areas O and L when comparing the operation of the existing and new WWTP. This increase relates to agricultural fields which already flood and would increase depths within Area L by 3cm from 26cm to	Rule 17 letter: Response to Q20: *We consider that this final FRA is unacceptable (Please see our full FRA response submitted separately) and we object to this proposal. The FRA shows that there will be an increase in*	At para 4.1.19 of the FRA the Applicant states: *As discussed in Section 2.1, the Central peak river flow climate change allowance of 9% is applicable to the Proposed Development. For the 1 in 100 year plus 9% climate change event, the differences in flood extents are generally negligible when comparing both future baseline scenarios (Appendix B, Figure 15, Figure 17). For this event, impacts are observed only at Areas O and L (Appendix B, Figure 7, Figure 16) where there are*

AW Position in FRA	EA Position at D7	D8 Response
29cm and in Area O by 1cm from 23cm to 24cm in one modelled event only: FRA para 4.1.19: *As discussed in Section 2.1, the Central peak river flow climate change allowance of 9% is applicable to the Proposed Development. For the 1 in 100 year plus 9% climate change event, the differences in flood extents are generally negligible when comparing both future baseline scenarios (Appendix B, Figure 15, Figure 17). For this event, impacts are observed only at Areas O and L (Appendix B, Figure 7, Figure 16) where there are increases in flood depth of typically 0.03m in an agricultural field. However, the field just north of Area L is already predicted to flood in the 'Future baseline – existing' scenario up to depths of 0.26m. There are also slight flood depth increases of 0.01m in an agricultural field at Area O (Appendix B, Figure 7, Figure 16) but this area is expected to flood in the 'Future baseline – existing' scenario at depths of 0.23m . For all other modelled events (1 in 2 year, 1 in 10 year, 1 in 20 year, 1 in 30 year, 1 in 75 year, 1 in 100 year, 1 in 100 year plus 19% CC, 1 in 100 year plus 45% CC, 1 in 200 year, and 1 in 1000 year) flood extent and flood depth differences are also negligible when comparing both future baseline scenarios.*	*flood risk to third party land for the proposed development in isolation.* *Although the FRA suggests that the predicted increase in flood risk within two areas of agricultural land is negligible, the modelling shows flood depths increases up to 4cm in one area of agricultural land, which should be considered significant. We would expect the proposal to demonstrate no increase in flood risk in isolation and where possible developments should offer betterment overall. The FRA has not set out any mitigation for these increases in flood risk, nor confirmed that, as a minimum, the effected landowners will be informed. We consider that the relevant landowners should be informed of any increase in flood risk to their land (in terms of any increased frequency, depth, duration and extent) and evidence that the landowners accept this increase in flood risk to their land should be provided.* Response to FRA – letter 12 April 2024: *The FRA also includes an assessment of the impact of the WWTP on flood risk elsewhere due to the relocation of the WWTP in isolation, discounting any cumulative effects due to*	*increases in flood depth of typically 0.03m in an agricultural field. However, the field just north of Area L is already predicted to flood in the 'Future baseline – existing' scenario up to depths of 0.26m. There are also slight flood depth increases of 0.01m in an agricultural field at Area O (Appendix B, Figure 7, Figure 16) but this area is expected to flood in the 'Future baseline – existing' scenario at depths of 0.23m. For all other modelled events (1 in 2 year, 1 in 10 year, 1 in 20 year, 1 in 30 year, 1 in 75 year, 1 in 100 year, 1 in 100 year plus 19% CC, 1 in 100 year plus 45% CC, 1 in 200 year, and 1 in 1000 year) flood extent and flood depth differences are also negligible when comparing both future baseline scenarios.* The EA's Deadline 7 submissions states its view that this increase in flood risk is significant and warrants refusal of the application without mitigation. It is the Applicant's position that the EA's objection in such terms in unsubstantiated and untenable as part of a wider planning balance with which both the ExA and the SoS will need to engage, but which the EA have clearly not considered in their response. The Applicant notes from the EA's Deadline 7 response to Question 20 of the ExA's Rule 17 letter that it does not present any justification or calibration of its judgement to support its conclusion that a significant impact will arise from what it then describes on page 2 of its separate response to the FRA dated 12 April 2024 as a "*small increase in flood risk within a few areas of agricultural land due to the proposed relocation of the WWTP (discounting any effects from expected population growth)".* The Applicant would highlight that the small increase will occur within areas that are already predicted to flood as noted at para 4.1.19 of the FRA.

AW Position in FRA	EA Position at D7	D8 Response
	population growth in the area up to 2041. Although the FRA suggests that the predicted increase in flood risk within two areas of agricultural land is negligible, the modelling shows flood depths increases up to 4cm in one area of agricultural land, which should be considered significant. We consider that the relevant landowners should be informed of any increase in flood risk to their land (in terms of any increased frequency, depth, duration and extent) and evidence that the landowners accept this increase in flood risk to their land should be provided. *We acknowledge that the relocation of the actual WWTP does not increase flood risk to itself. We also acknowledge that the modelling may be conservative due to some assumptions used in the model, as indicated in the FRA, which may introduce an element of uncertainty. However, we consider that a precautionary approach should be taken to providing mitigation, given that the future growth model scenarios do not account for any additional development that is likely to take place in the area for the lifetime of the WWTP as stated in the FRA (up to the 2090s).* *Where there is an increase in flood risk due to a development proposal, PPG sets out that mitigation measures must address the impact*	Furthermore, the Applicant notes that this "small increase" is predicted to arise in only 1 of 11 modelled events (1 in 100 year plus 9% climate change – see FRA paras 4.1.19 and 4.1.20) and in which event the increase in water levels in the Cam arising from the Proposed Development is predicted to be a maximum of 2mm. The EA itself notes that "the modelling may be conservative due to some assumptions used in the model, as indicated in the FRA, which may introduce an element of uncertainty". In the Applicant's view, the EA is expressing agreement with its assessment that there is a significant element of doubt as to whether the modelled events will occur in practice. By way of mitigation for this increase, the EA is suggesting a Requirement be imposed on the Applicant via the DCO to notify the owners of Areas O and L and to set out to them the proposed mitigation measures for those areas. The proposed requirement wording is at Requirement 2 of the EA's Deadline 7 submission dated 12 April 2024 in response to the ExA's Rule 17 letter. The Applicant notes that the EA's proposed reason for the imposition of the requirement is "to ensure that the proposed development does not give rise to any increase in flood elsewhere". The EA does not reference, and the Applicant is not aware of any guidance which would indicate that (a) affected landowners should be notified of a modelling output which may or may not affect their landholding at some future point, (b) that their private acceptance of such a risk is in any way relevant to the public interest planning process, nor (c) how such a requirement would serve to prevent the risk arising in any event. The Applicant does not therefore consider that the proposed requirement

AW Position in FRA	EA Position at D7	D8 Response
	of this flood risk. In particular paragraphs 004, 048 and 049 of the PPG. The FRA has not offered one mitigation *plan for its increase in flood risk to land and property in the future. The Applicant also has not demonstrated that they have exhausted a range of options to manage the risks they state may be increased by their proposal.* *We disagree with the Position Statement on Mitigation included in Appendix C of the FRA and wish to make the following comments in relation to each of the five points set out at the end of this position statement:* *• The modelling indicates that there will be a small increase in flood risk within a few areas of agricultural land due to the proposed relocation of the WWTP (discounting any effects from expected population growth). The modelling also indicates that there is likely to be a significant increase in flood risk in the future within several areas of third party land, including in areas where residential properties are located, due to increased wastewater flows in the catchment entering the WWTP and subsequently being discharged into the River Cam. We consider that this increase in flood risk is directly related to the proposed development and therefore should be mitigated as part of the DCO.*	would satisfy the tests for a valid planning condition set out in paragraph 56 NPPF. Furthermore it would be manifestly unreasonable to require the Applicant to mitigate for such a small increase in flood risk (observed in only 1 of 11 events) because it could only do so by attenuating the rate of discharge to the river Cam (see further below). On this basis, the Applicant considers that it has complied with its obligations in this regard set out in the NPS, the NPPF and the PPG

AW Position in FRA	EA Position at D7	D8 Response
	• *We do not agree that the incremental contribution of the proposed development to flood risk is extremely low compared to other factors.* • *We consider that national planning policy requires mitigation by the project for the predicted increases in flood risk, which are directly related to the proposed development (i.e. increased wastewater volumes entering the WWTP and being discharged into the River Cam). In particular, paragraph 049 of the PPG indicates that site-specific FRAs should assess the cumulative impacts of development on flood risk elsewhere and demonstrate how mitigation measures have addressed these impacts.*	
When comparing the "Baseline – Existing Cambridge WWTP" with the "Future Baseline – Existing Cambridge WWTP" to understand the impact of adding the additional waste water flows from new development proposed in the emerging local plan to 2041, the FRA concludes at para 4.1.24 – 4.1.31 that modelled flood risk will increase as a result in a number of areas which are already located within flood zone 3 and therefore liable to flooding. The modelled increase in risk is of an order of magnitude of centimetres, typically observed	It is clear from the EA's Deadline 7 submissions that its objections stem from the absence of mitigation proposed in the FRA. An extract from the EA's response to the ExA's Rule Letter Q21 makes this clear: *However, we do still have concerns regarding the flood risk increase due to the proposed development 'in isolation' and for future 'growth up to 2041'. We acknowledge it may*	With regard to impacts: The FRA reports that in the 1 in 100 year event only, "Area G" north of Bannold Road, may show increased flood depths of up to 0.09m. This area is included in Figure 1 in the Environment Agency response, with annotation "Depths of around 0.09 metres". Impacts at Area G are not observed in any other events including climate change events, and therefore there is uncertainty regarding whether this impact is genuine. Ordnance Survey AdressBase Plus (2021) has been used to identify point receptor locations, which indicates residential properties on the southern boundary of Area G. Two residential receptor point locations, show increases in flood depth in the 1 in 100 year event for the future

AW Position in FRA	EA Position at D7	D8 Response
for only one or two specific modelled events, which vary per location, and do not propagate through to higher order events.	*be challenging to offer mitigation for the future flood risk scenarios presented. But, the options explored in the 5 bullet points in Appendix C are not considered robust or exhaustive. We expected to see at least one robust mitigation plan put forward within the FRA to address the increased flood risk associated with this proposal. Therefore, we are objecting on flood risk* The EA then proposes requirement 1a and 1b which it says will address its concerns. The EA's response to the FRA dated 12 April 2024 states [our emphasis]: *We also consider that the proposed development is contrary to the NPSWW in particular paragraph 4.4.5 bullet points 2, 7 and 8 whereby the FRA has not fully considered the flood risk arising from the proposal, fully considered the different forms of flood risk including the increased outfall discharge and finally has not considered the effects on people and their property fully from the increased flood risk <u>because no mitigation for the increased risk has been set out in the FRA. Regarding paragraph 4.4.12 we do not believe reasonable steps have been taken to address our concerns as mitigation measures has not been explored in the FRA.</u>*	growth scenario (2041 population). However the flood hazard classification is unchanged compared to the existing scenario, remaining a "low" flood hazard. Although there is no indication that the two point receptor locations would be directly impacted by large flood depth increases of 0.09m, it is recognised that the wider property boundaries (i.e. gardens, outhouses etc) as observed from Google Earth imagery, may be impacted. As impacts at "Area G" are observed in only the 1 in 100 year event, not in lower or higher order events, and as the flood hazard classification at the two potentially impacted properties is unchanged and remains "low" in the future growth scenario, the assessed "moderate" impact to residents is conservative in recognition of potential flooding impacts within property boundaries. The Environment Agency in its response to the FRA dated 12 April 2024, also question impacts reported in the FRA in paragraphs 4.1.29 to 4.1.31, which relates to a new residential development at Dimmock's Cote Road, referenced as "Area N" within the FRA. In the EA's Figure 2, Area N is not specifically annotated, but is located within the southern extent of the area annotated "depth increases of just over 0.01m". The FRA observes that in the 1 in 75 year and 1 in 100 year events, flood depths may increase by up to 0.02m "within the vicinity" of the Dimmock's Cote Road development. This area is prone to flooding in the existing scenario. Inclusive of the additional 0.02m, flood depths in the future growth (2041) scenario would range from 0.05m to 1.2m within the development boundary in the 1 in 75 year event for example. As discussed above for Bannold Road, there is no indication that the properties themselves would directly be impacted in either the 1 in 75 or 1 in 100 year event. The assessment however conservatively considers the wider development boundary, as observed on Google Earth, which may be impacted in this event. The flood hazard classification within the

AW Position in FRA	EA Position at D7	D8 Response
	The EA's submission does not indicate any form of mitigation that it suggests the Applicant could propose in order to address its concerns. Indeed to the contrary, the EA acknowledge that is it difficult for the Applicant to do so (see the above extract). The EA do not believe that the planning system is able to regulate flows into the new WWTP and therefore it is the responsibility of the Applicant to attenuate the discharge from such flows (our emphasis): *We consider that national planning policy requires mitigation by the project for the predicted increases in flood risk, which are directly related to the proposed development (i.e. increased wastewater volumes entering the WWTP and being discharged into the River Cam). In particular, paragraph 049 of the PPG indicates that site-specific FRAs should assess the cumulative impacts of development on flood risk elsewhere and demonstrate how mitigation measures have addressed these impacts.* *We do not agree that wastewater flows are most effectively managed at source, through the planning system. There is currently no*	development boundary varies between none, low, moderate and significant in the existing scenario, and this would be unchanged in the future growth (2041) scenario. The FRA further notes that access to the Dimmocks Cote Road development may be impacted in the 1 in 100 year plus 9%CC event, due to a slight increase in flood-extent observed in the future growth (2041) scenario. The FRA states in paragraph 4.1.29 that modelled flood depths at Area N are based on pre-development topographic assumptions. Site level changes due to the development are not represented in the flood model and therefore any differences discussed in the FRA are indicative only. Further information on the planning application for the Dimmocks Cote Road development can be found on the East Cambridgeshire District Council's planning portal 20/00771/FUL, but the Applicant notes that the District Council and Environment Agency must have considered the location of the proposed development adjacent to the River Cam and its susceptibility to flooding in deciding to grant planning permission for the scheme. Figure 5-1 of the Fluvial Modelling report (Application Document Ref 5.4.20.5) [REP6-088] shows clearly the large time gap between the peak WWTP contribution of approximately 3.7m3/s, and the peak flow within the river Cam of approximately 78m3/s. The WWTP experiences its storm water increase within a 30 hour window and returns back to normal permitted FFT discharge limits by hour 40. Thereafter, whilst flows within the River Cam continue to increase, the contribution from the WWTP continues to reduce, returning back to normal baseline flows almost a full day before the River Cam peak flow occurs. During the storm event, the WWTP storm tanks would have filled to capacity and subsequently discharged. By the time that the river Cam experiences its peak, the

AW Position in FRA	EA Position at D7	D8 Response
	consistent or reliable way of ensuring discharges of foul and surface water from new development will not increase flood risk elsewhere through individual planning applications. Developers currently have a right to connect surface water drainage to mains sewers and case law has shown that a lack of capacity is not a valid reason to refuse connection. There is also no way of ensuring that foul water use through maximum water consumption levels for new dwellings will be complied with. *The Environmental Permitting (England and Wales) Regulations 2016 do not cover flood risk and cannot control flows. We do not have any powers to regulate wastewater flows arising from future developments and we are not a statutory consultee on either surface water drainage or foul water drainage if connected to a mains sewer. We consider that the Local Planning Authority is unlikely to be able to regulate wastewater flows arising from future developments. There is currently no national planning policy requirement for individual planning applications to assess and mitigate any increase in flood risk arising from wastewater discharges into the mains sewer. As such, we consider that the predicted increase in flood risk due to discharges of treated water into the River Cam could not be effectively*	WWTP is operating normally and is contributing less than 1.2m3/s, which is less than 2% of the River Cam peak flow of 78m3/s. The main volumetric load contributing to flood risk is therefore the catchment-related peak flows in the River Cam itself, as opposed to the very small increment provided by the WWTP, which has returned to normal FFT by the time the River Cam peak flows occur. There is nothing reasonable and proportionate that the Applicant can do to mitigate this issue. The Applicant refers the ExA to its previous submissions at Appendix C of the FRA and it closing submissions , but would comment on the following additional points: The requirements proposed by the EA (requirements 1a and 1b of its response to the Rule 17 letter), are manifestly unreasonable as it places the onus on the Applicant to mitigate the entirety of any increased flood risk arising from population growth increasing waste water treatment flows. As highlighted in its previous submissions such flows are a matter out with the Applicant's control. The FRA observes that increased flood depths resulting from population growth occur typically for only one or two specific modelled events, which vary per location, and do not propagate through to higher order events, resulting in uncertainty whether these impacts are genuine. Furthermore, the EA's response impliedly acknowledges that is it not the Applicant's development that gives rise to any increase flood risk when it suggests that to remedy these issues, financial contributions from new developments through CIL (presumably this point could also be extended to s106 Agreements related to such developments). This is precisely the point that the Applicant has sought to make in its position

AW Position in FRA	EA Position at D7	D8 Response
	mitigated through the planning system. Please note that the future growth effluent will also not be coming from the Cam catchment, so it cannot be considered part of a circular intake offtake system. The water supply for the growth will be transferred in from another catchment due to water scarcity in the Cam catchment. Therefore, this will be additional flows into the River Cam system	statement: namely (a) it is new development which creates the source of increased flood risk through generating additional waste water flows, and (b) it is for the planning system to regulate these issues through the terms of any consent issued or levy raised in respect of new developments as and when they come forward. The Applicant also strongly refutes the suggestion that the planning system could not regulate waste water treatment flows arising from new development, and would draw the ExA's attention to: • Paragraphs 9 and 10 of Planning Practice Guidance which consider Strategic Flood Risk Assessment and its role in formulating development plan allocations and policies, and that development plan policies need to be informed by flood risk advice from (inter alia) both the Environment Agency and Water and Sewerage Companies. It is the Applicant's view that the EA and LPAs are well placed and able to deliver consistent and reliable ways of ensuring new development does not increase flood risk elsewhere. They can do this through appropriately scoping SFRAs and individual FRAs, relying on the Water Framework Directive and the Floods Directive which is closely coordinated with it. The preparation of RBMPs and Local Plans offer the most obvious (but not only) opportunity for this, as the establishment of the Cambridge Water Scarcity Group demonstrates. • Paragraph 166 of the NPPF which states: *Strategic policies should be informed by a strategic flood risk assessment, and should manage flood risk from all sources.*

AW Position in FRA	EA Position at D7	D8 Response
		They should consider cumulative impacts in, or affecting, local areas susceptible to flooding, and take account of advice from the Environment Agency and other relevant flood risk management authorities, such as lead local flood authorities and internal drainage boards. • Paragraph 173 of the NPPF which states: *When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment* The EA's submissions focus on their perceived inability to regulate waste water flows but this appears to ignore the significant opportunities and range of measures currently being explored to address water scarcity in Cambridge, which would directly also reduce discharges to public sewers. *Addressing Water Scarcity in Greater Cambridge: Update on Government Measures (DEFRA/DLUHC) 6 March 2024* recognises that "there is an opportunity for Cambridge to be a trailblazer in integrated water resources management to support water positive development". Working with the Cambridge Water Scarcity Group, of which the EA is a part, a 2-part plan has already been developed to allow growth in Cambridge to proceed in a sustainable way by – (1) ensuring long-term water supply so that the city can grow in a sustainable way and (2) by supporting growth in the short-term so that development currently stalled can proceed. These measures, which embrace DEFRA's Environmental Improvement Plan 2023 and Plan for Water (2023), include investigating water reuse and dual pipe systems "as part of the planning review process", reviewing the Fixtures and Fittings regulations, setting up a taskforce to identify solutions to reduce toilet water wastage

AW Position in FRA	EA Position at D7	D8 Response
		and other means to mitigate downstream flooding and reduce pressure on the combined sewer system, potentially reducing the use of storm overflows. Alongside the above paper, DEFRA/DLUHC published a joint statement with the EA and the local planning authorities (LPAs) covered by the Greater Cambridge Shared Planning Service – Cambridge City Council and South Cambridgeshire Council also on 6 March 2024. This refers to the agreement by all parties (supported by Government funding) to the introduction of a scheme which includes "application of enforceable planning mechanisms so that planning permissions are linked to water savings measures in a robust way". Even if not a statutory consultee on either surface water drainage or foul water drainage if connected to a mains sewer, the EA is able to liaise and work closely with LLFAs who are consulted on all developments. In this way, it is not unrealistic for LPAs to be able to secure measures to limit (even if not to regulate) wastewater flows arising from future developments. The above documents have been submitted to the DCO Examination by SCDC at Appendices 2 and 3 of REP6-123.

7 Appendix B: Protected Provisions for National Highways

Protective Provisions

Summary of protective provision	Paragraph in Tracked Protective Provisions	Equivalent in the Agreed Protective Provisions
Works under the SRN	4(1)	59, 60(1)
Programme of works	4(2)(a)	60(1)(b)
Detailed design, identity of contractors and stakeholder liaison	4(2)(b)(i), (ii), (iii)	60(1)(c)(i), (iii), (iv)
Condition survey and regime of monitoring	4(2)(c)	60(1)(j)
Security	4(2)(d)	68
Constructing the specified works other than in accordance with the protective provisions and causing damage to the highway	5(3)(a) and (b), 13(3), 13(10)	61(5)(a) and (b)
Causing damage to the SRN	5(4), 13(4)	61(5)(a)
Recovery of expenditure in the event of a danger to road users	5(5), 13(5)	61(6)
Emergency works	5(6), 13(6), 13(12)	61(7)
Protection of utilities	5(7), 13(7)	61(8)
Failure to complete the specified works in accordance with the programme	5(8), 13(8), 13(11)	61(10)
Permit National Highways to access	13(9)	61(4)
Winter maintenance	13(14)	61(9)
Resurveys	14(1) to (3)	65(1) to (5)

Summary of protective provision	Paragraph in Tracked Protective Provisions	Equivalent in the Agreed Protective Provisions
Provision of as built information	14(4)	63(4)(c)

8 Appendix C: The National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024

STATUTORY INSTRUMENTS

2024 No. 393

INFRASTRUCTURE PLANNING

The National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024

Made - - - - *14th March 2024*

Coming into force *5th April 2024*

CONTENTS

Arbitration

24. Any difference arising between the undertaker and the Trust under this Part (other than a difference as to the meaning or construction of this Part) must be referred to and settled by arbitration in accordance with article 52 (arbitration) of this Order.

As built drawings

25. As soon as reasonably practicable following the completion of the construction of the authorised development, the undertaker must provide to the Trust as built drawings of any specified work to show the position of that work in relation to the waterway.

PART 4

FOR THE PROTECTION OF RAILWAY INTERESTS

26. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 40 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

27. In this Part of this Schedule—

"asset protection agreement" means an agreement to regulate the construction and maintenance of the specified work in a form reasonably prescribed from time to time by Network Rail save for matters concerning requirements imposed by Network Rail in order for Network Rail to comply with its statutory duties, regulatory duties or the terms of its network licence in which case such matters shall be in Network Rail's absolute discretion and in determining whether or not such matters fall within those constraints Network Rail shall at all times act reasonably;

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993;

"Network Rail" means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at Waterloo General Office, London, SE1 8SW) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited's railway undertaking;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

"railway property" means any railway belonging to Network Rail and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail or a tenant or licencee of Network Rail for the purposes of such railway or works, apparatus or equipment;

"regulatory consents" means any consent or approval required under—

(a) the Railways Act 1993;

(b) the network licence; and/or

(c) any other relevant statutory or regulatory provisions;

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development;

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 39 (temporary use of land for maintaining the authorised development) in respect of such works.

28.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

(a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

29.—(1) Subject to sub-paragraph (2) the undertaker must not exercise in respect of any railway property the powers conferred by this Order in—

(a) article 19 (discharge of water);

(b) article 21 (authority to survey and investigate the land);

(c) article 26 (extinguishment and suspension of private rights of way);

(2) The powers in sub-paragraph (1) shall not be exercised in respect of any railway property unless the exercise of such powers is with the consent of Network Rail such consent not to be unreasonably withheld and if by the end of the period of 28 days beginning with the date on which such request for Network Rail's consent was made Network Rail has not intimated their refusal together with the grounds of any such refusal of such consent the undertaker may serve upon Network Rail written notice requiring Network Rail to intimate approval or disapproval within a further period of 14 days beginning with the date upon which Network Rail receives written notice from the undertaker. If by the expiry of the further 14 days Network Rail has not intimated consent or refusal of consent, Network Rail is deemed to have given consent for the exercise of the respective powers.

(3) The undertaker must not in the exercise of any of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(4) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 26 (extinguishment and suspension of private rights), article 28 (power to override easements and other rights or private rights of way) or article 40 (statutory undertakers), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(5) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(6) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).

(7) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

30.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 52 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated their disapproval together with the grounds of any such disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 14 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 14 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker and if reasonably required by the undertaker upon reasonable prior written notice Network Rail will construct any adjoining part of the specified work ("adjoining work") without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker subject to—

(a) such adjoining work being located on railway property;

(b) Network Rail having sufficient rights to carry out such adjoining work;

(c) the undertaker first providing Network Rail with the requisite plans, specifications and any other information reasonably required by Network Rail to enable it to carry out such adjoining work;

(d) the engineer's approval of such adjoining work; and

(e) Network Rail being able to recover its costs of carrying out such adjoining work pursuant to paragraph 40(1).

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the opinion of the engineer must be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified work), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case with all reasonable dispatch and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

31.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 30(4) must, when commenced, be constructed—

(a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 30;

(b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little damage as is possible to operational railway property; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

32. The undertaker must—

(a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and

(b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

33. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

34.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work, in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice) , and within 42 days of receipt of an invoice (or other evidence of the liability incurred in carrying out the alterations and additions) from Network Rail the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 30(3), pay to Network Rail all reasonable and proper expenses to which Network Rail may be put and compensation for any loss which it suffers by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 40(1)(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

35. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 30(3) or in constructing any protective works under the provisions of paragraph 30(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;

(c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, need to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and

(e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work,

provided that any costs incurred arising from an act or omission of Network Rail, will not be paid by the undertaker.

36.—(1) In this paragraph—

"EMI" means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail's apparatus; and

"Network Rail's apparatus" means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph 36 applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail's apparatus carried out after approval of plans under paragraph 30(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI risks and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker's compliance with sub-paragraph (3)—

(a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter continue to consult with Network Rail (both before and after formal submission of plans under paragraph 30(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) the undertaker must provide an EMI interface study (such study to include consideration of transferred voltage potentials, radiated interference to signalling equipment and compliance with the Control of Electromagnetic field at Work Regulations 2016 and British Standard EN 50122 as applicable) for approval, such approval not to be unreasonably withheld or delayed but may be provided subject to reasonable conditions;

(c) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and

(d) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but Network Rail may, in its reasonable discretion, select the means of prevention and the method of their execution, and in relation to such modifications paragraph 30(1) has effect subject to this sub-paragraph.

(6) The undertaker shall use reasonable endeavours not to allow the use or operation of the authorised development in a manner that causes EMI and which introduces an intolerable risk to the operation of the railway or the safety of the track workers (such intolerable risk would include introducing exposure to electric and magnetic fields in excess of the requirements of the Control of Electromagnetic field at Work Regulations 2016, unacceptable transferred voltage potentials and interference impacting the safe operation of the signalling equipment), until measures have been taken in accordance with this paragraph to reduce the risk to tolerable levels of EMI.

(7) In the event of EMI having occurred—

(a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;

(b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and

(c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

(a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;

(b) Any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 31.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 40(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 35(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 52 (arbitration) to the Secretary of State shall be read as a reference to the President of the Institution of Engineering and Technology.

37. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably

necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

38. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

39. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail upon the receipt of a VAT invoice.

40.—(1) The undertaker must pay to Network Rail all reasonable and proper costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to the provisions of this paragraph) which may be occasioned to or reasonably incurred by Network Rail by reason of—

(a) the construction, maintenance or operation of a specified work or the failure of such a work; or

(b) any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

(c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development; or

(d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others; or

(e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development; and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must—

(a) give the undertaker reasonable written notice of any such sums referred to in sub-paragraph (1) as soon as reasonably possible after Network Rail become aware of the same

(b) not make any payment without the prior consent of the undertaker;

(c) take all reasonable steps to mitigate any liabilities; and

(d) keep the undertaker informed and have regard to the undertaker's representations in relation to any such sums referred to in sub-paragraph (1).

(3) In no circumstances is the undertaker liable to Network Rail under sub-paragraph (1) for any indirect or consequential loss or loss of profits, save that the sums payable by the undertaker under that sub-paragraph shall, if relevant, include a sum equivalent to the relevant costs in circumstances where Network Rail is liable to make payment of the relevant costs pursuant to the terms of an agreement between Network Rail and a train operator, and Network Rail shall use reasonable endeavours in advance of any such liability occurring to assist the undertaker in

obtaining copies of any agreements with train operators which may be relevant the purposes of sub-paragraph (1) and identifying the basis of calculation of such relevant costs.

(4) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of any damage or interruption to the extent that it is attributable to the neglect or default of Network Rail, its officers, servants, contractors or agents.

(5) Subject to the terms of any agreement between Network Rail and a train operator regarding the amount, timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(6) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(7) In this paragraph—

"the relevant costs" means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by a train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1); and

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

41. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 40) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

42. In the assessment of any sums payable to Network Rail under this Part there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part or increasing the sums so payable.

43. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

(a) any railway property shown on the works plan and land plan and described in the book of reference;

(b) any lands, works or other property held in connection with any such railway property; and

(c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

44. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

45. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 7 (consent to transfer benefit of the Order) of this Order and any such notice must be given no later than 14 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

46. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 48 (certification of plans etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in an electronic format specified by Network Rail.

PART 5

FOR THE PROTECTION OF NORTHERN POWERGRID

47. For the protection of Northern Powergrid the following provisions have effect, unless otherwise agreed in writing between the undertaker and Northern Powergrid.

48. In this Part of this Schedule—

"1991 Act" means the New Roads and Street Works Act 1991;

"alternative apparatus" means alternative apparatus adequate to enable Northern Powergrid to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means existing electric lines or electrical plant (as defined in the Electricity Act 1989), belonging to or maintained by Northern Powergrid within the Order limits and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"authorised works" means so much of the works authorised by this Order, which do not form NPG Works or NGN Works which affect existing Northern Powergrid's apparatus within the Order limits; "functions" includes powers and duties;

"in", in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

"plan" includes all designs, drawings, specifications, method statements, programmes, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed and shall include measures proposed by the undertaker to ensure the grant of sufficient land or rights in land necessary to mitigate the impacts of the works on Northern Powergrid's undertaking; and

"Northern Powergrid" means Northern Powergrid (Yorkshire) PLC (Company Number 04112320) whose registered address is Lloyds Court, 78 Grey Street, Newcastle upon Tyne NE1 6AF.

49. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Northern Powergrid are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

50. Regardless of any provision in this Order or anything shown on the land plans, or contained in the book of reference, the undertaker shall not acquire any apparatus, or override any easement or other interest of Northern Powergrid otherwise than by agreement with Northern Powergrid, such agreement not to be unreasonably withheld or delayed.

51.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that Northern Powergrid's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Northern Powergrid to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided pursuant to a completed easement for a tenure no less than exists to the apparatus being relocated or diverted, all to the reasonable satisfaction of Northern Powergrid in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Northern Powergrid 42 days' advance written notice of

The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008

Yorkshire Green Energy Enablement Project

Examining Authority's Report

of Findings and Conclusions

and

Recommendation to the Secretary of State for

Energy Security and Net Zero

Examining Authority

Jessica Powis BA(Hons) MSc MRTPI, Lead Panel Member

Annie Coombs BA(Hons) MA MSc FLI

Gavin Jones BSc(Hons) MA MA MRTPI

14 December 2023

rDCO changes and/ or retention of wording from the Applicant's final dDCO

6.7.36. The ExA's rDCO retains the wording from the Applicant's final dDCO for Provision 79. Should the SoS disagree with this point and require NH's wording, it is cited above and can be found in NH's D8 submission [REP8-027], Appendix 1, para 19(3)(a).

ExA's conclusions on s127 and s138 for National Highways

6.7.37. NH's objection to the CA and TP of its land has not been withdrawn, therefore the test of s27 and s138 of PA2008 applies. The ExA is satisfied that the powers sought by the Applicant are necessary for the Proposed Development and consistent with s138, and that the powers sought could be exercised without serious detriment to the carrying out of NH's undertaking, and are consistent with s127, on the basis of the PPs that are reported above and included in rDCO Schedule 15, Part 6.

6.7.38. In concluding these matters for NH, the ExA is also satisfied that although agreement is not reached through negotiation with NYC, the CA of the relevant interests in NH's land would be necessary to implement the Proposed Development and that it would be reasonable and proportionate to do so. We consider the Applicant's approach in relation to the CA powers sought in respect of this land to be acceptable should the SoS decide to grant the Order for the Proposed Development.

Network Rail Infrastructure Limited

6.7.39. NRIL registered as an IP [RR-001] and submitted an objection [REP2-081]. NRIL responded to written questions, it did not attend hearings.

6.7.40. The Applicant's position at the end of the Examination was that s127 and s138 are engaged [REP8-011], page 7 as set out in its Examination submission under s127 and s138 [REP5-086]. The Applicant explained that no land owned by NRIL needs to be compulsorily acquired; only rights over that land, therefore, section 127(2) and (3) PA2008 are not engaged. Class 2, 3, 4, 5 and 6 rights would be required. At D8, the Applicant informed the Examination that NRIL had issued the Technical and Business Clearance Certificates for those works forming part of the authorised development which would affect the railway and that the proposed works would be acceptable in principle. The principle of the Applicant's Application under s127 and s138 PA2008 was not objected to by NRIL, provided that PPs acceptable to it are included on the face of the Order [REP8-013], Table 2.6 and [REP8-030].

Protective Provisions: dDCO and rDCO Schedule 15, Part 4

6.7.41. After the ExA issued its commentary on the dDCO, with questions [PD-015], NRIL and the Applicant reached common ground on many of the issues, where differences had existed, that the ExA had sought each party's views on. However, NRIL retained its formal objection unless its PPs were included [REP8-029] and [REP8-030]. There are three outstanding matters not agreed, on which we need to report and recommend wording for rDCO Schedule 15, Part 4. These are:

i. restriction on the use of compulsory powers without NRIL's prior consent;
ii. land agreements; and
iii. drafting of EMI provisions.

Consent Provisions: rDCO Provision 29 ([REP6-063], para 4, Table 2.1)

6.7.42. NRIL requested the longstanding principle of CA powers not being granted in respect of railway property without NRIL's prior consent should be maintained in the PPs. It required additional articles (Articles 3, 4, 22, 25, 28, 34, 36 to 40 and 46) to be added to the articles in Provision 29(1), which would require powers under these articles only be exercised with the consent of NRIL [REP8-030].

6.7.43. NRIL also wanted Provision 29(2) (which would result in renumbering the remaining sub-paragraphs) to be included as follows [REP8-030], final two pages:

"(2) Subject to paragraph (3 the undertaker must also not exercise:

(a) the powers conferred by section 11(3) (power of entry) of the 1965 Act;

(b) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;

(c) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail."

6.7.44. NRIL accepted that there would be some protection for the railway in the currently proposed PPs, as the undertaker would have to enter into an Asset Protection Agreement and seek NRIL's prior approval of any plans, before any works commence. However, NRIL did not consider that these protections would regulate the exercising of the right by the undertaker and it said that it cannot accept the removal of its control over such regulation of the right [REP8-030].

6.7.45. The basis of its objection was that CA of rights would give rise to significant, unacceptable risk which could compromise NRIL's ability to comply with its Network Licence (copy provided) thus compromising the safe and efficient running of trains on the railway. It argued that this is because there would be no limitations and restrictions to facilitate the safe and efficient operation of the railway [REP8-030].

6.7.46. The Applicant did not consider that NRIL's proposed inclusions were necessary, proportionate or appropriate and furthermore considered that it could seriously compromise the undertaker's ability to deliver the Proposed Development [REP6-063], para 1.2.1. It considered that this Provision, if included, would have the potential to hinder progress of the Proposed Development and would fetter its rights under the dDCO [REP7-075], Table 4.1.

6.7.47. The Applicant made the case that because the Order would require the undertaker to secure NRIL's approval before carrying out any *"specified work"* (Provisions 28- to 30), NRIL's operational undertaking would not be adversely affected by works forming part of the Proposed Development. It also pointed out that it is not seeking powers for freehold interest in NRIL land [REP7-035].

6.7.48. Both parties cited examples of made DCOs in which their preferred PPs had been included. The Applicant acknowledged that there are precedents for the inclusion of the type of consent provision required by NRIL. However, it argued that the nature of the Proposed Development being an overhead line on which a number of offshore interconnectors would be reliant meant that stalling operations to accommodate future requests by NRIL could have far-reaching consequences across the national network and its dependents. The Applicant went on to express

further concerns regarding the potential power the provision would give NRIL to dictate the nature of the land interests and the commercial terms. The Applicant commented that NRIL had not submitted evidence to demonstrate that the Proposed Development would be incompatible with the safe and efficient operation of the railway [REP7-035], Section 1.2.

ExA's reasoning: Provision 29, Consent provisions

6.7.49. The ExA agrees with the Applicant that each case should be decided on its own merit. We consider that the comfort already provided by the approvals that would be required from NRIL, whilst not going as far as NRIL would wish, does give it a role in assessing risk and taking precautionary measures to prevent any serious detriment to its undertaking. The ExA has not made changes to the Applicant's final dDCO. In reaching this recommendation not to include the NRIL proposed additions, we have been mindful of the specific risks as presented in NRIL's WR [REP2-081].

rDCO changes and/ or retention of wording from the Applicant's final dDCO

6.7.50. The Applicant's final dDCO wording is retained in the ExA's rDCO.

Land agreements

6.7.51. A related matter to the consent provisions is the disagreement between parties about the terms of voluntary land agreements, which were under negotiation. The Applicant set out the issues, which it argued could have the effect of removing the Applicant's rights to operate the Proposed Development [REP7-035], Section 1.4.

6.7.52. In the final SoCG, both parties stated that they have progressed matters and have agreed in principle a mechanism which would facilitate agreeing a form of easement by a specified longstop date, which is subject to drafting. Without agreement of the easements or wording of the PPs, they stated that it is not possible to sign up to a Framework Agreement [REP7-075], Table 4.1. This was also explained by NRIL in its response to the ExA's dDCO commentary [REP7-091], DC1 10.1.2 to 10.1.4. At D8 the Applicant confirmed that a side agreement was in preparation but that it has not been possible for the parties to reach agreement by the end of the Examination [REP8-021], Table 2.1.

ExA's reasoning: Provision 79, Land agreements

6.7.53. Parties may have reached agreement over voluntary land agreements by the time the SoS is considering this Recommendation. In any case, the ExA has found in favour of the Applicant's final dDCO wording (reported above), regarding the prior consents, which would provide a way forward for the powers sought by the Applicant if voluntary land agreements had not been negotiated and agreed.

Electromagnetic interference: rDCO Provision 36 ([REP6-063], para 10, Table 2.1)

6.7.54. In relation to electromagnetic interference (EMI), NRIL proposed amendments to Provision 36(6) which would require testing by the undertaker prior to the use of the authorised development. NRIL also wanted amendments and additions to Provision 36(7) which would require the undertaker not to use the Proposed Development in a manner which has caused or would cause EMI until measures have been taken to prevent EMI occurring [REP6-063], para 10, Table 2.1.

6.7.55. The Applicant disagreed on both accounts, arguing that it would comprise duplication. It argued that the testing prior to commencement is not necessary

because calculations test the parameters using extreme scenarios and design solutions would ensure that impacts would be mitigated. The Applicant expressed concern about the potential that this would have to delay the programme for delivery of the Proposed Development [REP7-035], Section 1.3. On this point, NRIL stated that it is not duplicative because it would ensure testing would be carried out, without which the safety of the railway could be compromised [REP6-063], para 10, Table 2.1.

6.7.56. On the second proposed addition, the Applicant was very concerned that this addition could result in the need to shut down the electric line, whereas it argued that the existence of EMI would not necessarily require shutting down whilst the problem was fixed. It also pointed to Provision 36(3), which would require the undertaker to *"take all measures necessary to prevent EMI"* [REP7-035], Section 1.3.

ExA's reasoning: Provision 36, Electromagnetic interference

6.7.57. In the final SoCG, both parties indicated that dialogue was continuing [REP7-075] and that they were working to resolve this point [REP7-075], Section 1.3. It may be that the SoS has an agreed form of wording before them for the decision period. In which case if this has been resolved, agreed wording submitted by both parties should be used. However as this is not agreed, it is for the ExA to recommend.

6.7.58. The ExA agrees that NRIL's amended wording should be added to Provision 36(6). We consider that the Applicant's arguments regarding delays to delivery of the Proposed Development are non-specific and if parties agree to co-operate, as they indicate they would, the pre-commencement testing could be programmed in so as not to cause delay. We agree with NRIL, that this is not duplicative, and we have taken regard of its points regarding the risk that could arise to the safety of the railway if testing were not carried out.

6.7.59. Regarding the proposed addition to Provision 36(7), we have taken a different position. Whilst we agree with NRIL, that Provision 36(3) refers to design and construction and cannot therefore be used in justifying an operational position where EMI has occurred, we give weight to the Applicant's case that the existence of EMI would not necessarily require the shutting down of the electrical line and that there would be a regulatory duty for the undertaker to address an EMI occurrence as soon as possible.

rDCO changes and/ or retention of wording from the Applicant's final dDCO

6.7.60. The ExA's rDCO contains revised wording for Provision 36(6) as follows:

(6) Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if notwithstanding……

6.7.61. The ExA has not made changes to Provision 36(7) in its rDCO, the wording stands as in the Applicant's final dDCO.

ExA's conclusions on s127 and s138 for Network Rail Infrastructure Limited

6.7.62. NRIL's objection to the CA and TP of its land has not been withdrawn, therefore the tests of s127 and s138 PA2008 apply. The ExA is satisfied that the powers sought by the Applicant are necessary for the Proposed Development and consistent with s138, and that the powers sought could be exercised without serious detriment to the carrying out of NRIL's undertaking, and are consistent with s127 on the basis of

the PPs that are reported above and included in rDCO Schedule 15, Part 4. In concluding this, the ExA is mindful that some of the above points of disagreement at the end of the Examination may have been narrowed further or resolved. If agreement has been reached and the SoS is made aware of this, then we would recommend that the Order is made according to the agreed wording. There would be no need for further consultation, if the two parties agree.

National Gas Transmission plc

6.7.63. NGT submitted an objection which was not withdrawn [RR-028]. NGT did not attend hearings, but provided a written submission in lieu of attendance at CAH2, and responded to action points, it did not answer ExQ1 and ExQ2, but provided response to the ExA's dDCO commentary and made submissions at D7 and D8.

6.7.64. The Applicant's position at the end of the Examination was that s127 and s138 are engaged [REP8-011], page 11 to 12 as set out in its Examination submission under s127 and s138 [REP5-088]. The Applicant explained that no land owned by NGT needs outright CA; only rights over that land, therefore, s127(2) and (3) PA2008 are not engaged. Class 2 and 3 rights would be required [REP5-088].

6.7.65. NGT objected strongly to the Applicant's s127 and s138 Application. NGT refuted the Applicant's suggestion that the Proposed Development would present a low risk to NGT's apparatus. It asserted that the potential consequences of any damage to its apparatus would be so severe that it could result in catastrophic impacts on NGT and hundreds of thousands of gas consumers [REP6-073], para 22.

6.7.66. NGT continued to object to the s127 and s138 case in response to the ExA's dDCO commentary, and also set out the areas of difference and reasons regarding the wording of bespoke PPs [REP7-089]. In response to this, the Applicant stated that it has sought to engage with NGT to narrow the issues between the parties throughout the course of the Examination and, following D7 it proposed an all-parties meeting to try and reach agreement. However, it reported that NGT declined to meet [REP8-013], Table 2.4.

Protective Provisions and legal side agreement

6.7.67. At the end of the Examination, NGT considered that to ensure that its assets would be satisfactorily protected its PPs and a legal side agreement was required in respect of the Proposed Development. The Applicant considered that its PPs in its final dDCO Schedule 15 Part 7 would be sufficient to protect NGT's assets, but both parties confirmed that they were continuing to negotiate and agree a legal side agreement [REP8-017], Table 4.1. The ExA would not be party to any material submitted after the end of the Examination, but if submitted it may provide the SoS with the means to confirm or amend Schedule 15, Part 7 rDCO drafting, if the Order is to be made. The ExA proceeds on the basis that no legal side agreement is before us.

6.7.68. Whilst acknowledging that PA2008 is a written process, hearings give the opportunity for the ExA to hear parties' points together, which can assist in closing down differences. NGT chose not to attend CAH or DCO hearings, so it has not been possible for the ExA to engage with both parties together to understand if there are areas for compromises and potential agreement. There are a number of outstanding matters not agreed, on which we need to report and recommend wording for rDCO Schedule 15, Part 7. These are:

i. acceptable insurance cover;

9 Appendix D: Net Zero Teesside Order 2024

S T A T U T O R Y I N S T R U M E N T S

2024 No. 0000

INFRASTRUCTURE PLANNING

The Net Zero Teesside Order 2024

Made - - - - *16th February 2024*

Coming into force *11th March 2024*

CONTENTS

PART 11

FOR THE PROTECTION OF RAILWAY INTERESTS

111. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 124 of this Part of this Schedule, any other person on whom rights or obligations are conferred by that paragraph.

112.—(1) In this Part of this Schedule—

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993(**a**);

"Network Rail" means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at Waterloo General Office, London, United Kingdom, SE1 8SW) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited's railway undertaking;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

"protective works" means any works specified by the engineer under paragraph 115(4);

"railway operational procedures" means procedures specified under any access agreement (as defined in Part 1, section 83(1) of the Railways Act 1993) or station lease;

"railway property" means any railway belonging to Network Rail and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail for the purposes of such railway or related works, apparatus or equipment;

(**a**) 1993 c. 43.

"regulatory consents" means any consent or approval required under—

(a) the Railways Act 1993;

(b) the network licence; and/or

(c) any other relevant statutory or regulatory provisions,

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development; and

"specified work" means so much of any of the authorised development as is or is to be situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 5 (maintenance of authorised development).

"undertaker" has the same meaning as in article 2 (interpretation) of this Order.

113.—(1) Where under this Part of this Schedule Network Rail is required to give its consent, or approval in respect of any matter, that consent, or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

(a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

114. The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

115.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 47 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not communicated their disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to communicate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not communicated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's reasonable opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or

stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation decommissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

116.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 115(4) must, when commenced, be constructed—

(a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 115;

(b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little damage as is possible to railway property; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

117. The undertaker must—

(a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and

(b) supply the engineer with all such information as they may reasonably require with regard to a specified work or the method of constructing it.

118. Network Rail must at all times afford reasonable facilities to the undertaker and its employees, contractors or agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

119.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations or additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which are expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which

in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 115, pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 120(a), provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions, a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

120. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 115(3) or in constructing any protective works under the provisions of paragraph 115(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;

(c) in respect of the employment or procurement of the services of any inspectors, signallers, watch persons and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and

(e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

121.—(1) In this paragraph—

"EMI" means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail's apparatus; and

"Network Rail's apparatus" means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail's apparatus carried out after approval of plans under paragraph 115 for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker's compliance with sub-paragraph (3)—

(a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 115) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 115 has effect subject to the sub-paragraph.

(6) Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3) the testing of the authorised development causes EMI, then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

(a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;

(b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;

(c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and

(d) The undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraph (5) or (6)—

(a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;

(b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 116.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 125(1) applies to the costs and expenses reasonably incurred or losses reasonably suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 120(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

122.—(1) If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

(2) Regardless of anything in sub-paragraph (1), on receipt of a notice given by Network Rail pursuant to sub-paragraph (1), the undertaker may respond in writing to Network Rail requesting Network Rail to take the steps as may be reasonably necessary to put the specified work the subject of the notice in such state of maintenance as not adversely to affect railway property. If Network Rail agrees to undertake the steps it must give to the undertaker reasonable notice of its intention to carry out such steps, and the undertaker must pay to Network Rail the reasonable cost of doing so.

123. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

124. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

125.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

(a) by reason of the construction, maintenance or operation of a specified work or the failure thereof it;

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others within the control of the undertaker whilst engaged upon a specified work;

(c) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others within the control of the undertaker whilst accessing to or egressing from the authorised development;

(d) in respect of any damage caused to or additional maintenance required to railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others within the control of the undertaker; or

(e) in respect of costs incurred by Network Rail in complying with any railway operational procedure or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must—

(a) give the undertaker reasonable written notice of any such claims or demands;

(b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and

(c) take all steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph 125 applies. If requested to do so by the undertaker, Network Rail is to provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker is to only be liable under this paragraph 125 for claims reasonably incurred by Network Rail.

(3) In no circumstances is the undertaker liable to Network Rail under sub-paragraph (1) for any indirect or consequential loss or loss of profits, save that the sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

"the relevant costs" means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

126. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable pursuant to this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 125) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

127. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

128. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

(a) any railway property shown on the works and land plans and described in the book of reference;

(b) any lands, works or other property held in connection with any such railway property; and

(c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

129. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 of the Railways Act 1993.

130. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 8 (consent to transfer

of benefit or Order) of this Order) and any such notice must be given no later than 7 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

131. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 45 (certification of plans etc.) are certified by the Secretary of State provide a set of those plans and documents to Network Rail in a format specified by Network Rail.

The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008

Net Zero Teesside Project

Examining Authority's Report
of Findings and Conclusions

and

Recommendation to the Secretary of State for
Business, Energy and Industrial Strategy

Examining Authority

Kevin Gleeson BA MCD MRTPI Panel Lead

Susan Hunt BA (Hons) MA MRTPI

Beth Davies BSc (Hons) MSc FGS CGeol

10 February 2023

8.27. Network Rail Infrastructure Limited

8.27.1. NR have a range of interests within the Order Limits including railway corridors to the south of the B1275 Belasis Avenue in Billingham, the south of Seal Sands Road, and to the north of the A1085 in the vicinity of Bran Sands and Teesworks [sheets 1, 3, 8 and 12, REP12-015]. The land is required for a range of works including the CO_2 gathering network corridor, gas, electricity and water connections. Network Rail is a Statutory Undertaker.

8.27.2. NR raised concerns that the information supplied in the application was not sufficiently detailed to fully assess potential impacts on railway safety and operations. NR stated that they seek protection from the exercise of CA powers over their operational land both during construction and operation, and that their standard protective provisions would need to be included in the DCO. Additionally, a number of legal and commercial agreements would need to be entered into, including property agreements, which NR is prepared to discuss subject to a number of terms [RR-027].

8.27.3. The Applicants' consider there is sufficient information to understand how the proposed works would interact with the operational railway, and that they are in discussions to ensure that the project would not impact on operational safety, with protective provisions included in the dDCO. Their response also confirms their preference to obtain all necessary land and rights by voluntary agreement rather than relying on CA powers [REP1-045].

8.27.4. An initial draft SoCG was submitted by the Applicants at D1, which confirms that the relevant clearances for all rail crossings have been received and approved by NR, which allow negotiations to open. They have engaged with NR's asset protection team to enter into the necessary licences and land rights to implement the scheme. They also seek to ensure that the design and construction would not have an adverse impact on railway operations via protective provisions in the dDCO. It states that the parties are negotiating a Framework Agreement and working to conclude a voluntary agreement for an option and lease [REP1-019].

8.27.5. The final CA Schedule [REP12-131] and the End of Examination Negotiation Status document state that Heads of Terms have been reviewed by NR and that a proposal has been provided by the Applicants for a commercial agreement. It adds that the parties are continuing to seek to reach agreement on voluntary agreements following close of the Examination [REP13-021].

Conclusion

8.27.6. We note that NR did not engage any further with the Examination beyond submission of their RR. We are satisfied that the extinguishment of rights and interference with apparatus sought by the Applicant in relation to NR's land interests would be necessary for the purpose of carrying out of the Proposed Development. The dDCO includes bespoke Protective Provisions for the benefit of NR in order to safeguard its interests and assets.

Department for Energy Security & Net Zero

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Our Ref: EN010103

16 February 2024

Dear Sir/Madam

PLANNING ACT 2008: APPLICATION FOR DEVELOPMENT CONSENT FOR NET ZERO TEESSIDE PROJECT

1. Introduction

1.1. I am directed by the Secretary of State for Energy Security & Net Zero ("the Secretary of State") to advise you that consideration has been given to the report dated 10 February 2023 of the Examining Authority ("the ExA"), comprising of Kevin Gleeson BA MCD MRTPI (Panel Lead), Susan Hunt BA (Hons) MA MRTPI and Beth Davies BSc (Hons) MSc FGS CGeol who conducted an examination into the application ("the Application") submitted on 19 July 2021, by Net Zero Teesside Power Limited and Net Zero North Sea Storage Limited ("the Applicants") for a Development Consent Order ("the Order") under section 37 of the Planning Act 2008 ("PA2008") for the full chain Carbon Capture, Usage and Storage project comprising a number of elements including a new gas-fired electricity generating station (with an electrical output of up to 860 megawatts) with post combustion carbon capture plant; gas, electricity and water connections (for the electricity generating station); a carbon dioxide (CO_2) pipeline network (a 'gathering network') for gathering CO_2 from a cluster of local industries on Teesside; a high pressure CO_2 compressor station and an offshore CO_2 export pipeline. The above elements are referred to in this letter as "the Proposed Development". The offshore section of the export pipeline and the offshore storage facility are subject to separate consenting processes and are, therefore, not part of the Proposed Development that is the subject of this DCO application. The offshore elements which do not form part of the Proposed Development are referred to as the "Offshore Elements". The "Wider NZT Project" is the term which has been used by the ExA, and is therefore used in this letter, to refer to both the onshore and offshore elements, including those beyond the limits of this DCO ("the Order Limits").

1.2. The Application was accepted for examination on 16 August 2021. The examination began on 10 May 2022 and concluded on 10 November 2022. The Secretary of State received the report containing the ExA's conclusions and recommendation on 10 February 2023. A total of 42 Relevant Representations (as defined in PA2008) were received by the Planning Inspectorate.

of State to their conclusions on CNSL and NSMP relating to the CATS and TGPP terminals which overlap with the land occupied by NGT [ER 8.25.10]. For the purposes of s138 of the PA2008 the ExA was satisfied that the extinguishment of rights and interference with apparatus sought would be necessary for the purpose of carrying out the Proposed Development, and the Secretary of State agrees. The ExA also concluded that the Order would contain appropriate protective provisions for NGT [ER 8.25.11].

6.37. NGT confirmed, in response to the Secretary of State's letter of 23 August, that they were close to reaching agreement with the Applicants and provided revised protective provisions that they want included in the final DCO. The Applicants stated in their letter of 30 August that final protective provisions had been agreed subject to final signatures but have not commented on NGT's revisions or provided a copy of any agreed protective provisions. In the absence of comments from the Applicants, the Secretary of State has carefully considered NGT's revised protective provisions and concludes that the majority of these are minor and can be accepted. For the reasons set out above in respect of NGET, the Secretary of State has not included all of the proposed changes, including the proposed provision entitled "Acquisition of Land".

Navigator Terminals North Tees Limited and Navigator Terminals Seal Sands Limited ("Navigator")

6.38. Navigator are freehold owners, tenants and occupiers of a number of plots located at Seal Sands Road, proposed for CA of rights and TP for Work Nos. 6, 9 and 10. Bespoke protective provisions are provided for the benefits of Navigator at Part 24, Schedule 12 of the Order. At the end of the Examination Heads of Terms for an Option Agreement and Deed of Grant of Easement had been agreed between the parties, and draft legal documents issues but that negotiations were continuing [ER 8.26.3].

6.39. The ExA concluded that in the absence of agreement it was satisfied that the CA is needed in order to secure the delivery of the Proposed Development and that protective provisions would be secured in the Order [ER 8.26.4]. In the absence of an agreement between the parties the Secretary of State agrees with the Examining Authority's conclusion that the Applicants' draft protective provisions provide appropriate protections for Navigator [ER 9.4.218] and should be accepted for inclusion in the final DCO.

Network Rail Infrastructure Limited (NR)

6.40. NR is a statutory undertaker with a range of interests within the Order Limits including railway corridors listed in ER 8.27.1. The land is required for a range of works including CO_2 gathering network corridor, gas, electricity and water connections [ER 8.27.1]. NR raised a number of concerns that information supplied was not sufficiently detailed to assess railway safety and operation and they sought protection from the exercise of CA powers over their operational land and that their standard protective provisions would need to be included in the Order. Additionally, a number of legal and commercial agreements would need to be entered into [ER 8.27.2]. The final CA schedule and End of Examination Negotiation Status document state that Heads of Terms have been reviewed by

NR and a proposal provided by the Applicants for a commercial agreement and that parties continue to seek to reach agreement [ER 8.27.5].

6.41. The ExA noted that NR did not engage any further with the Examination beyond submission of their relevant representations. The ExA was satisfied that the extinguishment of rights and interference with apparatus sought by the Applicants in relation to NR land interests would be necessary for the purpose of carrying out the Proposed Development and the Secretary of State agrees.

6.42. The ExA notes that the draft Order includes bespoke protective provisions for the benefit of NR in order to safeguard its interests and assets [ER 8.27.6] and that NR did not provide their preferred protective provisions to the examination [ER 9.4.150]. NR provided their preferred protective provisions for the first time in October 2023, in response to the Secretary of State's letter of 22 September. The Applicants confirmed on 6 October that agreement has not been reached but the parties are engaged in negotiating a side agreement. The Applicants wrote again to the Secretary of State on 24 October 2023 confirming that NR's proposed amendments were not agreed. In the absence of an agreement between the parties the Secretary of State has considered NR's proposed protective provisions, notwithstanding the lateness of the submission and the absence of an explanation or justification from NR as to why these changes are required. The Secretary of State agrees with the Examining Authority's conclusions that the Applicants' proposed provisions can be included in the Order but has made some of NR's suggested changes where these are relatively minor or uncontentious and appear reasonable.

Northern Gas Networks Ltd (NGN)

6.43. NGN are a statutory undertaker and occupiers of a number of plots as the BoR which are proposed for CA of rights and TP. Protective Provisions were entered into the DCO at Deadline 4 of the examination and are set out in Schedule 12 Part 26 of the Order. It was noted that an asset protection agreement was being negotiated with parties but there is limited information regarding timescales. The Secretary of State's letters of 10 March 2023 and 23 August 2023 requested updates on negotiations. NGN responded on 8 September setting out concerns but without reference to the ongoing negotiations. The Applicants confirmed in their letter of 6 October 2023 that they will continue to engage with NGN in relation to their concerns.

6.44. The ExA concluded for the purposes of s138 of PA2008 it was satisfied that the extinguishment of rights and interference with apparatus sought would be necessary for the purpose of carrying out the Proposed Development [ER 8.28.3]. It further noted that the Order, including the Applicant's final version of protective provisions for the protection of NGN, would provide appropriate protections for NGN [ER 9.4.223]. In the absence of an agreement between the parties the Secretary of State agrees with the ExA's conclusions on CA and TP and in relation to the protective provisions which are recommended in the draft Order.

Get in touch

You can contact us by:

Emailing at **info@cwwtpr.com**

Calling our Freephone information line on **0808 196 1661**

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You can view all our DCO application documents and updates on the application on The Planning Inspectorate website:

https://infrastructure.planninginspectorate.gov.uk/projects/eastern/cambridge-waste-water-treatment-plant-relocation/