

Dated

2023

NATIONAL GRID ELECTRICITY TRANSMISSION PLC

to

THE COUNTY COUNCIL OF DURHAM

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**PLANNING OBLIGATION BY UNILATERAL UNDERTAKING  
PURSUANT TO SECTION 106 OF THE TOWN AND  
COUNTRY PLANNING ACT 1990 AND ASSOCIATED  
POWERS RELATING TO THE DEVELOPMENT OF LAND  
NEAR HAWTHORN GRID SITE, MURTON, DH6 2RX**

**RELATING TO THE NATIONAL GRID ELECTRICITY  
TRANSMISSION PLC (SCOTLAND TO ENGLAND  
GREEN LINK 1) COMPULSORY PURCHASE ORDER  
2023**

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**Commented [L01]:** The  
Comments and  
annotations made on  
this S106 document are  
to be read in conjunction  
with the **COUNCIL'S  
COMMENTS IN THE  
SUPPLEMENTAL  
NOTES DATED 4  
December 2023**

**This Planning Obligation by Unilateral Undertaking** is made the \_\_\_\_\_ day of 2023

**And is GIVEN BY**

1. **NATIONAL GRID ELECTRICITY TRANSMISSION PLC** (CRN: 02366977) whose registered office is at 1 - 3 Strand, London, WC2N 5EH ("**the Developer**")
- To
2. **THE COUNTY COUNCIL OF DURHAM** of County Hall, Durham, DH1 5UL ("**the Council**")

**Whereas**

- A. The Developer is the freehold owner of the Developer's Land which forms part of the Site and which is unregistered and was acquired pursuant to a conveyance dated 5 December 1966.
- B. The Developer is promoting the Project.
- C. The Developer has made the Order to acquire the land and rights identified in the Order and shown on the Order Maps.
- D. The Developer will acquire an interest in the Order Land once the Order has been confirmed by the Secretary of State and powers of compulsory acquisition are exercised by the Developer pursuant to the Order.
- E. The Council has issued the Planning Permission.
- F. The underground electricity cables forming part of the Project are to be constructed pursuant to the Town and Country Planning (General Permitted Development) Order 2015.
- G. The Developer is entering into this Undertaking in order to secure the planning obligations contained in it and the Developer considers that the obligations in this Undertaking are necessary to make the Cable Installation Works acceptable in planning terms having regard to the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).
- H. The Council is the local planning authority for the purposes of Section 106 of the Act for the area within which the Developer's Land and the Order Land is situated.
- I. The Developer has agreed to enter into this Undertaking with the intention that the obligations contained in this Undertaking may be enforced by the Council against the Developer and their successors in title.

**Commented [LO2]:** The Conveyance was not provided for the Council to verify that NG is the freehold owner.

**Commented [CC3]:** This is a fundamental problem as NG will need to own or have an interest in the Order Land prior to completion of the S106. NG will not own or have an interest in the Order Land until the Order is confirmed by the Secretary of State. For the Inspector/Secretary of State to afford any weight to the S106 it will need to be completed before the Order is confirmed. Also see the Council's comments in the supplemental notes dated 4 December 2023

**Commented [CC4]:** As set out in the supplemental note, the Council has significant concerns regarding the appropriateness of utilising a planning obligation where all parties interested in the land are not signatories and requiring third party landowners to rely upon the Council to exercise powers of enforcement.

**Now this Undertaking witnesses as follows:**

**1. DEFINITIONS**

For the purposes of this Undertaking the following expressions shall have the following meanings:

<b>“Act”</b>	the Town and Country Planning Act 1990 (as amended);
<b>“Cable Installation Works”</b>	means the installation of underground electricity works forming part of the Project;
<b>“Decision Letter”</b>	means a letter issued by the Secretary of State confirming the Order;
<b>“Developer’s Land”</b>	that part of the Site shown edged blue on Plan 1;
<b>“Landowner”</b>	means any party identified as a landowner in Table 1 of the Order and relevant Landowner shall mean the relevant Landowner in respect of individual plots of Order Land shown on the Order Maps and <b>“Landowners”</b> shall be interpreted accordingly;
<b>“Order”</b>	The National Grid Electricity Transmission plc (Scotland to England Green Link 1) Compulsory Purchase Order 2023;
<b>“Order Land”</b>	means the land shown on the Order Maps and which are appended to this Undertaking;
<b>“Order Maps”</b>	means the maps marked “the map referred to in The National Grid Electricity Transmission plc (Scotland to England Green Link 1) Compulsory Purchase Order 2023”;
<b>“Planning Permission”</b>	the planning permission granted by the Council;
<b>“Pre-Construction Soil Survey”</b>	a detailed soil survey to be undertaken by a competent person (e.g. a soil expert) in order to produce specific soil resource topsoil and subsoil unit plans and restoration specifications for areas of agricultural land within relevant plots, such survey to be used to monitor the progress

**Commented [L05]:** No plan was provided to show the developer's Land

of soil handling and restoration operations.

Each survey will include the identification of the physical characteristics of profiles at a standard density of 100m intervals (with additional profiles examined where the 100m grid sampling does not enable a suitable density of sampling in an agricultural enclosure that will otherwise be missed). Soil pits will also be examined at appropriate locations to provide additional detail on soil structure and stoniness. Each survey will provide information on the following soil physical characteristics:

Soil horizon depths for topsoil and subsoil horizons;

Soil textures of all horizons;

Soil colour;

Stone contents, estimated from augering, confirmed by soil pit excavation and/or sample analysis;

Presence and characteristics of mottling;

Presence of manganese concretions indicator;

Identification of gleyed horizons;

Identification of slowly permeable layers; and

Identification of impenetrable rock layers;

**“Pre-Construction Schedule of Condition”**

A schedule of condition which will include the following:

Existing crop regimes;

Position and condition of existing field boundaries;

Condition of existing access arrangements;

Location and type of existing private water supplies;

Type of agricultural use taking place;

Yield of crops;  
Quality of grazing land;  
Existing weed burden;  
Soil/ ground condition;  
Weather conditions;  
Date of survey;  
Grid reference;  
Photographs and drone/video footage (where practicable); and  
Section drawings/plans.

**“Project”** an electricity link comprising underground cables, converter station, substation and associated development to facilitate the transfer of electrical power between Torness in East Lothian and Hawthorn Pit in County Durham;

**“Site”** the land at Hawthorn Pit Grid Site Murton DH6 2RX subject of the Application as shown edged red on the Order Maps and as appended to this Undertaking; and

**"Working Day"** any day apart from Saturday and Sunday and statutory bank holidays in England.

## **2. CONSTRUCTION OF THIS UNDERTAKING**

- 2.1 Where in this Undertaking reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Undertaking (unless the context otherwise requires).
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neutral genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made,

issued or given under that Act or deriving validity from it.

- 2.5 References to any party to this Undertaking shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Developer and the Council the successors to their respective statutory functions.
- 2.6 The headings and contents list are for reference only and shall not affect construction.
- 2.7 Any covenant by the Developer not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.8 Insofar as any clause or clauses of this Undertaking are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 2.9 No person shall be liable for any breach of any of the obligations or other provisions of this Undertaking after it shall have parted with its entire interest in the Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 2.10 Nothing in this Undertaking shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission or any non-material amendment thereto) granted (whether or not on appeal) after the date of this Undertaking nor shall any payment be due under this Undertaking in respect of any development carried out under such other planning permission.

### **3. LEGAL BASIS**

- 3.1 The obligations contained in Clause 5 of this Undertaking are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council.
- 3.2 The obligations contained in Clause 5 of this Undertaking are entered into by the Developer with the intention that these provisions should bind their interests in the Developer's Land and the Order Land as provided by Section 106 of the Act.
- 3.3 Save where otherwise indicated and where possible pursuant to the relevant statutory provision the covenants in this Undertaking shall be binding on the Developer and its successors in title to Developer's Land or the Order Land subject always to Clause 3.4.
- 3.4 The Developer shall cease to have any obligation or liability under the terms of this Undertaking in relation to the Developer's Land or the Order Land or any part thereof once it shall have parted with all its interest in the Developer's Land or Order Land or that part thereof respectively but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.

### **4. CONDITIONALITY**

- 4.1 The obligations contained within this Undertaking are conditional upon the confirmation of the Order by the Secretary of State save for the provisions of Clause 4.2, 6, 7, 8, 9 and 10 which shall come into effect immediately upon the completion of this Undertaking.

- 4.2 If the Decision Letter concludes that the obligations set out in clause 5 of this Undertaking are not necessary and accordingly gives no weight to those obligations in confirming the Order then this Undertaking shall from the date of the Decision Letter immediately cease to have effect and the Developer shall be under no obligation to comply with it.

**5. THE DEVELOPER'S COVENANTS**

- 5.1 The Developer covenants with the Landowners to fully observe and perform the obligations in this Undertaking including those obligations set out in Schedule 1 to this Undertaking and hereby agrees that the Order Land shall be subject to the obligations, restrictions and covenants herein.

**6. TERMINATION OF THIS DEED**

- 6.1 This Undertaking shall cease to have effect (insofar only as it has not already been complied with) if the Order shall be quashed, revoked or otherwise withdrawn (or without the consent of the Developer it is modified by any statutory procedure) or the land and rights to be acquired.

**7. THIRD PARTY RIGHTS**

- 7.1 Save as provided in respect of successors in title to the Order Land this Undertaking shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999 and no third party shall acquire any benefit, rights or claims whatsoever thereto.

**8. JURISDICTION**

- 8.1 This Undertaking is governed by and interpreted in accordance with the law of England and Wales.

**9. LOCAL LAND CHARGE**

- 9.1 This Undertaking is a Local Land Charge and shall be registered as such by the Council in the Local Land Charges Register provided that if the Order expires unimplemented, or is revoked, or if all obligations under this Undertaking have been discharged then the registered charge shall be treated as having ceased to have effect under rule 8 of the Local Land Charges Rules 1977 or any statutory re-enactment thereof and the registration shall be cancelled.

**10. ARBITRATION**

- 10.1 All disputes, differences or questions arising out of this Undertaking or as to the rights or obligations of the parties under it or in connection with its construction shall be referred to arbitration by a single arbitrator to be agreed between the parties or, failing agreement, within 21 days by an arbitrator to be appointed at the request of any party by the President of The Royal Institute of Chartered Surveyors as the case may be having due regard to any representations made to him as the appropriate qualifications of such arbitrator.
- 10.2 The arbitration shall take place in London and shall be in accordance with the Arbitration Act 1996 or any re-enactment or modification of such Act for the time being in force, unless otherwise agreed in writing by the Council.

**IN WITNESS** of which this Undertaking has been duly executed as a Deed and has been delivered once dated.



## **SCHEDULE 1**

### **The Developer's Covenants**

The Developer covenants with the Council that:

1. the HVDC underground cables forming part of the Project will be installed in accordance with Energy Networks Association Guidance "Cable Laying on Agricultural Land" (Ref: G57: Issue 2: 2019) and will be installed to a contour of not less than 0.9 metres below the original surface level of the Order Land measured to the top of the protective tile above the underground cables (save where the cables are brought to or above the surface for a cable bridge or are laid below a highway and save in relation to plots 1-07,1-21 to 1-25, 2-10, 2-11, 2-18, 2-19, 3-04, 3-08, 5-05, 7-01 and 7-02) provided that the cable depth can be increased beyond the minimum 0.9 metres where necessary due to agricultural practices, land drainage requirements or any other engineering reasons that justify a greater burial depth;
2. prior to the commencement of any Cable Installation Works it will appoint an agricultural liaison officer to be the primary contact for ongoing engagement about practical matters with Landowners, occupiers and their agents both prior to and during the process of laying the underground cables;
3. it shall in respect of each Landowner:
  - a. prior to the commencement of any Cable Installation Works on the relevant Landowner's Order Land:
    - i. carry out a Pre-Construction Schedule of Condition of the relevant Landowner's Order Land;
    - ii. permit the relevant Landowner to make representations on the adequacy of the Pre-Construction Schedule of Condition;
    - iii. give due and proper regard to any representations received from the relevant Landowner on the Pre-Construction Schedule of Condition and take reasonable steps to remedy any justifiable inadequacy identified by the relevant Landowner;
    - iv. provide a copy of the final Pre-Construction Schedule of Condition to the relevant Landowner;
    - v. carry out a Pre-Construction Soil Survey of the relevant Landowner's Order Land;
    - vi. permit the relevant Landowner to make representations on the adequacy of the Pre-Construction Soil Survey;
    - vii. give due and proper regard to any representations received from the relevant Landowner on the Pre-Construction Soil Survey and

**Commented [CC6]:** The Council considers that this clause is too vague.

**Commented [CC7]:** As set out in the supplemental note, the Council has serious concerns regarding the appropriateness of seeking to give undertakings to third party landowners in a planning obligation.

- take reasonable steps to remedy any justifiable inadequacy identified by the relevant Landowner;
- viii. provide a copy of the final Pre-Construction Soil Survey to the relevant Landowner; and
  - ix. prepare a soil management plan with the objective of returning the relevant Landowner's Order Land post-completion of construction to the condition recorded in the Pre-Construction Soil Survey and the Pre-Construction Schedule of Condition;
- b. reinstate subsoil and topsoil on the relevant Landowner's Order Land to the same condition as evidenced by the Pre-Construction Schedule of Condition and the Pre-Construction Soil Survey;
- c. prior to commencement of any Cable Installation Works on the relevant Landowner's Order Land:
- i. procure that a suitably qualified drainage contractor ("Drainage Contractor") is appointed to carry out a pre and post construction drainage assessment of each relevant Landowner's Order Land;
  - ii. procure that the Drainage Contractor provides a copy of the pre-construction assessment to the relevant Landowner and any drainage consultant employed by the relevant Landowner;
  - iii. permit the relevant Landowner to make representations on the drainage assessment;
  - iv. take into account any reasonable representations made by the relevant Landowner in relation to the drainage assessment and provide a copy of the final drainage assessment to the relevant Landowner; and
  - v. implement any required drainage works, in line with the recommendations within the drainage assessment as soon as practicably possible to ensure the agricultural land drainage systems on the relevant Landowner's Order Land are left in no worse condition than before the date of the relevant drainage assessment;
- d. procure that the Drainage Contractor carries out a post-construction drainage assessment and provide a copy of this to the relevant Landowner;
- e. procure that a suitably qualified drainage consultant who will act independently of the Drainage Contractor ("Drainage Expert") is appointed to assure the design and methodology of the required drainage works to be undertaken by the Drainage Contractor;
- f. subject to compliance with CDM Regulations, and the Developer's health and safety requirements, provide the relevant Landowner and the Drainage Expert the opportunity to inspect the drainage works whilst in progress on the relevant Landowner's Order Land; and

- g. provide records of existing and remedial drainage to the relevant Landowner after completion of the drainage works by the Drainage Contractor.

The COMMON SEAL of  
**NATIONAL GRID ELECTRICITY  
TRANSMISSION PLC**  
was hereunto affixed  
in the presence of:

Authorised Signatory  
Member of the Board Sealing Committee