The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008

LITTLE CROW SOLAR PARK

Examining Authority's Report

of Findings and Conclusions

and

Recommendation to the Secretary of State for

Business, Energy and Industrial Strategy

Examining Authority

Grahame Gould BA MPhil MRTPI

5 January 2022

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OVERVIEW

File Ref: EN010101

The application, dated 4 December 2020, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 4 December 2020.

The applicant is INRG Solar (Little Crow) Limited.

The application was accepted for examination on 23 December 2020.

The examination of the application began on 20 April 2021 and was completed on 5 October 2021.

The development proposed comprises the construction, operation, maintenance and decommissioning of a solar photovoltaic array with associated development including an electrical storage facility and connection infrastructure. The proposed Order Limits have an area of around 226 hectares[1] and it is proposed that the solar array would have a generating capacity of more than 50 megawatts, while the proposed electrical storage capacity would have a capacity of 90 megawatts.

Summary of Recommendation:

The Examining Authority recommends that the Secretary of State should make the Order in the form attached.

[1] e-page 2 in REP4-003

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The Planning Inspectorate

ERRATA SHEET – LITTLE CROW SOLAR PARK
Reference EN010101

Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for Business, Energy and Industrial Strategy, dated 5 January 2022.

Corrections agreed by the Examining Authority prior to a decision being made

Paragraph	Page	Error	Correction
2.1.1	14	Missing text due to conversion of report to pdf	The opening of 2.1.1 should read "A full description of the Order Limits (site) is provided in Chapter 3 of the Environmental Statement (ES) ["
2.2.14	20	"Oder Limits"	"Order Limits"
3.8.3	36	"is important and relevant matter"	"is an important and relevant matter"
4.5.8	56	"diversion"	"diversification"

1. INTRODUCTION

1.1. INTRODUCTION TO THE EXAMINATION

1.1.1. The application (reference number EN010101) for the Little Crow Solar Park (the Proposed Development) was submitted by INRG Solar (Little Crow) Limited (the Applicant) to the Planning Inspectorate on 4 December 2020 and was accepted for Examination under section (s) 55 of the Planning Act 2008 (as amended) (PA2008) on 23 December 2020 [PD-001].

1.1.2. The Proposed Development is for a generating station with arrays of ground-mounted solar panels with a generating capacity of more than 50 megawatts (MW). The Proposed Development would comprise:

- Solar panels attached to mounting structures, power inverters (to change direct current to alternating current), transformers, cabling and the installation of internal security fencing and gates;
- A battery energy storage system (BESS), in one of two identified locations, consisting of containerised battery units, inverters, switch room containers housing switch gear, transformers, cabling and the installation of internal security fencing and gates;
- The formation of ecological corridors involving planting and ecological works, the formation of access tracks, the installation of fencing, the creation of bunds, embankments and swales and the formation of swale, pond, hedge and ancient woodland buffers;
- The construction of a substation building and compound with switch room, control room building welfare unit, car parking, gantry with voltage and current transformers, circuit breakers and earthing circuits, floodlighting, high level 132 kilovolt (kV) 'busbars' and access track provision for the District Network Operator;
- The upgrading of the main access track to the site consisting of the laying out and surfacing of passing bays and the existing track, vegetation removal, planting and ecological works and the provision of drainage channels;
- A perimeter development buffer consisting of security fencing, boundary treatment and other means of enclosure, bunds, embankments and swales, a temporary footpath diversion during the construction and decommissioning periods, the formation of buffers for ancient woodland, hedges, ponds, public footpaths and swales and planting and ecological works;
- The creation of an underground connection to the electricity network;
- The installation of closed circuit television; and
- A temporary construction and decommissioning compound consisting of the installation of portable cabins providing office and welfare facilities, parking, storage containers, storage compound, temporary hardstanding and security fencing.

1.1.3. The location of the Proposed Development is shown in the Environmental Statement (ES), for example see Figure 6.1 'Site Context' [APP-063] and the 'Land Plan Including Order Limits [APP-006]. The site lies wholly

within the administrative area for North Lincolnshire Council (NLC), a unitary local authority.

1.1.4. The legislative tests for whether the Proposed Development is a Nationally Significant Infrastructure Project (NSIP) were considered by the Secretary of State for Housing, Communities and Local Government (SoSHCLG)[2] in the decision to accept the Application for Examination in accordance with s55 of PA2008 [PD-001].

1.1.5. In accepting the application for Examination, the Planning Inspectorate agreed with the Applicant's view stated in the application form [APP-003] that the Proposed Development is an NSIP for the purposes of s14(1)(a) and s15(2) of PA2008. That is because the proposed generating station would be situated in England and have a capacity of more than 50MW. Accordingly, the Proposed Development requires development consent under the PA2008.

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

1.2.1. On 7 January 2021, Grahame Gould was appointed as the Examining Authority (ExA) for the application under s78 and s79 of PA2008 [PD-003].

1.3. THE PERSONS INVOLVED IN THE EXAMINATION

1.3.1. The persons involved in the Examination were persons who were entitled to be Interested Parties (IPs) because they had made a relevant representation (RR) or were a statutory party who requested to become an IP.

1.4. THE EXAMINATION AND PROCEDURAL DECISIONS

1.4.1. The Examination commenced on 20 April 2021 and was concluded on 5 October 2021.

1.4.2. The principal components of and events around the Examination are summarised below. A fuller description, timescales and dates can be found in Appendix A of this Report.

The Preliminary Meeting

1.4.3. On 23 March 2021, the ExA wrote to all IPs, Statutory Parties and Other Persons under Rule 6 (The Rule 6 Letter) of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR). The Rule 6 Letter invited its recipients to the Preliminary Meeting (PM) and Issue Specific Hearing 1 (ISH1) [PD-004]. The Rule 6 letter:

- Outlined the arrangements and the agenda for the PM;

[2] Now the Department for Levelling Up, Housing and Communities

- Set out an Initial Assessment of the Principal Issues (IAPI);
- Contained a draft Timetable for the Examination;
- Provided a notification for ISH1, which was an early ISH to examine general aspects of the submitted ES, including the generating capacity for the Proposed Development, the alternatives to the development considered by the Applicant and the draft Development Consent Order (dDCO) [APP-045];
- Itemised the procedural decisions made by the ExA up to 23 March 2021, including the scope of the Statements of Common Ground (SoCG) to be entered into between the Applicant and identified IPs and other organisations; and
- Detailed the availability of the application documents.

1.4.4. The PM was held on 20 April 2021 and was a livestreamed virtual meeting due to restrictions relating to the holding of public gatherings, for the control of the COVID19 pandemic, which were in force. A video recording [EV-002 and EV-003] and a note of the meeting [EV-006] were published on the Planning Inspectorate's National Infrastructure website[3].

1.4.5. My procedural decisions and the finalised Examination Timetable took account of matters raised prior to and at the PM. The ExA's procedural decisions and the finalised Examination Timetable were provided in Annexes A and B of the Rule 8 Letter [PD-006], which was issued on 27 April 2021.

Key Procedural Decisions

1.4.6. Most of the procedural decisions set out in the Rule 8 Letter related to matters that were confined to the procedure for the Examination and did not relate to the ExA's consideration of the planning merits of the Proposed Development. Further, they were generally complied with by the Applicant and relevant IPs. The decisions can be viewed in the Rule 8 Letter [PD-006] and so it is unnecessary for me to recite them here.

Site Inspections

1.4.7. Site Inspections are undertaken during Examinations to ensure that the ExA has a full appreciation of the Order Limits and the surroundings for the Proposed Development.

1.4.8. Where the matters for inspection can be viewed from the public domain and there are no other considerations, such as personal safety or the need for the identification of relevant features or processes, Unaccompanied Site Inspections (USI) are held.

[3] https://infrastructure.planninginspectorate.gov.uk/projects/Yorkshire%20and%20the%20Humber/Little-Crow-Solar-Park/

1.4.9. I sought the views of the Applicant and the other IPs about an Access Required Site Inspection (ARSI) being held as a substitute for an Accompanied (ASI) under agenda item 5 during the PM [Appendix A of PD-004 and EV-003]. Neither the Applicant nor any of the other IPs raised an objection to an ARSI.

1.4.10. Examination Deadline (D) 1 provided the Applicant and all other IPs with the opportunity to suggest locations for the ExA to visit when undertaking its site inspections during the Examination. The ExA's decision about whether either ASIs or ARSIs would be undertaken was deferred until later in the Examination period, as explained below.

1.4.11. The ExA held the following USIs:

- USI1, on 6 April 2021 with the purpose of familiarising myself with the Order Limits' relationship with: the village of Broughton and the Scunthorpe Steel Works; the strategic and local highway network in the area; and public footpath/rights of way routes in the area [EV-001]; and

- USI2, on 26 August 2021. During USI2 I went to the following locations:

  - The M180 overbridge in Holme Lane to the north east of Messingham [viewpoint photograph location 7 in the Applicant's 'Assessment Viewpoint Photographs' APP-087], to observe the roadside vegetation and the existing Raventhorpe solar farm in the distance to the north east;

  - Lakeside Parkway, Scunthorpe [viewpoint photograph location 6 in APP-087] to observe the housing and steel works lying to the south of the Order Limits;

  - The general location for the proposed Conesby solar park [[REP1-014 and REP1-016] off Normandy Road, Scunthorpe; and

  - The route of public footpath 214 between Dawes Lane, High Santon and site visit location proposed by the Applicant and NLC in their jointly agreed site inspection itinerary [REP1-012].

Notes providing a procedural record for USI1 and USI2 can respectively be found in EV-001 and EV-025.

1.4.12. Having considered the Applicant's written submissions [REP1-001 and REP1-012] and the oral submissions made by: the owners and occupiers of Fennswood/Heron Lodge (Fennswood); NLC; and the Applicant at the end of Open Floor Hearing (OFH) [EV-016] concerning how the ExA's site

inspections might be conducted, the ExA made a procedural decision on 10 August 2021[4] [PD-011] to hold an ARSI on 25 August 2021[5].

1.4.13. During the ARSI held on 25 August 2021 I inspected the following locations:

- Firstly the house and commercial premises that comprise the property known as Fennswood, also referred to as Heron Lodge (hereafter in the Report referred to as Fennswood); and
- Secondly the Order Limits for the Proposed Development. As recorded in the note for the ARSI [EV-025], while inspecting the Order Limits I walked the route of public footpath 214 and the proposed temporary diversion for that footpath, which are both shown on the plan contained in APP-043.

1.4.14. The ExA has had regard to the information and impressions obtained during its site inspections in all relevant sections of this Report.

Hearing Processes

1.4.15. Hearings are held in PA2008 Examinations in two main circumstances:

- To respond to specific requests from persons who have a right to be heard, in this instance from IPs requesting to be heard at an OFH under the provisions of s93 of PA2008. The right to be heard at a Compulsory Acquisition Hearing under s92 of the PA2008 did not apply in this instance. That is because no compulsory acquisition and temporary possession powers have been sought by the Applicant, as explained in section 4 of the Applicant's Explanatory Memorandum (EM) [REP7-005].

- To address matters where the ExA considers that a hearing is necessary to inquire orally into matters as part of an examination, typically because they are complex, there is an element of contention or disagreement, or the application of relevant law or policy is not clear.

1.4.16. The ExA held three virtual hearings to enable the examination of the issues raised by the application.

1.4.17. Two ISHs under s91 of the PA2008 were held on the content of the dDCO as follows:

- ISH1, on the morning of 21 April 2021 [EV-008 and EV-011]. During ISH1 there was a discussion about general drafting matters concerning the originally submitted dDCO [APP-045]. That discussion

[4] Rather than the date of 10 September 2021 stated in the published Procedural Decision letter

[5] With 26 August 2021 being reserved as a second day on which to complete the ARSI of the Order Limits should that not have been possible on 25 August

included the consideration of the Applicant's approach to identifying the generating capacity for the proposed solar park; and
- ISH2, on the morning of 30 June 2021 [EV-015 and EV-019], when there was a discussion about, amongst other things:

    - the consistency between the dDCO [REP3-003] and the various versions of the EM submitted prior to ISH2 [REP1-005, REP2-005 and REP3-004];
    - the definition of the generating capacity for the Proposed Development in the dDCO [REP3-003]; and
    - the general drafting for the proposed Articles and Requirements in the dDCO [REP3-003].

1.4.18. ISH1 and ISH2 also included sessions for which the discussions concerned general environmental and policy matters. Those hearings were held as follows:

- ISH1, afternoon of 20 April 2021 [EV-008, EV-009 and EV-010]; and
- ISH2, afternoon of 29 June 2021 [EV-015, EV-017 and EV-018]

1.4.19. ISH1 and ISH2 covered the following topics:

- solar energy generating technology and the generating capacity for the proposed solar arrays and the operational interrelationship between the proposed solar arrays and the BESS;
- the Applicant's consideration of alternatives to the Proposed Development, including location and scale;
- landscape and visual effects, including any implications for the users of footpaths to which the pubic have access;
- identification of any other proposed nearby major developments and the consideration of cumulative and in-combination effects;
- effects on legally protected species, including those subject to European site designations and the age and validity of the ecological surveys;
- the Applicant's proposals for sheep grazing as part of the Proposed Development;
- the effects during the construction and decommissioning phases for the Proposed Development; and
- National and development plan policy.

1.4.20. A virtual OFH was held under s93 of the PA2008 during the morning of 29 June 2021 [EV-016]. IPs owning and occupying the house and commercial premises at Fennswood were provided with an opportunity to be heard on any important and relevant matters they wished to raise.

1.4.21. Within the Examination Timetable 9 and 10 September 2021 were reserved for ISHs and OFHs if required. I found it unnecessary to hold those hearings, with a third round of written questions [PD-013] being issued in their place, in line with the provisions of the Examination Timetable.

1.4.22. The Examination was closed at 11.59pm on 5 October 2021. This was communicated to IPs in my letter of 6 October 2021 [PD-017].

Written Processes

1.4.23. An Examination under the PA2008 is primarily a written process, in which the ExA has regard to both the Application documentation and the written submissions made during the Examination. All of this material is recorded in the Examination Library (Appendix B of this Report) and has been published via the website for this NSIP application. References in this Report to individual documents in the Examination Library are enclosed in square brackets [].

1.4.24. Key written sources are set out further below.

Relevant Representations and notification by Statutory Parties wishing to be treated as Interested Persons

1.4.25. Sixteen relevant representations (RRs) were received by the Planning Inspectorate [RR-001 to RR-016]. One of those RRs was made by Kingston upon Hull City Council (the City Council) [RR-001] commenting that the development would have no effect on the City Council's area. The City Council advised that it did not wish to make any further detailed comments. Public Health England (PHE) in its RR advised that its interest had been addressed by the Applicant in the submitted application documents and that it had no additional comments to make and that it had *"… chosen NOT to register an interest …"* [RR-012]. The Coal Authority (TCA) in submitting it RR [RR-016] confirmed that the Order Limits do not fall within a defined coalfield and that the authority had no detailed comments or observations to make. Accordingly, TCA advised it wished to take no further part in the consideration of the submitted application.

1.4.26. The City Council, PHE and TCA have therefore been treated as public bodies that did not wish to take part in the Examination.

1.4.27. All RRs have been fully considered by the ExA. The issues that they raised are considered in Chapters 4 (planning issues) and/or 7 (dDCO issues) of this Report.

Written Representations and Other Examination Documents

1.4.28. The Applicant and all of the other IPs were provided with opportunities to:

- make written representations (WRs) and comment on the RRs at D1;
- comment on WRs and respond to comments on the RRs (D2);
- summarise their oral submissions at ISH1 and ISH2 in writing (D1 and D4);
- make other written submissions requested by the ExA; and
- comment on documents issued for consultation by the ExA including:

- A Report on Implications for European Sites (RIES) [PD-015] published on 1 September 2021 by D7 (20 September 2021); and
- The ExA's schedule of changes to the Applicant's dDCO published on 1 September 2021 [PD-014] by D7.

1.4.29. All WRs and other Examination documents have been fully considered by the ExA. The issues that they raise are considered, most particularly, in Chapters 4 and 7 of this Report.

Local Impact Report

1.4.30. A Local Impact Report (LIR) is a report made by a local authority, pursuant to s60 of the PA2008, which detail the likely impact of the Proposed Development on an authority's area.

1.4.31. NLC submitted an LIR [REP2-026]. I have taken into consideration the matters raised in NLC's LIR and they are referred to in later Chapters of this Report.

Statements of Common Ground

1.4.32. A SoCG is a statement agreed between the Applicant and one or more IPs, recording matters that are agreed or not agreed about, as the case may be.

1.4.33. By the end of the Examination, the following bodies had concluded SoCGs with the Applicant:

- Anglian Water Service Limited (AWSL) [PDA-017]
- The Environment Agency (The EA) [REP2-019];
- Historic England (HE) [REP4-012];
- Lincolnshire Wildlife Trust [REP6-015];
- National Highways (NH, Highways England as was) [PDA-018];
- Natural England [REP4-013];
- NLC [REP6-014];
- Northern Powergrid (Yorkshire) PLC, otherwise referred to as Northern Powergrid (NPG) in the rest of this Report [REP8-003].

1.4.34. The Applicant's SoCG Overview [APP-111] indicated that it intended to enter into a SoCG with PHE. On that basis the submission of a SoCG to be entered into by PHE[6] and the Applicant was identified under my second procedural decision listed in Annex B to the Rule 8 letter [PD-006]. However, the anticipated SoCG between PHE and the Applicant was not pursued by the latter. That is because in an exchange of correspondence between PHE and the Applicant on 28 April 2021 [Appendix 2 on REP1-013] the former advised that it did not wish to provide any further comments or enter into a SoCG.

[6] Now known as the UK Health Security Agency

1.4.35. I have fully taken into account the signed SoCGs that have been submitted in all relevant Chapters of this Report.

Written Questions

1.4.36. I asked four rounds of written questions.

- First written questions (ExQ1) [PD-007] were issued concurrently with the Rule 8 letter on 27 April 2021.
- Second written questions (ExQ2) [PD-010] were issued on 11 June 2021.
- Third written questions (ExQ3) were issued on 16 August 2021 [PD-013].
- Fourth written questions (ExQ4) were issued on 7 September 2021 [PD-016]. Amongst other things, ExQ4 gave the Applicant and all other IPs the opportunity to comment on what, if any, implications they considered the contents of the consultation drafts for the reviewed energy National Policy Statements published on 6 September 2021 [and appended to REP7-010] might have for the cases they had made about the Proposed Development up until this point in the Examination. The asking of ExQ4 was brought forward from 10 to 7 September to maximise the time available to IPs to comment on the consultation drafts for the reviewed energy National Policy Statements.

1.4.37. The following request for further information and comments under Rule 17 of the EPR was issued on 5 May 2021 [PD-008]. The further information requested from the Applicant sought clarification about:

- what works were intended for land parcels 1/1 and 1/2 [AS-002] and how those works would affect the adopted (public) highway;

- whether the proposed works within land parcels 1/1 and 1/2 affecting the adopted highway could be undertaken without the need for any compulsory acquisition and/or temporary possession powers being sought as part of any made DCO*;* and

- the small parts ("slivers") of the Order Limits referred to as being unregistered in paragraph 4.7 of the EM [REP7-005].

1.4.38. All responses to my written questions and the Rule 17 request have been fully considered and taken into account in all relevant Chapters of this Report.

Requests to Join and Leave the Examination

1.4.39. NPG did not register itself as an IP prior to the PM. Following the PM on 27 April 2021 NPG, in its capacity as a statutory party with apparatus sited within the Order Limits, confirmed that it wished to be considered as an IP and made a request to join in the Examination [REP1-026]. NPG is a statutory party, which was notified of and was entitled to attend the PM under the provisions of s56 of the PA2008. That is because NPG is a

person under s57(2)(a) of the PA2008 that it *"… is interested in the land …"*, as recorded in the Book of Reference [APP-048]. Under the provisions of the Examination Timetable NPG was therefore entitled by D1 (10 May 2021) to give notice of its wish to be considered as an IP. Accordingly, I have accepted NPG's request to become an IP.

1.4.40. Once the Examination had commenced no IPs withdrew from it. I have therefore had regard to all of the RR's that were extant at the beginning of the Examination, as well as to all of the representations that were made during the course of the Examination.

1.5. ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

1.5.1. On 19 December 2018, the Applicant submitted a Scoping Report to the SoSHCLG under Regulation 8 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations) in order to request an opinion about the scope for the content of the ES to accompany an NSIP application for the Proposed Development. The Applicant is deemed to have notified the SoSHCLG under Regulation 8(1)(b) of the EIA Regulations that it proposed to provide an ES in respect of the Project.

1.5.2. On 25 January 2019 the Planning Inspectorate issued a Scoping Opinion on the SoSHCLG's behalf [APP-070]. Therefore, in accordance with Regulation 6(2)(a) of the EIA Regulations, the Proposed Development was determined to be EIA development and the application is accompanied by an ES.

1.5.3. On 1 March 2021 the Applicant provided the Planning Inspectorate with certificates confirming that s56 of the PA2008 and Regulation 16 of the EIA Regulations had been complied with [OD-002].

1.5.4. Consideration has been given to the adequacy of the ES and matters arising from it. The potential environmental effects have been assessed and set out in the ES. The ES includes details of measures proposed to mitigate the likely significant effects identified by the Applicant.

1.5.5. I am content that the ES met the requirements of Schedule 4 of the EIA Regulations and, together with the environmental information provided during the Examination, forms an adequate basis for decision making. I have given consideration to the individual conclusions reached by the Applicant in the ES and report on them in Chapter 4 of this Report.

1.6. HABITATS REGULATIONS ASSESSMENT (HRA)

1.6.1. Under Regulation 5(2) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, where required, an application must be accompanied with sufficient information to enable the Secretary of State for Business, Energy and Industrial Strategy (SoSBEIS) to meet their statutory duties as the competent authority

under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).

1.6.2. For the purposes of the HRA Regulations a No Significant Effects Report (NSER) was submitted with the Application [APP-098]. The NSER was amended during the Examination through the submission of [REP5-015].

1.6.3. Consideration is given to the adequacy of the NSER, associated information and the matters arising from it in Chapter 5 of this Report.

1.6.4. I issued a RIES on 1 September 2021 [PD-015], as set out in the Examination Timetable [PD-006]. The RIES summarised the available environmental information by compiling, documenting and signposting information provided within the application and subsequent information submitted throughout the Examination by both the Applicant and other IPs up to 31 August 2021.

1.7. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

1.7.1. The SoSBEIS's attention is drawn to the existence and/or submission of the following formal undertakings, obligations and/or agreements that the Applicant had entered into with IPs:

- The Applicant has advised that it has entered into an agreement with NPG to facilitate the Proposed Development's connection to the local electricity distribution network, as referred to in the submitted grid connection statement [APP-053]. The Applicant has explained that agreement would enable the Proposed Development to be connected within the Order Limits to the 132kV electricity distribution network operated by NPG. The capacity limit for the agreed connection to the grid being 99.9MW at any given time, as explained in paragraph 4.23.4 of chapter 4 of the ES [REP5-006].

- On 26 August 2021 the Applicant (as the developer for the Proposed Development), the landowners[7] and NLC entered into an agreement under section 106 of the Town and Country Planning Act 1990 (as amended) (the TCPA1990) (the s106 agreement) [REP6-016]. The s106 agreement would obligate the landowners[8] to pay a *"community fund contribution"* of £250,000 to NLC no later than 28 days following the first export of electricity to the *"electricity grid network"*. On receiving the community fund contribution NLC would be responsible for using it with the purpose of improving community facilities within the parishes of Broughton and Appleby.

1.7.2. I have referred to grid connection agreement and the s106 agreement later on this Report.

[7] Including any successors in title of the landowners and the developer
[8] See Schedule 1 of the s106 agreement [REP6-016]

1.8. OTHER CONSENTS

1.8.1. The Application documentation, most particularly [APP-054], and responses to questions raised by the ExA during the Examination have identified the following consents that the Applicant has obtained, must obtain and may need to obtain, in addition to the DCO sought under the PA2008. The latest position on these is recorded below.

- An electricity generation licence granted by the Office of Gas and Electricity Markets, under the Electricity Act 1989, would be required for the operational phase of the Proposed Development.
- Health and safety related consents pursuant to the Health and Safety at Work Act 1974, granted by the Health and Safety Executive, would need to be obtained by the contractor prior to the commencement of the construction works.
- Consent under Section 61 of the Control of Pollution Act 1974 to control construction noise may need to be obtained from NLC by the contractor, a minimum of 28 days in advance of the commencement of any authorised works.
- Temporary road traffic orders and other street works consents under the Road Traffic Regulation Act 1984, the New Roads and Street Works Act 1991, the Traffic Management Act 2004 or s171 of the Highways Act 1980 may need to be obtained from the local highway authority (NLC).
- A land drainage consent under s23 of the Land Drainage Act 1991 was granted by the Lead Local Flood Authority (NLC) on 23 October 2019 concerning works relating to the crossing of a ditch (as an 'Ordinary Water Course') and the installation of a culvert [Appendix 1 in APP-072].

1.8.2. In relation to the outstanding consents recorded above, the ExA has considered the available information bearing on these and, without prejudice to the exercise of discretion by future decision-makers, has concluded that there are no apparent impediments to the implementation of the Proposed Development, should the SoSBEIS be minded to make a DCO.

1.9. STRUCTURE OF THIS REPORT

1.9.1. This Report provides the SoSBEIS with the ExA's findings and conclusions in respect of the application for the Proposed Development under s83 of the PA2008. The structure of this Report is as follows:

- **Chapter 1** introduces the reader to the Application, the processes used to carry out the Examination and compile this Report.
- **Chapter 2** describes the Order Limits and their surroundings, the Proposed Development and the Order Limits' planning history.
- **Chapter 3** records the legal and policy context for the SoSBEIS's decision.
- **Chapter 4** sets out the planning issues that arose from the Application and during the Examination.

- **Chapter 5** considers effects on European Sites and the HRA.
- **Chapter 6** sets out the balance of planning considerations arising from Chapters 4 and 5.
- **Chapter 7** considers the implications of the matters arising from the preceding chapters for the DCO.
- **Chapter 8** summarises all relevant considerations and sets out the ExA's recommendation to the SoSBEIS.

1.9.2. This Report is supported by the following Appendices:

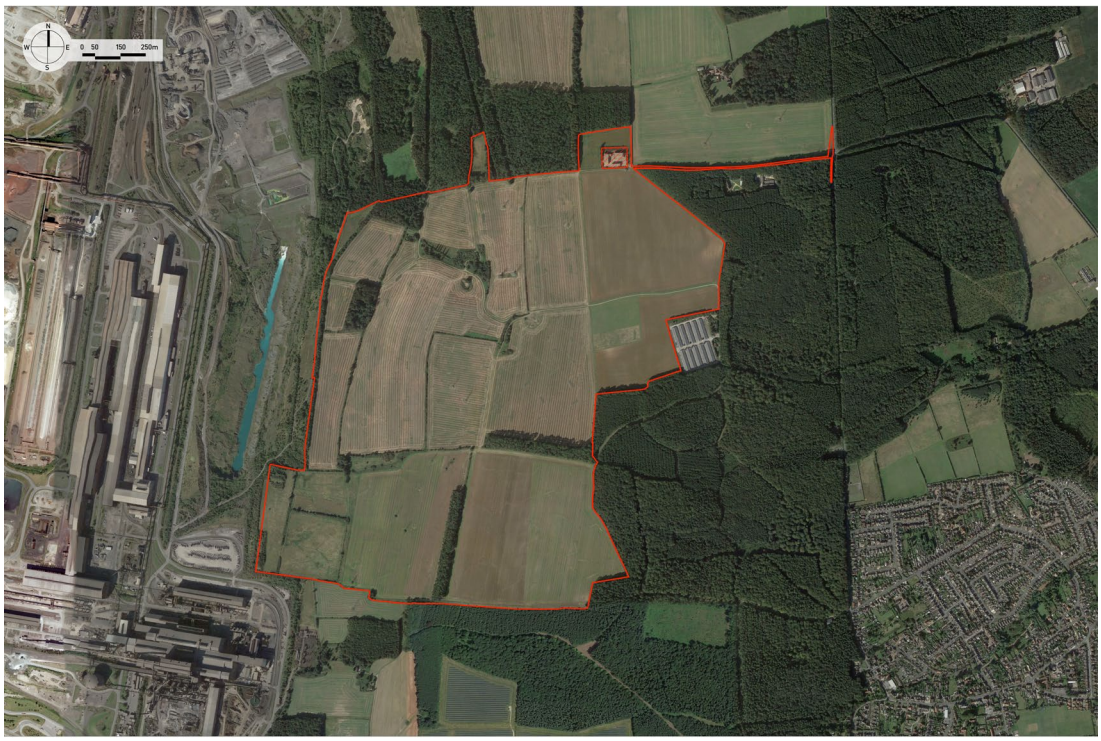
- **Appendix A** – the Examination Events.
- **Appendix B** – the Examination Library.
- **Appendix C** – List of Abbreviations.
- **Appendix D** – the ExA's Recommended DCO (rDCO).

1.9.3. Given that the application and Examination material has been published online, this report does not contain extensive summaries of all the representations although regard has been paid to them in reaching my conclusions. I have considered all important and relevant matters and set out my recommendations to the SoSBEIS against the PA2008 tests.

2. THE ORDER LIMITS AND THE PROPOSAL

2.1. ORDER LIMITS DESCRIPTION AND SURROUNDINGS

Figure 2.1 Extent of Order Limits and context [APP-042]



APP-060] and the extent of the site is shown on the Land Plan [APP-006]. The Order Limits comprise 226 hectares (ha) of land, which for the most part is arable farmland. That farmland is predominantly within agricultural land classification grades 3b and 3a. The Order Limits are located immediately to the east of the extensive Scunthorpe steel works and a little to the north west of the built up area of the village of Broughton. The extent of the Order Limits and their siting relative to the steel works and Broughton are shown on Figure 2.1 above.

2.1.2. The site predominantly comprises fields being used to cultivate cereal and root crops, which are demarcated by a mixture of hedgerows, trees and fencing. There is dense mixed deciduous and coniferous woodland immediately to the north and east of the site, together some woodland to the south. That woodland in part is subject to forestry management and separates the Order Limits from Broughton's residential area.

2.1.3. Vehicular access to the Order Limits is via an east/west farm track, linking the site with the B1207 to the east. A public right of way, definitive footpath 214 (FP214), crosses the Order Limits, essentially providing an east/west route of around 1.6 kilometres (km) (1.0 mile)

through the site[9]. The route of FP214 through the Order Limits is shown in application document [APP-043].

2.1.4. Two runs of pylon mounted 132 kilovolt (kV) distribution network power lines cross the Order Limits. Those power lines follow an essentially north/south orientation. Additionally, there is a single pylon mounted run of 132kV power lines, crossing part of the north eastern section of the Order Limits. The lines of the 132kV power lines within the Order Limits are shown on Plan 1 in Applicant's grid connection statement [APP-053].

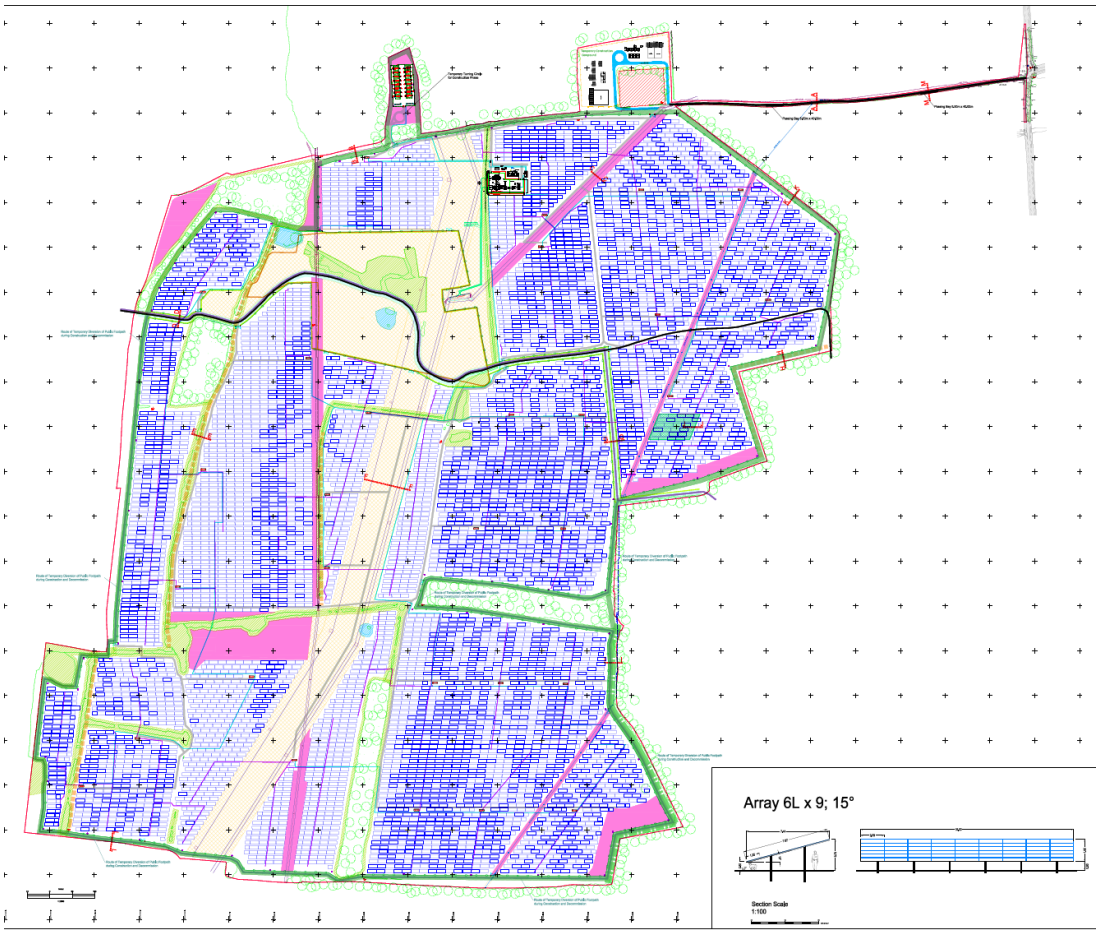
2.2. THE APPLICATION AS MADE

Background

2.2.1. A summary of the application has been provided in Chapter 1 of this Report. Full details of the Proposed Development are set out in Schedule 1 of the draft Development Consent Order (dDCO) [REP7-003] and Chapter 4 of the ES [REP5-006]. The indicative layout for the Proposed Development is shown on the Works Plan [APP-013] and the "Whole Site Plan" [APP-015]. Figure 2.2 below shows the indicative layout for the Proposed Development. That layout is based on a *"candidate design"* involving the installation of 356,670 solar panels, with each panel rated as having a maximum power output of 420 watts (w), as explained by the Applicant in Chapter 4 of the ES [REP5-006] and in Appendix 2 of the Applicant's *"Technical Guide"* [REP4-014]. Under the candidate design, the installed capacity for the proposed solar arrays would be around 150 megawatts (MW) peak (MWp) [paragraph 4.3.3 in REP5-006].

[9] Based on the distance between points A and B provided in APP-043

Figure 2.2 Layout for the Proposed Development [APP-015]



2.2.2. The Applicant's Explanatory Memorandum (EM) [REP7-005] for the purposes of s115 of the Planning Act 2008 (PA2008[10]) differentiates the works forming the Proposed Development as follows:

- Work No. 1 (a) to (l) would amount to a Nationally Significant Infrastructure Project (NSIP) in its own right under s115(1)(a) *"development for development consent is required"* of the PA2008. Work No. 1 would involve the installation of ground mounted photovoltaic solar panels, fixed to racks forming arrays of panels. The solar generating station comprising Work No.1 would have a gross electrical output of over 50MW. Work No. 1 in total would occupy an area of up to around 153ha, with the solar panels occupying around 92.4ha of that land [REP1-008].

- Work No. 2 to No. 7 inclusive constituting *"associated development"* for the purposes of s115(1)(b) of the PA2008. Works No. 2 to No.7 including, amongst other things:

[10] 'Development for which development consent may be granted'

- Work No. 2 – the provision of a battery energy storage system (BESS) of up to 90MW in one of two proposed locations, referred to in the application documentation as either Work No. 2A (occupying 0.529ha) or Work No. 2B (occupying 1.138ha). The alternatives for the installation of the BESS are explained below.

- Work No. 3 - the formation of ecological corridors and internal access tracks, the temporary diversion of public footpath 214 (FP214), the installation of fencing, the provision of an underground connection to the local electricity distribution network, the formation of cable trenches and the establishment of cable circuits. Work No. 3 would occupy an area of up to 60.352ha.

- Work No. 4 – the construction of a 132kV substation building with ancillary equipment and facilities within a self-contained compound. Work No. 4 would occupy an area of 0.636ha.

- Work No.5 – works for the main access track to the Order Limits, including surfacing works and the provision of passing bays. Work No. 5 would occupy an area of 0.783ha.

- Work No. 6 – the creation of a perimeter buffer, including the installation of security fencing, the undertaking of other boundary works, providing a temporary route for FP214 and the undertaking of mitigation planting. Work No. 6 would occupy an area of 7.663ha.

- Work No. 7 – the establishment of a temporary construction and decommissioning compound. Work No. 7 would occupy an area of 2.431ha.

2.2.3. The land areas for each of the Work Numbers listed above have been taken from the plans contained in [REP4-003].

Solar arrays

2.2.4. Based on the candidate design assessed in the ES, the Applicant has predicted that with the installation of 356,670 solar panels, rated at 420 watts peak (wp), annually the Proposed Development would be capable of generating of around 134,530MW hours (MWh) [e-page 36 in REP4-014]. The Applicant has explained in section 8 of [REP4-014] that generating output would be sufficient to service the grid export limit of 99.9MW [paragraph 4.23.4 in REP5-006] that has been agreed with Northern Powergrid (NPG).

2.2.5. The arrays of solar panels would be a static installation and they would therefore not track the sun's path. The solar panels would be mounted on aluminium racks, set out in multiple parallel rows. The rows of panels would have an east/west orientation and would therefore be south

facing. The maximum height of the installed panels would be 3.5 metres (m) and the space between the rows would range between 3.5m and 6.0m (Chapter 4 of the ES [REP5-006]).

2.2.6. Paragraph 4.5.1 of Chapter 4 of the ES [APP-061 and the subsequently revised version REP5-006] states that for the candidate design the total land covered by solar panels would be around 800,000 square metres (sq.m)[11], ie 80ha. At Issue Specific Hearing (ISH) 1 [EV-009] I asked the Applicant whether the solar panel coverage figure of 80ha was correct, given the Order Limits' area of around 226ha and the solar array extent and layout shown on the Works Plan [APP-013] and the Works Detail - Whole Site Plan [APP-015].

2.2.7. In its post ISH1 written submissions the Applicant explained that the reference to around 800,000sq.m (80ha) was an error in Chapter 4 of the ES and that for the candidate design the solar panels would occupy 924,346sq.m (around 92.4ha), representing 40% of the Order Limits [e-page 5 in REP1-008]. The clarification about the coverage for the solar arrays provided in [REP1-008] has corrected the Applicant's typographic or arithmetic error made in Chapter 4 of the ES. Importantly, the error identified by the Applicant does not alter the physical extent for the candidate design and it therefore does not affect the conclusions the Applicant has drawn in later chapters in the ES.

2.2.8. While the revised version of Chapter 4 of the ES [REP5-006] continues to refer the solar arrays occupying 80ha rather than around 92.4ha, I have examined the application on the basis of the solar arrays occupying an area of around 92.4ha.

2.2.9. Various application documents, as originally submitted, referred to sheep being used to graze the grass to be sown beneath the solar arrays. North Lincolnshire Council (NLC) in its Local Impact Report [paragraph 6.5 in REP2-026] drew attention to no sheep grazing taking place at some operational solar farms in its area[12]. This was a matter that I enquired about through the asking of Examination question (ExQ) 2.2.4 [PD-010] and under agenda 3(f) at ISH2 [EV-015 and EV-017]. At ISH2 the Applicant advised that it was not possible for it to categorically commit to the grazing of the grassland to be created as part of the Proposed Development. That is because the Applicant does not have its own flock of sheep and it would therefore be reliant on securing an agreement with a farmer to seasonally graze the Order Limits. The Applicant further advised that if it was not possible to graze the Order Limits, then in the interests of improving their biodiversity value the grassland would be managed through implementing a grass cutting regime.

[11] The area occupied by the solar panels and supporting racking, as opposed to the panels and access tracks between each of the arrays
[12] Raventhorpe Solar Farm and Flixborough Solar Farm, as clarified in NLC's reply to ExQ2.2.2 [REP4-023]

2.2.10. The potential for grass cutting to be used as an alternative to grazing was confirmed in the Applicant's post ISH2 written submissions [REP4-017] and in answering ExQ2.2.4 [e-page 12 in REP4-018]. To reflect the potential for grass cutting rather than grazing to be used to manage the Order Limits the following application documents were amended during the Examination:

- Outline Landscape and Ecological Management Plan [REP4-010];
- Chapter 4 (Development Proposal) of the ES [REP5-006];
- Chapter 6 (Landscape and Visual Impact) of the ES [REP5-008];
- Chapter 7 (Ecology and Nature Conservation) of the ES [REP5-010];
- Chapter 10 (Agricultural Circumstances) of the ES [REP5-012];
- Detailed Landscape Proposals [REP5-014];
- Planning Statement [REP5-017]; and
- Design and Access Statement [REP5-019].

Battery Energy Storage System (BESS)

2.2.11. The proposed BESS has been assessed in the ES as having a candidate storage capacity of 90MW and would occupy an area of between 0.529 ha (Work No. 2A) and 1.138 ha (Work No. 2B) [REP4-003]. As explained in section 8 of the Applicant's Technical Guide [REP4-014] the installation of a BESS would allow for:

- The storage of electricity at times when the amount generated by the proposed solar array was exceeding the grid export limit of 99.9MW and then allow for the electricity stored by the BESS to be discharged and exported to the grid at times when the output from the solar arrays was less than 99.9MW and the demand for electricity warranted that.

- The receipt (importation) of electricity via the grid to charge the BESS and for the subsequent exportation of the stored electricity back to the grid when there was demand for it and the proposed solar arrays were themselves not utilising the full grid connection limit of 99.9MW.

2.2.12. Paragraph 8.8 of the Technical Guide [REP4-014] advises:

"With regard to the charging times for BESS from a PV solar park this will vary depending on the output from the solar park and also the loss in efficiencies across both technologies. For example, it would take up to 1.25 hours to fully charge a 100MW BESS system using a 100MWp PV solar park assuming that the solar park produced a constant 100MWh for at least 1 hour. The time taken to fully charge the 100MW BESS will vary up or down depending on the output above or below the 100MWh from the 100MWp solar park."

2.2.13. With respect to the siting of the BESS, the EM [REP7-005] explains at paragraph 2.11(ii) that the BESS would be sited in one of two possible locations, identified as Work Nos. 2A and 2B on the Works Plan [APP-013]. It is explained in the EM that two alternative locations for the BESS have been identified in response to the potential for solar panel

efficiency to advance enabling fewer panels to be installed as part of Work No. 1. Should fewer solar panels be required to produce the level of electrical output identified by the Applicant, then it would become possible to reduce the number of solar panels to be installed and provide the BESS as Work No. 2B amongst the solar arrays, immediately to the north of the location for the proposed substation [paragraph 2.11(ii) of REP7-005].

2.2.14. Should the BESS be installed pursuant to Work No. 2B then the part of the Oder Limits notated as Work No. 2A would be utilised as an extension to the ecological corridor proposed under Work No.3. Article 3(3) of the dDCO [REP7-003] addresses the provision of the BESS and has been worded to ensure that it would only be possible to construct one BESS, either as Work No. 2A or 2B under the provisions of any made DCO.

2.2.15. The definition for associated development is stated in s115 of the PA2008 and that is supplemented by the "Guidance on associated development applications for major infrastructure projects"[13]. Having regard to the provisions of s115 of the PA2008 and the guidance concerning associated development, I am content that the proposed BESS can be considered as being associated development. That is because the proposed associated development would have a direct relationship with and be subordinate to the operation of the principal development.

Grid connection

2.2.16. The Proposed Development would be connected to the 132kV distribution network operated by NPG via an existing underground cable within the Order Limits [paragraph 4.8.2 in REP5-006]. That underground cable in turn linking with the above ground 132kV lines within the Order Limits [Plan 1 in APP-053].

Construction arrangements

2.2.17. The construction works for the Proposed Development would be served by a temporary main compound, Work No. 7 on the Works Plan [REP-013]. The compound would be located at the northern end of the Order Limits and it would be accessed via an existing farm track connecting with the B1207. The compound would comprise, amongst other things, portable buildings providing office and welfare facilities, parking for construction workers vehicles, a temporary hardstanding, a secure compound for storage and wheel washing facilities.

2.2.18. It is proposed that the construction works would be undertaken between 07:00 and 18:00 hours Monday to Friday and between 08:00 and 13:30 hours on Saturdays. The proposed exceptions to those working times would concern the undertaking of emergency works and works that would not cause noise that would be audible at the boundaries of the

[13] Department for Communities and Local Government April 2013

Order Limits [paragraph 5.3 in REP6-006]. The proposed construction hours and the exceptions to them would be subject to Requirement (R) 11 in the dDCO [REP7-003].

2.2.19. It is intended that heavy goods vehicle (HGV) construction traffic would route via the M180, A15, A18, B1207 and B1208, as explained in section 3 of the Applicant's outline Construction Traffic Management Plan (oCTMP) [APP-105] and section 4.16 in Chapter 4 of the ES [REP5-006]. The route for HGVs to get to and from the construction site are shown on Figure 3.1 in the oCTMP and the use of the M180, A15, A18, B1207 and B1208 would mean that HGVs would not be permitted to travel through Broughton's built up area. R9 of the dDCO [REP7-003] would require a CTMP, based on what is stated in the oCTMP, to be submitted to and approved by NLC prior to any phase of the works being commenced.

2.2.20. To facilitate the construction works it would be necessary for FP214 to be temporarily diverted. The existing route of PF214 as it crosses through the Order Limits and the route of its temporary diversion are shown on the plan included in [APP-043]. FP214's diversionary route would largely follow the eastern, southern and western boundaries of the Order Limits and it would be around 4.5km long [paragraph 4.2 in REP7-010], compared with 1.55km of the existing permanent route.

2.2.21. With respect to the anticipated duration of the construction phase, at ISH1 I sought clarification from the Applicant as to which of eleven months (as referred to in the majority of the application documents) or up to two years (as referred to in some of the application documents) was correct. The Applicant at ISH1 and in its post hearing written submission [e-page 11 in REP1-008] confirmed that in the event of the solar arrays and the BESS being constructed concurrently in a single phase then the construction period is expected to be eleven months. Should the BESS be constructed separately from the rest of the Proposed Development then its construction period would be approximately three months, which would be additional to the eleven months to construct the solar arrays and all of the other associated development.

Generating period and Decommissioning

2.2.22. The application has been submitted on the basis that the Proposed Development would have an operational life of 35 years. In that regard R3 in the dDCO [REP7-003] would compel the cessation of electricity generation following the thirty-fifth anniversary of electricity having first being exported from the Order Limits. Thereafter the Proposed Development would be decommissioned and the Order Limits would be restored, in a accordance with a decommissioning and site restoration scheme to be submitted for NLC's approval pursuant to R4 of the dDCO.

2.2.23. Under R4 of the dDCO [REP7-003] there would be a requirement for the majority of the Proposed Development to be decommissioned and the Order Limits restored. The Applicant originally proposed that the substation would be retained following the decommissioning of the rest of the Proposed Development, with R4 in the original dDCO [APP-045] being

worded to that effect. The Applicant explained in section 4.18 of the original version of Chapter 4 of the ES [APP-061] that the substation would be retained until such time as NPG decommissioned it.

2.2.24. At ISH1 [EV-008 and EV-011] and through the asking ExQ1.6.4 [PD-007], I requested the Applicant and NPG to explain under what circumstances might it be necessary for the substation to be retained. In response to those oral and written questions the Applicant advised that the substation would only be retained if at the time of the Proposed Development's decommissioning another project had already made a connection to the substation or was scheduled to make such a connection [e-page 11 in REP1-008, e-page 7 in REP2-010 and e-page 23 in REP2-022]. To reflect that potential future need for the substation, the Applicant amended the wording of R4 in the version of the dDCO submitted at Examination Deadline (D) 1 [REP1-003], to require the substation's removal unless its operator had confirmed a need for its retention.

2.2.25. The Applicant's outline *"Decommissioning Strategy"* was amended at D2 [REP2-010] to reflect the revisions that had been made to the drafting of R4 in the version of the dDCO submitted at D1 [REP1-003]. The amendments that were made to R4 in the dDCO and the Decommissioning Strategy at D1 and D2 have been retained in the finally submitted versions of the documents, respectively [REP7-003] and [REP6-008].

2.3. THE APPLICATION AS EXAMINED AND AT THE CLOSE OF THE EXAMINATION

2.3.1. Following the application's submission, during the Examination no change requests to alter the design of the Proposed Development were made by the Applicant.

2.3.2. However, during the course of the Examination a number of amendments were made to the originally submitted application documents. The most up-to-date versions of the particularly affected documents, which have taken account of relevant issues raised in: the Relevant Representations; Written Representations; written questions and responses to them; and oral submissions made at ISH1, ISH2 and Open Floor Hearing 1, are:

- dDCO [REP7-003];
- Explanatory Memorandum [REP7-005];
- Chapter 4 of the ES (Development Proposal) [REP5-006];
- Chapter 6 (Landscape and Visual Impact) of the ES [REP5-008];
- Chapter 7 (Ecology and Nature Conservation) of the ES [REP5-010];
- Chapter 10 (Agricultural Circumstances) of the ES [REP5-012];
- Chapter 11 (Socio Economic Issues) of the ES [PDA-013];
- Transport Statement [AS-003]
- Air Quality and Carbon Assessment [REP6-010];
- Noise Impact Assessment [REP2-014];
- Outline Construction Environmental Management Plan [REP6-006];
- Outline Decommissioning Strategy [REP6-008];

- Outline Landscape and Ecological Management Plan [REP6-012];
- Planning Statement [REP5-017]; and
- Design and Access Statement [REP5-019].

2.3.3. The ExA has given to consideration as to whether the submission of these amended documents amounts to a change to the application sufficient to require it to be considered as a new application in Chapter 3 of this Report.

2.4. RELEVANT PLANNING HISTORY

2.4.1. The Order Limits mainly comprise arable farmland and because of that there is no planning history under either the PA2008 or Town and Country Planning Act 1990 for the land included within the Order Limits. There is, however, an oil well originally sunk in 1984 and which is now redundant [paragraph 2.5 of REP5-017]. The land occupied by the oil well is shown as being excluded from the Order Limits [APP-006] and immediately adjoins the construction compound for the Proposed Development.

3. LEGAL AND POLICY CONTEXT

3.1. THE PLANNING ACT 2008 (PA2008)

3.1.1. The application includes development that falls within the definition for energy generating stations set out in s15(2) of the PA2008.

3.1.2. The PA2008 provides for two different decision-making procedures for Nationally Significant Infrastructure Project (NSIP) applications where a relevant National Policy Statement (NPS) has been designated and has effect (s104) and where there is no designated NPS or there is a designated NPS, but it does not have effect (s105). However, under the provisions of s105 of the PA2008 policy included in an NPS that does not have effect, can nevertheless be considered amongst the matters that are considered to be important and relevant for the purposes of decision making.

3.1.3. The Proposed Development would primarily involve the provision of solar arrays for generating electricity. However, solar generation has been excluded from the scope (paragraph 1.4.5) of the Overarching National Policy Statement for Energy (EN-1) (NPS EN-1) and the coverage (section 1.8) of the National Policy Statement for Renewable Energy Infrastructure (EN-3) (NPS EN-3). Accordingly, there is no designated NPS that has effect with respect to the consideration of the proposed solar arrays.

3.1.4. To facilitate the export of the generated electricity to the grid the Proposed Development includes the installation of a substation, which would be associated development for the purposes of section (s)115 of the PA2008. The provision of a substation as associated development is something that does come within the scope of NPS EN-1 and the coverage of the National Policy Statement for Electricity Networks Infrastructure (EN-5) (NPS EN-5).

3.1.5. The Proposed Development would also include a battery energy storage system (BESS) with a capacity of 90 megawatts (MW). Further to The Infrastructure Planning (Electricity Storage Facilities) Order 2020 coming into force on 2 December 2020, BESSs no longer constitute NSIPs for the purposes of s14 and s15 of the PA2008. However, the proposed BESS has been identified by the Applicant as being 'associated development' for the purposes of the PA2008 and therefore forms part of the Proposed Development for which a Development Consent Order (DCO) is being sought. BESSs do not come within the scope/coverage of suite of designated energy NPSs. However, as BESSs store electricity to address the intermittency of renewable energy generation, the policy stated in NPS EN-1 is capable of being treated as a matter that is important and relevant under the provisions of s105 of the PA2008 when consideration is being given to the proposed BESS.

3.1.6. Given the position with respect to NPS EN-1, NPS EN-3 and NPS EN-5 briefly explained above and elaborated on in section 3.2 below, the

Examination for this application has been conducted under s105 of the PA2008, applicable to decisions in cases where NPSs do not have effect.

3.1.7. In deciding this application s105(2) of the PA2008 requires the Secretary of State for Business, Energy and Industrial Strategy (SoSBEIS) to have regard to:

a. any local impact report (within the meaning given by section 60(3)) submitted to the SoS before the deadline specified in a notice under section 60(2);
b. any matters prescribed in relation to development of the description to which the application relates; and
c. any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision.

3.1.8. Although NPS EN-1 does not have direct effect in relation to the decision making for this application, I have identified aspects of that NPS, below and in subsequent chapters of my Report, which I consider to be important and relevant to the determination of this Application.

3.2. NATIONAL POLICY STATEMENTS

Background

3.2.1. NPSs set out Government policy for the different types of NSIPs. There are six NPSs that concern the generation and distribution of energy, NPS EN-1 to NPS EN-6, which were designated by a predecessor of the SoSBEIS in July 2011. Common themes underpinning the policy set out in the energy NPS are: meeting the need for additional energy generating capacity; and a move to low carbon sources of energy generation to address the effects of climate change.

3.2.2. The six energy NPSs are intended to provide the primary policy for the examination and determination of energy NSIP applications. However, the energy NPSs do not provide coverage for all of the currently available generating technologies. Solar energy generation being a technology that is excluded from the coverage/scope of the energy NPSs Appraisal of Sustainability. Accordingly, for reasons explained below the designated NPSs, most particularly NPS EN-1 and NPS EN-5 of themselves have only formed part of the policy context for the Examination of the submitted application, with the National Planning Policy Framework 2021 and the associated Planning Practice Guidance and the adopted development plan policies also having been taken account of as important and relevant matters.

NPS EN-1 – Overarching National Policy Statement for Energy

3.2.3. NPS EN-1 sets out the United Kingdom (UK) Government's commitment to increasing renewable generation capacity and recognises that, in the short to medium term, much of the new capacity is likely to come from onshore and offshore wind. In paragraph 3.3.11 of NPS EN-1 there is a recognition of the intermittent generating capability of some renewable

technologies such as wind, solar and tidal. Paragraph 3.3.12 states "*…there are a number of other technologies which can be used to compensate for the intermittency of renewable generation, such as electricity storage"* and that *"these technologies will play important roles in a low carbon electricity system"*. In paragraph 3.3.31 it is explained that *"… electrical energy storage allows energy production to be decoupled from its supply, and provides a contribution to meeting peak demand …"*.

3.2.4. NPS EN-1 sets out overarching policy, including good design principles, and has effect for decision making, in combination with the five technology specific NPS, NPS EN-2 to NPS EN-6, for energy *"… developments that fall within the scope of the NPSs"* (paragraph 1.1.1 of NPS EN-1). Under Section 104(2)(a) of PA2008 the SoSBEIS must have regard to any NPS which has effect in relation to the development to which an application relates.

3.2.5. However, paragraph 1.4.5 of NPS EN-1 states *"The generation of electricity from renewable sources other than wind, biomass or waste is not within the scope of this NPS"*. The Proposed Development, as a solar generating station, is expressly excluded from NPS EN-1's scope.

3.2.6. I am, therefore, of the view that to varying degrees parts of NPS EN-1 are capable of being considered as important and relevant for the purposes of the determination of this application under s105 of the PA2008. I have referred to the parts of NPS EN-1 that I consider are important and relevant to the determination of this application in section 4.4 below.

NPS EN-3 - National Policy Statement for Renewable Energy Infrastructure

3.2.7. NPS EN-3 specifically addresses renewable energy generation. However, paragraph 1.8.1 explains that NPS EN-3 only covers energy from: biomass; offshore wind; and onshore wind. Paragraph 1.8.2 of NPS EN-3 goes onto state *"This NPS does not cover other types of renewable energy generation that are not at present technically viable over 50MW onshore …".*

3.2.8. Solar energy generation is a renewable generating technology that is expressly excluded from NPS EN-3's coverage. Given that I consider the policies contained in NPS EN-3 neither have effect nor should be considered as being important or relevant for to the determination of this application.

NPS EN5 - National Policy Statement for Electricity Networks

3.2.9. As explained in section 1.8 of NPS EN-5, this NPS covers:

- the long distance transmission system (400 kilovolts (kV) and 275kV lines) and the lower voltage distribution system (132kV to 230 volt lines from transmission substations to the end-user); and

- associated infrastructure, for example substations and converter stations that facilitate the conversion between direct and alternating current.

3.2.10. A new substation forms part of the Proposed Development. This element of the Proposed Development would be associated development for the purposes of s115 of the PA2008, being central to how it is proposed electricity would be exported or imported via the 132kV distribution system. The proposed substation would be located amongst the proposed solar arrays and its operation would be entirely incidental to that of the proposed solar generating station.

3.2.11. The Proposed Development's point of connection to the grid would be via an existing 132kV underground cable within the Order Limits [APP-053]. There would therefore be no substantive installation of new lower voltage electricity lines associated with the Proposed Development.

3.2.12. The Proposed Development's associated development to a very limited extent therefore comes within NPS EN-5's coverage.

Matters raised in the Application and during the Examination about the NPSs

3.2.13. The Applicant's consideration of the NPSs is set out in sections 4 and 5 of its Planning Statement [REP5-017]. In reviewing the policy contained in NPS EN-1 the Applicant has highlighted the Government's commitment to reducing greenhouse gas emissions and the importance of maintaining and securing reliable energy supplies, with there being a need for all types of energy infrastructure covered by NPS EN-1. Within the Applicant's planning statement, it is argued that for decision making *"substantial weight"* should be given to the contribution projects would make towards satisfying the need for energy infrastructure [paragraphs 4.14 and 4.16 of REP5-017].

3.2.14. In [REP5-017] the Applicant has also drawn attention to the support for renewable energy generation stated in NPS EN-1 as part of tackling climate change and reducing carbon emissions. The Applicant, in particular, having drawn attention to the *"… presumption in favour of granting consent to applications for energy NSIPs …"* stated in paragraph 4.1.2 of NPS EN-1 [paragraphs 4.21, 4.22 and 6.3 in REP5-017]. In paragraphs 4.33 and 5.16 of the Planning Statement, the Applicant has acknowledged that only certain types of renewable energy generation are covered by NPS EN-3, with solar generation being an excluded technology. Notwithstanding that the Applicant has submitted that it considers the Proposed Development would *"… comply in principle …"* with the policy stated in NPS EN-3 because *"… it will contribute to the Government's objective for transition to a low carbon economy and increasing the energy generation from large scale renewable energy infrastructure"* [paragraph 5.16 of REP5-017].

3.2.15. In paragraph 5.15 of the Planning Statement [REP5-017] the Applicant has commented:

"For renewables, EN-1 is clear that there is a need for these types of infrastructure and that the scale and urgency ensure that there must be no upper limits on capacity. Decision makers must give substantial weight to the contribution NSIP projects will make towards satisfying this need."

3.2.16. North Lincolnshire Council (NLC) in section 2 of its Local Impact Report (LIR) [REP2-026] has referred to there being no NPS coverage for solar energy and battery storage. NLC has submitted that NPS EN-3 *"… has little relevance to the determination of this application"*. [paragraph 2.2.7 of REP2-026]. In the LIR NLC has commented:

"NPS EN-1 sets out the Government's energy policy, and explains the need for new energy infrastructure and instructs the Planning Inspectorate on how to assess the impacts of energy infrastructure development in general. It sets out the urgency for new energy infrastructure and provides that the Secretary of State should start with a presumption in favour of granting a Development Consent Order (DCO) for energy Nationally Significant Infrastructure Projects unless any more specific and relevant policies set out within the NPS's clearly indicate that consent should be refused." [paragraph 2.2.3 of REP2-026]

3.2.17. Referring to NPS EN-1 NLC has further commented:

"As an overarching NPS, EN-1 is a very general document, which delegates most specific advice to 5 technology specific NPS's (not including solar or battery storage). However, EN-1 does set the stage for the promotion of low carbon energy production and a reduction in greenhouse gas emissions. To that extent EN-1 does have relevance and is supportive of the principle behind this application". [paragraph 2.2.4 of REP2-026]

3.2.18. During Issue Specific Hearing (ISH) 2 [agenda item 4(a) EV-015 and EV-018] I asked the Applicant whether the reference in its Planning Statement to it being *"clear"* that the SoSBEIS in their decision making "… *must give substantial weight …"* [paragraph 5.15 of REP5-017] to the contribution the Proposed Development would make towards satisfying the need for renewable energy infrastructure was a correct interpretation of what is stated in NPS EN-1. That question being set within the context of solar generating stations being excluded from NPS EN-1's scope. The Applicant accepted that in determining this application there would be no compulsion upon the SoSBEIS to apply substantial weight to any contribution the Proposed Development would make towards satisfying the need for the energy infrastructure. That being because s105, as opposed to s104 of the PA2008, applies to the decision to be made by the SoSBEIS.

3.2.19. At ISH2 the Applicant went onto to comment that the provisions of NPS EN-1 should be looked upon as being important and relevant to the SoSBEIS's decision making and that substantial weight should therefore be attached to the contribution this NSIP would make towards satisfying the need for renewable energy infrastructure. That explanation is

elaborated upon in the Applicant's post ISH2 written submissions [e-pages 6 to 8 in REP4-017]. In those written submissions the Applicant has drawn attention to how the SoSBEIS approached this matter when determining the Cleve Hill application, namely attaching substantial weight to the contribution that NSIP would make to meeting the need for additional renewable energy generation [e-pages 619 to 658 in REP2-022].

3.2.20. During ISH2 I also asked the Applicant whether the *"… presumption in favour of granting consent to applications for energy NSIPs"* referred to in paragraph 4.1.2 of NPS EN-1 was applicable in this instance. The Applicant accepted that the aforementioned presumption should not apply to the SoSBEIS's decision making [EV-018].

3.2.21. At ISH2 I also asked the Applicant and NLC whether any regard should be paid to the policy stated in NPS EN-3, given solar generation is not covered by that NPS. The Applicant commented that EN-3 was not material and NLC expressed the same view [EV-018].

Conclusions on the energy NPSs

3.2.22. Solar electricity generation is neither within the scope of NPS EN-1 nor the coverage for NPS EN-3. Given that, I consider NPS EN-1 and NPS EN-3 do not have effect under s104 of the PA2008 with respect to the consideration of the proposed solar arrays and the majority of the proposed associated development. However, the substation, as associated development forming part of the Proposed Development, does come within NPS EN-1's scope and the coverage for NPS EN-5. The installation of the proposed substation would, however, only be necessary to facilitate the operation of the solar arrays and the BESS and would otherwise not be required. I therefore consider that the substation's installation would be no more than an incidental element of the Proposed Development.

3.2.23. In this instance, I consider that NPS EN-1 is "important and relevant" to the determination of all aspects of the application, under s105 other than the proposed substation, insofar as:

- the Proposed Development is a generating station with a capacity of more than 50MW and the policies in NPS EN-1 have been formulated specifically for generating stations and energy infrastructure of this scale; and

- NPS EN-1 contains paragraphs that emphasise the general national need for electricity and associated infrastructure, including electricity storage, and its fifth part provides guidance for the consideration of a generic range of impacts for energy NSIPs that cover the breadth of planning matters typically taken account of in the consideration of new development of whatever type or scale.

3.2.24. With respect to the consideration of the proposed substation, the SoSBEIS must have regard to NPS EN-1 and NPS EN-5. However, given

the incidental nature of the substation relative to the totality of the Proposed Development, whether that aspect of this NSIP would or would not be in conformity with NPS EN-1 and NPS EN-5, would not be determinative for the SoSBEIS's decision making in this instance.

3.2.25. As solar generation has been expressly excluded from the infrastructure covered by NPS EN-3, I consider NPS EN-3 should not be treated as being important and relevant to the SoSBEIS's decision making.

3.2.26. I therefore consider that the submitted application falls to be decided under s105 of the PA2008. Under s105 the SoSBEIS must have regard to NLC's LIR (s105(2)(a)) and *"any other matters which the Secretary of State thinks are both important and relevant"* (s105(2)(c)) to their decision.

3.2.27. In Chapter 4 below I have identified the policies in NPS EN-1 and NPS EN-5 that I consider are important and relevant to the decision to be made by the SoSBEIS. In reporting on each of the planning issues in Chapter 4 below, I have reached conclusions on conformity with the policies in NPS EN-1 and NPS EN-5 that are important and relevant.

3.3. UNITED KINGDOM (UK) REGULATIONS AND POLICY DERIVING FROM EUROPEAN LAW

European Union (EU) Withdrawal

3.3.1. The UK left the European Union (EU) as a member state on 31 January 2020, with the transition period ending on 31 December 2020. EU derived domestic legislation, as it has effect in domestic law immediately before exit day, continues to have effect in domestic law on and after exit day as retained law, unless it has been specifically superseded.

3.3.2. This report has been prepared on the basis of the retained law and references in it to European terms such as 'Habitats' have generally been retained for consistency with the Examination documents. However, where terminology has changed, for example 'national sites network' (NSN) rather than 'Natura 2000 network', the amended terminology will be used.

3.3.3. As it is possible that there may be changes in legislation between the writing of this report and the SoSBEIS's decision, it will be for the SoSBEIS to be satisfied as to the legislative position when this application is determined.

The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations)

3.3.4. The EIA Regulations provide the legislative framework for the environmental impact assessment (EIA) of the Proposed Development. The EIA Regulations originate from EU Council Directive 2011/92/EU on

the assessment of the effects of certain public and private projects on the environment. These regulations define the procedure by which information about the environmental effects for projects is collated and then evaluated by the relevant decision maker, as part of the decision making process.

3.3.5. The Proposed Development falls within Schedule 2 paragraph 3(a) of the EIA Regulations. The scale and nature of the Proposed Development may have the potential to give rise to significant effects on the environment and it is considered to be EIA development and an Environmental Statement (ES) has therefore been submitted. The documents comprising the originally submitted ES and the revisions made to some of them are listed in the Examination Library (Appendix B of this Report).

The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations)

3.3.6. The Habitats Regulations and The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 govern the assessment process that must be undertaken with respect to the Proposed Development's implications for NSN sites and Ramsar sites[14]. That assessment process is commonly referred to as a Habitats Regulations Assessment (HRA).

3.3.7. NSN sites are European sites, which include Special Areas of Conservation (SACs) and Special Protection Areas (SPAs), which no longer form part of the EU's Natura 2000 ecological network.

3.3.8. The Habitats Regulations originate in part from:

- EU Council Directive 2009/147/EC on the conservation of wild birds (Birds Directive), which is a nature conservation measure for the protection of all wild bird species naturally occurring in the EU. The Directive places great emphasis on the protection of habitats for endangered as well as migratory species. It requires the classification of areas as SPAs comprising all the most suitable territories for these species.
- EU Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive) is a nature conservation measure. Habitat types requiring designation as SACs are listed in Annex I of the Habitats Directive. Animal and plant species of interest whose conservation requires the designation of SACs are listed in Annex II. Annex IV lists animal and plants species of interest in need of legal protection. All species listed in these annexes are identified as European protected species.

[14] Sites designated under the Ramsar Convention on Wetlands of International Importance

3.3.9. The SoSBEIS as the decision maker in this instance is the competent authority for the purposes of the HRA.

3.3.10. In Chapter 5 below, I have provided the Examining Authority's (ExA) findings and conclusions in relation to the Habitats Regulations.

The Water Framework Directive (WFD)

3.3.11. The WFD is transposed into UK law in England and Wales through The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017. The WFD establishes a framework for water policy and managing the quality of receiving waters. Amongst other objectives, the WFD seeks to prevent the deterioration of surface water bodies, groundwater bodies and their ecosystems and improve the quality of surface water and groundwater bodies by progressively reducing pollution and by restoration.

The Air Quality Directive (AQD)

3.3.12. European Council Directive 2008/50/EC on ambient air quality and cleaner air for Europe (the Air Quality Directive (AQD)) came into force in June 2008. The AQA requires EU member states to assess ambient air quality with respect to sulphur dioxide, nitrogen dioxide, mono-nitrogen oxides, particulate matter (PM_{10} and $PM_{2.5}$), lead, benzene, carbon monoxide and ozone. The AQD aims to protect human health and the environment by avoiding, reducing or preventing harmful concentrations of air pollutants. The AQD sets legally binding concentration based limit values (LVs) as well as target values to be achieved for the main air pollutants and establishes control actions where those values are exceeded. The AQD is transposed into UK legislation via The Air Quality Standards Regulations 2010.

3.3.13. The UK Air Quality Strategy establishes the UK's framework for air quality improvements[15]. The UK Air Quality Strategy establishes a long-term vision for improving air quality in the UK and offers options to reduce the risk to health and the environment from air pollution. Individual plans prepared beneath its framework provide more detailed actions to address LV exceedances for individual pollutants. In turn, these plans set the framework for action in specific local settings where LV exceedances are found, including the designation of Clean Air Zones and more localised Air Quality Management Areas (AQMA). AQMAs being declared by local authorities.

3.3.14. The Order Limits are located in an AQMA[16] that has been declared by NLC for the presence of PM_{10} associated with the operation of the nearby

[15] The Air Quality Strategy for England, Scotland, Wales and Northern Ireland (DEFRA, 2007)
[16] The North Lincolnshire Borough Council Air Quality Management Area (NO.2) Order 2018

Scunthorpe steel works. The extent of the AQMA is shown in [REP4-030] and [REP4-031].

3.4. OTHER LEGAL PROVISIONS

Control of Pollution Act 1974

3.4.1. The Control of Pollution Act 1974 (CPA1974) provides the main legislation regarding demolition and construction site noise and vibration. If noise complaints are received, notices under s60 of the CPA1974 can be issued by local authorities with instructions to cease work until specific conditions to reduce noise have been adopted. S61 of the CPA1974 provides a means for applying to local authorities for prior consent to carry out noise generating construction activities. Once prior consent has been agreed under s61, s60 notices cannot be served if s61 consent conditions are being adhered to. This legislation requires Best Practicable Means to be applied to the control of construction noise.

The Wildlife and Countryside Act 1981

3.4.2. The Wildlife and Countryside Act 1981 (WACA1981) is the primary legislation for protecting certain habitats and species in the UK. It provides for and protects wildlife, nature conservation, countryside protection, National Parks and Public Rights of Way (PRoWs). If a species protected under the WACA1981 is likely to be affected by a development, a protected species licence will be required from Natural England. The WACA1981 is relevant to the submitted application because there is a PRoW crossing the Order Limits and some protected species are also present.

Environmental Protection Act 1990

3.4.3. S79(1) of the Environmental Protection Act 1990 identifies a number of matters which are considered to be statutory nuisance. This is discussed further in section 7.6 of this Report.

The Countryside and Rights of Way Act 2000

3.4.4. The Countryside and Rights of Way Act 2000 (as amended) includes provisions concerning PRoWs and access to land. This legislation is relevant because a definitive public footpath crosses the Order Limits.

Natural Environment and Rural Communities Act 2006

3.4.5. The Natural Environment and Rural Communities Act 2006 (NERCA2006) makes provisions for bodies concerned with the natural environment and rural communities. It includes a duty that every public body must have regard to the conservation of biodiversity in exercising its functions, so far as is consistent with the proper exercising of those functions. The ExA

has had regard to NERCA2006 and biodiversity in preparing this Report.

The UK Biodiversity Action Plan

3.4.6. Priority habitats and species are listed in the UK Biodiversity Action Plan. The plan is relevant to the Application in view of the biodiversity and ecological considerations covered in Chapters 4 and 5 of this Report.

The Equalities Act 2010

3.4.7. The Equalities Act 2010 established a duty (the public sector equality duty (PSED)) to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. The PSED is applicable to the ExA in the conduct of this Examination and reporting, and to the SoSBEIS in decision-making.

Climate Change

3.4.8. The Climate Change Act 2008 (CCA2008) has established statutory climate change projections and carbon budgets. The CCA2008 originally set a reduction target in carbon emissions of 80% (from 1990 levels) by 2050. That target was amended to 100% by The Climate Change Act 2008 (2050 Target Amendment) Order 2019. This is a matter I consider further in Chapter 4 below.

Other relevant legislation

3.4.9. The following legislation contains relevant provisions that must be met and to which I have had regard:

- The Town and Country Planning Act 1990 (as amended) (TCPA1990);
- Protection of Badgers Act 1992; and
- The Hedgerow Regulations 1997.

3.5. MADE DEVELOPMENT CONSENT ORDERS

3.5.1. A list of the made DCOs that the Applicant has taken account of as precedents, as referred to in its Explanatory Memorandum [REP7-005], is provided in Chapter 7 of this Report.

3.6. TRANSBOUNDARY EFFECTS

3.6.1. Under Regulation 32 of the EIA Regulations a screening was undertaken on 5 January 2021 for the effects of the Proposed Development, either alone or cumulatively, on the environment in any European Economic Area States (EEASs) [OD-004]. That screening concluded that the Proposed Development would be unlikely to have a significant effect either alone or cumulatively on the environment in any EEASs.

3.6.2. I consider that no issues have arisen during the Examination indicating that the Proposed Development, if consented, would, have a significant

effect either alone or cumulatively on the environment in any EEASs. I am therefore content that the duties under Regulation 32 of the EIA Regulations have been discharged.

3.7. OTHER RELEVANT POLICY STATEMENTS

3.7.1. In addition to the extant suite of energy NPSs, the National Planning Policy Framework of 2021, the Planning Practice Guidance and the development plan policies referred to elsewhere in my Report, the Applicant in its Planning Statement [REP5-017] has also referred to the following policy documents:

- The UK Renewable Energy Strategy, published by the Department of Energy and Climate Change in 2009;
- Energy Security Strategy, published by the Department of Energy and Climate Change in 2012; and
- Clean Growth Strategy, published by the Department for Business, Energy and Industrial Strategy in 2017.

3.7.2. Prior to the consultation on the review of the energy NPSs referred to in section 3.11 below, the Applicant through my asking of third round Examination question 3.1.3 (ExQ3.1.3) [PD-013] undertook a review of the non-planning background documents[17] it had relied upon up to that point in the Examination and submitted an updating note drawing upon the most up to date statistical data and emerging policy relating to the decarbonisation and expansion of electricity generation. I requested the Applicant undertake that review because some of the background documents, including statistical references, had become somewhat dated in the period since the application's submission, not least because of the Government's publication of the Energy White Paper (December 2020) just post-dated the application's submission. The Applicant's response to ExQ3.1.3 is contained in [REP6-020], with the related appendices being in [REP6-021]. The Applicant has referred to the following policy statements in response to ExQ3.1.3:

- Energy White Paper Powering our Net Zero Future, published by the Government in December 2020;
- The UK's Integrated National Energy and Climate Plan, published by the Department for Business, Energy and Industrial Strategy in January 2020;
- The Ten Point Plan for a Green Industrial Revolution, published in November 2020;
- National Infrastructure Plan, published in December 2014
- National Infrastructure Strategy: Fairer, faster, greener, published in November 2020

3.7.3. The Government's publication of consultation drafts for reviewed versions of NPS EN-1 and EN-3 on 6 September 2021 post-dated the Applicant's

[17] Policy and other energy sector documents and statistical releases

submission of [REP6-020]. That sequence of events has meant that the contents of REP6-020 are now less informative than they might otherwise have been. Accordingly, in considering the planning issues for the Proposed Development and reporting upon them in Chapter 4 below, I have placed greater reliance on the contents of the consultation drafts for the reviewed versions of NPS EN-1 and NPS EN-3 than the submissions made by the Applicant in REP6-020.

3.8. NATIONAL PLANNING POLICY FRAMEWORK (NPPF) AND PLANNING PRACTICE GUIDANCE (PPG)

3.8.1. The most up to date version of the NPPF was published mid Examination on 21 July 2021[18] and hereafter all references to the NPPF relate to the 2021 version. The NPPF sets out the Government's planning policies for England with respect to the making of Development Plans and the deciding of planning applications for planning permission and related determinations under the TCPA1990. The accompanying PPG provides additional guidance to be applied alongside the NPPF.

3.8.2. Paragraph 5 of the NPPF states:

"The Framework does not contain specific policies for nationally significant infrastructure projects. These are determined in accordance with the decision-making framework in the Planning Act 2008 (as amended) and relevant national policy statements for major infrastructure, as well as any other matters that are relevant (which may include the National Planning Policy Framework). …"

3.8.3. As solar generation does not come within the scope/coverage for NPS EN-1 and NPS EN-3, I consider that the NPPF is important and relevant matter to be considered as part of the decision making for the submitted application. I have therefore had regard to the relevant NPPF policies during the Examination and those policies are referred to in Chapter 4 of this Report.

3.8.4. As revisions to the NPPF arose during the Examination, ExQ3.1.12 [PD-013] provided the Applicant and all other Interested Parties (IPs) the opportunity to comment on any revisions to the NPPF that they considered to be important and relevant to the determination of the submitted application.

3.8.5. Section 5 of the PPG (Renewable and low carbon energy) provides guidance for various renewable energy generating technologies, including solar energy generation. I consider that the guidance provided in parts of section 5 of the PPG, most particularly paragraphs 001, 012 and 013[19], is important and relevant to the determination of this application. I have

[18] Replacing the version of the NPPF published in February 2019
[19] Reference ID: 5-001-20140306, Reference ID:5-012-20140306 and ID:5-013-20150327

referred to that guidance in the PPG in the relevant planning issue sections in Chapter 4 below.

3.9. LOCAL IMPACT REPORT (LIR)

3.9.1. Section 105 of the PA2008 state that in deciding an application the SoSBEIS must have regard to any LIR within the meaning of s60(3) of the PA2008. A LIR is a report made by a relevant local authority giving details of the likely impact of a proposed development on the authority's area (or any part of that area) that is submitted pursuant to s60 of the PA2008.

3.9.2. NLC submitted a LIR at Examination Deadline (D) 2 [REP2-026] and it sets out the principal local planning policies and other policies relevant to the Proposed Development. The LIR also provides a commentary on NLC's consideration of local impacts. The impacts of the Proposed Development identified by NLC in its LIR are considered in Chapter 4 below.

3.10. THE DEVELOPMENT PLAN

3.10.1. The legal requirement under s38(6) of the Planning and Compulsory Purchase Act 2004 to determine applications for development consent in accordance with development plan documents does not apply to NSIP applications submitted pursuant to PA2008.

3.10.2. However, given the position with the energy NPS explained earlier in this Chapter, I consider that the development plan is a matter that is both important and relevant to the determination of this application, a finding which is consistent with both the Applicant's view [paragraph 4.46 in REP5-017]) and what is stated in paragraph 4.1.5 of NPS EN-1. The development plan for North Lincolnshire comprises a number of documents and the pertinent parts are:

- The saved policies of the North Lincolnshire Local Plan of May 2003 (the NLLP); and

- The Lincolnshire Local Development Framework Core Strategy of June 2011 (the CS).

The North Lincolnshire Local Plan

3.10.3. Notwithstanding the absence of any reference to the saved policies of the NLLP in the Applicant's Planning Statement [REP5-017], the Applicant and NLC agreed in their Statement of Common Ground (SoCG) [REP6-014] that the most relevant NLLP policies are:

- Policy DS1 (General Requirements) [REP3-022];
- Policy DS7 (Contaminated Land) [REP3-023];
- Policy DS12 (Light Pollution) [REP3-024];

- Policy DS13 (Groundwater Protection and Land Drainage) [REP3-025];
- Policy DS14 (Foul Sewage and Surface Water Drainage) [REP3-026];
- Policy DS21 (Renewable Energy) [REP3-027];
- Policy HE9 (Archaeological Excavation) [REP3-028];
- Policy IG9 (Ironstone Extraction) [REP3-029];
- Policy LC4 (Development Affecting Sites of Local Nature Conservation Importance) [REP3-030];
- Policy LC5 (Species Protection) [REP3-031];
- Policy LC7 (Landscape Protection) [REP3-032];
- Policy LC12 (Protection of Trees, Woodland and Hedgerows) [REP3-033];
- Policy R5 (Recreational Paths Network) [REP3-035];
- Policy RD2 (Development in the Open Countryside) [REP3-036];
- Policy RD7 (Agriculture, Forestry and Farm Diversification) [REP3-037];
- Policy T1 (Location of Development) [REP3-038];
- Policy T2 (Access to Development) [REP3-039]; and
- Policy T18 (Traffic Management [REP3-040]).

The Lincolnshire Local Development Framework Core Strategy

3.10.4. The Applicant and NLC have agreed in their SoCG [REP6-014] that the most relevant CS policies are:

- Policy CS1 (Spatial Strategy for North Lincolnshire) [REP3-015];
- Policy CS2 (Delivering More Sustainable Development) [REP3-016];
- Policy CS3 (Development Limits) [REP4-027];
- Policy CS5 (Delivering More Sustainable Developments) [REP3-017];
- Policy CS6 (Historic Environment) [REP3-018];
- Policy CS16 (North Lincolnshire's Landscape, Greenspace and Waterscape) [REP3-019];
- Policy CS17 (Biodiversity) [REP3-020]; and
- Policy CS18 (Sustainable Resource and Climate Change) [REP3-021].

3.10.5. NLC further to a Procedural Decision I issued on 28 May 2021 [PD-009] submitted as Examination documents copies of the above listed NLLP and CS policies at D3 [REP3-015 to REP3-033 and REP3-035 to REP3-040] and D4 [REP4-027].

3.10.6. NLC has advised that it is in the process of producing a new local plan which will replace the NLLP and the CS [paragraph 2.4.2 of REP2-026]. However, NLC has explained that the emerging replacement local plan is still subject to consultation and has not progressed sufficiently in its production for any weight to be given to it in the decision making for the Proposed Development [paragraph 2.4.2 in REP2-026].

North Lincolnshire Council Supplementary Planning Documents

3.10.7. Further to the adoption of the NLLP and the CS, most particularly CS Policy CS18, NLC has adopted two Supplementary Planning Documents

(SPD) that provide additional guidance for renewable energy development within North Lincolnshire. Those SPDs being:

- Planning for Renewable Energy Development, adopted November 2011 [REP4-024]; and
- Planning for Solar Photovoltaic (PV) Development, which was adopted in January 2016 (PSPSPD) [REP4-025].

3.11. EMERGING DRAFT NATIONAL POLICY STATEMENTS FOR ENERGY

3.11.1. On 6 September 2021 the Government commenced a consultation on reviewed versions of the energy NPSs. That consultation having involved the issuing of draft versions for revisions to NPS EN-1 to NPS EN-5 inclusive, hereafter referred to as dEN-1 etc.

3.11.2. Given the scope/coverage of the consultation drafts for the reviewed NPS only dEN-1 (overarching policy), dEN-3 (renewable energy infrastructure) and dEN-5 (electricity networks infrastructure) are relevant to the Proposed Development. Accordingly, as part of my asking of ExQ4.1.1 [PD-016] the Applicant was requested to submit as Examination documents copies of dEN-1 [Appendix 1 in REP7-010 (e-pages 23 to 154)], dEN-3 [Appendix 2 in REP7-010 (e-pages 156 to 262)] and dEN-5 [Appendix 3 in REP7-010 (e-pages 264 to 295)].

3.11.3. ExQ4.1.1 gave the Applicant and all other IPs the opportunity to comment on any implications the publication of the consultation drafts for the reviewed NPS might have had for the cases that they had made prior to the consultation drafts' publication. I have had regard to all of the comments that were received in response to ExQ4.1.1.

3.11.4. dEN-1 and dEN-3 signal the Government's intention to bring solar energy generation within the scope/coverage of the reviewed versions of NPS EN-1 and NPS EN-3. In that regard it is intended that dEN-3 would include an entire section on solar photovoltaic generation, setting out detailed policy considerations for this generating technology [sections 2.47 to 2.54 (e-pages 234 to 249) in Appendix 2 of REP7-010].

3.11.5. Section 1.6 of dEN-1 explains the intended transitional provisions following the review of EN-1 to EN-5 and paragraph 1.6.2 [e-page 32 in REP7-010] states:

"… The Secretary of State has decided that for any application accepted for examination before designation of the 2021 amendments, the 2011 suite of NPSs should have effect in accordance with the terms of those NPS. The 2021 amendments will therefore have effect only in relation to those applications for development consent accepted for examination after the designation of those amendments."

3.11.6. Paragraph 1.6.3 of dEN-1 [e-page 32 in REP7-010] goes onto explain:

"… any emerging draft NPSs (or those designated but not having effect) are potentially capable of being important and relevant considerations in the decision-making process. The extent to which they are relevant is a matter for the relevant Secretary of State to consider within the framework of the Planning Act and with regard to the specific circumstances of each development consent order application."

3.11.7. Given the transitional provisions outlined in dEN-1 and the provisions of s104 of the PA2008, for the purposes of the determination of the Applicant's application dEN-1 and dEN-3 will not have effect for the decision making, irrespective of when the reviewed versions of EN-1 and EN-3 might be designated. That is because the acceptance of the Applicant's application for examination predates any designations that might take place. However, I consider that the emerging policy in dEN-1 and dEN-3 can be treated as being important and relevant matters in deciding this application under s105 of the PA2008. That approach being consistent with what is stated in paragraph 1.6.3 of dEN-1.

3.11.8. For each of the planning issues assessed in Chapter 4 of this Report, I have given consideration to whether there would or would not be compliance with the parts of the emerging policy in dEN-1 and dEN-3 that I consider are important and relevant to the issue in question.

3.12. THE SECRETARY OF STATE'S POWERS TO MAKE A DCO

3.12.1. I have been mindful throughout the Examination of the need to consider whether the changes made to the application documents[20] during the Examination have changed the application so as to make it a different application and whether the SoSBEIS would have power therefore under s114 of PA2008 to make a DCO, if so minded, having regard to the development consent applied for.

3.12.2. Paragraphs 109 to 115 of *'Planning Act 2008: examination of applications for development consent'*, (March 2015) published by the former Department for Communities and Local Government, provide guidance in relation to changing an application post acceptance. The view expressed by the Government during the passage of the Localism Act 2011 was that s114(1) of the PA2008 places the responsibility for making a DCO on the decision-maker and does not limit the terms in which it can be made.

3.12.3. The Applicant made no changes to the design, layout or extent etc of the Proposed Development between the application's original submission and the close of the Examination. Changes have been made to the originally submitted application documentation. However, those changes were primarily of a minor technical nature, for instance revisions to the draft DCO, culminating in the submission of the Applicant's final version [REP7-003]. Those technical changes have not resulted in any material

[20] Identified in Chapter 2 of this Report

changes to the NSIP for which consent was applied for. I am therefore of the view that the SoSBEIS has the power to make a DCO as recommended in Chapter 7 and provided in Appendix D to this Report.

4. FINDINGS AND CONCLUSIONS IN RELATION TO THE PLANNING ISSUES

4.1. MAIN ISSUES IN THE EXAMINATION

4.1.1. As required by section (s) 88 of the Planning Act 2008 (PA2008) and Rule 5 of The Infrastructure Planning (Examination Procedure) Rules 2010 (EPR), I made an Initial Assessment of the Principal Issues (IAPI) arising from a review of the application and the Relevant Representations (RRs) received from Interested Parties (IPs). The IAPI being set out in Appendix C of the Rule 6 letter [PD-004]. The issues identified in alphabetical order in the IAPI were:

- Agriculture and soils;
- Air quality;
- Amenity and recreation;
- Biodiversity, ecology and the natural environment;
- Draft Development Consent Order;
- Environmental Statement – general matters;
- Historic environment;
- Landscape and visual effects;
- Noise;
- Socio-economic effects;
- Traffic and transport; and
- Water and flooding.

4.1.2. The IAPI was discussed at the Preliminary Meeting (PM) [EV-002 and EV-003]. No matters were raised at the PM that required amendment to the IAPI. In compiling this recommendation Report the planning issues arising from the IAPI have been subject to some reordering, compared with the alphabetical list set out in Annex C of the Rule 6 letter [PD-004]. That reordering being in response to how the various issues relate with one another and their importance to the decision to be made by the Secretary of State for Business, Energy and Industrial Strategy (SoSBEIS).

4.1.3. The consideration of planning policy was not identified as a discrete issue in the IAPI, because it is something I have had regard to as a matter of course. National and development plan policy was a topic nonetheless that was discussed during the course of Issue Specific Hearing (ISH) 2 [EV-015 and EV-018]. In association with the Examination of the general matters relating to the Environmental Statement (ES) and having regard to the policy context outlined in Chapter 3 above. I have also considered the need for the Proposed Development as a discrete issue and have reported on that below.

4.1.4. The planning issues are addressed later in this Chapter 4 in the following order:

- meeting energy need, including the intended generating capacity for the proposed solar generating station;

- site selection, including effects on agriculture and consideration of alternatives to the Proposed Development;
- landscape and visual effects, including amenity and recreational effects for users of public right of way network;
- historic environment;
- biodiversity, ecology and the natural environment;
- traffic and transport;
- noise;
- air quality; and
- socio-economic effects.

4.1.5. Amongst the IAPI water and flooding was identified as a potential issue to be examined. However, during the Examination no IPs raised water and flooding as an issue of concern and while I had regard to this issue when reviewing the application documentation, I have concluded that there is no need to report on it.

4.1.6. Matters relating to the draft Development Consent Order (dDCO) and the consistency between it and the Applicant's Explanatory Memorandum (EM) are addressed in this Chapter as they relate to the individual planning issues listed above. Matters relating to the detailed drafting of the dDCO [REP7-003] are covered in Chapter 7 below.

4.1.7. In addition to reporting on the planning issues arising from the IAPI, the remainder of this Chapter addresses other relevant matters that arose during the Examination. For each issue, the effect of the Proposed Development on that particular issue and any mitigation measures proposed are summarised. Matters raised in the RRs, Written Representations (WRs), Statements of Common Ground (SoCG(s)) and North Lincolnshire Council's (NLC) Local Impact Report (LIR) as they relate to the individual issues are reported on. Where relevant, the Applicant's response to matters raised by other IPs in their RRs, WRs, SOCGs, other written and oral Examination submissions and the LIR are reported on and conclusions drawn.

4.1.8. On an issue by issue basis, consideration is also given to the Proposed Development's conformity with national and development plan policy. Consideration is also given to emerging Governmental policy, as expressed most particularly in the consultation drafts for reviewed versions of National Policy Statement (NPS) EN-1 and NPS EN-3, respectively hereafter referred to as dEN-1 and dEN-3.

4.2. ISSUES ARISING FROM WRITTEN AND ORAL SUBMISSIONS

Introduction

4.2.1. The application generated very little community comment and the representations raising objection to the Proposed Development centred on: the absence of NPS coverage for solar generation; the appropriateness of using farmland rather than previously developed land (PDL); and the construction and operational noise and air quality effects

for the owners and occupiers of adjoining residential and commercial premises.

4.2.2. Against that backdrop, the Examination proceeded on the basis of the consideration of the objections that had been received, together with the testing of the Applicant's proposals against the relevant legislative and policy requirements.

Relevant Representations (RRs)

4.2.3. The issues arising from the RRs are summarised as follows:

- NLC [RR-002], based on its pre-application engagement with the Applicant, raised no objection to the Proposed Development and gave an indication that it would be participating in the Examination.

- The Ancholme Internal Drainage Board [RR-003] wrote explaining its powers under the Land Drainage Act 1991 and outlining its standing advice that the Applicant would need to take account of in implementing the Proposed Development.

- Anglian Water Services Limited (AWSL) [RR-004] raised no objection in principle to the Proposed Development and drew attention to the presence of one of its water mains within the Order Limits, which would need to be safeguarded through the inclusion of protective provisions within any made Development Consent Order (DCO). AWSL advised that the proposed wording of the protective provisions in its favour set out in the dDCO [APP-045] did not accord with its standard wording and that discussions were on-going with the Applicant to resolve that issue. AWSL further advised that the proposals for surface water drainage would not interact with its assets and the suitability of the surface water drainage arrangements would be a matter for NLC, as the Lead Local Flood Authority to consider.

- The Environment Agency (EA) [RR-005] outlined the aspects of the Proposed Development of particular interest to it and advised that the effects on controlled surface water and groundwater had been adequately assessed by the Applicant. The EA therefore submitted that the implementation of the proposed Construction Environmental Management Plan (CEMP) [APP-077] would address its interests. The EA further commented that it would wish to be consulted on the arrangements for dealing with unexpected contaminated land via the discharging of proposed Requirement (R) 8 (submission of a CEMP) in the dDCO [APP-045].

- The owners and occupiers of the dwelling and commercial premises at Fennswood [RR-006, RR-008, RR-009, RR-014 and RR-015] raised objections to the Proposed Development. Those objections concerned: the use of greenfield land as opposed to PDL, the latter being favoured by national and local planning policies; the use 36.6 hectares (ha) of grade 3a agricultural land when national policy indicates that poorer quality land, grades 3b and below, should be

used; the environmental, noise, vibration and visual amenity effects; and the use of the temporary public footpath diversionary route within the Order Limits.

- With respect to the generation of noise it was submitted that the noise assessment [APP-085] appeared to be of *"… no value because it was conducted in respect of a site significantly smaller than the development site as defined by the Order Limits"*, with the access track intended to serve the Proposed Development having been omitted from the noise assessment. To safeguard the living conditions of the adjoining residents the hours during which construction and maintenance works would be undertaken should be restricted to 07:00 to 18:00 hours Monday to Friday, with no works on Saturdays, Sundays and public holidays in line with the hours of use restrictions that apply to the commercial premises at Fennswood. It was further submitted that the noise assessment should be based on the actual rather than the anticipated noise levels for the Proposed Development.
- In these RRs it was also contended that the effects on air quality and dust generation arising from the use of the construction access for the Proposed Development had not been adequately assessed.
- In relation to the Applicant's consideration of the socio-economic effects it has been submitted that no assessment has been made of the impact on property values arising from the construction and operation of the Proposed Development, with the loss of rural character in the area and there being potential for crime to arise because of the proximity of the proposed battery storage system and the *"high scrap value"* for its components.

- Homes England [RR-007] advised that it had no representations to make.

- Natural England (NE) [RR-010] advised that it had been working collaboratively with the Applicant and expected to conclude an updated SoCG.

  - NE comment that the designated natural features that could potentially be affected by the Proposed Development would be: The Humber Estuary Special Protection Area (the SPA); The Humber Estuary Special Area of Conservation (the SAC) and The Humber Estuary Ramsar site; The Humber Estuary Site of Special Scientific Interest (SSSI); and the Broughton Far Wood SSSI. With respect to those designated habitats NE comment that the Applicant's ES has demonstrated:

    "… beyond reasonable scientific doubt that there would be no significant effect on the integrity of the European site. Natural England is satisfied that the project is unlikely to have a significant impact on the nearby Humber Estuary SSSI or Broughton Far Wood SSSI. The project site currently supports habitats of negligible ecological interest and all protected species issues

(including any licensing requirements under the Habitats Regulations or the 1981 Act) can be addressed by the proposed draft DCO requirements. Natural England's advice is that in relation to identified nature conservation issues within its remit there is no fundamental reason of principle why the project should not be permitted … Provided that appropriate avoidance and mitigation measures are addressed in the Construction Environment Management Plan (CEMP) we are content the proposed operations are not likely to damage the interest features of Broughton Far Wood SSSI ..."

- NE drew attention to the adjoining "Far Wood Ancient Replanted Woodland" and advised that it was content that the mitigation proposed by the Applicant would protect that woodland.

- NE indicated that the Proposed Development may affect best and most versatile agricultural land (BMVL), that is land within grades 1, 2 and 3a under the agricultural land classification (ALC) system. However, NE acknowledged that any effect on BMVL would not necessarily lead to a significant long term loss because the solar panels could be fixed to the ground without disturbing the soil and then removed in the future with no permanent loss of agricultural land quality. With respect to safeguarding designated habitats and BMVL, NE drew attention to the national policy contained in paragraphs 174 and 175[21] of the National Planning Policy Framework (NPPF) and to the Planning Practice Guidance's (PPG) section on renewable and low carbon energy, most particularly the advice on using BMVL in paragraph 13[22].

- Openreach Limited submitted a RR [RR-011], simply advising who its contact was in respect of safeguarding its apparatus.

- A Mr Day, a resident of Broughton, submitted a RR [RR-013] objecting to the submitted application on the basis of: the Applicant inadequately assessing the effects of the Proposed Development on Great Crested Newts, Common Buzzard, Muntjac Deer and Roe Deer; effects on the public footpath within the Order Limits; and the absence of any direct benefits for the community of Broughton.

Written Representations (WRs)

4.2.4. IPs were provided with the opportunity to make WRs at Examination Deadline (D) 1, as amplification for what had been included in their RRs. A WR was submitted by Openreach [REP1-025] confirming that it had agreed protective provisions for inclusion in any made DCO with the Applicant. Northern Powergrid Limited (NPG) submitted a WR [REP1-026]

[21] Respectively paragraphs 170 and 171 of the version of the NPPF that was extant at the time when NE submitted its RR
[22] Reference ID: 5-013-20150327

seeking its inclusion as an IP, which I agreed to, as explained to in Chapter 1 of this Report.

Other Written Submissions

4.2.5. The Applicant and other IPs were given the opportunity to respond to the RRs at D1 and the Applicant was the only IP to submit such a response [REP1-009].

4.2.6. At D2 the Applicant was the only IP to make use of the opportunity to comment on the WRs [REP2-023] and that response was primarily in relation to the oral submissions made by Fennswood under agenda item 3 of ISH1 [EV-008 and EV-009]. Those oral representations having expanded on what was stated in [RR-006, RR-008, RR-009, RR-014 and RR-015]. By D2 IPs were also invited to respond to the Examining Authority's (ExA) first written questions (ExQ1) [PD-007]. Answers to the ExQ1 were received from the Applicant [REP2-022], NLC [REP2-027], the EA [REP2-028] and Historic England (HE) [REP2-029]. Fennswood also submitted answers to ExQ1 as part of their D1 submissions [REP1-027].

4.2.7. At D3 the Applicant submitted comments [REP3-013] on the other IPs responses to ExQ1. Additionally, at D3 and D4 NLC submitted copies of the policy wording and explanatory text for all of the Development Plan policies that it considered would be important and relevant to the consideration of the Proposed Development [REP3-015 to REP3-033, REP3-035 to REP3-040 and REP4-027]. The submission of that policy documentation arising from a request I made under Rule 17 of the EPR [PD-009], further to the submission of NLC's LIR [REP2-026] and the ExA's fourth Procedural Decision set out in Annex B of the Rule 8 letter of 27 April 2021 [PD-006].

4.2.8. At D4 IPs were also invited to respond to the ExA's second Written Questions (ExQ2) [PD-010]. Answers to ExQ2 were received from the Applicant [REP4-018 to REP4-022] and NLC [REP4-023 and REP4-030 to REP4-032].

4.2.9. At D5 the Applicant submitted comments [REP5-022] on the other IPs submissions made at D4, most particularly NLC's replies to ExQ2 and the written note of the submissions made by Fennswood at Open Floor Hearing 1 (OFH1) [REP4-033]. Additionally, amongst the Applicant's D5 submissions it provided a note [REP5-021] setting out a commentary of its review of the cumulative effects for its Proposed Development and the proposed Keadby 3 Low Carbon Gas Power Station Project (Keadby 3), a Nationally Significant Infrastructure Project (NSIP) application accepted for Examination on 28 June 2021[23]. The Keadby 3 cumulative effects note having been submitted by the Applicant as an action arising from a discussion during ISH2 [EV-015, EV-017 and EV-024].

[23] NSIP application reference EN010114

4.2.10. At D6 IPs had the opportunity to respond to the ExA's third Written Questions (ExQ3) [PD-013]. Answers to ExQ3 were received from the Applicant [REP6-019, REP6-020 and REP6-021], NLC [REP6-022], NE [REP6-023] and NPG [REP6-024].

4.2.11. At D7 IPs were given the opportunity to respond to the ExA's fourth Written Questions (ExQ4) PD-016]. ExQ4, amongst other things, enabled all IPs to comment on what, if any, implications they considered the contents of the consultation versions of the reviewed energy NPSs had for the cases they had made up until this point in the Examination. Answers to ExQ4 were received from the Applicant [REP7-010], NLC [REP7-012] and Fennswood [REP7-013].

4.2.12. The Applicant concluded SoCG with IPs at various points during the Examination and following their signing those SoCG were submitted at the next available Examination deadline. A list of the SoCG which have been signed is set out in Chapter 1 of this Report. The matters raised in RRs, WRs, responses to the ExA's questions and in the SoCG have been reported on as they relate to the planning issues covered later on in Chapter 4 of this Report.

Oral Representations

4.2.13. The Applicant, NLC and Fennswood were the only IPs to participate in ISH1 [EV-009, EV-010 and EV-011]. Only the Applicant and NLC participated in ISH2 [EV-017, EV-018 and EV-019]. The only requests for an OFH were received from the five owners and occupiers of Fennswood, who had submitted near identical RRs [RR-006, RR-008, RR-009, RR-014 and RR-015]. The only IPs to participate at OFH1 were Fennswood and the Applicant [EV-016] and their respective post OFH1 written submissions are stated in [REP4-033] and [REP5-022].

4.2.14. The issues raised in ISH1, ISH2 and OFH1 are addressed in the relevant sections of this Chapter of my Report. Generally, few new issues were raised in the oral representations made by NLC and Fennswood during ISH1, ISH2 and OFH1, as compared with what they had stated in writing.

Conclusion on issues arising from written or oral submissions

4.2.15. The issues arising from both written and oral submissions made by the Applicant and other IPs have been taken into account by the ExA and are reported on, as necessary, in the planning issue sections later in this Chapter or in Chapter 7 of my Report.

4.3. ISSUES ARISING IN THE LOCAL IMPACT REPORT (LIR)

4.3.1. NLC submitted a LIR [REP2-026]. Section 105(2) of the PA2008[24] requires the SoSBEIS to consider the contents of an LIR when deciding this application.

4.3.2. The key issues addressed in the LIR concern the following matters:

- national and development plan policies (section 2);
- landscape and visual impact (section 4);
- traffic and transport (section 5);
- biodiversity and ecology (section 6);
- cultural heritage (section 7);
- noise and vibration (section 8);
- air quality (section 9);
- land contamination (section 10);
- public rights of way (section 11); and
- socio-economic impact (section 12).

4.3.3. In summary NLC concluded in section 13 of its LIR [REP2-026] that:

- short term negative social and environmental impacts were anticipated and that those impacts would include increased traffic generation, construction disturbance and increased emissions;
- longer term adverse impacts would include visual intrusion caused by the installation of the solar panels and associated plant;
- *'… the implementation of impact avoidance, design and mitigation measures that will be secured through Requirements contained within the draft DCO and through other regulatory regimes …'* would, with some revisions to the dDCO, result in negative impacts that would not be significant;
- residual long term negative effects would relate to the potential impact on non-designated heritage assets, however, those impacts could be mitigated acceptably through requirements included in a made DCO;
- the development would have minor short term and long term beneficial economic impacts associated with job creation and inward investment within North Lincolnshire and those benefits are considered to be of *'moderate importance'*;
- the proposed development would provide a positive impact in terms of clean green, low carbon energy production and could contribute to a reduction in the carbon emissions of the energy supply in the UK and provide a secure and stable energy source for 35 years; and
- the positive impact on renewable energy generation will have to be balanced against the potential environmental impacts of the proposed scheme.

[24] Decisions in cases where no national policy statement has effect

4.3.4. In response to the LIR's submission the Applicant made comments on it at D3 [REP3-014]. In those comments the Applicant indicated its general agreement with the views expressed by NLC in the LIR and highlighted NLC's reference to the adopted development plan providing in principle support for renewable energy generation.

Conclusion on LIR issues

4.3.5. I have taken account of the matters, such as additional mitigation, raised by NLC in its LIR [REP2-026]. In the issue specific sections of this Chapter I have reported on those matters in detail so that the SoSBEIS can take account of them as part of the duties under s105 of the PA2008. Where NLC has proposed amendments to the drafting of the dDCO, I have considered those suggestions in Chapter 7.

4.3.6. The Applicant and NLC signed a SoCG on 31 August 2021 and that SoCG [REP6-014] was submitted at D6. That SoCG records there being no outstanding matters or matters of disagreement between NLC and the Applicant.

4.4. CONFORMITY WITH THE ENERGY NATIONAL POLICY STATEMENTS (NPSs)

4.4.1. As explained in Chapter 3, I consider the determination of this application should be made under s105 of the PA2008. In that regard I consider NPS EN-1 (the overarching NPS for energy) and NPS EN-5 (electricity networks infrastructure) to varying degrees are important and relevant to the determination of this NSIP application. The purpose and broad content of NPS EN-1 and NPS EN-5 are summarised in this section of my Report. However, the content and provisions of those NPS are referred to, as relevant, in each of the planning issue specific sections that are reported on later in this Chapter or Chapter 7 below.

4.4.2. As explained in section 3.2 above, while NPS EN-3 sets out policy for renewable energy generation, solar generation is expressly excluded from its coverage. Given that exclusion I consider EN-3 should not be treated as being important and relevant for the purposes of s105 of the PA2008.

NPS EN-1: Overarching National Policy Statement for Energy

4.4.3. NPS EN-1 sets out general principles and generic impacts to be taken account of when energy NSIP applications are being considered and it is intended to provide the primary basis for deciding whether consent should be granted. The overarching policy objectives underpinning NPS EN-1 include:

- meeting the demand for energy generation in the United Kingdom (UK); and

- transitioning to low carbon sources and reducing greenhouse gas (GHG) emissions.

4.4.4. NPS EN-1 refers to the Government's commitment to transitioning to low carbon sources and meeting the targets to reduce GHG emissions. The need for projects to strike a balance in meeting the overarching policy objectives is acknowledged throughout NPS EN-1.

4.4.5. Part 2 of NPS EN-1 sets out the anticipated direction of travel for meeting the Government's objectives for carbon emission reductions, energy security and affordability (at the time of designation in 2011). The paragraphs of note in Part 2 are:

- Paragraph 2.2.1 states that *"We are committed to meeting our legally binding target to cut greenhouse gas emissions by at least 80% by 2050, compared to 1990 levels"*[25].

- Paragraph 2.2.5 states that *"The UK economy is reliant on fossil fuels, and they are likely to play a significant role for some time to come"*.

- Paragraph 2.2.6 states *"However, the UK needs to wean itself off such a high carbon energy mix: to reduce greenhouse gas emissions, and to improve the security, availability and affordability of energy through diversification"*.

- Paragraph 2.2.19 states *"Government believes that the NPSs set out planning policies which both respect the principles of sustainable development and are capable of facilitating, for the foreseeable future, the consenting of energy infrastructure on the scale and of the kinds necessary to help us maintain safe, secure, affordable and increasingly low carbon supplies of energy"*.

- In paragraph 2.2.20 a clear case is made for a continuing demand for electricity in the UK and it is stated *"It is critical that the UK continues to have secure and reliable supplies of electricity as we make the transition to a low carbon economy"*.

- Referring to the 2050 pathways analysis, paragraph 2.2.22 indicates demand for electricity could double by 2050. Paragraphs 2.2.22 and 2.2.23 acknowledge that to meet emissions targets, the electricity being consumed will need to come almost exclusively from low carbon sources, and to do that the UK must reduce over time its dependence on fossil fuels, particularly unabated combustion.

4.4.6. Paragraphs 3.1.1 and 3.1.3 of NPS EN-1 indicate that the UK has a need for all the types of energy infrastructure covered by EN-1 and that the

[25] The 80% target originally stated in the Climate Change Act 2008 having subsequently been amended to 100% net zero for 2050 by the Climate Change Act 2008 (2050 Target Amendment) Order 2019 which came into force in July 2019

determination of NSIP applications for those types of infrastructure should proceed on the basis of the need for them having been demonstrated by the Government. Paragraphs 3.1.4 goes onto state that *"substantial weight"* should be given to the contribution projects would make towards satisfying that need for energy infrastructure.

4.4.7. However, solar generation is excluded from NPS EN-1's scope. I therefore consider that for the purposes of the application of the policies stated in NPS EN-1, the Proposed Development cannot be said to benefit from the Government's demonstration of the need for energy infrastructure referred to in section 3.1 of NPS EN-1. I am therefore of the view that the application of substantial weight to any contribution the Proposed Development might make to the provision of energy generating infrastructure does not automatically apply to the SoSBEIS's decision making in this instance.

4.4.8. Paragraph 3.2.3 of NPS EN-1 indicates that significant amounts of new large scale energy infrastructure will be required and states:

"… it will not be possible to develop the necessary amounts of such infrastructure without some significant residual adverse impacts … and that the need for such infrastructure will often be urgent. The IPC[26] should therefore give substantial weight to considerations of need. The weight which is attributed to considerations of need in any given case should be proportionate to the anticipated extent of a project's actual contribution to satisfying the need for a particular type of infrastructure."

4.4.9. Section 3.3 of NPS EN-1 also advises of the urgency for new electricity generation capacity and indicates that there is a need for new energy NSIPs to be brought forward as soon as possible, and certainly in the next 10 to 15 years[27]. In paragraph 3.3.2 it is explained that new generating capacity will be required to ensure energy security and to that end it is stated:

"The Government needs to ensure sufficient electricity generating capacity is available to meet maximum peak demand, with a safety margin or spare capacity to accommodate unexpectedly high demand and to mitigate risks such as unexpected plant closures and extreme weather events."

4.4.10. In paragraph 3.3.11 it is explained that an increase in renewable electricity generation will be 'essential' to improving energy security, reducing the dependence on fossil fuels, decreasing GHG emissions and providing economic opportunities. Within paragraph 3.3.11 it is stated:

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[26] The Infrastructure Planning Commission (IPC) having been abolished and all decision making responsibilities for NSIP applications now resting solely with the relevant Secretary of State

[27] Commencing in July 2011 following the designation of NPS EN1

"… However, some renewable sources (such as wind, solar and tidal) are intermittent and cannot be adjusted to meet demand. As a result, the more renewable generating capacity we have the more generation capacity we will require overall, to provide back-up at times when the availability of intermittent renewable sources is low. …"

4.4.11. In paragraph 3.3.12 it is explained that there are other technologies that can be used to:

"… compensate for the intermittency of renewable generation, such as electricity storage, interconnection and demand-side response, without building additional generation capacity. Although Government believes these technologies will play important roles in a low carbon electricity system, the development and deployment of these technologies at the necessary scale has yet to be achieved. The Government does not therefore consider it prudent to solely rely on these technologies to meet demand without the additional back-up capacity … It is therefore likely that increasing reliance on renewables will mean that we need more total electricity capacity than we have now, with a larger proportion being built only or mainly to perform back-up functions."

4.4.12. Paragraph 3.3.16 explains that as NSIPs can take a long time to move from design inception to operation, the Government has considered a planning horizon of 2025 for the energy NPSs in general. Paragraph 3.3.16 states:

"… A failure to decarbonise and diversify our energy sources now could result in the UK becoming locked into a system of high carbon generation, which would make it very difficult and expensive to meet our 2050 carbon reduction target. We cannot afford for this to happen."

4.4.13. Part 4 of NPS EN-1 identifies the information that should accompany energy NSIP applications, so that matters such as air quality and emissions, biodiversity, historic environment, landscape and visual, traffic and transport and socio-economic benefits can be considered when applications are being determined.

4.4.14. Paragraph 4.1.2 states *"Given the level and urgency of the need for infrastructure of the types covered by the energy NPSs set out in Part 3 of this NPS, the IPC should start with a presumption in favour of granting consent to applications for energy NSIPs"*. It should be noted that the reference to applying the presumption in favour of granting consent is caveated to the types of energy infrastructure that are within the energy NPSs' coverage. For the reasons outlined above, I consider the presumption in favour of granting consent under NPS EN-1 does not automatically fall to be applied in this instance, given solar generation's exclusion from the scope/coverage of NPS EN-1 and NPS EN-3.

4.4.15. Paragraph 4.1.3 advises that the SoSBEIS should consider environmental, social and economic benefits and adverse impacts at national, regional and local levels. Those considerations should include potential benefits in meeting the need for energy infrastructure, job

creation and any long-term or wider benefits and any potential adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts.

EN-5: National Policy Statement for Electricity Networks Infrastructure

4.4.16. NPS EN-5 provides policy applicable to the consideration of NSIPs involving electricity networks infrastructure. As indicated in Chapter 3 above the policies in EN-5 can be applied to associated development, such as substations and below ground electricity lines, for which consent is being sought in tandem with a generating station.

Conclusion on compliance with NPSs

4.4.17. The ExA's assessment of NPS policy compliance has been undertaken with respect to the policy detail and tests applicable to the individual planning issues, as set out in relevant NPS paragraphs. That assessment is reported on in the issue specific sections later in this Chapter.

4.4.18. In terms of the Government's high level policies for providing replacement and/or additional energy generating capacity and the transition away from GHG emitting generation, I consider that there is no inconsistency between the Proposed Development and the thrust of the policy expressed in NPS EN-1 and NPS EN-5.

4.5. CONFORMITY WITH THE DEVELOPMENT PLAN

Background

4.5.1. Section 3.10 of this Report lists all of the development plan policies that have been identified by the Applicant [section 4 of REP5-017], NLC [section 2 of REP2-026] and jointly by the Applicant and NLC in their signed SoCG [REP6-014] as being relevant to the assessment of the Proposed Development. I see no reason to take a contrary position to the Applicant's and NLC's agreed position about which development plan policies are relevant to the determination of this application.

4.5.2. Some of the saved policies of the North Lincolnshire Local Plan of 2003 (NLLP) and the policies of the North Lincolnshire Core Strategy of 2011 (CS) are relevant to the consideration of the principle for the Proposed Development, while others are issue specific. In this section I have reported on the conformity with the development plan's policies that are relevant to the in principle consideration of the Proposed Development. In the later sections of this Chapter, where I report on the issue specific effects, I have assessed conformity with the relevant issue specific NLLP and/or CS policies.

The development plan policies relevant to the principle of the Proposed Development

4.5.3. The Order Limits are within the open countryside and constitute greenfield land. Policies CS2 [REP3-016] and CS3 [REP4-027] of the CS and Policies RD2 [REP3-036] and RD7 [REP3-037] of the NLLP therefore apply.

4.5.4. Policy CS2 of the CS [REP3-016] addresses the delivery of sustainable development and promotes a sequential approach to new development within a hierarchy that focuses on the use of PDL within Scunthorpe's urban area, followed by other infill opportunities within the town and then greenfield urban extensions. Away from Scunthorpe Policy CS2 indicates that PDL within the defined limits of North Lincolnshire's market towns should be prioritised, followed by other suitable infill opportunities and then small scale greenfield extensions to meet identified local needs. The third level of the hierarchy concerns small scale development within the defined development limits of rural settlements that would meet identified local needs. Policy CS2 further states:

"… Any development that takes place outside the defined settlement limits of settlements or in rural settlements in the countryside will be restricted. Only development which is essential to the functioning of the countryside will be allowed to take place. This might include uses such as that related to agriculture, forestry or other uses which require a countryside location or which will contribute to the sustainable development of the tourist industry …"

4.5.5. Policy CS3 [REP4-027] outlines the approach to be taken to development proposals within and outside the settlement limits (boundaries) defined by the adopted development plan. In that regard Policy CS3 states development outside the defined settlement boundaries:

"… will be restricted to that which is essential to the functioning of the countryside. This will include uses such as that related to agriculture, forestry or other uses which require a countryside location or that which will contribute to the sustainable development of the tourist industry …"

4.5.6. Policy RD2 [REP3-036] states that *"Development in the open countryside will be strictly controlled …"*. Under the provisions of Policy RD2 planning permission will only be granted for specifically identified types of development that include, amongst other things, development that is: essential to the efficient operation of agriculture or forestry; employment related development appropriate to the open countryside; for the re-use and adaptation of existing rural buildings; and the diversification of an established agricultural business.

4.5.7. So long as a proposed development is one of the accepted types of development referred to in Policy RD2, a development will be acceptable if: the open countryside is the only appropriate location and could not reasonably be accommodated within a defined development boundary; it would not be detrimental to the character or appearance of the

countryside or a nearby settlement in terms of its siting, scale, massing and design; it would not be detrimental to residential amenity or highway safety; and it would be sited to make the best use of existing and new landscaping.

4.5.8. Policy RD7 [REP3-037] in addressing proposals for agricultural, forestry and farm diversion indicates that development will be acceptable in principle provided, amongst other things: it would not conflict with operational requirements of the existing enterprise; there would be no adverse impact on high quality agricultural land; and the likely volume of traffic should be acceptable having regard to the existing access and approach roads.

4.5.9. While Policies CS2, CS3, RD2 and RD7 do not identify solar farms/parks as being acceptable development within the countryside, NLC has commented in paragraph 2.5.1 of its LIR [REP2-026][28]:

"… Whilst a brownfield site would be preferred it is considered that by the very nature of solar farms open countryside sites can be suitable and still allow agricultural uses such as grazing to take place during the operational period of the farms. Due to the size of the Order Limits there is no known previously developed site that could accommodate the Proposed Development and which is available for development."

4.5.10. NLC in responding to ExQ1.1.8 [PD-007][29] commented [REP2-027]:

"NLC is not aware of any parcels of previously developed land within its administrative area that could be used as an alternative to the Order Limits. The Order Limits cover an area of approximately 225 hectares and there are no previously developed sites of this size within North Lincolnshire that the Council is aware of and which are known to be available.

Given the land take normally associated with renewable energy schemes it is likely that any previously developed site within North Lincolnshire that could be used to generate 150 to 200 MW[30] of electricity would necessitate the use of more traditional technologies (i.e. the burning of fossil fuels). It is also noted that a major limiting factor in the location of electricity generation proposals is the availability of a grid connection with available capacity …"

4.5.11. Fennswood in their RRs[31] have contended that solar farms can be constructed on PDL and questioned the need for the Proposed Development to occupy a greenfield site. In that regard these IPs in

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[28] A sentiment repeated in the signed SoCG between NLC and the Applicant [REP6-014]
[29] A question enquiring about alternatives to the Proposed Development and availability of PDL
[30] Megawatt
[31] RR-006, RR-008, RR-009, RR-014 and RR-015

responding to ExQ1.1.9 [REP1-027] submitted that there appeared to be PDL in north Lincolnshire, potentially unsuitable for residential development that might be capable of accommodating solar generating stations.

4.5.12. During the discussion of development plan policy under agenda item 4b) of ISH2 [EV-015 and EV-018] NLC advised that while the Proposed Development would in part be contrary to Policy RD2 of NLLP, the closed list nature of the permissible developments identified within Policy RD2 makes it a very restrictive policy, resulting in some conflict with the NPPF. At the time of Policy RD2's adoption national planning policies were supportive of protecting the countryside for its own sake and the wording of Policy RD2 reflects that. The NPPF takes a more nuanced approach to planning for renewable energy developments, with paragraph 155 stating:

"To help increase the use and supply of renewable and low carbon energy and heat, plans should:

a. provide a positive strategy for energy from these sources, that maximises the potential for suitable development, while ensuring that adverse impacts are addressed satisfactorily (including cumulative landscape and visual impacts);

b. consider identifying suitable areas for renewable and low carbon energy sources, and supporting infrastructure, where this would help secure their development; …"

4.5.13. Paragraph 158 of the NPPF goes on to state *"When determining planning applications for renewable and low carbon development, local planning authorities should: … b) approve the application if its impacts are (or can be made) acceptable …"*.

4.5.14. It is against what is now stated in paragraphs 155 and 158 that NLC has submitted that 'less weight' should be attached to any conflict the Proposed Development has with Policy RD2. NLC further submitted at ISH2 the provisions of Policy C3 of the CS were less restrictive.

4.5.15. NLC in paragraph 2.5.2 of its LIR [REP2-026] has explained that the Order Limits lie within an area of ironstone deposits, which are safeguarded under the provisions of Policy IG9 of the NLLP [REP3-029]. NLC has also commented that as the Proposed Development would occupy the Order Limits for 35 years and the land would then be returned to agriculture the ironstone reserves would remain intact. The ironstone reserve would not be sterilised by the Proposed Development and NLC is of the view that there would be no conflict with Policy IG9.

4.5.16. Policy DS21 of the NLLP [REP3-027] indicates that proposals for renewable energy generation will be permitted provided any detrimental effects on features and interests of acknowledged importance, including local character and amenity, are outweighed by environmental benefits. Policy DS21 further advises that where appropriate, conditions will be

imposed requiring the restoration of sites. NLC has also referred to Policy CS18 (sustainable resource use and climate change) of the CS [REP3-021], which states *'The council will actively promote development that utilises natural resources as efficiently and sustainably as possible …'*. In that regard Policy CS18's eleventh criterion provides support for *'… renewable sources of energy in appropriate locations, where possible …'*.

4.5.17. The Council is of the view that Policy DS21 and CS18 support the principle of renewable energy generation [paragraph 2.5.3 in REP2-026] and has identified no conflict with either of those policies.

4.5.18. NLC through the submission of its LIR has identified no in principle conflict with the policies of either the NLLP or the CS. While Fennswood have contended that PDL could accommodate the Proposed Development, as explained earlier in this subsection NLC does not share that view.

Conclusion on the development plan policies relevant to in principle considerations for the Proposed Development

4.5.19. Having regard to the provisions of the development plan's countryside protection policies and their bearing on the consideration of the Proposed Development in principle, the Examining Authority (ExA) concludes:

- There is conflict with Policy RD2 of the NLLP. That is because solar generating stations have not been identified as being a form of permissible development amongst the closed list of development types cited in Policy RD2. However, Policy RD2 in seeking to protect the countryside for its own seek is inconsistent with the policy approach advocated in the NPPF.

- While the Proposed Development would occupy farmland that occupation would not be permanent and there would be potential for sheep to graze the grass to be planted beneath the solar arrays. Given those circumstances there would be no in principle conflict with the objective of Policy RD7 of the NLLP to safeguard the operational requirements of an agricultural enterprise.

- Policies CS2 and CS3 of the CS support the use of PDL in urban locations ahead of the use of greenfield land in the countryside. For the purposes of Policies CS2 and CS3 the Proposed Development would not be of a type that would be essential to the functioning of the countryside. However, the Proposed Development would involve the provision of a utility scale generating station and NLC is of the view that there is insufficient PDL available to accommodate a solar park of this scale. The Proposed Development through its operation would inherently increase the use of renewable energy, which Policy CS2 is supportive of. Taking the aforementioned factors into account any proposal for a solar park with a generating output of over 50MW would be likely to need a greenfield site within North

Lincolnshire. While there is some conflict with Policies CS2 and CS3 under the circumstances of this case the conflict with those policies is considered to be insufficient to give rise to an in principle objection to the Proposed Development.

- Overall while the Proposed Development gives rise to some conflict with Policy RD2 of the NLLP and Policies CS2 and CS3 of the CS, the ExA considers that conflict does not amount to overarching non-conformity with the development plan.

4.6. CONFORMITY WITH THE NATIONAL PLANNING POLICY FRAMEWORK (NPPF) and Planning Practice Guidance (PPG)

4.6.1. The NPPF contains the Government's planning policies for England with respect to the making of Development Plans and the deciding of planning applications for planning permission and related determinations under the Town and Country Planning Act 1990 (TCPA1990). The PPG provides complimentary guidance with respect to the policies contained in the NPPF.

4.6.2. I consider that some of policies stated in the NPPF and the guidance in section 5 (Renewable and low carbon energy) of the PPG are, amongst the other matters, important and relevant to the SoSBEIS's decision making for this application.

Policies of the NPPF

4.6.3. Paragraph 7 of the NPPF explains that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 goes onto indicate that in achieving sustainable development the planning system has three overarching objectives, economic, social and environmental, *"… which are interdependent and need to be pursued in mutually supportive ways …"*. Paragraph 10 states *"So that sustainable development is pursued in a positive way, at the heart of the Framework is a* ***presumption in favour of sustainable development***[32]*"*.

4.6.4. There are other paragraphs in the NPPF that I consider are important and relevant and I have referred to them and assessed the Proposed Development's conformity with them in the planning issue sections later in this Chapter.

Guidance in the PPG

4.6.5. I consider that the guidance provided in parts of section 5 of the PPG, most particularly paragraphs 001, 012 and 013, is important and

[32] Emphasis forms part of the text in paragraph 10 of the NPPF

relevant to the determination of this application. I have referred to that guidance, as relevant, in the planning issue sections later in this Chapter.

4.7. ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

The Submitted Environmental Statement (ES)

4.7.1. The Applicant submitted an ES consisting of eleven chapters [APP-058 to APP-068] accompanied by multiple technical appendices [APP-070 to APP-108] and a standalone Non-Technical Summary [APP-055]. The previously mentioned technical appendices include the following environmental management plans:

- Outline Soil Management Plan [APP-080];
- Outline Battery Safety Management Plan (oBSM) [APP-083];
- Outline Construction Environmental Management Plan for Biodiversity (oCEMPfB) [APP-096];
- Outline Construction Traffic Management Plan (oCTMP) [APP-105];
- Outline Construction Environmental Management Plan (oCEMP) [REP6-006]
- Outline Decommissioning Strategy (oDS) [REP6-008];
- Outline Landscape and Ecological Management Plan (oLEMP); [REP6-012]; and
- Archaeological Management Plan (AMP) [REP6-018].

4.7.2. The environmental management plans, in tandem with Requirements (Rs) included in the dDCO [REP7-003], are intended to ensure that the construction, operational and decommissioning phases for the Proposed Development would meet the parameters assessed in the ES and provide mitigation that the Applicant has relied upon when undertaking the EIA. The environmental management plans listed above would be documents that would need to be submitted for the SoSBEIS's certification under the provisions of Article 14 of any made DCO. The management plans currently in outline form would be subject to approval for their final forms being sought from NLC, pursuant to Rs 4, 7, 8, 9 and 10 in Part 1 of Schedule 2 of the dDCO [REP7-003].

4.7.3. Some of the ES's chapters and technical appendices were amended during the course of the Examination and the revised versions of those documents are listed in section 2.3 of this Report. The amendments made to either the chapters or technical appendices of the ES essentially addressed matters of clarification or internal consistency with other parts of the ES or other application documents. The changes made to the ES during the Examination did not fundamentally affect the conclusions that the Applicant had reached in the originally submitted ES and which had informed the decision to accept the application for Examination [PD-001].

4.7.4. Chapters 6 (Landscape and Visual Impact) [REP5-008], 7 (Ecology and Nature Conservation) [REP5-010], 8 (Cultural Heritage) [APP-065], 9 (Transport and Access) [APP-066] and 11 (Socio Economic Issues) [PDA-013] include sections assessing the cumulative and in-combination effects of the Proposed Development and other developments in NLC's

area. However, the Applicant's assessment of the cumulative and in-combination effects was primarily restricted to the consideration of the effects of the Proposed Development combined with other solar farms rather than a broader assessment involving other forms of development.

4.7.5. Under agenda item 3d) at ISH1 [EV-008] and through the asking of ExQ1.1.9 and ExQ1.1.10 [PD-007] I sought clarification from the Applicant and NLC as to whether the consideration of cumulative and in-combination effects with other existing and/or approved projects in the ES met the requirements of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations). In response to my oral and written questions the Applicant advised [REP1-008 and REP2-022] that as part of its pre-application consultation with NLC the need to take account of other developments as part of a cumulative assessment was not identified by NLC.

4.7.6. NLC in responding to ExQ1.1.10 advised that there were *"… no additional existing or proposed developments that need to be included in the Applicant's assessment of the cumulative and in-combination effects …"* [REP2-027].

4.7.7. The submission of the Keadby 3 NSIP application for examination on 28 June 2021 had the potential to affect the Applicant's cumulative and in-combination effects assessment. The submission of the Keadby 3 application post-dated the submissions made by the Applicant and NLC at ISH1 and D1 and D2. As part of the discussion that took place at ISH2 I raised the matter of the Keadby 3 application's submission. As an action arising from ISH2 the Applicant agreed to undertake a cumulative effects assessment for Keadby 3. In that assessment the Applicant concluded that Keadby 3 would not have the potential to generate any likely significant cumulative effects when considered with the Proposed Development [REP5-021].

4.7.8. In [REP5-021] the Applicant also took the opportunity to undertake a similar assessment for the Able Marine Energy Park Material Change 2 (Able Marine) application, which was submitted on 25 June 2021 and subsequently accepted for examination on 15 July 2021. With respect to Able Marine the Applicant concluded that it would not have the potential to generate any likely significant cumulative effects when considered alongside the proposed solar park [paragraph 1.31 in REP5-021].

4.7.9. ExQ3.1.10 [PD-013] gave NLC the opportunity to comment on the Applicant's cumulative effects assessment for Keadby 3 and Able Marine. In response to that question NLC advised [REP6-022] that it agreed with the conclusions reached by the Applicant in [REP5-021].

Conclusions on the EIA and ES

4.7.10. During the Examination there were no submissions raising concerns about the overall adequacy of the EIA process and the ES. Individual submissions raising subject specific issues bearing on the individual

planning issues are addressed, as necessary, in later sections of this Chapter.

4.7.11. I consider the ES, inclusive of the revisions made to it during the course of the Examination, provides an adequate assessment of the environmental effects for the Proposed Development and that the requirements of the EIA Regulations have been met. In that regard the Applicant's EIA has relied upon the use of a *"candidate design"*, which has been used to assess the *"worst case"* significant effects for the Proposed Development [REP5-006]. The Applicant has provided an adequate assessment of the environmental effects for the Proposed Development, sufficient to describe a maximum impact (Rochdale Envelope) for this project, with the provisions of the dDCO being capable of ensuring that the implementation of any authorised development would be within the identified Rochdale Envelope.

4.7.12. Having sought clarification about adequacy of the Applicant's assessment of the cumulative and in-combination effects, I am content that this matter has been appropriately addressed in the ES. I am also content that the submission of the Keadby 3 and Able Marine NSIP applications do not have implications for the cumulative and in-combination effect conclusions reached by the Applicant in its ES.

4.7.13. Full account has been taken of the ES and in making the ExA's recommendations to the SoSBEIS.

4.8. HABITATS REGULATIONS ASSESMENT

4.8.1. Matters relating to the to the Habitats Regulations Assessment are reported on in Chapter 5 of this Report.

4.9. MEETING ENERGY NEED, INCLUDING THE GENERATING CAPCITY FOR THE PROPOSED DEVELOPMENT

INTRODUCTION

4.9.1. This section examines the need for and the anticipated generating capacity of the Proposed Development and includes consideration of the designated and emerging policies relating to need, reflecting the matters raised in writing and discussed at ISH1 and ISH2.

POLICY CONSIDERATIONS

National Policy Statements (NPSs)

4.9.2. NPS EN-1 and NPS EN-5 identify the need and urgency for new energy infrastructure to be provided with the aim of: supporting the Government's policies on sustainable development, notably by mitigating and adapting to climate change; and contributing to a secure, diverse and affordable energy supply. Part 2 of NPS EN-1 explains that the

Government is committed to meeting the legally binding target to cut carbon emissions by at least 80% (from 1990 levels) by 2050. That reduction target having been subsequently revised to 100% in July 2019[33].

4.9.3. Within NPS EN-1 there is recognition that there will be a need for electrification of much of the UK's heating, industry and transport, increasing the demand for electricity. To meet that increased demand for electricity there will be a need for new low carbon energy infrastructure.

4.9.4. Paragraph 3.1.1 of NPS EN-1 states *"The UK needs all the types of energy infrastructure covered by this NPS in order to achieve energy security at the same time as dramatically reducing greenhouse gas emissions"*. However, as I have explained in sections 3.2 and 4.4 above, solar energy generation has been expressly excluded from NPS EN-1's scope/coverage.

4.9.5. The underlining reason for that exclusion can be found in paragraph 1.8.2 of NPS EN-3. There it is explained that a number of renewable energy generating technologies, including solar photovoltaic, were excluded from NPS EN-3's coverage because in 2011 the Government considered they would not be *"technically viable"*.

4.9.6. Paragraphs 3.1.4 and 3.2.3 of NPS EN-1 state that substantial weight should be attached to considerations of need for the provision of significant amounts of new large scale energy infrastructure. However, that attribution of weight only applies to the types of energy infrastructure that are within the NPSs' scope/coverage, having regard to what is stated in paragraph 3.1.1 of NPS EN-1.

4.9.7. Paragraph 4.1.2 of NPS EN-1 states that a presumption in favour of granting consent should be applied to applications for energy NSIPs. However, as I have explained in section 4.4 above, the presumption in favour of granting consent only applies to the infrastructure types covered by the energy NPSs. With solar generation's exclusion from the technologies covered by the designated NPSs, the automatic presumption in favour of granting consent *"… for infrastructure of the types covered by the energy NPSs …"* (paragraph 4.1.2 of NPS EN-1) does not apply to the decision making in this instance.

4.9.8. NPS EN-5 contains specific policy concerning the provision of electricity networks infrastructure and is a technology specific companion to NPS EN-1. NPS EN-5's introduction explains that the new electricity generating infrastructure that the UK needs will be heavily dependent on the availability of a fit for purpose and robust electricity network. That network will need to be able to support a more complex system of supply and demand than currently, as well as coping with generation occurring in more diverse locations.

[33] The Climate Change Act 2008 (2050 Target Amendment) Order 2019

4.9.9. The remainder of NPS EN-5 is largely concerned with electricity network infrastructure comprising transmission systems and associated infrastructure.

National Planning Policy Framework (NPPF)

4.9.10. Chapter 14 of the NPPF contains policies for planning for climate change and, amongst other things, when it comes to determining planning applications for renewable and low carbon development paragraph 158 states:

"… local planning authorities should a) not require applicants to demonstrate the overall need for renewable or low carbon energy, and recognise that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions …"

The Development Plan

4.9.11. The development plan, through the operation of Policy DS21 of the NLLP [REP3-027] and Policy CS18 of the CS [REP3-021], recognises that there will be a need to produce energy from renewable sources within NLC's area.

Consultation drafts for the reviewed Energy National Policy Statements (dEN-1, dEN-3 and dEN-5)

4.9.12. As explained in section 3.11 of this Report on 6 September 2021 the Government commenced a consultation on the contents of reviewed versions of the energy NPSs. In that regard consultation drafts for NPS EN-1 to NPS EN-5 have been published, which I have abbreviated as dEN-1, dEN-3 etc in this Report.

dEN-1 (draft Overarching National Policy Statement for Energy)

4.9.13. Part 1.3 of dEN-1 signals the Government's intention to bring NSIP scale solar energy generation within the scope/coverage for NPS EN-1 and NPS EN-3.

4.9.14. Part 2 of dEN-1 explains that as part of the process of decarbonising the energy consumed in the UK, additional electricity generating capacity will be required. In section 2.5 it is explained that the Government's wider objectives for energy infrastructure includes contributing to sustainable development by providing a supply of low carbon energy that is safe, secure, reliable and affordable.

4.9.15. Part 3 of dEN-1 addresses the need for new energy NSIPs and makes clear that the Government sees there being a need for significant amounts of new large scale energy infrastructure, which will need to be provided on an urgent basis. Paragraph 3.2.5 states:

"The Secretary of State should therefore assess all applications for development consent for the types of infrastructure covered by the energy NPSs on the basis that the Government has demonstrated that

there is a need for those types of infrastructure, as described for each of them in this Part."

4.9.16. Paragraph 3.2.6 goes onto indicate that 'substantial weight' should be given to the need for new energy infrastructure when determining NSIP applications.

4.9.17. Within Part 3 of dEN-1 the availability of storage is recognised as providing flexibility in managing electricity generated by intermittent sources (wind and solar) so *'… that less of the output of plant is wasted as it can either be stored or exported when there is excess production'* (paragraph 3.3.17 of dEN-3 [e-page 49 in REP7-010]). Storage facilities are recognised as having the capability to supply electricity when demand is higher than the level of generation. That in turn has the potential to reduce the amount of generation plant capacity needed to meet peak demand.

4.9.18. Within the context of replacing retiring generating stations and meeting an increased demand for electricity in paragraph 3.3.1 of dEN-1 it is explained that there will be an increased reliance on the use of electricity as the UK's energy system transitions to deliver the Government's *"… net zero target"*. Paragraph 3.3.1 goes onto state:

"… We need to ensure that there is sufficient electricity to always meet demand; with a margin to accommodate unexpectedly high demand and to mitigate risks such as unexpected plant closures and extreme weather events."

4.9.19. Paragraph 3.3.2 further advises:

"The larger the margin, the more resilient the system will be in dealing with unexpected events, and consequently the lower the risk of a supply interruption. This helps to protect businesses and consumers, including vulnerable households, from volatile prices and, eventually, from physical interruptions to supply that might impact on essential services. But a balance must be struck between a margin which ensures a reliable supply of electricity and building unnecessary additional capacity which increases overall costs of the system."

4.9.20. Paragraph 3.3.21 of dEN-1 advises:

"Wind and solar are the lowest cost ways of generating electricity, helping reduce costs and providing a clean and secure source of electricity supply (as they are not reliant on fuel for generation). Our analysis shows that a secure, reliable, affordable, net zero consistent system in 2050 is likely to be composed predominantly of wind and solar."

4.9.21. In paragraph 3.3.22 reference is made to there being a requirement for sustained growth in capacity for onshore wind and solar generation in the next decade. However, unlike for offshore wind no generating target for solar generation by 2030 has been identified in dEN-1. The intermittent nature of wind and solar electricity generation is recognised in paragraph

3.3.23, with it being explained that there will be a need for those generating technologies to be complemented by others or for electricity demand to be reduced *'… when the wind is not blowing, or the sun does not shine …'*.

4.9.22. Within paragraph 3.3.44 solar electricity generation is expressly identified as being one of a number of technologies that it is intended would be within the scope of a revised NPS EN-1. That would mean that solar generation would be amongst the mix of technologies referred to in Part 3 of dEN-1 for which the need would be established by the Government as being *'urgent'*.

4.9.23. Part 4 of dEN-1 addresses the assessment principles for energy NSIPs and in paragraph 4.1.2 it is stated:

"… Given the level and urgency of need for infrastructure of the types covered by the energy NPSs set out in Part 3 of this NPS, the Secretary of State will start with a presumption in favour of granting consent to applications for energy NSIPs …"

dEN-3 (draft National Policy Statement for Renewable Energy Infrastructure)

4.9.24. Part 1.6 of dEN-3 identifies the renewable energy technologies that it is intended would be covered by a reviewed version of NPS EN-3. In this regard it is intended that solar photovoltaic generation over 50MW would be brought within the mix of renewable technologies covered by NPS EN-3.

4.9.25. Paragraph 2.1.2 of dEN-3 cross refers to section 3.3 of dEN-1 and states *"… the Secretary of State should act on the basis that the need for infrastructure covered by this NPS has been demonstrated"*.

4.9.26. Technology specific policy for solar generation in dEN-3 is set out in paragraphs 2.47.1 to 2.54.10. In paragraph 2.47.1 it is stated:

"Solar farms are one of the most established renewable electricity technologies in the UK and the cheapest form of electricity generation worldwide. Solar farms can be built quickly and, coupled with consistent reductions in the cost of materials and improvements in the efficiency of panels, large-scale solar is now viable in some cases to deploy subsidy-free and at little to no extra cost to the consumer. The government has committed to sustained growth in solar capacity to ensure that we are on a pathway that allows us to meet net zero emissions. As such solar is a key part of the government's strategy for low-cost decarbonisation of the energy sector".

4.9.27. Paragraphs 2.48.6 and 2.48.7 in dEN-3 provide clarification about how the generating capacity for solar generating stations should be measured

in terms whether they would or would not be an NSIP[34]. Those paragraphs respectively state:

"Solar panels generate electricity in direct current (DC) form. A number of panels feed an external inverter, which is used to convert the electricity to alternating current (AC). After inversion a transformer will step-up the voltage for export to the grid. Because the inverter is separate from the panels, the total capacity of a solar farm can be measured either in terms of the combined capacity of installed solar panels (measured in DC) or in terms of combined capacity of installed inverters (measured in AC).

For the purposes of determining the capacity thresholds in Section 15 of the 2008 Act, all forms of generation other than solar are currently assessed on an AC basis, while solar farms are assessed on their DC capacity. Having reviewed this matter, the Secretary of State is now content that this disparity should end, particularly as electricity from some other forms of generation is switched between DC and AC within a generator before it is measured. Therefore, from the date of designation of this NPS, for the purposes of Section 15, the combined capacity of the installed inverters (measured in AC) should be used for the purposes of determining solar site capacity. The capacity threshold is 50MW (AC) in England and 350MW (AC) in Wales."

4.9.28. In paragraph 2.47.2 of dEN-3 there is recognition energy storage may also be proposed as associated infrastructure alongside solar arrays.

THE APPLICANT'S CASE

4.9.29. The Applicant's case on the need for the Proposed Development is stated in:

- Statement of Need [APP-049];
- Chapter 5 of the ES: Legislative Context, Climate Change, Energy Policy and Guidance [APP-062]; and
- Planning Statement [REP5-017], an amended version submitted at D5.

4.9.30. Documents subsequently submitted into the Examination by the Applicant addressing need and generating capacity included:

- Post ISH1 written submissions [REP1-008];
- Technical Guide [REP1-011];
- Applicant's response to ExQ1, including at Appendices 3 and 6 respectively the ExA's recommendation report and the SoSBEIS's decision for the Cleve Hill solar park [REP2-022];
- Technical Guide update following ISH2 [REP4-014], replacing [REP1-011];
- Post ISH2 written submissions [REP4-017];

[34] As defined in s15 of the PA2008

- Applicant's response to ExQ2 [REP4-018];
- Projected Hourly Output for 420 watts peak (wp) with Grid Export Limited to 99.9MW [REP4-019];
- Projected Hourly Output for 420wp with Grid Export Unlimited [REP4-020];
- Projected Hourly Output for 535wp with Grid Export Limited to 99.9MW [REP4-021];
- Projected Hourly Output for 535wp with Grid Export Unlimited [REP4-022];
- Applicant's response to ExQ3 [REP6-019];
- Applicant's response to ExQ3.1.3 [REP6-020] and accompanying appendices [REP6-021]; and
- Applicant's response to ExQ4 [REP7-010].

4.9.31. The Applicant's needs case made in [APP-049], [APP-062] and the originally submitted Planning Statement [APP-109] predated the Government's publication of the Energy White Paper in December 2020 and dEN-1 and dEN-3. Much of the Applicant's needs case made prior to D6 (31 August 2021) therefore relies on dated national policy documents and/or renewable energy sector reports and data. I have therefore only provided a brief summary of the needs case made by the Applicant up until D7. That is because ExQ4.1.1 in effect gave the Applicant the opportunity to update its needs case at D7, following the publication of the emerging policy included in dEN-1, dEN-3 and dEN-5. The key points about need made by the Applicant are:

- There is a need for all types of energy infrastructure covered by the energy NPSs to provide energy security and dramatically reduce GHG emissions. In determining NSIP applications Part 3 of NPS EN-1 indicates that *"substantial weight"* should be attached to the contribution a project would make to satisfying the need for new energy infrastructure.

- The Government has made a legal commitment to decarbonise energy production to reduce GHG emissions and counter climate change. That is to be done by introducing the target to reduce GHG emissions by at least 100% of their 1990 level by 2050, otherwise known as the net zero target. There is therefore an urgent need to approve renewable energy generating stations to both replace retiring generating capacity and provide additional capacity to meet increased demand for electricity.

- With respect to the decarbonising of energy production, it is predicted, based on the installation of solar panels rated at 420 watts (w) that around 134,530 megawatt hours (MWh) of electricity would be generated during the first calendar year of operation. The generation of 134,530MWh of electricity is predicted to yield a displacement[35] (saving) in carbon dioxide (CO_2) emissions of around

[35] A reduction in CO_2 emissions by comparison with the same amount of electricity being produced through the combustion of fossil fuels

31,364 tonnes annually[36]. That CO_2 saving being equivalent to 30,050 tonnes in the first full year of operation, when an allowance is made for the CO_2 emitted during the constriction works, as explained in section 6 of the Applicant's Air Quality and Carbon Assessment (AQCA) [REP6-010].

- The Proposed Development would support sustainable economic growth, in accordance with the overarching presumption in favour of permitting sustainable development stated in the NPPF. Paragraph 158 of the NPPF advises that planning applications for renewable energy developments should be approved if their impacts are acceptable or can be made to be acceptable and applicants should not be required to demonstrate the overall need for renewable projects.

- The Proposed Development would contribute to the Government's identification in dEN-1 of a need for sustained growth in solar generation over the next decade, which weighs for the Proposed Development [section 2 in REP7-010].

- In line with the guidance contained in paragraph 2.48.3 of dEN-3, design parameters have been established "… which seek to maximise the performance of the development …" [page 5 of REP7-010].

- The provision of electrical storage in association with solar arrays can assist with addressing the intermittent nature of solar generation.

EXAMINATION

Introduction

4.9.32. The case made by Fennswood [37] questioned the need for the Proposed Development, albeit that concern was more to do with not using PDL.

4.9.33. In examining the need for the Proposed Development, I have primarily raised written and oral questions seeking clarification from the Applicant about some technological aspects of solar generation and what the predicted generating output for the generating station would be. That is because it was unclear to me from the originally submitted application documentation what the phrase *"… a generating station with a gross electrical output of over 50 megawatts peak …"* stated in Schedule 1 (authorised development) of the dDCO [APP-045] meant in practice.

4.9.34. I considered it important to have a full understanding about how much electricity the solar arrays would be expected to be generate. That was because with that information I would be able to reach a view about how

[36] Calculated using the Department for Environment, Food & Rural Affairs reporting guideline figure of 0.23314 kilograms per kilowatt hour
[37] RR-006, RR-008, RR-009, RR-014 and RR-015, REP1-027, REP4-033 and REP7-013

much weight I considered it would be appropriate to attach to the contribution the Proposed Development could make to meeting the UK's need for electricity generation. That being significant to the decision making in this instance, given that for the purposes of Part 3 of NPS EN-1 solar generating stations do not benefit from *"substantial weight"* being attributed to any contribution they might make to meeting the need for new energy infrastructure.

4.9.35. In reporting below on the need for the Proposed Development and its generating capacity I have had particular regard to the Applicant's:

- written submissions in the documentation listed in paragraph 4.9.30 above; and
- responses to the questions I raised at ISH1 [EV-008 and EV-009] and ISH2 [EV-015 and EV-018]

The Proposed Development's generating capacity

Solar generating technology and terminology

4.9.36. The Applicant explained at ISH1 [EV-009] and in its 'Technical Guide' [section 4 of REP4-014] that references to MW peak (MWp), rather than MW, relate to the nominal power output (generating capacity) for a solar generating station assessed against "Standard Test Conditions" (STC). STC being an internationally recognised set of standardised operating conditions, against which the performance of solar panels are judged. The STC being:

- Solar irradiation of 1,000w per square metre;
- A solar cell temperature of 25 degrees Celsius; and
- An air mass of 1.5, ie the amount of atmosphere sunlight must pass through to strike the earth [paragraph 4.2 in REP4-014].

4.9.37. The Applicant has explained that under STC a 1MWp solar park would be expected to produce 1,000MWh, with the actual amount of electricity generated being affected if any or all of the operational conditions vary from the STC. By way of example, the Applicant has explained that a solar park in southern Spain rated at 1MWp would be expected to produce twice as much electricity as the same facility operating in Scotland, given the higher solar irradiance levels in southern Spain [section 4 in REP4-014]. The Applicant has also submitted that the variation in solar irradiance in the UK means that a 1MWp solar park located in Cornwall would be expected to yield 20% more electricity than a similar facility in Scotland [paragraph 6.2 in REP4-014]. The map included in Appendix 1 in [REP4-014] shows the variation in solar irradiation across the UK.

4.9.38. Power outputs expressed as wp or MWp relate to installed capacities and are therefore somewhat nebulous and do not equate to a solar generating station's actual output.

4.9.39. Although the candidate design solar panels are rated at 420w, paragraph 4.3.3 of Chapter 4 of the ES [REP5-006] explains that with

advances in technology panels rated at more than 500w might be installed as part of the Proposed Development. In section 5 of the Applicant's Technical Guide, it is explained that solar panels currently have an efficiency of around 21%. That is 21% of the solar energy received by a solar panel is converted into *"useable electricity"*. Panel efficiency having increased from around 14% in 2010, when solar panels were rated in the range of 250 to 300wp [paragraph 5.2 in REP4-014].

4.9.40. The Applicant has further advised that some manufacturers have started making solar panels that are rated at around 600wp and those panels might start to become available over the next 12 to 18 months[38]. While in laboratory testing some experimental designs have recently been recorded as achieving efficiency levels exceeding 40% [paragraph 5.3 of REP4-014].

4.9.41. It was very evident from both the discussion at ISH1 and the Applicant's post ISH1 written submissions that solar panel efficiency and generating capacity is advancing rapidly. In order to gain a better appreciation of the implications that might have for the Proposed Development's generating output at ISH2 I enquired about the anticipated procurement timetable for this project[39]. In response to that question the Applicant advised, if a DCO was made and came into force in April 2022, given a six to nine month lead in time prior to works starting on site, then the construction for this scheme could commence during the first quarter of 2023. Based on that timescale the Applicant advised that solar panels rated between 550w and 600w could be available for installation [EV-018]. That response is confirmed in the Applicant's post ISH2 written submission [REP4-017], in which it is stated:

"… this was one of the most dynamic markets within the renewable industry and that it was quite likely that modules of around 550-600W could be available for consideration. … it was prudent not to curtail the ability to secure the best technology that is available at the time.

… even if there were advances in efficiency of modules over the next year or so the land take for the project would not change to any great extent. A decision would need to be taken as to whether to send any additional energy generated to the battery energy storage system and then release it to the grid later. Ultimately the Applicant must choose the size of module that best suits the project and the size of battery that best complements the solar pv element."

4.9.42. In responding to ExQ3.6.1 the Applicant reiterated it is likely that 600wp solar panels would be available by the anticipated earliest date for the commencement of the construction works [REP6-019] and further commented:

[38] Base date May 2021
[39] Agenda item 3c) [EV-015 and EV-018]

"Assuming that the Order would come into force in April 2022 (the estimated decision date) then the Applicant considers that it is appropriate to contemplate technological advances within that time frame. Experience of solar panel development to date strongly indicates that panels of a greater capacity but within the physical parameters of those currently available, are likely to come onto the market within that period."

4.9.43. The Applicant has drawn attention to the current dynamism in the marketplace for solar panel technology, most particularly in its post ISH2 written submissions [REP4-017] and its subsequent response to ExQ3.6.1 [REP6-019]. Notwithstanding those submission, the Applicant in replying to ExQ4.1.2 [PD-016] commented:

"Continued improvements in PV technology has increased the project megawatt peak potential whilst maintaining the same development footprint. This has allowed the Applicant to explore a range between 150 – 200MWp. Nevertheless, whilst there are PV modules with higher outputs continuously entering the market, it takes a few years before they become commonly viable and available. Therefore, the Applicant may opt to construct with lower output modules and staying around the 150MWp mark. The procurement timeline between obtaining consent and starting on site is probably 12 months for this project, and technology advancements should be expected within that time period. Considering that there is no change to the footprint or the parameters used in the Environmental Statement, it represents a sound development strategy to allow for the potential use of advancing technology, thus the Applicant has a explored a range of between 150 to 200MWp." [paragraph 3.2 in REP7-010]

4.9.44. It should be noted that ExQ4.1.2 asked the Applicant to explain how it considered it might be possible to increase the grid export limit of 99.9MW in the future, further to the response it had provided to ExQ3.6.1 in [REP6-019]. The Applicant's response to ExQ4.1.2 (quoted above) did not actually reply to the ExA's question. Notwithstanding that, I consider that the Applicant's reply to ExQ4.1.2 portrays what appears to be a lack of ambition on its part to install solar panels with a rating above 420wp and produce as much electricity as potentially possible. In that respect it should be noted that the dDCO [REP7-003] contains no provision, ie Article or Requirement, securing the installation of solar panels at a particular power rating, whether that be 420wp or higher.

4.9.45. Installing 356,670 solar panels rated at 420wp would mean that the solar arrays would have an installed capacity of around the 150MWp mark, as referred to in the Applicant's reply to ExQ4.1.2. However, given the 153.42 hectares (ha) of land [REP4-003] that would be occupied by the proposed solar arrays[40], I have reservations as to whether the Applicant's potential reliance on its candidate design, most particularly the

[40] Ie the full extent of Work No.1 shown on APP-013, namely the solar arrays and the network of maintenance tracks etc

installation of 420wp solar panels, would amount to an efficient use of land, as promoted by paragraph 124 of the NPPF. Those reservations being in the context of the actual amount of electricity the solar arrays of the candidate design would be capable of producing and the land take to achieve that. The efficient use of land I consider to be an important and relevant matter for the purposes of the determination of this NSIP application.

4.9.46. I consider the Applicant's response to ExQ4.1.2 to be inconsistent with the reasoning it provided during the Examination in resisting any maximum generating limit being stated in any made DCO. In that regard, as by way of examples, the Applicant commented:

- In response to ExQ2.6.5 [PD-010]:

"… The imposition of a maximum capacity would limit the generation of renewable energy at a time when there is significant Government policy imperative to increase renewable energy.

Notwithstanding the Applicant's strongly held view, if the ExA were minded to recommend the imposition of a maximum capacity, it should, in the Applicant's view relate to the combined capacity of both the solar and the battery and the Applicant would suggest a combined capacity of 500MW as this would allow some flexibility for reasonably foreseeable technological advances. However, if the ExA were to make such a recommendation, the Applicant would request that it is phrased as a Requirement in the following terms "the combined capacity of the solar PV and battery storage shall not exceed 500MW without the approval of the Secretary of State" [e-page 17 in REP4-018]

- In response to ExQ3.6.1 [PD-013], amongst other things:

"As previously confirmed, the generating capacity of the solar array and the battery energy storage system (BESS) are not parameters upon which the development has been assessed in the environmental statement (ES), and therefore any restriction on maximum capacity imposed via the DCO would be purely arbitrary. The ES refers to a candidate design in order that the physical parameters of the development (i.e. the panels and the battery) could be assessed. That candidate design was based on an example capacity that could be accommodated within the size of panels and battery assessed at the time of the preparation of the ES and the DCO Application. As has been demonstrated by the Applicant during the Examination, at ISH and in the Technical Guide [ref[41]], technology for solar development is advancing all the time and there is no reason why a greater capacity couldn't be accommodated within the physical parameters of the ES, thereby having no greater environmental impact than set out in the ES. …" [REP6-019]

4.9.47. So, on the one hand the Applicant has sought to argue that should a maximum generating limit be included in any made DCO that would be

[41] REP4-014

an impediment to maximising the Proposed Development's generating capacity while keeping within the worst case physical parameters assessed in the ES (ie not breaching the identified Rochdale Envelope). On the other hand, the Applicant has submitted that it may elect not to make the most of the advancement in technology and simply install solar panels rated at 420wp. The difference in the Applicant's predicted generating output for 420wp panels and higher rated panels is a matter I have reported on below.

4.9.48. The Applicant's response to ExQ2.6.5, as quoted above, suggests that were a maximum generating capacity to be stated in any made DCO then the combined capacity for solar generating station and BESS should not exceed 500MW because that would allow some flexibility for the reasonably foreseeable technologies. That approach would certainly provide flexibility for the Applicant. However, I have reservations as to whether it would be possible to implement the Proposed Development and install a BESS[42] with only a capacity of 90 to 100MW, at least without first securing a grid export limit significantly more than 99.9MW. Given the grid connection limit of 99.9MW, I am therefore doubtful whether it would be possible to implement a scheme with a combined capacity of around 500MW for the solar arrays and a BESS, while remaining within the Applicant's identified Rochdale Envelope. That is because without a significantly greater grid export limit and/or much greater battery efficiency and assuming a substantial increase in the generating capacity of the solar arrays, a lot more battery storage would be required.

4.9.49. In paragraph 6.6 of its Technical Guide [REP4-014] the Applicant has advised that another aspect of solar panel advancement concerns the rate at which the performance of panels declines in operation. The Applicant has explained that yearly degradation rate is now around 0.3%, with an expectation that the operational life for a solar park commencing generation in 2021 would now be 35 years, compared with 25 years for generating stations that became operational in 2010 [REP4-014].

4.9.50. Paragraph 2.48.8 in dEN-3 [e-page 236 in REP7-010] addresses the matter of solar panel degradation and refers to the concept of "overplanting". Overplanting being a circumstance under which the initially installed generating capacity for a solar generating station is greater than the grid connection limit. The reason for overplanting being to allow parts of a solar generating station to be held in reserve following first commissioning and then to be brought on line at a later stage, in response to panel degradation. That enabling the grid connection limit to be maximised throughout the generating station's operational life.

4.9.51. The Applicant, either in its application documents or its Examination submissions, most particularly its Technical Guide [REP4-014] and

[42] Ie either proposed Work No. 2A or 2B

submissions relating to dEN-3's publication [REP7-010], has not referred to overplanting as a factor contributing to the sizing for the proposed solar arrays. Rather the Applicant has explained the solar arrays have been sized simply in terms of their ability to maximise the use of the available grid connection of 99.9MW.

Predictions for the generating output for the Proposed Development

4.9.52. In connection with determining the size of the proposed generating station, ie the solar arrays, the Applicant has advised that the typical nominal installed capacity for a solar park is *"… based on 1.2 – 1.3 times the export capacity in the grid offer with the lower end of the scale being relevant to locations with higher irradiation for example Cornwall"* [paragraph 8.7 in REP4-014]. As the Proposed Development would have a grid export capacity of 99.9MW, the Applicant has explained that in order to maximise the available export capacity the *"optimum"* nominal installed capacity for the solar arrays should be in the range of 125 to 130MWp, ie 99.9MW multiplied by 1.25 to 1.30 [paragraph 8.7 in REP4-014].

4.9.53. In section 4.3 of Chapter 4 of the ES it is stated that the candidate design is based on the installation of solar panels rated at 420wp [REP5-006]. In terms of the number of solar panels to be installed, the Applicant has explained in paragraph 8.7 of its Technical Guide that the candidate design is based on the installation of 356,670 solar panels [REP4-014].

4.9.54. The installation of 356,670 panels rated at 420wp would result in the Proposed Development having a nominal installed capacity of 149.8MWp, as explained in paragraph 8.7 and Appendix 2 in the Technical Guide [REP4-014]. Appendix 2 includes a prediction for the electricity produced under the candidate design.

4.9.55. Given the potential for solar panels rated at 500w or more to be available in the near future, the Applicant has also modelled a design scenario utilising the installation of 356,670 panels rated at 535wp. Under that scenario the nominal installed capacity of the solar arrays would be 190.8MWp and a prediction for their electricity production is included in Appendix 3 of the Technical Guide [REP4-014].

4.9.56. In response to ExQ1.1.7b) [PD-007] the Applicant advised that the electricity generated by a solar farm with an installed capacity of 200MWp would be around 175,000MWh per year [REP2-022]. 175,000MWh per year equating, on average, to 479MWh per day. An average daily generating output of 479MWh being equivalent to 0.06% of the UK's daily consumption of electricity in 2020. The figure of 0.06% being based on the consumption of 284.4 terawatt hours of electricity in the UK during 2020 (an average consumption of 779,178MWh per day) [e-page 9 in REP2-022]. The Applicant's reply to ExQ1.1.7b) is based on the nominal installed capacity for the Proposed Development being at the upper end of the range of 150 to 200MWp referred to in Chapter 4 of the ES [REP5-006] and the Applicant's response to ExQ4.1.2 [REP7-010] and

quoted in the preceding subsection. Should the nominal installed capacity be 150MWp then on a comparative basis the contribution to the daily consumption of electricity for 2020 in the UK would be less than the 0.06% quoted by the Applicant for a solar park rated at 200MWp.

4.9.57. The installation of 356,670 panels rated at either 420wp or 535wp would result in the Proposed Development having a nominal installed capacity exceeding the optimum of 125 to 130MWp. The Applicant has explained that installing arrays exceeding 125 to 130MWp would enable a BESS to be installed, while remaining within the design parameters assessed in the ES [paragraph 8.7 in REP4-014]. The BESS having the capability to store electricity generated in excess of the grid export limit of 99.9MW. Any excess electricity held in the BESS would then be available to be released to the grid at times when the arrays were less productive and there was demand for the stored electricity to be consumed.

4.9.58. In terms of the operation of BESSs, the Applicant has explained that a 100MW BESS coupled with a 100MWp solar park would take 1.25 hours to fully charge, assuming the solar park generated 100MWh constantly for an hour [paragraph 8.8 in REP4-014]. With respect to discharging a BESS at ISH1 the Applicant advised that it could take between 1.5 and 2.0 hours, albeit the discharge rate would be affected by whether or not the solar arrays were generating electricity and exporting electricity to the grid concurrently with the discharge of the BESS.

4.9.59. If 420wp rated solar panels were installed the Applicant has predicted that for a calendar year the proposed solar arrays would be capable of producing around 134,529 megawatt hours (MWh (AC)) of electricity for exportation to the grid [table on e-page 36 in REP4-014]. The figure of 134,529MWh being a net one, including deductions for: the inversion (conversion) of the direct current (DC) electricity produced by the solar panels to alternating current (AC); the stepping up of the voltage to 132 kilovolts (kV) for exportation to the grid; and the electricity consumed by on-site transformers, when the solar arrays were generating no electricity[43]. All of the Applicant's predictions for electricity generation are subject to an industry norm fluctuation of +/- 3% per annum. The Applicant has submitted that the annual fluctuation would be expected to even out to over the lifetime of the Proposed Development, as per the answer given to ExQ3.1.8 in [REP6-019].

4.9.60. With respect to the annual CO_2 displacement (saving), for the candidate design the Applicant has calculated that would be 31,364 tonnes [paragraph 6.3 in REP6-010]. The originally submitted AQCA [APP-081] having been amended following ISH2 and in response to ExQ3.1.9 [REP6-010]. That was to ensure that the same generating assumptions

[43] The on-site transformers consume around 0.03% of the total amount of the electricity generated at times when the solar park would not be generating electricity as explained in a note in each of REP4-019 to REP4-022

for the Proposed Development's candidate design were being applied to the calculations for CO_2 displacement.

4.9.61. In replying to ExQ3.1.9 [PD-013] the Applicant has confirmed that the predicted CO_2 displacement figures quoted in the AQCA [REP6-010] should be treated as taking precedence over some more optimistic displacement figures quoted in other application/Examination documentation, for example Chapter 4 of the ES [REP5-006] and the Planning Statement [REP5-017]. It should be noted that the predictions for CO_2 displacement provided by the Applicant do not include any allowance for the CO_2 emitted during the manufacture of the solar panels. In replying to ExQ1.3.3 [PD-007] the Applicant advised that was because the manufacturer of the panels had not been able to provide that information [e-page 18 in REP2-022].

4.9.62. For solar arrays utilising 535wp rated solar panels the Applicant has predicted 168,708 MWh (AC) could be generated in a calendar year [table on e-page 42 in REP4-014].

4.9.63. Further to the asking of ExQ2.1.6 to ExQ2.1.8 [PD-010] and a discussion that took place at ISH2 [EV-018], the Applicant has submitted hourly generation predictions for the Proposed Development for the 8,760 hours in a calendar year under four scenarios:

- Projected hourly output for 420Wp with grid export limited to 99.9MW [REP4-019];
- Projected hourly output for 420Wp with grid export unlimited [REP4-020];
- Projected hourly output for 535Wp with grid export limited to 99.9MW [REP4-021]; and
- Projected hourly output for 535Wp with grid export unlimited [REP4-022].

4.9.64. Under the generating prediction scenarios restricted to the grid export limit of 99.9MW [REP4-019 and REP4-021] without a BESS being available the operation of the solar arrays would need to be subject to some curtailment, so as to avoid there being a surplus of generated electricity that could not be exported to the grid. Under the grid export limited scenarios, based on the Applicant's generating predictions, the use of solar panels rated at 535wp would be around 25% more productive than panels rated at 420wp, respectively producing 168,708MWh and 134,529 MWh per year. With a BESS installed, enabling generation above the 99.9MW grid export limit to occur at times of peak output for the solar arrays, the predictions provided by the Applicant in [REP4-020] and [REP4-022] indicate that the annual output under the 420wp and 535wp scenarios would respectively be 136,242MWh and 180,606MWh. No CO_2 displacement predictions have been provided for solar arrays installed with 535wp panels. However, I consider it reasonable to expect that if panels rated at more than 420wp were to be installed, the CO_2 displacement would appreciably exceed the prediction for the candidate design of 31,364 tonnes per year [section 6 in REP6-010].

4.9.65. Under the grid export unlimited scenarios for 420wp or 535wp rated panels, the Applicant's predictions for the number of hours in a calendar year when the grid export limit of the 99.9MW would be exceeded are:

- With 420wp solar panels, the grid export limit would be exceeded for 169 hours (spread across 64 days) with the maximum output in any hour of any day being around 118 MWh (AC) [e-page 12 in REP4-020]. The Applicant's predictions therefore indicate that with the utilisation of 420wp panels for around 1.9% of the time in a calendar year the solar arrays would be capable of producing electricity at a level exceeding 99.9MW.

- With the use of 535wp solar panels, the grid export limit would be exceeded for 479 hours (spread across 111 days) with the maximum output in any hour of any day being around 150 MWh [e-page 11 in REP4-022]. Based on the Applicant's predictions with 535wp panels installed for around 5.5% of the time in a calendar year the solar arrays would be capable of generating an amount of electricity exceeding the grid export limit of 99.9MW.

4.9.66. The tables on e-pages 36 and 42 in Appendices 2 and 3 in [REP4-014] show that May and December are predicted respectively to be the most and least productive months. In response to ExQ3.1.2 [PD-013] the Applicant has submitted in [REP6-019] hourly comparison graphs for May and December under the four scenarios listed above.

4.9.67. The projected hourly outputs for a calendar year included in [REP4-019 to REP4-022] and the comparison graphs for May and December, demonstrate the highly intermittent nature of solar generation. The range in the number of hours when the solar arrays would be expected to be generating electricity from direct sunlight or diffuse irradiation being between six hours in December and up to sixteen hours in May. Figure 6 in [REP4-014] shows the typical hourly output for solar farms/parks in the UK. The daily output predictions for the Proposed Development correlate strongly with what is shown in Figure 6 in [REP4-014].

4.9.68. The typical monthly generation profile for UK solar farms/parks is shown in Figure 7 in [REP4-014]. The Applicant has explained that typically in the UK around 70% of the annual production for solar farms/parks is *"squeezed into the months from April to October"* [paragraph 6.5 in REP4-014]. The Applicant's generating predictions for the Proposed Development are consistent with what is shown in Figure 7 in [REP4-014].

4.9.69. The Applicant's predictions[44] for the generation of electricity by solar arrays comprising 356,670 solar panels, whether they be rated at 420wp or 535wp, demonstrate that for considerable periods of time throughout a calendar year, in any month or during an individual day, the output

[44] REP4-019 to REP4-022 and the related comparative average graphs for May and December inREP6-019

from the Proposed Development would be significantly below the grid export limit of 99.9MW. As is to be expected the maximum generating output for the Proposed Development would be between mid mornings and late afternoons, times that would not necessarily coincide with the highest levels of electricity demand, albeit that in the future with greater electrification of energy generation the consumer demand profile may well change markedly.

EXA's CONCLUSIONS

4.9.70. Taking into account the written and oral submissions made with respect to the need for the Proposed Development, my conclusions are as follows.

4.9.71. Solar generation is expressly excluded from the coverage for NPS EN-1 and NPS EN-3 and the Proposed Development therefore does not automatically benefit from the Government's demonstration of need for new and/or additional generating capacity cited in Part 3 of NPS EN-1. However, I consider there is no inherent inconsistency with the policy principles stated in NPS EN-1 that support the provision of new diversified renewable electricity generating capacity, as part of the UK's decarbonising of energy production and consumption.

4.9.72. The exclusion of solar generation from NPS EN-1's scope means that presumption in favour of granting consent for the energy NSIPs covered by the suite of NPSs, as stated in Part 4 of NPS EN-1, does not apply in this instance.

4.9.73. It is evident from the direction of travel signalled in emerging national policy, most particularly dEN-1 and dEN-3, that the Government has an intention to bring large (utility) scale solar generation within the scope of the energy NPSs. Should that happen then the Proposed Development would benefit from the need for electricity generated by renewable energy sources having been identified by the Government, in line with what is stated in Part 3 in dEN-1. Should solar generation be brought within the scope of reviewed NPS EN-1 and NPS EN-3 then a presumption in favour of granting consent would then exist. However, under the transitional arrangements outlined in section 1.6 of dEN-1 the emerging national policy in dEN-1 and dEN-3 should not be treated as the basis for decision making in this instance. However, that emerging policy is capable of being treated as important and relevant consideration.

4.9.74. Based on the installation of 420w solar panels (the candidate design) the Proposed Development has been predicted as being capable of generating between 134,530MWh and 136,240MWh of electricity per year. That level of generation would make a useful contribution to providing electricity in the UK. However, that level of electricity generation would equate to a supply for between 45,000 to 60,000 homes per year or being capable of providing on average around

0.05%[45] of the electricity consumed in the UK each day throughout 2020. I therefore consider the generating station's contribution to meeting the UK's need for electricity would be modest and attracts no more than moderate weight in favour of consent being given. In this respect I do not share the Applicant's view that substantial weight should be attached to the Proposed Development's ability to assist with meeting the UK's need for electricity generation.

4.9.75. The Applicant has submitted that should consent be given then by the time works commenced on site solar panels rated at between 500 and 600wp could be available. In that regard the Applicant's predictions for solar panels rated at 535wp indicate that at least 25% more electricity could be generated by the Proposed Development. Given: the inherent intermittent nature of solar generation; the predicted difference in output between the candidate design and a scheme utilising 535wp solar panels; and the potential for higher rated solar panels to be available for installation within the construction timeline for the Proposed Development, I consider that a project reliant on the candidate design occupying Order Limits of 226ha should not be looked upon as being an efficient use of land.

4.9.76. Accordingly, for the purposes of paragraphs 119 and 124 of the NPPF and the guidance contained in paragraph 13 of Section 5 of the PPG, I am of the view that the Proposed Development's reliance on the candidate would not be supportive of the efficient use of land. That is a factor that I consider weighs significantly against the need for the Proposed Development. Increasing the generating output of the Proposed Development through the installation of more powerful solar panels, while remaining within this NSIP's Rochdale Envelope, would in my view render this proposal to be a more efficient use of the Order Limits. As I have explained in this section of my Report, the Applicant in some respects has been keen to have flexibility in the design for the Proposed Development in order to be able to take advantage of the advances in solar generating technology, while in other regards it has suggested that this project might be progressed on the basis of deploying the candidate design. Relying on the latter I consider would potentially be a missed opportunity and give rise to an inefficient use of land.

4.9.77. Given the available evidence, which suggests that the candidate design for the Proposed Development would not maximise the electricity generating potential for the Order Limits, the SoSBEIS may wish to satisfy themselves that any development authorised by a made DCO would facilitate the maximum generation of electricity from the installed solar arrays.

4.9.78. With respect to considering the need for the Proposed Development and whether it would be an efficient use of land, the SoSBEIS may also wish

[45] Based on the Applicant's calculation in [REP2-022] for a 200MWp solar array generating around 175,000MWh per year and an allowance being made for the candidate design's predicted output being of the order of 134,500 MWh per year

to satisfy themselves to what, if any, extent the Applicant in designing the Proposed Development has placed reliance on the concept of overplanting, as referred to in paragraph 2.48.8 in dEN-3 [e-page 236 in REP7-010]. If the Applicant has placed little or no reliance on overplanting that would add further to my concern that the candidate design's implementation (the installation of 356,670 solar panels rated at 420wp) would not be an efficient use of land.

4.10. SITE SELECTION, INCLUDING EFFECTS FOR AGRICULTURE AND CONSIDERATION OF ALTERNATIVES

INTRODUCTION

4.10.1. The principal issues that arose during the Examination with respect to site selection, including effects for agriculture, related the use of PDL as an alternative to farmland and the Applicant's approach to the consideration of alternatives.

POLICY CONSIDERATIONS

4.10.2. Section 4.4 of NPS EN-1 advises that from a policy perspective this NPS does not contain any general requirement to considers alternatives or to establish whether proposed NSIPs represent the best options. That said paragraph 4.4.2 of NPS EN-1 makes clear that an applicant is obliged to include in its ES, as a matter of fact, information about the main alternatives that have been studied and an indication of the main reasons for the applicant's choice, taking account of the environmental, social and economic effects and including, where relevant, technical and commercial feasibility.

4.10.3. Paragraph 5.10.8 of NPS EN-1 states that applicants should seek to minimise impacts on the best and most versatile agricultural land (defined as land in ALC Grades 1, 2 and 3a) and preferably use land in areas of poorer quality (Grade 3b and below) except where this would be inconsistent with other sustainability considerations. Paragraph 5.10.8 goes on to state that schemes should not occupy BMVL without justification, but that little weight should be given to the loss of poorer quality agricultural land.

4.10.4. Chapter 15 of the NPPF contains overarching policies for conserving and enhancing the natural environment and paragraph 174 states:

"Planning policies and decisions should contribute to and enhance the natural and local environment by:

a) protecting and enhancing … soils (in a manner commensurate with their statutory status or identified quality in the development plan) ;

b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services –

including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland …"

4.10.5. Section 5 of the PPG (Renewable and low carbon energy)[46] states:

"… Particular factors a local planning authority will need to consider include:

- *encouraging the effective use of land by focussing large scale solar farms on previously developed and non agricultural land, provided that it is not of high environmental value;*
- *where a proposal involves greenfield land, whether (i) the proposed use of any agricultural land has been shown to be necessary and poorer quality land has been used in preference to higher quality land; and (ii) the proposal allows for continued agricultural use where applicable and/or encourages biodiversity improvements around arrays …*
- *that solar farms are normally temporary structures and planning conditions can be used to ensure that the installations are removed when no longer in use and the land is restored to its previous use …"*

4.10.6. Section 8 of the PPG (Natural environment)[47] provides guidance on taking account of the quality of agricultural land and explains that under the ALC system there are five grades of agricultural land, with Grade 3 being subdivided into 3a and 3b. The PPG advises that Grades 1, 2 and 3a are categorised as BMVL and for decision taking the economic and other benefits of BMVL should be considered.

4.10.7. Policy RD2 (Development in the open countryside) of the NLLP [REP3-036] states that development in the open countryside will be strictly controlled and planning permission will only be granted for new development if, amongst other things, it would be essential to the efficient operation of agriculture and the open countryside is the only appropriate location and it could not reasonably be accommodated within the settlement boundaries defined by the development plan.

4.10.8. Policy RD7 (Agriculture, forestry and farm diversification) of the NLLP [REP3-037] indicates that development will be acceptable in principle provided, amongst other things it would not conflict with operational requirements of the existing enterprise and there would be no adverse impact on high quality agricultural land. Policy CS3 (Development limits) of the CS [REP4-027] states that development outside defined boundaries will be restricted to that which is essential to the functioning of the countryside, including uses that are related to agriculture or other uses which require a countryside location.

[46] Paragraph: 013 Reference ID: 5-013-20150327
[47] Paragraph: 001 Reference ID: 8-001-20190721

THE APPLICANT'S CASE

Site selection and alternatives considered

4.10.9. Section 4.23 of Chapter 4 of the ES [REP5-006] and the Applicant's post ISH1 written submissions [e-pages 7 and 8 in REP1-008] summarise the site selection exercise undertaken by the Applicant. Those summaries highlight:

- One of the biggest constraints for developing renewable energy schemes is securing *"a viable point of connection to the electricity network"*, with it being *"very difficult"* to secure a connection.

  "… Increasingly, electrical connections are being forced back to substations and Bulk Supply Points as the amount of renewable generation connected within the electrical lines has grown. For storage schemes the situation is more complex as the connecting substation must have sufficient export and import capacity." [paragraph 4.23.2 in REP5-006]

- A solar park of the proposed scale requires a 132kV grid connection and the distance from the 132kV grid is a potential limiting factor for locating a generation station of this scale.

- A grid connection of 99.9MW has been secured and without grid reinforcement (expansion) the securing of that connection has taken the electricity network operated by NPG to its *"maximum fault level"* (capacity) in the area within which the Order Limits lie[48]. The Applicant has further submitted [paragraph 4.23.6 in REP5-006] that the securing of the 99.9MW grid connection has also taken National Grid's electricity transmission network *"very close"* to its capacity, which will affect the ability of other new schemes to proceed without upgrades being made to the Keadby substation at a cost of £22 million.

- Having identified a point of connection to the grid, determining the extent of the site for the Proposed Development took account of technical, environmental and economic factors, including solar irradiation; topography; proximity to sensitive human receptors[49]; site access; flood risk; effects on landscape; agricultural land; heritage assets and biodiversity; and concluding commercial agreements with landowners.

  - With respect to solar irradiation levels and shading, large open fields without vegetated boundaries reduce the impact that small

[48] The network section known as Keadby – Broughton – Teed – Scawby Brook overhead 132kV line circuit
[49] Ie people whose living conditions could be adversely affected by the construction and operation of the Proposed Development

fields can have on the layout design for a solar park. Typically, buffers are required around field edges to avoid shading.
    - In relation to topography, southerly aspects are preferrable to northern ones.
    - With respect to heritage assets, it is preferable for solar park sites to have low levels of archaeological interest.

4.10.10. The Applicant has confirmed that no alternative site locations were considered by it [e-page 8 in REP1-008].

4.10.11. Section 4.22 of Chapter 4 of the ES [REP5-006] and the Applicant's post ISH1 written submissions [e-page 8 in REP1-008] outline the alternatives considered by the Applicant. Those alternatives were:

- Do nothing, under which the Order Limits would continue to be farmed, no electricity generation and storage.

- Using the Order Limits for growing biofuel crops and Table 4.1 in Chapter 4 of the ES identifies the biofuel crops that could be grown and their energy output per acre in comparison with the output from ground mounted solar arrays. In paragraph 4.22.5 of Chapter 4 of the ES the Applicant concludes that the production of solar energy *"… is far more efficient than other forms of energy production from cropping the land"*.

- Prior to the application's submission *"alternative designs"* for the Proposed Development were considered and refined in response to the consultee feedback. At an early design stage consideration was given to the Order Limits extending as far north as High Santon, in an area between the steel works and the B1207. The use of that land was discounted because of its proximity to dwellings and its higher farming quality, as compared with the Order Limits. The Applicant has further explained in paragraph 4.22.6 of Chapter 4 of the ES that the design of the Proposed Development was revised to incorporate: a built development exclusion zone to safeguard the archaeological interest of the former Gokewell Priory; the temporary diversion of public footpath 214 (FP214); and refinements to the proposed biodiversity mitigation and enhancement measures.

Effects for Agriculture

4.10.12. The Applicant's case with respect to the effects for agriculture is made in Chapter 10 of the ES (Agricultural Circumstances) [REP5-012]. That chapter of the ES considers the effects on:

- the agricultural land, having regard to its quality and versatility;
- the soil resource; and
- the operation on the farm businesses operating from the Order Limits.

4.10.13. The ALC survey of the Order Limits has identified 16.3% of the land being in Grade 3a (36.6ha), 77.2% (173.5ha) in Grade 3b and 5.9% in non-agricultural usage [Table 10.10 in REP5-012]. No part of the Order

Limits was found to be present in Grades 1, 2, 4 and 5 [paragraph 10.8.3 in REP5-012]. The Applicant in paragraph 5.58 of its Planning Statement [REP5-017] includes an analysis of all of the agricultural land in North Lincolnshire as follows:

- 89% of North Lincolnshire is in some form of agricultural use;
- 54% of the farmland in North Lincolnshire is in Grade 1 (excellent quality) and Grade 2 (very good quality) of the ALC; and
- 16% of farmland throughout England on average is in Grade 1 and Grade 2 of the ALC.

Additionally, in paragraph 5.58 of the Planning Statement the Applicant has submitted that while BMVL is in short supply and the lower quality farmland prevails in England, the position in North Lincolnshire is the opposite of that, with BMVL dominating. In that regard the Applicant has submitted that of the farmland in North Lincolnshire 2% is in Grade 4 (poor quality) and a negligible amount is Grade 5 (very poor quality).

4.10.14. In paragraph 10.8.12 of Chapter 10 of the ES attention is drawn to 11.4ha of the Order Limits that would comprise the proposed Gokewell archaeological exclusion zone (the AEZ). Within the AEZ no solar arrays would be installed, with this part of the Order Limits being used to provide ecological enhancements. 6.1ha of the AEZ is Grade 3a land and would not be directly affected by the Proposed Development.

4.10.15. The majority of the soil is sandy loam to loamy sand and is subject to *"conventional arable management, with ploughing each year for trash incorporation, weed control and preparation of a seed bed"* [paragraphs 10.8.13 and 10.8.15 in REP5-012]. Two farm businesses operate within the Order Limits and the vast majority of the farmed land is subject to arable cropping, with three small fields in the south western corner being non-grazed grassland [paragraphs 10.8.17 and 10.8.18 of REP5-012].

Construction effects

4.10.16. The construction effects on farmland are assessed in section 10.9 of Chapter 10 of the ES. It is submitted that the construction works would cause a temporary curtailment of arable production and that the resulting effects of the construction works on the agricultural land resource would be short term, reversible, local and have negligible significance [paragraph 10.9.4 in [REP5-012].

4.10.17. In terms of effects on the soil resource the Applicant has submitted that many of the activities associated with the construction works would be comparable to the current farming activity. Accordingly, the Applicant has assessed the Proposed Development's soil resource effects as being short term, reversible, local and of negligible significance [paragraph 10.9.7 of REP5-012].

4.10.18. With respect to the construction effects on the farm businesses, the construction works would result in some temporary curtailment of agricultural activities. The overall construction effects on the farm

businesses have been assessed by the Applicant as being short term, reversable, local and of negligible significance [paragraph 10.9.9 of REP5-012].

4.10.19. The effects of the decommissioning phase on the agricultural land resource, soil resource and agricultural businesses have been assessed by the Applicant as being comparable with the construction effects [paragraphs 10.9.12, 10.9.15 and 10.9.17 in REP5-012].

Operational effects of the Proposed Development

4.10.20. It is intended that for the 35 years of the generating station's operation the grass below the solar arrays would be grazed by sheep and therefore support agricultural production. During ISH2 and in response to ExQ2.2.4 the Applicant has advised that there is a *"reasonable expectation"* [REP4-018] that the site will be grazed. However, should that not be possible then the grass would be managed, so as to enhance the biodiversity value of the Order Limits, as per the provisions of the submitted oLEMP [REP6-012].

4.10.21. The Applicant has submitted that while the presence of the solar arrays would physically preclude the growing of crops, the extent, quality and versatility of the land as an agricultural resource would not be impaired [paragraph 10.9.18 in REP5-012].

4.10.22. The operational phase effects have therefore been assessed by the Applicant in section 10.9 of Chapter 10 of the ES as:

- For the agricultural land resource, medium term, reversable local and negligible adverse significance. That is because the temporary presence of the solar arrays would constrain the agricultural management of the land, however, the magnitude of change would be negligible as there would be no permanent loss of Grade 3a agricultural land.

- For the soil resource, a medium term, reversable, local effect of moderate beneficial significance. That is because the land would be planted with grass and become less susceptible to wind and water erosion and soil compaction, while the topsoil's organic matter would be replenished.

- With respect to the operation of the farming businesses, medium term, reversable, local and of negligible significance. That is because the planting of grass wood mean that sheep could be grazed retaining agricultural production. The landowner and thus one of the agricultural businesses would receive rental income from the operation of the solar park.

Mitigation and likely significant residual effects

4.10.23. As there would be no loss of BMVL associated with the construction, operation or decommissioning of the Proposed Development, the Applicant has submitted that there would be no additional mitigation

required for those phases to address the effects for the agricultural land resource. The construction and decommissioning phases' residual effects would remain as short term, reversable, local and have negligible significance. For the operational phase the residual effects would remain as medium term, reversable, local and have negligible adverse significance [paragraphs 10.10.1 and 10.10.10 in REP5-012].

4.10.24. With respect to mitigating effects on the soil resource, it is proposed that a Soil Management Plan would sit alongside a CEMP, with outline versions of those documents having been submitted [APP-080 and REP6-006] and final versions to submitted for NLC's approval under Requirement (R) 8 of the dDCO [REP7-003]. The Applicant has submitted that adopting appropriate soil management measures would ensure that the construction and decommissioning effects on the Order Limits' soils would remain short term, reversible, local and of negligible adverse significance [paragraph 10.10.4 of REP5-012].

4.10.25. The Applicant has submitted that as the Proposed Development's operational phase would have a beneficial effect on the soil resource. There would therefore be no need for further mitigation and the residual effect remains medium term, reversable, local and of moderate beneficial significance [paragraph 10.10.11 in REP5-012].

4.10.26. For the construction and decommissioning phases no mitigation for effects on the operation of the farming businesses is considered to be necessary, with the landowning farming business receiving a rental income from the Proposed Development [section 10.10 of REP5-012].

EXAMINATION

4.10.27. Fennswood in their RRs [RR-006, RR-008, RR-009, RR-014 and RR-015], oral submissions made during ISH1 and OFH1 [EV-016] and post OFH1 written submissions [REP4-033] have commented that national and local planning policies discourage the use of farmland for schemes such as the Proposed Development and encourage the use of PDL. In response to ExQ1.1.9 (availability of PDL), Fennswood has commented that there: is derelict industrial, storage and port land along the banks of the Humber; are many airfields in Lincolnshire that are being used minimally; and is the former British Sugar factory at Brigg, which is in excess of 42ha [REP1-027].

4.10.28. As part of the submissions made during OFH1 and in [REP4-033] Fennswood submitted that in North Lincolnshire and North East Lincolnshire numerous solar projects are in various stages of development and that some form of selection amongst the possible solar schemes should be made. Fennswood contended that not all of those solar schemes will come forward and the Proposed Development should not be considered in isolation from those other solar developments. Fennswood have argued that the Proposed Development should be subjected to sequential testing, along the lines undertaken by Cleve Hill's applicant, as there might not be a need for the Proposed Development, given the other solar schemes that are being brought forward elsewhere.

4.10.29. The Applicant in responding to Fennswood's sequential testing point has submitted [REP5-022] that there is no requirement in law or policy to undertake such an exercise and that to suggest the Proposed Development might not be needed is directly contrary to planning policy. In that regard the Applicant has drawn attention to Part 3 of NPS EN-1 indicating that the need for new energy NSIPs has been demonstrated and is urgent. The Applicant has also drawn attention to paragraph 158a) in the NPPF, which advises that in determining planning applications for renewable or low carbon developments local planning authorities should: not require applicants to demonstrate the overall need for their schemes; and recognise that even small-scale projects can provide valuable contributions to reducing GHG emissions [REP5-022].

4.10.30. The Applicant recognises in [REP5-022] that it has not submitted a standalone sequential test type document. However, it has expressed the view that it has provided equivalent information in:

- Chapter 10 of the ES, most particularly Table 10.10 [REP5-012].
- Paragraphs 5.55 to 5.59 of the Planning Statement [REP5-017].
- The response to ExQ1.1.8 [REP2-022].
- The response to the Fennswood's RRs [REP1-009].

4.10.31. In REP5-022 the Applicant has also drawn attention to NLC's response to ExQ1.1.8. ExQ1.1.8 asked NLC to comment on whether there was PDL available that could be used as an alternative to the Order Limits. NLC responded in [REP2-027] as follows:

"NLC is not aware of any parcels of previously developed land within its administrative area that could be used as an alternative to the Order Limits. The Order Limits cover an area of approximately 225 hectares and there are no previously developed sites of this size within North Lincolnshire that the Council is aware of and which are known to be available."

4.10.32. The Applicant in responding to Fennswood's RRs has referred to NLC's acceptance, in granting of planning permission for the "Conesby solar farm", that because of the size of that generating station (40MW) a countryside location was unobjectionable given a limited supply of PDL [REP1-015].

EXA'S CONCLUSIONS

Use of farmland versus previously developed land (PDL)

4.10.33. Having regard to the preponderance of farmland in NLC's area; the amount of land required to accommodate a solar generating station with a nominal installed capacity of 150MWp to 200MWp; and NLC being unaware of a PDL site of around 225ha being available [REP2-027], I

consider it is inevitable that accommodating the Proposed Development would involve using farmland.

4.10.34. I recognise that it is possible that there might be multiple PDL sites distributed across the North Lincolnshire and North East Lincolnshire that collectively might be able to accommodate solar arrays with an installed capacity in the range of 150MWp to 200MWp. In that regard Fennswood have referred to a former sugar factory at Brigg with an area of 42ha that is being marketed [REP1-027]. However, the Applicant in section 4.23 of Chapter 4 of the ES [REP5-006] has identified the availability of grid connections as being a constraint for developing utility scale renewable energy schemes and drawn attention to the limited grid capacity in this part of Lincolnshire. So, even if there was sufficient PDL available, with NLC's views on this matter suggesting otherwise, that PDL might not be well related to available grid capacity.

4.10.35. The information about grid capacity submitted by the Applicant, most particularly in section 5 of the Grid Network Constraint's Report [APP-079], indicates that capacity is in short supply. During the Examination no evidence was submitted indicating that the Applicant's assessment of the availability of grid capacity should not be relied on. I therefore consider that the scarcity of grid capacity is a significant constraint for locating a utility scale solar generating station in this part of Lincolnshire.

4.10.36. Were a standalone sequential test document to be available for consideration, I am not persuaded it would reveal the availability of suitable sites, including PDL, capable of accommodating the Proposed Development and obviate the use of farmland in this instance. I therefore consider there is no procedural deficiency in the way the Applicant has sought to justify the selection of farmland to accommodate the Proposed Development. In that regard I consider there to be no conflict with section 5 of the PPG, as extant national planning guidance, and paragraph 2.48.13 of dEN-3, as emerging national policy, as neither mandate that only PDL should be used nor place an absolute bar on the use of farmland.

The Proposed Development's implications for agricultural land

4.10.37. The Proposed Development would primarily occupy Grade 3b agricultural land, which does not constitute BMVL. However, the Proposed Development would occupy around 36.6ha of Grade 3a, which is BMVL. During the construction and decommissioning phases and the 35 years of operation, the Order Limits would not be capable of being cropped, although there is an intention that much of the affected farmland would be grazed by sheep. Should there be grazing of the Order Limits there would be some farming throughout the Proposed Development's operational life.

4.10.38. Removing higher quality farmland, ie land in ALC Grades 1, 2 and 3a, from food production is discouraged by both extant local and national planning policies and guidance and the emerging policy in dEN-3. In this

instance 36.6ha of Grade 3a land would be affected on a temporary basis and would be returned to agricultural use. The cessation of the Proposed Development after 35 years of operation being a matter that would be controlled by R3 in the dDCO [REP7-003]. On that basis the Proposed Development would not result in the permanent loss of farmland.

4.10.39. As the Applicant has highlighted in its Planning Statement [REP5-017] regard also needs to be paid to the fact that North Lincolnshire is an area where higher quality land is abundant, with land classed in Grades 1 and 2 being present at level just over three times the national level. I therefore agree with the Applicant's conclusions in Chapter 10 of the ES [REP5-012] that the Proposed Development's effects for agriculture would be:

- short term, reversable, local in extent and of negligible significance during the construction and decommissioning phases; and
- medium term, reversable, local in extent and of negligible significance during the operational phase, with a moderate beneficial effect for the quality of the soils within the Order Limits, because intensive cropping would be replaced by the growing of grass.

4.10.40. I consider that even though 36.6ha of BMVL would be taken out of arable farming for the duration of the Proposed Development, in relative terms, that would not have a significant effect on agricultural productivity in North Lincolnshire. I am therefore of the view that the Applicant has sought to minimise significant effects on BMVL. Accordingly, I consider there would be no unacceptable conflict with the provisions of the: extant national and local policy and guidance expressed most particularly in paragraph 5.10.8 of NPS EN-1; paragraph 174 of the NPPF, paragraph 013 in section 5 of the PPG, paragraph 001 in section 8 of the PPG, Policy RD7 of the NLLP and Policy CS3 of the CS; and the emerging policy in paragraph 2.48.13 of dEN-3.

4.10.41. As the primary purposes of the Proposed Development would be to generate and store electricity there would be conflict with Policy RD2 of the NLLP. That is because the Proposed Development would not be essential to the efficient operation of agriculture. However, as I have explained in section 4.5 above, NLC recognises that Policy RD2's objective of protecting the countryside for its own sake is inconsistent with the policy stated in the NPPF. I concur with NLC's view that Policy RD2 is inconsistent with the NPPF and that any conflict with that NLLP policy should not be accorded full weight. I therefore consider that very little weight should be attached to the Proposed Development's conflict with Policy RD2.

Consideration of alternatives for the Proposed Development

4.10.42. Schedule 4 of the EIA Regulations sets out the information that applicants are required to include in their ESs. Sub-paragraph 2 in Schedule 4 addresses the reporting of alternatives in an ES and states:

"2. A description of the reasonable alternatives (for example in terms of development design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects."

4.10.43. The Applicant's ES describes the alternatives studied (section 4.22 in Chapter 4 [REP5-006]). As outlined above, the Applicant's consideration of alternatives centred on a do nothing scenario, ie the continued use of the Order Limits for arable farming; the growing of biofuel crops; and refining the Proposed Development's design prior to the application's submission for examination.

4.10.44. The Applicant has stressed the importance of securing a connection to the grid in section 4.23 of Chapter 4 of the ES [REP5-006]. In this case a grid connection via a below ground 132kV cable within the Order Limits has been secured. That would allow, at any given time, up to 99.9MW of electricity to be exported from the proposed solar arrays and/or the BESS to the grid or the importation of electricity from the grid to be stored by the BESS and then to be exported back to the grid when needed.

4.10.45. Given a connection to the grid could be achieved that would in effect be integral to the Proposed Development, from what is stated in Chapter 4 of the ES and the answers I received to questions I put to the Applicant during ISH1 [EV-008 and EV-009], I consider that the location of the Proposed Development has mainly been determined by the grid connection that has been secured from NPG. That said I consider the Applicant's description of the alternatives that it has studied meets the requirements of the EIA Regulations and I am content that a suitable alternative site does not exist.

4.10.46. I, however, do have reservations about whether all reasonable alternatives have been considered, if the candidate design (arrays involving the installation of 356,670 solar panels with a power rating of 420wp) was to be relied upon in implementing an authorised development, should a DCO be made. That is because the Applicant has submitted during the Examination, as explained in section 4.9 of this Report, that solar panels with ratings significantly in excess of 420wp are likely to be available during the procurement period for the Proposed Development were a DCO to be made in the first quarter of 2022.

4.10.47. If the availability of significantly higher rated solar panels is taken together with the secured 99.9MW grid connection limit and the installation of a BESS, then I consider there is a potential for the Proposed Development to be accommodated with less land take. I consider that would be a potential alternative design which the Applicant has not studied. I say that having regard to the Applicant's response to ExQ4.1.2 [REP7-010] and this is a matter that I have reported on in more detail in section 4.9 above, in the context of whether the Proposed Development would represent an efficient use of land.

Other solar projects in North and North East Lincolnshire

4.10.48. During OFH1 and in [REP4-033] Fennswood have referred to numerous solar projects in various stages of development in North Lincolnshire and North East Lincolnshire. Three of those projects have been referred to by the Applicant in Chapter 7 (Ecology and Nature Conservation) of the ES [REP5-010], as follows:

- Raventhorpe Farm, 38MW capacity, operational and occupying 69.870ha. Raventhorpe Farm is located approximately 230 metres (m) to the south of the Order Limits. The planning permission, site plan and officer report for this solar farm are included in the Examination Library as [REP1-017, REP1-018 and REP1-019].

- Flixborough Solar Farm, 5.99MW capacity, operational and occupying 12.9ha. Located approximately 7.42 kilometres (km) north west of the Order Limits. The appeal decision and site location plan for this solar farm are included in the Examination Library as [REP4-028 and REP4-029].

- Conesby Solar Farm 40MW[50] capacity, occupying 70.9ha. Located approximately 4.5km north west of the Order Limits and benefitting from an extant planning permission. The planning permission, officer report and site plan for this solar farm are included in the Examination Library as [REP1-014, REP1-015 and REP1-016].

4.10.49. At ISH1 a fourth solar farm, concerning land at Sweeting Thorns, Holme, Scunthorpe, a few km to the south west of the Order Limits was also referred to. The Sweeting Thorns proposal was allowed on appeal on 5 December 2016 [REP1-021] and would have occupied 37ha and was predicted to be capable of producing around 25,000 MWh of electricity per year. The planning permission for this proposal appears not to have been implemented and has now expired.

4.10.50. The above mentioned planning history for non-NSIP solar farms/parks in NLC's administrative area indicates that operators consider this part of Lincolnshire to be a suitable location for this generating technology. While additional solar farms/parks may be in the development pipeline that does not mean that they will come to fruition, as the case of Sweeting Thorns demonstrates, or meet the need for generating capacity identified by the Applicant.

4.10.51. It is increasingly becoming evident that as part of decarbonising energy production, the UK will need significantly more renewable and low carbon generating capacity. That increased capacity will either replace fossil fuelled generating capacity that is being retired or provide entirely new generating capacity to address new demands for electricity. At a time of

[50] In [REP5-010] identified by the Applicant as having a capacity of 50MW, while in REP1-009 the Applicant has referred to the generating capacity being 40MW in line with the capacity cited by NLC in its officer report [REP1-015]

unprecedented need for additional renewable and low carbon generating capacity, I consider the existence of other solar projects in the development pipeline in North Lincolnshire and North East Lincolnshire of itself should not be a reason for withholding consent for the Proposed Development. In that regard there are no extant national or development plan policies setting capacity limits/targets for the amount of electricity to be generated by solar parks/farms. Similarly, the emerging policy in dEN-1 and dEN-3 sets no limits on the amount of new generating capacity to be derived from solar parks/farms.

4.11. LANDSCAPE AND VISUAL EFFECTS, INCLUDING RECREATIONAL EFFECTS FOR USERS OF THE PUBLIC RIGHT OF WAY NETWORK

INTRODUCTION

4.11.1. This section considers the Proposed Development's landscape and visual effects, including recreational effects for users of the public right of way network, most particularly FP214. The Proposed Development's visual effects for heritage assets are considered in section 4.12 below.

POLICY CONSIDERATIONS

4.11.2. Paragraph 5.9.1 of NPS EN-1 notes that the landscape and visual effects of energy projects will vary from case to case according to the type of development, its location and the particular landscape setting.

4.11.3. In paragraph 5.9.8 of NPS EN-1 there is recognition that virtually all energy NSIPs will have landscape effects and that projects need to take account of their potential impacts. Having regard to siting, operational and other relevant constraints, the aim should be to minimise harm, providing reasonable mitigation where possible and appropriate.

4.11.4. Paragraph 5.9.14 of NPS EN-1 provides guidance for the consideration of the landscape effects of energy NSIPs that would be located outside nationally designated areas, but nevertheless may be highly valued and protected by development plan designations. Where a development plan has policies based on local character assessments, particular attention should be paid to such assessments.

4.11.5. Paragraph 5.9.15 of NPS EN-1 highlights that the scale of energy NSIPs may mean that they are visible over long distances. It is therefore necessary to judge whether any adverse landscape impacts would be so damaging as to outweigh an NSIP's benefits, including its need.

4.11.6. Paragraph 5.9.16 of NPS EN-1 advises that in considering whether any adverse impacts would or would not be acceptable, regard should be paid to the duration of those impacts, including their reversal in reasonable timescales.

4.11.7. Paragraph 5.9.18 of NPS EN-1 recognises that all proposed energy infrastructure is likely to have visual effects for many visual receptors around proposed sites or visitors to an area and it is therefore necessary to judge whether the visual effects outweigh the benefits of the project.

4.11.8. Paragraph 5.9.21 of NPS EN-1 refers to the potential for reducing the scale of projects to help mitigate their visual and landscape effects, although that might result in a significant operational constraint and reduced generation output. There may, however, be exceptional circumstances, where mitigation could have a very significant benefit and warrant a small reduction in function. Paragraph 5.9.22 goes onto indicate that adverse landscape and visual effects may be minimised through appropriate siting, design and landscaping schemes.

4.11.9. Section 2.8 in NPS EN-5 indicates that specific landscape and visual considerations apply to electricity networks infrastructure, albeit primarily in relation to the provision of overhead lines.

4.11.10. Paragraph 158 of the NPPF states that in determining planning applications for renewable and low carbon developments, local planning authorities should approve applications if their impacts are or can be made to be acceptable.

4.11.11. Chapter 15 of the NPPF contains overarching policies for conserving and enhancing the natural environment. It indicates that planning decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes and recognising the intrinsic character and beauty of the countryside.

4.11.12. Paragraph 13 of section 5 of the PPG acknowledges that large scale solar farms can have a negative impact on the rural environment, although the visual impact can be addressed if they are well planned and screened.

4.11.13. With respect to the consideration of the landscape and visual effects the following development plan policies are important and relevant:

North Lincolnshire Local Plan 2003 (NLLP)

- Policy DS1 (General Requirements) [REP3-022], expects a high standard of design for all developments and, amongst other things, requires the design and external appearance to reflect or enhance the character, appearance and setting of the immediate area, while the design and layout should respect and where possible retain the existing landform.

- Policy DS12 (Light Pollution) [REP3-024] addresses developments with external lighting and states such proposals will only be permitted when it can be demonstrated there would be no adverse impact on local amenities.

- Policy DS21 (Renewable Energy) [REP3-027] indicates proposals will be permitted provided any detrimental effect on local character would be outweighed by environmental benefits.

- Policy LC7 (Landscape Protection) [REP3-033] states where developments are permitted in the countryside, special attention will be given to the protection of the scenic quality and distinctive local character of the landscape. Developments that are disrespectful of the local character will not be permitted.

- Policy R5 (Recreational Paths Network) [REP3-035], amongst other things, states that existing rights of way will be protected from development removing or restricting rights of way and permission will not be granted for any development which would prejudice public access onto and through the recreational path network, unless specific arrangements are made for suitable alternatives.

- Policy RD2 (Development in the Countryside) [REP3-036], amongst other things, states development will not be permitted if it would be detrimental to the character or appearance of the countryside or nearby settlements in terms of its siting, scale, massing, design and use of materials and it would be located where best use of existing and new landscaping can be made.

North Lincolnshire Core Strategy 2011 (CS)

- Policy CS5 (Delivering Quality Design) [REP3-017] requires all new development to be well designed and appropriate to its context and should, amongst other things, contribute to creating a sense of place and incorporate appropriate landscaping and planting.

- Policy CS16 (North Lincolnshire's Landscape, Greenspace and Waterscape) [REP3-019] seeks to protect, enhance and support a diverse and multi-functional network of landscape and greenspace through, amongst other things, requiring developments to improve the quality and quantity of accessible landscape and greenspace and protect trees and hedgerows where appropriate.

4.11.14. The Order Limits are situated within an area described within the North Lincolnshire Landscape Character Assessment and Guidelines (LCAG) as "Wooded Scarp Slope – Manton, Raventhorpe and Santon". The LCAG describes this character area as being a sinuous scarp slope that has been designated as an Area of High Landscape Value; with west facing slopes that are extensively vegetated and small areas of arable farmland, pasture, scrub and rough grass, where vegetation is limited, views towards Scunthorpe are extensive and otherwise the landscape is well enclosed and of intimate scale. Within this character area the presence of poorer quality agricultural soils has resulted in there being little farming, resulting in the west facing slope being extensively wooded [REP3-034].

THE APPLICANT'S CASE

4.11.15. The Applicant's case is set out in Chapter 6 (Landscape and Visual) of the ES [REP5-008], originally submitted as [APP-063]. Chapter 6 of the ES

was revised at D5 to address how the grassland within the Proposed Development would be managed if it was not grazed by sheep.

4.11.16. Chapter 6 of the ES has been submitted as a Landscape and Visual Impact Assessment (LVIA) and it is supported by the following documents:

- Landscape and Visual Impact Assessment Criteria [APP-086];
- Assessment Viewpoint Photographs [APP-087];
- Viewpoint Assessment [APP-088];
- Photomontage Visualisations [APP-089];
- Figure 6.3 Landscape and Visual Impact Assessment Viewpoints [PDA-010]; and
- Detailed Landscape Proposals [REP5-014].

4.11.17. As part of the discussion of landscape and visual effects during ISH1 the Applicant agreed to submit a glint and glare study, which was submitted at D1 [REP1-010].

4.11.18. The LVIA has been undertaken in accordance with the Landscape Institute and Institute for Environmental Management and Assessment guidelines and considers both the landscape and visual effects. The LVIA has assessed the Proposed Development's candidate design, described in Chapter 4 of the ES [REP5-006], with, amongst other things, the maximum height of the solar arrays being taken to be 3.5m.

4.11.19. Following preliminary desktop research and field work, the study area for the LVIA was identified as being 5km from the Order Limits. The Applicant considering any views beyond that distance would be negligible and unlikely to cause any effects greater than minor.

4.11.20. Section 6.3 of Chapter 6 of the ES describes the baseline conditions for the LVIA. That description includes:

- the nature of the Order Limits and their context;
- the landscape features within the Order Limits and their context within the LVIA's study area; and
- the landform and topography.

4.11.21. The Order Limits are situated on the edge of a localised ride that is raised slightly above the surrounding landscape. While that provides the potential for the Order Limits to be visible from the wider landscape, the surrounding woodland encloses much of the Order Limits, resulting in well contained views [paragraph 6.3.5 of REP5-008].

4.11.22. Chapter 6 of the ES and accompanying Figure 6.4 [PDA-011] confirm that no landscape designations apply to the Order Limits. The eastern two thirds of the Order Limits historically were in an area designated under the provisions of the NLLP as an Area of High Landscape Value, however, that designation was not formally 'saved' in September 2007 [paragraph 6.3.18 in REP5-008].

4.11.23. A screened Zone of Theoretical Visibility (ZTV), derived by using digital terrain data and shown on Figure 6.3 [PDA-010], has been produced to help identify the landscape and visual receptors with potential to be significantly affected. The Applicant has submitted that further to the identification of the ZTV and the subsequent undertaking of site visits, the extent of the Proposed Development's actual visibility would be less than suggested by the screened ZTV [paragraph 6.3.28 in REP5-008]. That is because the Order Limits to varying degrees are bounded by woodland to the north, east and south. The extensive Scunthorpe steel works lie immediately to the west of the Order Limits, screening them from Scunthorpe's main residential and commercial areas.

4.11.24. The most notable views of the Proposed Development would be limited to users of FP214, given its route through the Order Limits[51], and there would be very limited visibility in the wider landscape, with the latter being restricted to possible glimpsed views through very limited breaks in the forestry [paragraph 6.3.34 in REP5-008].

4.11.25. Eleven viewpoint locations have been considered; their locations having been discussed with NLC prior to the application's submission. The locations for and the views from the viewpoints are shown in [PDA-010] and [APP-087]. Photomontage visualisations [APP-089] have been prepared for two viewpoints:

- Viewpoint 1 - View from FP214, to the west of the Order Limits, near Little Crow Covert, looking eastwards; and
- Viewpoint 2 - View from FP214, to the east of the Order Limits looking north across the Order Limits.

4.11.26. The location of the Order Limits relative to dwellings means that it is considered that very few residents of the area would have views of the Proposed Development.

Operational effects

4.11.27. The solar arrays would be installed across existing fields and there would be minimal changes to Order Limits' ground levels, with there being no need for ground remodelling. The effects on the landform and topography have been assessed as negligible and not significant.

4.11.28. With respect to land use considerations, the main change would be from arable fields to solar arrays with grassland beneath. The sensitivity of the agricultural land use is judged to be low because arable land of this type is common and extensive within this area. The magnitude of change on land use has been assessed as high, resulting in a moderate level of effect, which is not significant because of the continuation of a similar land cover beneath the solar arrays [paragraph 6.4.20 of REP5-008].

[51] The route of FP214 being between shown on the map included in [APP-043]

4.11.29. In terms of the effects on landscape character, the affected landscape is considered to be of medium susceptibility to the Proposed Development. That is because of the large scale, broad nature, gently undulating landform and simple, consistent landcover of the landscape of the Order Limits. Those being key characteristics that would be capable of successfully accommodating or co-existing with the Proposed Development [paragraph 6.4.23 of REP5-008].

4.11.30. The landscape value of the Order Limits is assessed as medium. That is because the landscape is not subject to any designations and other than FP214 there are no valued features within the Order Limits. The value of the landscape is one that is not out of the ordinary. While there are heritage features within the Order Limits that are of interest, most notably Gokewell Priory and Gokewell Farm, neither of those are statutorily listed or scheduled. Having regard to the medium susceptibility and value of the landscape, it is considered that the landscape is of medium sensitivity to the Proposed Development [paragraph 6.4.26 of REP5-008].

4.11.31. When regard is paid to screening of the Order Limits by vegetation and built form in the area, the potential for any visibility of the Proposed Development in the character areas beyond the Order Limits would be very limited. The potential for effects on landscape character is therefore restricted to the local character of the Order Limits and their immediate surroundings. The two published landscape character areas (LCA) which cover parts of the Order Limits are "Heathy Woodland" and "Wooded Scarp Slope". The extent of the LCAs are shown on Figure 6.5 [PDA-012]

4.11.32. With respect to the effects for the Heathy Woodland LCA, this LCA is mostly characterised by woodland. While the Order Limits themselves for the most part are not wooded, the adjoining woodland would serve to prevent any effects on landscape extending much beyond the Order Limits. The Applicant therefore considers the primary characteristics of the wider Heathy Woodland LCA would not be diminished by the Proposed Development [paragraph 6.4.33 of REP5-008].

4.11.33. The Wooded Scarp Slope LCA within the vicinity of the Order Limits is partly wooded and partly arable farmland, but is heavily influenced by the immediately adjoining steel works. The Applicant recognises that the Proposed Development would have a localised major effect on landscape character for the lifetime of the development within part of the Wooded Scarp Slope LCA. However, any effects would not extend beyond the Order Limits and the steel works would remain the primary influence on the character of the landscape in the locality [paragraph 6.4.34 of REP5-008].

4.11.34. Overall, the operational effects for landscape character have been assessed by the Applicant as being *"… extremely limited and localised" and the effects "… would be restricted to a major effect that would not extend beyond the Order Limits …"* and the immediate surroundings within the Heathy Woodland and Wooded Scarp Slope LCAs. The effects on the LCAs would be no more than negligible. Notwithstanding the scale

of the Proposed Development, when regard is paid to the adjoining woodland and steel works, the primary characteristics of the local and wider landscape, including the LCAs within which the Order Limits are situated, would not be diminished [paragraphs 6.4.37 and 6.4.38 in REP5-008].

4.11.35. With respect to effects for visual amenity, in section 6.4 of Chapter 6 of the ES [REP5-008], the Applicant has judged the effects for walkers using FP214 within the Order Limits as being high. To soften and thus mitigate the visual effects of the solar arrays and associated fencing upon users of FP214, it is proposed that adjacent to FP214 native hedgerows would be planted and grassy verges formed. The installation of the solar arrays and fencing would restrict outward views, creating channelled views along FP214, in contrast to what are relatively open views across fields. With the proposed mitigation the effects on the users of FP214 within the Order Limits are judged as major and significant, quickly reducing to slight or no effect as the walkers enter the adjacent woodland areas [paragraph 6.4.50 of REP5-008].

4.11.36. In addition to FP214 there are some other public footpaths, including permissive routes, in the area [REP2-024]. One of those paths is definitive footpath 212 (FP212) which runs between Ermine Street (B1207) and the A18 to the south of the Order Limits. FP212 in part passes through woodland and the Raventhorpe solar farm. The potential for views of the Proposed Development from FP212 have been assessed as being limited to glimpses through a gap in the woodland to the south of the Order Limits, where a line of pylons passes through the woodland block. The combination of the offset of the solar arrays below the line of the cables and intervening vegetation, results in no views from FP212 and the Applicant has concluded that there would be no effect for users of FP212 [paragraph 6.4.51 of REP5-008].

4.11.37. Due to the high degree of screening by topography and vegetation present around the development site, the number of roads from which motorists and passengers are likely to experience views is very limited. Field work has established that no road users would have the potential to experience any more than a negligible visual effect [paragraph 6.4.53 of REP5-008].

Construction and decommissioning effects

4.11.38. In terms of the construction effects for the area's landscape character, the movement of construction vehicles, personnel and materials have been identified as being the effects of note. The construction effects within the Order Limits and its immediate locality would be significant, although temporary in nature [paragraph 6.4.11 in REP5-008]. Beyond the immediate vicinity of the Order Limits, it is considered that there would be no greater than an additional low magnitude of change, resulting in no higher than a moderate/minor temporary effect on landscape character, which is not significant [paragraph 6.4.12 in REP5-008].

4.11.39. With respect to the construction effects on visual amenity, the movement of construction vehicles, personnel and materials would be the only additional construction phase effects of note. The users of FP214, within the Order Limits and in close proximity to them, would generally be the only visual receptors for which there would be any notable views of the construction works. FP214's users would experience an additional medium magnitude of change on views as a result of the construction activities. The view of the construction works would result in a moderate temporary visual effect over and above the permanent visual effects, which would be significant, but temporary in nature [paragraph 6.4.13 in REP5-008].

4.11.40. Beyond the Order Limits the effect on visual amenity has assessed as being no greater than an additional low magnitude of change on views during the construction phase, resulting in no higher than a moderate/minor additional temporary effect, which is not significant [paragraph 6.4.14 of REP5-008].

4.11.41. The effects during the decommissioning phase would be similar to those for the construction phase, with the effects gradually reducing rather than increasing as the Proposed Development was dismantled.

Mitigation and enhancement

4.11.42. To reduce the likelihood of significant adverse landscape and visual effects, mitigation has been included within the design for the Proposed Development. Mitigation has included consideration of the location of the Order Limits, which due to their proximity to woodland mean they are screened from large parts of the landscape.

4.11.43. The design for the Proposed Development includes landscaping proposals that are intended to provide mitigation, as shown on Figure 6.6 of Chapter 6 of the ES [e-page 47 in REP5-008] and the Detailed Landscape Proposals [REP5-014]. An oLEMP [REP6-012] has also been prepared that includes:

- new native hedgerow planting adjacent to the proposed security fencing along the line of PF214;
- the closure of gaps in the existing native hedging within the Order Limits adjacent to FP214; and
- the sowing of wildflower seed along the verges between FP214 and the security fence boundaries.

4.11.44. R10 of the dDCO [REP7-003] would require the submission of a LEMP for NLC's approval, to generally accord with the oLEMP [REP6-012]. The assessment of the likely significant effects undertaken by the Applicant in section 6.4 of Chapter 6 of the ES takes account of the mitigation measures shown on Figure 6.6 and in the oLEMP [paragraph 6.5.3 of REP5-008].

Cumulative and in-combination effects

4.11.45. Other solar energy schemes in the surrounding landscape which are already operational, such as the Raventhorpe solar farm, have been included in the baseline environment against which the Proposed Development has been assessed. Notwithstanding that, it is relevant to also consider the overall effect of the developments in combination. Having considered the potential for effects on both landscape character and visual amenity, the Applicant considers that there would be no significant cumulative effects above and beyond those identified for the Proposed Development itself. Although there may be a small number of locations where the Proposed Development would be seen in combination with other solar energy developments, these locations would be of a highly limited nature [paragraph 6.6.1 of REP5-008].

4.11.46. A review has also been undertaken of any other solar energy developments in the vicinity of the Order Limits that are currently in planning or permitted, but remain to be built, which might have the potential for cumulative effects to arise. The Applicant considers there are no other such schemes with the potential to give rise to significant cumulative effects in combination with the Proposed Development [paragraph 6.6.2 of REP5-008].

EXAMINATION

4.11.47. NLC in section 4 of its LIR [REP2-026] considers the landscape and visual impact of the Proposed Development. In paragraph 4.1 of the LIR NLC commented that it is satisfied that the Applicant's LVIA *"… can be relied upon as a reasoned explanation of the potential impacts of the proposed development"*.

4.11.48. NLC in paragraph 4.3 of its LIR has further commented that significant landscape enhancements are proposed in the oLEMP, reflecting advice given by NLC, which would be secured through R10 of the dDCO. In paragraph 4.4 of the LIR NLC has drawn attention to the landowner or operator of the Proposed Development needing to be responsible for the on-going management of the hedgerows and wildflower planting throughout the operational phase.

4.11.49. With respect to maintaining the landscaping, R10(2)(d) of the dDCO, as originally drafted [APP-045], referred to a timetable for *"the long-term landscape management"* needing to be submitted to NLC as part of the discharge of the provisions of R10. In response to the receipt of the NLC's LIR, through ExQ2.6.9 [PD-010] I requested the Applicant to clarify what long-term landscape management in R10 meant. The Applicant responded that the intention through an approved LEMP would be for the landscaping to be managed for the lifetime of the Proposed Development [REP4-018]. To that end the wording of R10(2)(d) was amended in the version of the dDCO submitted at D4 [REP4-004] and continues to be included in the final version [REP7-003].

4.11.50. The making of that revision to the dDCO has addressed the soft landscaping management concern raised by NLC, with the SoCG signed between NCL and the Applicant recording that there were no outstanding matters of disagreement between them [REP6-014].

4.11.51. Fennswood in RRs [RR-006, RR-008, RR-009, RR-014 and RR-015] commented that the use of the proposed access to the Order Limits, an existing farm track, would have a significant visual impact. That is because outside the harvest period the farm track is used infrequently. The visual impact associated with the use of the access track should therefore have been assessed in Chapter 6 of the ES.

4.11.52. In response to the visual impact concern raised by Fennswood, the Applicant commented that thick continuous woodland cover lies between the dwelling and commercial premises at Fennswood and the access track to the north [REP1-009]. That intervening woodland provides a buffer between the dwelling and commercial premises and the the access track and there would be a filtering of views of the vehicles using the access track during the construction and operational phases. On a daily basis, during the construction phase the works are expected to generate 16 two way[52] heavy goods vehicle movements, 10 to 14 light goods vehicle movements (including minibuses transporting some construction workers) and the movements generated by 100 construction workers [section 9.8 in Chapter 9 of the ES [APP-066]. For the operational phase one vehicle is predicted to visit the Proposed Development on four occasions throughout a year.

EXA'S CONCLUSIONS

Matters raised by Interested Parties

4.11.53. With respect to the long term maintenance and retention of the hedgerow planting along either side of FP214, I am content that the wording of R10 in the dDCO [REP7-003] would secure the provision of the necessary screen planting, as long term visual mitigation for users of FP214.

4.11.54. During the eleven month construction[53] and decommissioning phases vehicles travelling along the access track may be visible to the occupiers of Fennswood. When I inspected the grounds of Fennswood [EV-025] I saw the belt of trees that lie immediately to the south of the access track. I agree with the Applicant's submissions made in [REP1-009] that for the occupiers of Fennswood the existing mature tree screen would provide filtered views (glimpses) of the construction and decommissioning traffic using the access track.

[52] Ie eight inbound and eight outbound movements
[53] Or eleven months plus a further three months, if the BESS is not constructed concurrently with the rest of the Proposed Development

4.11.55. I therefore consider that the movement of the construction and decommissioning traffic along the access track would not have a significant visual impact for the occupiers of Fennswood. The vehicle movements associated with the Proposed Development's operational phase would be very infrequent and I consider that they would have no adverse visual affect for the occupiers of Fennswood.

Other matters

Effect on landscape character and visual amenity beyond the Order Limits

4.11.56. The solar arrays, while having limited vertical emphasis, would have a very significant horizontal emphasis. The arrays and the service tracks would occupy approximately 153ha [REP4-003] and would have a functional and somewhat monotonous appearance, given the solar panels would be mounted on long racks stretching across the Order Limits. The Proposed Development would have a very functional appearance. However, I consider that to be unavoidable, given the scale of the proposed solar generating station and the need to capture as much of the available solar energy for conversion into electricity.

4.11.57. Further to undertaking my site inspections, Unaccompanied Site Inspections (USI) 1 and 2 and the Access Required Site Inspection (ARSI) [EV-001 and EV-025] I agree with the Applicant that the effects on landscape character and visual amenity would primarily be confined to the Order Limits, with negligible effects for the area beyond them. That is because the Order Limits benefit from so much woodland enclosure along their the northern, eastern and southern boundaries, while the steel works, in effect, provide enclosure along the western side of the Order Limits. The Proposed Development would also be limited vertically, with the solar arrays having a maximum height of 3.5m and the other buildings and structures, primarily associated with the provision of the substation, being no taller than 7.2m [APP-030]. The relatively low height of the Proposed Development would serve to reduce its effect on the area's landscape character and the visibility for receptors beyond the Order Limits.

4.11.58. Notwithstanding the fact that the Proposed Development would be large in scale and have a very functional appearance, I consider the chosen location means that its design can be looked upon as complying with the requirement in NPS EN-1 to minimise harm to the landscape. The effects on landscape character and visual amenity beyond the Order Limits would be mitigated to acceptable level through the presence of the perimeter screening afforded by the adjoining woodland and steel works. In terms of the avoidance of significant harm to landscape character and visual amenity of the area beyond the Order Limits, I consider there would be no conflict with the provisions of paragraph 158 of the NPPF, paragraph 13 of section 5 of the PPG, Policies DS21 and LC7 of the NLLP and Policy CS5 of the CS.

Effect on landscape character and visual amenity within the Order Limits

4.11.59. The landscape character within the Order Limits would be entirely changed from an agriculture to quasi-industrial. However, that change in landscape character would arise over a period of up to 35 years and would be reversed following the Proposed Development's decommissioning. The Proposed Development's temporary nature being secured through R4 of the dDCO [REP7-003].

4.11.60. The effect on visual amenity would essentially fall upon users of FP214 during the construction, operational and decommissioning phases.

4.11.61. The Applicant's assessment of the significance of the effects for users of FP214 in Chapter 6 of the ES [REP5-008] made no reference to how many people use this public footpath. ExQ1.4.2 asked the Applicant and NLC to submit any survey data that may have been available to them concerning the use of FP214 [PD-007]. In response to ExQ1.4.2 NLC and the Applicant advised there was no such survey data available [respectively in REP2-027 and REP2-022].

4.11.62. I agree with the Applicant's assessment in Chapter 6 of the ES [REP5-008] that there would be a major effect for the users of FP214. That is because those footpath users would no longer be able to look out across the open fields on either side of FP214 as it crosses the Order Limits. Instead, the users of FP214 would be faced with a footpath, in no small measure delineated by new native hedging, as shown in the submitted photomontages [APP-089], which the Applicant has calculated takes between 11 minutes and 38 seconds (at 8km per hour) to 23 minutes and 15 seconds (at 4km per hour) to walk [e-pages 20 and 21 in REP7-010]. For the sections of FP214 that would be bounded by hedging on both sides[54] the resulting corridor shown in the photomontages and in the cross section included on Figure 6.6 in Chapter 6 of the ES [e-page 47 in REP5-008] would be 10m wide.

4.11.63. I consider that for existing users of FP214 the change in the appearance of its crossing of the Order Limits would be very marked, as shown in the photomontages included in [APP-089] for both years 1 and 5 (and subsequent years) following the completion of the construction works. That said there is no information available about how many people actually use FP214 and it is not possible to quantify the number footpath users that would be affected by the Proposed Development's presence. During the Examination I gave consideration to requesting the Applicant to undertake a survey to establish the volume of FP214's use and the attitude of this footpath's users to the Proposed Development. However, given the COVID-19 movement restrictions that were in force immediately prior to the Examination opening and then through the early parts of the Examination, the opportunities for obtaining representative

[54] Ie FP214's route across the Order Limits, other than the section where there would be an exclusion on installing of solar panels in the vicinity of the former Gokewell Priory as shown on the Works Details – Whole Site Plan [APP-015]

survey information were limited. I therefore made the decision not to request the undertaking of a footpath user survey.

4.11.64. As part of undertaking my ARSI I walked the route of the temporary diversion for FP214 (the temporary route) [EV-025]. Following that walk, in reply to my asking of ExQ4.4.1 [PD-016], the Applicant has calculated walking times for the 4.495km (2.8 mile) temporary route. That information is stated in [REP7-010] and is as follows:

- Around 67.5 minutes at 4km/2.5 miles per hour;
- Around 54 minutes at 5km/3 miles per hour;
- Around 42 minutes at 6.4km/4 miles per hour; and
- Around 34 minutes at 8km/5miles per hour.

4.11.65. As can be seen from the existing route for FP214 and the temporary route [APP-043], the latter would be comparatively circuitous. Depending on an individual's walking speed it would take between 34 and 67 minutes or so to walk the temporary route. The time spent walking the temporary route would be in the region of three times longer than that spent walking the section of FP214 that would be temporarily closed. Part of the temporary route would offer a combination of views of woodland and the emerging solar park[55] in the vicinity of the eastern and southern boundaries of the Order Limits. However, that would be in stark contrast with the views available from the nearly 1.4km leg of the temporary route between points A and C [APP-043] on the western side of the Order Limits. Between points A and C, the views would be dominated by the steel works in combination with an emerging solar park. For users of the temporary route between points A and C, noise from the operation of the steel works would also be audible.

4.11.66. I have major reservations as to whether the temporary route would be put to much use, given its length, the time that would be expended in walking it and the significant change in ambience it would afford its users in comparison with the stretch of FP214 that would temporarily be closed. During the construction and decommission phases of eleven months[56] I consider it likely, notwithstanding the availability of the temporary route, that users of FP214 would cease using this footpath as a continuous recreational through route between Broughton to the east and High Santon to the north. I make that observation having walked the entire length of FP214, albeit in two parts during the course of US1 [EV-001] and USI2 [EV-025].

4.11.67. Under the provisions of R16 of the dDCO [REP7-003] a public rights of way management plan (PRWMP) for FP214 would be submitted for NLC's

[55] Depending on the sequencing of the installation of the solar arrays and how much of the expected eleven month construction period had elapsed
[56] For the construction period assumed to be eleven months irrespective of whether the BESS is constructed concurrently or not with the rest of the Proposed Development given the BESS's siting relative to FP214

approval prior to construction (and decommissioning) works being undertaken.

4.11.68. Under the provisions of R16(2)(a) the PRWMP must include details of measures to minimise the distances of any sections of FP214 that would be temporarily closed, pursuant to the powers sought under Article 8 (Temporary closure and diversion of public footpath) of the dDCO [REP7-003]. Assuming a DCO was to be made and the authorised development was implemented, based on:

- the distribution of works shown on the Works Plan [APP-013];
- the solar array layout shown on the Works Details – Whole Site Plan [APP-015] or something not too dissimilar;
- the installation of 356,670 solar panels as referred to in the Applicant's Technical Guide [REP4-014]; and
- the need to enclose the solar arrays with fencing for reasons of safety and security.

I consider it unlikely that there would be much scope for the distance of the temporary route shown on the plan in [APP-043] to be reduced (minimised) to any significant degree when a PRWMP was submitted for NLC's approval.

4.11.69. It therefore appears to me that the temporary diversion of FP214 would be of the order of 4.495km (2.8 miles) in length and that would be the minimum distance (or close to it) which could be secured under R16(2)(a) of the dDCO [REP7-003], as mitigation for the construction and decommissioning effects for the users of FP214. The Applicant has assessed the significance of the impact of the construction works on FP214's users as a *"Moderate temporary visual effect over and above the permanent visual effects …"* [Table 6.7 on e-page 33 of REP5-008]. That finding of the Applicant is rather tautological, given that the effect upon users of PF214 during the operational phase has been assessed being *"major"*.

4.11.70. I consider the effect on the users of FP214 during the construction and decommissioning phases would, put simply, be a major one, given my concern that the temporary route as a means of securing a continuing through route between Broughton and High Santon would be unlikely to be used. However, given the absence of any data about the use of FP214, it is unclear precisely how many walkers might be deterred from using the temporary route and thus adversely affected by the temporary diversion of FP214. Nevertheless, this is a matter I consider weighs against the Proposed Development.

4.11.71. Further to my undertaking of USI1 [EV-001] under agenda item 3 for ISH1 [EV-008] I sought the views of NLC and the Applicant about the intentions for hedgerow planting along the route of FP214 as part of the Proposed Development's decommissioning. The Applicant explained that the proposal was to retain what would be mature hedgerows, as that would retain much of the additional biodiversity value gained during the Proposed Development's operational phase [EV-008]. NLC reserved its

position about this matter, preferring to make a response in reply to a written question. That question subsequently became ExQ1.8.3 [PD-007].

4.11.72. In response to ExQ1.8.3 NCL commented in [REP2-027]:

"Under The Hedgerow Regulations 1997, any hedgerow that is more than 30 years old, species-rich and adjacent to grazing land and a footpath is likely to qualify as "important" and should therefore be retained. At the time of writing, such a hedgerow would also qualify as a habitat of principal importance (priority habitat) in terms of section 41 of the Natural Environment and Rural Communities Act 2006."

4.11.73. I consider that the retention of a hedge lined corridor amongst reinstated open fields might appear somewhat out of keeping and would preclude outward views across the fields for users of FP214 once the generating station had been removed. However, given the views of both NLC and the Applicant on this matter, I am content, in the interests of retaining the biodiversity value gained during the operational phase, that the retention of the hedging on either side of FP214 would be appropriate.

4.11.74. Overall, I consider that the construction, operational and decommissioning phases for the Proposed Development would have an adverse impact for users of FP214. However, there is no available evidence to quantify how many walkers use FP214 and would be affected, although no RRs or other submissions were received during the Examination from any group representing footpath users. Notwithstanding the scale of the Proposed Development and its direct effects for users of a definitive footpath, the absence of representations from any group representing the interests of recreational walkers suggests that FP214 is not a particularly well used walking route. With that in mind I am of the view that the visual harm for users of FP214 arising from all phases of the Proposed Development would be outweighed by the moderate positive weight I have attributed to the generation of electricity.

4.11.75. I therefore conclude in relation to the Proposed Development's landscape character and visual amenity effects for users of FP214 that there would be no unacceptable conflict with the provisions of NPS EN-1, paragraph 158 of the NPPF, paragraph 13 of section 5 of the PPG, Policies DS21 and LC7 of the NLLP and Policy CS5 of the CS. I also consider that the effects on landscape character and visual amenity would not give rise to any unacceptable conflict with the emerging policy stated in dEN-1 and dEN-3.

4.12. HISTORIC ENVIRONMENT

POLICY CONSIDERATIONS

4.12.1. Paragraph 5.8.2 of NPS EN-1 describes the historic environment as including all aspects of the environment resulting from the interaction between people and places through time. It recognises that heritage

assets are those elements of the historic environment that hold value through their historic, archaeological, architectural or artistic interest, which may be any building, monument, site, place, area or landscape. The sum of an asset's heritage interest is referred to as its significance.

4.12.2. Paragraphs 5.8.8 to 5.8.10 of NPS EN-1 require applicants to assess the significance of the heritage assets affected by their proposals. Applicants should also ensure that the extent of any impacts can be adequately understood from their application and supporting documents.

4.12.3. The NPS EN-1 confirms a presumption in favour of the conservation of designated heritage assets, commensurate with their significance.

4.12.4. Where there is a high probability that a development site may include as yet undiscovered heritage assets with archaeological interest NPS EN-1 indicates that applicants should carry out appropriate desk-based assessments and, if necessary, field evaluations. Furthermore, consideration should be given to requirements to ensure that appropriate procedures are in place for the identification and treatment of such assets if discovered during construction.

4.12.5. The NPPF describes the setting of a heritage asset as the surroundings in which it is experienced. The NPPF recognises the need to conserve heritage assets in a manner appropriate to their significance, to which great weight is given.

4.12.6. Policy DS1 (General Requirements) of the NLLP [REP3-022], amongst other things, requires developments to have no adverse effect on scheduled monuments, archaeological remains, listed buildings and conservation areas.

4.12.7. Policy HE9 (Archaeological Evaluation) of the NLLP [REP3-028] requires proposals affecting sites of known or suspected archaeological importance to be archaeologically assessed. This policy goes onto indicate that planning permission will not be granted without an adequate archaeological assessment of the nature, extent and significance of the remains present and the degree to which a development would be likely to affect a site's archaeology. Sites of known archaeological importance will be protected and where development is acceptable in principle, mitigation against damage must be secured and the preservation of remains in-situ will be the preferred approach.

4.12.8. Policy CS6 (Historic Environment) [REP3-018] promotes the effective management of historic assets through, amongst other things, preserving and enhancing the archaeological heritage of North Lincolnshire and protecting, conserving and enhancing the character and setting of historic buildings, conservation areas and statutorily and locally listed buildings.

THE APPLICANT'S CASE

4.12.9. Chapter 8 of the ES [APP-065] addresses the effects of the Proposed Development on heritage assets. A study area of a minimum of 1km around the Order Limits has been used as the baseline for the heritage assessment. The extent of the study area is shown on the plans included in [APP-011 and APP-012].

4.12.10. The Applicant's heritage assessment has been informed by: a review of the publicly available archaeological and historic information, reported in the Cultural Baseline Study [APP-099]; a geophysical survey of the Order Limits undertaken in 2018 and reported in [APP-100]; and ground investigation works, undertaken in September 2018 and relying on 23 test pits, of which 19 were monitored through an archaeological watching brief reported on in [APP-101]. No features, deposits or artefacts were found when the ground investigation was being undertaken [paragraph 8.2.6 of the APP-065]. A fieldwalking survey for around a quarter of the Order Limits has also been undertaken and that revealed the presence of small quantities of artefacts of archaeological interest and significance. The results from the fieldwalking survey are reported in [APP-102].

4.12.11. In addition to the previously mentioned investigations an archaeological evaluation involving the creation of 155 trial trenches was undertaken. This evaluation identified a series of ditches and pits, mainly within the eastern, western and southern parts of the Order Limits, corresponding with the location of anomalies revealed by the earlier geophysical survey. The results of the archaeological evaluation are reported in [APP-103].

4.12.12. There are no designated heritage assets (listed buildings, scheduled ancient monuments or conservation areas) within the Order Limits. The effects of the Proposed Development on known and potentially buried archaeologically and other heritage assets located within and nearby the Order Limits, which could potentially be affected as a result of changes within their settings have been considered.

4.12.13. An assessment of the settings of heritage assets has been undertaken in accordance with HE's guidance and the relevant policy in section 16 of the NPPF.

4.12.14. Section 8.3 of Chapter 8 of the ES [APP-065] identifies the baseline conditions and refers to:

- Prehistoric features, including a possible round barrow, a section of possible route corridor known as the Jurassic Way, a collection of flints and an apparent ring ditch (distinct from the previously mentioned barrow).

- The presence of small quantities of Roman pottery and building materials within the Order Limits, with Ermine Street a major Roman Road being situated to the east of the Order Limits.

- In relation to the early medieval and medieval periods, the fieldwalking survey recovered 35 sherds of pottery dating between the twelfth and sixteenth centuries. Some of that pottery was found close to the site of Gokewell Priory, a small Cistercian nunnery founded in the twelfth century and dissolved following the dissolution of monasteries in 1536. Despite the presence of the former priory the archaeological evaluation *"… recorded sparse evidence of medieval activity …"* [paragraph 8.3.11 in APP-065]. The deserted medieval villages of Manby and Raventhorpe are located to the south of the Order Limits, the latter being a scheduled monument.

- In the post medieval and modern period, the former priory become the location for Gokewell Priory Farm, with there being evidence of the farm buildings having been constructed from some of the remains of the former priory. The tithe map record shows Gokewell Priory Farm as the only built development with the Order Limits during the post medieval period. Gokewell Priory Farm was demolished in the 1980s. The geophysical survey recorded the presence of a number field boundaries. The survey works also found evidence of limestone extraction in the south eastern part of the Order Limits.

- The archaeological investigation also identified various undated features within the Order Limits, possibly associated with historic enclosure of land.

4.12.15. With respect to the setting of heritage assets the following designated assets are situated within 2km of the Order Limits, with their locations being shown on the plan in [APP-010]:

- The scheduled monument of Raventhorpe, a medieval settlement.
- The grade I listed St Mary's Church, Broughton.
- Ten other grade II listed buildings to the north, east and south of the Order Limits

4.12.16. The closest designated heritage assets to the Order Limits comprise two grade II Listed Buildings, Springwood Cottage and barn located around 650m to the north east of the Order Limits and Raventhorpe House (a grade II Listed Building) and the Scheduled Monument of Raventhorpe located around 870m to the south of the Order Limits.

4.12.17. The Applicant has concluded that the Order Limits do not form any part of the settings of significance to any of the designated heritage assets, due to distance, topography and tree screening. The Proposed Development will therefore not result in any change and thus harm to the significance of the settings for any of the designated heritage assets [paragraph 8.3.22 in APP-065]. Detailed setting assessments have been included in [APP-099].

4.12.18. The former Gokewell Priory is considered to be a non-designated heritage asset and is identified as "MLS1805" on the plan in [APP-011]. *"The remains of the priory comprise above-ground remnant earthworks and potential below-ground archaeological remains, and this asset principally*

derives its significance from the archaeological interest and evidential value of said remains" [paragraph 8.3.24 in APP-065]. In paragraph 8.3.40 of Chapter 8 of the ES it is submitted that any below ground remains of the priory would be of heritage significance, albeit that those remains are unlikely to be of sufficient archaeological interest to comprise highly significant heritage assets and constitute non-designated heritage assets of archaeological interest.

4.12.19. In terms of the settings for any other non-designated heritage assets, it has been determined that that there would be no in-direct harm to the significance of any other non-designated heritage assets. In that regard in paragraph 8.3.26 of Chapter 8 of the ES [APP-065] it is stated:

"In this case, most of the non-designated heritage assets of archaeological interest within and in the vicinity of the Order Limits have no surface presence and, additionally, the landscape within which they are present has been fundamentally changed over time. As such, it can be concluded that setting makes no contribution to the significance on the non-designated heritage assets of archaeological interest within or close to the Order Limits and their significance derives from the archaeological interest and evidential value of buried archaeological remains."

4.12.20. Given the archaeological investigations that have been undertaken within the Order Limits, the Applicant considers a good understanding of the archaeological potential already exists and that there is limited scope for any further undiscovered archaeological remains to be present. The Applicant has further submitted that while the discovery of additional archaeological remains cannot be ruled out, based on the known archaeological potential, should undiscovered archaeology be encountered it is unlikely to involve assets of the highest significance and would probably relate to non-designated heritage assets [paragraph 8.3.28 in APP-065].

4.12.21. Crop marks on aerial photographs have suggested the presence of a prehistoric round barrow. However, no upstanding physical remains for such a feature have been identified during a site visit, while the geophysical survey did not reveal the presence of a round barrow. However, the geophysical survey has identified the presence of a ring ditch in a different location to that shown on aerial photographs and it has tentatively been interpreted as a ploughed out prehistoric barrow. The Applicant has therefore made the following assessment of the ring ditch:

"This feature would be of evidential and historical (illustrative) value in its contribution towards our understanding of the nature and extent of prehistoric activity within the local landscape and would constitute a non-designated heritage asset of archaeological interest." [paragraph 8.3.31 in APP-065].

4.12.22. The Applicant has explained that the geophysical survey revealed a linear anomaly in the north-western part of the Order Limits. Subsequent

evaluation (Trenches 46, 149- 150) confirmed this anomaly relates to a substantial north-east/south-west orientated ditch, likely to represent a Middle to Late Iron Age field boundary. No further features associated with the later prehistoric period were identified in the course of the evaluation and it may be that further activity extended into the proposed AEZ for Gokewell Priory. The Applicant in paragraph 8.3.33 in [APP-065] has gone to state:

"The recorded ditch would be of evidential and historical (illustrative) value as it could contribute towards our understanding of the nature and extent of Iron Age agricultural activity within the surrounding area and it would constitute a non-designated heritage asset of archaeological interest."

4.12.23. Other features or artefacts of significance are not expected to be encountered or if found add appreciably to the understanding of the area's archaeology and would therefore amount to no more than non-designated heritage assets.

4.12.24. The Applicant's full assessment of likely significant effects is stated in section 8.4 of Chapter 8 of the ES [APP-065]. In summary the identified likely significant effects would arise during the construction and decommissioning phases, as follows:

"It has been established that the Proposed Development has the potential to affect known archaeological remains associated with possible prehistoric and medieval archaeological remains as well as archaeological remains of uncertain date. The excavation of cable trenches and building foundations, the insertion of new roads, and inserting/removing the mounting system structures (and any associated landscaping or services) have the potential to truncate or totally remove the archaeological remains within their footprint. Such effects would result in harm to or total loss of significance of these buried archaeological features, leading to a Significant Adverse Effect." [paragraph 8.7.3 in APP-065]

4.12.25. To mitigate the effects on the archaeological interests of the former Gokewell Priory, the Applicant intends that an AEZ would be established. The extent of the AEZ is shown on the plans in [APP-025, APP-026 and APP-027]. Within the AEZ it is proposed that no solar arrays and associated works would be installed so that any buried archaeology would remain unaffected and in-situ.

4.12.26. The archaeological investigations have identified remains associated with prehistoric activity, as well as features of uncertain date, which may be physically affected by the Proposed Development. In the course of the consultations with NLC, in addition to the AEZ, the following mitigation measures have been agreed:

- A no-dig zone within which concrete pads[57] will be utilised around the potential prehistoric round barrow (ring ditch).

[57] As opposed to driving the supporting legs of the solar arrays into the ground

- In order to avoid the potential barrow recorded as a cropmark, trench cabling has been relocated.
- A programme of archaeological recording to be implemented during any works within the fringes of the AEZ (ie around pylons to the east and during cable trench excavations within the south-east corner).
- An archaeological watching brief during ground works within sensitive areas in Fields 7 and 10, and the excavation of the swale to the west of the archaeological exclusion zone.

4.12.27. The proposed archaeological mitigation originally formed part of the oCEMP submitted with the application [APP-077]. NLC in section 7 of its LIR [REP2-026] raised concerns about the appropriateness of including archaeological matters in the oCEMP. Further to the discussion of this matter as part of ISH2, the Applicant has submitted a freestanding AMP [REP6-018] that would apply for the duration of the Proposed Development[58]. Figure 1 in the AMP shows the locations of the proposed AEZ, the ring ditch no-dig zone and the areas that would be subject to archaeological monitoring (watching brief) during the construction works. Section 3 of the AMP specifies all of the archaeological mitigation measures that would be followed during the construction and decommissioning phases.

4.12.28. R13 of the dDCO [REP7-003] would secure the implementation of the Proposed Development in accordance with the provisions of the AMP. R13, amongst other things, would preclude any phase of the Proposed Development from being commenced until the AEZ was established.

4.12.29. It has been found that the Proposed Development would cause no harm to any designated heritage assets within the vicinity of the Order Limits, including the Scheduled Raventhorpe deserted medieval village, and no mitigation for those assets is required, a neutral effect. Similarly, it is anticipated that there would be no significant effects for the setting of Gokewell Priory [paragraph 8.7.6 of APP-065].

4.12.30. With respect to the consideration of cumulative and in-combination effects the Applicant is of the view that the only other development to be taken account of is the Raventhorpe solar farm, occupying 80ha of land to the south of the Order Limits. The Applicant has submitted that because of the mitigation measures associated with both schemes it is of the view that no anticipated significant adverse cumulative effects for the historic environment would arise [paragraph 8.6.1 in APP-065].

MATTERS ARISING IN THE EXAMINATION

4.12.31. HE and the Applicant signed a SoCG with one another on 14 June 2021 [REP4-012]. That SoCG records there being no matters that were not agreed between HE and the Applicant. Amongst other things covered in the SoCG, HE has commented that the Applicant's heritage assessment

[58] Ie the construction, operational and decommissioning phases

appeared to be of sufficient scope and that the range of proposed mitigation measures, including the creation of the AEZ, were welcomed.

4.12.32. NLC in section 7 (Cultural Heritage) of its LIR [REP2-026] commented:

- The approach to the assessment and methodology of cultural heritage impacts as set out in Chapter 8 of the ES is appropriate and proportionate.

- It is agreed that there will be no adverse effects for designated heritage assets beyond the Order Limits.

- The baseline records used by the Applicant together with the fieldwork undertaken to date provide sufficient information to characterise the archaeological heritage assets and assess their significance.

- There are no designated heritage assets within the Order Limits. The non-designated heritage assets identified within the Order Limits that may be affected include:

    - Gokewell Priory, which is the key heritage asset and it is of particular heritage significance because of its research potential, with Cistercian nunneries representing a very small percentage (less than 5%) of all the monastic houses founded by the end of the twelfth century;
    - the ring ditch may be interpreted as a ploughed down Bronze Age burial mound or barrow;
    - the Cropmark of a ring ditch recorded on the historic environment record (unproven during the on-site evaluation);
    - the middle to late iron age ditch indicative of proximity to an area of settlement, potentially within the Priory site to the north east;
    - Ermine Street, a major Roman Road connecting Lincoln to the Humber, on the edge of Order Limits and evidence of Roman road construction is anticipated beneath and alongside the modern carriageway;
    - the undated curvilinear linear ditch likely to represent a large enclosure also containing internal features potentially of prehistoric date; and
    - post medieval limestone quarrying and evidence of burning most probably for producing agricultural lime, located in Lime Kiln Close named on the 1842 Tithe Map.

- With regard to the setting of Gokewell Priory, it is agreed that the present agricultural setting makes a contribution to the significance.

- The assessment of significance of the other known non-designated heritage assets within the Order Limits is agreed.

- In addition to the construction impacts identified in paragraph 8.4.1 of the ES, NLC would add the removal of the hedgerow alongside Ermine Street (B1207) forming part of Work No.5 (upgrading of the main

access track) that could, unless sensitive methods are specified, damage evidence of the Roman road's construction.

- Support for the archaeological management measures proposed by the Applicant, including the provision of the AEZ.

- During the decommissioning phase removing the solar arrays piled supporting posts by vibration has the potential to cause more damage to buried archaeology than the initial insertion of the piles, through disruption of the soil in the archaeological horizon at a short depth below ground level. It is by no means certain removal by vibration would result in the piles being cleanly lifted from the ground. In that regard NLC has stated it is unaware of the effects of decommissioning multiple small piles on archaeological remains having previously been demonstrated, nor has any archaeological research into the decommissioning of solar farms been undertaken.

  In relation to the decommissioning works the NLC questioned why in Table 8.4 in Chapter 8 of the ES [APP-065] such works have been treated as being not applicable [paragraph 7.15 in REP2-026].

- The assessment of the likely significant effects of the construction and operational phases is agreed, as is the evaluation of the identified effects that would result in the complete or partial loss of heritage significance of the known and potential archaeological remains within the Order Limits, without appropriate mitigation.

- The proposed mitigation measures are set out in detail in section 8.5 of the ES and were agreed with NLC prior to the application's submission. That said there is no mention of the AEZ in the oLEMP [APP-097], with the AEZ being located within part of the Order Limits allocated under Work No.3 (formation of ecological corridors) of the dDCO [REP7-003][59] and the undertaking of the works covered by the oLEMP may have archaeological implications. In a similar vein Chapter 8 of the ES refers to archaeological mitigation proposals being included in the oCEMP [APP-077], but that is not the case. NLC therefore commented it would be beneficial if a standalone AMP was prepared so as to ensure that all of the proposed archaeological mitigation measures were to be found in one document, with cross referencing to it in the oCEMP and oLEMP.

4.12.33. NLC in paragraph 7.28 of its LIR [REP2-026] suggested various amendments to the wording of R13 (archaeology) of the dDCO to ensure consistency between what was stated in any made DCO and Chapter 8 of the ES.

4.12.34. With respect to the provisions of Article 12 (Removal of human remains) of the dDCO, NLC commented in paragraph 7.29 of its LIR that in the

[59] Shown on the Works Plan [APP-013] and AEZ plans [APP-025 to APP-027]

event of any human remains being found they should be archaeologically recorded prior to their reburial in a cemetery or cremation.

4.12.35. Earlier in this section I have explained following the submission of NLC's LIR and a discussion at ISH2 the Applicant agreed to submit a standalone AMP, which became [REP6-018].

4.12.36. In response to other matters raised by NLC in its LIR, the Applicant made the following comments in [REP3-014]:

- With respect to works affecting Ermine Street under Work No.5, the works would primarily involve the cutting back of vegetation and no ground disturbance in anticipated. Should works involving ground disturbance become necessary then their archaeological supervision would come within the scope of R13 of the dDCO.

- Revisions have been made to the dDCO, oLEMP and oCEMP to address various drafting matters raised by NLC. With respect to the oLEMP and oCEMP, revisions have been made to explain how the archaeologically sensitive areas within the Order Limits should be treated.

- With respect to post removal during decommissioning, it is recognised that the potential impact on any archaeology is currently unclear. However, the Order Limits have been subject to a comprehensive programme of evaluation and investigation that has highlighted few locations of higher interest, generally suggesting a low archaeological potential. Agreed mitigation through design will ensure the most sensitive locations are protected. Given the low potential and the small size of the posts it is considered that even if a slightly larger area is disturbed at removal that would still only have a marginal impact on any archaeology present. R4 (decommissioning and site restoration) of the dDCO [REP7-003] would require a decommissioning strategy, including post removal, to be submitted for NLC's approval. At worst the decommissioning of the Proposed Development would have a minimal impact on buried archaeology.

- Compliance with the AMP [REP6-018], to be secured through the provisions of R13 (archaeology) of the dDCO [REP7-003], would include the archaeological supervision of works, such as the access track works and the excavation of trenches, within the AEZ. Adherence to the CEMP to be submitted to and approved by NLC, pursuant to the provisions of R8, would involve, amongst other things, the installation of fencing and signage as mitigation against buried archaeology being damaged within the AEZ.

4.12.37. The signed SoCG between NLC and the Applicant [REP6-014] records that all matters relating to cultural heritage (the historic environment) have been agreed, with revisions to the drafting of R4 and R13 in the dDCO [REP7-003] and the content of the oCEMP [REP6-006], oLEMP [REP6-012] and oDS [REP6-008] having been made during the Examination. Consequently, with the making of the aforementioned

revisions and the submission of the standalone AMP [REP6-018] all of the matters raised by NLC in section 7 of its LIR [REP2-026] have been addressed.

EXA'S CONCLUSIONS

4.12.38. This sub-section has had regard to the likely significant effects resulting from the Proposed Development on designated and non-designated heritage assets. Consideration has been given to the effects in terms of the potential for direct physical disturbance and indirect effects on settings in terms of the overall effect and the significance of the predicted effects.

4.12.39. Matters raised by NLC, most particularly in its LIR [REP2-026], have been Examined.

4.12.40. Although the area occupied by the Order Limits may contain unknown archaeological remains, based on the available evidence it is unlikely that those archaeological remains would be of significance. Notwithstanding that, having regard to the views expressed by NLC, primarily in its LIR, it is necessary to secure suitable mitigation for effects upon buried archaeology as part of any made DCO. That mitigation would primarily be secured through the provisions of R13 (archaeology), supplemented by R4 (decommissioning), R8 (CEMP) and R10 (LEMP) of the dDCO [REP7-003]. The previously mentioned Rs would entail the construction and decommissioning phases being undertaken in accordance with the AMP [REP6-018] and further to a CEMP, a LEMP and a decommissioning strategy to be submitted for NLC's approval.

4.12.41. There would be no significant effects from the construction, operational or decommissioning phases, either physically or for the settings for any designated heritage assets. Consequently, there would be no harm to the significance of any designated heritage assets. Similarly, there would be no significant cumulative archaeological or historic environment effects resulting from the Proposed Development.

4.12.42. On the basis of the evidence and the proposed mitigation, as secured via various Rs, all impacts have been addressed in a manner that complies with the historic environment policies of NPS EN-1, the NPPF and the development plan. I also consider that with the proposed mitigation the Proposed Development would accord with the emerging policy for safeguarding the historic environment in dEN-1 and dEN-3.

4.13. ECOLOGY

INTRODUCTION

4.13.1. This chapter addresses the effects of the Proposed Development on biodiversity, nature conservation and the natural environment.

4.13.2. However, all matters relating to any implications for the species and habitat of the SAC, the SPA and the Ramsar site are considered in Chapter 5 (Habitats Regulations Assessment) of this Report.

POLICY CONSIDERATIONS

4.13.3. Paragraph 5.3.3 of NPS EN-1 states that where the development is subject to an EIA, applicants should ensure that their ESs clearly set out any effects on internationally, nationally and locally designated sites of ecological importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity. In decision-making the SoSBEIS should ensure that appropriate weight is attached to these matters.

4.13.4. Paragraph 5.3.7 of NPS EN-1 recognises that developments should aim to avoid significant harm to biodiversity interests, including through mitigation and consideration of reasonable alternatives. Applicants are also required to show how projects have taken advantage of opportunities to conserve and enhance biodiversity interests.

4.13.5. NPS EN-1 recognises that the most important sites for biodiversity are those identified through international conventions and European Directives with the Habitats Regulations providing statutory protection for them.

4.13.6. Paragraph 5.3.18 of NPS EN-1 indicates that applicants should include appropriate mitigation measures as an integral part of their developments. Applicants should ensure that construction activities are confined to the minimal area required and that best practice is followed to minimise the risks of disturbance or damage to species or habitats.

4.13.7. Section 15 of the NPPF contains overarching policies for conserving and enhancing the natural environment. This section of the NPPF indicates that planning decisions should contribute to and enhance the natural and local environment by (in summary):

- protecting and enhancing sites of biodiversity value;
- recognising the wider benefits from natural capital and ecosystem services; and
- minimising impacts on and providing net gains for biodiversity.

4.13.8. Policy LC4 of the NLLP [REP3-030] indicates developments that would be likely to have an adverse impact on a Local Nature Reserve or a Site of Importance for Nature Conservation will not be approved unless it can be demonstrated that there are reasons outweighing the need to safeguard the intrinsic nature conservation value of the site or feature. In all cases where planning permission is permitted which may damage the nature conservation value of a site, such damage should be kept to a minimum.

4.13.9. Policy LC5 [REP3-031] of the NLLP states that planning permission will not be granted for developments that would have an adverse impact for badgers and other species subject to protection under Schedules 1, 5

and 8 of the Wildlife and Countryside Act 1981. Where development is permitted that may have an adverse effect on protected species conditions will be considered to facilitate the survival of individual members of the affected species, reduce disturbance to a minimum and provide alternative habitat.

4.13.10. Policy CS17 of the CS [REP3-020], amongst other things, indicates that in providing "effective stewardship" for wildlife in considering proposals for new development: appropriate consideration will be given to species; the retention, protection and enhancement of features of biological interest and the provision of appropriate management; and ensuring a net gain in biodiversity by designing in wildlife and ensuring any unavoidable impacts are appropriately mitigated for.

THE APPLICANT'S CASE

4.13.11. Chapter 7 of the ES [REP5-010] assesses the likely impacts of the Proposed Development on ecology and nature conservation.

4.13.12. The following surveys of the Order Limits have been undertaken:

- an extended Phase 1 habitat survey;
- great crested newt habitat suitability survey;
- arable plants survey;
- water vole survey;
- breeding bird survey
- wintering bird survey;
- bat activity survey; and
- badger survey.

Table 7.2 in Chapter 7 of the ES summaries the methodology and number of ecological surveys that have been undertaken.

4.13.13. The surveys of the Order Limits have identified a range of habitats within or immediately adjacent to them. However, the majority of the Order Limits are arable farmland and semi-improved grassland and are considered to be of low ecological value. The Order Limits are bounded by a network of hedgerows and extensive woodland plantations and the habitats within and adjacent to the Order Limits were assessed as being suitable for a variety of notable and protected species. A number of designated sites are present immediately adjacent to the Order Limits and/or within the zone of influence for the Proposed Development.

4.13.14. There are no internationally or nationally designated habitats within the Order Limits, as shown on the plan in [APP-008].

4.13.15. As explained in section 7.4 of Chapter 7 of the ES and shown in [APP-008] there are five sites of special scientific interest (SSSI) within a 5km radius of the Order Limits, namely:

- The Broughton Far Wood SSSI, a commercial woodland predominantly 820m to the east of the Order Limits. There is potential during the

construction phase for the Proposed Development to cause indirect impacts for this SSSI, as construction traffic would route via the B1208. The Broughton Far Wood SSSI is therefore considered to be in the zone of influence for the Proposed Development .

- The Broughton Alder Wood SSSI is an alder woodland with associated fen and spring habitats and plants, approximately 1km to the east of the main body of the Order Limits. This SSSI is separated from the development site by extensive plantation woodland, the B1207 and a poultry farm. The distances and intervening land uses between this SSSI and the Order Limits means direct or indirect impacts arising from the Proposed Development are highly unlikely to occur. The Broughton Alder Wood SSSI is considered to be outside the zone of influence for the Proposed Development.

- The Risby Warren SSSI is a remnant area of heathland that supports a variety of associated plant communities affected by airborne pollution. This SSSI is located 2.65km to the north west of the Order Limits and the intervening area is occupied by plantation woodland, agricultural farmland, heavy industry and quarry workings. Given the distance and land uses between Risby Warren and the Order Limits, this SSSI is considered to be beyond the zone of influence for the Proposed Development.

- The Manton and Twigmoor SSSI comprises a complex of three separate sites, which are located approximately 3.1km south of the Order Limits at the closest point. Important habitats supported by this SSSI include heathland, acid grassland and wetland features, with wet woodland also present. Together this SSSI's site components support a diverse range of associated plant species. The intervening area between this SSSI and the Order Limits comprises woodland plantations, an existing solar array, a golf course and the A18 and M180 roads. This SSSI is considered to be beyond zone of influence for the Proposed Development.

- The Castlethorpe Tufas SSSI is situated approximately 3.4km from the Order Limits and has been designated for its geological interest. Given that, this SSSI has not been considered further by the Applicant in the ES.

4.13.16. Eleven locally designated sites for nature conservation are located within 1km of the Order Limits and those locally designated sites are described in Table 7.3 in Chapter 7 of the ES [REP5-010] and shown on [APP-008]. Eight of those locally designated sites have been categorised as being Local Wildlife Sites (LWS), while the three other sites are classified as Sites of Nature Conservation Interest (SNCI), a category that is being replaced by LWS. However, the three SNCIs remain extant until such time as they have been assessed by the Greater Lincolnshire Nature Partnership [paragraph 7.4.15 in REP5-010].

4.13.17. The effects on the Broughton West Wood LWS, Manby Wood LWS, Heron Holt LWS, Broughton West Wood SNCI and Santon Wood SNCI have been

assessed because of their proximity to the Order Limits. The Broughton Far Wood LWS and the Rowland Plantation have also been assessed because they border the B1208, which would form part of the construction traffic route and the resulting traffic may cause indirect impacts. The other LWSs and SNCIs have been excluded from the Applicant's assessment because of their distances from the Order Limits.

4.13.18. The habitats within and immediately adjoining the Order Limits have been identified as comprising: arable fields; arable field margins; poor semi-improved grassland; semi-natural broad leaved woodland; plantation broad leaved woodland; planation mixed woodland; plantation coniferous woodland; scrub; hedgerows; ponds; scattered broad leaved trees; tall ruderal (waste land flora); and ditches. The majority of those habitats have been classified as being of "local importance" or "site importance", the exception being arable fields which are considered to be of "negligible importance" [paragraphs 7.4.19 to 7.4.65 in REP5-010].

4.13.19. The presence for and effects of on: badgers; bats; otters; water voles; brown hare; breeding birds; wintering birds; great crested newts (GCN), toads; reptiles; and invertebrates have been assessed. In summary, for each species the findings from the survey work and the implications arising from the Proposed Development are as follows, as explained in paragraphs 7.4.71 to 7.4.107 in [REP5-010]:

- **Bats**: Surveys have identified the presence of five bat species using the Order Limits. The surveys identified the hedgerows and woodland edges as being of most value for foraging/commuting bats. Overall, for an area of arable land surrounded by woodland and hedgerows, generally low levels of bat activity were recorded. Moderate common pipistrelle activity was however recorded in some areas, particularly at the woodland in the eastern Order Limits, where the highest number of bats were recorded. Bat activity was lowest at the hedgerow/scrub network in the south western corner. Bat activity within the interior of the arable/grassland fields was minimal.

  A zone of influence of 2.4km for bats has been used, based on the average foraging distance from roost sites for the bat species that are present. The Order Limits have been assessed as being of a local level importance for bats.

- **Otters**: The data search has revealed no otters being present within 2km of the Order Limits. The water bodies with the Order Limits are considered to be unsuitable for Otters and this species has therefore been scoped out of the ecological assessment.

- **Brown hare**: Small numbers (up to eight individuals) of brown hare have been recorded using the arable fields during the surveys. The mosaic of open fields, woodland and hedgerow provides optimal habitat for this species. The home range for brown hare ranges between 20 and 190ha. It seems likely that the ranges for hare recorded on site extends beyond the Order Limits and therefore the zone of influence for this species has been selected as being the Order

Limits and the surrounding suitable habitat up to 1km from the Order Limits. The brown hare population has been assessed as being of local importance.

- **Breeding birds**: Breeding bird surveys were undertaken between April and July 2018. In total, 55 bird species were recorded using the Order Limits. Twenty one of the 55 species are listed as species of conservation concern. Several of the farmland bird species recorded are targets for conservation both locally, as part of the Lincolnshire Biodiversity Action Plan, as well as nationally. These include lapwing, yellow wagtail, skylark, linnet, yellowhammer, reed bunting and bullfinch.

  Most of the bird species recorded were found to be associated with the boundary habitats, predominantly within the woodland, hedgerows, scrub and wetland. The exceptions to that were skylark (25 territories), yellow wagtail (3 territories), lapwing (1 or 2 territories), meadow pipit (1 or 2 territories) and reed bunting (3 territories), which were considered to be nesting within the open fields. The zone of influence for breeding birds associated with both the open field habitat and the other habitats is likely to extend beyond the Order Limits, given the highly mobile nature of these species. A zone of influence for breeding birds has been taken to include both the Order Limits and all habitat within 500m of the Order Limits. The breeding birds that rely on open farmland within the Order Limits have been assessed as being of district importance.

  The woodland, hedgerows, trees and scrub habitats at the field boundaries of the Order Limits were found to be used for breeding by a range of species of conservation concern, generally in small to moderate numbers. That includes yellowhammer, linnet, bullfinch, willow warbler, mistle thrush, song thrush, dunnock and kestrel. Overall, the assemblage of breeding bird species associated with the boundary habitat is assessed as being of local importance.

- **Wintering birds**: Wintering bird surveys were undertaken between November 2017 and February 2018. In total, 51 bird species were recorded using the Order Limits. Twenty four of the 51 species are listed as species of conservation concern.

  Most of the wintering bird species recorded at the Order Limits were found to be associated with the boundary habitats. However, some species of conservation concern which are known to rely on or regularly use open arable fields for foraging and roosting were recorded either as part of large flocks (lapwing and skylark) or as small, loose flocks and individuals (such as meadow pipit). Skylark were recorded in moderate to large numbers (peak count of 159). The consistent presence of large numbers skylarks indicates the site is of noteworthy importance to local wintering populations of this species. Lapwing were present in relatively large numbers (peak count of 109) on two survey visits, although their absence from the two remaining

visits indicates that the Order Limits are at least in part used in conjunction with other suitable fields in the surrounding area.

The zone of influence for wintering birds is likely to be greater than for breeding birds, as wintering birds are typically more mobile. As such a zone of influence of up to 2km from the Order Limits is considered appropriate for this species group. The Order Limits are therefore considered to be of district importance for wintering birds.

The remainder of the wintering bird activity recorded can be attributed to species more closely associated with hedgerow and woodland habitats and those birds of open country which seek shelter within dense hedgerows such as thrushes and finches. Although species of conservation concern were noted, these were generally present in small numbers and no noteworthy abundance of a species was recorded. The Order Limits have been assessed as being of site importance to wintering birds of woodland and hedgerows.

- **GCNs**: The ponds present within the Order Limits have potential to be used by GCN. No GCN deoxyribonucleic acid (DNA) was found in the ponds within the Order Limits. However, GCN DNA was found in a pond 330m to the south of the Order Limits and that is within the dispersal range for GCNs. It is therefore possible that GCN may be present in around 7ha of the Order Limits, albeit the arable farmland and semi-improved grassland within that area provides sub-optimal habitat for GCNs. While most of the habitat within the Order Limits does not support GCN, given the legal protection afforded to this species and its status of local conservation priority, the Order Limits are considered to be of local importance to GCNs.

- **Reptiles**: No recent desk study records for reptiles were identified. The hedgerows, scrub, woodland edges, ditches and grassland areas offer some value for foraging and sheltering widespread reptile species, such as slow worms and grass snakes. However, the large expanse of arable land is considered to offer poor suitability for reptiles. The zone of influence for reptiles is considered to be only within the Order Limits. As suitable habitat for reptiles was restricted to the margin and boundary habitats, reptiles are likely to be present in small numbers, if at all, and restricted to those areas. Reptiles are considered most likely to be of site importance if present.

- **Invertebrates**: The data search revealed a number of existing records for notable butterfly and moth species within the local area. Habitats at the margins and boundaries of the fields are likely to be of value for a range of invertebrate species typical of woodland edge and hedgerows, and a number of such species belonging to the order Lepidoptera (butterflies and moths) were recorded during the surveys, including cinnabar moth (a priority species). The ponds and ditches within the Order Limits are also likely to support a range of aquatic invertebrates. However, the arable fields, comprising the vast majority of the Order Limits, are likely to be poor habitat, particularly for pollinating species.

The zone of influence for invertebrates is considered to be the extent of the Order Limits. Invertebrates using the Order Limits and the immediately adjoining habitat are considered to be of local importance.

4.13.20. Design measures with "ecological influence" would include:

- A minimum 10m wide buffer between the perimeter Order Limits habitats and the boundary security fencing (Work No. 6). A minimum 4m buffer will be provided between hedgerows and interior fencing.

- The planting of approximately 2.5km of native hedgerows along either side of PF214, to provide visual screening for the solar arrays and demarcation for the AEZ. That hedging would increase connectivity and foraging opportunities for a range of species including, birds, bats, and small mammals.

- The creation of 4m wide and 400 millimetre deep swales along some field boundaries.

- The sowing of grass beneath the solar arrays, with the expectation it would be grazed by sheep. However, if grazing is not possible a grass cutting regime would be used.

- Measures to safeguard or enhance the nature conservation value of the Order Limits during the construction and operational phases have been incorporated into the oCEMPfB [APP-096] and oLEMP [REP6-012]. The oCEMPfB details measures and approaches to be adopted, limiting the likelihood of impacts on the retained habitats through damage, pollution and disturbance. Paragraph 7.5.2 of Chapter 7 of the ES indicates an intention for the final details for and implementation of the oCEMPfB would be secured via a requirement included in any made Order.

4.13.21. Section 7.6 of Chapter 7 of the ES [REP5-010] provides an assessment of the expected ecological effects, the proposed mitigation measures and the residual effects after mitigation. During the construction phase the mitigation measures would seek to avoid impacts such as runoff, dust deposition and accidental damage and would be secured through measures included in a CEMP, in compliance with R8 of the dDCO [REP7-003]. Under the provisions of R8, the CEMP to be submitted for NLC's approval must accord with the oCEMP [REP6-006]. Additional mitigation measures would be included in a CEMPfB.

4.13.22. An oLEMP [REP6-012] has been prepared explaining how the site would be managed during the operational phase to maximise the Proposed Development's ecological value. The oLEMP includes conservation management for the grassland and hedgerows to maximise their value for wildlife and other measures for the retention and ongoing management of the land for arable plants species. Bat and bird boxes would also be installed and hedgerows in-filled where appropriate. The

oLEMP also sets out details for monitoring and reporting, so that adherence to a LEMP and changes in biodiversity could be identified and reported to NLC. It is intended that the finalisation and operation of a LEMP would be secured through R10 in a made DCO, as per R10 in the dDCO [REP7-003].

4.13.23. Table 7.5 in Chapter 7 of the ES summaries the proposed mitigation measures, the residual effects and significance of those effects for each of the effected habitats and species. With mitigation the residual effects in most instances have been assessed as being neutral for the construction phase. The construction effects for most breeding birds has, however, been assessed as being adverse. That is because when the construction works were being undertaken conditions within the Order Limits would be unsuitable for ground nesting birds. Notwithstanding that the significance of the effects for habitats and species during the construction phase have been assessed as being "not significant" due to the temporary nature of the effects.

4.13.24. For the operational phase the residual effects have been assessed as being positive because intensive arable farming, including insecticide spraying, would cease and be replaced by a more diverse foraging habitat. The significance during the operational phase has been assessed as being either "not significant" or "significant at a local level", the latter applying to brown hare, breeding birds, GCN and invertebrates.

4.13.25. Information relating to the Proposed Development's effects for badgers has been submitted. That information has been submitted on a confidential basis, as is usual for this protected species and I have had regard to it. The documentation relating to badgers has not been included in the Examination Library, however, it can be made available to the SoSBEIS should it be required.

4.13.26. Section 7.9 of Chapter 7 of the ES [REP5-010] reports on the cumulative impacts of the Proposed Development by reference to the operational 38MW Raventhorpe and 5.99MW Flixborough solar farms and the proposed 50MW Conesby solar farm. More information about those solar farms is provided in section 4.10 above. As explained in section 4.7 above, in response to questions I raised during the Examination, the Applicant has clarified that consideration of cumulative impacts was not restricted to just the Proposed Development with other solar farm schemes.

EXAMINATION

4.13.27. NE in its RR [RR-010] commented that it considered there would be no significant impact on the nearby Broughton Far Wood SSSI and that the Order Limits *"… supports habitats of negligible ecological interest and all protected species … can be addressed by the proposed draft DCO requirements"*.

4.13.28. NE in its RR went on to observe that the Order Limits and the proposed construction traffic route via the B1208 both lie adjacent to the Far Wood

ancient replacement woodland. Given the proximity of that ancient woodland, NE indicated it was content that adequate measures (buffer zones and woodland planting) would be in place to protect the neighbouring ancient woodland.

4.13.29. The signed SoCG between NE and the Applicant [REP4-013] confirms that NE is content with: the Applicant's assessment of the construction and operational impacts of the Proposed Development on ecology and nature conservation; and the proposed mitigation and enhancement measures, insofar as they come within NE's remit. The SoCG further records that NE is of the view that the provisions of the oCEMP [REP6-006] and the oLEMP [REP6-012] and the drafting for R8 and R10 in the dDCO are appropriate. Section 5 of the SoCG confirms that there are no matters of disagreement between NE and the Applicant.

4.13.30. NLC in section 6 (biodiversity and ecology) of its LIR [REP2-026] commented:

- The Applicant's surveys are considered to be appropriate.
- While lapwing have been recorded within the Order Limits, there is no evidence indicating whether or not this flock of birds is linked with the Humber Estuary.
- The proposed mitigation and enhancement measures are broadly welcomed, although experience with other operational solar farms in the council's area suggests that sheep grazing may not occur. The mitigation and enhancement measures to: protect woodland and ancient woodland; and conserve arable plants, badgers, farmland birds and invertebrates are considered to be acceptable [paragraph 6.6 in REP2-026]. The LEMP to be submitted will adequately address the provision of the proposed mitigation and enhancement measures and there will be a need for those measures to be fully implemented for the lifetime of the Proposed Development, via R10 of the dDCO.
- Assuming that the proposed mitigation and enhancement measures are implemented, NLC considers that the overall effect would be neutral or minor positive when compared with other solar farm schemes that have come forward in NLC's area [paragraph 6.7 in REP2-026].

4.13.31. The Applicant's response to NLC's LIR are set out in section 6 of [REP3-014]. With respect to sheep grazing, the Applicant explained grazing is anticipated to be a *"… a key habitat management tool for the scheme …"* and that the landowner currently grazes around 800ha through the keeping of between 1,000 and 2,000 sheep [paragraph 6.5 in REP3-014]. As explained in sections 2.2 and 4.10 above, further to oral and written questions I raised during the Examination, the Applicant has indicated there is a reasonable prospect that the new grassland would be grazed. However, should that not happen then the grassland

would be subject to a grass cutting management regime, resulting in the biodiversity benefits attributed to the sowing of grass being achieved.

4.13.32. The potential for grass cutting as an alternative to sheep grazing, is a matter that has been included in the oLEMP [REP6-012] and, if necessary, would be secured via R10 of the dDCO [REP7-003].

4.13.33. A local resident in [RR-013] raised concerns about the adequacy of the assessment of effects on biodiversity. The author of RR-013 states that he is given to understand that the application documentation does not refer to effects on GCNs, common buzzard, muntjac deer and roe deer. As outlined above, the effects for GCNs have been assessed in Chapter 7 of the ES [REP5-010]. In response to RR-010 the Applicant has commented in [REP1-009] that in Great Britain deer are not endangered and are not afforded legal protection from a nature conservation perspective. Neither EN nor NLC have identified any concerns about the species scoping for the purposes of undertaking the ecological and nature conservation impact assessment reported in Chapter 7 of the ES [REP5-010].

EXA'S CONCLUSIONS

4.13.34. In considering biodiversity, ecology and the natural environment the Applicant, with the implementation of mitigation and enhancement measures, has identified no significant effects for protected species and habitats or other species.

4.13.35. Various mitigation and/or enhancement measures for the construction and operational phases are identified in the oCEMP [REP6-006], oCEMPfB [APP-096], oDS [REP6-008] and oLEMP [REP6-012]. It is intended the submission of final versions of a CEMP, DS[60] and LEMP would be secured respectively by R8, R4 and R10 in a made DCO, based on what has been included in the dDCO [REP7-003]. Chapter 7 of the ES states in paragraph 7.5.2 that an oCEMPfB has been prepared detailing:

"… measures and approaches to be adopted which will limit the likelihood of impacts upon retained habitats through damage, pollution and disturbance. It is anticipated that the final details and implementation of the CEMP will be secured by requirement of the Development Consent Order (DCO) which would be finalised once a main contractor has been appointed …"

4.13.36. Paragraph 7.6.27 of Chapter 7 of the ES goes on to refer to a CEMPfB forming part of the proposed mitigation measures. However, R8 in the dDCO [REP7-003] only refers to a final CEMP, according with the oCEMP's provisions [REP6-006], needing to be submitted for NLC's approval. The wording of R8 does not expressly refer to the oCEMPfB [APP-096] nor is its subject matter covered in R8, albeit it is a document listed to be

[60] Decommissioning Strategy

submitted for the SoSBEIS's certification under Article 14 of a made DCO. The wording of R8 in the dDCO is also inconsistent with what is stated in paragraph 6.7.3 of the EM [REP7-005], which refers to no phase of the Proposed Development being commenced until both a CEMP and a CEMPfB have been approved by NLC, with implementation thereafter to be in accordance with both CEMPs.

4.13.37. To provide all of the ecological and nature conservation mitigation that the Applicant has identified as being necessary for the construction phase I consider that R8 in any made DCO should to refer to a CEMPfB and the oCEMPfB [APP-096]. In in the rDCO (Appendix D of this Report) I have provided recommended revised wording to incorporate references to a CEMPfB and the oCEMPfB in R8.

4.13.38. I consider that the Proposed Development has been designed with mitigation to avoid significant adverse impacts on biodiversity, ecology and nature conservation. Accordingly, with the proposed mitigation intended to be secured through the provisions of a made DCO, I consider that the Proposed Development, either alone or cumulatively, accords with the relevant policies in NPS EN-1, the NPPF, the NLLP and the CS. I am also of the view that there would be no conflict with the emerging policy stated in dEN-1 and dEN-3

4.14. TRAFFIC AND TRANSPORT

POLICY CONSIDERATIONS

4.14.1. Access and transportation matters are addressed in Part 5.11 of NPS EN-1. NPS EN-1 recognises that transporting materials, goods and personnel to and from a project during all of its phases can have a variety of impacts on the surrounding transport infrastructure. Paragraph 5.13.2 advises that consideration of and mitigation for transport impacts is an essential part of the Government's wider policy objectives for sustainable development. Paragraphs 5.13.3 and 5.13.4 go on to indicate that Applicants should undertake a Transport Assessment (TA) for projects likely to have significant transport implications.

4.14.2. Where there is likely to be substantial heavy goods vehicle (HGV) traffic, paragraph 5.13.11 indicates Rs in DCOs to achieve one or more of the following may be necessary:

- controlling the number of HGV movements to and from a site in a specified period during its construction and possibly the routing for such movements;
- making sufficient provision for HGV parking, either on the site or at dedicated facilities elsewhere, to avoid parking on public roads, prolonged queuing on approach roads and uncontrolled on-street HGV parking in normal operating conditions; and
- ensuring satisfactory arrangements for reasonably foreseeable abnormal disruption, in consultation with the relevant authority.

4.14.3. Paragraph 104 of the NPPF advises:

"Transport issues should be considered from the earliest stages of plan-making and development proposals, so that: a) the potential impacts of development on transport networks can be addressed …"

4.14.4. Paragraph 111 of the NPPF states:

"Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe."

4.14.5. Policy T1 of the NLLP [REP3-038] addresses the location of development and, amongst other things, indicates that development will be permitted in Scunthorpe and the other larger settlements in NLC's area and at the south Humber Bank and Humberside International Airport. In relation to the consideration of access to developments, Policy T2 of the NLLP [REP3-039] states that all development must be provided with a satisfactory access and should, amongst other things, be adequately served by the existing highway network. Policy T18 of the NLLP addresses traffic management and indicates, amongst other things, that measures will be used to minimise the danger and nuisance caused by through traffic in residential areas, concentrating through traffic on the most suitable roads [REP3-040].

4.14.6. Policy CS2 of the CS in addressing the delivery of more sustainable development indicates that, amongst other things, development should be located where it can make the best use of the existing transport infrastructure and capacity [REP3-016].

4.14.7. The emerging national policy in section 2.54 in dEN-3 [e-pages 247 to 249 in REP7-010] addresses the construction impacts for solar generating stations. This emerging policy recognises that many solar farms will occupy large sites located in areas served by minor roads. Solar generating stations will mainly comprise the installation of small structures that can be transported separately in smaller vehicles and then be assembled on site. Applicants should in developing their proposals assess the suitability of delivery routes. Mitigation for the transportation effects during the construction phase may be secured through the imposition of Rs in made DCOs regulating the number and/or routing for vehicle movements.

THE APPLICANT'S CASE

4.14.8. The Applicant's case relating to transportation effects is set out in Chapter 9 (Transport and Access) of the ES [APP-066] and the accompanying Transport Statement (TS) [AS-003]. The TS was originally submitted as [APP-104] and was subject to some minor revisions following the application's submission.

4.14.9. The transportation impacts have been assessed in the ES on the basis of the construction period being approximately eleven months (47 weeks), with the construction works being undertaken between 07:00 to 18:00 hours Mondays to Fridays and between 08:00 and 13:30 hours on

Saturdays [paragraph 9.8.2 in APP-066]. Table 9.5 in Chapter 9 of the ES provides a summary of the predicted HGV deliveries and two-way vehicle movements during the construction phase. It has been predicted that for the construction period there would be 2,162 HGV deliveries (4,324 two-way movements), equating to an average of eight HGV delivers (16 two-way movements) per day.

4.14.10. During the course of ISH1 and in its post hearing written submissions, the Applicant clarified that if the proposed BESS was constructed discretely, rather than concurrently with the rest of the Proposed Development, its construction period is anticipated to be three months [e-page 11 in REP1-008].

4.14.11. It is predicted that there would be a maximum of 100 workers on site during the peak of construction [paragraph 9.8.10 in APP-066]. Some of the construction workers are expected to be non-local and would stay in local accommodation and be transported to and from the construction site in minibuses.

4.14.12. In addition to the predicted HGV movements referred to in Table 9.5 in the ES, it is expected that there would also be some smaller construction vehicle movements, associated with the transportation of waste and construction workers. It is expected that there could be between 10 to 14 light goods vehicle movements per day, including construction worker minibuses [paragraph 9.8.12 in APP-066].

4.14.13. Within the construction compound, Work No.7 on the Works Plan [APP-013], storage, parking for contractors and turning for HGVs would be provided.

4.14.14. The volume of traffic generated during the construction phase, on average 16 HGV movements per day[61] and between 10 and 14 light good vehicle movements per day, when compared with the existing volume of traffic in the area has been assessed as not having a significant environmental effect [paragraph 9.8.14 in APP-066]. When that and the duration of the construction works are accounted for, the environmental effects relating to transportation are considered to be negligible.

4.14.15. For the operational phase, it is anticipated that there would be four site visits per year, with personnel making those visits using vans or four by four type vehicles. As there would only be one vehicle visit for maintenance every three months, the operational phase transportation effects have been assessed as being negligible. The cumulative effect has also been assessed as being negligible during the operational phase [paragraph 9.8.19 in APP-066].

[61] Based on what is stated in Table 9.5 in Chapter 9 of the ES [APP-066], paragraph 5.7 in the TS [AS-003] and section 5 of the oCTMP [APP-105], as opposed to the 32 HGV movements referred to in paragraph 9.8.14 of the ES

4.14.16. The Proposed Development would be decommissioned after 35 years of operation and the transportation impacts for this phase are expected to be very similar to those for the construction phase. Given that, the transportation effects during decommissioning have been assessed as being negligible. The effects will also be temporary (short to medium term) and not permanent [paragraph 9.8.21 in APP-066].

4.14.17. An oCTMP has been submitted [APP-105]. Under R9 of the dDCO [REP7-003] it would be necessary for a CTMP, according with the provisions of the oCTMP, to be submitted for NLC's approval prior to the commencement of any development authorised by a made DCO.

4.14.18. A CTMP would provide mitigation for effects concerning the operation of the highway network for the duration of the construction phase. Amongst other things a CTMP would:

- require HGVs to use a signed route when travelling to and from the construction site;
- require the provision of parking for delivery vehicles and construction staff in the temporary construction compound; and
- specify the measures for cleaning vehicles and the public highway in the vicinity of the junction between the construction site's access and the public highway.

4.14.19. The signed construction traffic route would permit HGVs to use the M180, A15, A18, the B1207 (within the immediate vicinity of the site access) and the B1208. That route is shown on Figure 3.1 "Construction Traffic Route Plan" in the oCTMP [APP-105]. The Applicant intends that the mitigation proposed for the construction phase would also apply to the decommissioning phase [paragraph 9.9.4 in APP-066].

4.14.20. With the implementation of the mitigation stated in the oCTMP [APP-105], secured by R9 of the dDCO [REP7-003], the residual transportation effects during the construction, operational and decommissioning phases have been assessed as being negligible [section 9.10 in APP-066]. The in-combination transportation effects have similarly been assessed as being negligible in Chapter 9 of the ES [APP-066].

MATTERS ARISING IN THE EXAMINATION

4.14.21. On 3 March 2021 Highways England (now National Highways (NH)) and the Applicant signed a SoCG [PDA-018]. This SoCG records that all matters were agreed between NH and the Applicant, including:

- the construction traffic route, including part of the strategic highway network, for which NH is the highway authority;
- the predictions for construction traffic generation; and
- the proposed mitigation measures identified in the oCTMP [APP-105].

4.14.22. NLC in section 5 of its LIR [REP2-026] assesses the traffic and transport impact of the Proposed Development. That assessment having been

undertaken on the basis of what the Applicant has stated in Chapter 9 of the ES [APP-066], the TS [AS-003] and the oCTMP [APP-105]. NLC has advised that it is content that the TS *"… demonstrates that the proposed development will not have an adverse impact on the highway network"* [paragraph 5.2 in REP2-026]. In paragraph 5.3 of the LIR NLC advised that the construction traffic route has been agreed with it and through avoiding settlements will minimise disruption to residents.

4.14.23. NLC has advised that it would expect the majority of construction workers to travel by car and sufficient on-site parking to be provided to avoid ad-hoc parking occurring on the public highway [paragraph 5.4 in REP2-026]. NLC has further advised in paragraphs 5.6 and 5.7 of the LIR that it has no road safety concerns and considers the oCTMP to be acceptable.

4.14.24. The SoCG between NLC and the Applicant records that all matters relating to traffic and transportation are agreed [REP6-014].

4.14.25. No other IPs made representations concerning the Proposed Development's implications for the operation of the public highway.

4.14.26. The application documentation included no information about the volumes of traffic using the roads making up the construction traffic route. Without that information, I considered I would be unable to reach a fully informed view as to what effect the traffic generated during the construction and decommissioning phases would have for the operation of the highway network.

4.14.27. Accordingly, ExQ1.10.1 [PD-007] requested the Applicant to provide baseline traffic count data for the A18 and B1208. In response to that question the Applicant undertook automated traffic counts between 9 and 15 May 2021. The average traffic flows for A18 and B1208 are reported in [REP2-022] and were:

A18 weekday average (24 hours)

- Eastbound – 5,734 vehicles
- Westbound – 5,483 vehicles
- Total (two-way) – 11,217 vehicles

B1208 weekday average (24 hours)

- Northbound – 712 vehicles
- Southbound – 707 vehicles
- Total (two-way) – 1,419 vehicles

EXA'S CONCLUSIONS

4.14.28. The volume of construction traffic generated on a daily basis has been predicted to be on average to be 16 HGV movements and 10 to 14 light

goods vehicle movements, together with the movements arising from construction workers using their own vehicles.

The highway authorities, NH and NLC, are both content that the traffic generated during the construction and decommissioning phases would not adversely affect the operation of the public highway.

4.14.29. The daily traffic movements during the construction and decommissioning phases would be modest and extremely limited during the operational phase. Given the traffic counts for the A18 and B1208, in particular, I agree with the Applicant's assessment that with the proposed mitigation, most particularly the HGV route avoiding Broughton's built-up area, secured via R9 in the dDCO [REP7-003], the Proposed Development for all of its phases would have a negligible effect on the public highway's operation. I also agree with the Applicant that the cumulative and in combination effects of the Proposed Development with other development is likely to be negligible, given NLC's reply to ExQ1.1.10 [REP2-027]).

4.14.30. As NH and NLC have raised no concerns about the Applicant's assessment of transportation effects, I am content that the ES has adequately assessed those effects for the construction, operational and decommissioning phases. I therefore consider that in transportation terms the Proposed Development would accord with the policy stated in NPS EN-1, the NPPF and the development plan and that the necessary traffic management measures would be adequately secured through R9 of the dDCO [REP7-003].

4.15. NOISE

POLICY CONSIDERATIONS

4.15.1. Section 5.11 of NPS EN-1 refers to the Government's policy on noise as set out in the Noise Policy Statement for England[62]. The national policy recognises that excessive noise can have impacts on the quality of human life, health and the use and enjoyment of areas of value. Noise can also have adverse impacts on wildlife and biodiversity.

4.15.2. With respect to the assessment of noise, paragraph 5.11.4 of NPS EN-1 advises that where noise impacts are likely to arise NSIP applications should be accompanied by noise assessments. Factors which will determine noise impacts include the operational noise from a development and its characteristics, the proximity of a development to noise sensitive premises and the proximity to quiet places.

4.15.3. Paragraph 5.11.8 of NPS EN-1 advises projects should demonstrate good design through the selection of the quietest cost-effective plant available; containment of noise within buildings wherever possible; optimisation of

[62] Published by Department for Environment, Food & Rural Affairs in 2010

plant layout to minimise noise emissions; and, where possible, utilise landscaping or noise barriers to reduce noise transmission.

4.15.4. NPS EN-1 also advises that development consent should not be granted unless proposals avoid significant adverse impacts and mitigate and minimise other adverse noise impacts for health and the quality of life. Paragraph 5.11.12 advises noise mitigation measures may include engineering, layout and administrative measures.

4.15.5. Section 2.9 of NPS EN-5 sets out national policy for noise and vibration considerations for electricity networks infrastructure, albeit primarily in relation to above ground electricity lines. In paragraph 2.9.7 of NPS EN-5 there is recognition that audible noise can arise from the operation of substation equipment, such as transformers, given its tendency to emit a low frequency hum. Paragraph 2.9.10 of NPS EN-5 advises that for decision making there is a need to ensure that the relevant noise assessment methodologies have been used by applicants and that appropriate mitigation options have been considered and adopted. Where applicants can demonstrate that appropriate mitigation measures would be in place the residual noise impacts are unlikely to be significant.

4.15.6. Paragraph of the NPPF 185 states:

" Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:

a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life …"

4.15.7. The PPG's section on noise (section 30) reiterates guidance on noise policy and assessment methods and notes that *"the subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected. This will depend on how various factors combine in any particular situation"*.

4.15.8. Policy DS1 (General Requirements) of the NLLP, amongst other things, requires that new development should not unacceptably affect the amenity of neighbouring land uses through the generation of noise.

THE APPLICANT'S CASE

4.15.9. The Applicant's case relating to noise is contained in its Noise Impact Assessment (NIA) [REP2-014]. The originally submitted NIA [APP-085] was revised, becoming [REP2-014], following my asking of ExQ1.9.2 to ExQ1.9.4 [PD-007]. The revisions made to the NIA, amongst other things, addressed:

- clarity about which dwellings had been considered in the NIA;
- how the noise surveys informing the NIA had been undertaken;
- how pre-application discussions with NLC had informed the matters covered in the NIA; and
- more comprehensively the noise expected to arise from the use of the Proposed Development's access.

4.15.10. The NIA explains that noise surveys were undertaken at positions deemed to be representative of each noise receiver location, in accordance with British Standard BS7445:1991. Three survey locations were used, as shown on the aerial photograph included as Appendix A in the NIA [REP2-014]. That appendix also shows the location of the four noise sensitive receivers identified by the Applicant.

Operational noise

4.15.11. In section 4 of the NIA it is explained that the Applicant and NLC agree that the appropriate standard for assessing the Proposed Development's operational noise is BS 4142:2014 "Methods for rating and assessing industrial and commercial sound". For the purposes of BS 4142:2014 a noise rating five decibels (5dB) above the background noise level is likely to be inductive of an adverse impact arising, while a difference of 10dB or more above the background level is likely to be indicative of a significant adverse impact.

4.15.12. The Applicant's noise surveys have identified the typical background noise levels as being 36 decibels A-weighted (36dB(A)) during the daytime hours and 32 dB(A) during the night-time hours[63].

4.15.13. The precise specification of the plant to be installed as part of the Proposed Development is currently unknown. Accordingly, data for typical plant and measured operational noise levels at existing solar farms has been used to make a prediction for the Proposed Development's operational noise. In line with guidance contained in BS 4142:2014, a penalty noise level value has been applied to the predictions to account for potentially identifiable periods when plant would either be switched on or off, given that the BESS and the substation could be operational at any time, while inverters and transformers serving the solar arrays would only be operational during daylight hours. The predictive noise modelling for the operational phase has also taken account of the alternative locations for the BESS, ie Work Nos. 2A or 2B.

4.15.14. The predicted daytime operational noise levels are shown in the NIA's Table 6.2. It is predicted that the difference between the operational and background noise levels at receivers 2 (Fennswood) and 3 (Gokewell

[63] Daytime between 07.00 to 23.00 hours and night-time between 23.00 and 07.00 hours

Priory Farm) would respectively be plus 4.5dB/4.6dB[64] and plus 5.9dB. During the night-time period the operational noise is predicted to below the background level at all receiver locations that have been assessed.

4.15.15. To safeguard the living conditions of the occupiers of receivers 2 and 3, noise mitigation has been identified as being necessary. The proposed operational noise mitigation is discussed in section 6.2 of the NIA. Figure 6.3 shows six locations, within the north eastern part of the Order Limits, where it is predicted that inverters and transformers, based on the candidate design shown on the "Works Details – Whole Site Plan" [APP-015], would need to be installed with noise attenuation (mitigation) capable of providing an 8dB reduction.

4.15.16. During the operational phase it is anticipated that there would be four personnel visits per year. In association with the making of those visits, light vans or four by four vehicles would access the generating station using the track to the north of Fennswood. The Applicant has made worst case predictions for the noise arising from the access track's use when operational site visits were being undertaken. Those predictions suggest that during the making of the operational site visits the noise received at Fennswood would be 32dB(A), which would be 4dB less than the background noise level of 36dB L_{A90}[65] [Table 6.5 in REP2-014].

Construction noise

4.15.17. The assessment of construction noise has been undertaken using BS 5228-1:2009 *"Code of practice for noise and vibration control on construction and open sites, Part 1: Noise"*. For construction noise under the provisions of BS 5228-1:2009 the significance (impact) of the noise relative to the background (ambient) level is assessed using a different approach to that followed in BS 4142:2014 and is explained in Table 4.2 in the NIA. The assessment of construction noise has been based on the predictions for vehicle movements stated in Chapter 9 of the ES [APP-066] and the works being undertaken between the hours of 07:00 to 18:00 hours on Mondays to Fridays and 08:00 to 13:30 on Saturdays.

4.15.18. The current use of the proposed access, a farm track, is recognised in the NIA as being sporadic. Relying on the track's current use as the baseline for making noise predictions for its construction phase use is recognised as being unlikely to provide a reliable and representative assessment [section 4.4 in REP2-014]. Given that, the NIA explains that for the purposes of assessing noise arising from the access track's use during the construction phase, the methodology in BS 5228-1:2009 has been used, rather than the commonly used method included in NH's Design Manual for Roads and Bridges.

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[64] Depending on the whether the BESS was constructed in the location for Work No. 2A or 2B

[65] The noise level exceeded for not more than 90% of the time, the parameter often used as a descriptor for background noise [Appendix D in REP1-014]

4.15.19. On the basis of the ambient noise levels that have been measured within the Order Limits [Table 5.1 in REP2-014] and the noise emission thresholds stated in BS 5228-1:2009 (Table 4.2 in the NIA), if the cumulative level for construction noise and the existing ambient noise exceeded 65dB(A), then a significant construction noise effect would be deemed to occur [section 5.2 in REP2-014]. However, as the background noise levels that have been measured within the Order Limits would be more than 10dB lower than the BS 5228-1:2009 threshold level of 65dB(A), a significant construction noise effect would not be expected.

4.15.20. It is anticipated that during the construction works the loudest activities would involve the pushing (installation) of fence posts and the legs supporting the solar arrays and the use of construction plant such as excavators and dump trucks. The assumptions used in making the predictions for construction noise are stated in section 7.3 of the NIA. Amongst those assumptions it has been assumed that each trip along the access track would last 30 seconds, with the dwelling and commercial premises at Fennswood being a minimum of 30m from the access track. The minimum distances between the dwellings at Fennswood and Gokewell Priory Farm and fence post pushing have been identified respectively as 155m and 130m.

4.15.21. The calculated worst case construction noise levels for the receivers at Fennswood and Gokewell Priory Farm are predicted respectively to be 59dB(A) and 53dB(A), levels which would be below the threshold level for significant effects of 65dB(A) stated to in BS 5228-1:2009 [Table 7.2 in REP2-014].

4.15.22. With respect to vibration, that is not expected to be a concern, having regard to: the ground conditions; the distance from the nearest properties; and the nature of the works primarily being above ground and there being no piled foundations. The pushing of fence posts and supports for the solar arrays is not expected to generate vibration. Accordingly, vibration is expected to be at a level that cannot be predicted or detected and would therefore be insignificant [section 8.2 of REP2-014]. In the NIA it is further explained that HGV movements are expected to generate vibration below the lowest threshold levels defined in BS 5228-2:2009[66].

4.15.23. It is expected that the primary mitigation for the avoidance of construction noise disturbance for the occupiers of the nearby dwellings would be provided through the operation of the CEMP, secured via R8 in the dDCO [REP7-003].

[66] The Code of practice for noise and vibration control on construction and open sites, Part 2: Vibration

4.15.24. NLC in section 8 (Noise and Vibration) of its LIR [REP2-026] indicated that there would be potential for noise impacts to arise during the construction phase, from some of the installed equipment during the operational phase and then during the decommissioning phase. NLC further submitted in its LIR that noise from those sources would be expected to arise at some distance from the nearest noise sensitive properties, with the hours when the construction and decommissioning activities could be undertaken being controllable as a form of mitigation.

4.15.25. In recognition of the fact that the generating station's design has not been finalised and the potential for some operational noise to arise, NLC promoted the inclusion of an operational noise requirement in any made DCO. Such a requirement would require an operational noise assessment, based on the final design details for the Proposed Development, to be submitted to and approved by NLC prior to the commencement of any works [paragraphs 8.3 and 8.4 in REP2-026].

4.15.26. With respect to controlling the times when the construction and decommissioning works could be undertaken, NLC expressed a preference for the starting hour to be 08:00 rather than 07:00 for Mondays to Fridays and on Saturdays for the works to be completed by 13:00, as opposed to 13:30 [paragraph 8.5 in REP2-026].

4.15.27. The Applicant in responding to NLC's LIR [REP3-014] indicated that it was agreeable to an operational noise requirement being included in any made DCO. To that end R15 was added to the dDCO submitted at D3 [REP3-003a] and thereafter R15 has remained in the dDCO, including the final version [REP7-003]. The Applicant's wording for R15 is a little more comprehensive than that suggested by NLC and is based on R15 in the made Cleve Hill DCO [e-page 55 in REP1-008]. NLC has expressed no concerns about the wording for R15 in the dDCO.

4.15.28. In relation to the curtailment of the construction hours promoted by NLC, the Applicant submitted in [REP3-014] that it considered the proposed hours were reasonable and appropriate for this location. With respect to the suggested cessation of works at 13:00 rather than 13:30 on Saturdays, the Applicant expressed the view that it would be highly unlikely that the activities during the additional half an hour would have any adverse impact. In relation to the starting time for construction works on Mondays and Fridays, in [REP3-014] attention was drawn to the Conesby solar farm planning permission, permitting construction works between 07:00 and 19:00 Mondays to Fridays. In [REP3-014] the Applicant also implied that if the construction hours were reduced that could extend the duration of the construction phase.

4.15.29. The signed SoCG between NLC and the Applicant [REP6-014] records that there are no matters of disagreement relating to the control of noise during the construction, operational and decommissioning phases, including the wording for R8, R11 and R15 in the dDCO [REP7-003].

4.15.30. Fennswood in their RRs[67] submitted that the NIA [APP-085] *"… appears to be of no value because it was conducted in respect of a site significantly smaller than the development site as defined by the Order Limits …"*, with the proposed use of the access track to the north of Fennswood having been omitted from the consideration of the Proposed Development's noise impact. Fennswood's RRs contend:

"… there has been no consideration of the impact of either construction or operational traffic on the Interested Party. The failure to consider the effects of traffic, also render the conclusions in respect of vibration in section 8 of the Assessment, fundamentally flawed."

4.15.31. In relation to operational noise, Fennswood has also expressed the view that because the level of noise emanating from the plant to be installed is currently unknown, appropriate mitigation cannot be identified.

4.15.32. The concerns about the adequacy of the assessment of noise for all phases of the Proposed Development in the NIA were reiterated by Fennswood at ISH1 and OFH1 (including in the post OFH1 written submission [REP4-033]) and in the response to ExQ1.9.1 [REP1-027]. Following the Government's publication of dEN-1, in response to ExQ4.1.1 [PD-016], Fennswood drew attention to the parts of dEN-1 addressing noise and vibration [REP7-013]. As mitigation for noise arising from the use of the access track, Fennswood has submitted that it should be resurfaced with a noise reducing tarmac [REP4-033].

4.15.33. Fennswood have further submitted that in relation to the control of construction hours, sub-paragraph (2)(b) in R11 should be excluded from any made DCO [REP4-033]. It is argued that is because construction workers would be able to drive up and down the access track generating noise that would audible to the occupiers of Fennswood, while sub-paragraph (2)(b) is intended to allow activities to take place outside the construction hours permitted under R11, so long as those activities would be inaudible at the boundary of the Order Limits.

4.15.34. With respect to the use of the access track further to my asking of ExQ1.9.2 [PD-007] the Applicant submitted an updated version of the NIA [REP2-014]. The Applicant has explained in [REP2-023], in commenting on Fennswood's response to ExQ1.9.2, that the NIA was updated to provide greater detail about the assessment of noise arising from the access track's use [REP2-023].

4.15.35. With respect to construction noise, the Applicant has explained in [REP2-023] that the noise assessment has been undertaken on a worst case basis, given the mobile nature of the works associated with the Proposed Development's construction.

4.15.36. ExQ2.9.2 [PD-010] asked the Applicant to comment on what level of vehicular generation it considered would be required to cause an adverse

[67] RR-006, RR-008, RR-009, RR-014 and RR-015

noise effect for the occupiers of Fennswood. The Applicant's reply to ExQ2.9.2 was:

"In order for 65dB(A) to be exceeded during a worst case one hour period (with other construction works also occurring …) and therefore for there to result in an adverse effect on the owners and occupiers of Heron Lodge/Fennswood there would need to be 32 30-second HGV trips along the access road, compared with the 8 30-second HGV trips predicted for the Proposed Development.

The 32 trips required to cause a significant impact represents a 300% increase in traffic flows compared with the 8 predicted trips."
[e-page 22 in REP4-018]

4.15.37. The Applicant commented in [REP1-009] that use of the access track by construction traffic has been found not to cause a significant impact. Given that the Applicant contends that the level of noise arising from the access track's use would not justify the laying of a tarmac surface [REP5-022].

4.15.38. With respect to Fennswood's suggestion that subparagraph (2)(b) in R11 should be deleted, the Applicant has responded that this part of R11 is intended to permit the undertaking of works inaudible at the boundary of the Order Limits rather than the movement of vehicles along the access track [REP5-022].

4.15.39. Fennswood in making their submissions at OFH1 [EV-016] and in [REP4-033] have submitted that following the Proposed Development's construction its operators should not have *"carte blanche"* to carry out site operations, other than in emergencies, at any time of the day or night. The Applicant stated at OFH1 and in its post hearing written submission [REP5-022] that any ongoing maintenance would be likely to be minimal and that controlling the hours when maintenance activities could be undertaken was unjustified and would not be proportionate to the impacts that might arise. The Applicant therefore expressed the view that using a requirement to restrict the hours when operational maintenance could be undertaken would not meet the tests for imposing conditions stated in paragraph 56 of the NPPF.

4.15.40. In responding to Fennswood's OFH1 submissions, the Applicant commented that once the Proposed Development had been constructed and become operational a made DCO would not allow the authorised development to be deconstructed and rebuilt to increase its generating capacity, as an operational phase activity, because that activity had not been assessed by the Applicant in its ES (36.30 minutes into the recording for OFH1 [EV-016]).

EXA'S CONCLUSIONS

4.15.41. At ISH1 I asked Fennswood to explain why it believed the NIA was of no value, given the contention it related to a site significantly smaller than the Order Limits. I was advised that Fennswood's concern in that regard

only related to what was believed to be the exclusion of the consideration of noise arising from the access track's use during the construction phase. The originally submitted NIA [APP-085] has been replaced by [REP2-014] and while it might have appeared that the original version of the NIA had not taken account of the access track's use, I am in no doubt that noise associated with the access track's use has been assessed by the Applicant.

4.15.42. The use of the access track by construction traffic would be a source of some additional noise, when compared with its occasional use by farm traffic. However, the construction period would either be eleven months outright or eleven months plus a further three months at a later stage, if the BESS was not installed concurrently with rest of the Proposed Development.

4.15.43. The period for any vehicular noise arising from the increased use of the access track would be restricted to a comparatively short period of time. I consider that the submitted NIA [REP2-014] has demonstrated that any increased noise arising from the use of the access track would be unlikely to be of such significance as to cause an unacceptable impact for the residential and non-residential occupiers of Fennswood. In that regard while the grounds of Fennswood immediately adjoin the access track, I saw while undertaking my ARSI [EV-025] that both the dwelling and commercial premises are located at some distance from the track, a distance that the Applicant has identified as being a minimum of 30m in section 6.3 of the NIA [REP2-014]. The dwelling in the grounds of Fennswood is sited within something of an enclave in the woodland, with a 30m or so wide strip of woodland between the dwelling and the access track.

4.15.44. Given the densely treed nature of the previously mentioned woodland strip it is unlikely that this part of Fennswood's grounds is used actively as garden space. There was no obvious sign of the woodland strip being used as garden land when I undertook my site inspection. I therefore consider that any construction traffic that was audible from within that woodland strip would be unlikely to significantly affect its use as external space within Fennswood's grounds during the construction phase.

4.15.45. While Fennswood has suggested that the access track should be surfaced with a noise reducing material, I consider that would be unnecessary. That is because the NIA has not identified the noise arising from the access track's use as being at a level necessitating mitigation through a surfacing change. I consider that unsurprising, given the volumes of traffic predicted to use the access track. In that regard in responding to ExQ2.9.2 the Applicant has calculated that for there to be a significant noise impact arising from the access track's use during the construction phase, the number of HGV movements would need to be HGV 32 trips in a worst case hour [e-page 22 in REP4-018]. That would be in comparison with the predicted 16 HGV movements, on average, throughout a day during the construction phase [Table 9.5 in Chapter 9 of the ES APP-066].

4.15.46. During the construction phase, a CEMP and the control of construction hours, secured respectively via proposed R8 and R11 in the dDCO [REP7-003], would jointly operate to provide noise mitigation for the occupiers of Fennswood and Gokewell Priory Farm. In addition, noise controls under s60 and s61 of the Control of Pollution Act 1974 would also be available, given that legislation would not be disapplied by the DCO sought by the Applicant.

4.15.47. I therefore consider that the construction works would not cause unacceptable noise disturbance for the occupiers of the premises adjoining the Order Limits.

4.15.48. The Applicant expects that annually four maintenance visits (one every three months) would be made during the operational phase. That level of maintenance activity would be extremely low and would be very unlikely to cause an adverse noise impact for the occupiers of Fennswood, either through using the access track or in maintaining the generating station's plant. Should it be necessary to cut the grass beneath the solar arrays, rather than it being grazed by sheep, that might generate more comings and goings to and activity within the Order Limits compared with the four maintenance visits cited in the NIA. While grass cutting might potentially generate more comings and goings and activity within the Order Limits, I consider that activity would be unlikely to differ greatly from the current arable farming of the Order Limits.

4.15.49. I therefore consider that noise associated with the Proposed Development's maintenance would be at a level that would not adversely affect the occupiers of the premises immediately adjoining the Order Limits. Accordingly, I consider there to be no need for the SoSBEIS to include a requirement in any made DCO restricting the times when maintenance works could be undertaken.

4.15.50. I agree with Applicant, NLC and Fennswood that without appropriate mitigation there would be potential for some of the installed inverters and transformers to generate levels of noise that would be disturbing to the occupiers of the properties adjoining the Order Limits. To ensure that such disturbance would not arise, I consider it necessary for operational noise to be controlled and I am of the view that would be adequately secured through R15 in the dDCO [REP7-003].

4.15.51. I consider that the Proposed Development has been designed with mitigation to minimise noise emissions and to avoid significant adverse impacts on the health and quality of life for the occupiers of the neighbouring properties. With the mitigation that would be secured through various proposed Rs in the dDCO, I consider that the Proposed Development, either alone or cumulatively, would accord with the relevant policy in NPS EN-1 and NPS EN-5, the NPPF (paragraph 185) and Policy DS1 of the NLLP. I also consider that with respect to the consideration of noise there would be no conflict with the emerging policy in dEN-1 and dEN-3.

4.16. AIR QUALITY

INTRODUCTION

4.16.1. This section addresses construction effects on air quality, with particular regard to the effects on the living conditions for nearby residents and for the designated Air Quality Management Area (AQMA).

4.16.2. I have considered the implications for GHG emissions, particularly CO_2, in section 4.9 of this Report, which amongst other things, reports on the predicted electricity generating output. The generating output in turn having direct implications for displacing CO_2 emissions that might otherwise arise through the use of fossil fuels to generate electricity.

POLICY CONSIDERATIONS

4.16.3. Paragraph 4.10.2 of NPS EN-1 sets out the different functions of the planning and pollution control systems in relation to air quality matters. It confirms that the planning system is concerned with the development and use of land in the public interest and in improving the natural environment, public health and safety and amenity. Pollution control is concerned with the use of measures to prohibit or limit the releases of substances to the environment to the lowest practicable level.

4.16.4. Paragraph 4.10.3 of NPS EN-1 advises that the SoSBEIS is required to focus on whether individual developments would be acceptable uses of land and on the impacts of that land use, rather than the control of processes, emissions or discharges themselves. The SoSBEIS is entitled to assume that the relevant pollution control and environmental regulatory regimes will be properly applied and enforced and the SoSBEIS should seek to complement but not duplicate them.

4.16.5. The SoSBEIS should give air quality considerations substantial weight where a project would cause new breaches of national air quality limits or substantial changes in air quality levels, even where no breaches would occur. Paragraph 5.2.10 of NPS EN-1 advises that account must be taken of any relevant statutory air quality limits.

4.16.6. Paragraph 186 of the NPPF advises that planning decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, having regard to the presence of AQMAs and the cumulative impacts from individual sites in local areas.

4.16.7. Policy DS1 (General Requirements) of the NLLP, amongst other things, requires new development not unacceptably affect the amenity of neighbouring land uses through the generation of dust.

THE APPLICANT'S CASE

4.16.8. The Applicant's case relating to air quality is stated in its AQCA [REP6-010]. The originally submitted AQCA [APP-081] was revised and became [REP2-012] following my asking of ExQ1.3.2 [PD-007]. The

revisions made to the AQCA primarily concerned making references to clarify which nearby receptors had been assessed and to provide other amplifications. The AQCA was further revised at D6, through the submission of [REP6-010]. The revisions made to the final version of the AQCA [REP6-010] primarily concerned the carbon footprint section and are not relevant to the matters reported in this section of my Report.

4.16.9. The Order Limits are located within an AQMA [REP4-030 and REP4-031]. The AQMA having been designated because of exceedances of the 24 hour mean air quality objective of 50 micrograms per cubic metre ($50\mu g/m^3$) for particulate matter with a diameter of 10 microns or less (PM_{10}).

4.16.10. The AQCA advises that in 2016 there were 25 exceedances of the 24 hour mean objective for PM_{10}, with the Air Quality Strategy[68] (AQS) objective being that there should be no more than seven such exceedances per year [REP6-010]. A qualitative assessment of construction activity impacts on air quality has been undertaken, in accordance with the Institute of Air Quality Management's (IAQM) guidance.

4.16.11. Table 3.1 in the AQCA identifies nearby air quality receptors. In line with the IAQM guidance, the assessment of dust impacts has had regard to the scale and nature of the construction works, to determine a potential magnitude for dust emissions and the area's sensitivity. Those factors have then been combined to provide an estimate for risk of dust impacts, with the risks being classified as low, medium or high. A classification of negligible risk may also be used when the scale would be very small and there are no nearby receptors [section 3 in REP6-010].

4.16.12. The construction dust emission magnitudes have been assessed as being:

- Large for the earthworks, on a worst case basis, given the scale of the Order Limits.
- Small for construction works, because of the scale of the proposed buildings and the nature of the solar arrays' installation.
- Large for trackout (the transportation of dust and dirt via the public highway), on a worst case basis, because while the number of outbound vehicle movements in any day is predicted to be low, unpaved roads exceeding 100m in length would be used [Table 4.1 in REP6-010].

4.16.13. The sensitivity to dust soiling from earthworks, construction and trackout activities for all of the residential receptors within the vicinity of the Order Limits has been assessed as being low [paragraph 4.9 in REP6-010]. That is because of the limited number of dwellings within the immediate vicinity of the Order Limits and the background concentration

[68] The Air Quality Strategy for England, Scotland, Wales and Northern Ireland, published by Defra and the devolved administrations in 2007

for PM_{10} being estimated to be significantly below the annual mean AQS objective of 40µg/m^3. The AQCA recognises that one of the nearby dwellings is at Fennswood[69].

4.16.14. While Fennswood is within 50m of the Order Limits, having regard to the IAQM's guidance, its sensitivity to dust soiling effects is considered to be low. That is because of the extent of forestry between Fennswood and the construction access. That access being more than 20m away, with 20m being considered to be the proximity threshold for when dust soiling effects are likely to be become disruptive to people and property [paragraph 4.8 in REP6-010].

4.16.15. A dust effects assessment for ecological receptors has not been undertaken because, in line with the IAQM guidance, there are no designated ecological sites within 50m of the Order Limits [paragraph 4.11 of REP6-010].

4.16.16. The findings of the construction dust assessment are that at worst there would be a low risk for dust soiling effects for people and property and a low risk in relation to human health impacts [paragraph 4.14 in REP6-010].

4.16.17. With respect to construction traffic emissions, it is considered that the volume of traffic generated would result in no significant air quality effects, with HGVs being routed to avoid residential areas. Emissions from construction traffic have therefore been scoped out from requiring detailed assessment [paragraph 4.17 in REP6-010]. Operational phase air quality impacts are expected not be significant and have also been scoped out from requiring detailed assessment.

4.16.18. Section 5 of the AQCA identifies mitigation measures for the construction and trackout activities. While the implementation of those measures would not be essential, their use would nevertheless represent good practice. Those measures are based on the IAQM's guidance and cover communications, site management, monitoring, preparing and maintaining the construction site, operating vehicles and machinery and waste handling. That mitigation has been incorporated into the oCEMP [REP6-006] and its implementation would be secured through proposed R8 in the dDCO [REP7-003]. With respect to earthworks, this activity has been classed as being of a low risk and no mitigation has been identified for it.

4.16.19. The Applicant has concluded that the dust emissions during the construction phase would not be significant. The operational phase has similarly been assessed as not having a significant effect on air quality.

[69] Identified as Heron Lodge in the AQCA

EXAMINATION

4.16.20. NLC in section 9 (Air quality) of its LIR [REP2-026] has confirmed that the likely sources for emissions would be from construction traffic and dust. NLC has stated in its LIR that it accepts emissions from construction traffic would have a negligible impact. NLC has gone onto comment that while no mitigation has been identified as being necessary to address the construction effects on air quality, the operation of the CEMP would nevertheless, as good practice, provide local air quality mitigation.

4.16.21. The SoCG between NLC and the Applicant records that there are no matters of disagreement between them relating to effects on air quality [REP6-014].

4.16.22. Fennswood in their RRs[70] have contended that the Applicant's AQCA [APP-081] was based on "… erroneous Order Limits" and did not identify the residential and non-residential premises within the grounds of Fennswood as being the closest to the Order Limits. Given that it was further contended that:

"It is obvious that no consideration has been given to air quality and dust along the roadway[71] as a consequence of the proposed development. The roadway is extremely dusty during the arable harvest which is the only time when, for a week or two, it sees any significant use."

4.16.23. ExQ1.3.1 asked Fennswood to elaborate on the contention that the AQCA had been based on erroneous Order Limits [PD-007]. In response to that question Fennswood clarified that the extent of the Order Limits had been correctly identified and the concern was with the premises within the grounds of Fennswood having not been identified in the AQCA as being the closest to the Order Limits [REP1-027]. Accordingly, Fennswood submitted that a significant impact from trackout had not been adequately assessed.

4.16.24. As part of the submissions made during OFH1 [EV-016] and in the subsequent written submission [REP4-033], Fennswood promoted the hard surfacing of the access track to assist with dust suppression.

4.16.25. The Applicant in responding to Fennswood's concerns has submitted, notwithstanding the dwelling and commercial premises are around 30m from the access track, that the AQCA indicates that the likely risk of construction dust impacts would be low [REP1-009]. In those submissions the Applicant has explained construction traffic's use of the access track has been considered. However, the number of vehicle movements, at no more than 25 annual average daily traffic (AADT) would be below the 100 AADT criteria for determining when a likely impact could arise applying the IAQM guidance. Accordingly, the likely

[70] RR-006, RR-008, RR-009, RR-014 and RR-015
[71] Access track

impact from the access track's use during the construction phase would be negligible [e-page 10 in REP1-009].

4.16.26. In response to Fennswood's submissions [REP1-027] the Applicant [REP2-023] drew attention firstly to the updates that had been made to the AQCA [REP2-012] which had clarified the relationship between Fennswood and the Order Limits and secondly to the recommended mitigation measures that had been incorporated in the oCEMP, including provision for all site access roads to be dampened when the presence of transient dust necessitated that.

4.16.27. With respect to Fennswood's suggestion that the access track should be hard surfaced, the Applicant submitted it did not accept that a significant dust impact would arise justifying such a course of action [REP5-022].

EXA'S CONCLUSIONS

4.16.28. I agree with Fennswood that the originally submitted AQCA [APP-081] appeared not to have considered the air quality implications for the occupiers of that property. I consider the revisions made to the AQCA submitted at D2 [REP2-012] and retained in its final version [REP6-010], addressed the shortcoming of the originally submitted version. I therefore consider that there is now no doubt that the air quality impacts for the occupiers of Fennswood, most particularly during the construction phase, have been assessed by the Applicant.

4.16.29. For the duration of the construction phase the access track would be used more intensively, compared with the current occasional use by farm traffic. Increased use of what is essentially a dirt track would have the potential to generate additional dust. However, should there be occasions when there was transient dust on the access track, then the Applicant is proposing the track would be dampened down, reducing the potential for any dust transference to the grounds of Fennswood. That mitigation forming part of the oCEMP [REP6-006], which would be secured through R8 in the dDCO [REP7-003].

4.16.30. The mitigation provided via a CEMP would be a change of circumstances compared with the prevailing situation, given the access track can be used without any abatement of dust generated by farm traffic. Albeit from the RRs made by Fennswood it is understood that access track is intensively used for only a few weeks each year. Given that the construction phase is expected to last eleven months, it seems likely that significant parts of that time would not necessarily coincide with periods of dry weather that would be conducive to dust generation. I therefore consider that the potential for dust generation from vehicles using the access track would be unlikely to extend across the whole of construction phase. Given that and the implementation of the dust control measures forming part of a CEMP, I consider that the occupiers of Fennswood would be unlikely to experience detrimental construction dust impacts.

4.16.31. I agree with the Applicant that the likely level of dust generation associated with the construction works would not warrant the access track being hard surfaced.

4.16.32. Although the construction works would be undertaken within an AQMA, there is no suggestion that would result in PM_{10} exceedances.

4.16.33. I am content, with the mitigation facilitated by a CEMP, that there would be no significant effects for air quality arising from the Proposed Development's construction and operational phases. Accordingly, with the proposed mitigation, to be secured through the provisions of proposed R8, I consider that the Proposed Development, either alone or cumulatively, would accord with the relevant policy in NPS EN-1, the NPPF (paragraph 185) and Policy DS1 of the NLLP. I also consider that with respect to the consideration of air quality there would be no conflict with the emerging policy in dEN-1.

4.17. SOCIO-ECONOMIC EFFECTS

POLICY CONSIDERATIONS

4.17.1. NPS EN-1 addresses socio-economic considerations in section 5.12. Paragraph 5.12.3 states that applicants should consider all relevant socio-economic impacts, which may include, amongst other things:

- the creation of jobs and training opportunities;
- the impact of a changing influx of workers during the different construction, operational and decommissioning phases; and
- cumulative effects

4.17.2. With respect to the policies of the NPPF, the Proposed Development would contribute to the economic objective, as part of achieving sustainable development, through the provision of electricity generating infrastructure (paragraph 8).

THE APPLICANT'S CASE

4.17.3. Chapter 11 of the ES [PDA-013] assesses the Proposed Development's socio-economic effects, specifically with respect to the economy and the labour force and the potential effects that could arise, directly and indirectly during the construction and operational phases. The assessment of the socio-economic effects has primarily focused on NLC's administrative area [paragraph 11.2.12 in PDA-013].

4.17.4. In section 11.4 of [PDA-013] the Applicant has identified the likely significant socio-economic effects as being:

- A capital cost of at least £192 million, based on a solar generating station within an installed capacity of between 150MW to 200MW and a 90MW BESS.

- At the peak of the construction phase, a maximum of 100 construction workers are predicted to be working on site. Experience from the construction of other large scale solar farms in the UK suggests that for every on-site construction worker a further 1.33 indirect/induced jobs are supported in the wider economy. The construction phase could support a further 133 temporary jobs in the wider economy during the eleven month construction period. The Proposed Development could therefore support a total of 233 temporary jobs.

- Based on the gross value added (GVA) for construction workers in Yorkshire and The Humber, it is estimated that the GVA associated with the construction phase would be £15.9 million.

- Given the construction sector supports 6,000 jobs in North Lincolnshire and the prediction of 233 construction workers being employed for eleven months, the significance of the construction effect has been assessed as being minor beneficial in the short term, which in EIA terms would not be a significant impact.

- During the operational phase it is expected that a maximum of ten jobs (full time equivalent) would be created, providing support for a further thirteen jobs in the wider economy. The GVA associated with the operational phase is predicted to contribute £1.2 million each year. Over a ten year period the GVA attributable to the ten permanent employees has been estimated at £10.2 million on a present value basis.

- The solar arrays would be capable of providing electricity for between 45,000 and 60,000 homes per year and displace 31,364 tonnes of CO_2 per year, based on the updated figures quoted in the Applicant's AQCA [REP6-010][72].

- With respect to the significance of the operational effects, when the scale of the initial investment and the small increase in permanent employment are accounted for, the Proposed Development is assessed as having a long term moderate positive impact.

4.17.5. In socio-economic terms there are no identified negative effects requiring mitigation.

4.17.6. Overall, the Applicant considers that the Proposed Development would provide significant positive socio-economic-effects.

[72] Rather than the 62,200 tonnes quoted in paragraph 11.4.13 of Chapter 11 of the ES [PDA-013], with the Applicant having explained in responding to ExQ3.1.9 that the carbon saving figures quoted in the ACQA [REP6-010] should be treated as taking precedence [REP6-019]

MATTERS ARISING IN THE EXAMINATION

4.17.7. NLC in section 12 of its LIR [REP2-026] commented that it was satisfied with the approach that the Applicant had taken to assessing the socio-economic impacts. NLC further advised that it agreed with the Applicant's assessment that there would be a moderate economic benefit through the provision of temporary construction jobs, with the works providing opportunities for local businesses to be become involved with the construction works. NLC's LIR also refers to the clean energy sector contributing £1.1 billion to the Humber economy, accounting for 6.1% of the area's total GVA and to synergies developing between small and medium sized enterprises offering lucrative technical jobs that are co-locating alongside large scale renewable assets.

4.17.8. Fennswood in their RRs[73] submitted that despite the conclusions reached in Chapter 11 of the ES there would be negative socio-economic effects and a full assessment of potential negative effects had not been undertaken. In that regard Fennswood submitted that no evaluation of the impact on property values had been undertaken nor had there been any evaluation of developments such as this attracting crime.

4.17.9. The Applicant in response to Fennswood's RRs, commented that effects on property values are not material to the determination of applications and in that context cited guidance on material considerations stated in the PPG's section (21b) relating to the determination of planning applications [REP1-009].

EXA'S CONCLUSIONS

4.17.10. The construction phase is predicted to generate 233 direct and indirect/induced jobs and result in £15.9 million of GVA over an eleven month period. There would therefore be socio-economic benefits for North Lincolnshire arising from the construction phase and I agree with the Applicant's assessment that the construction effect would be minor beneficial in the short term.

4.17.11. The operational phase is expected to generate up to 23 additional jobs within North Lincolnshire's economy and contribute £1.2 million of GVA per year. There would therefore be some limited socio-economic benefits for North Lincolnshire arising from the operational phase and I agree with the Applicant's assessment that would be a long term moderate positive impact for the area.

4.17.12. While there might be some effect on property values in the area arising from the Proposed Development, I agree with the Applicant that is a matter that should not be a consideration as part of the SoSBEIS's decision making.

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[73] RR-006, RR-008, RR-009, RR-014 and RR-015

4.17.13. I consider that there would be no significant adverse socio-economic effects associated with the Proposed Development, either alone or cumulatively with other developments. The Proposed development would therefore accord with the relevant policy in NPS EN-1 and the NPPF. I also consider that there would be no incompatibility with the emerging policy in dEN-1 relating to socio-economic effects.

4.18. EXA'S RESPONSE AND CONCLUSIONS ON OTHER IMPORTANT AND RELEVANT CONSIDERATIONS

4.18.1. Having regard to the other application documentation and the relevant submissions, documents and policies drawn to my attention during the Examination, I am content that no other matters have arisen which affect the identification in the preceding chapters and sections of this Report of the planning matters that require to be balanced by the SoSBEIS or taken into account in the decision making for the Proposed Development.

5. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

5.1. INTRODUCTION

5.1.1. This chapter of the report sets out the Examining Authority's (ExA) analysis and conclusions relevant to Habitats Regulations Assessment (HRA). This will assist the Secretary of State for Business, Energy and Industrial Strategy (SoSBEIS), as the competent authority, in performing the duties under The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).

5.1.2. Regulation 63 of the Habitats Regulations states that if a plan or project is likely to have a significant effect on a European site designated under the Habitats Regulations (either alone or in combination with other plans or projects), then the competent authority must undertake an appropriate assessment (AA) of the implications for that site in view of its conservation objectives. As a matter of policy, the Government applies the same procedures to a number of other internationally designated sites, including Ramsar sites; these are all referred to in this report hereafter as European sites. Consent can only be granted if an AA concludes that the integrity of European sites would not be adversely affected, subject to Regulation 64 (considerations of overriding public interest).

5.1.3. Following the submission of the Applicant's application the Habitats Regulations were amended by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019, which came into force on 31 December 2020. The amended Habitats Regulations reflect the arrangements in light of the United Kingdom's departure from the European Union, as discussed in Section 3.3 of this Report, including the introduction of new terminology with reference to the National Site Network rather than the Natura 2000 network (which remains the collective term for sites in the European Union).

5.1.4. Evidence has been sought during the Examination from the Applicant and the relevant Interested Persons (IPs) through written and oral questions, with the aim of ensuring that the SoSBEIS has such information as may reasonably be required to carry out the duties as the competent authority.

5.1.5. The ExA prepared a Report on the Implications for European Sites (RIES) [PD-015] during the Examination with support from the Planning Inspectorate's Environmental Services Team. The purpose of the RIES was to compile, document and signpost information provided in the application and submitted by the Applicant and IPs during the Examination (up to and including Deadline (D) 6 of the Examination

(31 August 2021) in relation to potential effects on European sites. All IPs were notified of the RIES's publication on 1 September 2021 and they were given the opportunity to comment on its contents by D7 (20 September 2021).

5.1.6. The RIES was issued to ensure that IPs, including Natural England (NE) as the statutory nature conservation body, had been consulted formally on Habitats Regulations matters. This process may be relied upon by the SoSBEIS for the purposes of Regulation 63(3) of the Habitats Regulations. The consultation raised no new relevant or important issues or concerns. The Applicant was the only IP to submit any comments on the RIES [REP7-001]. Those comments did not raise any concerns with respect to the content of the RIES.

5.2. PROJECT LOCATION

5.2.1. The Proposed Development's Order Limits do not overlap with any European site. The Applicant screened for European sites within 10 kilometres (km) of the Order Limits' boundary and on a precautionary basis considered the following three European sites and their features, for which the UK is responsible, for inclusion within the HRA (section 2.1 of the RIES [PD-015]):

- The Humber Estuary Special Area of Conservation (the SAC), located 8.1 km to the west at the closest point;
- The Humber Estuary Special Protection Area (the SPA), located 11km to the north; and
- The Humber Estuary Ramsar site (the Ramsar site), located 8.1km to the west at the closest point

5.2.2. The SAC and the SPA respectively have areas of 36,657.15 hectares (ha) and 37,630.24 ha [Appendices 8 and 9 in REP2-022] and have a strong geographical association with the extent of the Humber Estuary.

5.2.3. No other European sites or features that could be affected by the Proposed Development have been identified by NE or any other IP. The Applicant did not identify any effects on European sites in any European Economic Area (EEA) State.

5.2.4. I am content that the Applicant has correctly identified all the relevant European sites and qualifying features/ interests for consideration.

5.3. HRA IMPLICATIONS OF THE PROJECT

5.3.1. In accordance with Regulation 5(2)(g) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 the Applicant submitted a Habitats Regulations screening assessment as part of its Habitats Regulations No Significant Effects Report (NSER) [APP-098]. The Secretary of State for Housing Communities and Local Government considered that the information provided in the NSER was adequate for acceptance, as part of the application's acceptance for Examination on 23 December 2020 [PD-001].

5.3.2. The Applicant provided a revised version of the NSER [PDA-015] in response to advice provided under section (s) 51 of the Planning Act 2008 (PA2008) [PD-002] and the Checklist issued by the Planning Inspectorate under s55 of the PA2008 [PD-012]. The revised version of the NSER [PDA-015] included additional cross referencing to the Environmental Statement (ES) documentation in support of the conclusion of no likely significant effects (LSE) on European sites and qualifying features. The revised version of the NSER [PDA-015] also corrected technical/formatting errors identified in the version originally submitted with the application [APP-098]. While the revised NSER [PDA-015] has replaced the originally submitted NSER, the conclusions reached in it are no different.

5.3.3. The Proposed Development is not connected with or necessary to the management for nature conservation of any of the European designated sites considered within the Applicant's NSER assessment.

5.3.4. The NSER sets out the results of a screening assessment, as required under the Habitats Regulations in order to identify likely effects on any European sites.

5.3.5. The NSER approach has been agreed with Natural England and the agreement is documented within a Statement of Common Ground (SoCG) [REP4-013]. The SoCG also confirms an agreed position that the NSER includes appropriate evidence to determine the effects of the Proposed Development on European sites alone and in combination with other plans and projects.

5.4. ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS (LSE)

5.4.1. The Applicant's NSER concluded that the Proposed Development would be unlikely to have significant effects, either alone or in-combination with other plans or projects, on the qualifying features of the SAC, the SPA and Ramsar site. That is because of the nature of the Proposed Development and distance between it and the SAC, the SPA and the Ramsar site.

5.4.2. Lapwing were recorded within the Order Limits for the Proposed Development during Wintering Bird Surveys (WBS) [APP-092] and Breeding Bird Surveys [APP-093]. On the basis of the originally submitted application documentation it was unclear whether this bird species was a qualifying feature of the SPA and whether the effects of the Proposed Development upon them had been appropriately assessed. Accordingly, the Applicant through my asking of ExQ1.5.8 [PD-007] was requested to submit copies of maps and citations for the SAC, the SPA and Ramsar site and Appendices 8 to 10 in [REP2-022] (e-page 667 onwards) respectively provide that information.

5.4.3. It is evident from the citation for the SPA included in Appendix 9 of [REP2-022] that while lapwing are recorded as a contributory species of the non-breeding waterbird assemblage species of the SPA, they have

not been designated as a qualifying species in their own right. Lapwing form part of an assemblage of wintering birds that populate the SPA, with their significance arising from forming part of a larger assemblage of birds that collectively visit the SPA, rather than being a bird species that is present in the SPA in numbers warranting designation as a qualifying feature in its own right.

5.4.4. In response to ExQ1.5.9 [REP2-022] the Applicant has advised that the peak winter count of 109 lapwing frequenting the Order Limits represents around 0.4% of the SPA's wintering lapwing population. However, that the species is widespread and ubiquitous across farmland and there is a high level of uncertainty as to whether or not this flock was linked to the overwintering Humber Estuary population. The Applicant expressed the view that the Order Limits were not functionally linked with the SPA.

5.4.5. Additionally, the Applicant has commented in [REP2-022] that the Lapwing which were observed during winter survey periods of the Order Limits were present for around half of the survey time. The Applicant has therefore expressed the opinion that the lapwing that have been observed within the Order limits use them in association with other farmland in the area during the winter period [REP2-022].

5.4.6. As part of the discussion that took place during the second Issue Specific Hearing (ISH2) I asked the Applicant to elaborate on why it considered the Order Limits do not represent a functionally linked habitat for the SPA. In response to that question and in Appendix 1 of its post ISH2 submissions [REP4-017], the Applicant provided a fuller explanation of its view that the Order Limits are functionally unconnected with the SPA's habitat, noting that the WBS results indicated that the peak lapwing count for the Order Limits was less than 1% of the SPA's lapwing population.

5.4.7. NE in its Relevant Representation (RR) [RR-010], the SoCG it has concluded with the Applicant [REP4-013] and its response to ExQ3.5.1(a) [REP6-023] has advised that it agrees with the Applicant that the Proposed Development would be unlikely to have a significant effect on interest features of the SPA either alone or in combination with other plans and/or projects. NE in paragraph 3.3.1 of [RR-010] advised that the Order Limits are *"… not likely to be functionally linked to the designated site for mobile species which are qualifying features of the designations"*.

5.4.8. ExQ3.5.1 also asked NE to advise on how species identified as being subject to an assemblage qualification for the SPA should be considered for the purposes of undertaking a HRA. NE's response was [REP6-023]:

"As regards the waterbird assemblage feature of the Humber Estuary SPA, Natural England focuses its statutory advice on those species that are an important component of an SPA assemblage. Important component species are defined as all species listed on the citation as well as those, which might not be listed on the citation, occurring at the site at a level of 1% or more of the national population (or where more than

2000 individuals are present). These species are considered to be particularly important components of the Humber Estuary SPA assemblage due to their more important contribution to the overall assemblage composition and abundance.

It is important to note that we do not assess the assemblage as a whole, that is to say we do not consider that it is only significant if the numbers of birds present is over 1% of the assemblage population as a whole (for example 1% of 150,000 would be 1500 birds). If 1% of the estuary population for an individual assemblage species is identified then the site could be significant for this species and an Appropriate Assessment should be carried out and mitigation measures may be required.

Note that 1% is a guideline threshold for the majority of assemblage species. Where species are demonstrating critical declines at a site level exceptions to the 1% threshold are made. For example Curlew are in critical decline on the Humber Estuary SPA and require further assessment if this species occurs on functionally-linked land …"

5.4.9. North Lincolnshire Council (NLC) in paragraph 6.4 of its Local Impact Report [REP2-026] commented that there is no evidence to indicate whether or not the lapwing using the Order Limits are linked to the SPA. That was a position that NLC repeated at ISH2, with the council further advising that lapwing can be found on open farmland across North Lincolnshire and there is no conclusive evidence of whether the lapwing population is or is not functionally linked with the SPA [EV-017].

In combination assessment

5.4.10. During the course of the Examination the proposed Keadby 3 Low Carbon Gas Power Station Project (Keadby 3) and Able Marine Energy Park Material Change 2 (Able Marine) Nationally Significant Infrastructure Project (NSIP) applications were submitted for examination. Those developments in combination with the Proposed Development had the potential to raise cumulative effects for the SAC, the SPA and the Ramsar site that had not previously been assessed by the Applicant. The Applicant has assessed the effects of Keadby 3 and Able Marine in combination with the Proposed Development [RE5-021] and concluded that together they would be unlikely to generate significant effects when their nature, proximity and construction and operational timescales are taken account of.

5.4.11. I share the Applicant's view that when taken together the Proposed Development, Keadby 3 and Able Marine would be unlikely to have significant in combination effects. I am therefore of the view that the submission of the two more recent NSIP applications do not affect the conclusions reached by the Applicant in its NSER [REP5-015].

5.5. HRA CONCLUSIONS

5.5.1. I have reviewed the evidence presented during the Examination concerning likely effects on the SAC, the SPA and the Ramsar site

potentially affected by the Proposed Development, both alone and in-combination with other plans or projects, with specific reference to the Environmental Statement, most particularly Chapter 7 [REP5-010] and the NSER [REP5-015]. I have taken into account information received during the Examination, including NE's RR [RR-010], its SoCG with the Applicant [REP4-013] and its reply to ExQ3.5.1 [REP6-023].

5.5.2. I am content that the submitted evidence demonstrates that the Proposed Development would not generate any likely significant effects for the SAC, the SPA or the Ramsar site, most particularly in terms of effects for lapwing as an assemblage species for the SPA, either alone or in combination with other plans or projects. In reaching that conclusion I have applied the precautionary principle and I am of the view that there is no remaining reasonable scientific doubt.

5.5.3. I am content that sufficient information has been provided by the Applicant to conclude:

- There are no likely significant effects of the Proposed Development on any European sites or their qualifying features.
- No mitigation relevant to a HRA has been proposed and none would be required.

6. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

6.1. INTRODUCTION

6.1.1. The statutory framework for deciding Nationally Significant Infrastructure Project (NSIP) applications where there is no relevant designated National Policy Statement (NPS) is set out in s105 of the Planning Act 2008 (PA2008). In deciding the application, the Secretary of State Business, Energy and Industrial Strategy (SoSBEIS) must have regard to:

- any Local Impact Report (LIR) submitted before the deadline specified under s60(2) of the PA2008;
- any matters prescribed in relation to development of the description to which the Application relates; and
- any other matters which the SoSBEIS thinks are both important and relevant to the SoSBEIS's decision.

6.1.2. The ExA's conclusions on this case for the granting of Development Consent are based on an assessment of those matters which I consider are both important and relevant to the decision, as well as the submitted LIR. In this Chapter I have drawn on my planning policy and issue analysis in Chapter 4 and the Habitats Regulations Assessment (HRA) in Chapter 5 of my Report.

6.1.3. In light of my conclusion on the case for Development Consent in this chapter, Chapter 7 considers the draft Development Consent Order (dDCO). I have reached my overall recommendation as to whether or not Development Consent should be granted in Chapter 8.

6.2. FINDINGS AND CONCLUSIONS ON THE PLANNING ISSUES

6.2.1. This section summaries the conclusions reached on the planning issues assessed in Chapter 4, including the need for the Proposed Development, and the HRA included in Chapter 5. I have not included document references in this summary because full references have been provided in Chapters 4 and 5.

Conformity with extant and emerging policy, including site selection considerations

6.2.2. There is agreement between the Applicant and the North Lincolnshire Council (NLC) and the Examining Authority (ExA) that neither the designated Overarching National Policy Statement for Energy (EN-1) (NPS EN-1) nor the National Policy Statement for Renewable Energy Infrastructure (EN-3) (NPS EN-3) have effect for the purposes of the determination of this application. That is because solar generation has expressly been excluded from the scope/coverage of both NPS EN-1 and

NPS EN-3. That being because at the time of the designation of those NPS in 2011 solar generation at the threshold for NSIPs, over 50 megawatts (MW), was considered not to be technically viable.

6.2.3. While the Proposed Development would involve a specific type of generating technology for which there are no NPSs that have effect, I consider that this NSIP would be broadly consistent with the objectives stated in NPS EN-1 and NPS EN-3 for generating electricity. That is because the Proposed Development would involve the generation of electricity from a renewable source and would contribute to meeting to the increasing need for electricity. Allied to that, the Proposed Development would make a contribution to addressing climate change, through reducing greenhouse gas emissions, as part of the United Kingdom's (UK) move away from the reliance on the burning of fossil fuels for generating electricity. In that regard the Applicant has predicted that the Proposed Development would provide a saving of 31,364 tonnes of carbon dioxide per year.

6.2.4. I consider that the Proposed Development would generally be compliant with the National Planning Policy Framework (NPPF), most particularly part 14 which addresses meeting the challenge of climate change. However, for the reasons I have given in section 4.9 of my Report, I have reservations about whether the Proposed Development would represent an effective/efficient use of land, having regard to the policy contained in part 11 of the NPPF, most particularly paragraphs 119 and 124. That is because the Applicant's generating predictions for the Proposed Development's candidate design (solar arrays installed with 420 watt (w) panels) indicate that the secured grid export limit of 99.9MW would only be exceeded for 169 hours of the 8,760 hours in a calendar year.

6.2.5. Based on the Applicant's predictions for the candidate design, for much of the time the proposed solar arrays would generate electricity at levels that would be below the 99.9MW grid export limit. In that regard all told the solar arrays and access tracks serving them would occupy in the region of 153 hectares (ha), with the solar panels themselves occupying around 92.4ha, while the Order Limits in total extend to 226ha.

6.2.6. I have referred in section 4.9 above to the current dynamic nature of the advances in solar generating technology. In that regard the Applicant in Chapter 4 of its Environmental Statement (ES) has acknowledged that panels rated at over of 500w might become available. The Applicant in response to written and oral questions that I raised during the Examination also referred to there being scope for solar panels rated in excess of 600w becoming available by the time works on the Proposed Development commenced and the potential for the nominal installed capacity of the solar arrays to be increased while remaining within the physical parameters for the Proposed Development assessed in the ES.

6.2.7. During the Examination the Applicant has provided generating predictions for the candidate design and solar panels rated at 535w. That predictive data suggests that the more powerful 535w panels, with the

same land take as the candidate design (solar arrays equipped with 420w solar panels) would be capable of generating at least 25% more electricity. Based on the predictive data submitted by the Applicant, the following table compares the generating output for the Proposed Development with 420w or 535w solar panels.

Table 6.1 Comparison between the Proposed Development with 420 and 535 watt solar panels installed

	Candidate Design 420w solar panels	535w solar panels
Number of solar panels	356,670	356,670
Installed capacity (MW peak) (MWp)	149.8MWp	190.8MWp
Electricity exported to grid per year (MW hours (h)) – grid export limited scenarios	134,529MWh	168,708MWh
Electricity exported to grid per year under grid export unlimited scenarios[1]	136,242MWh	180,606MWh
Number of hours per year when the grid limit of 99.9MW is exceeded under grid export limited scenarios	0	0
Number of hours per year when the grid limit of 99.9MW is exceeded under grid export unlimited scenarios[1]	169 (spread over 64 days)	479 (spread over 111 days)
Hourly maximum of electricity generated under grid export limited scenarios	98.99MWh	99.29MWh
Hourly maximum of electricity generated under grid export unlimited scenarios[1]	118.19MWh	150.23MWh

[1]Availability of a battery electrical storage system (BESS) enabling electricity generated by the solar arrays above the grid export limit of 99.9MW to be stored

6.2.8. I consider it reasonable to assume that panels rated at above 535w would be capable of generating even more electricity than is shown in the table above.

6.2.9. During the Examination the Applicant steadfastly resisted any made DCO stating a maximum generating output, on the basis that could hamper making the most of the current advances in solar generating technology. However, the Applicant in responding to ExQ4.1.2 advised that it might opt to install lower rated panels, resulting in a generating station with an installed capacity of around 150MWp, and therefore not make use of the advances in solar generating technology. Should the Proposed Development be consented and then be implemented on the basis of the candidate design, most particularly the deployment of 420w solar panels, I consider it questionable whether that would be an effective/efficient use of land and would result in some conflict with the policy stated in part 11 of the NPPF. That in turn would raise questions about whether the Proposed Development would be a sustainable one, when the policies set out in the NPPF are read as a whole.

6.2.10. With respect to the important and relevant development plan considerations, while the Proposed Development would occupy farmland in the countryside, rather than previously development land (PDL), I consider that does not raise an in principle conflict with the policies or either the North Lincolnshire Local Plan of 2003 (NLLP) or the North Lincolnshire Local Plan of 2011 (CS). That is because NLC advised during the course of the Examination, including in its LIR, that there is insufficient PDL in its area to accommodate a solar generating station of the proposed scale. I have therefore concluded in section 4.10 of my Report that in this instance there is an inevitability that a solar generating station of the proposed scale would occupy farmland.

6.2.11. Policy DS21 of the NLLP and Policy CS18 of the CS offer encouragement for renewable energy development. So, while there is some conflict with the development plan because the Proposed Development would occupy farmland in the countryside there is also support for this project because it would produce renewable energy.

6.2.12. The Climate Change Act 2008, as amended, places a duty on the SoSBEIS to ensure that the UK's net carbon emissions in 2050 are at least 100% lower than the 1990 baseline. I consider that the Proposed Development would make a modest contribution towards meeting that target and the legally binding commitment to end the UK's contribution to climate change.

6.2.13. The Government's publication in September 2021 of the consultation drafts for reviewed versions of the energy NPS, most particularly EN-1 (dEN-1) and EN-3 (dEN-3) have signalled the intention to bring large scale ground mounted solar generating stations within the scope/coverage of the energy NPS. I consider that the Proposed Development would be consistent with the relevant emerging policy in dEN-1 and dEN-3.

6.2.14. Overall, I consider that the Proposed Development generally accords with the policy support for renewable energy generation and the legal obligation to reduce greenhouse gases. However, for the reasons I have outlined in Chapter 4, I have reservations as to whether the Proposed

Development would represent an effective use of land, which I consider gives rise to some conflict with the policy stated in part 11 of the NPPF. So, while there is positive support for the contribution the Proposed Development would make to the renewable energy generation, I am of the view that support needs to be tempered, given my reservations as to whether this NSIP would represent an effective use of land.

6.2.15. My concern about the effective use of land may be capable of being addressed through any made DCO setting a minimum power rating for the solar panels to be installed as part of the authorised development. That is something I have commented on in more detail in Chapters 4 and 7 of this Report.

Environmental Impact Assessment (EIA)

6.2.16. No submissions were made which raised concerns about the overall adequacy of the EIA or the ES. I consider the ES and associated information submitted by the Applicant by the close of the Examination has provided an adequate assessment of the environmental effects and meets the requirements of the EIA Regulations[74]. The ES is sufficient to describe the Rochdale Envelope for the Proposed Development and to secure its delivery within that envelope through the provisions of a made DCO.

Habitats Regulations Assessment considerations

6.2.17. Having regard to the location of the Proposed Development, I am content that it would not have any likely significant effects for any European sites.

Meeting energy need

6.2.18. I consider that the Proposed Development is consistent with the general thrust of Government policy, most particularly that which has emerged and is still in the process of evolving since the designation of the suite of energy NPS in 2011. That policy identifies a need for low-carbon and renewable energy NSIPs in order to address climate change, through meeting the legal commitment to Net Zero, and ensuring a secure, diverse and affordable energy supply. Existing and emerging Government policy also requires a mix of renewable energy NSIPs to achieve those objectives.

6.2.19. In support of the Proposed Development, I consider there to be no in principle objection to its location. In that regard I consider that there are no suitable alternative locations that would be capable of accommodating the Proposed Development and that other potential locations have been adequately considered for the purposes of the EIA Regulations. The Proposed Development would benefit from a connection to the

[74] The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017

distribution system (the grid) within the heart of the Order Limits. With the Applicant having secured a 99.9MW grid connection offer prior to the application's submission, there is no evidence that the Proposed Development would prejudice the operation of the grid. Those are matters that provide support for the Proposed Development.

6.2.20. It is clear in the coming years there will be a need for extra renewable energy generation capacity to address the need for electricity, especially as fossil fuelled power stations and older nuclear power stations are both retired. The Proposed Development would be capable of making a rapid contribution to meeting the future need for renewable energy generation, with the potential for construction works to commence during the first quarter of 2023 and an expected eleven month construction period[75].

6.2.21. However, based on the Applicant's generating predictions for the Proposed Development's candidate design, summarised in Table 6.1 above, the contribution to the national need for electricity would be comparatively modest. The output predictions for the candidate design being between 134,530MWh and 136,240MWh per year. On the Applicant's calculations the candidate design's generating output would meet the needs of between 45,000 to 60,000 homes per year and its daily output would be equivalent to around 0.06% of all electricity consumed in the UK on average per day in 2020.

6.2.22. The Applicant's predictive data indicates that a generating station installed with 535w solar panels would be at least 25% more productive than one equipped with 420w panels. If 535w solar panels were to be installed, the Proposed Development's output is predicted to be at least 168,700MWh. The installation of higher rated solar panels would therefore result in the Proposed Development making a greater contribution to meeting the UK's need for electricity.

6.2.23. On the basis of the Applicant's generation predictions, I consider that the Proposed Development's contribution to meeting the UK's need for electricity attracts no more than moderate positive weight. It is evident that the installation of a BESS, particularly in combination with solar panels rated at 535w or more, would increase the Proposed Development's contribution to meeting the UK's need for electricity. I consider the installation of a BESS weighs for the Proposed Development.

Effects on agricultural land

6.2.24. Earlier in this Chapter I have reported on the general principle of the Proposed Development occupying farmland rather than PDL and need not comment further on that in this subsection.

6.2.25. It is expected that the Proposed Development would have an operational life of 35 years, during which there is potential for grass beneath the

[75] Assuming a DCO is made in the first quarter of 2022

solar arrays to be grazed by sheep. If the Order Limits were to be grazed during the operational phase, there would be no total cessation of agricultural activity. If there was to be no grazing during the operational phase there would be a temporary cessation of agricultural activity for up to 35 years, with Requirement (R) 3 in the dDCO seeking to control the Proposed Development's duration.

6.2.26. The majority of the Proposed Development would occupy poorer quality agricultural land, with 36.6 hectares of the Order Limits being classified as grade 3a land and thus being best and most versatile agricultural land (BMVL). Both national and local planning policies seek to minimise impacts on BMVL. North Lincolnshire is however an area where there is a preponderance of BMVL. Even though the Proposed Development would affect 36.6ha of BMVL, in relative terms, I consider that would not have a significant effect upon agricultural productivity in North Lincolnshire.

6.2.27. I am therefore of the view that the Applicant has sought to minimise significant effects on BMVL and I therefore consider that there would be no unacceptable conflict with the relevant national and local policies. Given that the impact on agricultural productivity would last for around 35 years, I consider that any adverse effects on agricultural land only weighs moderately against the Proposed Development and are of insufficient weight for it to be recommended that a DCO should not be made.

Landscape and visual effects

6.2.28. I consider that beyond the Order Limits there would be no significant landscape effects during the Proposed Development's construction, operational or decommissioning phases. That is because no special landscape designations apply to the Order Limits and visual screening would be afforded by the woodland in the area, the existing hedgerows and new planting to be provided as part of the Proposed Development. The measures for the retention of the existing hedgerows and the undertaking of new planting would be secured through provisions included in the dDCO.

6.2.29. There would however be an adverse effect for users of public footpath 214 (FP214), which crosses the Order Limits, during the construction, operational and decommissioning phases. While a temporary diversionary route for FP214 would be available during the construction and decommissioning phases that route would be significantly longer than the permanent route. I therefore have reservations as to whether in practice the temporary diversion would be of much practical utility. There is, however, no available evidence quantifying how many walkers use FP214 and would thus be affected.

6.2.30. No submissions were made during the Examination concerning the utility of FP214 during the construction, operational and decommissioning phases and that may suggest that this footpath is not particularly well used. Accordingly, I am of the view that the visual harm for the users of FP214 during all phases of the Proposed Development would be

outweighed by the benefits associated with the generation of electricity from a renewable source.

6.2.31. Overall, I consider that the Proposed Development's effects on landscape character and the visual amenity for users of FP214 would result in no unacceptable conflict with the provisions of NPS EN-1, the NPPF or the relevant development plan policies. I also consider that the effects on landscape character and visual amenity would not give rise to any unacceptable conflict with the emerging policy stated in dEN-1 and dEN-3.

6.2.32. I therefore consider that while the effect on landscape character and visual amenity weighs moderately against the Proposed Development, of itself that is something which does not warrant a recommendation that a DCO should not be made.

Historic environment

6.2.33. Given the scale of the Order Limits there is potential for them to contain as yet to be discovered archaeological remains. To safeguard the archaeological interest of the Order Limits, the Applicant has submitted a standalone Archaeological Management Plan (AMP) in response to submissions made by NLC in its LIR. The safeguarding of the Order Limits' archaeological interest would primarily be achieved through the operation of the AMP, secured via the provisions of R13 of the dDCO, supplemented by the provisions of the Decommissioning Strategy (DS) (R4), the Construction and Environmental Management Plan (CEMP) (R8) and the Landscape and Ecological Management Plan (R10).

6.2.34. With respect to archaeology, by the close of the Examination there were no matters of disagreement between NLC. With the necessary mitigation for buried archaeologically there would be no significant archaeological or historic environment related effects arising from the Proposed Development. Accordingly, in policy terms I consider that with the proposed mitigation all impacts for the historic environment have been addressed in ways that would accord with the relevant provisions of NPS EN-1, the NPPF and the development plan. I also consider that there would be no conflict with the emerging policy set out in dEN-1 and dEN-3.

6.2.35. Overall, I consider that the Proposed development would have a neutral effect on the historic environment.

Ecology

6.2.36. In assessing and reporting on biodiversity, ecology and the natural environment the ES has not identified any significant effects on designated sites, protected species and habitats and other species of principal importance for the conservation of biodiversity.

6.2.37. Various mitigation measures have been proposed, which would be secured by requirements included in the dDCO. The effect of those

mitigation measures would be that no significant residual effects are anticipated. Accordingly, as the Proposed Development would avoid significant harm to biodiversity, ecology and the natural environment, it would be compliant with the relevant policy in NPS EN-1, the NPPF and the development plan policies. I also consider that there would be no conflict with the emerging policy included in dEN-1 and dEN-3. I therefore consider this to be a neutral matter in the overall planning balance.

Traffic and Transport

6.2.38. The most significant traffic and transport effects would arise during the construction and decommissioning phases. Those phases would be subject to mitigation forming parts of a Construction Transport Management Plan (CTMP) and a DS, secured respectively by R9 and R4 in the dDCO. The CTMP, amongst other things, would require heavy goods vehicles to avoid routing via the built up parts of Broughton and Appleby.

6.2.39. I am content that the ES has adequately assessed the traffic and transport effects for the construction, operational and decommissioning phases and that appropriate mitigation would be available. I therefore consider the Proposed Development would accord with NPS EN-1, the NPFF and the development plan. I also consider that there would be no conflict with the emerging policy stated in dEN-1 and dEN-3. Accordingly, I am of the view that the traffic and transport effects for the Proposed Development are a neutral matter in the overall planning balance.

Noise

6.2.40. I am content that the Applicant has adopted a reasonable and proportionate approach to the assessment of noise and vibration. In that regard provision for necessary mitigation during the construction and operational phases has been identified and that would be secured through R8, R11 and R15 in the dDCO.

6.2.41. There would be some construction and decommissioning noise impacts. However, those impacts are capable of being mitigated appropriately and would be of a comparatively short duration, notwithstanding the physical scale of the Proposed Development.

6.2.42. In relation to the matter of noise, I consider the Proposed Development would accord with the policy stated in NPS EN-1 and NPS EN-5, the NPPF and the relevant development plan policies. I further consider that there would be no conflict with the emerging policy set out in dEN-1 and dEN-3. I am therefore of the view that this is a neutral matter in the final planning balance.

Air quality

6.2.43. I consider there would be no significant effects for air quality during the construction phase, notwithstanding the Order Limits are situated in an

Air Quality Management Area designated by NLC. Mitigation would be provided through the operation of a CEMP and would be secured via R8 of the dDCO. I therefore consider that appropriate mitigation would be available to manage the dust impacts during the construction phase.

6.2.44. With respect to air quality considerations, I am of the view that the Proposed Development would accord with the policy stated in NPS EN-1, the NPPF and the relevant development plan policies. I further consider that there would be no conflict with the emerging policy stated in dEN-1. I therefore consider this to be a neutral matter in the final planning balance.

Socio-economic effects

6.2.45. Other than the effects on the occupiers of properties adjoining the Order Limits and further afield in Broughton and users of FP214, which I have addressed above, the other socio-economic effects associated with the Proposed Development primarily relate to local employment.

6.2.46. The construction phase is predicted to generate 233 direct and indirect/induced construction jobs and result in £15.9 million gross value added (GVA) over an eleven month period. For the operational phase it is predicted that 23 jobs direct and indirect jobs would be created, yielding £1.2 million GVA per year.

6.2.47. I consider there would be minor positive socio-economic benefits arising from the Proposed Development, which would give rise to no conflict with either the extant national and development plan policies or the emerging policy included in dEN-1. I therefore consider this to be a matter weighing moderately for the Proposed Development in the final planning balance.

6.3. THE PLANNING BALANCE AND CONCLUSION

6.3.1. In reaching conclusions on the case for the Proposed Development, I have had regard to NPS EN-1 and NPS EN-5, the NPPF, policies of the development plan, NLC's LIR and the Government's emerging policy in dEN-1 and dEN-3, which I consider are important and relevant to the SoSBEIS's decision.

6.3.2. The Proposed Development gains support from the legislative and designated and emerging national policy imperative for decarbonising electricity production in the UK. The Proposed Development would contribute to the need for the generation of electricity from renewable sources and that is something weighing positively for this NSIP.

6.3.3. However, the contribution the Proposed Development would make to meeting the UK's need for electricity would be comparatively modest, especially when regard is paid to its land take. In that regard I consider it should be recognised that for significant periods of time during the daytime and across a calendar year very modest amounts of electricity would be generated, often significantly below the 99.9MW grid

connection limit that has been secured. That being because of the level of solar irradiance and/or the length of daylight.

6.3.4. The Applicant has submitted in its application documentation and in its Examination submissions that it has sought as much flexibility as possible in the design for the Proposed Development, so as to capitalise on the current dynamism in solar generating technology. The Applicant has explained that capitalising on those advances would potentially enable solar panels of greater generating capacity than the panels of the candidate design to be installed within the same physical parameters as has been assessed in the ES.

6.3.5. The Applicant in responding to ExQ4.1.2, however, intimated that even though solar panels capable of producing at least 25% more electricity than 420w solar panels, on which the candidate design has been based, would be likely to be available during the procurement period for the Proposed Development, it may nevertheless rely on the candidate design. That would mean that the current dynamism in solar technology would not be capitalised upon, with the resulting generating station potentially producing at least 25% less electricity than would be the case if higher rate solar panels were to be installed. I consider that might be a missed opportunity and would result in the implemented authorised development being a less effective use of land than would be the case if solar panels rated at 500w or more were installed.

6.3.6. The Applicant has predicted that the candidate design, based on the use of 420w solar panels, would generate of the order of 135,000MWh of electricity per year. I consider that level of output would make a relatively modest contribution to addressing the UK's need for electricity and is a factor weighing moderately in favour of a DCO being made. Some additional favourable weight would be gained if the generating station was to be equipped with solar panels with a higher power rating than the 420w modules underpinning the candidate design. That being something that the Applicant has submitted would be possible while remaining within the Rochdale Envelope physical parameters that have been assessed in the ES.

6.3.7. There is potential for the Proposed Development to be operational by the end of 2023 or in the early part of 2024. The Proposed Development could therefore be making its contribution to meeting the need for electricity generation in a comparatively short period of time. That potential for rapid deployment is a factor that I consider weighs moderately in favour of a DCO being made.

6.3.8. Weighing against a DCO being made are the adverse effects for agricultural land and the visual impact for users of FP214. I have assessed those effects as attracting moderate negative weight. That said I consider that neither of these adverse effects collectively attract sufficient weight for me to recommend that a DCO should not be made.

6.3.9. With respect to visual appearance, the historic environment, ecology, transport, noise and air quality, there would be some potential for

adverse effects to arise. However, with the implementation of the proposed mitigation measures, no significant adverse effects have been predicted to arise. I consider that the proposed mitigation would adequately address the harms identified in the ES. The necessary mitigation would be secured through various requirements that have been included in the dDCO and would result in the Proposed Development according with the relevant legislative requirements and policy considerations. I therefore consider the effects for visual appearance, the historic environment, ecology, transport, noise and air quality are neutral factors in the overall planning balance.

6.3.10. As explained elsewhere in this Report, this application falls to be decided under the provisions of s105 of the Planning Act 2008. Section 105(2) requires the SoSBEIS to have regard to any submitted LIR, any matters prescribed in relation to development of the description to which the application relates, and any other matters which the SoSBEIS thinks are both important and relevant to the decision.

6.3.11. Other than the matter of whether this NSIP would be an effective use of land, I consider that the matters weighing against the Proposed Development either in isolation or in combination would be outweighed by the moderate positive benefits that I have identified.

6.3.12. My concern about whether the Proposed Development would be an effective use of land and the resulting conflict with section 11 of the NPPF would become less significant if higher rated solar panels were to be installed. In that regard I have recommended that the SOSBEIS may wish to explore that matter further with the Applicant, with a view to securing the use of solar panels rated at more than 420w as part of a made DCO.

6.3.13. My concern about the effective use of land could be resolved through either the SoSBEIS pursuing this matter and including appropriate provisions in a made Order or the Applicant's own actions in finalising the design for the Proposed Development and procuring the equipment and plant following the making of a made DCO. Should my concern about the effective use of land not be resolved through one or other of those scenarios, I consider the matters weighing moderately in favour of this NSIP, most particularly the potential generation of electricity from a renewable source in a comparatively short period of time, would narrowly outweigh those factors weighing against consent being given.

7. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

7.1. INTRODUCTION

7.1.1. This Chapter provides an overview of the draft Development Consent Order (dDCO) that was submitted with the application [APP-045] and the changes that were made to it during the course of the Examination, resulting in the Applicant's submission of its seventh and final version of the dDCO at Examination Deadline (D) 7 [REP7-003]. This Chapter also considers changes I have recommended to the Applicant's final dDCO to arrive at the Examining Authority's (ExA) recommended DCO (rDCO), which is included in Appendix D of this Report.

7.1.2. The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 has been repealed. However, the Applicant to some degree has relied on the repealed model provisions, as explained in the Explanatory Memorandum (EM) [REP7-005].

7.1.3. The dDCO [REP7-003] includes wording and/or approaches derived from other made DCOs (precedents), as explained in the EM [REP7-005] and the Applicant's post Issue Specific Hearing (ISH) 1 submissions [REP1-008]. Those made DCOs include:

- The East Anglia ONE Offshore Wind Farm Order 2014;
- The Walney Extension Offshore Wind Farm Order 2014;
- The North Wales Wind Farms Connection Order 2016;
- The East Midlands Gateway Rail Freight Interchange and Highway Order 2016;
- The Brechfa Forest Wind Farm Connection Order 2016;
- The Hornsea Two Offshore Wind Farm Order 2016;
- The River Humber Gas Pipeline Replacement Order 2016;
- The York Potash Harbour Facilities Order 2016;
- The East Anglia THREE Offshore Wind Farm Order 2017;
- The Kemsley Paper Mill K4 Combined Heat and Power Generating Station Order 2019;
- The Northampton Gateway Rail Freight Interchange Order 2019;
- The Cleve Hill Solar Park Order 2020;
- The Riverside Energy Park Order 2020;
- The West Midlands Rail Freight Interchange Order 2020; and
- The Hornsea Three Offshore Wind Farm Order 2020

7.1.4. I have been mindful of the provisions of the made DCOs listed above in making my recommendations below. However, as the circumstances for individual Nationally Significant Infrastructure Projects (NSIPs) are not directly comparable with one another, precedents from other made DCOs relating to Articles (Art(s)) and Requirements (R(s)) cited by the Applicant may not be appropriate for inclusion in any made DCO for the Proposed Development.

7.1.5. The Applicant has also cited The Norfolk Vanguard Offshore Wind Farm Order 2020, a DCO that was made on 1 July 2020, and The A303 (Amesbury to Berwick Down) Development Consent Order 2020, a DCO that was made on 12 November 2020. However, the decisions to make those DCOs were quashed by the High Court respectively on 18 February and 30 July 2021[76]. The NSIP applications for the proposed Vanguard wind farm and A303 Amesbury to Berwick Down road scheme are in the process of being redetermined by the relevant Secretaries of State. Accordingly, for the purposes of my consideration of the submitted dDCO [REP7-003] I have disregarded any reliance the Applicant has placed on the quashed Vanguard and A303 Amesbury to Berwick Down DCOs.

7.2. THE DCO AS APPLIED FOR

7.2.1. A dDCO [APP-045] and an EM [APP-046] accompanied the originally submitted NSIP application. The original version of the dDCO was set out as follows:

- Part 1, Arts 1 and 2, which respectively set out how a made Order may be cited and the interpretation (meaning/definition) for various terms used in any made dDCO.

- Part 2, Arts 3 to 7, containing the principal powers for any made Order. Those powers would address:

  - the nature of the consented development (Art 3);
  - its maintenance (Art 4);
  - those benefitting from any made DCO and how those benefits could be transferred (Art 5);
  - the disapplication of certain legislative provisions (Art 6); and
  - defence to statutory nuisance proceedings (Art 7).

  With respect to those benefitting from a made DCO, Art 5(1) has been drafted so that benefit of a made Order would be restricted to the Applicant[77] and would override s156(1) of the Planning Act 2008 (PA2008) which states *'… the order has effect for the benefit of the land and all persons for the time being interested in the land'*. The Applicant has stated in paragraph 5.6 of the EM [REP7-005] that *"Given the scale of the Authorised Development it would be impracticable and inappropriate for the Order to be 'open' as to who may implement it, as might occur without this provision"* and has cited various precedents[78] for the inclusion of Art 5(1) in any made DCO.

[76] Pearce -v- Secretary of State for Business Energy and Industrial Strategy [2021] EWHC 326 (Admin) and Stonehenge World Heritage Site Limited and the Secretary for State for Transport [2021] EWHC 2161 (Admin)
[77] Unless under Art 5(2) the SoSBEIS, on request, has consented to a transfer to another person
[78] For example The Cleve Hill Solar Park Order 2020

- Part 3, Art 8, for the temporary stopping up and diversion of a public footpath.

- Part 4, Arts 9 and 10, set out supplemental powers relating to the discharge of water and the authority to survey and investigate land.

- Part 5, Art 11, stating the authority to operate the generating station subject to any made DCO and confirming that the provisions of any made DCO would not relieve its operator from obtaining any permit or licence required under other legislation needed to authorise the operation of an electricity generating station.

- Part 6, Arts 12 to 20, concern to miscellaneous and general provisions including: the removal of human remains (Art 12); certification of plans (Art 14); felling or lopping of trees or removal of hedgerows (Art 16); requirements and appeals (Art 18); the application of landlord and tenant law (Art 19); and protective provisions (Art 20).

7.2.2. The originally submitted dDCO [APP-045] also contained six Schedules as follows:

- Schedule 1 (authorised development), describing the seven specific Works and the site wide Works that would comprise the Proposed Development.

- Schedule 2 (Requirements), comprising two parts. Part 1 stating 17 Rs concerning the construction, operation and decommissioning for the Proposed Development and Part 2 comprising four paragraphs 18 to 21 addressing the procedure for the discharge of the Rs, as well as any other approvals required under Arts or other Schedules included in any made Order.

- Schedule 3 identified the public footpath that would need to be temporarily "stopped" up and diverted.

- Schedule 4 (hedgerows), comprising two parts. Parts 1 and 2 respectively identifying "important hedgerows" and "hedgerows" that would be authorised for removal.

- Schedule 5 sets out arbitration rules intended to apply to disputes with statutory undertakers.

- Schedule 6 (protective provisions), setting out the following protective provisions:

    - Part 1 for the protection of electricity, gas water and sewage undertakers; and
    - Part 2 for the protection of Anglian Water's apparatus and equipment etc.

7.3. ISSUES AND CHANGES MADE TO THE DRAFT DCO DURING EXAMINATION

7.3.1. The examination of the dDCO proceeded throughout the Examination, with written and oral input from the Applicant and North Lincolnshire Council (NLC). In that regard during Issue Specific Hearing (ISH) 1 [EV-011] and ISH2 [EV-019] there were discussions concerning the dDCO, which the Applicant and NLC participated in. Written questions concerning the dDCO were included in section 6 of the Examination written questions ExQ1 [PD-007], ExQ2 [PD-010] and ExQ3 [PD-013]. My written and oral questions in many instances sought to address the precision and/or enforceability of the provisions of the dDCO.

7.3.2. Further to the discussions held during ISH1 and ISH2 and/or in response to ExQ1 [PD-007] and ExQ2 [PD-010] the Applicant submitted revised versions of the dDCO [REP1-003 and REP4-005]. Revised versions of the dDCO were also submitted by the applicant at D2 [REP2-003], D3 [REP3-003a], D5 [REP5-003] and D6 [REP6-003]. The ExA issued a schedule of recommended amendments (ESRA) to the dDCO in [PD-014], further to the submission of the Applicant's fifth revision (version F) of the dDCO [REP6-003].

7.3.3. At D7 in response to my schedule of recommended amendments some amendments were made by the Applicant in its final dDCO [REP7-003]. The Applicant also made written submissions in response to the previously mentioned schedule of recommended amendments [REP7-011]. No other Interested Party (IP) submitted a response to the ExA's schedule of recommended amendments to the dDCO. In drafting the ExA's recommended rDCO, I have had regard to the Applicant's response to my schedule of recommended amendments.

7.3.4. By the close of the Examination the Applicant had submitted seven versions of the dDCO, with version G [REP7-003] being the final version that was accompanied by a Validation Report [REP7-014] and an updated EM [REP7-005]. On each occasion that the Applicant submitted a revised version of the dDCO it provided a "clean" copy together with a tracked changed copy to assist with identifying the amendments made in successive versions. While the tracked changed copies of the dDCO have been included in the Examination Library, I have only referred to the clean copies in my Report. The Applicant also submitted a DCO 'Changes Tracker' each time the dDCO was revised, providing a commentary for each of the amendments made to the dDCO during the Examination. The final version of the change tracker was submitted at D7 [REP7-007].

7.3.5. The various iterations of the dDCO made a series of changes to the originally submitted version. Many of those changes were not significant and, for example, were to: correct typographical errors; ensure internal drafting consistency within the dDCO; assist with precision; and aid the enforceability of the proposed Rs.

7.3.6. The more substantive changes that have been made to the dDCO throughout the Examination are set out below. Overall, I consider the

structure of the final version of the Applicant's dDCO [REP7-003] to be acceptable and fit for purpose, and no changes to the structure as outlined above are recommended.

Articles

Article 6 – Disapplication, application and modification of legislative provisions

7.3.7. At D1 Art 6(2) was added to the dDCO [REP1-003], clarifying that development carried out pursuant to either an express planning permission or authorised by a general development order[79] (that is permissions stemming from the Town and Country Planning Act 1990 (TCPA1990) following the implementation of any development authorised by a made DCO would not be a breach of the terms of the DCO or an offence for development without development consent. The Applicant has cited [paragraph 5.11 in REP1-005] various precedents for this Art's inclusion in a made DCO, including The East Midlands Gateway Rail Freight Interchange and Highway Order 2016 and West Midlands Rail Freight Interchange Order 2020.

7.3.8. I consider the inclusion of Art 6(2) in a made DCO would provide clarity for the operation of enforcement regimes set out in Part 8 of the TCPA1990.

Article 14 – Certification of plans etc

7.3.9. Amendments were made during the Examination to the various plans and other documents that would need to be certified under Art 14 by the Secretary of State for Business, Energy and Industrial Strategy (SoSBEIS) following the making of any DCO. To reflect the changes in the documentation to be certified under Art 14, the Applicant updated the wording of this Art so that the plans and documents listed in it remained extant. A revision to the wording for Art arose at D4 [REP4-005], to accommodate the submission of a freestanding 'Archaeological Management Plan' (AMP) further to a discussion that took place during ISH2 about removing matters relating to archaeology from the outline Construction and Environmental Management Plan (oCEMP) [EV-019].

7.3.10. In the final version of dDCO [REP7-003] the Applicant undertook some consolidation of the list of documents that would need to be certified under Art 14. The effect of that being that all documents forming part of the Environmental Statement (ES) now appear in sub-paragraph (1)(b), rather than being listed in other parts of Art 14. That change being made

[79] For example The Town and Country Planning (General Permitted Development) (England) Order 2015

further to a suggestion made in the ESRA to the dDCO to aid clarity [PD-014].

Article 19 – Application of landlord and tenant law

7.3.11. Art 19 would override landlord and tenant law, so far as it would relate to the operation of: any agreement for leasing the whole or any part of the Authorised Development to any person other than the undertaker/Applicant; or any agreement between the undertaker and any person to build, maintain, use or operate the Proposed Development.

7.3.12. During ISH1 [EV-011] I sought further clarification from the Applicant about the justification for Art 19, given the Applicant's intention to enter into a lease with the landowners to construct and operate the Proposed Development and with no compulsory acquisition powers being sought as part of any made DCO.

7.3.13. The Applicant advised at ISH1 and in the EM submitted following ISH1 that articles equivalent to Art 19 have been included in:

"… the majority of DCOs to ensure that any lease or agreement that is entered into by the undertaker relating to the construction, maintenance, use or operation of the authorised development is not prejudiced by any current or future provision of landlord and tenant law. Its purpose is therefore to ensure that the terms of any lease or agreement which may be entered into by the undertaker constitute the full terms of the agreement between the parties. The Applicant notes that equivalent provisions are included in made DCO's even where letting may not be expressly contemplated. See for example Article 51 of The A303 (Amesbury to Berwick Down) Development Consent Order 2020" [paragraph 5.34 of REP1-005]

7.3.14. While I consider there is nothing objectionable about the wording of Art 19, it is still not entirely clear why this Art would need to be included in a made DCO. That is because there would appear to be no reason why either any agreement for leasing to any other person or any agreement entered into by the undertaker for the construction, maintenance, use or operation of the Proposed Development could not be drafted so as encompass the safeguards intended for inclusion in Art 19.

Schedule 1 – Authorised Development

7.3.15. Within Schedule 1 of the originally submitted version of the dDCO the gross electrical output for the Proposed Development was expressed as being *'... over 50 megawatts peak …'* [APP-045]. It was, however, unclear from what was stated in the dDCO and the EM [APP-046] precisely what 'peak' meant. As I have indicated in Chapter 4 above, I sought clarification from the Applicant during ISH1 [EV-009] about the meaning of megawatts peak (MWp). That clarification is set out in writing in section 4 of the Applicant's 'Technical Guide', which was originally

submitted as [REP1-011] following ISH1 and was subsequently updated following ISH2 as [REP4-014].

7.3.16. Having received an explanation of MWp at ISH1 and in [REP1-011], and with Schedule 1 of the dDCO simply referring to a generating capacity of over 50MW peak, I was concerned about the potential for the Proposed Development to be implemented at a scale that would not actually be an NSIP under the provisions of s15(2)(c) of the PA2008. That is because, given the Applicant's explanation of MWp, a solar generating station occupying the Order Limits, with an installed capacity of or near to 50MWp, would be incapable at any given time of exporting sufficient electricity to the grid to meet the threshold for an NSIP scale generating station stated in s15(2)(c) PA2008. Not least because some of the electricity generated by the solar arrays as direct current (DC) would be lost through inverting the generated electricity into grid exportable alternating current (AC).

7.3.17. Accordingly, given the provisions of s15(2)(c) of the PA2008, ExQ2.6.4 [PD-010] requested the Applicant to consider whether 'peak' should or should not be included in the wording for the authorised development contained in Schedule 1 of the dDCO. This being an issue that I raised during the course of ISH2 [EV-017]. Further to my written and oral questions about this matter the Applicant advised that peak need not be referred to in Schedule 1 of any made DCO. In that regard the Applicant deleted peak from the wording of Schedule 1 in the version of the dDCO submitted at Examination D4 [REP4-005] and that change has been retained in all subsequent iterations of the dDCO, including the final version [REP7-003].

7.3.18. I am content that the deletion of 'peak' from Schedule 1 of the dDCO would improve the precision for defining the generating capacity for the authorised development within any made DCO. The SoSBEIS has acknowledged in paragraphs 2.48.6 and 2.48.7 in the consultation draft for the review of National Policy Statement Renewable Energy Infrastructure (EN-3) (hereafter referred to dEN-3) that there has been an issue specific to solar generating stations relating to how their generating output is defined. Paragraph 2.48.7 of dEN-3 outlines the Government's intention for the generating capacity for solar generating stations in future to be stated as MW (AC), so as to be comparable with the approach taken with other forms of electricity generating technology.

7.3.19. The new policy approach to defining the output from solar generating stations trailed in dEN-3 will not formally apply to the determination of this application[80]. That said establishing what the Proposed Development's generating output would be was a recurrent issue during the Examination, being the subject of various written and oral questions that I raised. In that regard I have sought the views of the Applicant as

[80] Given the transitional arrangements outlined in paragraph 1.6.2 of the consultation draft for the reviewed Overarching National Policy Statement for Energy (EN-1)

to whether a made Order should specify a maximum generating output, see for example ExQ2.6.5 [PD-010] and ExQ 3.6.1 [PD-013]. The Applicant has been resistant to any made DCO setting a maximum generating output, see for example the Applicant's responses to ExQ2.6.5 and ExQ.3.6.1 in [REP4-018] and [REP6-019]. That is something which I have returned to later in this subsection of my Report. However, the Applicant in responding to ExQ4.1.1 (opportunity to make submissions about the emerging policy contained in dEN-1[81] and dEN-3) [PD-016] has commented on the content of paragraph 2.48.9 as follows:

"Reflecting on paragraph 2.48.8, the Applicant considers that any permission should be interpreted on the basis of the maximum physical extent of the development. However should the ExA be minded to recommend a maximum installed capacity limit to the Secretary of State then it should be clear that such capacity is set in AC not DC, please refer to Applicant's response to the Schedule 1, Paragraph 1 of ExA's recommended amendments to the Applicant's draft DCO." [REP7-010]

7.3.20. To ensure any authorised development in a made DCO met the threshold for an NSIP, I consider it would be prudent for the references to gross electrical output in Schedule 1 to be expressed as a gross electrical output of over 50MW (AC). In the rDCO I have therefore recommended that Schedule 1 is so worded, which accords with the Applicant's comments in [REP7-010], quoted in the preceding paragraph.

7.3.21. Above I have alluded to a theme that ran throughout the Examination about whether or not the generating output for the Proposed Development should be expressed in a made DCO as simply being over 50MW or as a maximum generating output. In relation to that matter, on the one hand the Applicant has contended that setting a maximum generating output figure would be arbitrary and might stymie the use of the rapidly advancing technology in this power generating sector while keeping within the Rochdale Envelope that has been identified for the Proposed Development. See for example the Applicant's responses in [REP1-008], [REP4-017], [REP4-018], [REP6-019] and [REP7-011].

7.3.22. On the other hand, the Applicant in responding to ExQ4.1.2 has advised that notwithstanding the potential availability of significantly higher rated solar panels during the procurement period for the Proposed Development, it may nevertheless opt to install solar panels of a lower output rating [REP7-010]. That is a matter that I have reported on at some length in section 4.9 of this Report.

7.3.23. In section 4.9 of this Report, I have explained that I reservations as to whether the implementation of the Proposed Development, on the basis of its candidate design would be efficient use of land and thus accord with the provisions of the National Planning Policy Framework, most particularly paragraph 124. The candidate design is based on the

[81] Consultation draft for a reviewed Overarching National Policy Statement for Energy (EN-1)

installation of solar panels rated at 420 watts peak (wp)[82]. The Applicant's predictions[83] for electricity exported to the grid utilising solar arrays rated at 420wp or 535wp show that the higher rated panels would be around 25% more productive compared with the lower rated candidate design panels. It is also evident from the submissions made by the Applicant that it would be possible for higher rated solar panels to be installed while remaining within the Rochdale Envelope that has been identified for the Proposed Development. That would mean higher rated solar panels could be installed without altering the Proposed Development's visual impact or its effects on other environmental matters.

7.3.24. The Applicant submitted during the discussion under agenda item 3c at ISH2 [EV-015] that even if there were advances in the efficiency (increased power ratings) for solar panels over the next year or so the land take for the Proposed Development would not change to any great extent [EV-018 and REP4-017]. That submission strongly suggests that the installation of solar arrays of the candidate design would be likely to occupy as much land as panels rated at 500wp or higher, while generating at least 25% less electricity.

7.3.25. As elaborated upon in greater detail in section 4.9 of my Report, I consider reliance on the candidate design would fall some way short of constituting an efficient use of land. That being against the backdrop of the Applicant having submitted throughout the Examination that it would not wish to be constrained by a made DCO setting a maximum generating output, which might otherwise frustrate the deployment of more powerful solar panels and a battery electricity storage system (BESS) with a capacity of more than 90MW. The Applicant's response to ExQ4.1.2 suggests that might be a genuine prospect, which the wording of the dDCO [REP7-003] could facilitate. That is because the definition for the Proposed development in Schedule 1 simply refers to a generating station with an output of over 50MW.

7.3.26. To address my concern about the efficient use of land associated with the Proposed Development, while keeping within the Rochdale Envelope that has been identified by the Applicant, the SoSBEIS may wish to satisfy themselves that any development authorised by a made DCO would facilitate the maximum generation of electricity from the installed solar arrays. In that regard, in relation to the description for Work No.1(a) (solar panels) in Schedule 1, introducing wording stating a minimum solar panel rating would potentially address my concern and might therefore be a matter that the SoSBEIS would wish to seek the Applicant's views about.

[82] Paragraph 4.3.3 of Chapter 4 of the ES [REP5-006]
[83] Respectively set out in Appendices 2 and 3 in [REP4-014]

Schedule 2 Part 1 - Requirements

7.3.27. During ISH1 [EV-011] I indicated to the Applicant that I considered a number of the Rs set out in the dDCO [APP-045] requiring the undertaker to complete certain actions before undertaking works used phraseology, such as 'may be' as opposed to 'must' or 'shall be' and therefore lacked certainty and/or force in relation to their enforceability. The Applicant agreed to review the phraseology used in the Rs and revisions to make them more certain for enforcement purposes were made within the version of the dDCO submitted at D1 [REP1-003].

7.3.28. In issuing the ESRA to the dDCO [PD-014] I identified some other instances where substituting "may" with more forceful language would aid the precision or enforceability of the Rs. The Applicant, as explained in [REP7-011], agreed to the making of those revisions, which are reflected in the wording for the Rs used in the final dDCO [REP7-003].

Requirement 4 – Decommissioning and site restoration

7.3.29. During ISH1 [EV-011] I asked the Applicant about the appropriateness of the retention of the substation following the cessation of the generating station's operation and its exclusion from the decommissioning and restoration of the Order Limits. The Applicant having submitted in Chapter 4 of the ES [REP5-006] and the original version of the draft Decommissioning Strategy (dDS) [APP-078] that the intention was to retain the substation and the access track serving it (Work Nos. 4 and 5) in perpetuity. The Applicant explained that was because those parts of the Proposed Development would have become the property of Northern Powergrid Limited (NPG) and would not be in the gift of the undertaker/developer to decommission.

7.3.30. In making its post ISH1 submissions [REP1-008] the Applicant advised that NPG had confirmed that following the decommissioning of the generating station the substation would only need to be retained if another generating project had already or was scheduled to connect to this substation. Accordingly, the wording of R4(2)(a) was amended to that affect by the Applicant in its first revised version of the dDCO [REP1-003] and was further revised in the D4 version of the dDCO [REP4-005].

7.3.31. The Applicant's amendment to the wording of R4(2)(a) would only allow for the substation and the access track serving it to be retained should there be a continuing need for their use once the rest of the Proposed Development had been decommissioned. That would avoid a redundant piece of apparatus being retained in perpetuity in the middle of what would otherwise be restored farmland. Securing the removal of the substation from the Order Limits, if there was no need for it to be retained, under the provisions of the Applicant's amended wording for R4 would be interests of safeguarding the long-term appearance of the area and is something I whole heartedly support for inclusion in any made Order.

Requirement 8 – Construction environmental management plans (CEMPs)

7.3.32. R8 of the dDCO would require, as mitigation, the construction works to be undertaken in accordance with the provisions of a CEMP, based on the oCEMP [REP6-006], to be submitted for NLC's approval. The Applicant has explained in its EM that it intends the CEMP would be supplemented by a CEMP that would address nature conservation matters (a CEMPfB [APP-096]).

7.3.33. However, as I have explained in section 4.13 above there is no reference to a CEMPfB or the oCEMPfB in the wording for R8 included in the dDCO [REP7-003]. That appears to have been an oversight on the Applicant's behalf. In the rDCO in R8(2) I have added a new item (j) which refers to the need for a CEMPfB to be submitted to NLC for approval that accords with the provisions of the oCEMPfB.

Requirement 9 – Construction traffic management plan

7.3.34. The submitted outline Construction Traffic Management Plan (oCTMP) [APP-105] makes provision for the parts of the public highway to be used as construction traffic routes, most particularly the B1207, to be subject to condition surveys prior to and following the completion of the construction works. The purpose of those surveys being to identify and agree with the highway authority (NLC) any remedial works reasonably attributable to construction activities [section 7 in APP-105].

7.3.35. R9(2)(c) of the originally submitted dDCO [APP-045] sought to secure the undertaking of the condition surveys referred to in the oCTMP. As part of ExQ1.6.5 [PD-007] I enquired about the purpose of undertaking the road condition survey because the proposed wording for R9(2)(c) did not state what the undertaker would be required to do should the survey identify that there had been a deterioration in the condition of the public highway attributable to the passage of the Proposed Development's construction traffic.

7.3.36. In response to my enquiry the wording for R9(2)(c) was revised by the Applicant in the D3 version of the dDCO [REP3-003a] to make it clear that in the event of the condition surveys identifying any defects attributable to the Proposed Development's construction, the undertaker would be required to submit details for remediating the identified defects. I consider that the amendments that have been made to the wording of R9(2)(c) were necessary and have addressed what would otherwise have been an uncertainty about the enforcement of this part of R9.

Requirement 11 – Construction hours

7.3.37. In relation to R11 ExQ1.6.7 [PD-007] sought the views of the Applicant and NLC about the need for the inclusion of the 'tailpiece' phrase *"… unless otherwise agreed by the local planning authority"*. NLC commented that the tailpiece phrase should not be included in any made DCO [REP2-027]. The Applicant took the contrary position, submitting that the retention of the tailpiece phrase was acceptable and would

permit variations to be agreed with NLC in response to unforeseen circumstances that might have implications for undertaking the works during the permitted construction hours [REP2-027].

7.3.38. In ExQ2.6.10 [PD-010] I returned to this matter and requested the Applicant to explain why the tailpiece phrase was necessary given that sub-paragraphs 2 and 3 would permit variations to the standard construction hours to allow emergency works to proceed, in effect an accommodation for unforeseen circumstances. The Applicant responded that the tailpiece phrase would allow activities that were not necessarily unforeseen, such as continuous concrete pours to be undertaken, and which would not arise because of emergencies.

7.3.39. In the ESRA to the dDCO [PD-014] I indicated that I considered that the tailpiece phrase was unnecessary and should be deleted to aid R11's precision. The Applicant indicated acceptance to that deletion in [REP7-011] and that change was incorporated into the final dDCO [REP7-003].

Requirement 13 -Archaeology

7.3.40. NLC in its Local Impact Report (LIR) [REP2-026] raised some concerns about how the mitigation for the Proposed Development's effects on archaeology would be secured. Responding to NLC's LIR the Applicant made various commitments in [REP3-014], expanding on the archaeological mitigation measures stated in the cultural heritage chapter of the ES [APP-065], and explained that those commitments would be addressed through the submission and approval of a written scheme of investigation.

7.3.41. Through the asking of ExQ2.6.11 [PD-010] and an oral question during ISH2 [EV-019] I sought clarification about the mechanism within the dDCO for securing the delivery of the Applicant's archaeological commitments. The discussion of this matter at ISH2 resulted in the Applicant's agreement to submit a freestanding AMP. That culminated in the Applicant's submission of a freestanding AMP [REP6-018] and the making of revisions to R13 in the dDCO to secure compliance with the provisions of the AMP.

7.3.42. I consider the existence of the freestanding AMP and the related revised wording of R13, including some further refinements made to the text in the final dDCO [REP7-003], would adequately secure the safeguarding of the archaeological interests of the Order Limits.

Requirement 14 – Protected species

7.3.43. In the version of the dDCO submitted at Examination D2 [REP2-003] some revisions were made to R14 to clarify that no works, including site preparation works, would be commenced prior to final pre-construction surveys for protected species having been undertaken and, if necessary, a scheme of mitigation having been approved by NLC. The revisions made to R14 have remained in the subsequent versions of the dDCO submitted during the Examination, including the final version [REP7-003].

7.3.44. I consider that the final wording for R14 would secure the necessary safeguarding for protected species present within the Order Limits or likely to be affected by the Proposed Development.

Requirement 15 – Operational noise

7.3.45. NLC in paragraph 8.4 of its LIR [REP2-026] promoted the inclusion of an operational noise R within any made DCO. The R suggested by NLC providing for the submission of details of plant and equipment to be approved prior to its submission. The purpose of such a R being to ensure that noise arising from the operation of plant, such as the BESS, substation, inverters and transformers would not cause noise disturbance. That being in the context of a detailed design for the Proposed Development still to be finalised and the Applicant's noise assessment [REP2-014] identifying a need for noise mitigation being provided in association with the installation of plant in some locations within the Order Limits.

7.3.46. The Applicant added an operational noise R, R15, in the D3 version of the dDCO [REP3-003a]. Under the provisions of R15 the Proposed Development could not become operational until an 'operational noise assessment' had been submitted to and approved by NLC. The purpose of the operational noise assessment being to demonstrate that the solar park, inclusive of any necessary mitigation, would operate with noise levels that complied with the levels identified in the Applicant's noise impact assessment [REP2-014].

7.3.47. I consider the inclusion of this R15 within any made DCO would ensure that the Proposed Development would have levels of operational noise that would not be harmful to the living conditions for nearby residents, including the owners and occupiers of Fennswood. I therefore consider that R15 is necessary and suitably worded.

7.3.48. The addition of what was a new R15 at D3 meant that the Rs that had previously been numbered R15 to R17 were renumbered as R16 to R18 in the D3 version of the dDCO [REP3-003a] and that has remained the case in all subsequently submitted versions, including the final version [REP7-003].

Schedule 2 Part 2 – Procedure for the discharge of Requirements

7.3.49. At ISH1 [EV-011] I raised a concern about the cross referencing to "Part 2" in paragraphs 19, 20 and 21[84] in Part 2 of Schedule 2 of the originally submitted version of the dDCO [APP-045]. That was because those references appeared to be to the Rs contained in Part 1 of Schedule 2 of the dDCO. That matter in part being allied to a concern I

[84] Now paragraphs 20, 21 and 22 in the final dDCO [REP7-003] that renumbering arising from the addition of an additional Requirement in Part 1 of Schedule 2

had raised during ISH1 about the need to refer to "discharging authority" in paragraph 18[85] (Interpretation) of Part 2 of Schedule 2 of the dDCO. That being because it appeared that NLC, as the only local planning authority (LPA), would have the sole responsibility for discharging the proposed Rs in Part 1 of Schedule 2 of the dDCO.

7.3.50. By the time ISH2 was held the Applicant had submitted a copy of the made DCO for the Cleve Hill solar park [e-page 22 onwards in REP1-008] as an example of a past precedent concerning an unrelated matter. I put to the Applicant at ISH2 that it appeared when the wording of Part 2 of Schedule 2 of the dDCO[86] was compared with the three part, First Schedule in Cleve Hill's made DCO that some 'cutting and pasting' of wording from the latter into the former had been undertaken making it difficult to follow the provisions of this part of the Applicant's dDCO. The Applicant accepted that the references to Part 2 in paragraphs 19 to 21 had been in error and did not fit with Schedule 2's intended structure in the dDCO and that the references should have been to Part 1. This error was corrected when the revised version of the dDCO was submitted at D4 [REP4-005].

7.3.51. The dDCO under paragraph 21[87] of Part 2 of Schedule 2 as first submitted [APP-045] included a provision whereby the undertaker would have been able to make appeals to the SoSBEIS following the issuing of notices or consents by NLC respectively under s60 and s61 of the Control of Pollution Act 1974 (CPA1974). However, the Applicant did not seek to disapply or modify the provisions of CPA1974 under Art 6 of the dDCO [APP-045].

7.3.52. At ISH1 [EV-011] I raised a concern with the Applicant and NLC about the legitimacy of seeking to introduce an appeal mechanism in relation to any consents that might be issued pursuant to s61 of CPA1974, when the procedure for applying for such consents did not come within the scope of any of the proposed Arts or Rs in the dDCO. The Applicant submitted that the inclusion of an appeal mechanism for any consent issued pursuant to s61, would not amount to a partial disapplication of CPA1974, citing the inclusion of such a provision in the made Cleve Hill DCO [e-page 59 in REP1-008[88]].

7.3.53. The applicant further submitted that bringing s61 appeals within the scope of any made DCO would be compatible with NSIP regime providing a comprehensive mechanism for the discharge of Rs and any other related consents [EV-011 and REP1-008]. At ISH1 NLC queried what the implications would be for remitting appeals to the magistrates' court

[85] This became paragraph 19 in the versions of the dDCO submitted at D4 to D7 inclusive
[86] Ie that contained in APP-045, REP1-003, REP2-003 and REP3-003
[87] Now paragraph 22 in the final dDCO [REP7-003]
[88] Paragraph 24(1)(c) in Part 3 of Schedule 1 on page 37 of the DCO [e-page 59 in REP1-008]

following the dismissal of appeals concerning s60 notices or s61 consents under paragraph 21[89] of Part 2 of Schedule 2 of the dDCO.

7.3.54. ExQ1.6.11 [PD-007] sought further comments on the appropriateness of appeals concerning s60 and s61 of CPA1974 being brought within the provisions of a made DCO in this instance. NLC expressed the view that what was being sought by the Applicant would be an *"unnecessary duplication"* of the appeal procedure available via the magistrates' court and would hinder NLC's ability to take expedient action to address noise during the Proposed Development's construction phase [REP2-027]. In responding to ExQ1.6.11 NLC reiterated its concern about what the interrelationship would be between dismissed appeals arising out of the mechanism proposed for inclusion in the dDCO and the procedure available in the magistrates' court.

7.3.55. The Applicant's response to ExQ1.6.11 [REP2-022] was that the undertaker would either appeal under the procedure in any made DCO or directly to the magistrates' court. The Applicant further submitted in [REP2-022] that if an appeal was made under the DCO the resulting decision would be final and binding under paragraph 21(9)[90] of Part 2 of Schedule 2 of the dDCO, preventing the matter being brought before the magistrates' court at a later stage if an appeal had been dismissed. The Applicant's interpretation of the circumstances, following a dismissed appeal under the DCO, would appear to have meant that the undertaker and/or its contractor(s) could not be fined for breaches of either s60 notices or s61 consents.

7.3.56. During ISH2 [EV-019] and in combination with my prior asking of ExQ2.6.15 [PD-010], I sought further views from the Applicant and NLC about the appropriateness of appeals concerning CPA1974 being brought within the provisions of any made DCO. NLC maintained its preference for any appeals under the CPA1974 not being brought within the appeal mechanism proposed in the dDCO. The Applicant agreed to remove that provision, as recorded in its response to ExQ2.6.15 [REP4-018]. The versions of the dDCO submitted at D4 and thereafter, including the Applicant's final dDCO [REP7-003], show the removal of the appeal mechanism for s60 and s61 of the CPA1974. My concern in this regard has been resolved as part of the application's Examination.

7.3.57. In the ESRA to the dDCO [PD-014] I suggested the deletion of paragraph 22(10) in Part 2, Schedule 2 of the dDCO [REP6-003]. That paragraph sought to provide the discharging authority with the ability to confirm any appeal determinations made by an appointed person in writing in an identical form to the determination issued by the appointed person. However, as I have outlined above, paragraph 22(9) states that any appeal determination made by an appointed person would be final and binding. Given that I considered paragraph 22(10) to be unnecessary, hence my suggestion that it should be deleted. The

[89] Now paragraph 22 in the final dDCO [REP7-003]
[90] Now paragraph 22(9) in the final the dDCO [REP7-003]

Applicant has accepted that change being made and it is reflected in the final dDCO [REP7-003].

7.3.58. The only other matter of concern to me relating to the drafting of Part 2 of Schedule 2 of the dDCO [REP7-003] relates to the need to refer to *"discharging authority"* in paragraphs 20 to 22 and thus provide an interpretation (definition) for that term in paragraph 19. Paragraph 19's sole purpose being to provide an interpretation for "discharging authority" and it states:

"In this Part of this Schedule, "discharging authority" means anybody responsible for giving any consent, agreement or approval required by a requirement included in Part 1 of this Schedule, or for giving any consent, agreement or approval further to any document referred to in any such requirement."

7.3.59. This was a matter that I raised with the Applicant at various stages during the Examination. My views on this are best encapsulated in my comments included in the ESRA to the dDCO [PD-014]. I am of the view that references to discharging authority in Part 2 of Schedule 2 are unnecessary because the only authority, organisation or body that would be responsible for discharging the Rs included in Part 2 of Schedule 2 would be the LPA, namely NLC, a term that is defined in Art 2 (Interpretation) of the dDCO.

7.3.60. The Applicant in responding to [PD-014] agreed that the LPA would be the only authority responsible for discharging a made DCO's Rs. However, the Applicant went onto submit that NLC might not be the only party required to issue consents under the Rs [REP7-011]. In that regard the Applicant has referred to the likes of Natural England, Humberside Fire and Rescue Service and the Health and Safety Executive, who while not expressly being a discharging authority for the purposes of any of the Rs may nevertheless need to give approvals to activities undertaken pursuant to documents submitted under the Rs, such as the CEMP or the Landscape and Ecological Management Plan. While that might be the case any approvals required from the likes of Natural England, Humberside Fire and Rescue Service and the Health and Safety Executive would be pursuant to legislation that the Applicant has not sought to have disapplied under Article 6 of the dDCO.

7.3.61. I am not persuaded that any need to obtain consents or approvals under the circumstances identified by the Applicant in [REP7-011] provides a justification for the term discharging authority being used in Part 2 of Schedule 2 of a made dDCO. In my view the purpose of Part 2 of Schedule 2 is to simply identify the mechanism by which the undertaker and NLC, as the LPA, would go about discharging the Rs stated in Part 1 of this schedule. Accordingly, in the ExA's rDCO I have deleted all references to discharging authority, replaced those with 'local planning authority', deleted paragraph 19 and renumbered the retained paragraphs in Part 2 as 19 to 21.

Schedule 6 – Protective Provisions

Part 2 – Anglian Water

7.3.62. With respect to Part 2 of Schedule 6 (protective provisions for Anglian Water's infrastructure) revisions were made to the dDCO at Examination D1 [REP1-003]. Those revisions being made by the Applicant further to an agreement being reached between it and Anglian Water Services Limited (AWSL) in relation to the use of bespoke wording, as explained in paragraph 6.13 in the D1 update of the EM [REP1-005]. The revisions made to the dDCO post-date AWSL and the Applicant entering into a Statement of Common Ground (SoCG) [PDA-017].

7.3.63. Other than the Relevant Representation made by AWSL [RR-004] this company did not engage with the Examination. The Applicant's final Statement of Commonality [REP8-004] records no matters outstanding between it and AWSL. I therefore consider it reasonable to assume that the AWSL is content with the protective provisions set out in Part 2 of Schedule 6 of the dDCO [REP7-003].

Part 3 – Operators of electronic communications code networks (telecommunications undertakers)

7.3.64. At D1 the Applicant added a third part to Schedule 6, setting out protective provisions for telecommunications undertakers. That revision being made at the request of Openreach, as explained at paragraph 6.14 of the EM [REP7-005]. Openreach has confirmed that it is in agreement with the protective provisions stated in Part 3 of Schedule 6 of the dDCO [REP1-025].

Part 4 – Northern Powergrid (Yorkshire) PLC (NPG)

7.3.65. Further to negotiations between the Applicant and NPG protective provisions in favour of the latter, as set out in Part 4 of Schedule 6, were added to the final dDCO [REP7-003]. NPG and the Applicant signed a SoCG on 30 September 2021 [REP8-003] and it records that all matters were agreed between both parties, with the agreed proactive provisions having been appended to the SoCG.

OTHER MATTERS

7.3.66. The owners and occupiers of Fennswood (Fennswood) in their post Open Floor Hearing 1 written submissions [REP4-033] have requested that the wording of any made DCO should specify firstly the duration of the construction period and second key phasing dates by reference to week numbers from the commencement of the works. Fennswood have submitted that specifying those matters in a made DCO would preclude the construction works taking longer than the eleven months currently envisaged by the Applicant and used to assess the Proposed Development's construction impacts.

7.3.67. The Applicant has submitted that it is not agreeable to a made DCO specifying phasing dates [REP5-022]. That is because the phasing would only be ascertainable following the granting of a consent when the detailed design would be finalised, solar panels would be procured and contractors would be appointed. The Applicant has therefore submitted that it would be unreasonable for a made DCO to specify phasing dates, with such a provision not satisfying the tests for imposing planning conditions, as referred to in paragraph 56 of the National Planning Policy Framework 2021 (NPPF).

7.3.68. I agree with the Applicant that as the detailed design for the Proposed Development has not been finalised and neither the solar panels and other plant and equipment have been procured nor has a contractor been appointed, that seeking to specifying phasing dates in a made DCO would be unreasonable. I also consider that specifying the overall duration of the construction period in a made DCO would be likely to be impractical. That is because of uncertainties concerning the supply chain and inclement weather, which would be matters beyond the control of the Applicant once the construction works had been commenced. I also consider that the construction impacts that the Applicant has identified, reported on in Chapter 4 in this Report, would not be of such significance as to warrant any made DCO specifying either the overall duration for the works or phasing dates.

7.4. MATTERS SUBJECT TO CONTENTION

7.4.1. At the close of the Examination there was one matter relating to the dDCO's drafting that remained in contention. That matter being the need to refer to "discharging authority" in Part 2 of Schedule 2. For the reasons given in paragraphs 7.3.58 to 7.3.61 above, I consider that in Part 2 of Schedule 2 of any made Order there would be no need to refer to discharging authority, with it only being necessary to refer to the LPA, a term that is defined in Art 2 (Interpretation) of the dDCO.

7.4.2. I therefore consider that paragraph 19 in Part 2 of Schedule 2 of the dDCO [REP7-003] should be deleted. In paragraph 7.3.61, I have explained the consequential changes for the dDCO arising from paragraph 19's deletion. The rDCO in Appendix D of this Report includes all of my recommended changes for Part 2 of Schedule 2.

7.5. LEGAL AGREEMENTS AND OTHER CONSENTS

7.5.1. The Applicant together with the owners of the Order Limits have entered into a planning obligation with NLC pursuant to s106 of the Town and Country Plan Act 1990, as amended by s174 of the PA2008 (the s106 agreement) [REP6-016]. The planning obligation would require the owners of the Order Limits to pay a community fund contribution of £250,000 to NLC within 28 days of the first exportation of electricity to the grid. The community fund would be used for the purposes of improving community facilities in the parishes of Appleby and Broughton and would be administered by NLC on the parishes' behalf.

7.5.2. Paragraphs 6.10 to 6.17 of NLC's "Planning for Solar Photovoltaic (PV) Development" Supplementary Planning Document of 2016 (PSPSPD) [REP4-025] provide guidance on community benefits in relation to solar generation developments. Paragraph 6.12 of the PSPSPD explains that the provision of community funding typically does not meet the criteria for planning obligations. The criteria for planning obligations being stated in Regulation 122 of The Community Infrastructure Levy Regulations 2010 (repeated in paragraph 57 of the NPPF) are as follows:

"(2) A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is —

a. *necessary to make the development acceptable in planning terms;*
b. *directly related to the development; and*
c. *fairly and reasonably related in scale and kind to the development.*

7.5.3. Policy B of the PSPSPD advises that where developers seek to provide community funds their *"… provision cannot be considered as part of the planning application decision making process"* [page 11 in REP4-025].

7.5.4. A contribution of £250,000, secured via the executed s106 agreement [REP6-016], would provide community benefits within the parishes of Appleby and Broughton. However, I consider the making of that contribution would not be necessary to make the Proposed Development acceptable in planning terms. That is because the Proposed Development of itself would not be burdensome for community facilities in the parishes of either Appleby or Broughton. I therefore consider that the existence of the planning obligation included in the s106 agreement would not constitute a reason for making a DCO in this instance and therefore does not benefit from any policy support stated in the NPPF or the PSPSPD.

7.5.5. I therefore consider that for the purposes of decision making in this instance, no weight should be attached to the planning obligation that has been entered into by the Applicant, the owners of the Order Limits and NLC.

7.5.6. The Applicant has explained in the EM [REP7-005] that no compulsory acquisition powers are being sought because they are unnecessary, with the Order Limits being land over which the Applicant has an option to lease or acquire. The option agreement is a confidential document and has not been submitted by the Applicant. The exercising of that option to gain control of the Order Limits for the purposes of implementing any development authorised by a made DCO is a matter for the Applicant and the landowners to finalise. In the event of that not happening, the development authorised by any made DCO would be unlikely to come forward, given that compulsory acquisition powers would be unavailable to the Applicant.

7.5.7. The Applicant has secured a grid connection offer with NPG, as explained in paragraph 2.9 of the EM [REP7-005]. No documentation concerning the grid connection that has been secured has been provided, presumably for reasons of commercial confidentially. The fact that NPG

has made no representations during the Examination about the availability of a grid connection suggests that it has no concerns in that regard.

7.6. NUISANCE

7.6.1. Art 7 of the dDCO [REP7-003] proposes to provide a defence to proceedings in respect of statutory nuisance arising from the generation of noise.

7.6.2. Regulation 5(2)(f) of The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the APFP) requires that an application must be accompanied by *"…. a statement whether the proposal engaged one or more of the matters set out in section 79(1) […] of the Environmental Protection Act 1990 [EPA1990] and, if so, how the applicant proposes to mitigate or limit them."* That obligation has been discharged in the Statement of Statutory Nuisance (SSN) submitted with the application [APP-052].

7.6.3. The SSN reviews the scope of statutory nuisance potentially arising from the Proposed Development. It identifies the potentially engaged areas of statutory nuisance as follows:

- any premises in such a state as to be prejudicial to health or a nuisance (s79(1)(a) EPA1990);
- any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance (s79(1)(d) EPA1990);
- any accumulation or deposit which is prejudicial to health or a nuisance (s79(1)(e) EPA1990);
- artificial light from premises (s79(1)(fb) EPA1990); and
- noise emitted from premises so as to be prejudicial to health or a nuisance and noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street (s79(1)(g) and (ga) EPA1990).

7.6.4. The remainder of this Section considers the application in the light of the policy stated in paragraphs 4.14.1 to 4.14.3 of National Policy Statement (NPS) EN-1 in respect of statutory nuisance, as important and relevant matters.

7.6.5. The content of proposed Art 7 and the SSN of themselves were not matters of contention during the Examination. However, concerns relating to the emission of noise and dust were raised by Fennswood in the context of how those matters had been addressed by the Applicant in its ES. I have reported on those concerns in Chapter 4 of my Report.

7.6.6. Having regard to the matters covered in the SSN, I consider that the Applicant has appropriately identified the scope for potential nuisance sources for the Proposed Development's construction, operational and decommissioning phases. The Applicant has provided appropriate mitigation for foreseeable forms of nuisance and secured that in the

dDCO through the proposed Rs and references to the ES and the oCEMP [REP6-006], oCTMP [APP-105], outline Landscape and Ecology Plan [REP6-012] and outline Decommissioning Strategy [REP6-008].

7.6.7. The SSN in paragraph 4.3 concludes:

"The embedded design and additional mitigation measures identified within the ES, will prevent impacts which have any potential to result in statutory nuisance under s79(1) of the EPA 1990. These measures are secured by requirements contained in the draft DCO, which cover relevant matters."

7.6.8. I accept that the risk of noise nuisance occurring has been reduced to the extent reasonably feasible and will be negligible.

7.6.9. The defence to proceedings in respect of statutory nuisance in Art 7 of the dDCO is of a type that is commonly provided for NSIPs. Necessary steps to reduce the risk of nuisance events have been taken and the proposed provision in Art 7 would not be a shield against the consequences of poor practice. It is an appropriate provision against circumstances where unforeseen but unavoidable nuisance arose. Having had regard to NPS EN-1, insofar as it is an important and relevant matter in this instance, and in the light of the information in the SSN, the proposed mitigation to be secured through any made DCO for this NSIP, the ExA recommends the proposed defence provision set out in Art 7 of the dDCO.

7.7. CONCLUSIONS

7.7.1. I have taken account of all the iterations of the dDCO, as submitted by the Applicant, from the originally submitted one [APP-045] through to the final version (version G) [REP7-003] and considered the degree to which the Applicant's final version has addressed outstanding matters. One matter, the deletion of the term discharging authority and its replacement with local planning authority in Part 2 of Schedule 2 is the subject of a recommendation in this Chapter and is included in the rDCO in Appendix D of this Report.

7.7.2. In relation to R8 (CEMPs) I have recommended a minor change to correct a drafting oversight in the dDCO so that reference is made to the submission of a CEMPfB for approval by NLC.

7.7.3. In relation to the definition for the authorised development in Schedule 1 of any made DCO, within the rDCO I have recommended that to the phrase *"gross electrical output of over 50 megawatts"* the words 'alternating current' be added. That being to ensure that any authorised development implemented under the provisions of a made DCO would meet the generating threshold of 50MW for NSIPs, as stated in s15(2) of the PA2008.

7.7.4. In relation to the definition for the authorised development in Schedule 1 of any made DCO and the power rating of the solar panels that would be

installed under Work No.1, while I have not recommended a textural change in the rDCO, I have suggested that the SoSBEIS may wish to satisfy themselves as to whether it would be appropriate for a minimum solar panel rating to be specified. That being in the context of seeking to ensure that the Proposed Development would represent the most efficient use of land possible, given the advances in solar panel technology that the Applicant has advised could arise during the procurement period for the Proposed Development.

7.7.5. Taking all matters raised in this Chapter and all matters relevant to the DCO raised in other parts of this Report fully into account, if the SoSBEIS is minded to give consent to the Proposed Development, the ExA recommends a DCO be made in the form set out in Appendix D. The exception to that being the possible inclusion of a minimum solar panel rating in Schedule 1, should the SoSBEIS consider that to be appropriate.

8. SUMMARY OF FINDINGS AND CONCLUSIONS

8.1. INTRODUCTION

8.1.1. This Chapter summarises the Examining Authority's (ExA) conclusions in this Report as a whole and sets out our recommendation to the Secretary of State for Business, Energy and Industrial Strategy's (SoSBEIS).

8.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS

8.2.1. Solar generating stations do not come within the scope/coverage (coverage) for either the Overarching National Policy Statement for Energy (EN-1) (NPS EN-1) or the National Policy Statement for Renewable Energy Infrastructure (EN-3) (NPS EN-3). Accordingly, for the purposes of the decision making neither NPS EN-1 nor NPS EN-3 have effect with respect to the proposed solar generating station.

8.2.2. As part of the Proposed Development the Applicant is proposing to install a battery electrical storage system (BESS) with a candidate design of 90 megawatt (MW). However, while the proposed BESS would be a generating station of more than 50MW in its own right, it is being promoted as part of the Proposed as "associated development" under the provisions of s115 of the Planning Act 2008 (PA2008). That is because BESSs, irrespective of their capacity, no longer require consent as generating stations under the Nationally Significant Infrastructure Projects (NSIP) regime, further to an amendment made to the PA2008 that came into force on 2 December 2020[91]. BESSs do not come within the coverage for either NPS EN-1 or NPS EN-3 and those NPS therefore do not have effect for the purposes of the consideration of the proposed BESS.

8.2.3. The Proposed Development also includes the provision of a substation, as part of the associated development forming part of the Proposed Development. Substations come within the coverage of the National Policy Statement for Electricity Networks Infrastructure (EN-5) (NPS EN-5). However, as the proposed substation would be incidental to the operation of the proposed solar generating station, I consider that any compliance with NPS EN-5 should not be viewed upon as being determinative in this instance.

8.2.4. Given the situation with NPS EN-1, NPS EN-3 and NPS EN-5 I have outlined above, the Examination for this application was undertaken on the basis of s105 rather than s104 of the PA2008 being applicable. That is the SoSBEIS's decision making for this application should be on the

[91] The Infrastructure Planning (Electricity Storage Facilities) Order 2020

basis of the designated NPSs not having effect. Under s105(2) of the PA2008 the SoSBEIS *"must have regard to"*:

- any local impact report (LIR);
- any matters prescribed in relation to development of the description to which the application relates; and
- any other matters considered to be both important and relevant to the SoSBEIS's decision.

8.2.5. I conclude that NPS EN-1 and NPS EN-5 are both important and relevant. I am also of the view that the policy included in the National Planning Policy Framework 2021 (the NPPF) is also important and relevant to the determination of this application. There are also a number of policies within the North Lincolnshire Local Plan of 2003 and the North Lincolnshire Core Strategy 2011, which I consider are important and relevant to the SoSBEIS's decision making and I have assessed the Proposed Development's compliance with those policies in earlier chapters of this report, most particularly Chapter 4.

8.2.6. Additionally, on 6 September 2021 the Government commenced a consultation on reviewed versions for five of the energy NPSs. That consultation has included the issuing of draft versions for revisions to NPS EN-1 (dEN-1), NPS EN-3 (dEN-3) and NPS EN-5 (dEN-5). Given the policy coverage in dEN-1, dEN-3 and dEN-5, I consider that emerging policy is also an important and relevant matter for the SoSBEIS's decision making in this instance. Given that, my written Examination question ExQ4.1.1 gave the Applicant and all other Interested Parties (IPs) the opportunity to comment on any implications the publication of dEN-1, dEN-3 and dEN-5 might have had for the cases they had made prior to that emerging policy's publication. In preparing this Report I have had regard to the comments made by IPs in reply to ExQ4.1.1.

8.2.7. There is other Government policy concerning energy generation, most notably the "Energy white paper: Powering our net zero future", published on 14 December 2020, that is capable of being relevant to the determination of this application. Given that dEN-1, dEN-3 and dEN-5 are: NSIP specific; consistent with the policy included in, amongst other things, the white paper; and were so recently published, I have placed more emphasis on the emerging policy included in dEN-1, dEN-3 and dEN-5, as opposed to the policy included in the white paper or any of the other much older energy sector policy documents published by the Government that the Applicant has drawn attention to. In that context I consider it is both important and relevant that in dEN-1 and dEN-3 the Government has clearly signalled its intention for large scale solar generation to become the subject of policy coverage in reviewed versions of NPS EN-1 and NPS EN-3.

8.2.8. I am in no doubt that the Proposed Development is broadly consistent with the objectives stated in NPS EN-1, NPS EN-3, dEN-1 and dEN-3 for urgently producing more electricity, particularly from renewable energy sources, so as to reduce greenhouse gas emissions and combat the effects of climate change. The Proposed Development is also consistent

with the policies contained in the NPPF and the development plan that are supportive of energy generation from renewable energy sources. That in principle extant and emerging policy support for the Proposed Development weighs in favour of it being consented.

8.2.9. When regard is paid to the Applicant's predictions for the likely amount of electricity the Proposed Development would contribute to meeting the UK's need for electricity, I consider that is something that weighs moderately in favour of consent being given for this NSIP.

8.2.10. However, in section 4.9 and Chapter 6 above I have expressed reservations as to whether the Proposed Development would promote an effective/efficient use of land, having regard to the policy stated in the NPPF, most particularly section 11 – *"Making effective use of land"*.

8.2.11. In parts of the application documentation, most particularly Chapter 4 of the Environmental Statement (ES), and generally in its written and oral Examination submissions, the Applicant has been very keen to stress that solar panel technology is currently advancing rapidly. Given that the Applicant has submitted that there would be scope for solar panels to be installed with a power rating of higher than 420 watts (w) (the basis for the candidate design for the Proposed Development), namely panels rated over 500w. In that regard the Applicant has submitted that the candidate design considered in the ES represents the worst case physical parameters (the Rochdale Envelope) for the Proposed Development and to make the most of the advances solar panel technology it would be possible to increase the generating output, by deploying higher rated solar panels, while remaining within the identified Rochdale Envelope.

8.2.12. However, the Applicant's reply to my fourth written question ExQ4.1.2 portrays an element of contradiction with respect to the intention to capitalise on the advances in solar panel technology. In that reply the Applicant commented it might opt to use lower rated solar panels. Based on the generating predictions for 420w or 535w solar panels provided during the Examination, and with the same land take, reliance on 420w panels would generate around 25% less electricity than 535w panels.

8.2.13. On the basis of the Applicant's comparative generation predictions, I am concerned that the installation of 420w solar panels, as part of Work No.1, would not be an efficient use of land. That is because the Applicant's predictions clearly demonstrate that utilising higher rated panels would make the Proposed Development more productive and thus a significantly more effective use of land. I therefore consider that reliance on the use of lower rated panels would cause some conflict with section 11 of the NPPF and would serve to diminish the moderate weight I have attributed to the contribution the Proposed Development would make to meeting the UK's need for electricity.

8.2.14. Increasing the generating output of the Proposed Development, while remaining within its Rochdale Envelope, is something that the Applicant has submitted would be possible, and in my view would make this proposal a more effective use of the Order Limits. Should the SOSBEIS

be in agreement about that, they may wish to satisfy themselves that any development authorised by a made Development Consent Order (DCO) would maximise both the generation of electricity and the effective use of land. My concern in this regard could potentially be addressed if any made DCO was to specify a minimum power rating for the installed solar panels and that is something which the SoSBEIS may wish to consult the Applicant about.

8.2.15. Allied to the consideration of whether or not the Proposed Development would amount to an effective use of land, the SoSBEIS may also wish to consult with the Applicant to establish to what extent, if any, it has relied on the concept of "overplanting"[92] in designing the Proposed Development. Overplanting be a design response to solar panel efficiency degradation over time. If the Applicant has placed little or no reliance on overplanting that would add further to my concern that implementing the candidate design would not be an efficient use of land. In that regard from what is stated in the application documentation and the submissions made following the publication of dEN-3, it appears that the Applicant has not relied upon overplanting.

8.2.16. The Proposed Development would give rise to some adverse effects for agricultural land and for users of public footpath 214, the latter being in terms of the visual impact for users of that footpath. However, I consider those adverse effects either alone or in combination would be insufficient to outweigh the electricity generation benefits that would arise from the Proposed Development.

8.2.17. The Proposed Development has the potential to have adverse effects for the historic environment, ecology, transport, noise and air quality. However, those adverse effects are capable of being addressed by various mitigation measures, which would be secured through requirements included in the ExA's recommended DCO. With the provision of the necessary mitigation, I consider those potentially adverse effects would become neutral in the overall planning balance and in those respects the Proposed Development would accord with the relevant legislative and policy requirements and would also address matters raised by North Lincolnshire Council in its LIR.

8.2.18. Setting aside the matter of whether or not the Proposed Development would be an efficient use of land, in all other respects I am content that there are no important and relevant matters that would individually or collectively outweigh the benefits arising from the Proposed Development's generation of electricity. I also consider that there are no adverse impacts alone or cumulatively, or in-combination with other projects and plans, that would diminish the weight attributable to the Proposed Development's benefits.

8.2.19. The SoSBEIS is the competent authority for the purposes of making assessments under the Habitats Regulations. As explained in Chapter 5

[92] As referred to in paragraph 4.9.52 in dEN-3

above, on the basis of the submitted evidence I consider the Proposed Development would not result in any likely significant effects, either alone or in combination with other projects or plans, for the Humber Estuary Special Area of Conservation, the Humber Estuary Special Protection Area and the Humber Estuary Ramsar site.

8.2.20. I have had regard to the Public Sector Equality Duty (PSED) throughout the Examination, including the method by which hearings and site inspections were undertaken, and in producing this report. The Proposed Development does not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. On that basis, I consider there is no breach of the PSED.

8.3. RECOMMENDATION

8.3.1. For all of the above reasons, and in accordance with the findings and conclusions on important and relevant matters set out in this Report, the ExA recommends, on balance, that the SOSBEIS, makes the Little Crow Solar Park Development Consent Order in the form recommended at Appendix D to this Report or with the addition of references to a minimum solar panel rating in Schedule 1 of any made Order, should the SoSBEIS consider that to be appropriate.

APPENDICES

APPENDIX A: THE EXAMINATION

Application by INRG Solar (Little Crow) Limited for an Order Granting Development Consent for the Little Crow solar park Project

The Examining Authority (ExA) is under a duty to **complete** the examination of the application by the end of the period of six months beginning with the day after the close of the Preliminary Meeting.

Item	Matters	Due Dates
1	**Preliminary Meeting (PM)**	**Tuesday 20 April 2021**
2	**Issue Specific Hearing (ISH) 1 on the Environmental Statement, general matters and the draft Development Consent Order**	**Tuesday 20 and Wednesday 21 April 2021**
3	**Issue by the ExA of:** The Examination Timetable **Publication by the ExA of:** First round of written questions (ExQ1)	**Tuesday 27 April 2021**
4	**Deadline 1** For receipt by ExA of: • Further information from the Applicant and North Lincolnshire Council as raised during the ISH1 and published in the Action Points from ISH1 • Comments on any updates to Application documents submitted by the Applicant before the PM • Comments on Relevant Representations (RR) • Written Representations (WRs) • Summaries of any WRs exceeding 1500 words • Post ISH1 submissions, including written submissions of oral cases given during that hearing • Updated Statement of Commonality for Statements of Common Ground (SoCG) • An updated version of the draft Development Consent Order (dDCO), following its discussion at ISH1 and to be submitted in an	**Not later than 23:59 on Monday 10 May 2021**

	editable format with any revisions to the preceding version shown using tracked changes • An updated Index to the Application documents to be submitted by the Applicant • Notification by Statutory Parties of wish to be considered as an Interested Person (IP) by the ExA • Submission by the Applicant and IPs of suggested locations for the ExA to include in Unaccompanied and/or Accompanied Site Inspections, including the reason for nomination and issues to be observed; information about whether the location can be accessed using public rights of way or what access arrangements would need to be made; and the likely time requirement for the visit to that location (if not covered within an Unaccompanied Site Inspection) • Notification of wish to speak at any future ISHs • Notification of wish to speak at an Open Floor Hearing (OFH) • Responses to any further information requested by the ExA • Any requests from the ExA for information under Rule 17 of the Examination Procedure Rules 2010 (if required)	
5	**Deadline 2 (D2)** Deadline for receipt by the ExA of: • Comments on WRs and responses to comments on RRs • Responses to ExQ1 • Local Impact Report(s) (LIR) • An updated Statement of Commonality for SoCGs • Update on the preparations of Statements of SoCG requested by the ExA • An updated Index to the Application documents submitted by the Applicant • Applicant's revised dDCO to be submitted in an editable format with any revisions made to the preceding version shown using track changes (if required)	**Not later than 23:59 on Monday 24 May 2021**

	• Comments on any amendments made to the dDCO by the Applicant at D1 • Comments on any additional information/submissions received by D1 • Responses to any further information requested by the ExA • Any requests from the ExA for information under Rule 17 of the Examination Procedure Rules 2010 (if required)	
6	**Issue by the ExA of:** Notification of hearings to be held on 29 and 30 June 2021 (if required)	**Friday 28 May 2021**
7	**Deadline 3 (D3)** Deadline for receipt by the ExA of: • Comments on LIR(s) • Comments on responses to the ExQ1 • Comments on any updated SoCG received at D2 • Update on the preparation of SoCG • An updated Statement of Commonality for SoCG • An updated Index to the Application documents submitted by the Applicant • Applicant's revised dDCO to be submitted in an editable format with any revisions shown using tracked changes (if required) • Comments on any amendments made to the dDCO by the Applicant at D2 • Comments on any additional information/submissions received by D2 • Responses to any further information requested by the ExA • Any requests from the ExA for information under Rule 17 of the Examination Procedure Rules 2010 (if required)	**Not later than 23:59 Monday 7 June 2021**
8	**Publication by the ExA of:** • ExA's further written questions (ExQ2) (if required)	**Friday 11 June 2021**
9	**Dates reserved for Hearings** • ISHs (if required)	**Tuesday 29 and**

	• OFH (if required)	**Wednesday 30 June 2021**
10	**Deadline 4 (D4)** Deadline for receipt by the ExA of: • Responses to ExQ2 (if required) • Post-hearing submissions, including written summaries of oral cases made by the Applicant and IPs (if hearings on 29/30 June 2021 are required) • Applicant's revised dDCO to be submitted in an editable format with any revisions to the preceding version shown using tracked changes (if required) • Comments on any amendments made to the dDCO by the Applicant at D3 (if required) • Comments on any additional information/submissions received at D3 • Comments on any updated SoCG received at D3 • Update on the preparation of SoCG • Updated Statement of Commonality for SoCG • An updated Index to the Application documents submitted by the Applicant • Responses to any further information requested by the ExA • Any requests from the ExA for information under Rule 17 of the Examination Procedure Rules 2010 (if required)	**Not later than 23:59 on Wednesday 7 July 2021**
11	**Deadline 5 (D5)** Deadline for receipt by the ExA of: • Comments on responses to ExQ2 • Applicant's revised dDCO to be submitted in an editable format with any revisions to the preceding version shown using tracked changes (if required) • Comments on any additional information/submissions received at D4 • Comments on any amendments made to the dDCO by the Applicant at D4 (if required) • Comments on any updated SoCG received at D4 • Update on the preparation of SoCG • Updated Statement of Commonality for SoCG • An updated Index to the Application documents submitted by the Applicant • Responses to any further information requested by the ExA	**Not later than 23:59 on Monday 9 August 2021**

	• Any requests from the ExA for information under Rule 17 of the Examination Procedure Rules 2010 (if required)	
12	**Issue by the ExA of:** • Notification of Hearings to be held 9/10 September 2021 (if required) **Publication of:** • The ExA's Further Written Questions (ExQ3) (if required)	**Monday 16 August 2021**
12A	**Dates for:** • **Access Required Site Inspection 1 (ARSI1) at Heron Lodge/Fennswood** • **Access Required Site Inspection 2 (ARSI2) of the Order Limits**	**Wednesday 25 August 2021** **and Thursday 26 August 2021**
13	**Deadline 6 (D6)** **Deadline for receipt by the ExA of:** • Responses to the ExA's ExQ3 (if required) • Applicant's revised dDCO to be submitted in an editable format with any revisions to the preceding version shown using tracked changes (if required) • Comments on any amendments made to the dDCO by the Applicant at D5 (if required) • Comments on any additional information/submissions received at D5 • Comments on any updated SoCG received at D5 • Final and signed SoCGs • Updated Statement of Commonality for SoCG • Any executed s106 Agreement • An updated Index to the Application documents submitted by the Applicant • Responses to any further information requested by the ExA • Any requests from the ExA for information under Rule 17 of the Examination Procedure Rules 2010 (if required)	**Not later than 23:59 on Tuesday 31 August 2021**
14	**Issue by the ExA of:** • Any requests for information under Rule 17 of the Examination Procedure Rules 2010 (if required)	**Wednesday 1 September 2021**

	Publication by the ExA of: • Agenda for Hearings to be held 9 and 10 September 2021 (if required) • The Report on the Implications for European Sites (RIES) (if required) • The ExA's proposed Schedule of Changes to the dDCO (if required and if no DCO specific ISH is held on 9 or 10 September 2021)	
15	Dates reserved for Hearings • ISHs (if required) • OFH (if required)	**Thursday 9 and September 10 2021**
16	**Publication by the ExA of:** • The ExA's Further Written Questions (ExQ4) (if required) • The ExA's draft Schedule of Changes to the dDCO (if required and if not issued on 1 September 2021) **Issue by the ExA of:** • Any requests for information under Rule 17 of the Examination Procedure Rules 2010 (if required)	**Friday 10 September 2021** **OR Monday 13 September 2021 if Hearings are held on 9 and 10 September 2021**
17	**Deadline 7 (D7)** Deadline for receipt by the ExA of: • Post-hearing submissions, including written summaries of oral cases made by the Applicant and IPs (if hearings on 9/10 June 2021 are required) • Comments on responses to ExQ3 (if required) • Responses to the ExA's ExQ4 (if required) • Comments on any amendments made to the dDCO by the Applicant at D6 (if required) • Comments on any additional information/submissions received at D6 • Final version of the dDCO to be submitted by the Applicant in both clean and tracked changed forms and in the SI template format, with an SI template validation report • An updated Index to the Application documents submitted by the Applicant • Comments on the ExA's Schedule of Changes to the dDCO published either on 1 or 13 September 2021 (if required)	**Not later than 23:59 on Monday 20 September 2021**

	• Responses to any further information requested by the ExA • Any requests from the ExA for information under Rule 17 of the Examination Procedure Rules 2010 (if required)	
18	**Deadline 8** Deadline for receipt by the ExA of: • Comments on any additional information/submissions received at D7 • Responses to any further information requested by the ExA under Rule 17 (if required)	**Not later than 23:59 on Friday 1 October 2021**
19	Examination closed	**Tuesday 5 October 2021**
20	The ExA is under a duty to complete the Examination of the application by the end of the period of 6 months	**Wednesday 20 October 2021**

APPENDIX B: EXAMINATION LIBRARY

Little Crow Solar Park Examination Library

Updated – 16 December 2021

This Examination Library relates to the Little Crow Solar Park application. The library lists each document that has been submitted to the examination by any party and documents that have been issued by the Planning Inspectorate. All documents listed have been published to the National Infrastructure's Planning website and a hyperlink is provided for each document. A unique reference is given to each document; these references will be used within the Report on the Implications for European Sites and will be used in the Examining Authority's Recommendation Report. The documents within the library are categorised either by document type or by the deadline to which they are submitted.

Please note the following:

- This is a working document and will be updated periodically as the examination progresses.
- Advice under Section 51 of the Planning Act 2008 that has been issued by the Inspectorate, is published to the National Infrastructure Website but is not included within the Examination Library as such advice is not an examination document.
- This document contains references to documents from the point the application was submitted.
- The order of documents within each sub-section is either chronological, numerical, or alphabetical and confers no priority or higher status on those that have been listed first.

EN010101 – Little Crow Solar Park **Examination Library - Index**	
Category	**Reference**
Application Documents As submitted and amended version received before the PM. Any amended version received during the Examination stage to be saved under the Deadline received	APP-xxx
Adequacy of Consultation responses	AoC-xxx
Relevant Representations	RR-xxx
Procedural Decisions and Notifications from the Examining Authority Includes Examining Authority's questions, s55, and post acceptance s51	PD-xxx
Additional Submissions Includes anything accepted at the Preliminary Meeting and correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination including responses to Rule 6 and Rule 8 letters	AS-xxx
Events and Hearings Includes agendas for hearings and site inspections, audio recordings, responses to notifications and applicant's hearing notices	EV-xxx
Representations – by Deadline	
Procedural Deadline A:	PDA-xxx
Deadline 1: For receipt by ExA of: • Further information from the Applicant and North Lincolnshire Council as raised	REP1-xxx

during the ISH1 and published in the Action Points from ISH1 • Comments on any updates to Application documents submitted by the Applicant before the PM • Comments on Relevant Representations (RR) • Written Representations (WRs) • Summaries of any WRs exceeding 1500 words • Post ISH1 submissions, including written submissions of oral cases given during that hearing • Updated Statement of Commonality for Statements of Common Ground (SoCG) • An updated version of the draft Development Consent Order (dDCO), following its discussion at ISH1 and to be submitted in an editable format with any revisions to the preceding version shown using tracked changes • An updated Index to the Application documents to be submitted by the Applicant • Notification by Statutory Parties of wish to be considered as an Interested Person (IP) by the ExA • Submission by the Applicant and IPs of suggested locations for the ExA to include in Unaccompanied and/or Accompanied Site Inspections, including the reason for nomination and issues to be observed; information about whether the location can be accessed using public rights of way or what access arrangements would need to be made; and the likely time requirement for the visit to that location (if not covered within an Unaccompanied Site Inspection) • Notification of wish to speak at any future ISHs • Notification of wish to speak at an Open Floor Hearing (OFH) • Responses to any further information requested by the ExA • Any requests from the ExA for information under Rule 17 of the Examination Procedure Rules 2010 (if required)	
Deadline 2: For receipt by ExA of: • Comments on WRs and responses to comments on RRs	REP2-xxx

• Responses to ExQ1 • Local Impact Report(s) (LIR) • An updated Statement of Commonality for SoCGs • Update on the preparations of Statements of SoCG requested by the ExA • An updated Index to the Application documents submitted by the Applicant • Applicant's revised dDCO to be submitted in an editable format with any revisions made to the preceding version shown using track changes (if required) • Comments on any amendments made to the dDCO by the Applicant at D1 • Comments on any additional information/submissions received by D1 • Responses to any further information requested by the ExA • Any requests from the ExA for information under Rule 17 of the Examination Procedure Rules 2010 (if required)	
Deadline 3: For receipt by ExA of: • Comments on LIR(s) • Comments on responses to the ExQ1 • Comments on any updated SoCG received at D2 • Update on the preparation of SoCG • An updated Statement of Commonality for SoCG • An updated Index to the Application documents submitted by the Applicant • Applicant's revised dDCO to be submitted in an editable format with any revisions shown using tracked changes (if required) • Comments on any amendments made to the dDCO by the Applicant at D2 • Comments on any additional information/submissions received by D2 • Responses to any further information requested by the ExA • Any requests from the ExA for information under Rule 17 of the Examination Procedure Rules 2010 (if required)	REP3-xxx
Deadline 3A: For receipt by ExA of:	REP3A-xxx

• A speaking note(s) from Interested Parties who intend to speak at Open Floor Hearing 1 no later than 16:00 Monday 28 June 2021	
Deadline 4: For receipt by ExA of: • Responses to ExQ2 (if required) • Post-hearing submissions, including written summaries of oral cases made by the Applicant and IPs (if hearings on 29/30 June 2021 are required) • Applicant's revised dDCO to be submitted in an editable format with any revisions to the preceding version shown using tracked changes (if required) • Comments on any amendments made to the dDCO by the Applicant at D3 (if required) • Comments on any additional information/submissions received at D3 • Comments on any updated SoCG received at D3 • Update on the preparation of SoCG • Updated Statement of Commonality for SoCG • An updated Index to the Application documents submitted by the Applicant • Responses to any further information requested by the ExA • Any requests from the ExA for information under Rule 17 of the Examination Procedure Rules 2010 (if required)	REP4-xxx
Deadline 5: For receipt by ExA of: • Comments on responses to ExQ2 • Applicant's revised dDCO to be submitted in an editable format with any revisions to the preceding version shown using tracked changes • Comments on any additional information/submissions received at D4 • Comments on any updated SoCG received at D4 • Update on the preparation of SoCG • Updated Statement of Commonality for SoCG	REP5-xxx

• An updated Index to the Application documents submitted by the Applicant • Responses to any further information requested by the ExA • Any requests from the ExA for information under Rule 17 of the Examination Procedure Rules 2010	
Deadline 6: For receipt by ExA of: • Responses to the ExA's ExQ3 (if required) • Applicant's revised dDCO to be submitted in an editable format with any revisions to the preceding version shown using tracked changes (if required) • Comments on any amendments made to the dDCO by the Applicant at D5 (if required) • Comments on any additional information/submissions received at D5 • Comments on any updated SoCG received at D5 • Final and signed SoCGs • Updated Statement of Commonality for SoCG • Any executed s106 Agreement • An updated Index to the Application documents submitted by the Applicant • Responses to any further information requested by the ExA • Any requests from the ExA for information under Rule 17 of the Examination Procedure Rules 2010 (if required)	REP6-xxx
Deadline 7: For the receipt by the ExA of: • Post-hearing submissions, including written summaries of oral cases made by the Applicant and IPs (if hearings on 9/10 June 2021 are required) • Comments on responses to ExQ3 (if required) • Responses to the ExA's ExQ4 (if required) • Comments on any amendments made to the dDCO by the Applicant at D6 (if required) • Comments on any additional information/submissions received at D6	REP7-xxx

• Final version of the dDCO to be submitted by the Applicant in both clean and tracked changed forms and in the SI template format, with an SI template validation report • An updated Index to the Application documents submitted by the Applicant • Comments on the ExA's Schedule of Changes to the dDCO published either on 1 or 13 September 2021 (if required) • Responses to any further information requested by the ExA • Any requests from the ExA for information under Rule 17 of the Examination Procedure Rules 2010 (if required)	
Deadline 8: For the receipt by the ExA of: • Comments on any additional information/submissions received at D7 • Responses to any further information requested by the ExA under Rule 17 (if required)	REP8-xxx
Other Documents Includes s127/131/138 information, s56, s58 and s59 certificates, and transboundary documents	OD-xxx

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APP-001	INRG SOLAR (Little Crow) Ltd 1.1 Covering Letter to the Planning Inspectorate
APP-002	INRG SOLAR (Little Crow) Ltd 1.2 Application Guide
APP-003	INRG SOLAR (Little Crow) Ltd 1.3 Application Form
APP-004	INRG SOLAR (Little Crow) Ltd 1.4 Copies of Newspaper Notices
APP-005	INRG SOLAR (Little Crow) Section 55 Check List
APP-006	INRG SOLAR (Little Crow) Ltd 2.1 Land Plan Order Limits
APP-007	INRG SOLAR (Little Crow) Ltd 2.2 Environmental Designations Plan: Habitats
APP-008	INRG SOLAR (Little Crow) Ltd 2.3 Statutory and Non-Statutory Sites of Ecological Importance
APP-009	INRG SOLAR (Little Crow) Ltd 2.4 Statutory and Non-Statutory Sites of Geological Importance
APP-010	INRG SOLAR (Little Crow) Ltd 2.5 Designated Heritage Assets
APP-011	INRG SOLAR (Little Crow) Ltd 2.6 North Lincolnshire HER – Archaeological Monument Data
APP-012	INRG SOLAR (Little Crow) Ltd 2.7 North Lincolnshire HER – Archaeological Event Data
APP-013	INRG SOLAR (Little Crow) Ltd 2.8 Works Plan
APP-014	INRG SOLAR (Little Crow) Ltd 2.9 Works Details Key Plan
APP-015	INRG SOLAR (Little Crow) Ltd 2.10 Works Details - Whole Site Plan
APP-016	INRG SOLAR (Little Crow) Ltd 2.11 Works Details - Key A1 - Sheet 1 of 7
APP-017	INRG SOLAR (Little Crow) Ltd 2.12 Works Details - Key A2 - Sheet 2 of 7
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APP-019	INRG SOLAR (Little Crow) Ltd 2.14 Works Details - Key B1 - Sheet 4 of 7
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APP-024	INRG SOLAR (Little Crow) Ltd 2.19 Battery Compound Layout
APP-025	INRG SOLAR (Little Crow) Ltd 2.20 Archaeological Exclusion Zone Sheet 1 of 2
APP-026	INRG SOLAR (Little Crow) Ltd 2.21 Archaeological Exclusion Zone Sheet 2 of 2
APP-027	INRG SOLAR (Little Crow) Ltd 2.22 Archaeological Exclusion Zone – Whole Area Plan
APP-028	INRG SOLAR (Little Crow) Ltd 2.23 Works Details – Section Details
APP-029	INRG SOLAR (Little Crow) Ltd 2.24 132KV Substation Layout – General Arrangement
APP-030	INRG SOLAR (Little Crow) Ltd 2.25 132KV Substation Layout – Elevation Section A–A - Cross-Section B-B
APP-031	INRG SOLAR (Little Crow) Ltd 2.26 132KV Substation Layout – Proposed Site Access
APP-032	INRG SOLAR (Little Crow) Ltd 2.27 132KV Substation Layout – Site Location Plan
APP-033	INRG SOLAR (Little Crow) Ltd 2.28 NPG Control Room – General Arrangement and Elevations
APP-034	INRG SOLAR (Little Crow) Ltd 2.29 Customer Switchroom Plan – Layout and Elevations
APP-035	INRG SOLAR (Little Crow) Ltd 2.30 Battery Compound Layout and Elevations
APP-036	INRG SOLAR (Little Crow) 2.31 53ft Battery Container Plan and 3D View
APP-037	INRG SOLAR (Little Crow) Ltd 2.32 Transformer and Inverter Skid Plan and Elevations
APP-038	INRG SOLAR (Little Crow) Ltd 2.33 53ft Battery Container Elevations
APP-039	INRG SOLAR (Little Crow) Ltd 2.34 40ft Client Switchroom Container Elevations
APP-040	INRG SOLAR (Little Crow) Ltd 2.35 132kV Substation and Battery Storage Cable Trench Details
APP-041	INRG SOLAR (Little Crow) Ltd 2.36 Alternative Location for Battery Compound – Work No 2B
APP-042	INRG SOLAR (Little Crow) Ltd 2.38 Indicative Aerial Image of Order Limits
APP-043	INRG SOLAR (Little Crow) Ltd 2.39 Proposed Temporary Diversion of Public Footpath 214
APP-044	INRG SOLAR (Little Crow) Ltd 2.40 Hedgerow Plan
APP-045	INRG SOLAR (Little Crow) Ltd 3.1 Draft Development Consent Order

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APP-049	INRG SOLAR (Little Crow) Ltd 3.4 Statement of Need
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APP-051	INRG SOLAR (Little Crow) Ltd 4.2 Consultation Report - Technical Appendices
APP-052	INRG SOLAR (Little Crow) Ltd 4.3 Statement of Statutory Nuisance
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APP-054	INRG SOLAR (Little Crow) Ltd 4.5 Consents and Licences Required under other Legislation
APP-055	INRG SOLAR (Little Crow) Ltd 5.1 Environmental Statement - Non-Technical Summary
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APP-071	INRG SOLAR (Little Crow) Ltd 7.2 Environmental Statement - Technical Appendices - Appendix 1.2 - Natural England Scoping Consultation Response
APP-072	INRG SOLAR (Little Crow) Ltd 7.3 Environmental Statement - Technical Appendices - Appendix 3.1 - Flood Risk Assessment and Drainage Strategy
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APP-082	INRG SOLAR (Little Crow) Ltd 7.13 Environmental Statement - Technical Appendices - Appendix 4.6 - EMF Assessment
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APP-085	INRG SOLAR (Little Crow) Ltd 7.16 Environmental Statement - Technical Appendices - Appendix 4.9 - Noise Impact Assessment
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AoC-003	East Riding of Yorkshire Council Adequacy of Consultation Representation
AoC-004	Lincolnshire County Council Adequacy of Consultation Representation
AoC-005	North East Lincolnshire Council Adequacy of Consultation Representation
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RR-002	North Lincolnshire Council
RR-003	Ancholme Internal Drainage Board
RR-004	Anglian Water Services Ltd
RR-005	Environment Agency
RR-006	Sills & Betteridge LLP on behalf of Fennswood Motors Ltd
RR-007	Homes England
RR-008	Sills & Betteridge LL on behalf of Infocus ID Ltd
RR-009	Sills & Betteridge LLP on behalf of ManDown Support Ltd
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PD-002	Section 51 advice to the Applicant
PD-003	Rule 4 Letter - Notification of the appointment of the Examining Authority Appointment of Examining Authority – 7 January 2021
PD-004	Rule 6 letter - notification of the preliminary meeting and matters to be discussed
PD-005	Rule 9 - Procedural Decision Notification of Procedural Decision with respect to documentation submitted by the Applicant on 8 April 2021
PD-006	Rule 8 - Notification of timetable for the examination
PD-007	Examining Authority First Written Questions (ExQ1)
PD-008	Rule 8(3) and Rule 17 - Variation to Timetable and Request for further information
PD-009	Rule 13 and Rule 17 - Notification of Hearings and Requests for Further Information
PD-010	Examining Authority's Further Written Questions (ExQ2)
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EV-001	Note of Unaccompanied Site Inspection – 6 April 2021
Preliminary Meeting – 20 April 2021	
EV-002	Recording of Preliminary Meeting (PM) - Session 1 - 20 April 2021
EV-003	Recording of Preliminary Meeting (PM) - Session 2 - 20 April 2021
EV-004	Preliminary Meeting (PM) - Session 1 - Transcript - 20 April 2021 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV-005	Preliminary Meeting (PM) - Session 2 - Transcript - 20 April 2021 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV-006	Preliminary Meeting (PM) Meeting Note - 20 April 2021
EV-007	Preliminary Meeting (PM) - Action Points - 20 April 2021
Issue Specific Hearing 1 (ISH1) – 20 April–21 April 2021	
EV-008	Agenda for Issue Specific Hearing 1 (ISH1) - 20 April 2021
EV-009	Recording of Issue Specific Hearing 1 (ISH1) - Session 1 - 20 April 2021
EV-010	Recording of Issue Specific Hearing 1 (ISH1) - Session 2 - 20 April 2021
EV-011	Recording of Issue Specific Hearing 1 (ISH1) (Day 2) - Session 1 - 21 April 2021
EV-012	Issue Specific Hearing 1 (ISH1) - Session 1 - Transcript - 20 April 2021 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV-013	Issue Specific Hearing 1 (ISH1) - Session 2 - Transcript - 20 April 2021 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV-014	Issue Specific Hearing 1 (ISH1) (Day 2) - Session 1 - Transcript - 21 April 2021

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	This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
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EV-016	Recording of Open Floor Hearing 1 (OFH1) - 29 June 2021
EV-017	Recording of Issue Specific Hearing 2 (ISH2) - Session 1 - 29 June 2021
EV-018	Recording of Issue Specific Hearing 2 (ISH2) - Session 2 - 29 June 2021
EV-019	Recording of Issue Specific Hearing 2 (ISH2) - Session 2 - Part 2 - 30 June 2021
EV-020	Open Floor Hearing 1 (OFH1) - Transcript - 30 June 2021 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV-021	Issue Specific Hearing 2 (ISH2) - Session 1 - Transcript - 29 June 2021 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV-022	Issue Specific Hearing 2 (ISH2) - Session 2 - Transcript - 29 June 2021 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV-023	Issue Specific Hearing 2 (ISH2) - Session 2 - Part 2 - Transcript - 30 June 2021 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event.
EV-024	Issue Specific Hearing 2 (ISH2) - Action Points - 29-30 June 2021
Access Required and Unaccompanied Site Inspections Wednesday 25 and Thursday 26 August 2021	
EV-025	Note of Access Required and Unaccompanied Site Inspections Examining Authority's Note of its Access Required and Unaccompanied Site Inspections on Wednesday 25 and Thursday 26 August 2021
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PDA-003	INRG SOLAR (Little Crow) Ltd Procedural Deadline A - Document Ref 2.3 - Statutory and Non-Statutory Sites of Ecological Importance
PDA-004	INRG SOLAR (Little Crow) Ltd Procedural Deadline A - Document Ref 2.4 - Statutory and Non-Statutory Sites of Geological Importance
PDA-005	INRG SOLAR (Little Crow) Ltd Procedural Deadline A - Document Ref 2.41 - Environmental Designations Plan: Habitats - 10K Radius
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PDA-014	INRG SOLAR (Little Crow) Ltd Procedural Deadline A - Document Ref 6.11A - Environmental Statement - Chapter 11 - Socio Economic Issues (tracked version)
PDA-015	INRG SOLAR (Little Crow) Ltd Procedural Deadline A - Document Ref 7.29A - Environmental Statement - Technical Appendices - Appendix 7.9 - Habitats Regulations Statement - No Significant Effects Report (NSER)

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PDA-017	INRG SOLAR (Little Crow) Ltd Procedural Deadline A - Document Ref 9.5A - Statement of Common Ground with Anglian Water
PDA-018	INRG SOLAR (Little Crow) Ltd Procedural Deadline A - Document Ref 9.7A - Statement of Common Ground with Highways England
PDA-019	Sills and Betteridge Solicitors Procedural Deadline A - Letter from Sills and Betteridge Solicitors - 29 March 2021
Deadline 1 – Monday 10 May 2021 For receipt by ExA of: • Further information from the Applicant and North Lincolnshire Council as raised during the ISH1 and published in the Action Points from ISH1 • Comments on any updates to Application documents submitted by the Applicant before the PM • Comments on Relevant Representations (RR) • Written Representations (WRs) • Summaries of any WRs exceeding 1500 words • Post ISH1 submissions, including written submissions of oral cases given during that hearing • Updated Statement of Commonality for Statements of Common Ground (SoCG) • An updated version of the draft Development Consent Order (dDCO), following its discussion at ISH1 and to be submitted in an editable format with any revisions to the preceding version shown using tracked changes • An updated Index to the Application documents to be submitted by the Applicant • Notification by Statutory Parties of wish to be considered as an Interested Person (IP) by the ExA • Submission by the Applicant and IPs of suggested locations for the ExA to include in Unaccompanied and/or Accompanied Site Inspections, including the reason for nomination and issues to be observed; information about whether the location can be accessed using public rights of way or what access arrangements would need to be made; and the likely time requirement for the visit to that location (if not covered within an Unaccompanied Site Inspection) • Notification of wish to speak at any future ISHs • Notification of wish to speak at an Open Floor Hearing (OFH) • Responses to any further information requested by the ExA • Any requests from the ExA for information under Rule 17 of the Examination Procedure Rules 2010 (if required)	
REP1-001	INRG SOLAR (Little Crow) Ltd Deadline 1 Submission - Document Ref 9.16 - Applicant's Covering Letter
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REP1-005	INRG SOLAR (Little Crow) Ltd Deadline 1 Submission - Document Ref 3.2A - Explanatory Memorandum
REP1-006	INRG SOLAR (Little Crow) Ltd Deadline 1 Submission - Document Ref 3.2A - Explanatory Memorandum - Tracked Version
REP1-007	INRG SOLAR (Little Crow) Ltd Deadline 1 Submission - Document Ref 3.5 - DCO Changes Tracker
REP1-008	INRG SOLAR (Little Crow) Ltd Deadline 1 Submission - Document Ref 9.17 - Applicant's Post Hearing Submissions: Issue Specific Hearing 1 : Environmental Statement, General Matters and the Draft Development Consent Order
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REP1-011	INRG SOLAR (Little Crow) Ltd Deadline 1 Submission - Document Ref 9.20 - Technical Guide
REP1-012	INRG SOLAR (Little Crow) Ltd Deadline 1 Submission - Document Ref 9.21 - Applicants suggested itinerary for Examining Authority Site Visit - Accepted as a late submission at the discretion of the Examining Authority
REP1-013	INRG SOLAR (Little Crow) Ltd Deadline 1 Submission - Document Ref 9.22 - Applicant's Statement of Commonality for Statements of Common Ground
REP1-014	North Lincolnshire Council Deadline 1 Submission - Solar Farm Planning History - Conesby Farm - LPA reference PA-2018-2140 - Decision Notice
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REP1-020	North Lincolnshire Council Deadline 1 Submission - Solar Farm Planning History - Raventhorpe - LPA ref PA-2014-0892 - Location Plan
REP1-021	North Lincolnshire Council Deadline 1 Submission - Solar Farm Planning History - Sweeting Thorns - LPA ref PA-2015-0114 - Appeal Decision
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REP1-024	North Lincolnshire Council Deadline 1 Submission - Solar Farm Planning History - Sweeting Thorns - LPA ref PA-2015-0114 - Site Location Plan
REP1-025	BT Openreach Deadline 1 Submission - BT Openreach Agreement to Protective Provisions
REP1-026	Northern Power Grid Deadline 1 Submission
REP1-027	Sills & Betteridge Solicitors Deadline 1 Submission - Responses to Examining Authority's First Written Questions (EXQ1) and Notification of wish to speak at an Open Floor Hearing

Deadline 2 – Monday 24 May 2021

For receipt by ExA of:

- Comments on WRs and responses to comments on RRs
- Responses to ExQ1
- Local Impact Report(s) (LIR)
- An updated Statement of Commonality for SoCGs
- Update on the preparations of Statements of SoCG requested by the ExA
- An updated Index to the Application documents submitted by the Applicant
- Applicant's revised dDCO to be submitted in an editable format with any revisions made to the preceding version shown using track changes (if required)
- Comments on any amendments made to the dDCO by the Applicant at D1
- Comments on any additional information/submissions received by D1
- Responses to any further information requested by the ExA
- Any requests from the ExA for information under Rule 17 of the Examination Procedure Rules 2010 (if required)

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REP2-002	INRG SOLAR (Little Crow) Ltd Deadline 2 Submission - 1.2D Application Index (Updated Extract from Application Guide)
REP2-003	INRG SOLAR (Little Crow) Ltd Deadline 2 Submission - 3.1B Draft Development Consent Order (Clean)
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REP2-016	INRG SOLAR (Little Crow) Ltd Deadline 2 Submission - 7.21A Environmental Statement - Appendix 6.5 - Detailed Landscape Proposals
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REP2-019	INRG SOLAR (Little Crow) Ltd Deadline 2 Submission - 9.6A Statement of Common Ground with Environment Agency
REP2-020	INRG SOLAR (Little Crow) Ltd Deadline 2 Submission - 9.13A Draft S106 Agreement
REP2-021	INRG SOLAR (Little Crow) Ltd Deadline 2 Submission - 9.22A Statement of Commonality for Statements of Common Ground
REP2-022	INRG SOLAR (Little Crow) Ltd Deadline 2 Submission - 9.24 Applicant's Response to Examining Authority Questions (ExQ1)
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REP2-029	Historic England Deadline 2 Submission - Responses to ExQ1

Deadline 3 – Monday 7 June 2021

For receipt by ExA of:

- Comments on LIR(s)
- Comments on responses to the ExQ1
- Comments on any updated SoCG received at D2
- Update on the preparation of SoCG
- An updated Statement of Commonality for SoCG
- An updated Index to the Application documents submitted by the Applicant
- Applicant's revised dDCO to be submitted in an editable format with any revisions shown using tracked changes (if required)
- Comments on any amendments made to the dDCO by the Applicant at D2
- Comments on any additional information/submissions received by D2

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• Responses to any further information requested by the ExA • Any requests from the ExA for information under Rule 17 of the Examination Procedure Rules 2010 (if required)	
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REP3-002	INRG SOLAR (Little Crow) Ltd Deadline 3 Submission - Document Ref 1.2E - Applicant Application Index (Updated Extract from Application Guide)
REP3-003	INRG SOLAR (Little Crow) Ltd Deadline 3 Submission - Draft Development Consent Order (Tracked Version)
REP3-003a	INRG SOLAR (Little Crow) Ltd Deadline 3 Submission - Draft Development Consent Order (Clean Version)
REP3-004	INRG SOLAR (Little Crow) Ltd Deadline 3 Submission - Document Ref 3.2C - Explanatory Memorandum
REP3-005	INRG SOLAR (Little Crow) Ltd Deadline 3 Submission - Document Ref 3.2C - Explanatory Memorandum (Tracked Version)
REP3-006	INRG SOLAR (Little Crow) Ltd Deadline 3 Submission - Document Ref 3.5B - DCO Changes Tracker
REP3-007	INRG SOLAR (Little Crow) Ltd Deadline 3 Submission - Document Ref 7.8B - Appendix 4.1 Outline Construction Environmental Management Plan - Accepted as a late submission at the discretion of the Examining Authority
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REP3-014	INRG SOLAR (Little Crow) Ltd Deadline 3 Submission - Document Ref 9.30 - Applicant's Comments on North Lincolnshire Council's Local Impact Report
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REP3-016	North Lincolnshire Council Deadline 3 Submission - Information as requested by the Examining Authority under Rule 17 of the Examining Procedure Rules 2010 - CS2 Delivering More Sustainable Development
REP3-017	North Lincolnshire Council Deadline 3 Submission - Information as requested by the Examining Authority under Rule 17 of the Examining Procedure Rules 2010 - CS5 Delivering Quality Design in North Lincolnshire
REP3-018	North Lincolnshire Council Deadline 3 Submission - Information as requested by the Examining Authority under Rule 17 of the Examining Procedure Rules 2010 - CS6 Historic Environment
REP3-019	North Lincolnshire Council Deadline 3 Submission - Information as requested by the Examining Authority under Rule 17 of the Examining Procedure Rules 2010 - CS16 North Lincolnshire's Landscape, Greenspace and Waterscape
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REP3-022	North Lincolnshire Council Deadline 3 Submission - Information as requested by the Examining Authority under Rule 17 of the Examining Procedure Rules 2010 - DS01 Development Standards
REP3-023	North Lincolnshire Council Deadline 3 Submission - Information as requested by the Examining Authority under Rule 17 of the Examining Procedure Rules 2010 - DS07 Development Standards
REP3-024	North Lincolnshire Council

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REP3-029	North Lincolnshire Council Deadline 3 Submission - Information as requested by the Examining Authority under Rule 17 of the Examining Procedure Rules 2010 - IG09 Ironstone Extraction
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REP3-031	North Lincolnshire Council Deadline 3 Submission - Information as requested by the Examining Authority under Rule 17 of the Examining Procedure Rules 2010 - LC05 Species Protection
REP3-032	North Lincolnshire Council Deadline 3 Submission - Information as requested by the Examining Authority under Rule 17 of the Examining Procedure Rules 2010 - LC07 Landscape Protection
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REP3-037	North Lincolnshire Council Deadline 3 Submission - Information as requested by the Examining Authority under Rule 17 of the Examining Procedure Rules 2010 - RD7 Agriculture, Forestry and Farm Diversification
REP3-038	North Lincolnshire Council Deadline 3 Submission - Information as requested by the Examining Authority under Rule 17 of the Examining Procedure Rules 2010 - T01 Location of Development
REP3-039	North Lincolnshire Council Deadline 3 Submission - Information as requested by the Examining Authority under Rule 17 of the Examining Procedure Rules 2010 - T02 Access to Development
REP3-040	North Lincolnshire Council Deadline 3 Submission - Information as requested by the Examining Authority under Rule 17 of the Examining Procedure Rules 2010 - T18 Traffic Management
Deadline 3A – 28 June 2021 For receipt by ExA of: • A speaking note(s) from Interested Parties who intend to speak at Open Floor Hearing 1 no later than 16:00 Monday 28 June 2021	
	No submissions received.
Deadline 4 – 7 July 2021 For receipt by ExA of: • Responses to ExQ2 (if required) • Post-hearing submissions, including written summaries of oral cases made by the Applicant and IPs (if hearings on 29/30 June 2021 are required) • Applicant's revised dDCO to be submitted in an editable format with any revisions to the preceding version shown using tracked changes (if required) • Comments on any amendments made to the dDCO by the Applicant at D3 (if required) • Comments on any additional information/submissions received at D3 • Comments on any updated SoCG received at D3 • Update on the preparation of SoCG • Updated Statement of Commonality for SoCG • An updated Index to the Application documents submitted by the Applicant • Responses to any further information requested by the ExA	

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REP4-002	INRG SOLAR (Little Crow) Ltd Deadline 4 Submission - Ref 1.2F - Application Index
REP4-003	INRG SOLAR (Little Crow) Ltd Deadline 4 Submission - Response to the ExA for information under Rule 17 of the Examination Procedure Rules 2010 - Ref 2.44 - Gross Land Area for each Work Number
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REP4-005	INRG SOLAR (Little Crow) Ltd Deadline 4 Submission - Ref 3.1D - Draft Development Consent Order (Clean)
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REP4-013	INRG SOLAR (Little Crow) Ltd Deadline 4 Submission - Ref 9.10A - Statement of Common Ground with Natural England (Agreed)
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REP4-015	INRG SOLAR (Little Crow) Ltd Deadline 4 Submission - Ref 9.20A - Technical Guide (Tracked)
REP4-016	INRG SOLAR (Little Crow) Ltd Deadline 4 Submission - Ref 9.22B - Applicant's Statement of Commonality for Statements of Common Ground
REP4-017	INRG SOLAR (Little Crow) Ltd Deadline 4 Submission - Ref 9.32 - Applicant's Post Hearing Submissions: Issue Specific Hearing 2 (ISH2) - Environmental Statement, General Matters and the draft Development Consent Order
REP4-018	INRG SOLAR (Little Crow) Ltd Deadline 4 Submission - Ref 9.33 - Applicant's Responses to the Examining Authority's Written Questions (ExQ2)
REP4-019	INRG SOLAR (Little Crow) Ltd Deadline 4 Submission - Ref 9.34 - Projected Hourly Output for 420Wp with Grid Export Limited to 99.9MW
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REP4-025	North Lincolnshire Council Deadline 4 Submission - Planning for Solar Photovoltaic (PV) Development
REP4-026	North Lincolnshire Council Deadline 4 Submission - 11: Environment and Resources (Core Strategy Adopted June 2011)
REP4-027	North Lincolnshire Council Deadline 4 Submission - CS3: Development Limits (Core Strategy Adopted June 2011)
REP4-028	North Lincolnshire Council Deadline 4 Submission - Appeal Decision - Appeal Ref: APP/Y2003/W/16/3142032 - Land adjacent to Flixborough Industrial Estate, Stather Road, Flixborough, North Lincolnshire DN15 8SG

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REP4-029	North Lincolnshire Council Deadline 4 Submission - Site Location Plan
REP4-030	North Lincolnshire Council Deadline 4 Submission - Environment Act 1995 Part IV Section 23 (2) (a) - North Lincolnshire Borough Council Air Quality Management Area (No 2) Order 2018
REP4-031	North Lincolnshire Council Deadline 4 Submission - AQMA Boundary Plan
REP4-032	North Lincolnshire Council Deadline 4 Submission - 2020 Air Quality Annual Status Report (ASR)
REP4-033	Sills & Betteridge LLP Deadline 4 Submission - Post-hearing submission - Open Floor Hearing - 29 June 2021 - On behalf of clients: Richard Fenwick Johnson, Katie Teresa Holmes, Fennswood Motors Ltd, Mandown Support Ltd and Infocus ID Ltd
Deadline 5 – 09 August 2021 For receipt by ExA of: • Comments on responses to ExQ2 • Applicant's revised dDCO to be submitted in an editable format with any revisions to the preceding version shown using tracked changes • Comments on any additional information/submissions received at D4 • Comments on any updated SoCG received at D4 • Update on the preparation of SoCG • Updated Statement of Commonality for SoCG • An updated Index to the Application documents submitted by the Applicant • Responses to any further information requested by the ExA • Any requests from the ExA for information under Rule 17 of the Examination Procedure Rules 2010	
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REP5-004	INRG SOLAR (Little Crow) Ltd Deadline 5 Submission - 3.1E Draft Development Consent Order (Tracked Version)
REP5-005	INRG SOLAR (Little Crow) Ltd Deadline 5 Submission - 3.5D DCO Changes Tracker
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EN010101 – Little Crow Solar Park **Examination Library**	
REP5-007	INRG SOLAR (Little Crow) Ltd Deadline 5 Submission - 6.4A Environmental Statement - Chapter 4 - Development Proposal (Tracked Version)
REP5-008	INRG SOLAR (Little Crow) Ltd Deadline 5 Submission - 6.6B Environmental Statement - Chapter 6 - Landscape and Visual (Clean Version)
REP5-009	INRG SOLAR (Little Crow) Ltd Deadline 5 Submission - 6.6B Environmental Statement - Chapter 6 - Landscape and Visual (Tracked Version)
REP5-010	INRG SOLAR (Little Crow) Ltd Deadline 5 Submission - 6.7A Environmental Statement - Chapter 7 - Ecology and Nature Conservation (Clean Version)
REP5-011	INRG SOLAR (Little Crow) Ltd Deadline 5 Submission - 6.7A Environmental Statement - Chapter 7 - Ecology and Nature Conservation (Tracked Version)
REP5-012	INRG SOLAR (Little Crow) Ltd Deadline 5 Submission - 6.10A Environmental Statement - Chapter 10 - Agricultural Circumstances (Clean Version)
REP5-013	INRG SOLAR (Little Crow) Ltd Deadline 5 Submission - 6.10A Environmental Statement - Chapter 10 - Agricultural Circumstances (Tracked Version)
REP5-014	INRG SOLAR (Little Crow) Ltd Deadline 5 Submission - 7.21B Environmental Statement - Technical Appendices - Appendix 6.5 - Detailed Landscape Proposals
REP5-015	INRG SOLAR (Little Crow) Ltd Deadline 5 Submission - 7.29B Environmental Statement - Technical Appendices - Appendix 7.9 - Habitats Regulations Statement - No Significant Effects Report (NSER) (Clean Version)
REP5-016	INRG SOLAR (Little Crow) Ltd Deadline 5 Submission - 7.29B Environmental Statement - Technical Appendices - Appendix 7.9 - Habitats Regulations Statement - No Significant Effects Report (NSER) (Tracked Version)
REP5-017	INRG SOLAR (Little Crow) Ltd Deadline 5 Submission - 9.1A Planning Statement (Clean Version)
REP5-018	INRG SOLAR (Little Crow) Ltd Deadline 5 Submission - 9.1A Planning Statement (Tracked Version)
REP5-019	INRG SOLAR (Little Crow) Ltd Deadline 5 Submission - 9.2A Design and Access Statement
REP5-020	INRG SOLAR (Little Crow) Ltd Deadline 5 Submission - 9.22C Applicant's Statement on Commonality for Statements of Common Ground
REP5-021	INRG SOLAR (Little Crow) Ltd Deadline 5 Submission - 9.39 Cumulative Effects Assessment - Post Submission Review of Keadby 3

EN010101 – Little Crow Solar Park **Examination Library**	
REP5-022	INRG SOLAR (Little Crow) Ltd Deadline 5 Submission - 9.40 Applicant's Response to Deadline 4 Submissions
Deadline 6 – 31 August 2021 For receipt by ExA of: • Responses to the ExA's ExQ3 (if required) • Applicant's revised dDCO to be submitted in an editable format with any revisions to the preceding version shown using tracked changes (if required) • Comments on any amendments made to the dDCO by the Applicant at D5 (if required) • Comments on any additional information/submissions received at D5 • Comments on any updated SoCG received at D5 • Final and signed SoCGs • Updated Statement of Commonality for SoCG • Any executed s106 Agreement • An updated Index to the Application documents submitted by the Applicant • Responses to any further information requested by the ExA • Any requests from the ExA for information under Rule 17 of the Examination Procedure Rules 2010 (if required)	
REP6-001	INRG SOLAR (Little Crow) Ltd Deadline 6 Submission - Ref 9.41 - Applicant's Introduction to Deadline 6 Submission (Cover Letter)
REP6-002	INRG SOLAR (Little Crow) Ltd Deadline 6 Submission - Ref 1.2H - Application Index
REP6-003	INRG SOLAR (Little Crow) Ltd Deadline 6 Submission - Ref 3.1F - Draft Development Consent Order
REP6-004	INRG SOLAR (Little Crow) Ltd Deadline 6 Submission - Ref 3.1F - Draft Development Consent Order (Tracked)
REP6-005	INRG SOLAR (Little Crow) Ltd Deadline 6 Submission - Ref 3.5E - Development Consent Order (DCO) Changes Tracker
REP6-006	INRG SOLAR (Little Crow) Ltd Deadline 6 Submission - Ref 7.8D - Environmental Statement - Technical Appendices - Appendix 4.1 - Outline Construction Environmental Management Plan
REP6-007	INRG SOLAR (Little Crow) Ltd Deadline 6 Submission - Ref 7.8D - Environmental Statement - Technical Appendices - Appendix 4.1 - Outline Construction Environmental Management Plan (Tracked)
REP6-008	INRG SOLAR (Little Crow) Ltd Deadline 6 Submission - Ref 7.9C - Environmental Statement - Technical Appendices - Appendix 4.2 - Outline Decommissioning Strategy
REP6-009	INRG SOLAR (Little Crow) Ltd

EN010101 – Little Crow Solar Park Examination Library	
	Deadline 6 Submission - Ref 7.9C - Environmental Statement - Technical Appendices - Appendix 4.2 - Outline Decommissioning Strategy (Tracked)
REP6-010	INRG SOLAR (Little Crow) Ltd Deadline 6 Submission - Ref 7.12C - Environmental Statement - Technical Appendices - Appendix 4.5 - Air Quality and Carbon Assessment
REP6-011	INRG SOLAR (Little Crow) Ltd Deadline 6 Submission - Ref 7.12C - Environmental Statement - Technical Appendices - Appendix 4.5 - Air Quality and Carbon Assessment (Tracked)
REP6-012	INRG SOLAR (Little Crow) Ltd Deadline 6 Submission - Ref 7.28D - Environmental Statement - Technical Appendices - Appendix 7.8 - Outline Landscape and Ecological Management Plan
REP6-013	INRG SOLAR (Little Crow) Ltd Deadline 6 Submission - Ref 7.28D - Environmental Statement - Technical Appendices - Appendix 7.8 - Outline Landscape and Ecological Management Plan (Tracked)
REP6-014	INRG SOLAR (Little Crow) Ltd Deadline 6 Submission - Ref 9.4A - Statement of Common Ground with North Lincolnshire Council (Agreed)
REP6-015	INRG SOLAR (Little Crow) Ltd Deadline 6 Submission - Ref 9.11A - Statement of Common Ground with Local Wildlife Trust (Agreed)
REP6-016	INRG SOLAR (Little Crow) Ltd Deadline 6 Submission - Ref 9.13B - Certified Copy of the s106 Agreement
REP6-017	INRG SOLAR (Little Crow) Ltd Deadline 6 Submission - Ref 9.22D - Applicant's Statement of Commonality for Statements of Common Ground
REP6-018	INRG SOLAR (Little Crow) Ltd Deadline 6 Submission - Ref 9.42 - Archaeological Management Plan
REP6-019	INRG SOLAR (Little Crow) Ltd Deadline 6 Submission - Ref 9.43 - Applicant's response to Examining Authority Questions ExQ3
REP6-020	INRG SOLAR (Little Crow) Ltd Deadline 6 Submission - Ref 9.44 - Applicant's response to ExQ3 - Question 3.1.3
REP6-021	INRG SOLAR (Little Crow) Ltd Deadline 6 Submission - Ref 9.45 - Applicant's response to ExQ3 - Question 3.1.3 - Technical Appendices
REP6-022	North Lincolnshire Council Deadline 6 Submission - Response to the Examining Authority's third set of written questions for the Little Crow Solar Park Project
REP6-023	Natural England

EN010101 – Little Crow Solar Park Examination Library	
	Deadline 6 Submission - Natural England's response to ExQ3
REP6-024	Northern Powergrid Limited Deadline 6 Submission - Northern Powergrid Limited's response to ExQ3
Deadline 7 – 20 September 2021 For the receipt by the ExA of: • Post-hearing submissions, including written summaries of oral cases made by the Applicant and IPs (if hearings on 9/10 June 2021 are required) • Comments on responses to ExQ3 (if required) • Responses to the ExA's ExQ4 (if required) • Comments on any amendments made to the dDCO by the Applicant at D6 (if required) • Comments on any additional information/submissions received at D6 • Final version of the dDCO to be submitted by the Applicant in both clean and tracked changed forms and in the SI template format, with an SI template validation report • An updated Index to the Application documents submitted by the Applicant • Comments on the ExA's Schedule of Changes to the dDCO published either on 1 or 13 September 2021 (if required) • Responses to any further information requested by the ExA • Any requests from the ExA for information under Rule 17 of the Examination Procedure Rules 2010 (if required)	
REP7-001	INRG SOLAR (Little Crow) Ltd Deadline 7 Submission – Ref 9.46 - Applicant's Introduction to Deadline 7 Submission (Cover Letter)
REP7-002	INRG SOLAR (Little Crow) Ltd Deadline 7 Submission - Ref 1.2I - Application Index
REP7-003	INRG SOLAR (Little Crow) Ltd Deadline 7 Submission - Ref 3.1G - Draft Development Consent Order (Clean)
REP7-004	INRG SOLAR (Little Crow) Ltd Deadline 7 Submission - Ref 3.1G - Draft Development Consent Order (Tracked)
REP7-005	INRG SOLAR (Little Crow) Ltd Deadline 7 Submission - Ref 3.2D Explanatory Memorandum (Clean)
REP7-006	INRG SOLAR (Little Crow) Ltd Deadline 7 Submission - Ref 3.2D Explanatory Memorandum (Tracked)
REP7-007	INRG SOLAR (Little Crow) Ltd Deadline 7 Submission - Ref 3.5F - DCO Changes Tracker
REP7-008	INRG SOLAR (Little Crow) Ltd Deadline 7 Submission - Ref 9.12A - Statement of Common Ground with Northern Powergrid
REP7-009	INRG SOLAR (Little Crow) Ltd

EN010101 – Little Crow Solar Park Examination Library	
	Deadline 7 Submission - Ref 9.22E - Applicant's Statement of Commonality for Statements of Common Ground
REP7-010	INRG SOLAR (Little Crow) Ltd Deadline 7 Submission - Ref 9.47 - Applicant's Response to Examining Authority Questions EXQ4
REP7-011	INRG SOLAR (Little Crow) Ltd Deadline 7 Submission - Ref 9.48 - Applicant's Response to the Schedule of the Examining Authority's Recommended Amendments to the Applicant's Draft Development Consent Order
REP7-012	North Lincolnshire Council Deadline 7 Submission - Responses to the ExA's ExQ4
REP7-013	Sills & Betteridge LLP on behalf of Infocus ID Ltd, Fenswood Motors Ltd, ManDown Support Ltd, Richard Fenwick Johnson and Katie Teresa Holmes Deadline 7 Submission - Responses to the ExA's ExQ4
Late Submission	
REP7-014	INRG SOLAR (Little Crow) Ltd Deadline 7 Submission – Late Submission accepted at the discretion of the Examining Authority - Validation Report for the draft DCO
Deadline 8 – 01 October 2021 For the receipt by the ExA of: • Comments on any additional information/submissions received at D7 • Responses to any further information requested by the ExA under Rule 17 (if required)	
REP8-001	INRG SOLAR (Little Crow) Ltd Deadline 8 Submission - Ref 9.49 - Applicant's Introduction to Deadline 8 Submission (Cover Letter)
REP8-002	INRG SOLAR (Little Crow) Ltd Deadline 8 Submission - Ref 1.2J - Application Index
REP8-003	INRG SOLAR (Little Crow) Ltd Deadline 8 Submission - Ref 9.12B - Statement of Common Ground with Northern Powergrid
REP8-004	INRG SOLAR (Little Crow) Ltd Deadline 8 Submission - Ref 9.22F - Applicant's Statement of Commonality for Statements of Common Ground
Other Documents	
OD-001	INRG SOLAR (Little Crow) Ltd Section 56 Notice
OD-002	INRG Solar (Little Crow) Ltd Section 56 Compliance Certificate
OD-003	Section 51 Advice to Sills & Betteridge Solicitors - 7 April 2021
OD-004	LCRW - Regulation 32 Transboundary Screening

Document Index

APPENDIX C: LIST OF ABBREVIATIONS

The table below lists the abbreviations referred to in the Report by the Examining Authority (ExA)

AA	Appropriate Assessment for the purposes of the Habitats Regulations
AADT	Annual average daily traffic
(AC)	Alternating current
AEZ	The Gokewell Archaeological Exclusion Zone
ALC	Agricultural Land Classification system
AMP	Archaeological Management Plan
APP	Application document
AQCA	Air Quality and Carbon Assessment
AQD	The Air Quality Directive
AQMA	Air Quality Management Area
AQS	The Air Quality Strategy for England, Scotland, Wales and Northern Ireland of 2007
Art	Article within the draft Development Consent Order
ARSI	Access Required Site Inspection
ASI	Accompanied Site Inspection
AWSL	Anglian Water Services Limited
BBS	Breeding Bird Survey
BESS	Battery energy storage system
BMVL	Best and most versatile agricultural land
BS	British Standard
CCA2008	Climate Change Act 2008
CEMP	Construction Environmental Management Plan
City Council	Kingston upon Hull City Council
CO_2	Carbon Dioxide
CPA1974	Control of Pollution Act 1974
CS	The Lincolnshire Local Development Framework Core Strategy of June 2011
D	Examination Deadline
dB	Decibel
dB(A)	Decibel A-weighted sound level
(DC)	Direct current
DCO	Development Consent Order
dDCO	Draft Development Consent Order
dEN-1 to dEN-5	Consultation drafts for proposed revisions to the energy suite of National Policy Statements issued on 6 September 2021
DNA	Deoxyribonucleic acid
EA	Environment Agency
EEASs	European Economic Area States
e-page	Electronic page number location in application and/or Examination documents
EIA	Environmental Impact Assessment
EIA Regulations	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
EM	Explanatory Memorandum

EPA	Environmental Protection Act
EPR	The Infrastructure Planning (Examination Procedure) Rules 2010
ESRA	The Examining Authority's Schedule of Recommended Amendments (to the dDCO)
ES	Environmental Statement
EV	Event
ExA	Examining Authority
ExQ1, ExQ2, ExQ3 and ExQ4	The ExA's first, second, third and fourth rounds of written questions, respectively
FP212	Public footpath 212
FP214	Public footpath 214
GCN	Great Crested Newts
GHG	Greenhouse gas
GVA	Gross Value Added
ha	Hectare(s)
HGV	Heavy goods vehicle
HE	Historic England
HRA	Habitats Regulations Assessment
IAPI	Initial Assessment of the Principal Issues
IPC	The Infrastructure Planning Commission
IPs	Interested Parties
IAQM	Institute of Air Quality Management
ISH	Issue Specific Hearing
Keadby 3	Keadby 3 Low Carbon Gas Power Station Project
km	Kilometre
kV	Kilovolt
LCA	Landscape Character Area
LCAG	North Lincolnshire Landscape Character Assessment and Guidelines
LEMP	Landscape and Ecology Management and Monitoring Plan
LIR	Local Impact Report
LPA	Local Planning Authority
LSE	Likely Significant Effects
LV	Limit values for air quality
LWS	Local Wildlife Site
m	Metre
MW	Megawatt
MWh	Megawatt hour
MWp	Megawatt peak
NE	Natural England
NERCA2006	The Natural Environment and Rural Communities Act 2006
NH	National Highways (previously known as Highways England)
NIA	Noise Impact Assessment
NLC	North Lincolnshire Council
NLLP	North Lincolnshire Local Plan
NPG	Northern Powergrid (Yorkshire) PLC
NPPF	National Planning Policy Framework
NPS(s)	National Policy Statement(s)

NPSE	Noise Policy Statement for England of 2010
NPS EN1	Overarching National Policy Statement for Energy (EN-1)
NPS EN3	National Policy Statement for Renewable Energy Infrastructure (EN-3)
NPS EN5	National Policy Statement for Electricity Networks Infrastructure (EN-5)
NSER	No Significant Effects Report
NSIP	Nationally Significant Infrastructure Project
NSN	National Sites Network
oBSM	Outline Battery Safety Management Plan
oCEMP	Outline Construction Environmental Management Plan
oCEMPfB	Outline Construction Environmental Management Plan for Biodiversity
oCTMP	Outline Construction Traffic Management Plan
OD	Other documents
oDS	Outline Decommissioning Strategy
OFH	Open Floor Hearing
oLEMP	Outline Landscape and Ecological Management Plan
PA2008	Planning Act 2008
PD	Procedural Deadline
PDA	Procedural Deadline A
PDL	Previously developed land
PHE	Public Health England
PM	Preliminary Meeting
PM_{10}	Particulate matter with a diameter of up to 10 microns
PPG	The Planning Practice Guidance
Proposed Development	The NSIP comprising the proposed Little Crow Solar Park
PRoW	Public right of way
PRWMP	Public rights of way management plan
PSED	The Public Sector Equality Duty
PSPSPD	Supplementary Planning Document 'Planning for Solar Photovoltaic (PV) Development', adopted by North Lincolnshire Council in January 2016
PV	Photovoltaic
R	Requirement within the draft or recommended Development Consent Order
rDCO	The ExA's recommended Development Consent Order
RIES	Report on Implications for European Sites
REP	Representation
RR(s)	Relevant Representation(s)
s106	An agreement under section 106 of the Town and Country Planning Act 1990 (as amended)
SAC	The Humber Estuary Special Area of Conservation
SNCI	Sites of Nature Conservation Interest
SoCG(s)	Statement(s) of Common Ground
SoS	Secretary of State
SoSBEIS	Secretary of State for Business, Energy and Industrial Strategy

SoSHCLG	Secretary of State for Housing, Communities and Local Government
SPA	The Humber Estuary Special Protection Area for Birds
SPD	Supplementary Planning Documents
sqm	Square metre(s)
SSN	Statement of Statutory Nuisance
SSSI	Site of Special Scientific Interest
STC	Standard Test Conditions
TA	Transport Assessment
TCA	The Coal Authority
TCPA1990	The Town and Country Planning Act 1990 (as amended)
TS	Transport Statement
UK	United Kingdom
USI	Unaccompanied Site Inspection
w	Watt
WACA1981	The Wildlife and Countryside Act 1981
WBS	Wintering Bird Survey
WFD	The Water Framework Directive
wp	Watt peak
WR(s)	Written Representation(s)
ZTV	Zone of Theoretical Visibility

APPENDIX D: THE RECOMMENDED DCO

STATUTORY INSTRUMENTS

202[ ] No. 0000

INFRASTRUCTURE PLANNING

The Little Crow Solar Park Order 202[ ]

Made - - - -	202[ ]
Coming into force - -	202[ ]

CONTENTS

PART 6
MISCELLANEOUS AND GENERAL

SCHEDULES

An application has been made to the Secretary of State under section 37 of the Planning Act 2008(**a**) ("the 2008 Act") in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(**b**) for an Order granting development consent.

The application was examined by a single appointed person (appointed by the Secretary of State) pursuant to Chapter 3 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(**c**).

(**a**) 2008.c. 29 Section 37 was amended by section 137(5) of, and paragraph 5 of Schedule 13(1) to, the Localism Act 2011 (c. 20). Section 74 (2) was amended by paragraph 29 (3) of that Schedule. Section 83(1) was amended by paragraph 35 of that Schedule. Section 105 (2) was amended by paragraph 50 of that Schedule. Section 114 was amended by paragraph 55 of that Schedule. Section 120 was amended by section 140 of, and paragraph 60 of Schedule 13(1) to, that Act.

(**b**) S.I. 2009/2264, as amended by the Localism Act 2011 (Infrastructure Planning) (Consequential Amendments) Regulations 2012 (S.I. 2012/635)(1), the Infrastructure Planning (Prescribed Consultees and Interested Parties etc) (Amendment) Regulations 2013 (S.I.2013/522) and the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (S.I. 2017/572). There are other amendments to the Regulations which are not relevant to this Order.

(**c**) S.I. 2010/103, amended by S.I. 2/012/635.

The single appointed person having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83(1) and (2) of the 2008 Act, has submitted a report and recommendation to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the report of the single appointed person, has decided to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application.

The Secretary of State, in exercise of the powers conferred by sections 114, 115 and 120 of the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as The Little Crow Solar Park Order 202[ ] and comes into force on [ ].

Interpretation

2.—(1) In this Order except where provided otherwise—

"the 1961 Act" means the Land Compensation Act 1961(**a**);

"the 1980 Act" means the Highways Act 1980(**b**);

"the 1989 Act" means the Electricity Act 1989(**c**);

"the 1990 Act" means the Town and Country Planning Act 1990(**d**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**e**);

"the 2008 Act" means the Planning Act 2008(**f**);

"address" includes any number or address for the purposes of electronic transmission;

"apparatus" has the same meaning as in section 105(1) of the 1991 Act;

"archaeological management plan" means the document certified as the archaeological management plan for the purposes of this Order under article 14 (certification of plans and documents etc);

"authorised development" means the development and associated development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act and any works carried out under the requirements;

"battery energy storage" means equipment used for the storage of electrical energy by battery;

"building" includes any structure or erection or any part of a building, structure or erection;

(**a**) 1961 c. 33 Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c. 65). There are other amendments to the 1961 Act which are not relevant to this Order.
(**b**) 1980 c. 66.
(**c**) 1989 c. 29.
(**d**) 1990 c. 8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c. 29) (date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
(**e**) 1991 c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c. 26). Sections 78(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
(**f**) 2008 c. 29.

"cable circuit" means an electrical conductor necessary to transmit electricity between two points within the authorised development and may include one or more auxiliary cables for the purpose of gathering monitoring data;

"CCTV" means a closed circuit television security system;

"commence" means beginning to carry out any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised development other than site preparation works, and "commencement" and "commenced" must be construed accordingly;

"construction compound" means a compound including central offices, welfare facilities, accommodation facilities, storage and parking for construction of the authorised development and other associated facilities;

"electronic transmission" means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

"environmental statement" means the document certified by the Secretary of State as the environmental statement for the purposes of this Order under article 14;

"hedgerow plan" means the plan identifying hedgerows and important hedgerows and certified by the Secretary of State for the purposes of this Order under article 14;

"highway" and "highway authority" have the same meaning as in the 1980 Act(**a**);

"inverter" means electrical equipment required to convert direct current power generated by the solar panels to alternating current power;

"land plan including Order limits" means the plan certified by the Secretary of State as the land plan including Order limits for the purposes of this Order under article 14;

"LEMP" means the landscape and ecological plan approved pursuant to requirement 10;

"local planning authority" means the planning authority for North Lincolnshire;

"maintain" includes inspect, upkeep, repair, adjust, alter, remove, reconstruct and replace in relation to the authorised development, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement; and any derivative of "maintain" must be construed accordingly;

"mounting structure" means a frame or rack with posts made of galvanised steel or other material pushed into the ground to support the solar panels;

"Order limits" means the limits shown on the land plan including Order limits within which the authorised development may be carried out and land used;

"outline BSMP" means the plan certified by the Secretary of State as the battery safety management plan for the purposes of this Order under article 14;

"outline CEMPs" means the documents certified by the Secretary of State as the outline construction environmental management plan and the outline construction environmental management plan for biodiversity certified by the Secretary of State as the outline CEMPs for the purposes of this Order in accordance with article 14;

"outline CTMP" means the document certified by the Secretary of State as the outline construction traffic management plan for the purposes of the Order in accordance with article 14;

"outline decommissioning strategy" means the document certified as the outline decommissioning strategy by the Secretary of State for the purposes of this Order under article 14;

"outline LEMP" means the document certified by the Secretary of State as the outline landscape and ecological management plan for the purposes of this Order in accordance with article 14;

"outline soil management plan" means the document certified by the Secretary of State as the outline soil management plan for the purposes of this Order in accordance with article 14;

(**a**) "highway" is defined in section 328 (1) for "highway authority" see Section 1.

"proposed temporary diversion of public footpath 214 plan" means the plan showing footpath 214 and its proposed temporary diversion certified by the Secretary of State for the purposes of this Order under article 14;

"requirement" means those matters set out in Part 1 of Schedule 2 (requirements) and a reference to a numbered requirement is a reference to the requirement set out in the paragraph of that Part of that Schedule with the same number;

"site preparation works" means operations consisting of pre–construction surveys and/or monitoring, site clearance, demolition work, archaeological investigations, environmental surveys, investigations for the purpose of assessing ground conditions, remedial work in respect of adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements;

"solar panel" means a solar photovoltaic panel designed to convert solar irradiance to direct current electrical energy fitted to a mounting structure;

"street" means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

"street authority" in relation to a street, has the same meaning as in Part 3 of the 1991 Act(**a**)

"substation" means a compound containing electrical equipment required to switch, transform, convert electricity and provide reactive power compensation with welfare facilities, means of access and other associated facilities;

"transformer" means a structure containing electrical switch gear serving to transform electricity generated by the solar panels and imported and exported by the batteries to a higher voltage;

"undertaker" means INRG Solar (Little Crow) Limited company number 11136483, whose registered office is at 93 Leigh Road, Eastleigh, Hants, England SO50 9DQ;

"watercourse" includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

"work" means a work set out in Schedule 1 (authorised development); and

"works plan" means the plan certified by the Secretary of State as the works plan for the purposes of this Order in accordance with article 14.

(2) All distances, directions, capacities and lengths referred to in this Order are approximate and distances between points on a work are taken to be measured along that work.

(3) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by this Order.

(4) In this Order "includes" must be construed without limitation unless the contrary intention appears.

(5) References in this Order to any statutory body include that body's successor bodies as from time to time have jurisdiction in relation to the authorised development.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order including the requirements in Schedule 2 Part 1 the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Each numbered work must be situated within the corresponding numbered area shown on the works plan.

(**a**) "street authority" is defined in section 49, which was amended by paragraph 117 of Schedule 1 to the Infrastructure Act 2015 (c. 7).

(3) Notwithstanding anything in this Order or shown on the works plan the undertaker may construct work no. 2A or work no. 2B but may not construct more than one of those works under the powers conferred by this Order.

(4) The undertaker must notify the local planning authority prior to the commencement of any works comprised in work no.2A or work no. 2B which of those works it intends to construct.

Maintenance of authorised development

4.—(1) The undertaker may at any time maintain the authorised development, except to the extent that this Order, or an agreement made under this Order, provides otherwise.

(2) This article only authorises the carrying out of works for maintenance purposes within the Order limits.

Consent to transfer benefit of Order

5.—(1) Except as otherwise provided in this Order, the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Subject to paragraph (4), the undertaker may with the written consent of the Secretary of State—

(a) transfer to another person ("the transferee") any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; and

(b) grant to another person ("the lessee") for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed,

except where paragraph (6) applies, in which case no consent of the Secretary of State is required.

(3) Where an agreement has been made in accordance with paragraph (2) references in this Order to the undertaker, except in paragraphs (5) and (7) are to include references to the transferee or the lessee.

(4) The undertaker must consult the Secretary of State before making an application for consent under this article by giving notice in writing of the proposed application.

(5) Where the undertaker has transferred any benefit, or for the duration of any period during which the undertaker has transferred any benefit, or for the duration of any period during which the undertaker has granted any benefit, under paragraph (2)—

(a) the benefit transferred or granted ("the transferred benefit") must include any rights that are conferred, and any obligations that are imposed, by virtue of the provisions to which the benefit relates;

(b) the transferred benefit will reside exclusively with the transferee or, as the case may be, the lessee and the transferred benefit will not be enforceable against the undertaker; and

(c) the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (2) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(6) This paragraph applies to any provisions of this Order and its related statutory rights where the transferee or lessee is the holder of a licence under section 6 (licensing authorising supply etc) of the 1989 Act.

(7) Prior to any transfer or grant under this article taking effect the undertaker must give notice in writing to the Secretary of State and the local planning authority.

(8) The notice required under paragraphs (4) and (7) must—

(a) state—

(i) the name and contact details of the person to whom the benefit of the provisions will be transferred or granted;

(ii) subject to paragraph (9), the date on which the transfer will take effect;

(iii) the provisions to be transferred or granted; and

(iv) the restrictions, liabilities and obligations that, in accordance with paragraph (5)(c), will apply to the person exercising the powers transferred or granted; and

(b) be accompanied by—

(i) where relevant, a plan showing the works or areas to which the transfer or grant relates; and

(ii) a copy of the document effecting the transfer or grant signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted.

(9) The date specified under paragraph (8)(a)(ii) in respect of a notice served in respect of paragraph (7) must not be earlier than the expiry of five days from the date of the receipt of the notice.

(10) The notice given under paragraph (7) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

Disapplication, application and modification of legislative provisions

6.—(1) Regulation 6 of the Hedgerows Regulations 1997(**a**) is modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following—

"(k) or for carrying out or the maintenance of development which has been authorised by The Little Crow Solar Park Order 202[ ]."

(2) Any development or any part of a development within the Order limits which is constructed or used under the authority of a planning permission pursuant to Part 3 of the 1990 Act (whether expressed or otherwise) following the coming into force of this Order is to be disregarded at all times for the purposes of ascertaining whether or not an offence has been committed under the provisions of Sections 160 (development without development consent) and 161 (breach of terms of order granting development consent) of the 2008 Act (**b**).

Defence to proceedings in respect of statutory nuisance

7.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisances) of the Environmental Protection Act 1990(**c**) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order is to be made, and no fine is to be imposed, under section 82(2) of that Act if —

(a) the defendant show that the nuisance —

(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974(**d**); or

(ii) is a consequence of the construction maintenance or decommissioning of the authorised development and cannot reasonably be avoided; or

(b) the defendant shows that the nuisance is a consequence of the use of the authorised development and cannot reasonably be avoided.

(**a**) S.I. 1997/1160.

(**b**) Sections 160 and 161 were amended by S.I.2015/664. Section 161 was also amended by section 112 (2) of and paragraph 4 of Part 1 of Schedule 8 to the Marine and Coastal Access Act 2009 (c.23).

(**c**) 1990 c. 43. There are amendments to this Act which are not relevant to this Order.

(**d**) 1974 c. 40. Section 61(9) was amended by Section 162 and paragraph 15 of Schedule 3 to the Environment Protection Act 1990 (c. 25). There are other amendments to 1974 Act but none are relevant to this Order.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

PART 3

PUBLIC FOOTPATH

Temporary closure and diversion of public footpath

8.—(1) The undertaker may, during the construction and decommissioning of the authorised development, temporarily close public footpath 214 as specified in column (3) of Schedule 3 (public footpath to be temporarily closed and diverted) to the extent specified in column (5) of Schedule 3, and must provide the temporary substitute public footpath specified in column (6) of Schedule 3 for the period during which the footpath is temporarily closed.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

9.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out, maintenance or use of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 199l(**a**).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs or the person or body otherwise having authority to give such consent; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not carry out any works to or make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river other than in accordance with a permit granted by the Environment Agency.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise a groundwater activity or a water discharge activity within the meaning of the Environmental Permitting (England and Wales) Regulations 2016(**b**).

(**a**) 1991 c. 56. Section 106 was amended by section 35(8)(a) of the Competition and Service (Utilities) Act 1992 (c. 43) and sections 36(2) and 99 of the Water Act 2003 (c. 37). There are other amendments to the section which are not relevant to this order.

(**b**) S.I. 2016/1154 "Groundwater activity" is defined in paragraph 3 of Schedule 22. "Water discharge activity" is defined in paragraph 3 of Schedule 21.

(8) In this article—

(a) "public sewer or drain" means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and

(b) other expressions, excluding watercourse, used both in this article and in the Environmental Permitting (England and Wales) Regulations 2016 have the same meaning as in those Regulations.

(9) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days of receiving an application, that person is deemed to have granted consent or given approval, as the case may be.

Authority to survey and investigate the land

10.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

(a) survey or investigate the land;

(b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;

(c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and

(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

(a) must, if so required entering the land, produce written evidence of their authority to do so; and

(b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes may be made under this article:

(a) in land located within the highway boundary without the consent of the highway authority; or

(b) in a private street without the consent of the street authority

but such consent must not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) If either a highway authority or a street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

(a) under paragraph (4)(a) in the case of a highway authority; or

(b) under paragraph (4)(b) in the case of a street authority,

that authority is deemed to have granted consent.

PART 5

OPERATIONS

Operation of generating station

11.—(1) The undertaker is authorised to operate and use the generating station for which development consent is granted by this Order.

(2) Paragraph (1) does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required from time to time to authorise the operation of an electricity generating station.

PART 6

MISCELLANEOUS AND GENERAL

Removal of human remains

12.—(1) Before the undertaker carries out any development or works which will or may disturb any human remains within the Order limits it must remove those human remains from the Order limits, or cause them to be removed, in accordance with the following provisions of this article.

(2) Before any such remains are removed from the Order limits the undertaker must give notice of the intended removal, describing the Order limits and stating the general effect of the following provisions of this article, by—

(a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and

(b) displaying a notice in a conspicuous place within or near the Order limits.

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to North Lincolnshire Council.

(4) At any time within 56 days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of any deceased person whose remains are interred within the Order limits may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

(5) Where a person has given notice under paragraph (4), and the remains in question can be identified, that person may cause such remains to be—

(a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or

(b) removed to, and cremated in, any crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10).

(6) If the undertaker is not satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question must be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

(7) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(8) If—

(a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains within the Order limits; or

(b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or

(c) within 56 days after any order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the order fails to remove the remains; or

(d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (9) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves are to be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(9) If the undertaker is satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(10) On the re-interment or cremation of any remains under this article—

(a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and

(b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (8) must be sent by the undertaker to the local authority mentioned in paragraph (3).

(11) No notice is required under paragraph (2) before the removal of any human remains where the undertaker is satisfied—

(a) that the remains were interred more than 100 years ago; and

(b) that no relative or personal representative of the deceased is likely to object to the remains being removed in accordance with this article.

(12) In this article—

(a) references to a relative of the deceased are to a person who—

(i) is a husband, wife, civil partner, parent, grandparent, child or grandchild of the deceased; or

(ii) is, or is a child of, a brother, sister, uncle or aunt of the deceased; or

(iii) is the lawful executor of the estate of the deceased; or

(iv) is the lawful administrator of the estate of the deceased.

(13) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(14) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(15) Section 25 of the Burial Act 1857(**a**) (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) is not to apply to a removal carried out in accordance with this article.

(16) The Town and Country Planning (Churches, Places of Religious Worship and Burial Ground) Regulations 1950(**b**) do not apply to the authorised development.

(**a**) 1857 c. 81. Substituted by Church of England (Miscellaneous Provisions) Measure 2014 No. 1 s.2 (January 1, 2015: substitution has effect subject to transitional and saving provisions specified in S.I. 2014/2077 Sch. 1 paras 1 and 2).

(**b**) S.I. 1950/792.

Operational land for the purposes of the 1990 Act

13. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as operational land) for the purposes of that Act) of the 1990 Act.

Certification of plans, etc.

14.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of the—

(a) archaeological exclusion zone – whole area plan (document reference 2.22 LC DRW);

(b) environmental statement (document reference 6 LC ES CH (Chapters 1-11) as submitted on 4 December 2020, as updated by the following documents —

(i) 6.4A LC ES CH 4 (Development Proposal) (9 August 2021);

(ii) 6.6B LC ES CH 6 (Landscape and Visual Impact) (9 August 2021);

(iii) 6.7A LC ES CH 7 (Ecology) (9 August 2021);

(iv) 6.10A LC ES CH 10 (Agriculture) (9 August 2021);

(v) 6.11A LC ES CH 11 (8 April 2021);

(vi) 7.12C LC TA 4.5 Air Quality and Carbon Assessment (31 August 2021);

(vii) 7.16A LC TA 4.9 Noise Impact Assessment (24 May 2021);

(viii) 7.21B LC TA 6.5 Detailed Landscape Proposals (9 August 2021);

(ix) 7.29B LC TA 7.9 Habitats Regulation Statement – No Significant Effects report (NSER) (9 August 2021);

(x) flood risk assessment and drainage strategy (document reference 7.3 LC TA3.1);

(xi) 7.35A LC TA 9.1 Transport Statement (11 January 2021);

(xii) outline BSMP (environmental statement technical appendix 7.14 LC TA4.7);

(xiii) outline CEMPs (environmental statement technical appendix 7.8D LC TA4.1 (31 August 2021) & 7.27 LC TA7.7);

(xiv) outline CTMP (environmental statement technical appendix 7.36 LC TA9.2);

(xv) outline soil management plan (environmental statement technical appendix 7.11 LC TA4.4);

(xvi) outline decommissioning strategy (environmental statement technical appendix 7.9C LC TA4.2 (31 August 2021); and

(xvii) outline LEMP (environmental statement technical appendix 7.28D LC TA7.8)(31 August 2021);

(c) hedgerow plan (document reference 2.40 LC DRW);

(d) land plan including Order limits (document reference 2.1 LC DRW);

(e) proposed temporary diversion of public footpath 214 plan (document reference 2.39 LC DRW);

(f) works details – Key B2 - sheet 5 of 7 (document reference 2.15 LC DRW);

(g) works plan (document reference 2.8 LC DRW);

(h) archaeological management plan (document reference 9.42 LC OTH)

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

15.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

(a) by post;

(b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or

(c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(**a**) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

(a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and

(b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

(a) addressing it to that person by name or by the description of "owner", or as the case may be "occupier", of the land (describing it); and

(b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

(a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;

(b) the notice or document is capable of being accessed by the recipient;

(c) the notice or document is legible in all material respects; and

(d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

(a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

(**a**) 1978 c. 30.

(10) In this article "legible in all material respects" means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Felling or lopping of trees or removal of hedgerows

16.—(1) The undertaker may fell or lop any tree, or shrub near any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree, or shrub—

(a) from obstructing or interfering with the construction, maintenance operation or decommissioning of the authorised development or any apparatus used in connection with the authorised development; or

(b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree, or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined under Part 1 of the 1961 Act.

(4) The undertaker may for the purposes of the authorised development—

(a) remove those parts of the important hedgerows within the Order limits and specified in Schedule 4 part 1 (removal of important hedgerows); and

(b) remove those parts of the hedgerows as are within the Order limits and specified in Schedule 4 part 2 (removal of hedgerows).

(5) In this article "hedgerow" and "important hedgerow" have the same meaning as in the Hedgerow Regulations 1997(**a**).

Arbitration

17. —(1) Any difference under any provision of this Order, unless otherwise provided for, shall be referred to and settled in arbitration in accordance with the rules at Schedule 5 (Arbitration rules) of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

Requirements, appeals, etc.

18.—(1) Where an application is made to, or a request is made of, the local planning authority or any other relevant person for any agreement or approval requirement or contemplated by any of the provisions of this Order, such agreement or approval must, if given, be given in writing and must not be unreasonably withheld or delayed.

(2) Part 2 (procedure for discharge or requirements) of Schedule 2 (Requirements) has effect in relation to all agreements or approvals granted, refused or withheld in relation to requirements in Part 1 of that Schedule.

Application of landlord and tenant law

19.—(1) This article applies to—

(a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and

(b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

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(**a**) S.I. 1997/1160.

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants may prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law to which paragraph (2) applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

(a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

(b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

(c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Protective Provisions

20. Schedule 6 (protective provisions) has effect.

Signed by Authority of the Secretary of State for Business, Energy and Industrial Strategy

Signatory text

Name
Address — Department of Business, Energy and Industrial Strategy
Date — Department

SCHEDULES

SCHEDULE 1 — Article 3

AUTHORISED DEVELOPMENT

In the administrative area of North Lincolnshire

1. The construction, operation, maintenance and decommissioning of a nationally significant infrastructure project as defined in sections l4(l) and 15 of the 2008 Act with associated development under section 115(1)(b) of the 2008 Act.

The nationally significant infrastructure project comprises a generating station with a gross electrical output of over 50 megawatts alternating current comprising all or any of the work numbers in this Schedule or any part of any work number in this Schedule—

Work No. 1 – a generating station comprising: arrays of ground-mounted solar panels with a gross electrical output of over 50 megawatts alternating current comprising—

(a) solar panels;

(b) mounting structure;

(c) internal access tracks;

(d) inverters;

(e) transformers;

(f) cable trenches;

(g) cable circuits;

(h) switch gear and ancillary equipment

(i) earthing circuits;

(j) communication circuits;

(k) CCTV and mountings; and

(l) internal security fencing with gates

Along with associated development within the meaning of Section 115(2) of the 2008 Act comprising—

Work No. 2A – a battery energy storage system comprising—

(a) containerised battery units;

(b) inverters;

(c) client switch room containers housing the switch gear;

(d) transformers;

(e) cable trenches;

(f) cable circuits;

(g) communication circuits;

(h) vehicle parking;

(i) earthing circuits;

(j) CCTV and mountings;

(k) internal security fencing with gates; and

(l) internal access tracks;

Work No. 2B – a battery energy storage system comprising—

(a) containerised battery units;

(b) inverters;

(c) client switch room container housing the switch gear;

(d) transformers;

(e) cable trenches;

(f) cable circuits;

(g) communication circuits;

(h) vehicle parking;

(i) earthing circuits;

(j) CCTV and mountings;

(k) internal access tracks; and

(l) internal security fencing with gates;

Work No. 3 – formation of ecological corridors comprising—

(a) planting and ecological works incorporating the biodiversity objectives and management prescriptions set out in the LEMP;

(b) internal access tracks;

(c) fencing archaeological exclusion zone;

(d) swale buffer;

(e) temporary diversion of public footpath;

(f) underground connection to the electricity network;

(g) cable trenches;
(h) cable circuits;
(i) hedge buffer;
(j) ancient woodland buffer;
(k) pond buffer;
(l) CCTV and mountings; and
(m) bunds, embankments and swales.

Work No. 4 – construction of substation building and compound comprising—

(a) customer switch room;
(b) control room building welfare unit and WC;
(c) car parking;
(d) gantry with voltage and current transformers ;
(e) security fencing with gates;
(f) circuit breakers;
(g) earthing circuits;
(h) access track with separate access provision for District Network Operator;
(i) cable trenches;
(j) cable circuits;
(k) cess pit;
(l) floodlight columns;
(m) pad mounted transformer;
(n) sealing end structures;
(o) high level 132 kV busbars; and
(p) low level disconnectors.

Work No. 5 – upgrade to main access track comprising—

(a) laying out and surfacing of passing bays and access track;
(b) vegetation removal;
(c) planting and ecological works incorporating the biodiversity objectives and management prescriptions in the LEMP; and
(d) drainage channels.

Work No. 6 – perimeter development buffer comprising—

(a) security fencing, boundary treatment and other means of enclosure;
(b) bunds, embankments and swales;
(c) temporary diversion of public footpath during construction and decommissioning;
(d) ancient woodland buffer;
(e) public footpath buffer;
(f) pond buffer;
(g) hedge buffer;
(h) swale buffer;
(i) mitigation planting and maintenance corridor;
(j) planting and ecological works incorporating the biodiversity objectives and management prescriptions set out in the LEMP; and
(k) internal access tracks.

Work No. 7 – temporary construction and decommissioning compound comprising—

(a) installation of portable cabins providing office and welfare facilities;

(b) parking;

(c) storage containers;

(d) secure storage compound;

(e) temporary hardstanding; and

(f) internal security fencing with gates.

Site Wide Works

In connection with the construction of Work Nos. 1-7 above and to the extent that they do not form any part of any such work, further associated development comprising such other works as may be necessary or expedient for the purpose of or in connection with the relevant part of the authorised development and which fall within the scope of work assessed by the environmental statement within the Order limits including—

(a) foundations, drainage, fencing, culverts and lighting;

(b) bunds, embankments and swales;

(c) jointing bays, cable ducts, cable protection, joint protection, manholes, construction of crossing structures, kiosks, marker, posts, underground cable marker, tiles and tape, and lighting and other works associated with cable laying;

(d) altering the course of or otherwise constructing over or under non-navigable watercourses;

(e) site preparation works, site clearance; earthworks (including soil stripping and storage, site levelling); remediation of contamination;

(f) working sites, storage areas, temporary vehicle parking, ramps and other means of access, hardstanding, internal roads and tracks, laydown areas, welfare facilities, construction lighting, haulage roads and other machinery, apparatus, works and conveniences and their restoration;

(g) landscape and biodiversity mitigation and enhancement;

(h) horizontal directional drilling; and

(i) works for the benefit or protection of land affected by the authorised development.

SCHEDULE 2

Article 3

REQUIREMENTS

PART 1

REQUIREMENTS

Interpretation

1. In this Schedule—

"BSMP" means battery safety management plan;

"CEMPs" means construction environmental management plan and construction environmental management plan for biodiversity;

"contaminated land" has the same meaning as that given in section 78A of the Environmental Protection Act 1990;

"CTMP" means construction traffic management plan;

"first export date" means the date on which the generating station first exports electricity to the Northern Powergrid network on a commercial basis;

"landowner" means the freehold owner of the land within the Order limits on which the relevant part of Work No. 5 is constructed;

"phase" means a defined section or part of the authorised development, the extent of which is shown in a scheme submitted to and approved by the local planning authority under requirement 5 (phases of authorised development); and

"substation operator" means the operator of the substation from time to time constructed as part of Work No. 4."

Time limit

2. The authorised development must commence no later than the expiration of five years beginning with the date on which this Order comes into force.

Expiry of development consent

3.—(1) The authorised development must cease generating electricity on a commercial basis no later than the 35th anniversary of the first export date from Work No.1.

(2) Confirmation of the first export date for Work No.1 must be provided by the undertaker to the local planning authority within one month of its occurrence.

Decommissioning and site restoration

4.—(1) Not less than 6 months before the 35th anniversary of the first export date, a decommissioning and site restoration scheme must be submitted to the local planning authority for its approval. The decommissioning and site restoration scheme(s) must be in accordance with the outline decommissioning strategy.

(2) The decommissioning and site restoration scheme(s) must include provision for—

(a) removal of all above-ground elements of the relevant part of the authorised development, with the exception of the access tracks (Work No.5) where the landowner has confirmed to the undertaker that it requires their retention and the substation (Work No. 4) where the substation operator has confirmed to the undertaker that its retention is required;

(b) removal of any cabling which is up to five hundred millimetres below ground level; and

(c) restoration of the areas disturbed by the relevant part of the authorised development.

(3) The decommissioning of the authorised development and the restoration of the land affected by the authorised development must be undertaken within the time period set out in accordance with the approved decommissioning and site restoration scheme(s).

Phases of authorised development

5.—(1) The authorised development must not be commenced until a written scheme setting out the phases of construction of the authorised development has been submitted to and approved by the local planning authority.

(2) The authorised development must be implemented in accordance with the approved phasing scheme.

Detailed design approval

6.—(1) No phase of the authorised development is to be commenced until written details of the following for that phase have been submitted to and approved by the local planning authority—

(a) layout;

(b) scale;

(c) proposed finished ground levels and elevations;

(d) external appearance;

(e) hard-surfacing materials;

(f) parking and circulation areas;

(g) refuse or other storage units, signs and lighting;

(h) power and communications cables and pipelines;

(i) fencing;

(j) security measures; and

(k) any mitigation measures necessary to address noise impacts.

(2) The details to be submitted for approval must accord with—

(a) the principles and assessments set out in the environmental statement; and

(b) the works plan.

(3) The authorised development must be carried out in accordance with the approved details.

Battery Safety Management Plan (BSMP)

7.—(1) Prior to the commencement of either Work No. 2A or Work No. 2B as notified to the local planning authority under Article 3(4) a BSMP must be submitted to and approved by the local planning authority.

(2) The submitted BSMP must either accord with the outline BSMP or detail such changes as the undertaker considers are required.

(3) In the event that the submitted BSMP proposes changes to the outline BSMP the local planning authority must not approve the BSMP until it has consulted with the Health and Safety Executive and Humberside Fire and Rescue Service.

Construction Environmental Management Plans (CEMPs)

8.—(1) No phase of the authorised development is to be commenced until a CEMP for that phase has been submitted to and approved by the local planning authority. Any CEMP submitted for approval must be in accordance with the outline CEMP and any approved CEMP must be adhered to for the duration of the works in the phase of the authorised development to which the CEMP relates.

(2) The CEMP for each phase of the authorised development must provide details of—

(a) community liaison;

(b) complaints procedures;

(c) nuisance management including measures to avoid or minimise the impacts of construction works (covering dust, noise and vibration);

(d) a soil management plan which must accord with the outline soil management plan;

(e) site waste and materials management measures;

(f) pollution control measures to prevent the introduction of any hazardous substances;

(g) security measures and use of artificial lighting;

(h) a protocol requiring consultation with the Environment Agency in the event that unexpected contaminated land is identified during ground investigation or construction;

(i) details of out of hours working procedures; and

(j) a construction and environmental management plan for biodiversity that must accord with the outline construction and environmental management plan for biodiversity.

Construction Traffic Management Plan (CTMP)

9.—(1) No phase of the authorised development is to be commenced until a CTMP covering that phase and in accordance with the outline CTMP has been submitted to and approved by the local planning authority.

(2) The CTMP must include details of—

(a) associated traffic movements; including delivery vehicles and staff/construction vehicle movements;

(b) traffic management requirements on the adjoining public highway of the B1208, B1207 and the A18; and

(c) a condition survey for any road which will be affected by undertaking that phase of the authorised development and a further condition survey following that phase of the construction works. In the event that any defects are identified in that condition survey that are directly attributable to that phase of the construction works of the authorised development, details of how those defects are to be remediated by the undertaker.

(3) The CTMP must be implemented as approved.

Landscape and Ecological Management Plan (LEMP)

10.—(1) No phase of the authorised development is to be commenced until a LEMP covering that phase which accords with the outline LEMP has been submitted to and approved by the local planning authority.

(2) The LEMP must include—

(a) details of the method of protection of existing landscape features and habitats during the construction, operation and decommissioning stage of the authorised development;

(b) details of habitat creation, including new native hedgerow planting adjacent to the proposed security fencing along the line of the existing footpath, replanting of any breaks (gaps) in excess of 1 metre in existing native hedgerows within the Order limits adjacent to the footpath and sowing of wildflower seed along the margins between the footpath and the hedgerow/ security fence boundaries;

(c) details of ongoing management including seasonal grazing regime and other measures shown in table 7.5 at chapter 7 of the environmental statement including the annual review of the need for any additional mitigation planning work, during the lifetime of the authorised development;

(d) a timetable for the landscape management of the land within the Order limits during the lifetime of the authorised development; and

(e) landscaping details for the area allocated for Work No.2A in the event that Work No. 2B is constructed.

(3) The LEMP must be implemented as approved.

Construction hours

11.—(1) Subject to sub-paragraph (2), no construction works are to take place except between the hours of—

(a) 07:00 and 18:00 Monday to Friday; and

(b) 08:00 and 13:30 on Saturday.

(2) The following works are permitted outside the hours referred to in sub-paragraph (1)—

(a) emergency works; and

(b) works which do not cause noise that is audible at the boundary of the Order limits.

(3) Any emergency works carried out under sub-paragraph (2)(a) must be notified to the local planning authority within 72 hours of their commencement.

Surface and foul water drainage

12.—(1) No phase of the authorised development is to be commenced until written details of the surface and foul water drainage system for that phase have been submitted to and approved by the local planning authority.

(2) The details submitted under sub-paragraph (1) must include the plans and strategies referred to in Appendix 3.1 -flood risk assessment and drainage strategy of the environmental statement (document reference 7.3 LC TA3.1).

(3) The surface and foul water drainage system for the relevant part of the authorised development must be constructed in accordance with the approved details.

Archaeology

13.—(1) The authorised development must be carried out in accordance with the archaeological management plan.

(2) No phase of the authorised development is to be commenced until the archaeological exclusion zone around Gokewell Priory shown on the Archaeological Exclusion Zone – Whole Area Plan (document reference 2.22 LC DRW) has been installed as shown on the works plan.

(3) No digging or use of piled mounting frames shall be undertaken within the archaeological "no-dig" zone identified on the Works Details – Key B2 - Sheet 5 of 7 (document reference 2.15 LC DRW).

(4) No phase within the authorised development is to be commenced until a written scheme for the investigation of areas of archaeological interest within that phase has been submitted to and approved by the local planning authority.

(5) The scheme approved under sub-paragraph (4) must be in accordance with the archaeological management plan and identify any areas where a programme of archaeological investigation is required and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(6) Any archaeological works or programme of archaeological investigation carried out under the approved scheme for investigation must be carried out by an organisation registered with the Chartered Institute for Archaeologists or by a member of that Institute.

(7) Any archaeological works or programme of archaeological investigation must be carried out in accordance with the scheme approved under sub-paragraph (4).

(8) Within six months of the commencement of the authorised development the undertaker must submit a scheme to the local planning authority detailing proposals for two interpretation boards explaining the significance of Gokewell Priory. The scheme shall include details of the proposed location, size, materials, content, means of fixing and maintenance of the proposed boards. The scheme shall be implemented as approved within six months following the completion of the authorised development or six months following the approval of the scheme whichever is the later.

Protected Species

14.—(1) No work, including site preparation works, shall be commenced in any phase of the authorised development until final pre-construction survey work has been carried out for that phase to establish whether a protected species is present on any of the land affected, or likely to be affected, by the authorised development or in any of the trees to be lopped or felled as part of that phase.

(2) Where a protected species is shown to be present, the authorised development must not be commenced within that phase until a scheme of protection and mitigation measures has been submitted to and approved by the local planning authority in consultation with Natural England.

(3) The authorised development must be carried out in accordance with any scheme approved under sub-paragraph (2).

(4) In this requirement, "protected species" refers to any species defined as a European Protected Species in regulations 42 (European protected species of animals) and 46 (European protected

species of plants) of the Conservation of Habitats and Species Regulations 2017(**a**) or any species to which Part I (wildlife) and Schedule 5 (animals which are protected) of the Wildlife and Countryside Act 1981(**b**) applies.

Operational noise

15.—(1) No phase of the authorised development is to commence until an operational noise assessment containing details of how the design of the authorised development has incorporated mitigation to ensure the operational noise rating levels as set out in the environmental statement are to be complied with for that phase has been submitted to and approved by the local planning authority.

(2) The authorised development must be implemented and operated for its duration in accordance with the approved operational noise assessment.

Temporary diversion to public footpath

16.—(1) No phase of the authorised development is to be commenced and no decommissioning will be undertaken until a public rights of way management plan for the phase incorporating any part of public footpath 214 shown to be temporarily closed and diverted on the temporary diversion of public footpath plan has been submitted to and, approved by the local planning authority.

(2) The public rights of way management plan must include details of—

(a) measures to minimise the distance of any sections of the public right of way to be temporarily closed; and

(b) advance publicity and signage in respect of any sections of public rights of way to be temporarily closed.

(3) Prior to the commencement of any phase of the authorised development and of any decommissioning the public rights of way management plan must be implemented as approved.

Requirement for written approval

17. Where the approval, agreement or confirmation of the Secretary of State, local planning authority or another person is required under a requirement that approval or confirmation must be given in writing.

Amendments to approved details

18.—(1) With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the local planning authority, the approved details must be carried out as approved unless an amendment or variation has previously been approved in writing by the local planning authority in accordance with sub-paragraph (2).

(2) Any amendments to or variations from the approved details must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to immaterial changes where it has been demonstrated to the local planning authority that the subject matter of the agreement sought is unlikely to give rise to any materially new or materially different environmental effect from those assessed in the environmental statement.

(3) The approved details must be taken to include any amendments that may subsequently be approved in writing by the local planning authority.

(**a**) S.I. 2017/1012.
(**b**) 1981 c. 69.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

19.—(1) Where an application has been made to the local planning authority for any consent, agreement or approval required by a requirement contained in Part 1 of this Schedule, or for any consent, agreement or approval further to any document referred to in any such requirement, the local planning authority must give notice to the undertaker of its decision on the application within a period of eight weeks beginning with—

(a) the day immediately following that on which the application is received by the local planning authority; or

(b) where further information is requested under paragraph 21 the day immediately following that on which the further information has been supplied by the undertaker, or such longer period as may be agreed in writing by the undertaker and the local planning authority.

(2) In determining any application made to the local planning authority for any consent, agreement or approval required by a requirement contained in Part 1 of this Schedule, the local planning authority may—

(a) give or refuse its consent, agreement or approval; or

(b) give its consent, agreement or approval subject to reasonable conditions,

and where consent, agreement or approval is refused or granted subject to conditions the local planning authority must provide its reasons for that decision with the notice of the decision.

Further information regarding requirements

20.—(1) In relation to any application referred to in paragraph 20, the local planning authority may request such further information from the undertaker as it considers necessary to enable it to consider the application.

(2) If the local planning authority considers that further information is necessary and the requirement concerned contained in Part 1 of this Schedule does not specify that consultation with a consultee is required, the local planning authority must, within fourteen days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the requirement concerned contained in Part 1 of this Schedule specifies that consultation with a consultee is required, the local planning authority must issue the application to the consultee within seven days of receipt of the application, and notify the undertaker in writing specifying any further information requested by the consultee within seven days of receipt of such a request.

(4) If the local planning authority does not give the notification within the period specified in sub-paragraph (2) or (3) it (and the consultee, as the case may be) is deemed to have sufficient information to consider the application and is not entitled to request further information without the prior agreement of the undertaker.

Appeals

21.—(1) Where the undertaker makes an application to a local planning authority, the undertaker may appeal to the Secretary of State in the event that—

(a) the local planning authority refuses an application for any consent, agreement or approval required by—

(i) a requirement contained in Part 1 of this Schedule; or

(ii) a document referred to in any requirement contained in Part 1 of this Schedule;

(b) the local planning authority does not determine such an application within the time period set out in paragraph 20(1), or grants it subject to conditions;

(c) on receipt of a request for further information pursuant to paragraph 21 of this Part of this Schedule, the undertaker considers that either the whole or part of the specified information requested by the local planning authority is not necessary for consideration of the application; or

(d) on receipt of any further information requested, the local planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is as follows—

(a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) the expiry of the time period set out in paragraph 20(1), giving rise to the appeal referred to in sub-paragraph (1);

(b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the local planning authority and any consultee specified under the relevant requirement contained in Part 1 of this Schedule;

(c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to consider the appeal ("the appointed person") and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the attention of the appointed person should be sent;

(d) the local planning authority and any consultee (if applicable) must submit their written representations together with any other representations to the appointed person in respect of the appeal within ten business days of the start date specified by the appointed person and must ensure that copies of their written representations and any other representations as sent to the appointed person are sent to each other and to the applicant on the day on which they are submitted to the appointed person;

(e) the undertaker must make any counter-submissions to the appointed person within ten business days of receipt of written representations pursuant to sub-paragraph (d) above; and

(f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable after the end of the ten day period for counter-submissions under sub-paragraph (e).

(3) The appointment of the appointed person pursuant to sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(5) Any further information required pursuant to sub-paragraph (4) must be provided by the party from whom the information is sought to the appointed person and to the other appeal parties by the date specified by the appointed person. The appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within ten business days of the date specified by the appointed person, but must otherwise be in accordance with the process and time limits set out in sub-paragraphs (2)(c) to (e).

(6) On an appeal under this paragraph, the appointed person may—

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision of the local planning authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the appointed person in the first instance.

(7) The appointed person may proceed to a decision on an appeal taking into account such written representations as have been sent within the relevant time limits and in the sole discretion of the appointed person such written representations as have been sent outside of the relevant time limits.

(8) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(9) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for a judicial review.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the local planning authority, the reasonable costs of the appointed person are to be met by the applicant.

(11) On application by the local planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the guidance on costs in the Planning Practice Guidance or any official circular or guidance which may from time to time replace it.

SCHEDULE 3

Article 8

PUBLIC FOOTPATH TO BE TEMPORARILY CLOSED AND DIVERTED

Table 1

(1) Area	*(2) Plan*	*(3) Public footpath to be temporarily closed and diverted*	*(4) Period of diversion*	*(5) Extent of temporary closure*	*(6) Extent of temporary diversion*
North Lincolnshire	As shown indicatively on Drawing P17-0718-30 REV: G1 – PROW (document reference 2.39 LC DRW)	Public Footpath 214	During construction and decommissioning	Between the points marked A-B as shown with a solid black line on the proposed temporary diversion to public footpath 214 plan	From A-C-D-B as shown with a dashed black line on the proposed temporary diversion to public footpath 214 plan

SCHEDULE 4

Article 16

HEDGEROWS

PART 1

REMOVAL OF IMPORTANT HEDGEROWS

Table 2

(1) Plan	*(2) Important Hedgerow*	*(3) Work*
Hedgerow Plan ref 2.40 LC DRW	H12	Removal of section 16 as shown with a purple circle on the hedgerow plan
Hedgerow Plan ref 2.40 LC DRW	H11	Removal of section 17 as shown with a purple circle on the hedgerow plan
Hedgerow Plan ref 2.40 LC DRW	H11	Removal of section 18 as shown with a purple circle on the hedgerow plan
Hedgerow Plan ref 2.40 LC DRW	H5	Removal of section 19 as shown with a purple circle on the hedgerow plan
Hedgerow Plan ref 2.40 LC DRW	H5	Removal of section 14 as shown with a yellow circle on the hedgerow plan

PART 2

REMOVAL OF HEDGEROWS

Table 3

(1) Plan	*(2) Hedgerow*	*(3) Work*
Hedgerow Plan ref 2.40 LC DRW	H1	Removal of section 1 as shown with a yellow circle on the hedgerow plan
Hedgerow Plan ref 2.40 LC DRW	H1	Removal of section 2 as shown with a purple circle on the hedgerow plan
Hedgerow Plan ref 2.40 LC DRW	H1	Removal of section 3 as shown with a purple circle on the hedgerow plan
Hedgerow Plan ref 2.40 LC DRW	H1	Removal of section 4 as shown with a purple circle on the hedgerow plan
Hedgerow Plan ref 2.40 LC DRW	H1	Removal of section 5 as shown with a purple circle on the hedgerow plan
Hedgerow Plan ref 2.40 LC DRW	H1	Removal of section 6 as shown with a purple circle on the hedgerow plan
Hedgerow Plan ref 2.40 LC DRW	H2	Removal of section 7 as shown with a purple circle on the hedgerow plan
Hedgerow Plan ref 2.40 LC DRW	H3	Removal of section 8 as shown with a purple circle on the hedgerow plan

Hedgerow Plan ref 2.40 LC DRW	H3	Removal of section 9 as shown with a purple circle on the hedgerow plan
Hedgerow Plan ref 2.40 LC DRW	H3	Removal of section 10 as shown with a purple circle on the hedgerow plan
Hedgerow Plan ref 2.40 LC DRW	H3	Removal of section 11 as shown with a purple circle on the hedgerow plan
Hedgerow Plan ref 2.40 LC DRW	H4	Removal of section 12 as shown with a purple circle on the hedgerow plan
Hedgerow Plan ref 2.40 LC DRW	H4	Removal of section 13 as shown with a purple circle on the hedgerow plan
Hedgerow Plan ref 2.40 LC DRW	H6	Removal of section 20 as shown with a yellow circle on the hedgerow plan
Hedgerow Plan ref 2.40 LC DRW	H7	Removal of section 22 as shown with a purple circle on the hedgerow plan
Hedgerow Plan ref 2.40 LC DRW	H8	Removal of section 21 as shown with a purple circle on the hedgerow plan
Hedgerow Plan ref 2.40 LC DRW	H10	Removal of section 15 as shown with a purple circle on the hedgerow plan

SCHEDULE 5

Article 17

ARBITRATION RULES

Primary objective

1.—(1) The primary objective of these arbitration rules is to achieve a fair, impartial, final and binding award on the substantive difference between the parties (save as to costs) within 4 months from the date the arbitrator is appointed pursuant to article 17 of the Order.

(2) The arbitration is deemed to have commenced when a party ("the Claimant") serves a written notice of arbitration on the other party ("the Respondent").

Time periods

2.—(1) All time periods in these arbitration rules will be measured in days and this is to include weekends, but not bank or public holidays.

(2) Time periods will be calculated from the day after the arbitrator is appointed which must be either—

(a) the date the arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or

(b) the date the arbitrator is appointed by the Secretary of State.

Timetable

3.—(1) The timetable for the arbitration is to be that set out in sub-paragraphs (2) to (4) unless amended in accordance with sub-paragraph 5(3).

(2) Within 14 days of the arbitrator being appointed, the Claimant must provide both the Respondent and the arbitrator with—

(a) a written Statement of Claim which describes the nature of the differences between the parties, the legal and factual issues, the Claimant's contentions as to those issues, the amount of its claim and the remedy it is seeking; and

(b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

(3) Within 14 days of receipt of the Claimant's statements under sub-paragraph (2) by the arbitrator and Respondent, the Respondent must provide the Claimant and the arbitrator with—

(a) a written Statement of Defence responding to the Claimant's Statement of Claim, its statement in respect of the nature of the differences, the legal and factual issues in the Claimant's claim, its acceptance of any element(s) of the Claimant's claim, its contentions as to those elements of the Claimant's claim it does not accept;

(b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports; and

(c) any objections it wishes to make to the Claimant's statements, comments on the Claimant's expert report(s) (if submitted by the Claimant) and explanations for the objections.

(4) Within 7 days of the Respondent serving its statements sub-paragraph (3), the Claimant may make a Statement of Reply by providing both the Respondent and the arbitrator with—

(a) a written statement responding to the Respondent's submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;

(b) all statements of evidence and copies of documents in response to the Respondent's submissions;

(c) any expert report in response to the Respondent's submissions;

(d) any objections to the statements of evidence, expert reports or other documents submitted by the Respondent; and

(e) written submissions in response to the legal and factual issues involved.

Procedure

4.—(1) The parties' pleadings, witness statements and expert reports (if any) must be concise. No single pleading is to exceed 30 single-sided A4 pages using 10pt Arial font.

(2) The arbitrator must make an award on the substantive difference(s) based solely on the written material submitted by the parties unless the arbitrator decides that a hearing is necessary to explain or resolve any matters.

(3) Either party may, within 2 days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(4) Within 7 days of receiving the last submission, the arbitrator must notify the parties whether a hearing is to be held and the length of that hearing.

(5) Within 10 days of the arbitrator advising the parties that he/she is to hold a hearing, the date and venue for the hearing must be fixed by agreement with the parties, save that if there is no agreement the arbitrator must direct a date and venue which he/she considers is fair and reasonable in all the circumstances. The date for the hearing must not be less than 35 days from the date of the arbitrator's direction confirming the date and venue of the hearing.

(6) A decision will be made by the arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the arbitrator, then any expert(s) attending the hearing may be asked questions by the arbitrator.

(7) There will be no process of examination and cross-examination of experts, but the arbitrator will invite the parties to ask questions of the experts by way of clarification of any answers given by the expert(s) in response to the arbitrator's questions. Prior to the hearing the procedure for the expert(s) will be that—

(a) at least 28 days before a hearing, the arbitrator will provide a list of issues to be addressed by the expert(s);

(b) if more than one expert is called, they will jointly confer and produce a joint report or reports within 14 days of the issues being provided; and

(c) the form and content of a joint report must be as directed by the arbitrator and must be provided at least 7 days before the hearing.

(8) Within 14 days of a hearing or a decision by the arbitrator that no hearing is to be held the parties may by way of exchange provide the arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The arbitrator will take these submissions into account in the award.

(9) The arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the substantive difference within 4 months of the date on which the arbitrator is appointed, unless both parties otherwise agree to an extension to the date for the award.

(10) If a party fails to comply with the timetable, procedure or any other direction then the arbitrator may continue in the absence of a party or submission or document, and may make a decision on the submitted information attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure and/or direction.

(11) The arbitrator's award must include reasons. The parties will accept that the extent to which reasons are given must be proportionate to the issues in dispute and the time available to the arbitrator to deliver the award.

Arbitrator's powers

5.—(1) The arbitrator has all the powers of the Arbitration Act 1996, including the non-mandatory sections, save where modified by these arbitration rules.

(2) There will be no discovery or disclosure, except that the arbitrator will have the power to order the parties to produce such documents as are reasonably requested by another party no later than the Statement of Reply, or by the arbitrator, where the documents are manifestly relevant, specifically identified and the burden of production is not excessive. Any application and orders should be made by way of a Redfern Schedule without any hearing.

(3) Any time limits fixed in accordance with this procedure or by the arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the arbitrator. In the absence of agreement, the arbitrator may vary the timescales and/or procedure—

(a) if the arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice; and

(b) only for such a period that is necessary to achieve fairness between the parties.

(4) On the date the award is made, the arbitrator will notify the parties that the award is completed, signed and dated, and that it will be issued to the parties on receipt of cleared funds for the arbitrator's fees and expenses.

Costs

6.—(1) The costs of the arbitration must include the fees and expenses of the arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the arbitration.

(2) Where the difference involves connected/interrelated issues, the arbitrator will consider the relevant costs collectively.

(3) The final award must fix the costs of the arbitration and decide which of the parties will bear them or in what proportion they will be borne by the parties.

(4) The arbitrator will award recoverable costs on the general principle that each party should bear its own costs, having regard to all material circumstances, including such matters as exaggerated claims and/or defences, the degree of success for different elements of the claims, claims that have incurred substantial costs, the conduct of the parties and the degree of success of a party.

Confidentiality

7.—(1) The parties agree that any hearings held as part of the arbitration will take place in private.

(2) The parties and arbitrator agree that any matters, materials, documents, awards, expert reports and the like are confidential and must not be disclosed to any third party without prior written consent of the other party, save for any application to the Courts or where disclosure is required under any legislative or regulatory requirement.

SCHEDULE 6

Article 20

PROTECTIVE PROVISIONS

PART 1

PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

Application

1. For the protection of the affected undertakers referred to in this Part of this Schedule (save for Anglian Water which is protected by Part 2 of this Schedule and Northern Powergrid which is protected by Part 4 of this Schedule) the following provisions have effect, unless otherwise agreed in writing between the undertaker and the affected undertaker concerned.

2. In this Part of this Schedule—

"affected undertaker" means—

(a) any licence holder within the meaning of Part 1 (electricity supply) of the 1989 Act;

(b) a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986(**a**);

(c) a water undertaker within the meaning of the Water Industry Act 1991(**b**); or

(d) a sewerage undertaker within the meaning of Part 1 (preliminary) of the Water Industry Act 1991,

for the area of the authorised development but, for the avoidance of doubt, does not include the undertaker specified in Part 2 (Anglian Water) of this Schedule, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained;

"alternative apparatus" means alternative apparatus adequate to enable the affected undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means—

(a) in the case of an electricity undertaker, electric lines or electric plant (as defined in the 1989 Act), belonging to or maintained by that affected undertaker;

(b) in the case if a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

(c) in the case of a water undertaker—

(i) mains, pipes or other apparatus belonging to or maintained by that affected undertaker for the purposes of water supply; and

(ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A (agreements to adopt water main or service pipe at future date) or the Water Industry Act 1991;

(**a**) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

(**b**) 1991 c. 56.

(d) in the case of a sewerage undertaker—

(i) any drain or works vested in the affected undertaker under the Water Industry Act 1991; and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"functions" includes powers and duties; and

"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.

Precedence of the 1991 Act in respect of apparatus in the streets

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the affected undertaker are regulated by the provisions of Part 3 (water supply) of the 1991 Act.

Removal of apparatus

4.—(1) If, for the purpose of executing any works in, on or under any land purchased, held, or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the affected undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an affected undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (2), afford to the affected undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(2) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (1), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the affected undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(3) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the affected undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 17 (arbitration).

(4) The affected undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 17 (arbitration) and after the grant to the affected undertaker of any such facilities and rights as are referred to in sub-paragraph (1) or (2), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(5) Regardless of anything in sub-paragraph (4), if the undertaker gives notice in writing to the affected undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the affected undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the affected undertaker.

Facilities and rights for alternative apparatus

5.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to an affected undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the affected undertaker in question or in default of agreement settled by arbitration in accordance with article 17 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the affected undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that affected undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

6.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 4(1) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 4(1), the undertaker must submit to the affected undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the affected undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the affected undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by an affected undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If an affected undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 5 apply as if the removal of the apparatus had been required by the undertaker under paragraph 4(1).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the affected undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses and costs

7.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to an affected undertaker the reasonable expenses incurred by that affected undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 4(1).

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 17 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the affected undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to an affected undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the affected undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

8.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 4(1), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of an affected undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any affected undertaker, the undertaker must—

(a) bear and pay the cost reasonably incurred by that affected undertaker in making good such damage or restoring the supply; and

(b) provide reasonable compensation to that affected undertaker for any other expenses, loss, damages, penalty or costs incurred by the affected undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an affected undertaker, its officers, servants, contractors or agents.

(3) An affected undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the consent of the undertaker which, if it withholds such consent, will have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Enactments and agreements

9. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an affected undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF ANGLIAN WATER

10. For the protection of Anglian Water, the following provisions have effect, unless otherwise agreed in writing between the undertaker and Anglian Water.

11. In this Part of this Schedule—

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

"apparatus" means—

(a) any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage;

(b) any drain or works vested in Anglian Water under The Water Industry Act 1991; and

(c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of The Water Industry Act 1991 or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at a future date) of that Act,

and includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain, or works (within the meaning of section 219 (general interpretation) of that Act) and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"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 sections, drawings, specifications and method statements; and

"water main" means the 21 inch iron water main (asset number 7293912) within the Order Limits.

12. The undertaker must not interfere with, build over or near to any apparatus within the Order limits or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within the standard protective strip which is the strip of land falling 6 metres either side of the water main within the Order limits (including any accessories to it) or 3 metres either side of any other apparatus uncovered by the undertaker during construction or so as to require any special measures that are outside industry standard measures other than in accordance with paragraph 16 below unless otherwise agreed with Anglian Water, such agreement not to be unreasonably withheld or delayed, with such provision being brought to the attention of any agent or contractor responsible for carrying out any work on behalf of the undertaker.

13. The alteration, extension, removal or re-location of any apparatus must not be implemented until—

(a) any requirement for a permit under the Environmental Permitting (England and Wales) Regulations 2016 or other legislation and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such re-location are approved, such approvals from Anglian Water not to be unreasonably withheld or delayed; and

(b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

14. If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the undertaker must provide such alternative means of access to such apparatus as will enable Anglian Water to maintain or use the apparatus no less effectively than was possible before such obstruction.

15. If in consequence of the exercise of the powers conferred by the Order, previously unmapped sewers, lateral drains or other apparatus are identified by the undertaker, notification of the location of such assets must immediately be given to Anglian Water and afforded the same protection of other Anglian Water assets.

16.—(1) Not less than 28 days before starting the execution of any works that are near to, or will or may affect, any apparatus where the removal of which has not been required by the undertaker, the undertaker must submit to Anglian Water a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Anglian Water is entitled to watch and inspect the execution of those works.

(3) Any reasonable requirements made by Anglian Water under sub-paragraph (2) shall be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it and where no requirements are specified within 21 days, approval of the plan, specification and description is deemed to have been given.

(4) Nothing in this paragraph 16 shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan, section and description.

(5) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Anglian Water notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

17. If for any reason as a result of the construction of any of the works referred to in paragraphs 13 or 16 any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

(a) bear and pay the cost reasonably incurred by Anglian Water in making good any damage or restoring the supply; and

(b) make reasonable compensation to Anglian Water for any other direct expenses, loss, damages, penalty or costs incurred by Anglian Water.

18. Anglian Water must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, penalties and costs to which the provisions of this Part 2 apply. If requested to do so by the undertaker, Anglian Water must provide an explanation of how any claim has been minimised. The undertaker is only liable under paragraph 18 for claims reasonably incurred by Anglian Water.

19. For the avoidance of doubt any difference under any provision of this Part 2 of Schedule 6, unless otherwise provided for, shall be referred to and settled by arbitration in accordance with the rules at Schedule 5 (Arbitration rules) of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

PART 3

FOR PROTECTION FOR OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

20. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

21. In this Part of this Schedule—

"the 2003 Act" means the Communications Act 2003(**a**);

"the code rights" has the same meaning as in the Paragraph 3 of the electronic communications code(**b**);

"electronic communications apparatus" has the same meaning as in the electronic communications code;

"the electronic communications code" has the same meaning as in Chapter 1 of Part 2 of the 2003 Act;

"electronic communications code network" means—

(a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

(b) an electronic communications network which the undertaker is providing or proposing to provide,

"electronic communications code operator" means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

"infrastructure system" has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

"operator" means the operator of an electronic communications code network.

22. The exercise of the powers conferred by this Order is subject to part 10 (undertaker's works affecting electronic communications apparatus) of the electronic communications code.

23.—(1) Subject to sub-paragraphs (2) to (3), if as a result of the authorised development or its construction, or of any subsidence resulting from any of the authorised development—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other reasonable expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

24. The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker and if such consent, is withheld, the undertaker has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(**a**) 2003 c.21.
(**b**) See section 106. Section 106 was amended by section 4(3) to (9) of the Digital Economy Act 2017 (c.30).

25. Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 17 (arbitration).

26. This Part of this Schedule does not apply to—

(a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or

(b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

27. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

PART 4

FOR THE PROTECTION OF NORTHERN POWERGRID (YORKSHIRE) PLC

Application

28. For the protection of Northern Powergrid (Yorkshire) PLC ("Northern Powergrid"), the following provisions will have effect, unless otherwise agreed in writing between the undertaker and Northern Powergrid.

29. In this Part of this Schedule—

"acceptable credit provider" means a bank or financial institution with a credit rating that is not lower than "A-" if the rating is assigned by Standard & Poor's Ratings Group or "A3" if the rating is assigned by Moody's Investors Services Inc. (or an equivalent credit rating from an equivalent organisation in the event that such organisation or ratings are no longer applicable);

"acceptable insurance" means a policy of public liability/ third party liability insurance effected and maintained by the undertaker or its contractor(s) to a level that may be approved by Northern Powergrid in writing and in any event with insurance cover of not less than £10,000,000 (ten million pounds) per event for the construction period of the onshore works pursuant to this Order with an internationally recognised insurer of repute operating in the London and worldwide insurance market, and such policy shall include (but without limitation)—

(a) that Northern Powergrid is named as an insured party under the policy;

(b) a cross liabilities clause; and

(c) a waiver of subrogation in favour of Northern Powergrid;

"acceptable security" means either—

(a) evidence provided to Northern Powergrid's reasonable satisfaction that the undertaker has a tangible net worth of not less than £100,000,000 (one hundred million pounds) (or an equivalent financial measure); or

(b) a parent company guarantee from the undertaker's ultimate parent company such company having a tangible net worth of not less than £100,000,000 (one hundred million pounds) (or an equivalent financial measure) in favour of Northern Powergrid to cover the undertaker's liability to Northern Powergrid to a cap of not less than £10,000,000 (ten million pounds) per asset per event up to a total liability cap of £25,000,000 (twenty-five million pounds) in a form satisfactory to Northern Powergrid in its reasonable opinion; or

(c) a bank bond or letter of credit from an acceptable credit provider in favour of Northern Powergrid to cover the undertaker's liability to Northern Powergrid for an amount of not less than £10,000,000 (ten million pounds) per asset per event up to a total liability cap of

£25,000,000 (twenty-five million pounds) in a form satisfactory to Northern Powergrid in its reasonable opinion;

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

"apparatus" means electric lines or electric plant (as defined in the 1989 Act), belonging to or maintained by Northern Powergrid;

"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; and

"Northern Powergrid" means Northern Powergrid (Yorkshire) PLC being a licence holder within the meaning of Part 1 (electricity supply) of the 1989 Act for the area of the authorised development and in relation to any apparatus belonging to it or maintained by it.

No interference

30. 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 interfere with any communications cables or equipment used by Northern Powergrid in relation to its apparatus or interfere with any rights or interests supporting the use, maintenance or renewal of such equipment otherwise than by agreement of Northern Powergrid (such agreement not to be unreasonably withheld or delayed).

Removal of apparatus

31.—(1) If, for the purpose of executing any works in, on or under any land purchased, held, or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give Northern Powergrid 56 days advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Northern Powergrid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (2) , afford to Northern Powergrid the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(2) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (1), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the affected undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the—

(a) the undertaker shall in the first instance use reasonable endeavours to acquire all necessary land interests or rights as Northern Powergrid may reasonably require for the relocation and construction of alternative apparatus and shall procure all necessary rights to access and maintain Northern Powergrid's apparatus and alternative apparatus thereafter the terms of such access and maintenance to be agreed by Northern Powergrid (acting reasonably); and

(b) in the event the undertaker is not able to procure the necessary land interests or rights referred to in sub-paragraph 3(a) Northern Powergrid must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is

to be constructed save that this obligation shall not extend to the requirement for Northern Powergrid to use its compulsory purchase powers to this end unless it elects to do so.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Northern Powergrid and the undertaker or in default of agreement settled by arbitration in accordance with article 17 (arbitration).

(5) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 17 (arbitration) and after the grant to Northern Powergrid of any such facilities and rights as are referred to in subparagraph (1) or (2), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives 56 days advance notice in writing to Northern Powergrid that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by Northern Powergrid, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Northern Powergrid subject to the undertaker providing Northern Powergrid with plans and details including a material statement describing—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant;

(d) the position of all apparatus and alternative apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and

(f) evidence of acceptable insurance.

(7) The undertaker shall not commence the construction or renewal of any works to which sub-paragraph (6) applies until—

(a) Northern Powergrid has given written approval of the plans so submitted;

(b) Northern Powergrid has confirmed in writing that it is satisfied in its reasonable opinion that the undertaker has provided acceptable security for the construction period of the works authorised by the Order; and

(c) Northern Powergrid has confirmed in writing that it is satisfied in its reasonable opinion that the undertaker has procured acceptable insurance and provided evidence that it shall maintain such acceptable insurance for the construction period of the works authorised by the Order;

(8) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

Facilities and rights for alternative apparatus

32.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Northern Powergrid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Northern Powergrid or in default of agreement settled by arbitration in accordance with article 17 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted,

are in the opinion of the arbitrator less favourable on the whole to Northern Powergrid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Northern Powergrid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

33.—(1) Not less than 56 days before starting the execution of any works of the type referred to in paragraph 31 (1) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 31(1), the undertaker must submit to Northern Powergrid a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Northern Powergrid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Northern Powergrid is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Northern Powergrid under sub-paragraph (2) must be made within a period of 30 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If Northern Powergrid in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs (2) to (6) apply as if the removal of the apparatus had been required by the undertaker under paragraph 31(1).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 35 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Northern Powergrid as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses and costs

34.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid within 30 days receipt of a valid invoice all charges costs and expenses reasonably incurred by Northern Powergrid in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are authorised by this Order including without limitation—

(a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus in the event that Northern Powergrid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 31(3) all costs incurred as a result of such action;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule).

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was;

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 17 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Northern Powergrid by virtue of sub-paragraph (1) must be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

35.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in this Order, or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker or Northern Powergrid under this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Northern Powergrid, or there is any interruption in any service provided, or in the supply of any goods, by Northern Powergrid, or Northern Powergrid becomes liable to pay any amount to a third party the undertaker must—

(a) bear and pay the cost reasonably incurred by Northern Powergrid in making good such damage or restoring the supply; and

(b) indemnify Northern Powergrid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs reasonably incurred by or recovered from Northern Powergrid, by reason or in consequence of any such damage or interruption or Northern Powergrid becoming liable to any third party.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Northern Powergrid, its officers, servants, contractors or agents.

(3) Northern Powergrid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the consent of the undertaker which, if it

withholds such consent, will have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Enactments and agreements

36. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Northern Powergrid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

37. Where in consequence of the proposed construction of any of the authorised development, the undertaker or Northern Powergrid requires the removal of apparatus under paragraph 31 or otherwise or Northern Powergrid makes requirements for the protection or alteration of apparatus under paragraph 33, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the need to ensure the safe and efficient operation of Northern Powergrid's undertaking taking into account the undertaker's desire for the efficient and economic execution of the authorised development and the undertaker and Northern Powergrid shall use reasonable endeavours to co-operate with each other for those purposes.

Access

38. If in consequence of an agreement reached in accordance with paragraph 4 or the powers granted under this Order the access to any apparatus or alternative apparatus is materially obstructed, the undertaker shall use all reasonable endeavours to provide such alternative means of access to such apparatus or alternative apparatus as will enable Northern Powergrid to maintain or use the said apparatus no less effectively than was possible before such obstruction.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises INRG Solar (Little Crow) Limited to construct a new solar power generating station on land in Scunthorpe to the east of the British Steel plant and to carry out all associated works.

The Order also makes provision for the maintenance operation and decommissioning of the authorised development.

A copy of the plans, the environmental statement and other documents mentioned in this Order and certified in accordance with article 14 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at North Lincolnshire Council, Church Square House, 30-40 High Street, Scunthorpe, North Lincolnshire, DN15 6NL.