Department for Energy Security & Net Zero

Habitats Regulations Assessment for an Application Under the Planning Act 2008

Oaklands Farm Solar Park

Regulation 63 of The Conservation of Habitats and Species Regulations 2017

JUNE 2025

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Contents

List of abbreviations

Term	Abbreviation
(outline) Construction Environment Management Plan	oCEMP
Adverse Effect on Integrity	AEoI
Appropriate Assessment	AA
Development Consent Order	DCO
Environmental Statement	ES
Examining Authority	ExA
Habitat Regulations Assessment	HRA
Interested Parties	IPs
Likely Significant Effect	LSE
Nationally Significant Infrastructure Project	NSIP
Natural England	NE
Planning Inspectorate	PINS
Statement of Common Ground	SoCG
Statutory Nature Conservation Body	SNCB
The Secretary of State for Energy Security and Net Zero	The Secretary of State

1 Introduction

1.1 Background

This is a record of the Habitats Regulations Assessment (HRA) that the Secretary of State for Energy Security and Net Zero ("the Secretary of State") has undertaken under the Conservation of Habitats and Species Regulations 2017[1] ("the Habitats Regulations") as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019[2] for the Oaklands Farm Solar Park and its associated infrastructure (the "Project"). The Examining Authority ("ExA") defines this as the "Proposed Development". It is defined as the "Project" within this HRA for consistency with the terminology of the Habitats Regulations. For the purposes of these Regulations, the Secretary of State is the competent authority.

The Project comprises the construction, operation, maintenance and decommissioning of a solar photovoltaic electricity generating facility and battery energy storage system with a total capacity exceeding 50 megawatts (MW) and associated infrastructure.

The Project constitutes a nationally significant infrastructure project ("NSIP") as defined by s. 14(1)(a) of the Planning Act 2008[3] as it is for an onshore generating station in England with a capacity over 50MW.

The Project was accepted by the Planning Inspectorate (PINS) on 5 March 2024 and a single Inspector was appointed as the ExA for the Project application. The Examination of the Project application began on 10 July 2024 and was completed on 19 December 2024. The ExA submitted its report of the Examination including its recommendation ("the ExA's Report") to the Secretary of State on 19 March 2025. Numbered references to the ExA's Report are presented in the format "[ER *.*.*].

1.2 Habitats Regulations Assessment

The Habitats Regulations aim to ensure the long-term conservation of certain species and habitats by protecting them from possible adverse effects of plans and projects.

In the UK, the Habitats Regulations apply as far as the 12 nautical miles (nm) limit of territorial waters.

The Habitats Regulations provide for the designation of sites for the protection of habitats and species of international importance. These sites are called Special Areas of Conservation

[1] https://www.legislation.gov.uk/uksi/2017/1012/contents/made

[2] The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019

[3] Planning Act 2008

("SACs"). They also provide for the classification of sites for the protection of rare and vulnerable birds and for regularly occurring migratory species within the UK and internationally. These sites are called Special Protection Areas ("SPAs"). SACs and SPAs together from part of the UK's National Site Network ("NSN").

The Convention on Wetlands of International Importance 1972 ("the Ramsar Convention") provides for the listing of wetlands of international importance. These sites are called Ramsar sites. Government policy is to afford Ramsar sites in the United Kingdom the same protection as sites within the NSN (collectively referred to in this HRA as "protected sites").

Candidate SACs ("cSACs"), SACs and SPAs are afforded protection as protected sites. As a matter of policy[4] the Government affords potential SPAs ("pSPAs") the same level of protection.

Regulation 63 of the Habitats Regulations provides that:

…before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in-combination with other plans or projects), and (b) is not directly connected with or necessary to the management of that site, [the competent authority] must make an appropriate assessment of the implications of the plan or project for that site in view of that site's conservation objectives.

And that:

In the light of the conclusions of the assessment, and subject to regulation 64, the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

This Project is not directly connected with, or necessary to, the management of a protected site. The Habitats Regulations require that, where the Project is likely to have a significant effect (LSE) on any such site, alone or in-combination with other plans and projects, an appropriate assessment (AA) is carried out to determine whether the Project will have an adverse effect on the integrity (AEoI) of the site in view of that site's Conservation Objectives. The following assessments are collectively referred to as a Habitats Regulations Assessment (HRA):

- Stage 1: Assessment of likely significant effects (LSE),
- Stage 2: Appropriate Assessment (AA) to determine whether there is an AEoI of a protected site,
- Stage 3: Assessment of Alternative Solutions,
- Stage 4: Imperative Reasons of Overriding Public Interest (IROPI),
- Stage 5: Compensatory measures.

[4] NPS EN-1 para 5.3.9

Consent for the Project may be granted only after having ascertained that it will not adversely affect the integrity of protected sites, and no reasonable scientific doubt remains[5].

On 12 April 2018, the Court of Justice of the European Union issued a ruling in People Over Wind, Peter Sweetman v Coillte Teoranta (C-323/17) (the 'Sweetman Judgement')[6], which stated (at paragraph 41):

"Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects [mitigation] of the plan or project on that site."

This means that mitigation measures should not be considered at the screening stage (stage 1) but taken forward and considered at the AA stage (stage 2). The assessment provided within this HRA takes account of the ruling in the Sweetman Judgment and the precautionary principle has been applied.

The Secretary of State has had regard to guidance on the application of the Habitats Regulations to the assessment of plans and projects as published by the PINS (2022) (Advice Note 10)[7] guidance produced by the European Commission (2018)[8], joint guidance by Defra, Natural England ("NE"), the Welsh Government and Natural Resources Wales (2021) on 'Habitats Regulations Assessment: protecting a European site' (the "2021 joint guidance")[9].

1.3 Site conservation objectives

Where an AA is required in respect of a protected site, regulation 63(1) of the Habitats Regulations requires that it be an AA of the implications of the plan or project for the site in view of its conservation objectives. Government guidance also recommends that in carrying out the LSE screening, applicants must check if the proposal could have a significant effect on a protected site that could affect its conservation objectives.

[5] CJEU Case C-127/02 Waddenzee 7 September 2004, Reference for a preliminary ruling from the Raad van State (Netherlands) in the proceedings: Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij

[6] ECJ case reference C-323/17, available: http://curia.europa.eu/juris/document/document.jsf?docid=200970&doclang=EN (Accessed 16/04/2022)

[7] https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/advice-note-ten/

[8] European Commission (2018) Managing Natura 2000 sites: The provisions of Article 6 of the Habitats Directive 92/43/EEC

[9] Defra, NE, the Welsh Government and Natural Resources Wales (2021) 'Habitats Regulations Assessment: protecting a European site' https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site

Defra Guidance indicates that disturbance to a species or deterioration of a protected site must be considered in relation to the integrity of that site and its conservation objectives[10]. It states that *"the integrity of a site is the coherence of its ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats and/or the levels of populations of the species for which it was designated"*.

Conservation objectives have been established by NE. When met, each site will contribute to the overall favourable conservation status of the species or habitat feature across its natural range. Conservation objectives outline the desired state for a protected site, in terms of the interest features for which it has been designated. If these interest features are being managed in a way which maintains their nature conservation value, they are assessed as being in a 'favourable condition'. An AEoI is likely to be one which prevents the site from making the same contribution to favourable conservation status for the relevant feature as it did at the time of its designation. There are no set thresholds at which impacts on site integrity are considered adverse. This is a matter for interpretation on a site-by-site basis, depending on the designated feature and nature, scale, and significance of the impact.

NE has issued generic conservation objectives, which should be applied to each interest feature of the site. Supplementary advice on conservation objectives ("SACOs") for each site underpins these generic objectives to provide site-specific information and give greater clarity to what might constitute an adverse effect on a site interest feature. SACOs are subject to availability and are currently being updated on a rolling basis.

Where supplementary advice is not yet available for a site, NE advises that HRAs should use the generic objectives[11] and apply them to the site-specific situation. For SPAs, the overarching objective is to avoid the deterioration of the habitats of qualifying features, and the significant disturbance of the qualifying features, ensuring the integrity of the site is maintained and the site makes a full contribution to achieving the aims of the Habitats Regulations. This is achieved by, subject to natural change, maintaining and restoring:

- the extent and distribution of the habitats of the qualifying features;
- the structure and function of the habitats of the qualifying features;
- the supporting processes on which the habitats of the qualifying features rely;
- the populations of the qualifying features; and
- the distribution of the qualifying features within the site.

For SACs, the overarching objective is to avoid the deterioration of the qualifying natural habitats and the habitats of qualifying species, and the significant disturbance of those qualifying species, ensuring the integrity of the site is maintained and the site makes a full contribution to achieving favourable conservation status of each of the qualifying features. This is achieved by, subject to natural change, maintaining and restoring:

- the extent and distribution of the qualifying natural habitats and habitats of qualifying species;

[10] https://www.gov.uk/guidance/appropriate-assessment

[11] http://publications.naturalengland.org.uk/publication/6734992977690624?cache=1656417868.31

- the structure and function (including typical species) of qualifying natural habitats;
- the structure and function of the habitats of qualifying species;
- the supporting processes on which qualifying natural habitats and habitats of qualifying species rely;
- the populations of qualifying species; and
- the distribution of qualifying species within the site.

The conservation objectives and, where available, supplementary advice on conservation objectives have been used by the Secretary of State to consider whether the Project has the potential to have an adverse effect on the integrity of sites, either alone or in-combination with other plans or projects.

The SACOs relevant to this HRA, as published by NE and the Joint Nature Conservation Committee are referenced in Table 1 of this HRA.

1.4 Documents referred to in this HRA

This HRA has taken account of and should be read in conjunction with the documents produced as part of the Project application and Examination, which are available on the PINS NSIP Project web page[12]. In particular:

- the ExA's Report;
- the Report on Implications for European Sites (RIES) [PD-013];
- the Report to Inform HRA [APP-122];
- the Environmental Statement (ES); and
- the Statement of Common Ground (SoCG) with NE.

Plus, other information submitted during the Examination and during the Secretary of State's consideration of the Application. Key information from these documents is summarised in this report.

A final signed version of the SoCG with NE was submitted at Deadline 7 [REP7-005]. Any subsequent references to the SoCG between the Applicant and NE in this HRA are to that version. The SoCG confirmed that all matters relating to HRA and otherwise were agreed between the two parties, and that there were no HRA matters outstanding between them in respect of the Project.

1.5 Consultation

Under Regulation 63(3) of the Habitats Regulations the competent authority must, for the purposes of an AA, consult the Statutory Nature Conservation Body (SNCB) and have regard to

[12] https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/EN010122/documents

any representation made by that body within such reasonable time as the authority specifies. NE is the SNCB for England and for English waters within the 12 nm limit.

The ExA recommended [ER4.1.8] that the RIES and consultation on it, may be relied upon as an appropriate body of information to enable the Secretary of State to fulfil his duties of consultation. The Secretary of State agrees and considers that the SNCB has been appropriately consulted.

2 Project description

In summary, the Project comprises a proposed solar farm with an associated Battery Energy Storage System (BESS). The Project would have a generating capacity of over 50 MW and would be situated on 191 hectares ("ha") of land. The solar farm itself, comprising photovoltaic (PV) solar panel arrays, a central electricity substation and BESS together with access, landscaping and other works would be on 135 ha of agricultural land currently in use for arable production and grazing. A high voltage underground electricity cable would run through land to the north to connect the Project to the national grid via an electricity substation at the former Drakelow Power Station, south of Burton Upon Trent. The Project would operate for up to 40 years.

The Project comprises the construction, operation and decommissioning of:

Principal development

- Work No. 1 - a ground mounted solar PV generating station.

Associated Development

- Work No. 2 - a BESS compound;
- Work No. 3 - works in connection with a new on-site substation;
- Work No. 4 - 132kV electrical cables connecting Work No. 3 to Work No. 5;
- Work No. 4A - crossing Rosliston Road with electrical cabling;
- Work No. 4B - temporary stopping up of water courses to trench and lay cables, installation of culverts, drainage and other features to cross watercourses;
- Work No. 4C - crossing Walton Road with electrical cabling;
- Work No. 4D - crossing Coton Road with electrical cabling;
- Work No. 5 - connection and installation works to the existing substation;
- Work No. 5A - access for Work No. 5;
- Work No. 5B - access to National Grid operational land for Work No.5;
- Work No. 6 - construction and decommissioning of access tracks and compounds;
- Work No. 7 - general works;
- Work No. 8 - works to facilitate access for all works excluding Work No. 5;
- Work No. 9 - works for areas of habitat management;
- Work No. 10 - works to implement a new permissive path; and
- other works as may be necessary or expedient for the purpose of or in connection with the relevant part of the authorised development, as described in Schedule 1 of the Development Consent Order ("DCO").

The Applicant has not included a maximum limit on generating capacity in the DCO explaining that total generation capacity is linked to the size of the site and the Grid Connection offer that the Applicant has received and accepted. The Project design envelope sets out a series of design options for the Project and has a reasoned minimum and maximum extent for a number of key parameters. The final design would lie between the minimum and the maximum extent of

the consent sought for all aspects of the Project. A set of Design Parameters [REP6-031] have been established by the Applicant which allow for flexibility in the design and form the limits within which the Project can be built and operated ('the Rochdale Envelope'). These design principles correspond to the physical areas set out in the works plans and are secured in the DCO. These have been used for topics where a specific level of detail is required to enable a robust assessment to be undertaken. Further information on the Rochdale Envelope is available in PINS Advice Note Nine[13]. The final detailed design of the Project, which would occur post-consent, would fall within this 'Rochdale envelope'. The Secretary of State's HRA is based upon the maximum extent or worst-case potential impact of the Project for each parameter.

2.1 Changes to the Project application during Examination

A number of updates were made to the application documents during the Examination, including amendments to the wording of the draft DCO. These changes were intended to address the ExA's questions as well as points raised by IPs. They sought to improve the clarity of the drafting and address any omissions, discrepancies and other matters which were raised during the Examination.

The Applicant also submitted several revisions to the application documents, details of which can be found in the Application Guide submitted at Deadline 8 [REP8-002]. This provides a guide to all documents submitted as part of the Application and was updated at each Deadline when new or revised documents were submitted. It provides a full record of all documentation submitted into the Examination by the Applicant. The Applicant did not request any changes to the application.

[13] https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/advice-note-nine-rochdale-envelope/

3 Stage 1: Screening for Likely Significant Effects ("LSEs")

Under regulation 63 of the Habitats Regulations, the Secretary of State must consider whether the Project will have a LSE on a protected site, either alone or in-combination with other plans or projects. The purpose of this section is to identify any LSEs on protected sites that may result from the Project and to record the Secretary of State's conclusions on the need for an AA.

This first stage in the HRA process (stage 1) uses the threshold of LSE to determine whether effects on protected sites should be the subject of further assessment. The Habitats Regulations do not define the term LSE. However, in the Waddenzee case (Case C-127/02)[14] the European Court of Justice found that an LSE should be presumed, and an AA carried out if it cannot be excluded on the basis of objective information that the plan or project will not have significant effects on the conservation objectives of the site concerned, whether alone or in-combination with any other project. The Advocate General's opinion of the Sweetman case (Case C-258/11)[15] further clarifies the position by noting that, for a conclusion of an LSE to be made *"there is no need to **establish** such an effect...it is merely necessary to determine that there **may** be such an effect"* (original emphasis). For the reasons highlighted above the assessment process follows the precautionary principle throughout and the word 'likely' is regarded as a description of a risk (or possibility), as opposed to a probability.

3.1 Project location and zone of influence

The location of the Project is shown and described in detail in ES Chapter 4 [REP6-031]. It comprises an area of approximately 191 ha. The site is wholly in England and lies within the Derbyshire County Council (DCC) and South Derbyshire District Council (SDDC) administrative areas and in proximity to the Staffordshire County Council (SCC), East Staffordshire Borough Council (ESBC) and Lichfield District Council administrative areas.

Most of the Order limits is agricultural farmland with small areas of woodland copses, isolated trees and hedgerow throughout the site. The Pessall Brook cuts west to east through the site. It also includes areas of woodland, ponds, small areas of pasture along with trees, hedgerows and farm access tracks.

A screening distance of 15km was used to identify protected sites likely to be affected by impacts relating to the Project. Beyond this distance the potential for LSEs either alone of in-combination is typically negligible. However, consideration was given to protected sites further afield where functional ecological connectivity exists.

[14] Judgment of the Court (Grand Chamber), 7 September 2004. Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij. Reference for a preliminary ruling: Raad van State - Netherlands. Case C-127/02.

[15] Judgment of the Court (Third Chamber), 11 April 2013. Peter Sweetman and Others v An Bord Pleanála. Request for a preliminary ruling from the Supreme Court (Ireland) Case C-258/11.

This included a review of the potential for impact types which can travel greater distances, such as via hydrological connectivity.

The Project site is within the zone of influence of one protected site, the River Mease SAC, as illustrated in Figure 1. The SAC is 4km south of the Order limits at the closest point. All other protected sites are ruled out based on distance and absence of potential source-pathway receptor connectivity.

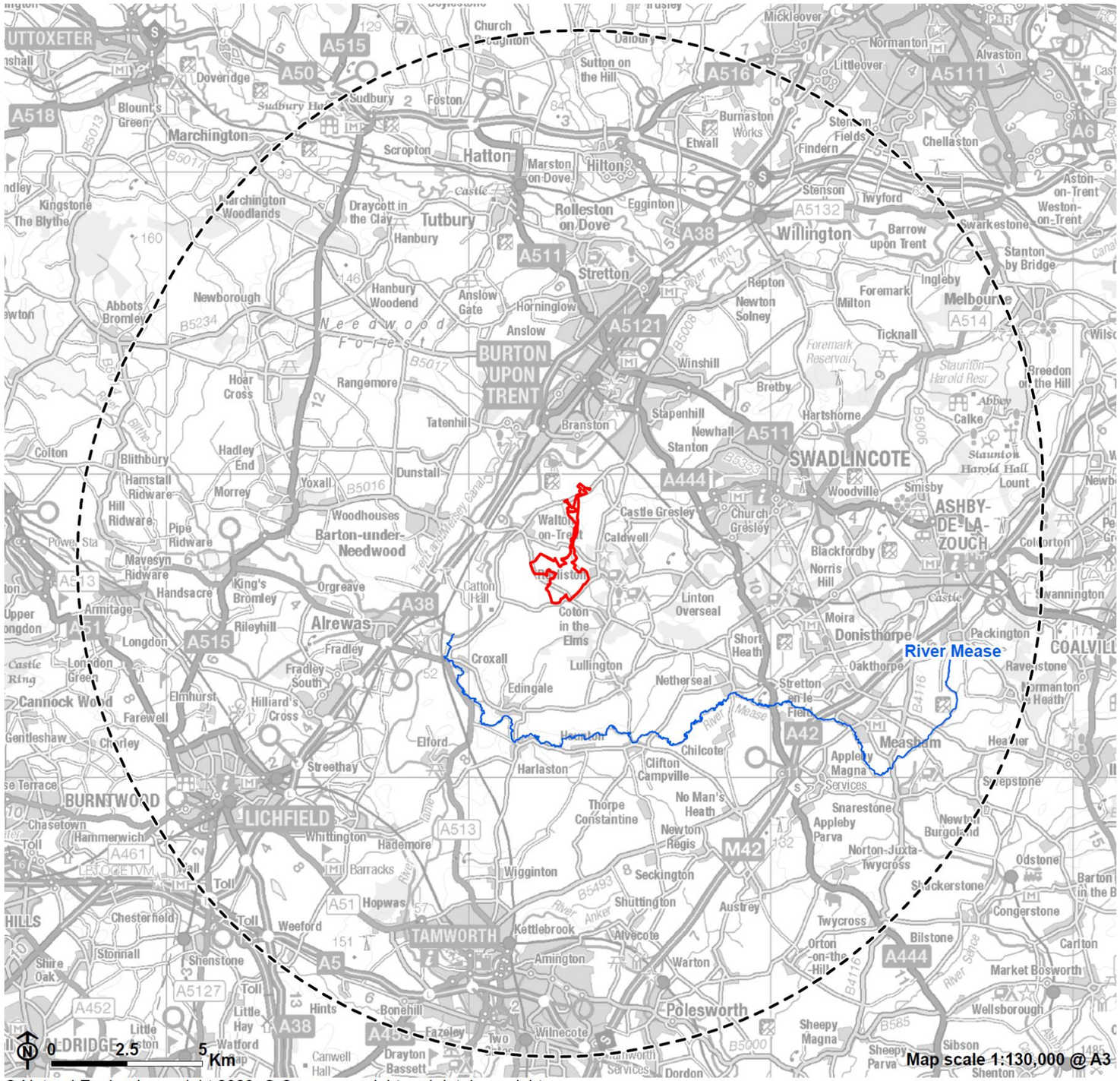

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Figure 6.2.1: Site Location in Relation to European Sites

- Site boundary
- Site boundary 15km buffer
- River Mease SAC

PINS reference: EN010122

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Figure 1: Spatial relationship of the Project and protected sites

The Applicant's HRA Report [APP-122] sets out the methodology applied in determining what would constitute a 'significant effect'. The qualifying features that were considered in the Applicant's assessment of LSE are presented in Table 1 below. NE [REP7-005] also identified these protected sites as those relevant to the Project.

Table 1: Protected site and qualifying features considered in the Assessment of LSE.

Protected site	Qualifying features	SACOs
River Mease SAC	Annex I habitats present as a qualifying feature, but not a primary reason for selection of this site: • Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitricho-Batrachion* vegetation Annex II species that are a primary reason for selection of this site: • Spined loach *Cobitis taenia* The River Mease is a good example of a riverine population of spined loach. It is a small tributary of the River Trent and has retained a reasonable degree of channel diversity compared to other similar rivers containing spined loach populations. It has extensive beds of submerged plants along much of its length which, together with its relatively sandy sediments (as opposed to cohesive mud) provides good habitat opportunities for the species. • Bullhead *Cottus gobio* The Mease is an example of bullhead populations in the rivers of central England. Bed sediments are generally not as coarse as other sites selected for the species, reflecting the nature of many rivers in this geographical area, but are suitable in patches due to the river's retained sinuosity. The patchy cover from submerged macrophytes is also important for the species. Annex II species present as a qualifying feature, but not a primary reason for site selection: • White-clawed (Atlantic stream) crayfish *Austropotamobius pallipes*; and • Otter *Lutra lutra*	See footnote[16]

[16] https://designatedsites.naturalengland.org.uk/TerrestrialAdvicePDFs/UK0030258.pdf

3.2 LSE alone and in-combination

Effect pathways assessed in Chapter 3 of the HRA Report for their potential to result in LSEs include direct habitat loss or direct physical damage, air pollution and recreation pressure. No realists effect pathway was identified due to the nature of the Project and distance from the River Mease SAC.

The HRA Report identifies potential impacts of the Project alone that have the potential to result in LSEs:

Changes to hydrology - water quantity during the construction stage

- The Project will not result in any water abstraction activities and there will be no anticipated changes of flow within the site which would affect the flow rates within the River Mease SAC during either construction or operation of the Project. Therefore, the potential for water quantity to affect the River Mease SAC in terms of water quantity is considered highly unlikely.
- The southernmost part of the site comprises an area of 2.6ha located within the northernmost part of the River Mease SAC catchment (Figure 2). At this location there are no recognised waterbodies with direct hydrological connectivity between the site and the SAC. The nearest tributary of the Mease to the development site is Pessall Brook. This is 0.7 km from the development site at its closest point. The potential for construction and operational activities within this area to result in, or contribute to, LSEs as a result of changes in water quality and quantity, is considered low.
- Nevertheless, in line with the precautionary principle which needs to be applied in HRAs, standard hydrological avoidance and mitigation construction measures are required to provide certainty that significant effects associated with changes in hydrology will be avoided altogether. The scheme will include mitigation and enhancement measures to ensure that there are no notable changes to water quantity within offsite and functionally linked watercourses and field drains. Therefore, in line with the regulations as outlined in section 1.2 of this report, the potential for water quantity to affect qualifying features of the SAC, including otter, are included in the Appropriate Assessment.

Changes to hydrology - water quality during the construction stage

- Construction activities relating to the Project have the potential to result in contaminated surface water run-off reaching the River Mease SAC located 4km to the south of the site boundary via existing water courses, ditches and field drains, as a small area of the site is within the River Mease catchment area (Figure 2).
- However, the operational phase of the Project is predicted to result in improvements to water quality due to the removal of the fertilizer and pesticide load associated agricultural operations at the site. The benefits will be described and assessed fully as part of the EIA but effects on water quality during the operational phase of the Project have been scoped out of further assessment within the HRA because the Habitats Regulations do not require the assessment of beneficial impacts.

Invasive non-native species during the construction stage

- In the absence of mitigation there is a small potential for non-native invasive species within the site to travel to the SAC via run-off, or to degrade offsite functionally linked watercourses

through spread. The impact pathways are as described for water quality and quantity described above.

Non-physical disturbance to otter during construction

- Noise and vibration effects, e.g. during construction, are most likely to disturb species including otter. Artificial lighting at night (e.g. from construction lighting) is most likely to affect nocturnal species, including otter.
- It has been assumed (on a precautionary basis and based on the Applicant's experience of previous HRAs and consultation with NE) that the effects of noise, vibration and light pollution are capable of causing an adverse effect if development takes place within 500 m of a protected site (or functionally linked habitat) with qualifying features sensitive to these disturbances.
- The River Mease SAC is located over 500m from the site at the closest point and therefore potential effects are limited to mobile qualifying species utilising functionally linked land within 500m of the site. In the absence of mitigation there is potential for construction activities including vibration, noise and lighting, to disturb otter which may be utilising offsite water courses and field drains. Given the distance from the SAC, this is considered unlikely to affect the SAC population but could occur given the large territories occupied by individual otters.

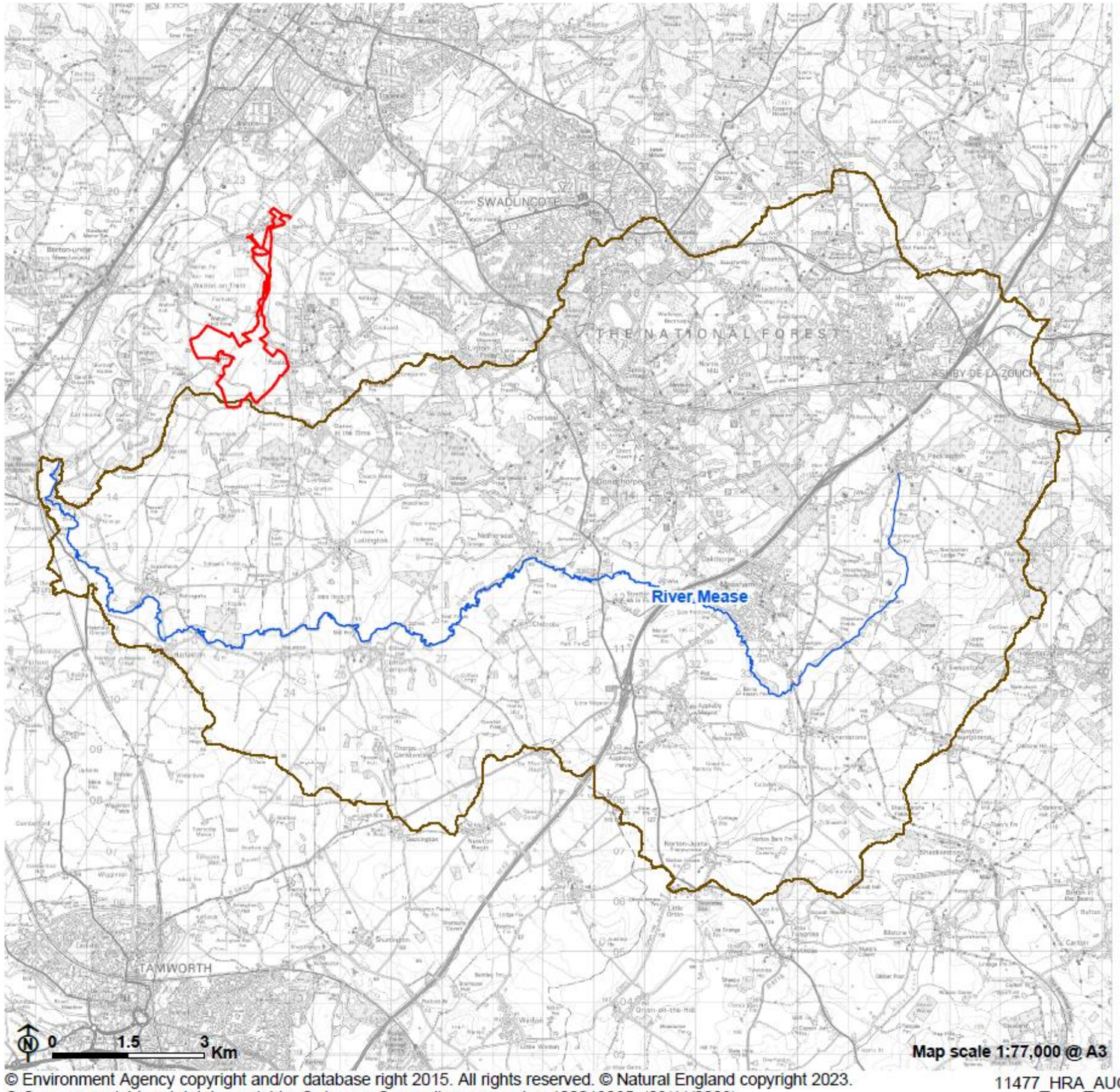

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Figure 6.2.2: River Mease Catchment

Site boundary
River Mease SAC
River Mease catchment

Map scale 1:77,000 @ A3

PINS reference: EN010122

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Figure 2: Spatial relationship of the Project and River Mease SAC catchment.

3.2.1 LSE In-combination

Under the Habitats Regulations, the Secretary of State must consider whether the Project might affect protected sites in-combination with other plans or projects.

The HRA Report addresses potential in-combination effects arising from the Project and sets out the methodology applied. The other plans and projects included in the in-combination assessment are set out in Appendix C [APP-122].

In many cases, where the Applicant's screening establishes the potential for LSEs to arise from the Project alone, the potential for in-combination effects is also considered in the HRA Report. This approach, as far as it has a bearing on the screening for LSEs, was not discussed during the Examination.

The ExA [ER 6.2.31] was satisfied that all plans and projects with potential to result in in-combination effects together with the Project have been identified and considered by the Applicant.

3.3 Likely Significant Effects conclusion

The Secretary of State has carefully considered the potential effects of the Project on all qualifying features of the protected site listed in Table 1, taking into account their conservation objectives, to determine whether there will be LSEs in the context of the Habitats Regulations. The Secretary of State considers that sufficient information has been provided to inform a robust assessment in line with his duties under the Habitats Regulations.

The Applicant's screening for LSEs took account of the Sweetman Judgement[6] to ensure that no mitigation or avoidance measures were taken into account in reaching the conclusion. The ExA [ER 4.2.11] was satisfied that the correct impact-effect pathways for the River Mease SAC are assessed, and the approach to the assessment of alone and in-combination likely significant effects is appropriate. The ExA consider the Project is likely to have a significant effect from the effects identified above on the qualifying features of the River Mease SAC when considered alone, or in combination with other plans or projects. This was not disputed by any IPs or NE during the Examination.

The Secretary of State agrees with the recommendations of the ExA, in line with the advice of NE and conclusions of the Applicant's assessments and concludes that LSEs on the River Mease SAC cannot be excluded when the Project is considered alone and in-combination. In reaching his conclusion the Secretary of State took no account of any measures intended to mitigate effects on any protected site.

4 Appropriate Assessment Methodology

The requirement to undertake an AA is triggered when the competent authority determines that a plan or project is likely to have a significant effect on a protected site either alone or in-combination with other plans or projects. Guidance[17] states that the purpose of an AA is to assess the implications of the plan or project in respect of the site's Conservation Objectives, either individually or in-combination with other plans and projects, and that the conclusions should enable the competent authority to ascertain whether the plan or project will adversely affect the integrity of the site concerned. The focus is therefore specifically on the species and / or habitats for which the protected site is designated.

In line with the requirements of Regulation 63 of the Habitats Regulations:

"In considering whether a plan or project will adversely affect the integrity of the site, the competent authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposes that the consent, permission or other authorisation should be given.".

The purpose of this AA is to determine whether AEoI of the features of the protected site as a result of the Project alone or in-combination with other plans or projects in can be excluded, in view of the site's Conservation Objectives and using the best scientific evidence available.

In accordance with the precautionary principle embedded in the integrity test (AA) and established through case law, the Secretary of State may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the protected site, and this must be demonstrated beyond all reasonable scientific doubt. If the Secretary of State cannot exclude AEoI of the affected protected sites beyond all reasonable scientific doubt, then he can only agree to a plan or project if it complies with the requirements of Regulation 64 of the Habitats Regulations. Regulation 64 provides that the Secretary of State may agree to the plan or project only if satisfied that there are no alternative solutions, and that the plan or project must be carried out for IROPI. In addition, Regulation 68 requires compensatory measures to be secured which maintain the overall coherence of the NSN.

[17] https://www.gov.uk/guidance/appropriate-assessment#what-must-an-appropriate-assessment-contain

5 Stage 2: Appropriate Assessment

The Secretary of State has undertaken an objective scientific assessment of the implications of the Project on the qualifying features of the protected sites identified in his screening assessment, using best scientific evidence available. The assessment has been made in light of the site's Conservation Objectives, which are set out in Table 1, Section 1.3 and the following sections of this HRA Report.

The findings of the HRA Screening identified the potential for LSEs on the River Mease SAC as a result of changes in water quality and quantity through surface water run-off, non-physical disturbance to otter during the construction period, and spread of invasive non-native species via hydrological pathways.

5.1 Avoidance and mitigation

The potential for construction activities associated with the Project to result in, or contribute to, LSEs on the River Mease SAC is considered unlikely, but cannot be ruled out entirely in the absence of avoidance and mitigation measures. Such measures will be applied as best practice construction and operation protocol and will provide certainty that adverse effects on the River Mease SAC will be avoided, either alone, or in-combination with other plans and projects.

Best practice construction methods will be specified and delivered by means of a Construction and Environmental Management Plan (CEMP) to ensure that the construction and operation avoid contaminated run-off entering overland flow paths. The CEMP will include consideration of the following standard and reliable measures as appropriate:

- Pre-inspection checks for otter signs in the vicinity of works and appropriate working practices to avoid disturbance including no night-time working, sensitive construction lighting and appropriate working buffers.
- Construction mitigation measures to be implemented in accordance with best practice to prevent impacts from dust, noise, runoff or other potential pollutants.
- Production of a silt management plan referencing the protection of overland flow paths and all water courses within and adjacent to the development site.
- Soil stockpiles to be located away from overland flow paths and water bodies, and outside of the SAC catchment, and to be seeded as soon as possible, covered with geotextile mats and/or surrounded by a bund.
- Any temporary site drainage system to be developed to prevent silt-laden run-off being discharged into sewers or surface water courses.
- Mud to be controlled at entrance/exit to site using wheel washes and/or road sweepers.
- Avoidance of site run-off of water or mud. Construction method statement specifying best practices measures for silt/runoff, pollution prevention measures and groundwater/other hydrological maintenance during piling and other works in close proximity to water courses such as silt traps, bunds, interception features.

- Tools and plant to be washed and cleaned in designated areas within the site compound (including designated concrete wash-out areas) where runoff can be isolated for treatment before discharge to watercourse/ground or sewer under appropriate consent.
- Fuel and other potentially polluting chemicals to be stored in a secure impermeable and bunded storage area outside the River Mease SAC catchment.
- Refuelling and maintenance to be undertaken within the site compound away from all watercourses within or adjacent to the Site and outside the River Mease SAC catchment.
- Fixed plant to be self-bunded, mobile plant to be kept clean and in good working order, and fitted with drip trays, where appropriate.
- Spillage kits and oil absorbent material to be carried by mobile plant and located at vulnerable locations (e.g. crossings of land drains/ditches).
- Secure site to prevent vandalism events which could lead to pollution.
- An emergency response plan will be prepared as part of the CEMP and prior to construction. The emergency response plan will include (but not be limited to) chemical/fuel spillage, flood events, fire, explosions, structural collapse.
- All construction staff to be trained to respond to spillages, and how to use emergency response equipment.
- Discharges of water abstracted from excavations/ or dewatering of aquifers to be subject to quality attenuation measures as required.
- Toolbox talks or other training to be provided to site staff on relevant site environmental issues to ensure precautionary working methods are adhered to.
- Construction activities will take place with adherence to detailed mitigation measures (including timing of works and pollution prevention measures).
- Monitoring during the construction and operational phases to ensure an appropriate feedback loop is in place, allowing remedial measures and operational refinements to be identified and implemented if required.
- Pre-construction inspections for invasive non-native species and, if required, the provision of appropriate buffer zones and eradication programmes.
- Implementation of appropriate biosecurity measures in accordance with best practices construction measures.

Detailed drainage design to ensure that operational phases do not contribute to polluted run-off or increase surface flows entering watercourses will be secured through Requirement 17 in Part 2 of Schedule 1 to the DCO. These mitigation and avoidance measures would ensure that AEoI of the River Mease SAC will be avoided as a result of the Project alone.

Regarding changes in water quality, early in the Examination, NE [AS-022, REP1-037] did not agree with the conclusions of the HRA Report. It considered there would be impacts:

- from construction because of sediment mobilisation;
- from operation because of sediment mobilisation which could transport sediments with a nutrient load via tributaries into the River Mease; and
- from operation because of the use of chemicals to wash the solar panels.

SDDC [REP1-029, REP2-001] and DCC [REP1-026] also raised concerns regarding potential impacts on the River Mease SAC from the mobilisation of sediments and use of chemicals.

NE stated [REP1-037] that it may be possible to mitigate these impacts through the use of sustainable drainage which would intercept the surface water. It would then be possible to treat this surface water prior to being discharged or infiltrated.

The Applicant responded [REP4-011] that correspondence was received from NE on 12 September 2024 stating it is agreed that "SuDS are not required and that the removal of annual inputs from intensive agriculture will provide an overall improvement in water quality". The Applicant also stated that a commitment to not using harsh chemicals for cleaning solar panels has been added to paragraph 4.2.4 of the outline Operational Environmental Management Plan (oOEMP) [REP5-013] which is secured in the DCO.

NE did not respond at Deadline 4; however, it did provide a submission on 21 October 2024 [AS-033] stating that it considered impacts to the River Mease SAC during construction could be avoided following implementation of mitigation measures set out in Section 2.6 of the outline CEMP. For impacts during operation, NE noted that paragraph 4.26 has been included in the outline Landscape and Ecological Management Plan ("oLEMP") which relates to the establishment of grassland in order to reduce mobilisation of silt. "NE consider that where grassland is established across the solar PV site, sediment mobilisation during construction, i.e. via preferential flow pathways & soil erosion, would effectively be avoided."

Finally, NE note the mitigation measures included in the oOEMP regarding 'no harsh chemicals' to be used to wash solar panels. It stated that although the types of chemicals which will be used has not been defined, NE considers that where grassland is being maintained under and around the solar panels any chemical runoff is likely to infiltrate and be attenuated within the soil, prior to it reaching the River Mease SAC. At Deadline 5, the Applicant [REP5-025] confirmed that paragraph 4.2.4 of the oOEMP [REP5-013] had been updated to confirm that the solution used to clean panels would be similar to household detergent.

At Deadline 5, the Applicant confirmed [REP5-023] that "NE have confirmed that it is no longer seeking for the Applicant to provide SuDS within the Projects to manage impacts on the River Mease, as NE acknowledge that the removal of annual inputs from intensive agriculture will provide an overall improvement in water quality. NE have requested that grassland within the Mease Catchment is established at the earliest opportunity in order to help eliminate the possibility of sediment run off during construction. The Applicant amended the oLEMP to provide that commitment at Paragraph 4.26."

The final SoCG between the Applicant and NE includes that the Applicant commits to pollution prevention measures within the Outline CEMP [REP6-018] regarding non-toxicity of cleaning chemicals. The Applicant updated the oLEMP [REP4-040] and Outline CEMP to commit to seeding the area of the site within the River Mease catchment as soon a practically possible to minimise the potential for sediment run off. The Applicant and NE [REP7-005] agree that, subject to the implementation of the mitigation measures, adverse effects on the integrity of the River Mease SAC can be discounted.

6 Conclusion

The Secretary of State has carefully considered all the information presented within the Application and during the Examination, including the representations made by all IPs including the SNCB, along with the ExA's Recommendation. The Secretary of State is satisfied that the relevant protected sites have been identified for consideration of LSE.

Subject to the mitigation measures secured in the DCO, an AEoI on the River Mease SAC from the Project when considered alone or in-combination with other plans or projects can be excluded from the impact-effect pathways assessed, beyond all reasonable scientific doubt.

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