



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008

Heckington Fen Solar Park

Examining Authority's Report
of Findings and Conclusions
and

Recommendation to the Secretary of State for
Energy Security and Net Zero

Examining Authority

Susan Hunt BA (Hons) MA MRTPI

9 May 2024

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OVERVIEW

File Ref: EN010123

The application, dated 15 February 2023, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on the same date.

The applicant is Ecotricity (Heck Fen Solar) Limited.

The application was accepted for examination on 13 March 2023.

The examination of the application began on 19 September 2023 and was completed on 20 February 2024.

The development proposed comprises Development Consent Order Application for Ground Mounted Solar Panels, Energy Storage Facility, Below Ground Grid Connection to, and extension at, Bicker Fen Substation and all associated infrastructure works.

Summary of Recommendation:

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

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APPENDIX A: REFERENCE MATERIAL

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The Planning Inspectorate

ERRATA SHEET – Heckington Fen Solar Park Project – File Ref: EN010123

Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for the Department of Energy Security & Net Zero dated 9 May 2024

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

ePage No.	Paragraph	Error	Correction
21	3.3.23	"The Government expects a five-fold increase in combined ground and rooftop solar deployment by 2023 (up to 70 Gigawatts)"	Should be "by 2035" instead of "by 2023".
64	3.6.31	"The farming report indicates that prior to current ownership the land was used for given over to grassland and livestock together..."	Should be either "used for" or "given over", not both.
75	3.7.10	"Over the 40-year operational lifespan this is estimated at around £18.1 million, assed by the Applicant..."	Should be "assessed by".
95	3.10.44	"Substantially less waste is expected during the construction phase."	Perhaps the ExA is referring to another phase of the lifecycle here (operational/decommissioning), as it has referred to the construction phase in 3.10.43 and compares to that in 3.10.44.

ePage No.	Paragraph	Error	Correction

1. INTRODUCTION

1.1. BACKGROUND TO THE EXAMINATION

- 1.1.1. The Application for the Heckington Fen Solar Park (the Proposed Development), reference EN010123, was submitted by Ecotricity (Heck Fen Solar) Limited (the Applicant) to the Planning Inspectorate on 15 February 2023 under section (s) 31 of the Planning Act 2008 (PA2008) and accepted for Examination under s55 of PA 2008 on 13 March 2023 [\[PD-002\]](#). This Recommendation sets out the Examining Authority's (ExA) findings, conclusions and recommendations to the Secretary of State (SoS) for Energy Security and Net Zero.
- 1.1.2. The legislative tests for whether the Proposed Development is a Nationally Significant Infrastructure Project (NSIP) were considered by the SoS for the Department for Levelling Up, Housing and Communities in its decision to accept the Application for Examination in accordance with s55 of the PA2008 [\[PD-002\]](#).
- 1.1.3. The Proposed Development comprises the construction, operation and decommissioning of a ground mounted solar generating facility with a total capacity exceeding 50 megawatts (MW) together with an energy storage facility (with an estimated storage capacity of 200-400MW), below ground grid connection to and extension at the National Grid Bicker Fen substation.
- 1.1.4. As the solar generating station has a capacity of more than 50MW, the Proposed Development falls within s15(2) of PA2008. On this basis, the Planning Inspectorate agreed with the Applicant's view stated in the application form [\[APP-003\]](#) that the Proposed Development is a NSIP and so requires development consent in accordance with s31 of PA2008. The Proposed Development therefore meets the definition of an NSIP set out in s14(1)(a) of PA2008.
- 1.1.5. The [Examination Library](#) provides a record of all application documents and submissions to the Examination, each of which is given a unique reference number, which are used throughout this Recommendation and hyperlinks are included to allow the reader to access them directly.
- 1.1.6. The ExA has had full regard to all documents and representations received and all important and relevant matters arising. This Recommendation does not contain extensive summaries of them all, but key written sources are set out further below and are available in full in the [Examination Library](#).

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

- 1.2.1. On 3 April 2023, Susan Hunt was appointed as the ExA for the application under s61 and s65 of PA2008 [\[PD-004\]](#).

1.3. THE APPLICATION

LOCATION OF THE PROPOSED DEVELOPMENT

- 1.3.1. The location of the Proposed Development is illustrated below and is detailed in the Location and Order Limits Plan [\[REP4-011\]](#), ES Figures 1.1 [\[PS-082\]](#) and 1.2 [\[PS-083\]](#), and the Land Plans [\[REP4-004\]](#). The Site lies within the county of Lincolnshire and the administrative areas of North Kesteven District Council (NKDC) and Boston Borough Council (BBC), and is wholly within England.

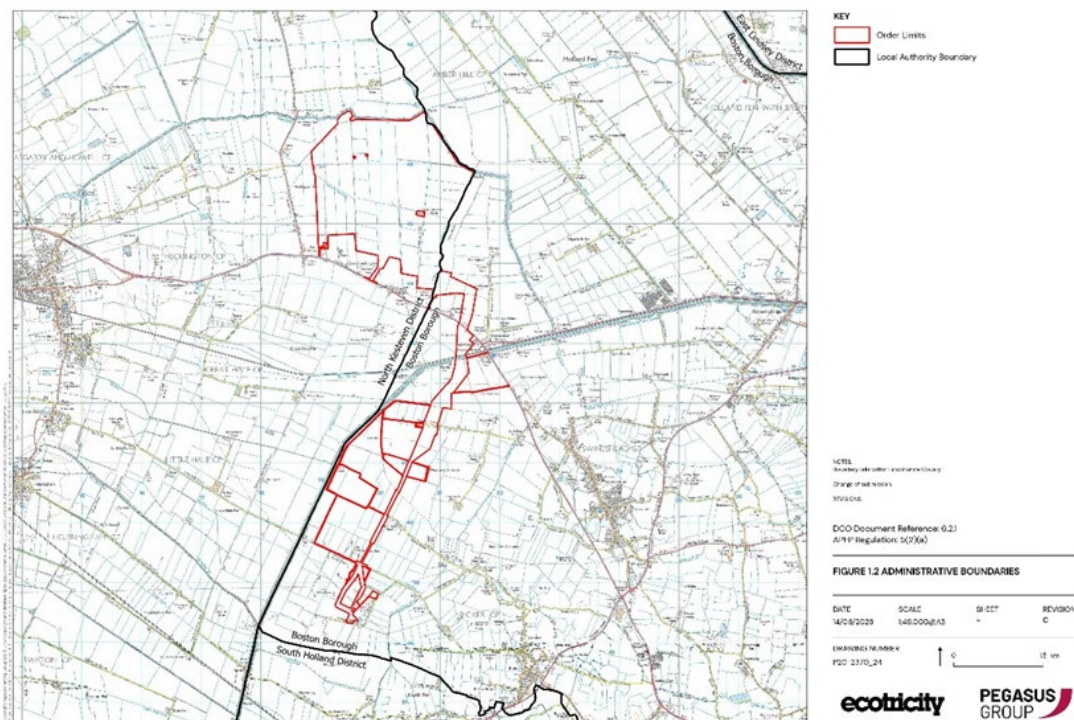


Figure 1: Site Location Plan and Administrative Boundaries [PS-083]

- 1.3.2. The following Site descriptors used throughout this Recommendation:
- **Proposed Development** – the entire Order Limits of the Site.
 - **Energy Park Site** – the area comprising the solar photovoltaic (PV) generating station (the **Solar Park**), the energy storage facility and onsite site substation and other supporting infrastructure.
 - **Cable Route Corridor** – the route of the electrical cables connecting the Energy Park to the grid connection at the National Grid Bicker Fen substation. This is referred to as the ‘off-site’ cable route beyond the area of the Energy Park.
- 1.3.3. Chapter 3 of the Environmental Statement (ES) [PS-053] provides a description of all areas of the Proposed Development and the surrounding area.
- 1.3.4. In summary, the Energy Park Site comprises an area of flat and sparsely vegetated arable land extending to approximately 524 hectares to the north of East Heckington and approximately 3.7km east of the village of Heckington and 8.9km west of the town of Boston. The Energy Park Site lies wholly within the district of North Kesteven in the county of Lincolnshire. The existing arable land is subdivided into rectilinear parcels by drainage ditches. The Head Dike drain and a Public Right of Way (Heck 15/1) run alongside the northern boundary of the Energy Park site. The B1395 Sidebar Lane lies to the west, beyond another arable field. Here a small number of dwellings line the Lane, largely towards the A17 end.
- 1.3.5. To the south of the Energy Park Site is the A17 which bypasses the nearby town of Sleaford and villages of Heckington and East Heckington, and leads towards the A1121 to Boston. A number of dwellings are situated along the A17 together with a range of non-residential uses which include a school (Build-a-Future), petrol filling stations, and agricultural buildings.

- 1.3.6. There are farm buildings and derelict farm cottages broadly central to the Energy Park site at Six Hundreds Farm. These are excluded from the Order Limits given the farm buildings would remain in agricultural use, and the cottages are classed as non-designated heritage assets. Existing access tracks connect to the highway network onto the A17 at Elm Grange and Six Hundreds Farm, and via Crab Lane onto the B1395 Sidebar Lane.
- 1.3.7. The cable route corridor part of the site is predominately within the borough of Boston. It also largely comprises greenfield arable land. The Order Limits which encompass the route of the cable corridor exit the south-eastern corner of the Energy Park Site at Holland Dike. The route then crosses the A17. The now operational Viking Link electricity interconnector crosses the A17 in this area, where there are temporary construction accesses. The cable route, and associated construction access routes, then run through arable fields towards the existing National Grid Bicker Fen substation. The order limits cross the main channel of the South Forty Foot Drain (also known as the Black Sluice Navigation) and railway line between Heckington and Swineshead, and a number of local access roads including Bicker Drove, North Drove and Timm's Drove.
- 1.3.8. The grid connection is wholly within the borough of Boston. The National Grid Bicker Fen substation lies to the south and east of the South Forty Foot Drain, surrounded by arable fields. To the south and south-east are the villages of Bicker Bar and Northorpe, alongside the A52. Larger settlements are at Donington to the south of the A52 and Swineshead to the east of the A17. The substation for Triton Knoll and the converter station for the Viking Link electricity connector are situated to the north-west and south-west of Bicker Fen, and the order limits cross their cable routes and accesses. To the immediate west and south of the Bicker Fen substation are wind turbines and infrastructure associated with the Bicker Fen wind farm, which the order limits run through.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

- 1.3.9. The Proposed Development is described in ES Chapter 4 [\[REP4-024\]](#) as *"Development Consent Order Application for Ground Mounted Solar Panels, Energy Storage Facility, Below Ground Grid Connection to, and extension at, Bicker Fen Substation and all associated infrastructure works"*.
- 1.3.10. As set out above, for ease of reference the Proposed Development has been divided into the Energy Park Site and the cable route corridor (and associated ancillary infrastructure), as shown in ES Figure 2.3 [\[PS-086\]](#).

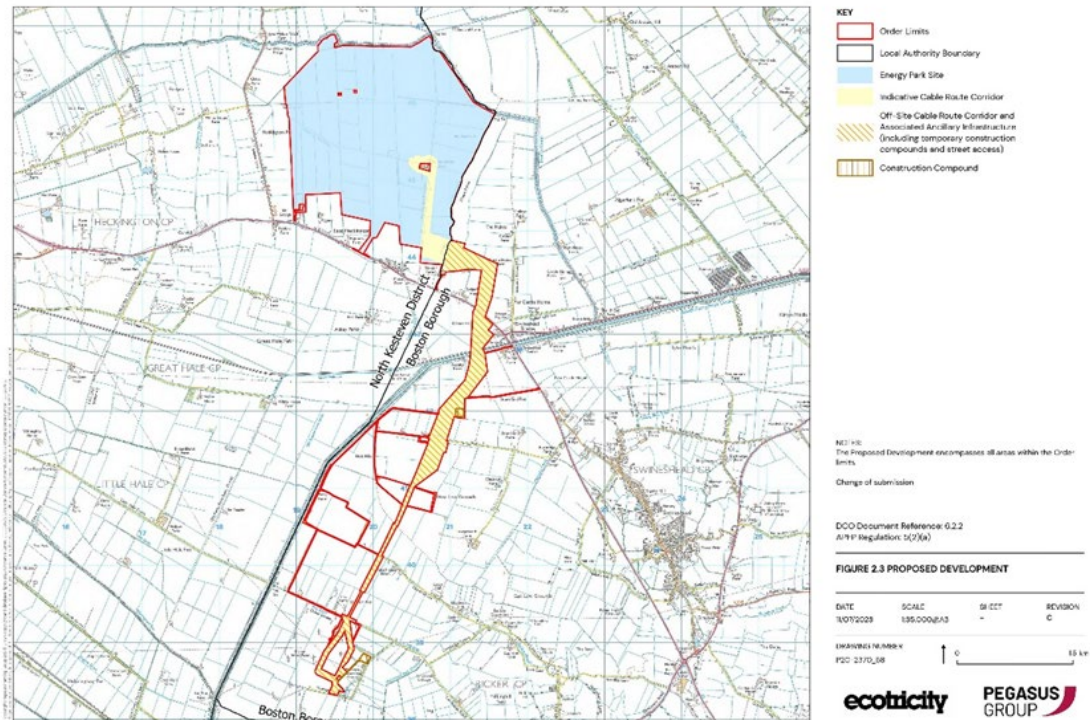


Figure 2: Proposed Development Areas [PS-086]

1.3.11. The Proposed Development Works are diagrammatically illustrated below and further detailed on the Works Plans [REP5-019].



Figure 3: Proposed Development Works [REP5-019]

- 1.3.12. The Proposed Development Works are within the Energy Park Site and are fully described in Schedule 1 of the draft DCO [\[REP5-020\]](#) as:
- **Work No. 1:** a ground mounted solar photovoltaic generating station with a gross electrical output capacity of over 50 megawatts including:
 - **Work No. 1A:** solar modules, solar stations, inverters, solar module mounting structures and a network of electrical cables.
 - **Work No. 1B:** electrical cables between solar stations and solar modules within Work No. 1A and connecting Work No.1A to Work No.2 and Work No.4.
- 1.3.13. Associated development within the meaning of s115(2) of the PA2008 is also fully described in Schedule 1 of the draft DCO [\[REP5-020\]](#) and can be summarised as follows:
- 1.3.14. The Energy Park Site:
- **Work No. 2:** an energy storage facility comprising energy storage cells and a protective structure, electrical cables and circuits, heating, ventilation and air conditioning or liquid cooling systems, energy storage stations comprising inverters and transformers, switchgear and ancillary equipment, monitoring and control systems and fire safety infrastructure (the energy storage facility or system is referred to in this Recommendation as ESS)
 - **Work No. 3:** reception areas, temporary cabins, construction compounds and parking, gatehouses and service areas
 - **Work No. 4:** onsite substation and associated works
- 1.3.15. Cable route corridor and works at existing substation at Bicker Fen:
- **Work Nos 5, 5A and 5B:** works to lay electrical cables
 - **Work No. 6A:** creation of a new generation bay and associated works at the existing substation including an electrical bay to connect into the existing network at Work No. 6B, associated outdoor air insulated switchgear (AIS) or indoor gas insulated switchgear (GIS); electrical apparatus; control building; and underground and above ground electrical cables and connectors
 - **Work No. 6B:** extension to the existing substation including outdoor AIS or indoor GIS; electrical apparatus; and underground and above ground electrical cables and conductors
 - **Work No. 6C:** works in connection with the extension to the existing substation including a cable sealing end compound and new circuit bay, and underground and above ground electrical cables and conductors connecting the existing 400KV transmission tower and the new feeder bay
 - **Work No.7:** two temporary laydown areas in connection with Work Nos 5, 6A, 6B and 6C, including areas of hardstanding, parking and access, material storage areas, site welfare facilities, security infrastructure, drainage and waste management infrastructure, and electricity, water, waste water and telecommunications connections
- 1.3.16. Work Nos 6B and 6C (creation of a new generation bay at the existing substation and works to facilitate the extension of the substation) were added into the Proposed Development as part of the change application in the Pre-examination period. This is further explained at Section 1.5 of this Recommendation.

- 1.3.17. Other associated development:
- **Work No. 8:** works to create and maintain a permanent means of access from the A17 to Work Nos 1A, 1B, 2, 3 and 4
 - **Work No. 9A:** works to create, enhance and maintain green infrastructure and create biodiversity net gain areas including soft landscaping, tree planting, earth works, hard landscaping, drainage and irrigation infrastructure, means of enclosure and improvement of existing tracks
 - **Work No. 9B:** works to create a permissive path, including installing up to two footbridges and means of enclosure
 - **Work No. 9C:** works to create a community orchard
 - **Work No. 10:** works to existing streets to facilitate access to Work Nos 1 to 9B
- 1.3.18. Work No. 9C (community orchard) was added at Deadline 2. This did not form a new proposal; rather it was separated from the more general green infrastructure works forming part of Work No. 9A so that it could be defined within Schedule 1 of the draft DCO [\[REP2-008\]](#) and subsequently a Requirement (21) in Schedule 2.
- 1.3.19. Further associated development in connection with Work Nos 1 to 10 is also fully described in Schedule 1 of the draft DCO [\[REP5-020\]](#), and includes work within highways, fencing and security measures, internal access arrangements, utilities connections, and surface water drainage systems.
- 1.3.20. Flexibility is sought within the draft DCO [\[REP5-020\]](#) and the Works Plans [\[REP5-019\]](#) to allow for flexible use of space in terms of the type of activity that can be undertaken in a given area and in temporal terms as described in Table 4.1 of ES Chapter 4 [\[REP4-024\]](#). Given the flexibility applied for and in order to ensure a robust assessment of the likely significant environmental effects of the Proposed Development, the Environmental Impact Assessment (EIA) has been undertaken adopting the principles of the 'Rochdale Envelope', where appropriate, as described in the Planning Inspectorate Advice Note 9. This involves assessing the maximum (and where necessary the minimum) parameters of the Proposed Development where flexibility needs to be retained, as set out in Table 4.1. Table 4.3 of ES Chapter 4 [\[REP4-024\]](#) sets out the design parameters used for each component of the scheme which were used for the ES assessment.
- 1.3.21. The approach sets worst-case parameters which aim to provide certainty that the impacts of the Proposed Development will be no worse than those assessed as part of the ES as relevant for each topic in the ES. Each of the ES Chapters 6 to 18 describe the parameters applied in relation to the particular issue. As the Proposed Development design has evolved, some key elements of the design have been fixed but where flexibility has been retained in the Application, any changes to design parameters would remain within the likely worst-case envelope. Justification for the need to retain flexibility in certain parameters is outlined in ES Chapter 3: Site Description, Site Selection and Iterative Design Process [\[PS-053\]](#).
- 1.3.22. The location of the aforementioned works is shown in Figure 3 above. The Outline Design Principles document [\[REP4-031\]](#) provides guiding principles for the detailed design of the Proposed Development, within stated parameters of location, scale and design as set out in Tables 1.1 to 1.11. Such principles are intended to be secured by Requirement 6 of the DCO and would inform the final detailed design for the relevant Works.
- 1.3.23. The Technical Guide [\[PS-045\]](#) provides further information to explain how the solar park and energy storage facility will operate and interact with the National Grid

electricity transmission network. It provides illustrations and examples of typical infrastructure which would form part of the Proposed Development including panels, inverters, transformers, and ESS. It also summarises the typical operation and maintenance arrangements, including cleaning of panels, as well as the waste and recycling options for the various types of equipment. The Technical Guide sets out that the type of solar panels proposed as part of the Proposed Development would be Bi-facial fixed panels, which have photovoltaic cells on both sides.

- 1.3.24. The Technical Guide explains that either AIS or GIS technology would be used to transform voltage in the substation works at Bicker Fen. It sets out that AIS is located outside, open to the atmosphere, and is most commonly used. GIS is contained within a sealed environment and requires less space. Potential use of Sulphur Hexafluoride (SF6) or alternative gases in GIS equipment and circuit breakers is further discussed in section 3.2 of this Recommendation.

RELEVANT PLANNING HISTORY

- 1.3.25. The planning history is summarised in Table 1 of the Statement of Need and Planning Statement [\[REP2-060\]](#). This refers to the consent originally granted by the then Department for Business, Energy and Industrial Strategy in 2013 for an application submitted under s36 of the Electricity Act 1989 for a wind energy electricity generating station (22 turbines with a maximum tip height of 125m and up to 66MW capacity).
- 1.3.26. The wind farm was ultimately refused in 2022 (NKDC ref. 18/1384/S36), when an application was made to extend the date for commencement of development. Both Applicant and NKDC have confirmed that the wind farm development will not progress following the inability to secure a Radar Mitigation Scheme for which a Grampian planning condition had been imposed. NKDC considers that the original consent has now lapsed, as explained in paragraph 5.10 of its Local Impact Report [\[REP1-033\]](#).
- 1.3.27. The National Grid substation at Bicker Fen was granted planning permission in 2005 (BBC ref. B/05/0046).
- 1.3.28. Existing and approved major development within the zone of influence of the Proposed Development informed the Applicant's cumulative assessment for each topic discipline within the ES. The zone of influence varies for each relevant topic as set out in Table 2.7 of the Environmental Statement (ES) Chapter 2: EIA Methodology and Consultation [\[PS-051\]](#). This resulted in a cumulative sites long list and short list of other developments within the search area [\[APP-175\]](#). Other NSIPs within the wider region have also been included, including those which have been consented and those which are at various stages in the NSIP application process.
- 1.3.29. The Order Limits overlap with the cable connections relating to the following approved and operational major developments: the Bicker Fen wind farm, Triton Knoll Electrical System Order 2016, and Viking Link interconnector. Matters relating to Protective Provisions for these undertakers are dealt with in Chapters 6 and 7 of this Recommendation.
- 1.3.30. The long and short lists evolved throughout the Examination with the final version at Appendices 1 and 2 of the ES Technical Note 'Updated Information on Cumulative Projects' [\[REP5-004\]](#). The cumulative assessment is considered in detail in Section 3.11 of this Recommendation.

1.4. THE EXAMINATION

START OF THE EXAMINATION

- 1.4.1. The Preliminary Meeting (PM) took place on 19 September 2023 [\[EV-002\]](#). The ExA's Procedural Decisions and the Examination timetable took full account of matters raised at the PM. They were provided in the Rule 8 letter [\[PD-010\]](#) dated 26 September 2023.
- 1.4.2. The Examination began on 19 September 2023 and concluded on 20 February 2024 [\[PD-017\]](#). The principal components of the Examination and details of the events held can be seen in the Examination timetable [\[PD-010\]](#) and are summarised below. No party requested to join or leave the Examination.

PROCEDURAL DECISIONS

- 1.4.3. The procedural decisions taken by the ExA are recorded in the EL referenced [\[PD-X\]](#). They detail the ExA's decisions relating to the procedure of the Examination and did not bear on the ExA's consideration of the planning merits of the Proposed Development.

STATEMENTS OF COMMON GROUND

- 1.4.4. By the end of the Examination, the following parties had concluded and signed Statements of Common Ground (SoCG) with the Applicant:

- Anglian Water [\[REP1-009\]](#)
- Black Sluice Internal Drainage Board [\[REP5-039\]](#)
- Boston Borough Council, North Kesteven District Council and Lincolnshire County Council [\[REP6-006\]](#)
- Environment Agency [\[REP5-040\]](#)
- Lincolnshire Wildlife Trust [\[REP1-012\]](#)
- National Gas Transmission plc [\[REP6-007\]](#)
- National Grid Electricity Transmission plc [\[REP6-008\]](#)
- National Grid Ventures (Viking Link Ltd) [\[REP6-009\]](#)
- Natural England [\[REP5-048\]](#)
- Network Rail Infrastructure Ltd [\[REP5-050\]](#)

The following SoCGs are final versions but remain unsigned at the end of the Examination:

- Triton Knoll OFTO Limited [\[REP5-052\]](#)

- 1.4.5. The signed SoCGs have been taken fully into account by the ExA in all relevant sections of this Recommendation. The weight afforded to the unsigned SoCG is considered in the relevant sections of this Recommendation.

WRITTEN QUESTIONS, SITE INSPECTIONS AND HEARINGS

- 1.4.6. The ExA asked two rounds of written questions, the first (ExQ1) on 17 October 2023 [\[PD-012\]](#) and the second (ExQ2) on 19 December 2023 [\[PD-013\]](#). Two requests for further information and comments under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 were made, dated 4 October 2023 [\[PD-011\]](#), and 25 January 2024 [\[PD-015\]](#) and [\[PD-016\]](#).

- 1.4.7. The ExA carried out two Unaccompanied Site Inspections (USI), on 23 May 2023 [\[EV-001\]](#) and 8 January 2024 [\[EV-001b\]](#) from publicly accessible locations only. An Accompanied Site Inspection (ASI) took place on 20 November 2023 [\[EV-001a\]](#).
- 1.4.8. Four Issue Specific Hearings (ISH) were held: ISH1 on 19 September 2023 [\[EV-004\]](#), ISH2 on 20 September 2023 [\[EV-009\]](#), ISH3 on 21 November 2023 [\[EV-018\]](#) and ISH4 on 22 November 2023 [\[EV-019\]](#). One Compulsory Acquisition Hearing was held on 21 November 2023 [\[EV-017\]](#).
- 1.4.9. No requests were received for an Open Floor Hearing, and no such hearings were held.

1.5. CHANGES TO THE APPLICATION

- 1.5.1. Changes to the key application documents, including the wording of the draft DCO, were submitted and updated prior to the start of and during the Examination. The changes sought to address points raised by Interested Parties (IPs) and the ExA, and to update or provide additional information resulting from discussions which had occurred during the Examination.
- 1.5.2. The Applicant's changes to the Application documents, together with any additional information submitted, are detailed in the Guide to the Application [\[REP6-004\]](#). 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.

CHANGE APPLICATION

- 1.5.3. The Applicant submitted notice of a Change Request on 13 June 2023 [\[PS-001\]](#), within the Pre-examination period. The ExA responded on 16 June 2023 [\[PD-008\]](#), confirming that either individually or cumulatively, the proposed Changes would not lead to the Project being different in nature or substance to that which was originally applied for.
- 1.5.4. The Changes comprised:
- a new section of NGET infrastructure at the substation comprising a busbar extension including a section breaker, a bus coupler and a feeder circuit on land to the south of Bicker Fen Substation (Additional Work Area 1 - AW1)
 - a new cable sealing end compound on land to the west of Bicker Fen Substation (Additional Work Area 2 - AW2); together known as, the "Additional Works".
- 1.5.5. The proposed Changes were subject to further environmental assessment in accordance with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017. The Applicant carried out a targeted consultation exercise with the list of consultees set out at Appendix 1 of their Change Notification [\[PS-001\]](#), which the ExA considered to be proportionate.
- 1.5.6. The Change Application was subsequently received on 25 August 2023 [\[PS-003\]](#), in advance of the commencement of the Examination. IPs were given the opportunity to comment upon the Changes at ISH1 [\[EV-004\]](#) and ISH2 [\[EV-009\]](#).
- 1.5.7. The ExA issued a Procedural Decision to accept the changes into the Examination at Annex B1 of its Rule 8 letter of 26 September 2023 [\[PD-010\]](#) and confirmed satisfaction with the consultation procedures and timetable.

1.6. OBLIGATIONS, AGREEMENTS AND OTHER CONSENTS

- 1.6.1. By the end of the Examination, no planning obligations had been formally secured under section 106 (s106) of the Town and Country Planning Act 1990. However, Heads of Terms for such a s106 agreement have been agreed between the Applicant and all relevant planning authorities; BBC, NKDC and Lincolnshire County Council (LCC) [Appendix 1, [REP5-003](#)]. This relates to a range of obligations which are discussed further in Chapter 3 of this Recommendation.
- 1.6.2. Some Affected Persons (APs) have confirmed that, during the Examination, they have reached private agreements with the Applicant regarding protection of their assets and/ or interests. These are referred to, where relevant, in subsequent sections of this Recommendation.
- 1.6.3. These obligations and agreements have been taken into account by the ExA in all relevant Chapters of this Recommendation, with weight given to them according to whether they have been fully completed.
- 1.6.4. In addition to the consents required under the PA2008, the Applicant would require other consents to construct, operate and maintain the Proposed Development. Such additional consents are set out by the Applicant in the Appendix of 'Consents and licences required under other legislation' [[REP5-035](#)].

1.7. STRUCTURE OF THE RECOMMENDATION REPORT

- 1.7.1. The structure of the remainder of this Recommendation is as follows:
- Chapter 2 identifies the planning issues and summaries the key legislation and policy context.
 - Chapter 3 sets out the findings and conclusions in relation to the planning issues that arose from the Application and during the Examination.
 - Chapter 4 provides a summary of the Habitats Regulations Assessment (HRA).
 - Chapter 5 sets out the balance of planning considerations arising from Chapters 3 and 4 in the light of important and relevant factual, legal and policy considerations.
 - Chapter 6 sets out the ExA's examination of land rights and related matters.
 - Chapter 7 considers the implications of the matters arising from the preceding chapters for the Development Consent Order (DCO).
 - Chapter 8 summarises all relevant considerations and sets out the ExA's recommendation to the SoS.
- 1.7.2. This Recommendation is supported by the following appendices:
- Appendix A – Supporting Reference Material:
 - A1: The Environmental Statement
 - A2: Statements of Common Ground
 - A3: Change Application Documents
 - A4: National Policy, Statements and Guidance
 - A5: Relevant Legislation
 - A6: Relevant Local Plan Policies
 - A7: Made and Draft Development Consent Orders
 - Appendix B – List of Abbreviations
 - Appendix C – Habitats Regulations Assessment
 - Appendix D – The Recommended DCO

2. DETERMINING THE APPLICATION

2.1. INTRODUCTION

- 2.1.1. This Chapter identifies the key legislation, policy and Local Impact Reports (LIRs) that the Examining Authority (ExA) considers to be important and relevant to its findings and recommendations to the Secretary of State (SoS).

2.2. LEGISLATION AND POLICY

NATIONAL POLICY STATEMENTS - BACKGROUND

- 2.2.1. The PA2008 provides for two different decision-making procedures for Nationally Significant Infrastructure Project (NSIP) applications:
- where a relevant National Policy Statement (NPS) has effect (s104 of PA2008)
 - where no NPS has effect (s105 of PA2008)
- 2.2.2. NPS set out Government policy on different types of national infrastructure development and provide the primary policy context for this Examination. The energy suite of NPS in place at the time of submission of the Application were published and designated in 2011, and the ExA hereafter refers to the suite as the '2011 NPS'. Shortly after submission of the Application, a revised draft of the amended energy suite of NPS was published in March 2023; this and previous versions are referred to in the Application as the 'draft NPS'. The final version of the revised energy suite of NPS was published in November 2023 and designated in January 2024. This is hereafter referred to as the '2024 NPS'.
- 2.2.3. The transitional provisions for those applications accepted for examination prior to designation of the 2024 NPS, which is the case here, are set out in section 1.6 of 2024 NPS EN-1.
- 2.2.4. Paragraph 1.6.2 states: "*The Secretary of State has decided that for any application accepted for examination before designation of the 2023 amendments, the 2011 suite of NPSs should have effect in accordance with the terms of those NPS*".
- 2.2.5. Paragraph 1.6.3 then states: "*The 2023 amendments will therefore have effect only in relation to those applications for development consent accepted for examination, after the designation of those amendments. However, any emerging draft NPSs (or those designated but not yet 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 2008 and with regard to the specific circumstances of each Development Consent Order application*".
- 2.2.6. Solar photovoltaic (PV) generation is not explicitly listed as being covered by the 2011 energy NPS, and nor do energy storage systems (ESS) come within their scope therefore s104 does not apply for DCO applications submitted before the designation date of 17 January 2024. Therefore, s105 of PA2008 continues to be applicable.
- 2.2.7. Section 105 of PA2008 enables policy included in an NPS that does not currently have effect to be considered amongst the matters that are considered to be important and relevant for the purposes of decision making. Solar PV development

is included in the 2024 NPS, which is an important and relevant consideration in the decision-making process.

- 2.2.8. To facilitate the export of the generated electricity to the National Grid the Proposed Development also includes the extension of the Bicker Fen Substation which is associated development for the purposes of section 115 of the PA2008. The provision of a substation as associated development does come within the scope of 2011 NPS EN-1 and the coverage of the 2011 NPS EN-5 for Electricity Networks Infrastructure.
- 2.2.9. Given that the solar PV generating station of over 50 MW is that which falls within the definition of a NSIP and the position on the 2011 energy suite of NPS as explained above, the Examination for this application has been conducted under s105 of the PA2008. Section 105(2) requires the SoS to have regard to:
- a) any local impact report (within the meaning given by s60(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 SoS thinks are both important and relevant to the SoS's decision.
- 2.2.10. This Recommendation sets out the ExA's findings, conclusions and recommendations taking these matters into account and applying the approach set out in s105 of PA2008. The purpose and broad content of the relevant NPSs are summarised here. A full list of other relevant legislation is included at Appendix A5 of this Recommendation.

2011 NATIONAL POLICY STATEMENTS

- 2.2.11. 2011 NPS EN-1, the Overarching NPS for Energy, sets out general principles and generic impacts to be taken into account in considering applications for energy NSIPs. All other energy NPSs sit under the policy framework provided by this NPS. It provides the primary basis for determining if development consent should be granted.
- 2.2.12. The Proposed Development is a generating station with a capacity of more than 50MW, and the policies in 2011 NPS EN-1 are devised specifically for generating stations and energy infrastructure of this scale. As a result, the policies set out in 2011 NPS EN-1 have some bearing on the determination of this application.
- 2.2.13. Furthermore, 2011 NPS EN-1 acknowledges that some renewable sources are intermittent (including solar) and cannot be adjusted to meet demand. In recognition of this, it notes that: "*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*" (paragraph 3.3.12). It also recognises that: "... *electrical energy storage allows energy production to be decoupled from its supply, and provides a contribution to meeting peak demand...*" (paragraph 3.3.31).
- 2.2.14. Accordingly, NPS EN-1 is considered by the ExA to be an important and relevant matter in the determination of the application.

- 2.2.15. 2011 NPS EN-3 details assessment criteria specific to different types of renewable energy infrastructure, explaining at paragraph 1.8.1 that it only covers energy from biomass, offshore wind and onshore wind. Paragraph 1.8.2 goes on to state that *“This NPS does not cover other types of renewable energy generation that are not at present technically viable over 50MW onshore...”*.
- 2.2.16. Consequently, whilst the ExA is mindful that technology has advanced since 2011 such that solar generating stations are now viable at a nationally significant scale of over 50MW, the policies contained within 2011 NPS EN-3 do not have effect nor should they be considered important or relevant in view that solar energy generation is expressly excluded from its coverage. This accords with the approach taken in other recently made DCOs for solar generating stations including Longfield Solar Farm (2023) and Little Crow Solar Park (2022).
- 2.2.17. The electricity infrastructure, cabling and substation works constitute Associated Development for which consent is sought as part of the Application. They fall within the scope of 2011 NPS EN-5 for Electricity Networks Infrastructure which is important and relevant in determining the application.

2024 NATIONAL POLICY STATEMENTS

- 2.2.18. At the time of submission of the Application on 15 February 2023, the 2021 draft of the energy suite of NPS was the most recent version and that referred to in the submission documents. A further consultation draft was published for consultation on 30 March 2023, following acceptance of the application. The Applicant submitted an updated Statement of Need and Planning Statement in August 2023 within the Pre-examination period [\[PS-142\]](#).
- 2.2.19. The final NPS were published on 22 November 2023, and were designated by the Government in January 2024 (both took place during the Examination). The Applicant and IPs were given an opportunity to comment on the final but undesignated version of the 2023 NPS via the ExA's second written questions [\[PD-013\]](#) in December 2023. Further comments were made by the Applicant in their Closing Submissions, post-designation [\[REP6-003\]](#).
- 2.2.20. The transitional provisions set out in section 1.6 of 2024 NPS EN-1 apply to the Application given that it was accepted for Examination prior to its designation. The 2011 NPS continue to have effect in accordance with the terms of those NPS. However, paragraph 1.6.3 of 2023 NPS EN-1 makes it clear that the emerging NPS are capable of being important and relevant considerations in the decision-making process.
- 2.2.21. At the time of submission and at the start of the Examination, the 2021 and March 2023 revised drafts of the NPS provided a good indication of the Government's preferred approach to delivering its objectives and planning policy framework to support the country's transition to net zero. Those versions were important and relevant to consideration of the Application under s105 of the PA2008 and included large-scale energy infrastructure including solar (together with wind) as being a secure, reliable and affordable way of generating electricity.
- 2.2.22. The support for solar energy continues into the designated 2024 version, where it is further strengthened by its identification as Critical National Priority (CNP) for which there is an urgent need, as set out in section 4.2 of 2024 NPS EN-1. Energy storage infrastructure which fits within the definition of 'low carbon' is also classed as CNP.

- 2.2.23. Policy specifically relating to solar PV generation is set out in section 2.10 of 2024 NPS EN-3. 2024 NPS EN-5 covers electricity networks infrastructure; which encompasses the associated development of the onsite substation, extension to Bicker Fen substation, and the cable connections.

NATIONAL POLICY STATEMENTS - CONCLUSION

- 2.2.24. There are no designated NPS that have effect in place for solar PV generation, and the application falls to be decided under s105 of the PA2008. The criteria to which the SoS must have regard in deciding this application includes any other matters to which are both important and relevant to the decision.
- 2.2.25. 2011 NPS EN-1 and EN-5 are both important and relevant given that the Proposed Development is a generating station of more than 50MW, and the inclusion of substations and high voltage cable connections. 2011 NPS EN-3 is not important and relevant to the determination of this application given that it expressly excludes solar PV development from its coverage.
- 2.2.26. The ExA considers the 2024 energy NPS EN-1, EN-3 and EN-5 to also be an important and relevant consideration in the determination of this Application under s105 of PA2008. Solar PV development is clearly within the remit of the 2024 EN-1 and EN-3. Given the 2024 NPS sets out the latest energy policy of the Government the ExA affords them very great weight, and more than the 2011 NPS.
- 2.2.27. In this Recommendation the ExA sets out its consideration of each topic covered by Chapter 3 against both the 2011 and 2024 NPS, recognising that both are important and relevant matters when considered under s105 of PA2008.

2.3. OTHER RELEVANT NATIONAL POLICIES, GUIDANCE AND STATEMENTS

- 2.3.1. Other relevant Government policy, guidance and statements have been taken into account by the ExA, principally those listed below (a full list is provided at Appendix A4) which are discussed in more detail in Chapter 3 (Section 3.2).
- The National Planning Policy Framework
 - Net Zero: The UK's Contribution to Stopping Global Warming Emissions
 - Ten Point Plan for a Green Industrial Revolution
 - Energy White Paper: Powering our Net Zero Future
 - Industrial Decarbonisation Strategy
 - Net Zero Strategy: Build Back Greener
 - British Energy Security Strategy
 - Powering up Britain
 - Written Ministerial Statement on solar energy 2015

2.4. LOCAL DEVELOPMENT PLAN POLICIES

- 2.4.1. The Proposed Development spans two local authority areas which both lie within the county authority area of Lincolnshire County Council (LCC). The district of North Kesteven is covered by the Central Lincolnshire Local Plan, adopted in April 2023. The borough of Boston is covered by the South East Lincolnshire Local Plan, adopted in March 2019.
- 2.4.2. The relevant policies of each plan, as highlighted by both the Applicant and the Relevant Planning Authorities (RPAs), are summarised in Appendix A6.

2.5. MADE DEVELOPMENT CONSENT ORDERS

- 2.5.1. The Applicant has cited a number of made DCOs in its submission, and these are listed in Appendix A7. The Order Limits overlap that of Triton Knoll Electrical System (2016) in the vicinity of the Bicker Fen substation.

2.6. LOCAL IMPACT REPORTS

- 2.6.1. Three Local Impact Reports (LIRs) were submitted into the Examination, by [Lincolnshire County Council](#) (LCC), [North Kesteven District Council](#) (NKDC) and [Boston Borough Council](#) (BBC) at Deadline 1. The LIRs covered the following issues:

- Policy context
- Planning history
- Principle of the development
- EIA methodology
- Landscape and visual amenity
- Residential visual amenity
- Glint and glare
- Ecology and ornithology
- Hydrology, flood risk and drainage
- Heritage and archaeology
- Climate change
- Socio-economics
- Noise and vibration
- Air quality
- Transport, access and public rights of way
- Land use and agriculture
- Waste management
- Miscellaneous impacts
- Cumulative impacts

- 2.6.2. The LIR from LCC [\[REP1-028\]](#) included an appendix with detailed comments from their appointed landscape consultants. The LIR from NKDC [\[REP1-033\]](#) included three appendices with reviews from external consultants: a review of ecology, ornithology and Biodiversity Net Gain, a review of soil and agricultural land classification, and a review of archaeology by Heritage Lincolnshire.

- 2.6.3. The issues raised are considered in further detail in relation to relevant planning issues in Chapter 3 of this Recommendation. Appendix A6 sets out the individual development plan policies within the Central Lincolnshire Local Plan (2023) and the South East Lincolnshire Local Plan (2019), which the RPAs have highlighted as being of relevance to the Proposed Development.

2.7. ENVIRONMENTAL IMPACT ASSESSMENT

- 2.7.1. The Applicant provided a notification under Regulation 8(1)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations) of its intention to provide an Environmental Statement (ES). Therefore, in accordance with Regulation 6(2)(a) of the EIA Regulations, the ExA determined that the Proposed Development was EIA development.
- 2.7.2. On 7 January 2022 the Applicant submitted a Scoping Report to the SoS under Regulation 10 of the EIA Regulations in order to request an opinion about the scope

of the ES to be prepared [\[APP-170\]](#). On 17 February 2022 the Planning Inspectorate provided a Scoping Opinion on behalf of the SoS [\[APP-171\]](#) .

2.7.3. Overall, the ExA considers that the ES, as supplemented with additional information during the Examination, is sufficient to enable the SoS to take a decision in compliance with the EIA Regulations.

2.7.4. The ExA considers that changes to the documentation, comprising the ES during the Examination, together with the Change Application (Section 1.5 of this Recommendation) did not individually or cumulatively undermine the scope and assessment of the ES. Chapter 3 of this Recommendation will summarise the environmental effects under each topic section.

2.8. HABITATS REGULATIONS ASSESSMENT

2.8.1. The SoS is the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations). The Habitats Regulations were amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.

2.8.2. The Proposed Development is one that has been identified as giving rise to the potential for likely significant effects (LSE) on European sites and hence is subject to a Habitats Regulations Assessment (HRA). As is the convention and to inform SoS decisions prepared under the PA2008, a separate record of considerations relevant to HRA has been set out in Appendix C of this Recommendation, a summary of which can be found in Chapter 4.

2.9. TRANSBOUNDARY EFFECTS

2.9.1. A transboundary screening under Regulation 32 of the EIA Regulations was undertaken on behalf of the SoS on 25 March 2022 following the Applicant's request for an EIA Scoping Opinion. No significant effects were identified on the environment in a European Economic Area (EEA) member state.

2.9.2. A second screening was published on 17 February 2023. Again, no EEA states were identified as being likely to have significant effects on their environment including consideration of potential pathways and the extent, magnitude, probability, duration, frequency and reversibility of the impacts. It was considered that the likelihood of transboundary effects resulting from the Proposed Development is so low that a detailed transboundary screening was unwarranted.

2.9.3. The Regulation 32 duty is an ongoing duty. On that basis the ExA has considered, up to the close of the Examination, whether any new or materially different information has come to light which may alter the decisions set out in the first and second screening exercises. On the basis of the information provided by the Applicant and considering that no concerns were raised by Natural England or any other IPs regarding the sites considered in the HRA, the ExA is satisfied that the Proposed Development would not have an LSE on European sites in any EEA States.

3. ASSESSMENT OF THE PLANNING ISSUES

3.1. INTRODUCTION

- 3.1.1. This Chapter sets out the Examining Authority's (ExA) findings and conclusions on the planning issues arising. The Chapter is structured to firstly examine the matters of principle, including need and alternatives. The remainder of the topics are not prioritised in any particular order of importance.
- 3.1.2. As required by section (s) 88 of the Planning Act 2008 (PA2008) and Rule 5 of the Infrastructure Planning (Examination Procedure) Rules 2010, the ExA made an initial assessment of principal issues (IAP) arising from the Application in advance of the Preliminary Meeting (PM). This formed an initial assessment of the issues based on the Application documents and submitted Relevant Representations (RR). The list of issues relates to all phases of the Proposed Development. The IAP was raised at the Preliminary Meeting and no other key topics were identified during the Examination. The IAP can be found in Annex C of the Rule 6 letter [\[PD-009\]](#).
- 3.1.3. The ExA does not report in detail on every issue, whether or not included in the initial IAP the Environmental Statement and/or raised by Interested Parties (IPs). Instead, the focus in this Recommendation is on those matters which were principal concerns for the Examination and specific discussion points of interest. Where the ExA does not discuss a particular concern of an IP, the Secretary of State (SoS) can be assured the ExA has considered the matter and is satisfied with the Applicant's responses given at the appropriate point in the Examination.
- 3.1.4. Following the principle of the development, the main planning issues are reported in Sections 3.3 to 3.11 of this Chapter under the following topic headings:
- Biodiversity and the Natural Environment
 - Design, Landscape and Visual
 - Historic Environment
 - Land Use and Soils
 - Socio-Economics
 - Transport, Access and Public Rights of Way
 - Water Environment, Flood Risk and Drainage
 - Other Planning Issues
 - Cumulative Effects
- 3.1.5. Each Section follows a similar format, including relevant policy considerations, the approach taken in the Application, issues considered during the Examination, and finally the ExA's conclusion on each planning issue. Each Section considers the effects of the Proposed Development alone; findings in respect of potential cumulative effects are contained in Section 3.11 of this Chapter.
- 3.1.6. As previously noted, the ExA's acceptance of the Change Application took place at the beginning of the Examination [Annex B, [PD-010](#)], which then proceeded in consideration of the Application as changed. Consideration is therefore based on this version and as updated during the Examination.
- 3.1.7. The term 'impact' is used in this Chapter. To clarify, environmental 'impacts' and 'effects' are both considered in this Recommendation to be 'environmental effects'.
- 3.1.8. The ExA has had full regard to national and local policies in considering the Application. They will not be recited in full in each topic below, but specific National

Policy Statement (NPS) paragraphs and other national and local policies will be drawn on where it is necessary and relevant to do so.

3.1.9. The ExA has used the following approach in ascribing the weight to be attached to each of the planning issues in each individual conclusion, which would weigh for or against the making of the Development Consent Order (DCO):

- No or neutral weight – The ExA considers that there are no matters relating to that issue which would weigh either for or against making of the Order.
- A little weight
- Moderate weight
- Great weight
- Very great weight

3.2. THE PRINCIPLE OF THE DEVELOPMENT

INTRODUCTION

3.2.1. The application falls to be determined within the criteria set out in s105 of PA2008. The transitional provisions set out in section 1.6 of 2024 NPS EN-1 apply to the Application given that it was accepted for Examination prior to its designation. The 2024 NPS was designated during the Examination and the parties were given the opportunity to comment on it. The 2011 NPS continue to have effect in accordance with the terms of those NPS. However, paragraph 1.6.3 of 2023 NPS EN-1 makes it clear that the emerging NPS are capable of being important and relevant considerations in the decision-making process.

3.2.2. For this reason and as set out in Chapter 2 (Section 2.2) of this Recommendation the ExA considers that the 2011 National Policy Statements (NPS) EN-1 and EN-5 and their intended application to large scale energy projects are important and relevant matters in the consideration of the principle of the development. 2024 NPS EN-1, EN-3 and EN-5 are also important and relevant considerations in deciding whether the Proposed Development is acceptable in principle, and the ExA applies very great weight to these recently designated NPS.

3.2.3. Leading to the designation of the 2024 suite of energy NPS, there has been a strengthening legislative and national policy imperative to urgently decarbonise the UK's energy supply and improve energy security, as explained in Chapter 2. This reinforces the urgent need for renewable energy infrastructure including solar.

3.2.4. Other relevant decision-making policies which are important and relevant to the principle of the development include the National Planning Policy Framework (NPPF), the Planning Practice Guidance (PPG) and the local development plans of the relevant planning authorities (RPAs). These, and relevant legislation, are summarised at Appendices A4 to A6 of this Recommendation.

3.2.5. This section also includes consideration of greenhouse gas (GHG) effects in the assessment of need. Alternatives are considered later in this section.

POLICY CONSIDERATIONS

2011 Overarching National Policy Statement for Energy EN-1

3.2.6. 2011 NPS EN-1 sets out the case for both the need and urgency for new energy infrastructure to be consented and built as soon as possible. Notwithstanding the exclusion of solar from its scope, it makes clear that applications for development

consent for the types of energy infrastructure covered should be assessed on the presumption that there is a need for those types of infrastructure. It also advises that substantial weight is to be given to the contribution which projects would make towards satisfying this need when considering applications under the PA2008.

- 3.2.7. 2011 NPS EN-1 also notes that it is for industry to propose new energy infrastructure projects within the strategic framework set by Government, and planning policy should not set targets for, or limits on, different technologies. It also recognises that there are a number of technologies which can be used to compensate for the intermittency of renewable generation, such as electricity storage. It points to the likelihood 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.
- 3.2.8. Given the level and urgency of the identified need, it advises that the consideration of applications for development consent should start with a presumption in favour of granting consent unless more specific and relevant policies in the related NPSs and/or any other matters that the decision maker thinks are both important and relevant to the decision clearly indicate that consent should be refused.
- 3.2.9. Guidance is also given on the importance of a grid connection noting that while it is for an applicant to ensure that there will be the necessary infrastructure and capacity within a transmission or distribution network to accommodate the electricity generated, the SoS will need to be satisfied that there is no obvious reason why a grid connection would not be possible.
- 3.2.10. 2011 NPS EN-1 does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option. However, applicants are required to include in its ES information about the main alternatives it has studied and include an indication of the main reasons for the choice made, taking into account the environmental, social and economic effects including technical and commercial feasibility. Furthermore, paragraph 4.4.3 of 2011 NPS EN-1 advises that given the need for new energy infrastructure, the consideration of alternatives should be carried out in a proportionate manner.

2011 National Policy Statement for Electricity Networks Infrastructure EN-5

- 3.2.11. 2011 NPS EN-5 supplements 2011 NPS EN-1 and relates to electricity networks infrastructure. The Application includes an onsite substation and an extension to and works in connection with the existing National Grid substation at Bicker Fen, together with the associated high voltage electricity transmission cables. These works constitute Associated Development for which consent is sought along with a National Significant Infrastructure Project (NSIP). They fall within the scope of 2011 NPS EN-5 which is important and relevant in determining the Application.
- 3.2.12. Paragraph 2.1.2 cross-refers to 2011 NPS EN-1 which includes information regarding the specific need for new major electricity networks infrastructure in Section 3.7, and therefore the SoS should act on the basis that the need for the infrastructure covered in this NPS has been demonstrated.

2024 Overarching National Policy Statement for Energy EN-1

- 3.2.13. Section 2 of 2024 NPS EN-1 specifically refers to the Energy White Paper (2020), the Net Zero Strategy (2021), the British Energy Security Strategy (2022), the Growth Plan of September 2023 and Powering up Britain of March 2023, together

with the National Infrastructure Strategy and the second National Infrastructure Assessment. It confirms the urgent need for new electricity generating capacity, in response to the rise in global energy costs and security of supply issues.

- 3.2.14. Section 3 explains the need for significant amounts of new large-scale energy infrastructure to meet the Government's energy objectives, which are to ensure the country's supply of energy always remains secure, reliable, affordable, and consistent with net zero emissions in 2050, for a wide range of future scenarios. It recognises that a range of different types of energy infrastructure are needed to deliver such objectives, and that it is inappropriate to set limits on different technologies.
- 3.2.15. 2024 NPS EN-1 advises that applications should be assessed on the basis that the Government has demonstrated that there is a need for those types of infrastructure covered by the NPS which is urgent, and that substantial weight should be given to this need.
- 3.2.16. It sets out why the Government considers that the need for electricity infrastructure is urgent in delivering net zero in 2050; ensuring there is sufficient electricity to always meet demand, accommodate unexpectedly high demand and mitigate risks of supply interruptions. Electricity storage has a key role to play in achieving net zero and providing flexibility to the energy system. It advises that given the urgent need for new electricity infrastructure and the time it takes for electricity NSIPs to move from design conception to operation, there is an urgent need for new (and particularly low carbon) electricity NSIPs to be brought forward as soon as possible, given the crucial role of electricity as the UK decarbonises its economy.
- 3.2.17. In particular, 2024 NPS EN-1 recognises that wind and solar are the lowest cost ways of generating electricity, and that *"a secure, reliable, affordable, net zero consistent system in 2050 is likely to be composed predominately of wind and solar"* (paragraph 3.3.20).
- 3.2.18. Solar photovoltaic (PV) generation is specifically included with the scope of 2024 NPS EN-1 at paragraph 3.3.60 as a known generation technology. The need for solar PV amongst other types of infrastructure is urgently required for both energy security and net zero, such that the Government has (since the November 2023 publication of the final version) concluded there is a critical national priority (CNP) for it. At paragraph 3.3.63 it notes that the urgent need for CNP infrastructure will in general outweigh any other residual impacts not capable of being addressed by application for the mitigation hierarchy, and makes clear that *"Government strongly supports the delivery of CNP infrastructure and it should be progressed as quickly as possible"*.
- 3.2.19. CNP infrastructure specifically includes solar PV development, and both of these were excluded from the 2011 NPS. The support for CNP energy infrastructure within 2024 NPS EN-1 significantly raises the presumption of need over and above that previously set out in the 2011 NPS. In section 4 of the 2024 NPS it is advised that for projects which qualify as CNP infrastructure, it is likely that the need case will outweigh the residual effects in all but the most exceptional cases, subject to certain qualifications.
- 3.2.20. 2024 NPS EN-1 does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option from a policy perspective (although it notes there are specific requirements regarding alternatives in relation to compulsory acquisition and habitats sites). At paragraph 4.3.15 it

recognises that the ES should include information about reasonable alternatives, including an indication of the main reasons for the applicant's choice taking into account the environmental, social and economic effects and including, where relevant, technical and commercial feasibility.

- 3.2.21. 2024 NPS EN-1 indicates that the consideration of alternatives should be carried out in a proportionate manner, and that the SoS should only consider those alternatives that can meet the objectives of the proposed development, and have a realistic prospect of delivering the same infrastructure capacity in the same timescale. Furthermore, it advises that the SoS should not refuse an application because there would be fewer adverse impacts from developing similar infrastructure on another suitable site. In addition, it makes clear that alternatives not considered by the Applicant should only be considered to the extent that the SoS considers them to be both important and relevant to the decision (paragraphs 4.3.22 to 4.3.29).
- 3.2.22. The general assessment principles are set out in section 4 of the 2024 NPS EN-1 including the range of environmental considerations which are dealt with in the remainder of this Chapter.

2024 National Policy Statement for Renewable Energy Infrastructure EN-3

- 3.2.23. Unlike 2011 NPS EN-3 which specifically excludes solar development, 2024 NPS EN-3 covers solar PV generation above 50MW and includes a new section (2.10) setting out detailed policy considerations for solar proposals. In summary, it recognises solar as a key part of the Government's strategy for low-cost decarbonisation of the energy sector and sets out a commitment to sustained growth in this solar capacity. The British Energy Security Strategy is specifically referred to. The Government expects a five-fold increase in combined ground and rooftop solar deployment by 2023 (up to 70 Gigawatts), and states support for solar that is co-located with other functions, such as agriculture or storage to maximise the efficiency of land use.
- 3.2.24. 2024 NPS EN-3 goes on to refer to the Powering Up Britain: Energy Security Plan which states that the Government seeks large scale ground-mounted solar deployment across the UK, looking for development mainly on brownfield, industrial and low and medium grade agricultural land. It also sets out that solar and farming can be complementary and encourages deployment of solar technology that delivers environmental benefits, with consideration for ongoing food production or environmental improvement. Section 2.10 also recognises solar as being one of the cheapest forms of electricity generation, that can be produced quickly and efficiently.
- 3.2.25. While acknowledging the scale of development involved will inevitably have impacts, particularly if sited in rural areas, 2024 NPS EN-3 lists the key considerations involved in the siting of solar farms including irradiance and site topography, network connection, proximity to dwellings, agricultural land classification and type, accessibility and public right of ways, and security considerations.
- 3.2.26. 2024 NPS EN-3 notes that connection voltage, availability of network capacity, and the distance from the solar farm to the existing network can have a significant effect on the commercial feasibility of a solar development proposal. Consequently, it notes that applicants may choose a site based on nearby available grid export

capacity to maximise existing grid infrastructure, minimise disruption to existing local community infrastructure, biodiversity and to reduce overall costs.

- 3.2.27. It also provides advice on the key technical considerations including in terms of good design, project lifetime (noting that time limited consent is described as temporary because there is a finite period for which it exists, and that an upper limit of 40 years is typical), decommissioning, and project flexibility. The relevant impacts and mitigation identified in part 5 of 2024 NPS EN-1 and from paragraph 2.10.75 of EN-3 are considered further in the individual issues set out in the remainder of this Chapter.

2024 National Policy Statement for Electricity Networks Infrastructure EN-5

- 3.2.28. 2024 NPS EN-5 is relevant to the proposed substations and electricity cable connections which constitute associated development for which consent is sought along with the solar PV generating station. It should be read alongside EN-1 and EN-3. It notes the emphasis in EN-1 for supporting the urgent need for new low carbon infrastructure and that associated works such as substations are also considered to be CNP.

Other Government Legislation and Policy Documents

- 3.2.29. The Climate Change Act 2008 (2050 Target Amendment) Order 2019 introduced a revised target of achieving net zero GHG emissions by 2050. This legislated for a 100% reduction in GHG emissions instead of the 80% reduction that had originally been stated in the Act.
- 3.2.30. The Ten Point Plan for a Green Industrial Revolution (2020) lays the foundations for a 'Green Industrial Revolution' and a commitment to investing in clean technologies. The Energy White Paper: Powering our Net Zero Future (2020) builds on this, setting out the Government's policies and commitments which seek to achieve Net Zero and tackle climate change. The White Paper recognises that solar is a technology which does not have a fuel cost, only the cost of building and operating it, and that a low-cost net zero consistent system is likely to be composed predominately of wind and solar as part of a wider energy mix.
- 3.2.31. The Net Zero Strategy: Build Back Greener (2021, updated 2022) expands on key commitments in the Energy White Paper and the Ten Point Plan to meet Carbon Budgets and put the country on course to achieving net zero by 2050. One of the key commitments is to accelerate deployment of low-cost renewable generation including wind and solar.
- 3.2.32. The British Energy Security Strategy was published in April 2022 in response to the rising global energy costs and increase in the cost of living in the UK. It notes the fall in cost of solar over the past decade and sets out an expectation of a five-fold increase in deployment of solar by 2035, with a commitment to strengthening policy in favour of development subject to certain protections. It supports solar that is co-located with other functions to maximise efficiency of land use.
- 3.2.33. The Powering Up Britain: Energy Security Plan policy paper (2023) sets out the Government's plans to enhance energy security, seize the economic opportunities of the energy transition, and deliver on the Government's net zero commitments. The 'Powering Up Britain – Energy Security Plan' sets out the steps by which the Government will enhance the country's energy security following the publication of the British Energy Security Strategy in April 2022.

- 3.2.34. It notes that the UK has huge deployment potential for solar power and a key commitment is to establish a solar taskforce, and to publish a roadmap setting out a trajectory to achieving 70GW of solar by 2035 to demonstrate the Government's clear commitment to the sector and provide certainty to investors. Alongside promotion of rooftop solar, large-scale ground-mounted solar is sought, particularly encouraging of solar technology that delivers environmental benefits with consideration for ongoing food production or environmental improvement. It states that the Government will not be making changes to categories of agricultural land in ways that might constrain solar deployment.
- 3.2.35. The Technical Annex to Powering up Britain: Net Zero Growth Plan outlines how the UK will achieve its climate targets following the High Court's conclusion that the Government's original Net Zero plan lacked the sufficient level of detail on how the UK would reduce its emissions (R. (on the application of Friends of the Earth Ltd) v Secretary of State for Business, Energy and Industrial Strategy [2022] EWHC 1841 (Admin)).
- 3.2.36. The Energy Act 2023 received Royal Assent on 26 October 2023. It aims to boost investment in clean energy technologies, support skilled jobs and lay the foundations for greater UK energy independence, helping to "*power Britain from Britain*".

National Planning Policy Framework and Planning Practice Guidance

- 3.2.37. Chapter 14 of the NPPF indicates that the planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. Paragraph 163 advises that: a) applicants should not be required to demonstrate the overall need for renewable or low carbon energy, and b) to approve the application if its impacts are (or can be made) acceptable.
- 3.2.38. The PPG 'Renewable and low carbon energy' states that increasing the amount of energy from renewable and low carbon technologies, including solar, will help to make sure the UK has a secure energy supply, reduce GHG emissions to slow down climate change and stimulate investment in new jobs and businesses (5-001-20140306).

Local Development Plans

- 3.2.39. The Central Lincolnshire Local Plan 2023 (CLLP) policy S14 'Renewable Energy' sets out a commitment to supporting the transition to a net zero carbon future, and will seek to maximise appropriately located renewable energy, supporting schemes where the impacts are or will be made acceptable. It includes a presumption in favour of ground-based photovoltaics and associated infrastructure, including commercial large scale proposals subject to a range of criteria.
- 3.2.40. The South East Lincolnshire Local Plan 2019 (SELLP) policy 31 'Climate Change and Renewable and Low Carbon Energy' supports renewable energy facilities and associated infrastructure subject to a range of criteria.

Other local policy and guidance

- 3.2.41. The North Kesteven District Council (NKDC) Climate Emergency Strategy 2022-23 establishes aims to achieve net zero 2030 targets through a 95% reduction in GHG and carbon emissions, and the NKDC Climate Emergency Action Plan 2022-23 establishes the actions being taken to reach such aims. This includes an 'energy' theme which focuses on reducing fossil fuel dependence and associated emissions

by promoting and supporting renewable energy generation opportunities in the District.

THE APPLICATION

Need

- 3.2.42. The Applicant's case for the need for the Proposed Development is set out in the Statement of Need and Planning Statement [\[REP2-060\]](#). It highlights that 2011 NPS EN-1 is clear that there is a need for renewable energy infrastructure and the scale of requirements and the urgency ensures that there must be no upper limits on capacity, and that there is a demonstrable and overarching policy drive from both planning and other legislative documents to deliver renewable energy.
- 3.2.43. In an Addendum to the Statement of Need and Planning Statement [\[REP2-062\]](#) the Applicant referred to the emerging revisions to the NPS issued in March 2023, as well as the NPPF, PPG and other published Government documentation broadly as summarised above. Appendices 1 and 2 of the Addendum provide an assessment of the proposals against the March 2023 version of the NPS in relation to generic impacts and specifically in relation to solar PV development.
- 3.2.44. The Applicant's case for need is built upon the contribution of the Proposed Development to the following three national policy aims: decarbonisation, security of supply and affordability. It concludes that the Proposed Development would contribute to addressing the climate change emergency by ensuring a secure, low carbon and low-cost energy supply and that this contribution should be afforded significant weight when the SoS considers matters which are important and relevant in the decision making process.
- 3.2.45. ES Chapter 13 'Climate Change' [\[APP-066\]](#) considers the potential effects of the Proposed Development on emissions of GHG at all phases. The Applicant concludes that GHG emissions from the construction phase would be greatest as a result of the embodied carbon in construction materials. Transportation of materials, waste and workers in both the construction and decommissioning phases is assessed as not significant, when compared to applicable national carbon budgets in line with the accepted guidance.
- 3.2.46. The Applicant's assessment concludes that the Proposed Development would result in a significant beneficial effect during its operational phase. When considering the Proposed Development as a whole, the Applicant calculates an average operational GHG intensity of 20.4 grams of carbon dioxide (CO₂) equivalent per kWh (gCO₂e/kWh). This operational GHG intensity is well below the 2022 GHG intensity of the grid (136 gCO₂e/kWh) (BEIS, 2021). When considering only the aspects relating to the solar energy generation from the Energy Park, this gives an average operational GHG intensity of 6.1 grams of CO₂ equivalent per kWh (gCO₂e/kWh).
- 3.2.47. The Applicant states that, without low-carbon energy generation projects such as the Proposed Development, the average grid GHG intensity will not fully decrease as projected, which would also adversely affect the UK's ability to meet its carbon reduction targets. Therefore, the Proposed Development is considered by the Applicant to have a significant beneficial effect on emissions reductions during its operational phase [\[paragraph 13.5.5, APP-066\]](#) .

Alternatives

Energy Park Site

- 3.2.48. The Applicant's consideration of alternatives is also set out in the Statement of Need and Planning Statement [\[REP2-060\]](#), with further detail in ES Chapter 3 [\[PS-053\]](#). The site selection was primarily based on having secured a grid offer from National Grid for a 400 MW export capacity at Bicker Fen substation. Security of connection is set out in the sequential and exceptions tests carried out by the Applicant as part of the Flood Risk Assessment (FRA) at ES Appendix 9.1 [\[AS-020 to AS-023 inclusive\]](#). Given its location partly within Flood Zones 2 and 3 the Proposed Development is subject to both tests. This is covered in further detail in Section 3.9 of this Recommendation.
- 3.2.49. Criteria for alternative site selection included:
- A location within a Search Area based on a 15km radius from the Bicker Fen Substation.
 - A geographical extent similar in scale to Heckington Fen (circa 550 hectares).
 - A potential suitability for large-scale ground mounted solar development (excluding sites that are allocated or safeguarded within the Development Plan).
 - A potential status as being 'reasonably available' for such development.
- 3.2.50. The Applicant recognises that 2011 NPS EN-1 states that any alternative site must also have a *"realistic prospect of delivering the same infrastructure capacity... in the same timescale as the proposed development"*. A date for connection at Bicker Fen substation has been confirmed by National Grid as 2027, and it has also indicated there is no capacity for development of a similar scale at Spalding substation until after 2030. Spalding is the only other 400kV substation in Lincolnshire.
- 3.2.51. ES Chapter 3 also [\[PS-053\]](#) details the identification and assessment of 13 alternative sites as part of a comparative 'back check and review' process which in turn aligns with the Environment Agency's guidance on the sequential test in relation to flood risk. The Applicant concludes in this respect that there are no reasonably available alternative sites appropriate for the Proposed Development which are located in areas with a lower risk of flooding. Use of Best and Most Versatile (BMV) agricultural land is also considered in the Applicant's assessment of alternatives. This matter is further detailed in Section 3.6 of this Recommendation.
- 3.2.52. ES Chapter 3 [PS-053](#) sets out alternative designs/layouts, sites, cable route corridors and technologies, as well as the 'no development' scenario. It also responds to matters raised during consultation regarding consideration of alternatives from the RPAs. The Applicant notes that the 'no development' alternative of leaving the site in its current use and physical state anticipates continuation of its primary agricultural use, with a loss of opportunity for provision of much needed renewable energy.
- 3.2.53. In terms of alternative technology, as set out in Section 1.3 of this Recommendation a 66MW wind farm has been previously approved on the Energy Park Site (for the same Applicant), but not implemented due to difficulties in finding a technical mitigation in respect of Ministry of Defence radar which was required via a Grampian (pre-commencement) condition. Alternative types of solar technology have also been considered, including tracking panel systems. This type of system was discounted largely because of the flood risk of the land, and in the event of a worst-case flood a moving panel would be partially submerged in water due to the angle of the lower edge. In order for the Proposed Development to continue to generate electricity in the event of a flood, all of the solar panels must remain above the flood water level.

- 3.2.54. Agrivoltaics (solar panels combined with agricultural cropping of the land under and between the panel rows) was also considered by the Applicant as an alternative technology. The Applicant considered this economically unviable when considered against the potential yields of such a system, as well as the soil condition being generally unsuitable for this type of fruit crop.
- 3.2.55. In view of the Applicant's long-standing interest in the land since its wind farm proposal, it has had an Option agreement in place with the landowner for a number of years. The Applicant stressed that a new site of similar size and capacity is expected to take at least 12 months to secure from a different landowner. Furthermore, a grid connection offer has been confirmed from National Grid, with a bilateral grid connection agreement entered into. This has been well advanced due to the Applicant's Option on the land [\[APP-051\]](#). Another site could result in a lengthy delay in terms of securing a similar grid connection offer on an alternative site. Spalding substation would not have capacity until after 2030, therefore the focus of the Applicant's 'back check and review' was for sites around the Bicker Fen Substation.
- 3.2.56. The Applicant considers a distance of 15km from Bicker Fen substation to be the maximum distance a development of this scale could economically accommodate. This search area, and a number of other key variables, were agreed in advance with the RPAs. Whilst the Energy Park Site is in a single ownership, land in different ownerships was also considered in the back check and review. The Applicant puts that a site in multiple ownership would result in more complex and time-consuming legal matters to achieve Heads of Terms and/or an Option. This is considered unrealistic to be achieved in time for an agreed connection to Bicker Fen substation in 2027.
- 3.2.57. The 13 alternative sites are summarised at paragraphs 3.4.50 to 3.4.113 of ES Chapter 3 [\[PS-053\]](#) and geographically represented at Figure 3.4 [\[APP-085\]](#), which is reproduced below. The individual sites are shown at Figures 3.4a to 3.4m [\[APP-087\]](#) to [\[APP-098\]](#) inclusive], with details including landownership, heritage assets, access routes, flood risk and agricultural land classification.

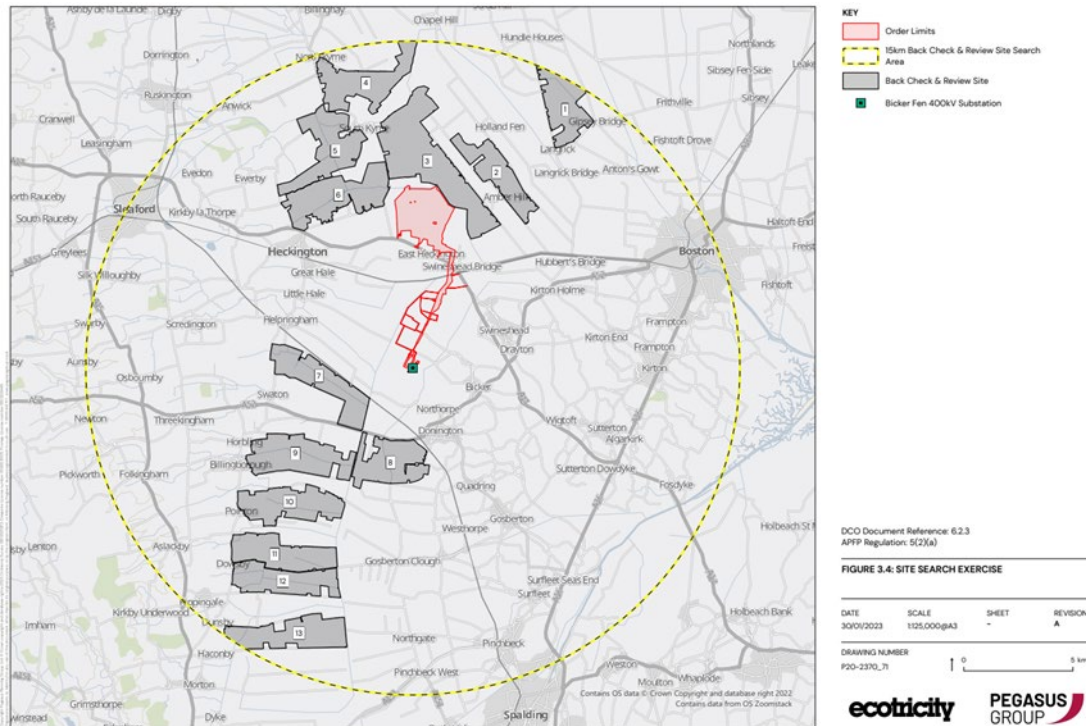


Figure 4: Site Search Exercise [APP-085]

3.2.58. A tabulated summary of the back check and review of alternative sites is presented at Appendix 3.1 [APP-176]. In short, the Energy Park Site was chosen as a suitable site for the following reasons:

- Agreement with the landowner in place.
- A neatly contained Energy Park Site with a single landowner.
- Orientation of land and its open nature, suitable for efficient energy generation.
- No ecological or landscape designations or statutory protected areas within close proximity.
- Limited visibility from the wider landscape.
- Grid connection is economically achievable for a development of this generation capacity.
- Access into the Energy Park site is directly off the A17.
- Less area of BMV land of categories Grade 1 and 2 used within the site.
- Limited residential properties next to the site.

3.2.59. Alternative layouts within the Energy Park site were considered by the Applicant and the main design iterations summarised in Table 3.2 of ES Chapter 3 [PS-053]. In summary, the final layout as presented in the Application includes the following principal amendments:

- A reduction in the size of the Energy Park following removal of Grade 1 and 2 agricultural land.
- Onsite substation moved to the central area of the site.
- Removal of 132kV substations.
- Removal of overhead onsite cable route in favour of buried cables.
- Fire risk mitigation added to the substation and energy storage area.
- Construction and operational compounds reduced.
- Further internal access tracks added.
- Indicative inverters and transformer locations added.

- Maximum panel height reduced from 4.5m to 3.5m with provision of different zones of 3m and 3.5m to reflect different flood risk.

Cable Route Corridor

- 3.2.60. The Cable Route Corridor initially covered a much wider area in the Scoping Report and Preliminary Environmental Information Report (PEIR). It has been refined to a single route except for the most southerly section near to the Bicker Fen substation. Appendix A of the Statement of Reasons (SoR) [\[REP5-027\]](#) sets out the Grid Route Selection Report.
- 3.2.61. This sets out the constraints along the routes which were considered including the presence of the A17, the South Forty Foot Drain, the railway, a high-pressure gas pipe and a number of watercourses as well as the presence of other infrastructure projects (Triton Knoll and Viking Link). An offsite overhead connection was discounted due to visual impact, preference to avoiding cables over the railway and drainage channels, and the precedent set locally for underground cables from Triton Knoll and Viking Link. The complex crossing points would utilise trenchless crossings, likely by horizontal directional drills.
- 3.2.62. Paragraph 2.1.11 of Appendix A of the SoR sets out that it is not possible to utilise the same cable connections as Triton Knoll and Viking Link due to their much advanced construction (both are now operational) and landowner agreements in place.
- 3.2.63. Section 5 of Appendix A of the SoR summarises the cable corridor route selection and consideration of a range of alternatives. In summary, the primary criteria for the route were engineering requirements and complexity, proximity to residences and businesses, likely environmental impacts, economic factors; and landowner considerations.

THE EXAMINATION

- 3.2.64. No IP questioned the urgent need for renewable electricity generation nor the energy storage (ESS) proposals, and there was no dispute that the Proposed Development would contribute to meeting this need. No concerns were raised in terms of the principle or scope of development, and matters such as capacity and alternatives as discussed at Issue Specific Hearing (ISH) 2 [\[EV-009\]](#).
- 3.2.65. **Lincolnshire County Council (LCC)** in its local impact report (LIR) [\[REP1-028\]](#) noted that CLLP policies are in support of energy infrastructure and that the Proposed Development offers positive impacts in terms of the production of clean renewable energy and the UK's transition towards Net Zero. LCC agreed that the estimated annual GHG intensity of the Proposed Development would be considerably less than the relevant annual projected decarbonised grid GHG intensity, but questioned the emissions associated with the recycling or disposal of components at the decommissioning stage. However, LCC did not dispute the Applicants overall conclusions that, adopting a 'whole life' approach, there would be significant positive impacts that would accrue in relation to reduction of GHG emissions.
- 3.2.66. **NKDC** in its LIR [\[REP1-033\]](#) highlighted its Climate Emergency Action Plan and NKDC Climate Emergency Action Plan 2022-23 which includes a focus on reducing fossil fuel dependence and associated emissions by promoting and supporting renewable energy generation opportunities in the District. It noted that the delivery of renewable energy of the nature proposed is in accordance with its strategic

policies, in seeking to address the challenges relating to climate change to ensure that the District and Central Lincolnshire is fit for a zero-carbon future. It therefore supports the principle of the development subject to detailed environmental matters as set out in the remainder of this Chapter.

- 3.2.67. **Boston Borough Council** (BBC) made no specific comments in terms of need and alternatives given the Borough would host the cable route connection only. No other IPs raised issues in terms of such matters.
- 3.2.68. In relation to climate change and GHG, the ExA asked a question at ExQ1 (GEN 1.5) relating to sulphur hexafluoride (SF6) gases in relation to the choice of switchgear assets. The Applicant replied [REP2-077](#) that the detailed design of the electrical distribution system has not yet been completed, and it only relates to the use of SF6 within the gas insulated switchgear (GIS), if incorporated as an alternative to Air Insulated Switchgear (AIS) at Bicker Fen substation. The Applicant acknowledged that 2024 NPS EN-5 seeks for GIS systems to be avoided where possible. The SF6 commitment is contained both within ES Chapter 4 [\[REP4-024\]](#) and the Outline Design Principles document [\[REP4-031\]](#), which makes it clear that should the GIS option be used at the substation, National Grid would avoid the use of SF6. It is not possible to rule out small amounts of SF6 in a circuit breaker interrupter which provide a critical safety function. Any use of SF6 in the circuit breakers would be continuously monitored with any leaks of gas resulting in an alarm activating and complete replacement of the defective equipment. This is secured in the outline OEMP secured by Requirement 19 [\[REP5-011\]](#).
- 3.2.69. Following the publication of the final energy suite of NPS in November 2023, at ExQ2 (GEN 2.2) [\[PD-013\]](#) the ExA asked the Applicant and all IPs to provide comments on the changes made since the March 2023 version, in particular regarding the scope of CNP infrastructure. Responses were provided by the Applicant [\[REP4-047\]](#), NKDC [\[REP4-056\]](#), LCC [\[REP4-055\]](#) and BBC [\[REP4-054\]](#).
- 3.2.70. The Applicant considered that no additional information was required for the Application in relation to the change, but reiterated the urgent need for new electricity infrastructure to be brought forward and that this would be through a combination of power sources. The Applicant highlighted the text within the November 2023 EN-1 which confirms that the need case will outweigh the residual effects in all but the most exceptional cases [\[REP4-047\]](#).
- 3.2.71. The transitional arrangements and weight to the November 2023 NPS were also considered by the Applicant in its answer to ExQ2 GEN 2.2, noting that the revised NPS “... *should have substantial weight as relevant and important matters in decision making. The weight afforded to them is substantial because they provide guidance on decision making on solar Nationally Significant Infrastructure Projects (NSIPs), something no other document was written to do. They were also published on 22 November 2023, so present the most up to date Government policy and guidance. They are highly relevant to the Application*” [\[REP4-047\]](#).
- 3.2.72. Appendix 3 of the Applicant’s Closing Submissions [\[REP6-003\]](#) provided a full answer to ExQ GEN 2.3 and summarises its approach to the mitigation hierarchy and summarises the key residual effects. Mitigation is dealt with in each relevant topic below.
- 3.2.73. The joint statement of common ground (SoCG) with the RPAs [\[REP6-006\]](#) records agreement on the energy potential of the solar park and the capacity of the secured grid connection. At part 5.2, in relation to alternatives, no comments were raised by

BBC, LCC and NKDC noted the Applicant's approach to the site selection process, recognising that it has taken into account a number of different factors including proximity to a grid connection and minimising impacts on designated sites. The outstanding matters of disagreement relating to use of high grade agricultural land were highlighted, and this is discussed in Section 3.6 of this Recommendation.

PRINCIPLE OF DEVELOPMENT: CONCLUSIONS

- 3.2.74. The ExA acknowledges that no specific concerns were raised by IPs in relation to the principle of development or need case, nor the Applicant's assessment of climate change, and therefore did not ask any further questions. In view of the urgent need for new renewable generating capacity, the ExA accepts that, subject to detailed consideration of the planning issues set out in Sections 3.3 to 3.10 below, all forms of renewable generation, including large scale ground mounted solar, have a role to play in contributing to increased energy supply and security and in meeting net zero targets. This need has been significantly heightened by the designation of the 2024 NPS and the CNP status of solar PV development. The need case for the Proposed Development has therefore been made out.
- 3.2.75. GHG emissions were not contested by any IPs, and the Applicant provided a satisfactory response to the ExA's questions regarding potential SF6 gases. The ExA is satisfied that the Applicant has applied an appropriate methodology and sought to contextualise the carbon emissions that would result from the Proposed Development in the context of relevant carbon budgets and against the whole life of the Proposed Development.
- 3.2.76. In terms of alternatives and site selection, the RPAs (nor any other IPs) did not question the site selection process nor alternatives in respect of the location of the Energy Park Site. The contained nature of the Energy Park and its proximity to the Grid Connection (where a bilateral connection agreement is in place at Bicker Fen substation) were accepted as key considerations. The sequential test for use of land in zones at risk of flooding was also not questioned, and the ExA notes that similar flood risk exists at many of the alternative sites. Rather, NKDC and LCC sought for design and layout to reflect the agricultural land classification and to reduce the amount of BMV land affected by the Proposed Development. The ExA accepts that the alternative sites considered by the Applicant have similar or higher amounts of BMV for a layout of the same size.
- 3.2.77. No other IPs raised specific concerns in relation to need or alternatives in terms of either the Energy Park or the Grid Connection Route. Consequently, the ExA did not ask further written questions in respect of alternatives and site selection. The constraints of the Energy Park Site including use of BMV, flood risk, access and biodiversity considerations are considered in the following Sections of this Recommendation.
- 3.2.78. The ExA has had particular regard to the contained nature of the Energy Park Site (on which an Option agreement has been obtained with the single landowner). This is coupled with the agreed grid connection which is within a relatively short distance. Consequently, the ExA is satisfied that construction of the Proposed Development and the associated grid connection is capable of taking place within a reasonable time scale so that much needed renewable energy generation and storage can quickly contribute to the UK's net zero energy targets and energy security, identified in 2024 NPS EN-1 as a critical national priority.

- 3.2.79. Such matters are also persuasive in representing compelling advantages of the siting of the Proposed Development over and above all other alternatives assessed in the back check and review in Chapter 3 [\[PS-053\]](#).
- 3.2.80. The ExA is satisfied that there is a compelling and urgent need for the Proposed Development, supporting the UK's transition towards a low carbon economy and its Net Zero strategy. The need has been demonstrated by the Applicant in accordance with the provisions of both 2011 and 2024 NPS EN-1, which are important and relevant considerations.
- 3.2.81. The ExA considers that the Applicant has satisfactorily demonstrated an appraisal of alternatives and the siting and routing options refined in the submission of the Proposed Development. The legislative and policy requirements have been met in this respect. There are no matters relating to the consideration of alternatives which would weigh for or against the Order being made.
- 3.2.82. The ExA prescribes very great positive weight to the contribution the Proposed Development would make towards satisfying the urgent need for renewable and low carbon energy infrastructure in the UK. This is further enhanced by the designated 2024 NPS which includes solar PV development as CNP infrastructure, an important and relevant consideration to which the ExA gives very great weight.

3.3. BIODIVERSITY AND THE NATURAL ENVIRONMENT

INTRODUCTION

- 3.3.1. This Section considers the effects of the Proposed Development on the natural environment, including biodiversity, ecology, ornithology, protected species, and sites of national, local and regional interest. Effects on the natural environment also include planting and removal of trees and hedgerows.
- 3.3.2. Matters relating to effects on European sites in the context of the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations) are set out separately in Chapter 4 and Appendix C of this Recommendation which relates to potential effects on The Wash Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar site, and the Norfolk Coast and Wash SAC.

POLICY CONSIDERATIONS

- 3.3.3. 2011 NPS EN-1 seeks to ensure that the ES clearly sets out any effects on internationally, nationally and locally designated sites of ecological or geological conservation importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity. The applicant should show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests, and maximise opportunities for building-in beneficial biodiversity or geological features, using requirements or planning obligations where appropriate.
- 3.3.4. Paragraph 5.3.8 seeks for the SoS to ensure that appropriate weight is attached to designated sites of international, national and local importance; protected species; habitats and other species of principal importance for the conservation of biodiversity; and to biodiversity and geological interests within the wider environment.

- 3.3.5. Section 5.4 of 2024 NPS EN-1 generally repeats the above. It also highlights the Government's 25-year Environment Plan and other policies including the Environmental Improvement Plan 2023, which aim to halt overall biodiversity loss in England by 2030 and then reverse loss by 2042, support healthy well-functioning ecosystems and establish coherent ecological networks. Inclusion of appropriate avoidance, mitigation, compensation and enhancement measures as an integral part of the proposed development is set out in paragraph 5.4.35.
- 3.3.6. Paragraph 5.4.41 recognises that national significant low carbon energy infrastructure may include benefits for biodiversity which may outweigh harm. The SoS may take account of any such net benefit where it can be demonstrated, and in line with the mitigation hierarchy.
- 3.3.7. Biodiversity Net Gain (BNG) forms an important consideration as set out in section 4.6 of 2024 NPS EN-1. Proposals should seek opportunities to contribute to and enhance the natural environment by providing net gains for biodiversity and the wider environment where possible. Paragraph 4.6.7 encourages use of the latest version of the biodiversity metric to calculate the baseline and present BNG outcomes, with data presented in full as part of the Application. Paragraph 4.6.1 recognises that achieving BNG is not currently an obligation for NSIPs but advises that the SoS should give appropriate weight to environmental and biodiversity net gain, although any weight given to gains provided to meet a legal requirement (for example under the Environment Act 2021) is likely to be limited.
- 3.3.8. The NPPF at paragraph 186 states that opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate. Development Plan policy seeking to protect biodiversity is contained with CLLP policy S60, with policy S61 requiring delivery of at least 10% BNG in all qualifying development proposals. For the Borough of Boston, SELLP policy 28 has similar aims but does not specify a level of BNG.

THE APPLICATION

- 3.3.9. ES Chapter 8 Ecology and Ornithology [[PS-063](#)] and ES Technical Note: Additional Ecology Information [[REP3-027](#)] assesses the effects of construction, operation and decommissioning and their effects on the natural environment.
- 3.3.10. Supporting appendices include:
- Appendix 8.1 – Preliminary Ecological Appraisal [[APP-190](#)]
 - Appendix 8.2 – Lincolnshire Environmental Records Centre search report [[APP-191](#)]
 - Appendices 8.3 to 8.11 – Habitat survey reports [[APP-192](#) to [APP-201](#)]
 - Appendix 8.12: BNG calculation [[REP4-028](#)]
 - Appendix 8.13: BNG assessment report [[REP4-029](#)]
 - Appendix 6.3: Arboricultural Impact Assessment, Tree Survey and Tree Protection Plan [[PS-121](#)]
- 3.3.11. There are also references to the natural environment in Chapter 9 (Hydrology, hydrogeology, flood risk and drainage) [[PS-065](#)] and Chapter 16 (Land Use and Agriculture) [[REP2-028](#)].
- 3.3.12. The areas surveyed are displayed at Figure 8.1 [[PS-107](#)]. Figure 8.2 shows the statutory and non-statutory designated sites [[PS-108](#)], Figure 8.3 indicates the

location of protected and notable species in the area [\[PS-109\]](#), and Figure 8.4 visually presents the results of the Phase 1 habitat survey [\[PS-110\]](#).

- 3.3.13. The key measures proposed to mitigate the effects of the Proposed Development on habitats and the species they support during all phases are summarised in section 8.7 of ES Chapter 8. Those measures to be employed during construction are contained in the outline Construction Environmental Management Plan (CEMP) [\[REP5-054\]](#). Ongoing and long term management to deliver BNG is set out within the outline Landscape and Ecological Management Plan (LEMP) [\[REP5-056\]](#). The outline Operational Environmental Management Plan (OEMP) [\[REP5-011\]](#) also sets out a number of measures to manage the Energy Park Site during operation, including management of planting and grazing. The measures set out in the outline LEMP are illustrated on the Landscape Strategy Plan at ES Figure 6.2 [\[REP3-012\]](#).
- 3.3.14. There are no nationally designated sites within the Order Limits. Sites within the study area of 10km are shown on ES Figure 8.2 [\[PS-108\]](#). The nearest Site of Special Scientific Interest (SSSI) is Horbling Fen (designated for its geological interest), some 5km away. There are nine Local Wildlife Sites (LWS) within 5km, most of these relating to drains the largest of which is the South Forty Foot Drain. This is watercourse supports large populations of many aquatic plants, and the cable route corridor crosses it at one point.
- 3.3.15. Around 14.5km away is The Wash SPA and Ramsar site, and the Norfolk Coast and Wash SAC. These European Sites are considered by the Applicant in its Shadow Habitat Regulations Assessment (HRA) [\[REP4-022\]](#) and are considered by the ExA in Chapter 4 and Appendix C of this Recommendation.

Baseline Habitat Conditions

- 3.3.16. The land within the Energy Park site is currently in arable use, subdivided into rectilinear parcels by drainage ditches. The ES notes that it is generally of a low nature conservation value. Hedgerows were found to be species poor, and the conservation value boundary habitat within the Energy Park very limited and therefore only of local importance as set out in ES Appendix 6.3: Arboricultural Impact Assessment (AIA) [\[PS-121\]](#). Section 2.3 of the AIA confirms that there are no trees subject to Tree Preservation Order nor any other tree protection designations. The AIA notes that an oak tree at G39 is to be assessed for veteran status. Overall, tree cover is limited to four small plantation woodland blocks with numerous more isolated trees along boundaries and watercourses.
- 3.3.17. The cable route corridor includes the South Forty Foot Drain LWS, but the majority of the route comprises intensive arable land together with some areas of semi-improved grasslands which mostly border the network of drains. Field boundaries largely comprise ditches and there are few hedgerows, of which have little or no connectivity to the wider landscape and very limited boundary habitat was found.
- 3.3.18. To the south of the Bicker Fen substation, an area of land of was added to Work No. 6 and the Order Limits increased as part of the Change Application [\[PS-003\]](#). This area contains part of a larger area of plantation woodland, which was required by planning condition as part of the substation development approved nearly 20 years ago.
- 3.3.19. ES Figure 8.4 illustrates the findings of the Phase 1 Habitat Survey [\[PS-110\]](#) over both the Energy Park Site and the cable route corridor (and the area around it) and was updated as part of the Change Application. ES Appendices 8.1 to 8.11 provide

detailed survey reports of all habitats and species. Extended reports are provided for badgers, bats, water vole, birds and great crested newts. In respect of ornithology, breeding bird and wintering bird surveys are contained at ES Appendix 8.10 [APP-200].

Effects on Biodiversity and the Natural Environment: Construction

3.3.20. In ES Chapter 8 [PS-063] the Applicant identifies the potential effects on biodiversity and the natural environment during construction as including:

- Injury or mortality to species using the areas due to construction activities, such as site clearance.
- Changes in level disturbance to species resulting from changes in normal farming practices to construction activities.
- Loss or gain of habitat during construction resulting from changes in land use.
- Temporary change in habitat during construction associated with site clearance, access tracks or construction compounds.
- Habitat degradation due to direct or indirect effects resulting in a reduction in the ecological condition of habitats and suitability for some species it supports.
- Changing structure of the area due to construction of vertical structures (solar panels and supports, substations, energy storage facilities, fencing etc).

3.3.21. ES Chapter 8 (section 8.5) [PS-063] sets out the effects on grasslands, boundary habitats, trees/woodlands, wetlands, protected species (including European hare, badgers and bats), ornithology (breeding and wintering birds) during construction, and puts forward mitigation and enhancement measures and any residual effects. In summary:

- Increase in areas of grassland from 13ha to over 500ha - a moderate beneficial effect (positive Significant).
- Increase in boundary habitats by design (hedgerow planting) - a minor to moderate beneficial effect (positive Significant).
- Loss of the woodland adjacent to Bicker Fen substation - a minor adverse effect (Not Significant).
- Effects on other trees are minimised by suppression of dust deposition, and avoidance of root protection areas by storage and vehicles – with mitigation secured in the CEMP there is expected to be no effect on trees or woodlands during construction (Not Significant).
- Directional drilling, and other measures in the CEMP including silt fencing aims to protect watercourses from construction impacts. The cessation of fertiliser application would result in an improvement of water quality – a Significant positive effect.
- Otter and water vole – a neutral-negligible effect is predicted on these species with use of directional drilling under watercourses (Not Significant).
- European Hare – potential of disturbance and death or injury during construction represents a minor adverse effect (Not Significant) reducing to a neutral-negligible effect with mitigation (Not Significant).
- Badgers – potential risk of disturbance and need for a licence but location of setts is subject to change. With mitigation a neutral/negligible effect is expected (Not Significant).
- Bats – buildings and suitable habitats would be unaffected during construction but with a precautionary approach including mitigation measures in the CEMP the effect would be neutral/negligible (Not Significant).
- Breeding birds – potential disturbance, death or injury during clearance works which would be an adverse effect at local level, considered to be a Moderate

Adverse effect, and Significant prior to mitigation. After mitigation there would be a neutral/negligible effect (Not Significant).

- Wintering birds – no significant effect predicted from construction nonetheless a precautionary approach would be taken leading to a neutral/negligible effect (Not Significant).

Effects on Biodiversity and the Natural Environment: Operation

3.3.22. The Applicant identifies the potential effects on biodiversity and the natural environment during the 40-year operational phase in paragraphs 8.5.116 to 8.5.138 of ES Chapter 8 as including:

- Changes in the level of disturbance to species using the Energy Park Site resulting from changes in normal farming practices to low density sheep grazing and conservation management of grasslands.
- Loss or gain of habitat in the wider vicinity during lifetime of the project resulting from changes in land use.
- Habitat degradation due to direct or indirect effects resulting in a reduction in the ecological condition of habitats and suitability for some species it supports, for example changes in water quality, or changes in surface or ground water flow.
- Changing structure of the area due to presence of vertical structures (solar panels and supports, substation, energy storage facilities and fencing).
- Barrier effects of fencing.
- Collision risk of vertical structures including fencing, solar panels, substation and energy storage structures.
- Shading of habitat beneath solar panels and changes in light level and or reflection.
- Low level noise from electrical plant including the substation, inverters, transformers, or energy storage units.

3.3.23. The Applicant highlights that stopping arable cultivation, the cessation application of fertiliser and agri-chemicals combined with conservation of the majority of the Energy Park to a mosaic of grasslands would reduce silt, fertiliser and agri-chemicals run-off into the drains, the Head Dike and Skerth Ditch and eventually into The Wash SPA/SAC. It is estimated that between 2,100—6,300 tonnes of topsoil would be prevented from entering The Wash SPA/SAC. However, in comparison to the total volumes of soil and chemicals entering The Wash from the surrounding intensive agricultural landscape in Lincolnshire, Cambridgeshire and Norfolk which drain into The Wash, the reduction in volumes from the Energy Park would be insignificant, therefore the overall effect is considered by the Applicant to be neutral/negligible and Not Significant.

3.3.24. The change from intensive arable use to grassland habitat is classified as having a minor to moderate beneficial effect, a positive Significant impact. The overall effect on species during operation is considered by the Applicant to be neutral/negligible for otter, water vole and Not Significant, and a minor to moderate beneficial effect on badgers and bats, a positive Significant impact.

3.3.25. In respect of breeding birds, it is assumed in the ES that the solar park development would reduce the number of open habitat nesting species such as skylark. On the other hand, the anticipated boost in abundance and diversity of invertebrate prey species through management of the grassland is expected to boost the quality foraging habitat available to birds nesting in the surrounding arable farmland and is likely to increase their breeding success. Although skylark are likely to continue to nest within the Energy Park Site this may be at much lower density than within the current agricultural landscape. By design, the area to the south and west of the

Energy Park would remain in agricultural use and could provide approximately 140 skylark plots. Overall, it is expected that there will be an increase in the diversity and number of breeding birds within and around the Energy Park Site resulting in a minor beneficial effect (Not Significant) on the conservation status at a local level.

- 3.3.26. No residual effect on the conservation status of wintering birds is expected, and the effect would be Neutral to Negligible (Not Significant).

Effects on Biodiversity and the Natural Environment: Decommissioning

- 3.3.27. The effects of decommissioning are expected to be similar to construction, but the overall nature conservation value of the Energy Park would be greater following habitat creation. The return of the land to arable cultivation is likely to result in a decline in the overall nature conservation value of the Energy Park Site. A full pre-decommissioning survey would be required to assess the effects on fauna and flora. It is intended that all tree planting (including the orchard and plantation woodland) would remain. The substation extension at Bicker Fen is likely to remain after decommissioning, together with the cables leading to it. Overall the effects are predicted by the Applicant to be temporary, minor and Not Significant but surveys would be needed to understand the ecological baseline at that time.

- 3.3.28. Of the 524ha area of the Energy Park Site, BNG areas would amount to approximately 60.29ha, with 0.4ha of woodland (replacement planting for that removed at Bicker Fen substation) and a community orchard of around 2.15ha. The fenced area of the Energy Park Site of some 440ha would be re-seeded prior to construction with a drought resistant species of rich seed mix suitable for sheep grazing with no additional fertiliser. There would be a 9m minimum standoff from all Black Sluice Internal Drainage Board (IDB) maintained ditches (and all other ditches 8m), which would amount to approximately 30ha. These standoff areas of land would be seeded with a nature conservation species seed mix and managed to provide habitat for insects and pollinators as well as nesting farmland birds and foraging habitats for birds and mammals.

- 3.3.29. In nature conservation Environmental Impact Assessment (EIA) terms the overall change in land use is classified as minor to moderate beneficial (Not Significant).

Mitigation and Enhancement

- 3.3.30. In summary, mitigation by design includes:

- Avoidance and stand-off distance of at least 9m from all IDB watercourses and 8m from all other ditches.
- Cessation of intensive agricultural practices (with associated use of fertiliser and agri-chemicals) is expected to significantly reduce the potential for silt and pollution run-off.
- Grassland planting under and around the solar panels.
- Planting of approximately 8.5km of new hedgerow around the Energy Park site, not only for landscape screening but to offer new areas of habitat and feeding grounds for wildlife.
- Planting of a 2.15ha community orchard with meadow grassland underneath.
- 0.4ha of native woodland planting.
- Directional drilling of cable route under the South Forty Foot Drain.

- 3.3.31. Additional mitigation in the CEMP, secured by Requirement 13, would include:

- Measures to minimise dust deposition and run-off.

- Habitat protection and prevention of disturbance to European hares and badgers.
- Standard practice to avoid impacts to nesting birds.

3.3.32. Enhancements measures are proposed through design by the on-site planting and return of fields to grass pasture for grazing, as well as the provision of a community orchard (on approximately 2.15ha of land to the south west of the Solar Park). The introduction of bat and bird boxes is also included in the outline LEMP (page 18) [REP5-056]. The outline LEMP also includes at section 6.2 the processes for monitoring and review. Furthermore, the outline OEMP [REP5-011] sets out a number of measures to manage the Energy Park Site during operation, including management of planting and grazing.

Biodiversity Net Gain

3.3.33. In light of the direction of travel provided for by the Environment Act 2021 and the Government's recent consultation on its implementation, and advice contained within 2024 NPS-EN1 the Applicant also submitted a BNG calculation [REP4-028] and assessment report [REP4-029]. This concludes that the Proposed Development would result in an overall percentage change of:

- 113.22% net gain in Habitat units
- 393.89% net gain in Hedgerow units
- 36.33% net gain in Watercourse units

3.3.34. Part c) of Requirement 8, which secures the submission of a final LEMP, requires the Applicant to indicate how a minimum level of BNG in habitat units would be secured during the operation of the whole of the authorised development. Other mechanisms to ensure its delivery include ES Figure 6.2, the Landscape Strategy Plan [REP3-012] and the CEMP. The outline LEMP [REP5-056] includes management and maintenance prescriptions and a commitment to undertake BNG habitat condition assessments and a review of management during years 1, 2 and 5 and then every 5 years for the remainder of the Proposed Development's operational life. Whilst BNG requires a commitment of 30 years management and monitoring, this would occur across the lifetime of the solar park (40 years).

3.3.35. At each monitoring interval a monitoring report would be produced and shared with the relevant stakeholders to ensure the habitat conditions are maintained throughout the life of the Proposed Development. It is also proposed that an Ecology Advisory Group is established to steer the ongoing management and ensuring the BNG strategy for the Proposed Development is delivered.

THE EXAMINATION

3.3.36. **Lincolnshire Wildlife Trust** [RR-014 and AS-030] was satisfied that all ecological surveys were appropriately carried out and with the approach taken in the ES. It noted that despite reduced biodiversity enhancement areas since PEIR stage the proposals would still result in a high BNG value, while allowing fields to remain in agricultural production. It sought supplementary areas for skylarks, recognising the limited research regarding behavioural changes in farmland bird species as a result of solar farm development. These comments were echoed in its SoCG [REP1-012], where in addition the Trust supported skylark plots being incorporated into the LEMP as mitigation.

- 3.3.37. **Natural England** in its RR [\[RR-019\]](#) noted that further information was required regarding potential protected species licences, but made no other comments regarding effects on biodiversity.
- 3.3.38. **The Forestry Commission** confirmed there were no ancient woodlands in the area and that there would be appropriate protection measures in place for trees on the site during construction [\[RR-010\]](#).
- 3.3.39. **BBC** in its RR [\[RR-004\]](#) questioned what biodiversity enhancements could be achieved along the cable route to provide habitat linkages, and sought mitigation of impacts on the South Forty Foot Drain LWS. Following the Change Application, BBC's LIR [\[REP1-025\]](#) commented on the loss of woodland at the Bicker Fen substation, and noted that replacement tree planting would be at the Solar Park and not in the Boston Borough area, where tree coverage is already low. It sought for opportunities to enhance the connectivity of habitats and other biodiversity improvements to be explored.
- 3.3.40. **NKDC** provided feedback on biodiversity matters in Appendix 1 of its LIR [\[REP1-033\]](#). NKDC was generally satisfied with the approach taken, the results obtained, the impact assessment conclusions, and the mitigation proposed. NKDC agreed that the existing habitat baseline is relatively 'low risk' but concerns were raised regarding the approach to botanical surveys, effects of fencing, impact assessment on quail. The BNG assessment was also questioned with further information sought. NKDC considered the AIA and tree protection measures to be adequate, and agreed that new planting could be secured by requirement. It noted that an oak tree, within Group G39, would need to be re-assessed for veteran tree status and that root protection zones may need to be adjusted.
- 3.3.41. **LCC** in its LIR [\[REP1-028\]](#) deferred detailed ecology matters to other bodies but considered that the construction effects arising from this development would be negative. In terms of BNG, if this is secured and delivered then this was considered to be a positive impact of the development.
- 3.3.42. Generic comments on biodiversity were also raised by individual IPs [\[RR-015\]](#) and [\[RR-022\]](#). However, these were not substantiated in any further representations to the Examination.

Protected Species and Habitats

- 3.3.43. The Applicant responded to NKDC's LIR [\[REP1-033\]](#), providing further information regarding its botanical survey methodology and a confirmation that no further surveys would be undertaken [\[REP2-078\]](#). In terms of fencing and effects on badger movements, the Outline Design Principles document was updated [\[REP2-051\]](#) and it was confirmed that a badger licence was being drafted with Natural England. Further detail on skylark habitat and assessment of quail was also provided.
- 3.3.44. A further update was provided at ISH4 [\[EV-019\]](#), and the ES Technical Note: Additional Ecology Information [\[REP3-027\]](#) sought to address NKDC's concerns regarding quail, arable flora and skylark. This provided further detail on survey methods as requested by NKDC, as well as an updated skylark mitigation strategy (which was also added to the outline LEMP [\[REP4-039\]](#) at Deadline 4). The ExA invited NKDC to comment under Rule 17 [Annex C2, [PD-016](#)]. Its response indicated outstanding concerns regarding a lack of mitigation for skylark being secured, notwithstanding the Applicant's conclusions that there would be no significant effect on skylark in EIA terms. NKDC pointed out that the skylark is a

species of principal importance and is a relevant consideration when meeting the Biodiversity Duty under the Environment Act 2021, and did not agree that in terms of cumulative impact that there would be no residual adverse effect [\[REP5-067\]](#).

- 3.3.45. It was put to the ExA that Lincolnshire Wildlife Trust wish to see collaboration from the solar industry to address the cumulative effects of habitat loss of skylark. The Trust is working through initial proposals put forward by various solar NSIP representatives in the county [\[REP5-067\]](#).
- 3.3.46. The Applicant subsequently confirmed a commitment to further off-site skylark mitigation in the next version of the outline LEMP [\[REP5-056\]](#) which includes a memorandum of understanding from the landowner. Section 1.4 of the SoCG [\[REP6-006\]](#) confirms that a skylark mitigation strategy is agreed, with the cascade approach to mitigation detailed in the outline LEMP and secured by Requirement 8.
- 3.3.47. Methodology for additional quail surveys, to be carried out as part of a suite of pre-commencement surveys as committed to in the outline CEMP and secured through Requirement 13 is set out in the ES Technical Note [\[REP3-027\]](#). The SoCG confirms NKDC's agreement to this approach, as well as the survey methods for arable flora, and that the provision of badger and deer gates in security fencing can be addressed by requirements. The SoCG with Lincolnshire Wildlife Trust also indicates the approach to skylark plots as being an agreed matter [\[REP1-012\]](#).
- 3.3.48. An update regarding potential protected species licences sought by the ExA in its first written question (ExQ1) BIO 1.6 [\[PD-012\]](#) confirmed that the Applicant and Natural England were working together regarding protected species licences and the SoCG [\[REP5-048\]](#) confirms the subsequent issue of a Letter of No Impediment.
- 3.3.49. By the end of the Examination Natural England confirmed the ES addresses its previous concerns regarding impacts on biodiversity and other elements of the natural environment, subject to the appropriate use of DCO requirements. The commitment to deliver BNG was welcomed by Natural England, with the enhancements detailed within the outline LEMP being likely to indirectly have a positive effect. It considered the measures set out in the outline CEMP to be satisfactory in protecting the key elements of the natural environment [\[REP5-048\]](#).
- 3.3.50. At the end of the Examination, there were no outstanding matters in relation to protected species and habitats.

Trees and Hedgerow Planting

- 3.3.51. Whilst NKDC considered the AIA [\[PS-121\]](#) and tree protection measures to be adequate, the matter of the potential veteran status of the oak tree within Group G39 was subject to discussion at ISH4 [\[EV-019\]](#). The Applicant confirmed that further survey of this particular tree would be undertaken. However, landowner permission for survey access was not forthcoming to date, and therefore this would take place post-Examination.
- 3.3.52. The Applicant also highlighted that the cable route corridor was of sufficient width in this location to allow for flexibility in design and micro-siting of the cable, thus avoiding the oak tree. Should the oak be identified as a veteran tree, the BNG reporting would also be updated accordingly to reflect the tree's distinctiveness. The outline CEMP was subsequently updated to include provision for a pre-commencement survey [\[REP3-039\]](#). The SoCG with the RPAs [\[REP6-006\]](#) confirms agreement by NKDC and notes that root protection zones may need to be adjusted.

- 3.3.53. The loss of trees at Bicker Fen substation, as a result of the substation extension proposed as part of the Change Application at Work no. 6 was not objected to in principle, given their relatively young age and low biodiversity value. The offset planting shown on ES Figure 6.2 Landscape Strategy Plan [\[REP3-012\]](#) details the area of offset woodland planting to the north of the Solar Park, as also specified in the outline LEMP [\[REP5-056\]](#). The Forestry Commission confirmed its satisfaction with the approach in its response to ExQ2 BIO 2.5 [\[REP4-065\]](#), noting that a woodland management plan would be provided for both the replacement woodland and the community orchard.
- 3.3.54. BBC continued to raise concerns that the offset planting would not be within the Boston Borough area. In response the Applicant put forward provision for further planting in the outline LEMP [\[REP5-056\]](#), with off-site provision and/or equivalent payment secured by s106 agreement. Whilst only Heads of Terms were submitted before the close of the Examination (Appendix 1 to the Applicants Response to Rule 17 Letter [\[REP5-003\]](#)), the SoCG [\[REP6-006\]](#) confirms agreement by BBC to the approach and that the exact legal mechanism for the payment could be dealt with alongside submission and approval of the final LEMP, secured by Requirement 8.
- 3.3.55. The provision of a community orchard has been part of the landscape works contained within Work no. 9A since submission of the Application. Following the ExA's questioning at ISH2 [\[EV-009\]](#) about how it would be secured for community use and maintained, the Applicant created a separate Work no. 9C for the orchard, together with a new Requirement 21. This requires details of planting, as well as a maintenance regime and a trigger for its provision to be agreed by NKDC. This was added to the draft DCO at version 4 [\[REP2-008\]](#), and was welcomed by NKDC.
- 3.3.56. The submission version of the draft DCO [\[APP-015\]](#) did not include provision for planting which has been removed or failed to be replaced within Requirement 8, in respect of the LEMP. This was a matter discussed at ISH2 [\[EV-009\]](#) and subsequently such a provision was inserted to paragraph 3 within version 4 [\[REP3-021\]](#). NKDC raised concerns at ISH4 [\[EV-019\]](#) that a five-year period for replacement planting was insufficient and did not comply with their Tree Strategy [\[REP4-059\]](#). The period set out in Requirement 8 c) was subsequently increased from five to seven years to the satisfaction of NKDC.

Biodiversity Net Gain

- 3.3.57. At ISH2 [\[EV-009\]](#) the Applicant explained its approach to calculating BNG, and its precautionary approach in applying a minimum net gain of 10% in Requirement 8 c) of the draft DCO (version 3) [\[PS-024\]](#). The RPAs, whilst generally accepting the BNG calculations (subject to amendment for the Change Application), sought to secure an increased percentage given the much higher net gains calculated by the Applicant. NKDC provided a copy of its own recently published guidance 'Delivering Biodiversity Net Gain in Central Lincolnshire' (April 2023) [\[REP2-097\]](#).
- 3.3.58. Subsequently the Applicant updated Requirement 8 of the draft DCO at Deadline 2 [\[REP2-008\]](#) to secure 60% BNG in habitat units. This was subject to further discussion on the matter at ISH4 [\[EV-019\]](#). The Applicant explained that the BNG calculation is an iterative process, and the calculation will be refined to reflect any future changes during the DCO process and during the detailed design phase. The differing approaches taken in other solar DCO applications were also noted. The Applicant pointed out that its approach would ensure enough flexibility to accommodate scheme design, whilst also demonstrating the significant increase in

biodiversity value the Proposed Development would bring (to which weight could be applied in the planning balance) [\[REP3-039\]](#).

- 3.3.59. The use of Biodiversity Metric 4.0 and its specification in Requirement 8 was also discussed at ISH4, and the RPAs confirmed at the hearing that they were content with its use. Shortly after the hearings the Statutory Biodiversity Metric was published, on 29 November 2023. The ExA subsequently issued a written question on the potential use of the Statutory Metric rather than version 4.0 [\[ExQ2 BIO 2.2, PD-013\]](#).
- 3.3.60. The next version of the draft DCO at Deadline 3 [\[REP3-004\]](#) saw a further amendment to Requirement 8 c), increasing the minimum BNG percentage to 65%, whilst the following version at Deadline 4 [\[REP4-014\]](#) included reference to the Statutory Biodiversity Metric.
- 3.3.61. The RPAs confirmed in their SoCG [\[REP6-006\]](#) that they had no issue with fixing the use of the Statutory Metric. LCC and NKDC welcomed the commitment to 65% but noted that it is still significantly less than that claimed within the Application, and that there is still scope for a higher percentage given that it represents a key benefit of the scheme. The Applicant's Closing Submissions [\[REP6-003\]](#) notes this as an outstanding matter of disagreement, but considers that the 65% minimum target is both pragmatic and achievable.

BIODIVERSITY AND THE NATURAL ENVIRONMENT: CONCLUSIONS

- 3.3.62. The removal of vegetation arising from the area of woodland planting adjacent to Bicker Fen substation would result in the loss of a small area of relatively recently planted woodland (the area would vary, depending if GIS or AIS is employed for the works in the final design). The additional 0.4ha of tree planting proposed to the north of the Energy Park is considered to provide satisfactory compensation. The ExA is mindful of BBC's concerns that this compensation woodland is within the NKDC area, and that additional planting nearer to the substation would be desirable.
- 3.3.63. However, the ExA acknowledges that there are operational constraints which may prevent additional screen planting in close proximity to the National Grid substation. The Applicant's proposals to provide and/or finance planting to the landowners which are hosting the grid connection route would not play a role in assisting the screening of the substation works. The ExA recognises that such planting proposals would provide some additional environmental enhancements in terms of seeking to establish green corridors and increasing biodiversity in the area around the cable route. Nonetheless, weight to be given to such enhancements should be very limited given that their provision is currently not secured by legal agreement.
- 3.3.64. The ExA has considered the views of the RPAs, Natural England and Lincolnshire Wildlife Trust in respect of effects on biodiversity and protected species. The ExA is satisfied that by the close of the Examination the Applicant had adequately addressed their concerns on such matters and that the LEMP, secured by Requirement 8, would appropriately secure the mitigation and enhancement measures put forward.
- 3.3.65. The ExA considers that the Applicant's assessment of both biodiversity and the natural environment (including trees), as set out in ES Chapter 8 and accompanying plans and appendices, provides sufficient information to understand the effects of the Proposed Development on biodiversity and ecological receptors, as required by

the EIA Regulations and both the 2011 and 2024 NPS. The Applicant has taken opportunities to conserve and enhance biodiversity and taken account of the need for protected species licences to be obtained from Natural England.

- 3.3.66. The mitigation hierarchy has been appropriately applied, through design by applying an appropriate separation distance from watercourses, below ground drilling under the South Forty Foot Drain LWS, and avoiding removal of trees and hedgerows where possible. Removal of intensive arable farming practices (and associated chemical fertiliser application), planting of grassland and a high level of hedgerow and tree planting in particular would provide mitigation and enhancements, along with a range of other mitigations, secured principally by Requirements 8 (LEMP) and 13 (CEMP). This is in accordance with 2011 NPS EN-1 paragraphs 5.3.7, 5.3.18 and 5.3.19 and section 5.4 of 2024 NPS EN-1, which are both important and relevant considerations.
- 3.3.67. Consequently, the ExA accepts the assessment's conclusions that there would be no significant residual adverse effects on biodiversity or ecology receptors as a result of the Proposed Development. Following mitigation, the effects on species (including ground nesting birds) and the natural environment (including loss of trees) would not weigh for or against the making of the Order.
- 3.3.68. The ExA notes that NKDC and LCC have outstanding concerns in relation to the minimum percentage of BNG set out in Requirement 8. The Applicant has significantly increased the percentage from the original drafting of the DCO at 10% to 65%. The ExA acknowledges the need for some flexibility given that the calculation of BNG is an iterative process and the final detailed design will result in a slightly different overall percentage for each type of units. Whether the final BNG of habitat units is 65% or reaches the expected 113%, this is a substantial gain over and above the current habitat baseline of the site in its intensive arable use.
- 3.3.69. On the basis of the above considerations the ExA ascribes the overall effects of the Proposed Development on biodiversity and the natural environment great weight in favour of making the Order, and this is primarily due to the significant levels of BNG, secured in the long term, by Requirement 8 of the Recommended DCO.

3.4. DESIGN, LANDSCAPE AND VISUAL

INTRODUCTION

- 3.4.1. This Section considers the landscape and visual effects of the Proposed Development including the suitability of the study area and selected viewpoints, the effects on views from sensitive receptors including from the Public Right of Way (PRoW) network and residential properties, and consideration of mitigation measures.
- 3.4.2. The Proposed Development is not located in any national designation for landscape protection nor are there any local designations on the Development Plan policies maps in the vicinity of the site.

POLICY CONSIDERATIONS

- 3.4.3. Section 5.9 of 2011 NPS EN-1 sets out guidance and policy for undertaking the assessment of landscape and visual effects. Section 4.5 sets out the criteria for good design. Paragraph 5.9.8 recognises that virtually all NSIPs will have effects on the landscape and states that projects need to be designed carefully, taking account of potential landscape impacts. Paragraph 5.9.15 recognises that the scale of such

projects means that they will often be visible within many miles of the site of the proposed infrastructure, and the SoS should judge whether any adverse impact on the landscape would be so damaging that it is not offset by the benefits (including need) of the project.

- 3.4.4. In relation to mitigation, paragraph 5.9.22 of NPS EN-1 states that adverse landscape and visual effects may be minimised through appropriate siting of infrastructure within that site, design including colours and materials, and landscaping schemes depending on the size and type of the proposed project.
- 3.4.5. Paragraph 4.5.3 states that while there may be little or no choice in the physical appearance of some energy infrastructure, there may be opportunities for the Applicant to demonstrate good design in terms of siting relative to existing landscape character, landform and vegetation.
- 3.4.6. 2024 NPS EN-1 at section 4.7 also seeks for the application of good design to energy projects, emphasising that high quality and inclusive design goes far beyond aesthetic considerations and that its functionality (including fitness for purpose and sustainability) is equally important. Section 5.10 similarly recognises that virtually all nationally significant energy infrastructure projects will have adverse effects on the landscape. It notes there may also be beneficial landscape character impacts arising from mitigation, and that all proposed energy infrastructure is likely to have visual effects for many receptors so a judgement will need to be made on whether such effects outweigh the benefits of the project. The SoS should also consider whether any adverse impact on the landscape is capable of being reversed within a reasonable timescale.
- 3.4.7. 2024 NPS EN-3 paragraphs 2.10.93 to 2.10.101 and paragraphs 2.10.131 to 2.10.133 relate to landscape, visual and residential amenity specific to solar PV generation. It states that solar farms are likely to be in low lying areas of good exposure and as such may have a wider zone of visual influence than other types of onshore energy infrastructure, but that with effective screening the area of a zone of visual influence could be appropriately minimised. As part of the design, layout, construction, mitigation screening should be considered as well as protection and growth of existing established vegetation. Other features such as security fencing and lighting also form part of considerations of landscape impact.

THE APPLICATION

- 3.4.8. The Applicant's assessment of landscape and visual amenity matters is primarily contained within ES Chapter 6 [\[REP5-033\]](#) which contains the landscape and visual impact assessment (LVIA). The supporting figures and appendices are listed in Appendix A1 of this Recommendation. These include consideration of landscape character (including local and national assessments of character), a zone of theoretical visibility (ZTV), production of baseline views and photomontages from a range of viewpoints. A Design and Access Statement was also submitted and updated during the Examination [\[REP2-063\]](#). A Technical Guide [\[PS-045\]](#) provides indicative drawings and photographs of the types of equipment proposed to be installed. The Outline Design Principles document [\[REP4-031\]](#) provides the location, scale and design parameters for each component of the Proposed Development, the maximum parameters of which informed the assessment.
- 3.4.9. Residential visual amenity has been considered separately in ES Chapter 7 [\[PS-061\]](#) and its supporting appendices and figures, also listed in Appendix A1 of this Recommendation, including receptor locations and photomontages.

- 3.4.10. The LVIA methodology is set out in ES Appendix 6.1 [\[APP-177\]](#), with the residential visual amenity assessment (RVAA) methodology in ES Appendix 7.1 [\[APP-188\]](#).
- 3.4.11. Both methodologies have had regard to the relevant technical guidelines and advice documents including the Landscape Institute/ Institute of Environmental Management and Assessment (IEMA) Guidelines for Landscape and Visual Assessment 2013 (GLVIA). The degrees of significance in terms of the sensitivity of receptor and magnitude of change are explained in section 6.3 of ES Chapter 6 [\[REP5-033\]](#) and section 7.3 of Chapter 7 [\[PS-061\]](#). It should be noted that this differs from those summarised in Table 2.5 of ES Chapter 2 [\[PS-051\]](#). They are summarised in Table 6.3 and Table 7.3 of the assessments, recognising that a number of judgements are involved and that what constitutes a significant effect is ostensibly a subjective opinion. With regard to the RVAA, the 'Lavender test' is referred to, noting that the magnitude of change and scale of effects must be of such a degree that a property would become widely regarded as an unattractive place in which to live (paragraph 7.3.44-45) [\[PS-061\]](#).
- 3.4.12. The baseline conditions are set out in section 6.4 of ES Chapter 6 [\[REP5-033\]](#) and paragraphs 7.9.2-3 of ES chapter 7 [\[PS-061\]](#). The character of the local landscape is set out in the context of the published landscape character assessments (LCAs) at both a national and local level, the key characteristics of each as set out in paragraphs 6.4.6 to 6.4.12 of ES Chapter 6 [\[REP5-033\]](#):
- National Character Area (NCA) 46: The Fens
 - North Kesteven Landscape Character Assessment (2007): The Fens Regional Landscape Character Type, and associated Fenland sub-area 13 (the entire Energy Park Site lies within this sub-area).
 - Landscape Character Assessment of Boston (2009): LCA A1 Holland Reclaimed Fen (in which the cable route corridor and substation are situated).
- 3.4.13. The geographical extent of the identified landscapes (and nearby character areas) is shown on Figure 6.3 Landscape Character Plan [\[PS-092\]](#). Notable features within the area are described at paragraphs 6.4.18 to 6.4.20 of ES Chapter 6.
- 3.4.14. The Applicant's assessment of the value of the landscape, in line with GLVIA3, is summarised in Table 6.4 of ES Chapter 6, and it is concluded that the site and its environs are of medium value, not exhibiting any special functional or visual relationship with any statutory landscape designations or exhibiting demonstrable physical attributes that would elevate it from the ordinary countryside. The susceptibility of the landscape to change is assessed at paragraphs 6.4.25 to 6.4.37 of ES Chapter 6, concluding that its susceptibility to solar development is medium, and that it is of medium landscape sensitivity when applied to the local landscape areas. With regard to NCA 46 The Fens, due to its geographical scale and varied character, its sensitivity is considered by the Applicant to be low.
- 3.4.15. The selection of viewpoints is informed by the screened ZTV at Figures 6.5a to c [\[APP-138, APP-139\]](#) and [\[PS-094\]](#) and the study areas are explained at paragraphs 6.4.43 to 6.4.51 of ES Chapter 6, with the justification for the selected representative and illustrative viewpoints (and exclusion of others) set out in paragraphs 6.4.52 to 6.4.74 and summarised at Table 6.5 Shortlisted Viewpoints. ES Appendix 6.8 further explains the scoping out visual assessment, and Appendix 6.9 contains the detailed visual assessment.
- 3.4.16. The receptor locations for the RVAA are displayed at ES Figure 7.1 [\[APP-147\]](#), with photomontages included at Figure 7.3 [\[PS-102\]](#) to [\[PS-106\]](#). The Applicant explains

how the visual baseline is varied at paragraphs 7.9.2 to 7.9.3 [PS-061]. Landscape and visual effects during the construction, operational and decommissioning phases are outlined at paragraphs 6.5.2 to 6.5.75 of ES Chapter 6 [REP5-033].

3.4.17. In summary, it has been assessed that the construction phase would result in temporary short term significant adverse effects on the landscape associated with the Order limits and its immediate context, up to approximately 500m away. Beyond this distance, effects diminish to minor (Not Significant in EIA terms) effects on landscape character. Visual effects on receptors at East Heckington, road users present along localised sections of Sidebar Lane, those travelling along the railway line west from Swineshead Bridge as they cross the Offsite Cable Route Corridor and its immediate area, and users of PRowS SKym/2/1, Heck/15/1 and Swhd/14/1 are assessed as major (Significant). In both landscape and visual terms the identified effects are considered by the Applicant to be highly localised and temporary.

3.4.18. Likewise, during operation the Energy Park has been assessed as potentially causing geographically limited yet significant adverse effects upon landscape character, reducing to minor (Not Significant) effects beyond 500m. The same receptors, except for PRow Swhd/14/1 and railway users are expected to experience significant adverse visual effects during operation. Viewpoints 1, 2, 4 and 6 are assessed as potentially experiencing Significant effects.

3.4.19. The proposed mitigation and enhancement is considered at section 6.6 of ES Chapter 6 [REP5-033]. In summary, mitigation developed through the iterative design process includes:

- Offsets from internal and boundary watercourses and vegetation.
- Increased offset from properties Nos. 1 to 12 Council House in East Heckington, by approximately 250m.
- Decrease in height of the solar modules from 4.5m to 3.5m in the northern and eastern parts and 3m in the western and southern parts of the Energy Park i.e., that closest to the residential receptors.
- 132kV substations have been removed from the design of the Energy Park.
- Change to a single centralised Onsite Substation and Energy Storage System, increasing the distance to nearest residential receptors and the settlement of East Heckington.
- Overhead cables removed from the design of the Energy Park.
- Utilisation of the existing built form and tree vegetation associated with Six Hundreds Farm to provide context and screening.
- Location of the National Grid Bicker Fen Substation extension works in the context and existing surrounding tree vegetation which provide screening.
- Use of metal mesh perimeter fencing instead of palisade fencing.

3.4.20. Additional mitigation measures proposed are:

- New hedgerow of varied height (3 to 3.5m) proposed along the perimeter of the Energy Park.
- Taller sections of perimeter hedgerow, approximately 5m in height, introduced to resemble overgrown hedgerows, and echo the character and screening potential of the existing hedgerows present along Six Hundreds Drove.
- Should a GIS system be used within the area south of the National Grid Bicker Fen Substation, painting of the barn in a muted matt green colour with a grey roof.

- Additional area of woodland tree planting and new hedgerow trees on the northern edge of the Energy Park to offset the tree removal adjacent to the Bicker Fen substation.

3.4.21. The following enhancements are proposed:

- Area of habitat enhancements between Head Dike and PRow Heck/15/1 increasing the separation distance between the northern edge of the Energy Park and visual receptors to the north and north west.
- Community orchard (2.15ha) in the south western corner of the Energy Park.
- Creation of a 4km long permissive path incorporating access to a community orchard.

3.4.22. Likely significant visual effects on residential properties are separately considered in section 7.4 of ES Chapter 7 [\[PS-061\]](#). Major adverse (significant) effects from the Energy Park Site are identified to a range of nearby properties shown on Figure 7.1 [\[APP-147\]](#) and as set out in paragraph 7.4.3.

3.4.23. Built-in mitigation measures and additional mitigation as set out in section 7.5 (and identical to those set out above) are anticipated to reduce such effects. In particular, the maturing hedgerows are envisaged to break the lines of sight from residential properties and the identified significant effects experienced from the ground floor windows and gardens are predicted by the Applicant to reduce to moderate effects at year 5.

3.4.24. The Applicant stresses at paragraph 7.5.4 of ES Chapter 7 that it is not required to decrease the effects to an acceptable level in order to pass the 'Lavender Test'; they consider that the Energy Park would pass the Test without the perimeter hedgerow.

3.4.25. The proposed mitigation planting is also expected to assist in addressing the issue of glint and glare, which is assessed in ES Chapter 17 [\[APP-070\]](#) and the Applicant summarises the residual effects as being negligible for all of the identified receptors.

THE EXAMINATION

3.4.26. **LCC** raised concerns in its RR [\[RR-013\]](#) that the development has the potential to transform the local landscape by altering the character of the area. This would be as a consequence of changes to the land use over a large area, potentially affecting wider landscape character affecting the current openness, tranquillity, and agricultural character that are identified as defining characteristics of the area. LCC also set out that receptors would be affected by a change from views within an agricultural landscape to that of a landscape containing large scale solar development and noted there is limited existing vegetation allowing for long distance views of the site.

3.4.27. LCC made detailed comments on both landscape and visual and residential visual effects in its LIR, at sections 7.1 and 7.2 and Appendix B [\[REP1-028\]](#). It agreed to the scope of work, the study area, methodology and viewpoint selection in the ES, and noted that the documents largely comply with best practice methodology and provide a thorough analysis of the proposals. Notwithstanding this LCC raised concerns that the Applicant's conclusion that only Major or Moderate-Major effects should be considered as Significant is not a standard conclusion and somewhat downplays the impacts of the development. LCC's position (in line with Landscape Institute Guidance) is that all effects assessed as being Moderate and above should

be considered as Significant and as a result LCC have concerns and dispute some of the conclusions regarding the landscape and visual impact.

- 3.4.28. Overall, LCC considered that the Proposed Development, by reason of its mass and scale, would *“lead to significant adverse effects upon landscape character and visual amenity. The development would transform the local landscape by affecting the current openness, tranquillity, and agricultural character of the area and would also lead to significant adverse effects on views from receptors as a result of changing views of an agricultural or rural landscape to that of a landscape containing large scale solar development”* [\[REP1-028\]](#).
- 3.4.29. In respect of the RVAA, LCC concluded that even with built-in mitigation measures, the magnitude of change means that both construction and operational visual amenity impacts on the 22 identified residential properties would be negative [\[REP1-028\]](#).
- 3.4.30. Sections 12 and 13 of **NKDC**’s LIR [\[REP1-033\]](#) also includes agreement to the Applicant’s general approach to LVIA including the scope, study area, methodology and viewpoint selection. It agreed that both construction and operational landscape and visual impacts are negative upon the character of the Fenland Landscape Character Sub-Area as set out in the 2007 NKDC LCA, even after the maturing of screen planting at year 5. It also stated that negative residential visual amenity impacts would occur to the 22 named properties as set out in the RVAA. NKDC considered that negative cumulative operational impacts might occur with the proposed Beacon Fen Solar Park, and this is further considered in Section 3.11 of this Recommendation.
- 3.4.31. **BBC** did not raise any specific concerns on this topic but noted that in its experience once the cable work is complete the visual impact of the disturbed route is minimal, relating to marker posts to warn of buried cables and any repaired hedgerow planting whilst it establishes. BBC recognised that by design there would be physical separation between dwellings and the infrastructure, and the existing substation at Bicker Fen is well landscaped [\[RR-004\]](#). Section 11 of BBC’s LIR [\[REP1-025\]](#) did not raise concerns regarding the methodology of the LVIA and noted that the visual impacts would be softened by distance, proposed landscaping and existing features outside of the site. It concluded that the cable route would have a temporary impact, and overall the impacts on the Borough would potentially be neutral.
- 3.4.32. A small number of individual IPs briefly referred to landscape and visual impacts in their RRs [\[RR-008\]](#), [\[RR-022\]](#), [\[RR-024\]](#), but did not elaborate on their concerns in any further representations to the Examination.

Good Design

- 3.4.33. The ExA asked a range of questions relating to design at ExQ1 [\[PD-012\]](#). The Applicant’s response [\[REP2-077\]](#) set out its consideration of a range of documents including the National Model Design Code, the National Infrastructure Commission Design Principles for National Infrastructure. The Applicant considered that for a solar and energy storage site technical/engineering requirements of the site will need to be considered within the design to ensure that its energy generation and storage capacities are maximised. These design constraints include items such as levels of solar irradiation and shading, topography and distance to the Grid Point of Connection. These design constraints are discussed in ES Chapter 3 [\[PS-053\]](#).

- 3.4.34. The Applicant clarified that an internal design review panel was used during the pre-submission design process and design formed part of Pre-application consultation. The iterative design process was further explained in the context of the constraints of the site and the technology involved. Boundary treatments and landscaping form an important part of the design, and security fencing and lighting provisions were also clarified. The Outline Design Principles document would be used to guide future detailed design as required by Requirement 6 of the draft DCO, and design of landscaping by Requirement 8 (LEMP). The RPAs raised no concerns with the Applicant's consideration of good design nor the approach to scale parameters and flexibility with regard to the Rochdale Envelope and wording of Requirement 6, as set out in sections 8.6 to 8.8 of the SoCG [REP6-006].

LVIA Methodology

- 3.4.35. The ExA asked a question at ExQ1 (DLV 1.3) [PD-012] regarding the differences in methodology for landscape and visual effects in terms of only major or moderate-major landscape and visual effects being considered as Significant (and consequent exclusion of Moderate effects) and in doing so potentially downplaying the impacts of the development. This was also raised in LCC's LIR [REP1-028].
- 3.4.36. The Applicant responded [REP2-077 and REP2-078], re-iterating its justification set out in ES paragraphs 6.3.42-48 regarding their approach to what constitutes a 'Significant effect'. Its response states that: *"Neither EC Directive 2011/12/EU nor the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 define a threshold at which an effect may be determined to be significant. In certain other environmental disciplines there are regulatory thresholds or quantitative standards which help to determine the threshold of what constitutes a significant effect. In LVIA, however, any judgement about what constitutes a significant effect is ostensibly a subjective opinion expressed as in this case by a competent and appropriately qualified professional assessor"* [REP2-078].
- 3.4.37. The Applicant also pointed out that GLVIA3 notes the subjective nature of the assessment of significant effects at paragraph 3.32: *"There are no hard and fast rules about what effects should be deemed 'significant' but LVIAs should always distinguish clearly between what are considered to be significant and non-significant effects"*.
- 3.4.38. At ISH4 [EV-019] the matter was explored further. The Applicant clarified its position that significant effects would only occur where the key characteristics of the landscape or a view would be completely changed and redefined or removed. The Applicant stated that should the ExA accept the LCC level of significance, and assuming moderate effects are significant, based on the Applicant's assessment such significant visual effects would still be highly localised and within the same geographical extent as major adverse effects. A number of viewpoints were referred to that were judged not to be significantly affected, so demonstrating that the actual visual envelope of the Energy Park would be very limited. The parties clarified that they were in agreement on the selection of viewpoints, and that more distant viewpoints would not be informative to the assessment.

- 3.4.39. The matter remains as an outstanding disagreement in section 8.2 of the SoCG (by LCC only) [REP6-006].

Hedgerow Planting and the 'Lavender Test'

- 3.4.40. At ISH4, the Applicant explained that the negative residential visual amenity effects would be limited, with only 22 residential receptors identified. The mitigation

hedgerow planting would assist in reducing those effects to moderate adverse visual effects. The Applicant explained that the main purpose of ES Chapter 7 [PS-061] was to identify whether any of the effects would be overbearing and in the case of the proposed Energy Park, none of the identified major adverse effects would be overbearing. The Applicant considered that the relative level of tranquillity is greatly reduced by the presence of the fast-moving traffic along the A17, with associated noise and light spill during hours of darkness. The landscape south of the A17, contains a number of large-scale energy related infrastructure, such as the Bicker Fen Wind Farm, which is highly visible and prominent from close to medium range views. This and the existing substations affect the character of the landscape and the relative level of tranquillity.

3.4.41. In the discussion on residential amenity at ISH4 [EV-019], LCC raised the 'Lavender Test' as an issue when questioned on the appropriateness of the mitigation planting and the harm it considered would arise to residential receptors. LCC suggested that the proposed hedgerow planting would be overbearing to residents and uncharacteristic with the prevailing open character of the landscape. The Applicant responded that the Proposed Development would not fail the 'Lavender Test' in terms of the residential amenity assessment, because the proposed hedgerow planting would not be so overbearing that it would make living conditions unacceptable. It explained that the Test is an extremely high bar deriving from the context of onshore wind development. A particular nuance of the 'Lavender' (Carland Cross) case centred on whether properties were considered 'within' the cluster of turbines as opposed to being physically detached, so the facts of that case are materially different to this case, particularly when LCC's concern centres on the height of hedgerows measuring between 3 and 5m. The Applicant strongly disputed that the Lavender Test is engaged in these circumstances.

3.4.42. This remained an outstanding not agreed matter in the SoCG [REP6-006]. Whilst LCC agree with the Applicant's assessment of effects on local living conditions, it considers that there is over reliance on hedgerow planting for mitigation. The SoCG states that hedgerows of the height proposed (3 to 5m) are not a common characteristic of the site or immediate locality so would introduce a significant vertical element into views which are currently long and open. LCC consider that users of country lanes to the north in particular would experience foreshortened views by high hedges which are out of character for the area.

Site Inspections

3.4.43. The ExA visited a number of locations, including the selected viewpoints, as part of USI1 and USI2 (from public viewpoints only) [EV-001 and EV-001b]. Numerous viewpoints were also included on the ASI [EV-001a]. The visits took place over the Autumn and Winter.

3.4.44. Short distance and long-range views were possible from a range of locations and the presence of existing vegetation and other screening was also observed. No residential properties were visited given that no such IPs had participated in the Examination, but the ExA saw the location, orientation, setting and general views from the majority of the properties listed within the RVAA.

DESIGN, LANDSCAPE AND VISUAL: CONCLUSIONS

3.4.45. The ExA is satisfied that the methodologies for both landscape and visual effects as set out in ES Chapters 6 and 7 are appropriate and fit for purpose. The assessments take account of the relevant guidance and the LVIA has had regard to landscape character assessments on a regional and local level.

- 3.4.46. The only point of disagreement between the Applicant and LCC relates to their interpretation of Significant effects. The ExA acknowledges the Applicant's reasoning for applying a different 'bar' to the assessment of significant effects with respect to landscape and visual effects, given the subjectivity of the topic. Nonetheless, the ExA agrees with LCC that the predicted residual moderate adverse landscape and visual effects could be described as Significant in EIA terms. The effects would be significant during construction and in the first five years of operation. However, due to the relatively low height of the infrastructure, this would be limited to relatively short-range views. Beyond a distance of around 500m, and after five years allowing for maturation of vegetation, the ExA agrees that the effects on the wider landscape would reduce to minor adverse.
- 3.4.47. The dispute between LCC and the Applicant relates to the methodology only and does not follow through to disagreement over the proposed mitigation, with which the ExA is also content.
- 3.4.48. In respect of landscape effects, the ExA considers that as a result of the change from arable land to solar infrastructure there would be a significant adverse effect on the Fenland landscape character area (NKDC LCA sub-area 13) during construction and operation. However, due to the relatively low height of the infrastructure, this would be limited to relatively short-range views. Beyond a distance of around 500m, and after five years allowing for maturation of vegetation, the ExA agrees that the effects on the wider landscape would reduce to minor adverse. The construction effects would be temporary as well as short in range. However, overall the effects would clearly be negative and would weigh against the Proposed Development.
- 3.4.49. In terms of visual effects, the ExA is satisfied that the effects on sensitive receptors have been appropriately assessed including selection of and quality of viewpoints. Visual effects on users of highways at the A17 and Sidebar Lane, the railway line and PRow would particularly be adversely affected during construction. The impact would be limited both in terms of extent and duration.
- 3.4.50. A number of residential properties around East Heckington, the A17 and Sidebar Lane would experience major adverse visual effects during construction and the first five years of operation. The ExA acknowledges that such effects would vary between properties depending on a number of variables including orientation and boundary features, but overall would reduce over time to moderate adverse visual effects.
- 3.4.51. Landscape and visual effects arising from the cable route and substation were not considered by BBC to be of concern, and the ExA agrees with this given the existing context of the substation and the time-limited visual effects during construction of the buried cables.
- 3.4.52. The hedge screening would be distanced from residential properties so that, in itself, it would not be overbearing to nearby residential occupiers. The 'Lavender Test' has little relevance in this case both in terms of the solar infrastructure and the proposed screening. The ExA is content that neither the Proposed Development nor associated screen planting would have such an adverse effect that it would turn any otherwise satisfactory dwelling into an unattractive place to live in RVAA terms.
- 3.4.53. In terms of design, the ExA is satisfied that there is adequate detail and parameters to assess the effects of the Proposed Development and that its design has evolved through an iterative process which has incorporated embedded mitigation into the design to reduce its landscape and visual impacts. The parameters and further

details of design, and the proposed additional mitigation, are appropriately secured in the Recommended DCO.

- 3.4.54. Both 2011 and 2024 NPS EN-1 are clear that all proposed energy infrastructure will have visual effects. The Site does not fall within or near to any nationally or locally designated landscapes and while the scale of the Energy Park Site is extensive, it is well-contained and lends itself well to effective mitigation through vegetation screening. This is detailed on the Landscape Strategy Plan and secured in the LEMP by Requirement 8. Over time, the extensive proposed planting would provide effective screening as well as biodiversity benefits. The adverse effects of the Energy Park Site would also be reversible upon decommissioning following its 40 year life. Whilst there is no doubt that this is a significant period of time, it represents a positive element of the scheme given that the landscape is able to eventually revert to its current condition.
- 3.4.55. Overall, both the landscape and visual harm, including residential visual amenity, weighs against the Proposed Development. The ExA affords both effects moderate negative weight against the Order being made.

3.5. HISTORIC ENVIRONMENT

INTRODUCTION

- 3.5.1. This Section considers the effects of the Proposed Development in relation to the historic environment, including both designated and non-designated heritage assets (NDHAs). There are no designated heritage assets within the Order Limits, but there are a number of NDHAs within the Energy Park Site as well as areas of archaeological potential which may be affected during construction.

POLICY CONSIDERATIONS

- 3.5.2. The Infrastructure Planning (Decisions) Regulations 2010 (Decisions Regulations) require the SoS to have regard to the desirability of preserving, amongst other things, the setting of a listed building.
- 3.5.3. Section 5.8 of 2011 NPS EN-1 relates to the historic environment. Paragraph 5.8.12 states that the SoS should take into account the particular nature of the significance of the heritage assets and the value that they hold for this and future generations. Paragraph 5.8.14 sets out the presumption in favour of the conservation of designated heritage assets and the more significant the designated heritage asset, the greater the presumption in favour of its conservation should be. Loss affecting any designated heritage asset should require clear and convincing justification. Paragraph 5.8.15 states that any harmful impact on the significance of a designated heritage asset should be weighed against the public benefits of development, recognising that the greater the harm to the significance of the heritage asset the greater the justification will be needed for any loss.
- 3.5.4. 2024 NPS EN-1 and EN-3 continue these themes and make it clear that the SoS should give considerable importance and weight to the desirability of preserving all designated heritage assets. Any harmful impact on the significance of a designated heritage asset should be given significant weight when weighed against the public benefit of development, recognising that the greater the harm to the significance of the heritage asset the greater the justification will be needed for any loss. Paragraph 5.9.32 of 2024 NPS EN-1 states that where the proposed development will lead to less than substantial harm to the significance of the designated heritage asset, this harm should be weighed against the public benefits of the proposal. Paragraph

5.9.33 relates to NDHA and requires a balanced judgement, having regard to the scale of any harm or loss and the significance of the heritage asset.

- 3.5.5. Similar advice can be found in the NPPF and PPG, which are echoed in the relevant Development Plan policies set out in Appendix A6.

THE APPLICATION

- 3.5.6. The Applicant's assessment of the historic environment is set out within ES Chapter 10 [REP2-024], supported by Appendix 10.1 (Heritage desk-based assessment) [APP-206], and historic designations plans [PS-114 and REP4-009]. Archaeological surveys and evaluation of the Energy Park are set out in Appendix 10.2 [APP-207 to APP-211 inclusive] and Appendix 10.3 APP-212, and those for the cable route corridor are contained within Appendix 10.4 [APP-213 and APP-214] and Appendix 10.5 [REP2-048]. The evaluation and mitigation outline Written Schemes of Investigation (WSI) were updated at Deadline 2 [REP2-055 and REP2-057] to reflect ongoing survey work on the cable route corridor. Figures 10.2 and 10.3 provide a visual representation of the geophysical surveys for the Energy Park [APP-160] and cable route [APP-161]. Figure 10.4 shows the archaeological mitigation areas for the Energy Park [REP2-036].
- 3.5.7. The assessment considers heritage assets within a minimum 5km search area and a number were considered for further assessment. The following designated heritage assets are identified within the search area:
- 11 Scheduled Monuments: One considered for further assessment: 'Settlement site 600m east of Holme House' (List Entry ref. 1004927).
 - 4 Conservation Areas: None considered for further assessment.
 - 123 Listed Buildings: The Grade I listed Kyme Tower, Church Lane (Ref. 1204786) considered for further assessment.
- 3.5.8. For those considered for further assessment, their significance (and setting) was described and effects on that significance assessed in section 10.5 of ES Chapter 10 [REP2-024].
- 3.5.9. The upstanding NDHAs within the Order Limits as listed in paragraph 10.4.25 of ES Chapter 10 [REP2-024], and all were assessed further:
- Upstanding post-medieval/modern brick boundary wall along the west side of the track to the west of Elm Grange.
 - Upstanding post-medieval/modern buildings at Six Hundreds Farm.
 - Upstanding remains of a post-medieval/modern drainage pump near Head Dike.
- 3.5.10. Outside of the Order Limits, the following nearby NDHAs were considered for further assessment:
- Former Primitive Methodist Chapel on Sidebar Lane, now a dwelling (approximately 500 metres to the west of the Energy Park Site).
 - Mill Green Farmhouse (approximately 600m to the north of the Energy Park site) – this was considered for further assessment as a result of its designed views looking south over site.
 - Elm Grange and the Rectory are also identified by the Applicant as NDHAs (to the south of the Energy Park Site, alongside the A17).
- 3.5.11. In respect of archaeology, the known archaeological remains within the Energy Park Site as listed in paragraph 10.4.25 of ES Chapter 10 [REP2-024] are:

- Indications of Mesolithic/Neolithic activity in G15.
- Buried remains of Romano-British agricultural activity in G3, G4, G9, G21, G23, SH1, SH13 and SH14 – with a saltern in G23 and associated dispersed remains in G21.
- Discrete, undated, circular or sub-circular gullies and ditches in G4, G25, SH13, and SH14.
- Buried remains of a post-medieval duck decoy in SH12.
- Buried remains of former farms and field boundaries in various locations, some but not all of which are shown on historic maps.

Within the Cable Route Corridor are the following known and potential archaeological remains:

- Known buried remains of a Romano-British enclosure system at Royalty Farm. Potential buried evidence of Roman activity elsewhere within the Corridor which may have been undetected by the geophysical survey.
- Known buried remains of post-medieval and modern field boundaries and/or drainage ditches.

- 3.5.12. The Applicant's assessment explains the reasoning for scoping out further assessment of many of the above-mentioned heritage assets. Detailed setting assessments identified no harm to the significance of any Scheduled Monuments, listed buildings or conservation area arising from the Proposed Development. Minor harm to the significance of Mill Green Farmhouse (a NDHA) was found.
- 3.5.13. The potential for significant cultural heritage effects was identified during construction and decommissioning stages, relating to (as a worst-case scenario) the possible destruction of known buried archaeological remains of prehistoric and Roman activity. This recognises that trial trench evaluation has not yet been completed for the cable route corridor. Table 10.11 of ES Chapter 10 [\[REP2-024\]](#) provides a summary of effects, mitigation and residual effects.
- 3.5.14. Mitigation by design involves the retention of all of the upstanding NDHAs within the Order limits. For archaeological features, those areas found in the archaeological investigations to have preserved buried archaeological resource would be subject to strip map sample excavation, recorded prior to construction and decommissioning activities. The Applicant's assessment concludes that the residual effect is minor harm to the significance of the range of assets as set out. The recorded location of the post-medieval duck decoy within the Energy Park would be subject to a mitigation strategy of avoidance of activities which could change its topography and any truncation of buried deposits of the feature. The Applicant considers that the residual effect would not result in harm to its significance.

THE EXAMINATION

- 3.5.15. **BBC** raised no concerns relating to designated heritage assets in its RR [\[RR-004\]](#) or LIR. Its LIR [\[REP1-025\]](#) acknowledged that trial trenching was, at that time, ongoing in relation to the cable route corridor.
- 3.5.16. **NKDC** in its LIR [\[REP1-033\]](#) at section 16 considered above ground heritage assets and confirmed that its primary interest was the Applicant's assessment of the group of listed buildings at South Kyme. The Council's Conservation Officer did not challenge the overall impact assessment on the Scheduled Monument of 'east of Holme House', nor the NDHAs (Mill Green Farmhouse and the Primitive Chapel). However, it disagreed that there is no harm to the significance of Kyme Tower, noting that it was designed to be both conspicuous in the landscape and offer a

360-degree defensive view. NKDC put that the function of the tower is to offer views, so no views of the tower, or away from the tower, should be classed as 'incidental' and this is exemplified by views of numerous church towers and spires located outside the study area, which are still clearly visible from the application site. A negative impact was assigned on the significance of Kyme Tower.

3.5.17. **LCC** – considered in its RR [\[REP1-028\]](#) that sufficient evaluation, including trenching, had been undertaken on the Energy Park site to inform an adequate mitigation strategy in respect of buried archaeological features, and that this has been demonstrated to work well allowing for a targeted and proportionate mitigation proposal and strategy to be put forward. The mitigation strategy for this part of the Order Limits was agreed together with the methodology for the scheme of investigation. However, it would need to include a section on the duck decoy pond area (preservation in-situ) which would require an Archaeological Clerk of Works to periodically monitor to ensure compliance. LCC urged for trenching of the cable route to be completed before the strategy for this part of the site could be properly examined in full. LCC raised no concerns relating to designated heritage assets.

3.5.18. **Historic England** referred to archaeology only in its RR [\[RR-011\]](#), deferring to the expertise of local authority archaeological advisors.

3.5.19. No comments or concerns were raised regarding heritage assets from any other IPs.

Designated Heritage Assets: Kyme Tower

3.5.20. The only designated heritage asset which was a matter of contention during the Examination is the Grade I listed Kyme Tower (ref 1204786). Kyme Tower is a four-storey fortified limestone tower dating from the mid-14th century. An attached house was demolished in the 1720s. The tower and associated moated site are included within a wider complex of archaeological earthworks designated as a Scheduled Monument on the basis of its national importance: 'Remains of medieval monastery, moated manor house, fishponds and post-medieval garden' (ref 1008317).

3.5.21. Kyme Tower forms part of a group of heritage assets together with the Scheduled Monument at Church Lane, South Kyme:

- The Manor, Church Lane (ref 1360601) – Grade II.
- The Church of St Mary's and All Saints, Church Lane (ref 1061749) – Grade II*.

3.5.22. NKDC disagreed with the Applicant's overall assessment that there is no harm to the significance of Kyme Tower stemming from the development. In response to NKDC's LIR [\[REP1-033\]](#) the Applicant explained that there is no known historical association between the tower and the site, with no indication that the Tower was positioned or orientated to ensure its prominence specifically in views from or across the Energy Park. The Applicant pointed out that the current landscape is not representative of the medieval and earlier post-medieval periods when the tower was built and used. The geographical and topographical context of the tower, and the current potential range of the views towards and from it, would not be changed. The Applicant considered that the change to the character of a part of the wider landscape that is already of modern character would not result in harm to the significance of the asset [\[REP2-078\]](#).

3.5.23. NKDC made further comments in its WR [\[REP2-109\]](#) and answer to the ExA's first written question ExQ1 HE 1.2 [\[REP2-101\]](#), stating that due to the historic function of

the tower and the extant landscape setting, no views of the tower, or away from the tower, should be classed as incidental. The Energy Park Site would be visible and present within views away from the tower, thereby affecting the landscape character of the site, and this would affect the setting of the tower, having a degree of less than substantial harm on its special interest. Overall, NKDC disagrees with the conclusion in paragraph 10.5.22 of ES Chapter 10 that the effect on Kyme Tower is not significant and that no harm is caused. NKDC maintained its view that the harm lies towards the lower end of less than substantial and that the required counterbalance of public benefit was necessary.

- 3.5.24. The ExA invited Historic England to comment on both the Applicant's and NKDC's assessments of the Grade I listed Kyme Tower in ExQ1 HE 1.2 [\[PD-012\]](#). Historic England's response notes that the tower was built both to see from and be seen in the wider landscape as well as offering a defensive refuge and provided their own assessment of its significance. It considered that parts of the historic landscape setting of Kyme Tower inevitably make a greater contribution to its significance than others, including the Scheduled earthworks, listed manor and church, the village of South Kyme, the Kyme Eau and the former wetlands. Historic England noted that views from south of the Eau, within and across the Energy Park Site, would arguably contribute to significance but to a much lesser degree [\[REP2-091\]](#).
- 3.5.25. Historic England accepted the differing views of NKDC and the Applicant and recognised that impacts upon the significance of the Tower would appear to fall below the level of a reportable significant effect in EIA terms. From a planning policy perspective in which all harm to the significance of designated assets requires clear and convincing justification and to be set against public benefits, Historic England considered a low level of less than substantial harm might still be identified [\[REP2-091\]](#).
- 3.5.26. The Applicant maintained its position regarding lack of harm at ISH4 [\[EV-019\]](#) and highlighted that:
- There may be visibility of the Energy Park Site from the upper floors of Kyme Tower, but there is no public access and all of the floors have been removed.
 - The visibility of the Energy Park in certain views to and from Kyme Tower are largely incidental.
 - The Energy Park does not contribute through setting to the significance of Kyme Tower.
 - The proposed development will cause no harm to the significance of Kyme Tower through change to setting.
 - Even if NPPF paragraph 202 (paragraph 208 in the December 2023 update) was engaged, the public benefits would outweigh the less than substantial harm, but ultimately this is a matter for the decision maker.
- 3.5.27. The Applicant indicated it would be willing to provide further information in the form of visualisations which would not alter its conclusions, but rather to assist the ExA's decision on whether NPPF Paragraph 202 (208) is engaged.
- 3.5.28. A map of public footpaths around the heritage assets was subsequently provided by NKDC, and the Applicant submitted a screened ZTV plan and photomontages, as attached at Appendices 1 and 2 of its answers to the ExA's question ExQ2 HE 2.1 [\[REP4-047\]](#). Given the lack of public access and for safety reasons (the Tower has no floors within it) no photomontages were produced to assess outward views from the top of the Tower.

- 3.5.29. The ExA utilised this additional information and subsequently visited the area of Kyme Tower and the other heritage assets at Church Lane in South Kyme [\[EV-001b\]](#).
- 3.5.30. Historic England clarified its position in its response to EXQ2 HE 2.1 [\[REP4-061\]](#), stating that the elements of setting drawn out in paragraph 10.5.17 of ES Chapter 10 are of relevance. It considered that long range views can still contribute to the significance of the asset albeit to a lesser degree, and deserve consideration in the case of an asset of this importance. It stressed it would be for the decision maker to consider if the Applicant has provided sufficient information (including any additional visualisations) to test the impact upon significance.
- 3.5.31. NKDC in its response to the ExA's same question agreed with the elements of setting referred to in ES Chapter 10 paragraph 10.5.17, but pointed out that paragraph 10.5.18 is contradictory by stating that intervisibility is incidental. In NKDC's opinion, no views can and should be classed as incidental due to the nature of the asset. NKDC considered that the open agricultural character is one that has been established for hundreds of years and would not be significantly different from that which currently exists. NKDC retained its position that the impacts may be negligible and is anticipated to result in less than substantial harm at the lower end of the scale. However, there would still be a degree of impact which needs to be assessed accurately [\[REP4-056\]](#).
- 3.5.32. The Applicant responded to both Historic England and NKDC's comments, confirming that its assessment position remains unchanged in relation to South Kyme Tower [\[REP5-002\]](#).
- 3.5.33. The SoCG [\[REP6-006\]](#) records NKDC's final position that the proposals cause lower end less than substantial harm to the setting/significance of Kyme Tower, but that the public benefit test would be met. NKDC otherwise agreed with the ES conclusions.

Non-Designated Heritage Assets

- 3.5.34. In response to ExQ1 HE 1.1 [\[REP2-101\]](#) NKDC confirmed that Mill Green Farmhouse, the former Primitive Chapel, derelict cottages and barn at Six Hundreds Farm and former drainage pump at Head Dyke all satisfy the Council's criteria as NDHAs. It also clarified that the low boundary wall at Elm Grange would not be considered as a NDHA due to its extant condition. It considered all five named NDHAs to be of some interest, and that the former Primitive Methodist Chapel and Rectory did not require further assessment but the buildings at Six Hundreds Farm and former drainage pump would benefit from some further assessment. Notwithstanding this, NKDC was satisfied that as the structures would not be physically impacted by the Proposed Development, such an assessment could be linked with archaeological matters by expanding Requirement 12 to include historic building recording of these particular assets.
- 3.5.35. In response, the Applicant discounted NKDC's suggestion of including building recording with the archaeology information and instead amended the outline CEMP [paragraphs 7.71 to 7.75, [REP3-019](#)] to cover the further assessment required, given that the recording surveys would be carried out by built heritage specialists and not archaeologists [\[REP3-026\]](#).
- 3.5.36. No other IPs made comments on NDHAs, and NKDC made no further comments regarding the suggested approach to recording the on-site NDHAs.

Archaeology

- 3.5.37. At ISH2 [\[EV-009\]](#) the ExA sought an update from the Applicant on the recent archaeological investigations, and any implications for the Examination. The Applicant confirmed that archaeological trial trenching of the cable route commenced in early August 2023 and was ongoing, pending agreement of access. The Applicant explained that the agreed scope is a 2% sample of the Order Limits area, with a 2% contingency. It stated that the work is being carried out in accordance with a detailed Written Scheme of Investigation (based on Outline WSI–Evaluation [\[REP2-055\]](#)) approved by the RPAs’ archaeology advisors prior to commencement.
- 3.5.38. The Applicant explained that the area of greatest archaeological potential on the cable route (at Royalty Farm, south and east of South Forty Foot Drain) was being prioritised, revealing ditches and gullies representing Roman agricultural activity. For the most part these features align with anomalies detected by the geophysical survey [\[APP-213\]](#) and [\[APP-214\]](#), which in turn, correlate with cropmarks visible on aerial photographs reviewed for the Heritage Desk-Based Assessment [\[APP-206\]](#). The Applicant clarified that the Roman features were considered to be of local to regional heritage significance and noted that initial discussions have been had with the RPAs’ archaeological advisors regarding the area of greatest sensitivity and the options for mitigation.
- 3.5.39. The Applicant clarified that the work carried out so far has revealed some archaeological features that were not predicted by the geophysical survey, but generally, the survey results have been borne out. The Applicant considers the likelihood of there being archaeological remains of a significance equivalent to a Scheduled Monument to be low [\[REP1-020\]](#).
- 3.5.40. The completion of the trial trenching is secured by Requirement 12(1) through compliance with the outline WSI - Evaluation [\[REP2-055\]](#). The Applicant’s intention to update Requirement 12 as raised by LCC at ISH1 was noted. This would make it clear that only those elements of the cable route that have not been trenched will need to be subject to submission of a WSI in accordance with the outline WSI.
- 3.5.41. The Applicant acknowledged NKDC comments on discrepancies between the Figure 10.4- Energy Park Archaeological Mitigation Areas [\[APP-162\]](#) and the Outline Written Scheme of Investigation–Mitigation [\[APP-245\]](#). These discrepancies were addressed in version 2 of the detailed WSI [\[REP2-055\]](#) and [\[REP2-057\]](#). The results of the archaeological evaluation of the offsite cable route corridor to date are set out in Appendix 10.5 [\[REP2-048\]](#) and ES Chapter 10 was also updated accordingly at Deadline 2 [\[REP2-024\]](#).
- 3.5.42. The RPAs accepted the approach and the revisions to Requirement 6 (detailed design) which was amended to include reference to design being informed by findings of the archaeological surveys in their answers to the ExA’s second written question ExQ2 HE 2.3 [\[REP4-054\]](#), [\[REP4-055\]](#), [\[REP4-056\]](#), [\[REP4-059\]](#)
- 3.5.43. At ISH4 [\[EV-019\]](#) the ExA asked for a further update on trial trenching of the cable route. The Applicant advised that it had not been possible to undertake additional fieldwork since ISH2 but that completion would be secured by the update to Requirement 12 [\[REP3-039\]](#). The RPA’s SoCG [\[REP6-006\]](#) confirms that all three authorities consider sufficient trial trenching has been completed to inform a Mitigation Strategy and that all are agreeable to further trenching along cable route being secured by requirement.

Historic Environment: Conclusions

- 3.5.44. In view of the above, the ExA considers that the Applicant has appropriately and adequately assessed the significance of the heritage assets affected by the Proposed Development, as well as its assessment of the likely impact on significance. In this regard the Application meets the requirements of both 2011 and 2024 NPS EN-1, as well as the NPPF and development plan policies, which are important and relevant considerations.
- 3.5.45. The Infrastructure Planning (Decisions) Regulations 2010 (Decisions Regulations) require the SoS to have regard to the desirability of preserving, amongst other things, the setting of a listed building. The ExA has had regard to the differing views of the Applicant in relation to the impact on the setting of the Grade I listed Kyme Tower, in contrast to those of NKDC and Historic England.
- 3.5.46. Kyme Tower is a heritage asset of exceptional historic and architectural interest. Its setting is far reaching, given its prominence in the landscape and its historic role in its surveillance of the surrounding countryside. The ExA agrees that its immediate setting is of the highest significance, where it sits within a high value but discrete group of other Listed buildings (and is also classified as a Scheduled Monument). The group is well screened and enclosed by mature vegetation which lines the Kyme Eau. The wider setting has been diluted over time as the landscape has altered to one of intensive arable farming and intervening vegetation cover is sparse. There are a number of relatively distant detractors in the direction of the Proposed Development, including large scale farm buildings, electricity infrastructure and the distant Bicker Fen wind farm. Intervisibility between the site and Kyme Tower remains at numerous viewpoints, albeit at a long distance.
- 3.5.47. Consequently, the ExA agrees with NKDC and Historic England that the site is within the setting of Kyme Tower, and currently its open undeveloped nature has a neutral effect on its significance. The Proposed Development would be discernible from Kyme Tower and its immediate setting, and its presence would result in a level of harm which would be less than substantial. Mitigation measures to include planting to the perimeter of the site would assist in reducing the wider effects of the Proposed Development, and the residual harm would be at the lower end of the scale. Nonetheless, the ExA considers that the Proposed Development would give rise to less than substantial harm to the significance of a designated heritage asset. Paragraph 5.8.15 of 2011 NPS EN-1 and likewise paragraph 5.9.32 of 2024 NPS EN-1 require a balance against the public benefits and I return to this matter in Chapter 5 of this Report.
- 3.5.48. In respect of above ground NDHAs both within the site and nearby, the ExA is satisfied that there would be a neutral effect. The CEMP, secured by Requirement 13, would secure pre-construction recording of the on-site NDHAs.
- 3.5.49. In respect of archaeology, comprehensive surveys and assessment have taken place of the Energy Park Site and for a proportion of the Cable Route Corridor. These are proportionate to the overall archaeological potential of the site. The ExA accepts that trial trenching of the Cable Route Corridor would continue post-Examination and notes that the RPAs are satisfied with this approach. Requirement 12 appropriately secures the individual WSIs for both areas of the Proposed Development, and Requirement 6 would ensure that the results of the archaeological surveys are considered in the final design.

- 3.5.50. Overall, the ExA considers that the Proposed Development would result in less than substantial harm to the setting of a designated heritage asset (Kyme Tower), and that there would be minor harm arising to NDHAs following mitigation (principally archaeology during construction). Effects to both are not significant in EIA terms.
- 3.5.51. Where there is a harm, the SoS must give that harm considerable importance and weight. The ExA considers the minor adverse effects arising to the significance of the Grade I listed Kyme Tower would be at the lower end of the scale of less than substantial harm.
- 3.5.52. This harm should be weighed against the public benefits of the Proposed Development. This and other benefits are considered at Chapter 5 of this Recommendation, in the planning balance.

3.6. LAND USE AND SOILS

Introduction

- 3.6.1. This section considers the effects of the Proposed Development on best and most versatile (BMV) agricultural land, as well as consideration of future uses of land and soil management practices.

Policy Considerations

- 3.6.2. 2011 NPS EN-1 (paragraph 5.10.8) advises applicants to seek to minimise impacts on BMV agricultural land defined as agricultural land classification (ALC) grades 1, 2 and 3a, with preferable use of land in areas of poorer quality (ALC grades 3b, 4 and 5) except where this would be inconsistent with other sustainability considerations. It also indicates that applicants should identify any effects and seek to minimise impacts on soil quality taking into account any mitigation measures proposed.
- 3.6.3. 2011 NPS EN-1 requires applicants not to site their scheme on BMV agricultural land without justification, but goes on to advise that little weight should be given to the loss of poorer quality agricultural land (paragraph 5.10.15).
- 3.6.4. 2024 NPS EN-1 similarly notes that applicants should seek to minimise impacts on BMV agricultural land and preferably use land in areas of poorer quality (paragraph 5.11.12), and that schemes should not be sited on BMV land without justification. Where schemes are to be sited on BMV land, the economic and other benefits of that land should be taken into account (paragraph 5.11.34).
- 3.6.5. Specifically in relation to solar energy generation, section 2.10 of 2024 NPS EN-3 makes it clear that land type should not be a predominating factor in determining the suitability of the site location. However, it also seeks for ground mounted solar PV projects wherever possible to utilise previously developed land, contaminated land or industrial land. Where the proposed use of any agricultural land has been shown to be necessary, poorer quality land should be preferred to higher quality land avoiding the use of BMV agricultural land where possible (paragraph 2.10.29).
- 3.6.6. Furthermore, 2024 NPS EN-3 makes it clear that whilst the development of ground mounted solar arrays is not prohibited on BMV land, the impacts of such are expected to be considered and the choice of site should be explained by the applicant. Consideration of continued agricultural use and/or co-location with other functions (including storage) to maximise the efficiency of land use should also be considered. Sustainable management of soils is also encouraged via a suitable management plan.

- 3.6.7. Paragraph 013 of the PPG on renewable and low carbon energy also provides guidance in relation to large scale ground mounted solar farms. This includes 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.
- 3.6.8. The PPG also refers to the Written Ministerial Statement (WMS) dated 25 March 2015. The WMS indicates (amongst numerous other issues) that any proposal involving BMV agricultural land would need to be justified by the most compelling evidence. It also notes that every application needs to be considered on its individual merits, with due process, in the light of relevant material considerations.
- 3.6.9. CLLP policy S67 seeks for proposals to protect BMV agricultural land, so as to protect opportunities for food production and the continuance of the agricultural economy. It states that significant development resulting in the loss of BMV land will only be supported if:
- a. The need for the proposed development has been clearly established and there is insufficient lower grade land available at that settlement (unless development of such lower grade land would be inconsistent with other sustainability considerations); and
 - b. The benefits and/or sustainability considerations outweigh the need to protect such land, when taking into account the economic and other benefits of the best and most versatile agricultural land; and
 - c. The impacts of the proposal upon ongoing agricultural operations have been minimised through the use of appropriate design solutions; and
 - d. Where feasible, once any development which is supported has ceased its useful life the land will be restored to its former use.
- 3.6.10. CLLP policy S14, specifically in relation to solar energy proposals, includes a presumption in favour of commercial large scale ground based photovoltaics and associated infrastructure unless (amongst other matters) the proposal following a site specific soil assessment does not meet the requirements of policy S67.
- 3.6.11. SELLP policy 31, is supportive of renewable and low carbon energy proposals where there would be no significant harm to 4) agricultural land take. There are no policies which directly refer to use of BMV land.

THE APPLICATION

- 3.6.12. The Applicant's case in relation to land use, agriculture and soils is set out in ES Chapter 16 [\[REP2-028\]](#), and is supported by Figure 16.1 [\[APP-168\]](#), Appendices 16.1 to 16.5 [\[APP-220\]](#), [APP-221](#), [APP-222](#), [APP-223](#), [APP-224](#) and an outline Soil Management Plan (SMP) [\[REP5-064\]](#).
- 3.6.13. Paragraphs 3.2.18 to 3.2.22 of ES Chapter 3 [\[PS-053\]](#) consider site selection and alternatives in relation to land use. It explains that areas of high grade BMV agricultural land were removed from areas to the south and west of the Energy Park site following statutory Pre-application consultation.
- 3.6.14. In terms of alternatives, the Back Check and Review Assessment [\[APP-176\]](#) sets out that the entirety of Sites 1, 2 and 3 have an ALC of Grade 2 BMV land.

Soil Surveys

- 3.6.15. Two main surveys of agricultural land quality were undertaken on land proposed for the Energy Park. A semi-detailed survey (138 auger bore locations) was undertaken in September and October 2021, and then a detailed survey of a further 313 auger samples in August and September 2022. Both were undertaken over a wider area of 590ha. Soil profiles of open trenches were also examined as part of archaeological investigation in August 2022. The approach to sampling was agreed in consultation with Natural England and NKDC.
- 3.6.16. The cable route was not subjected to such detailed survey given it involves temporary disturbance for cable trenches only, and would not involve the sealing or downgrading of soil quality. The Applicant proposes that this be managed through the application of the outline SMP.
- 3.6.17. ES Appendix 16.3 [\[APP-222\]](#) sets out the main physical factors affecting agricultural land quality as being climate, site, soil and interactive limitations. In terms of climate, this does not limit agricultural land quality at the site. The three main site factors which may limit quality are gradient, micro-relief and risk of flooding. The site is broadly level to an elevation of between 1m and 4m AOD, and consequently the quality is not limited by gradient or micro-relief. The site is at risk of flooding, being mainly located in flood zone 3.
- 3.6.18. The Applicant's detailed soil surveys of 2021 and 2022 confirm that the soils are comparable with those described by British Geological Survey mapping which indicates the site is underlain by Ampthill Clay Formation in the east (mudstone) and West Walton Formation (mudstone and siltstone) in the west. The National Soil Map published by the Soil Survey of England and Wales (1983) indicates that the soils are grouped in the Wallasea 2 Association. These type of soils are extensive in the area. Paragraph 3.13 of Appendix 16.3 [\[APP-222\]](#) notes the complex variety of soil textures and drainage status over the Site, which reflects the variety of Tidal Flats Deposits deposited by the sea in the past. The findings of the particle size distribution analysis are set out in Table 2 of ES Appendix 16.3 [\[APP-222\]](#), and in summary their ALC soil texture classes were established as heavy clay loam, silty clay and medium silty clay loam.
- 3.6.19. The distribution of ALC across the 524ha site is shown on Figure 16.1 [\[APP-168\]](#) and is summarised in Table 16.2 of ES Chapter 16 and illustrated at Figure 6 below. Overall, 49.0% of the Solar Park Site, an area of 257ha, is classified as BMV.

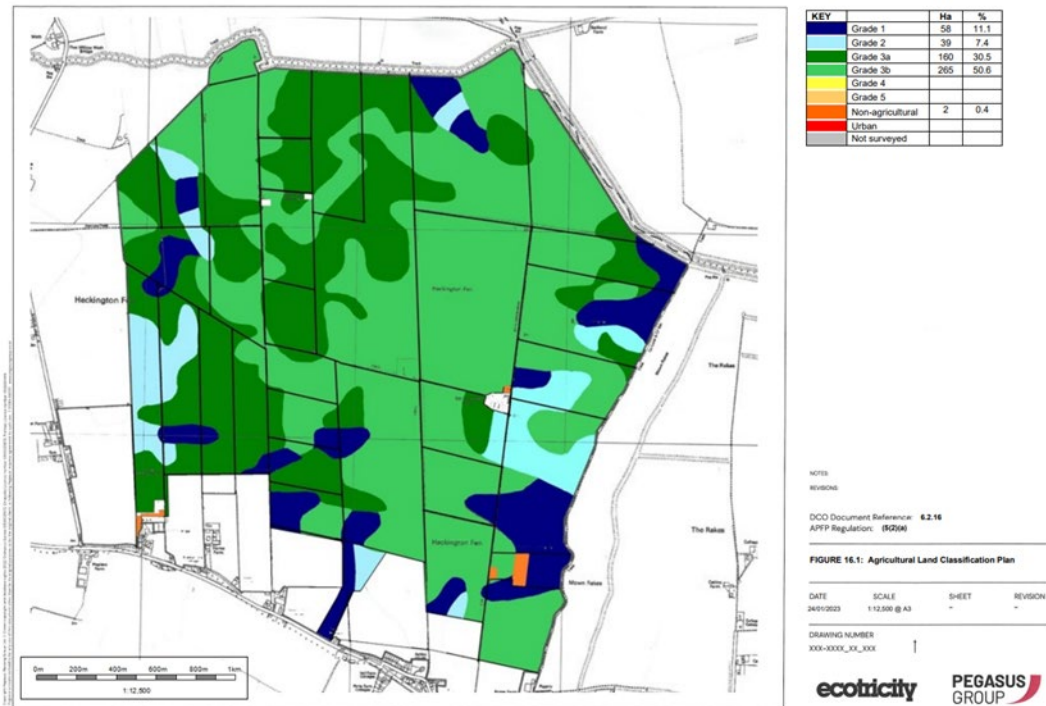


Figure 5: Agricultural Land Classification Plan [APP-168]

ALC Grade	Area (Hectares)	Area % of total site
Grade 1 (Excellent)	58	11.1
Grade 2 (Very Good)	39	7.4
Subgrade 3a (Good)	160	30.5
Subgrade 3b (Moderate)	265	50.6
Grade 4 (Poor)	0	0
Grade 5 (Very Poor)	0	0
Non-agricultural / other	2	0.4
Total	524	100

Table 1: Agricultural Land Classification (reproduced from ES Chapter 16 Table 16.2) [REP2-028]

Farming System

- 3.6.20. In addition to the ALC surveys and soil analysis, the farming circumstances of the occupying farm business were considered by the Applicant as set out in a Farming Report at ES Appendix 16.1 [\[APP-220\]](#).
- 3.6.21. The current farming system is entirely combinable cropping, and is focused on winter feed wheat. Oilseed rape and field beans have been grown in the past as break crops, but following crop failures of oilseed rape and the less economically desirable nature of field beans they are no longer grown. The farm now grows permanent wheat, with the most recent crop being a hard feed wheat variety.
- 3.6.22. ES Appendix 16.1 [\[APP-220\]](#) explains that a significant factor in the cropping choice is that the farm has a significant blackgrass population, a difficult to control perennial weed. The Applicant explains that the spray chemistry employed against it cannot be used on barley and oats. Drilling of wheat is delayed to Autumn due to the presence of blackgrass, at which time the land is easily waterlogged and yields are affected. Notwithstanding the significant blackgrass population, the Applicant confirmed that this does not affect the ALC results.
- 3.6.23. The farming report indicates that the land is farmed as a single block to optimise efficiency of labour and machinery and the crops are stored at Six Hundred Farm and Elm Grange. Straw from the wheat crops is baled and taken away. The 'block cropping' means that where there are areas of better quality soil within a block, it is generally not physically or economically practical to farm these minority areas differently to the majority, as explained in section 5.2 of the farming report [\[APP-220\]](#). The report explains that the deep ditches which divide the fields across the Energy Park site represent further barriers to certain farming practices, because single bridge entries prevent farming other than on a whole field scale.
- 3.6.24. The report also indicates that due to an ageing drainage system the land is moving towards becoming waterlogged for longer periods. This leads to a focus onto winter cropping of cereals, as potatoes and other vegetables require planting and cultivation in the spring. Root vegetable crops would also require significant investment including building storage and packing facilities as well as the need for additional irrigation abstraction licences.
- 3.6.25. The farming report also sets out the risk and return on capital for winter feed wheat, and inflation costs for machinery and labour. The report sets out that from a labour perspective, sheep farming is comparable to that of cereal cropping.

National and Regional Agricultural Land Classification

- 3.6.26. Table 16.5 of ES Chapter 16 tabulates the total areas of commercially farmed land in Lincolnshire, indicating an increase of over 5,000 ha between 2013 and 2021. Wheat accounts for a large proportion of total arable crops [\[REP2-028\]](#).
- 3.6.27. The United Kingdom Food Security Report (2021) estimates that domestic wheat production is around 15 million tonnes per year at around 8 tonnes per ha. The 524 ha of the Energy Park site, at 8 tonnes per ha could produce the order of 4,200 tonnes (0.03% of national production). As previously set out, the report notes that crops can vary significantly year by year. On a more local level and based on the 2021 statistics in Table 16.5, the 524ha site represents 0.1% of the total commercially farmed land within Lincolnshire.

- 3.6.28. The Applicant has compared the ALC grading of the site to Lincolnshire as a whole and on a national level, as shown in Tables 2 and 3 of the farming report [\[APP-220\]](#), and paragraphs 16.5.13 to 16.5.42 of ES Chapter 16 [\[REP2-028\]](#).
- 3.6.29. The site has a larger proportion of Grade 3 land than the whole of the county, but a much smaller proportion of Grades 1 and 2 land, with the proportion of BMV land being much higher in Lincolnshire overall than in England. On a more local level, BMV across North Kesteven is also higher than England overall. Whilst the provisional ALC maps published by Natural England have their limitations, it is clear that the overall proportion of BMV in both North Kesteven and Lincolnshire is much higher than the rest of England. Mapping shown at Inserts 4 and 5 of ES Chapter 16 [\[REP2-028\]](#) visually show the expanses of predicted BMV land across the area.

Future Land Use

- 3.6.30. The Applicant's case focuses on the premise that the operation of a solar park on the site would allow the land to continue to be in agricultural use for the lifetime of the solar park and beyond. It is proposed that the area under and around the solar panels would be grassland, grazed by sheep. The Applicant considers this to be a physically feasible and financially viable land use option. A stocking rate of four ewes per hectare is proposed which would support a new farming enterprise at the same time as providing a site for clean energy generation. The farming report sets out that it is expected that no arable jobs would be lost as the site forms a small part of the landowner's overall land holdings [\[APP-220\]](#).
- 3.6.31. The farming report indicates that prior to current ownership the land was used for given over to grassland and livestock together with some winter cereal rotation. There are existing livestock buildings at the farm holding as shown at Appendix 23 of the farming report [\[APP-220\]](#). The Applicant expects that the land could be quickly and easily returned to wheat crops following removal of the solar panels at the end of their lifetime.

Environmental Implications

- 3.6.32. In ES Chapter 16 the Applicant explains that the carbon emissions from an arable system producing mainly wheat are higher than that of an extensive sheep enterprise. The current farming system involves significant chemical and fertiliser application whereas no artificial fertilisers will be required with the land down to pasture. The complex role of soil organic carbon is explained by the Applicant in paragraphs 16.5.54 and 16.5.56 of ES Chapter 16, supported by Appendix 16.4, the British Society of Soil Note 'Soil Carbon' (2021) [\[APP-223\]](#).
- 3.6.33. Implications of climate change on agricultural practices is considered at paragraphs 16.5.57 to 16.5.59 of ES Chapter 16 [\[REP2-028\]](#). This includes changes in rainfall and increasing temperatures.
- 3.6.34. Vehicle movements would also be greatly reduced. The Applicant expects that moving over to grazing would build up the organic matter in the soil, thereby increasing its resilience for the long term.

Assessment of Significance

- 3.6.35. ES Appendix 16.2 [\[APP-221\]](#) sets out the criteria used to determine sensitivity and magnitude in the Applicant's assessment of significance. It takes account of the IEMA guidance 'A New Perspective on Land and Soil in Environmental Impact Assessment' (2022), but does not strictly follow it. The assessment considers

whether there would be permanent sealing or downgrading of agricultural land as a result of the proposals. It also includes other factors which impact land uses.

- 3.6.36. ES Chapter 16 [\[REP2-028\]](#) section 16.6 assesses the potential effects on agricultural land quality and soils during all phases. Mitigation through design includes reducing the extent and spread of panels as well as BNG areas, to avoid higher grade fields to the south and west. Approximately 62 ha of grades 1 and 2 was removed from the Order Limits prior to submission and will remain in arable use.
- 3.6.37. The outline SMP [\[REP5-064\]](#) sets out the approach to mitigation during construction and decommissioning phases. It includes a description of the soil types and their resilience, details of the proposed access routes and how they will be managed, details of installation of panels and how soil damage will be minimised, together with a methodology for monitoring soil condition. The outline SMP seeks to ensure that at the end of the construction phase the impacts from construction activities will be restored with no or minimised impact on soil structure or land quality.
- 3.6.38. The construction process as it affects soils and agricultural land is described in detail in Appendix 16.5: Construction Methodology (as it affects soils) [\[APP-224\]](#). The Applicant expects there to be no direct loss (permanent sealing or downgrading of land quality) of one or more soil functions by the installation of the solar arrays. The expected construction process as it affects soils involves piling support poles/legs into the soils, cabling and trenching as well as disturbance by vehicles and machinery.
- 3.6.39. The Applicant explains that areas of fixed equipment, such as transformers, have been located on lower quality agricultural land where possible and practical. The equipment would be raised with supporting legs placed on concrete pad point foundations to minimise the need to remove topsoil to construct base areas. Any soil removed would be stored in bunds (a maximum of 3 to 4m high) for reuse at the decommissioning stage, and an indicative stockpile location plan is shown within the outline SMP [\[REP5-064\]](#). Use of soil mats are proposed for use in construction compounds to dissipate weight during use, and would be returned to agriculture following completion of the construction works. The outline SMP [\[REP5-064\]](#) also seeks to minimise heavy construction traffic during the wettest periods of winter.
- 3.6.40. Only those areas of land proposed for the fixed onsite equipment relating to electrical infrastructure is treated as sealed over (or lost) for the duration of the Proposed Development. It is possible for these areas (at the Energy Park, not at Bicker Fen substation) to be restored to agricultural use in the decommissioning phase. Nevertheless, the ES takes a cautious approach and assumes that restoration may not return to comparable quality.
- 3.6.41. The areas of fixed equipment and the ALC grades are summarised in Table 16.6 of ES Chapter 16 [\[REP2-028\]](#), which is reproduced below.

ALC Grade	Area Affected (Hectares)			
	Tracks	Solar Stations	Substation	Total
1	0.5	0.1	0	0.5
2	0.5	0.1	0	0.5
3a	1.6	0.2	0	1.8
3b	3.5	0.4	13.5	17.4
Total	6.1	0.6	13.5	20.2

Table 2: Areas of land affected within the Energy Park for the operational phase of the Proposed Development (ES Chapter 16 Table 16.6) [REP2-028]

- 3.6.42. This indicates that the vast majority of the 20.2 ha of land proposed for the tracks, solar stations and substation is located within ALC grade 3b, which is not BMV land. The total BMV land sealed over or lost for the duration of the Proposed Development would be less than 3ha. The assessment of significance of this loss is set out in Table 16.7 of ES Chapter 16 [REP2-028].
- 3.6.43. The Applicant states that in terms of effects on farm businesses and enterprises during construction, the contained nature of the Energy Park Site means that closure and severance would be minimised, but there is potential for disruption and short-term severance during construction of the grid connection route corridor. The ES summarises such effects as slight adverse. Effects on employment are considered in Section 3.7 of this Recommendation (Socio-Economics).
- 3.6.44. The overall impact on soils from the trenching and drilling of the cable route construction is assessed by the Applicant as neutral or slight adverse. The impact on the areas of land proposed for fixed equipment is assessed as minor adverse. The ES highlights that a number of services related to other projects have been buried underground in the locality of Bicker Fen and that there is no evidence of any effect on soils or agricultural productivity post-installation.
- 3.6.45. Implications for food production are considered by the Applicant to be economic rather than environmental. The land is currently used for growing crops which could be for industrial use as well as for animal or human food. Furthermore, the Applicant stresses that there is no policy requirement to produce food from agricultural land. At paragraphs 16.6.56 to 16.6.60 of ES Chapter 16 [REP2-028] the Applicant sets out that if the solar arrays proposed across the 257 ha of BMV land within the Energy Park was moved to poorer quality land elsewhere, the consequence would be the decrease in production levels between the BMV and non-BMV land rather than the loss of production.
- 3.6.46. The assessment calculates that the consequential reduction in production would be about 360 tonnes of winter wheat. It goes on to state: *“The potential 360-tonne*

reduction in yield can legitimately be compared to the yield from the circa 178,000 hectares of wheat producing land in Lincolnshire in 2021... If the 178,000 ha of Lincolnshire yielded the national average of 8.6 t/ha, Lincolnshire would produce in the order of 1.5 million tonnes of wheat each year. As 71% of Lincolnshire is estimated to be BMV, production would be higher than this. The 360-tonne annual reduction in the county's wheat yield is approximately a 0.02% reduction. Consequently, the effect on production of crops for animal feed, energy or for human food is limited and would be considered insignificant" [paragraphs 16.6.59-60, [REP2-028](#)].

- 3.6.47. The Applicant also refers to the UK Food Security Report 2021 which explores grain yields and consumer demand as set out in paragraphs 16.6.62 and 16.6.63, and highlights that DEFRA has not indicated any concerns about impending shortages in supply in UK food production.

Mitigation and Enhancement

- 3.6.48. The sealing over or loss of BMV is proposed to be minimised by design as far as reasonably practicable by locating access tracks and fixed equipment within Grade 3B land. The ESS and onsite substation are all located within lower grade land.
- 3.6.49. The CEMP [\[REP5-054\]](#) and SMP [\[REP5-064\]](#), secured by Requirements 13 and 20, would secure good soil management practices and the Applicant considers that no additional mitigation is considered necessary. The Applicant expects soil health and structure to be enhanced by a 40-year period of permanent grassland cover.
- 3.6.50. Cumulative effects relating to loss of BMV agricultural land are dealt with in Section 3.11 of this Recommendation.

THE EXAMINATION

- 3.6.51. **NKDC's** LIR [\[REP1-033\]](#) acknowledged that the Applicant has already adopted design mitigation through the evolution of the scheme by excluding 62ha of Grade 1 and Grade 2 land from the Order Limits. Attached at Appendix 3 of the LIR is a review by NKDC's agricultural consultant. The review found that the Applicant's spatial approach to augering and soil analysis is acceptable relative to the size of the site and that the scheme amendment to reduce the Order Limits and therefore retain additional high grade BMV land is positive.
- 3.6.52. Concerns were raised that in real terms the difference between grade 3a and 3b land is quite small in this instance and that there is a degree of subjectivity about the difference, though the overall findings are not in dispute. It also queried some of the Applicant's suggestions in terms of the degree to which existing site drainage/irrigation conditions and the extent of blackgrass impacts the ability to farm the existing site to its fullest extent. It highlights that there are methodologies to limit and manage blackgrass, and that evidence of irrigation constraints may be anecdotal. NKDC noted that whilst sheep grazing between panels on the site is possible, the area is not known for such activity, and concerns are expressed about the likelihood of this occurring. Its overall conclusion is that through the combination of the scale of the project and the amount of BMV land taken up, the impact is significant at both District and County level.
- 3.6.53. NKDC accepted that the Applicant is entitled to decide, unilaterally, that removal of additional areas of BMV land would be commercially unattractive but with nearly half of the Energy Park site classed as BMV land it pointed to there being very limited margin for professional interpretation before this proportion flips into an overall

'majority' by area. It considered the Applicant has not proven that the need to develop BMV land has been clearly established in accordance with CLLP policy S67 nor that the impacts of the proposal upon ongoing agricultural operations have been minimised through the use of appropriate design solutions.

- 3.6.54. NKDC noted that the proposals for sheep grazing had been developed only to high level with no further detail provided. It highlighted that no Requirements expressly deal with grazing management, despite the reliance on reversion to sheep grazing to demonstrate continuance of an agricultural use and to mitigate adverse effects.
- 3.6.55. **LCC** in its RR [\[RR-013\]](#) acknowledged the revisions to the original design to remove areas of BMV land and proposals to graze sheep on area of the land in lieu of the current arable use. However, concerns remain about the impact of the development in terms of the loss of productive arable farmland not only from this site but also when considered in combination with other NSIP scale projects across the County.
- 3.6.56. Section 7.8 of LCC's LIR [\[REP1-028\]](#) also sought clarity about how an agricultural enterprise such as sheep grazing may still be carried out on the land and be secured as part of any DCO, including who would be responsible for managing any sheep, a commitment to exact herd densities and whether this would be implemented for the life of the development. Overall, LCC stated its position that the construction, operational and decommissioning impacts holistically across land use and agriculture would be negative.
- 3.6.57. No concerns were raised by **BBC** regarding soil and agricultural land use matters, noting that the impact from the cable route would be temporary whilst the route is excavated, the cables installed and the trench re-filled, with the agricultural land being restored to agriculture [\[RR-004\]](#).
- 3.6.58. **Natural England** in its initial RR [\[RR-019\]](#) considered further work was necessary to fully assess the extent of impacts to BMV agricultural land, including from biodiversity enhancement areas. It also sought deficiencies in the SMP to be addressed to ensure soil resources are managed and maintained appropriately during construction and for the lifetime of the development.
- 3.6.59. **Sir John Hayes MP** [\[RR-024\]](#) raised concerns that the proposal would see prime agricultural land removed from food production at a time when recent events have reminded us of the vital importance of food security, highlighting the importance of retaining farming land in production to ensure that food prices remain affordable, and we can continue to feed our nation. Sir John Hayes MP did not engage further in the Examination.
- 3.6.60. **Amber Hill Parish Council** set out in its RR [\[RR-002\]](#) that it was in favour of a solar farm but has concerns about good quality land being removed from agricultural production. Amber Hill Parish Council did not engage further in the Examination.
- 3.6.61. **Mr and Mrs Bowler** [\[RR-008\]](#) objected to the loss of top quality agricultural land needed for food security but did not engage further in the Examination.
- 3.6.62. **Mr Barlow** [\[RR-005\]](#) also highlighted the use of high grade agricultural land which is one of several currently under consideration with more on the way, and questioned who would be overseeing this significant change of use of land currently used to grow food. Mr Barlow did not engage further in the Examination.

- 3.6.63. In response to these comments in RRs the Applicant clarified that areas of BMV to the south and west of the Energy Park have been removed, and that separating out further areas had been considered but were not deemed viable for effective arable use. It maintained that the land will still be classified as agricultural land and areas around the panels will be grazed by sheep, as secured through the outline LEMP and Requirement 8 of the draft DCO. The Applicant stressed that the scheme provides an opportunity to produce energy whilst continuing to farm the land, as well as improving biodiversity [\[REP1-022\]](#).
- 3.6.64. The Applicant pointed out the practical difficulties of farming the BMV mixed with the poorer quality land can be seen in the way the grading varies across the site. Dividing the fields into different cropping areas would be significantly hindered by the field layouts, with all fields bordered by sizeable ditches. The Applicant noted the potential policy conflict between food and energy security. It pointed out that the installation of solar arrays has a limited effect on the underlying soil resource and the land quality and is a reversible installation, particularly in the context of this scheme which has an operational lifetime of 40 years. The area of land that is sealed (where soils are removed and buildings, stone or concrete are added, such that the agricultural land is permanently lost or lost for the duration of the Proposed Development), is limited and mostly located on poorer quality land. It confirmed that less than 3 ha of BMV agricultural land and 17.4 ha of poorer quality land would be sealed [\[REP1-022\]](#).
- 3.6.65. At ISH2 [\[EV-009\]](#) NKDC and LCC substantiated their concerns and stated that they would wish to see further BMV land within the Site retained for arable use. In response the Applicant further explained the practical difficulties of farming the BMV mixed with the poorer quality land, by reference to the complex pattern of the land quality (inserts 6, 7, 8 and 9 of ES Chapter 16) [\[REP2-028\]](#). The Applicant explained how dividing the fields into different cropping areas was significantly hindered by the layout, with all fields bordered by sizeable ditches, with an example shown on Photo 3 of ES Chapter 16. It was explained that the land quality found was lower than expected, especially by reference to the East Midlands provisional ALC map which shows the Energy Park Site as provisional Grades 1 and 2. The Applicant explained that the reason lies in the historic nature of the land before large-scale drainage, and drew the ExA's attention to Insert 10 of Chapter 16, which shows an aerial image in which the historic course of watercourses from pre-drainage times can be seen, which has resulted in the very mixed quality of the Energy Park Site.
- 3.6.66. The Applicant clarified that the substation has been proposed on subgrade 3b land and referred to Table 16.6 of the ES Chapter 16 [\[REP2-028\]](#). This shows that 1 ha of Grades 1 and 2, and 1.8 ha of Subgrade 3a land, is to be temporarily affected by tracks or inverters and that these areas will be restored on decommissioning.
- 3.6.67. In respect of the cable route to the Bicker Fen substation, the Applicant explained that a revised outline SMP (included within the outline CEMP and secured under Requirement 13 of the DCO) was currently with Natural England for comment. This included a methodology for surveying the soils post-consent and agreeing a soil handling methodology with Natural England pre-works. The Applicant explained that the typical width of trench would be 1.5m wide, but wider in areas where directional drilling is required. For a route of approximately 5.5km length the amount of land being disturbed was not likely to exceed 1 ha.
- 3.6.68. In response to NKDC's comments in its LIR [\[REP1-033\]](#), the Applicant noted NKDC's consultant was unable to attend the site during the augering and trial trenching. Evidence of irrigation (or lack of) is available from the Environment

Agency who note that licences for abstraction may not be successful. It was clarified that the area has been used in the past for grazing and that the Applicant has committed to sheep grazing through the outline LEMP and within the outline OEMP submitted at Deadline 2 [\[REP2-075\]](#), secured by Requirement 19 inserted to version 4 of the draft DCO [\[REP2-008\]](#). The Applicant presumed that NKDC's conclusion that the effect is significant at District and County level is presumably based on a difference between current land use and sheep grazing, but noted that there is no policy for producing arable crops from agricultural land, and NKDC's methodology differs from other assessments and is not defined [\[REP2-078\]](#).

- 3.6.69. The ExA asked (ExQ1 LUS 1.1) [\[PD-012\]](#) the Applicant to clarify the methodology used to define significant effects within ES Chapter 16 and provide an update to Table 16.11 which includes the significance of the residual effects.

- 3.6.70. The Applicant explained that the assessment in Table 3 of Appendix 16.2 [\[APP-221\]](#) shows that the loss, for the duration of the operational period, of 3.5 ha of BMV results in a minor magnitude effect (Table 2) on a resource of very high (0.5ha Grade 1 and 0.5ha Grade 2) and high (1.8 ha Grade 3a) sensitivity (Table 1). Under Table 3 this equates to a moderate or large adverse significance of effect, which the Applicant maintains is Not Significant in EIA terms. The loss, for the operational phase, of 13.5 ha of subgrade 3b is a moderate magnitude effect (Table 2 of Appendix 16.2) on a resource of high sensitivity (Table 1) leading to a moderate or large adverse significance effect (Table 3), which is Not Significant in EIA terms. The effects on soils and farm businesses are similarly assessed and are classed as Not Significant in EIA terms. An updated Table 16.11 was provided in version 2 of ES Chapter 16 [\[REP2-028\]](#).

- 3.6.71. The ExA's written question ExQ1 LUS 1.2 sought an update regarding intrusive soil sampling, as referred to by Natural England in its RR [\[RR-019\]](#) and the draft SoCG [\[REP1-016\]](#). The Applicant explained that given the impact of undertaking intrusive surveys on agricultural operations at that time of year (Autumn/Winter) the Applicant had taken the decision to defer the negotiation of separate licence agreements for further survey work and intends that the rights for surveys will be included in the legal agreements being discussed with all interested parties [\[REP2-077\]](#). The Applicant subsequently provided an amended methodology (Appendix 3, [\[REP2-077\]](#)) and a revised outline SMP [\[REP2-059\]](#) to be agreed by Natural England.

- 3.6.72. Natural England responded to ExQ2 LUS 1.1, confirming acceptance of the methodology for intrusive soil sampling [\[AS-035\]](#). In respect of ExQ LUS 1.3, Natural England sought a detailed ALC and soil survey of the agricultural land across the full study area, to ensure that appropriate mitigation is in place to allow for restoration of the land to the baseline ALC grade. Natural England welcomed the provision of the SMP, advising that temporary displacement of soil should be considered with soil handling methods in accordance with DEFRA guidance. It provided further advice on soil handling as well as monitoring and reporting by a competent soil specialist.

- 3.6.73. The ExA asked further questions and sought an update at ISH3 [\[REP3-038\]](#) and in ExQ2 [\[PD-013\]](#), including comments from the RPAs on whether Requirements 8 (LEMP) and 19 (OEMP) were sufficient to secure sheep grazing on the Solar Park Site (ExQ2 LUS 2.2).

- 3.6.74. NKDC sought for a baseline survey to be agreed so that it could be measured against, and ensure the land is kept in good agricultural and environmental condition (a term used by DEFRA). NKDC also referred to NFU guidance 'BRE

(2014) Agricultural Good Practice Guidance for Solar Farms' regarding grazing densities and sought for a commitment to increased densities to be secured in the OEMP. It also referred to situations where the land might not be grazed for a period of time, leading to deterioration of grassland quality and the need for a mowing regime. Revised wording to paragraphs 2.22 to 2.24 of the OEMP was suggested by NKDC [\[REP4-056\]](#).

- 3.6.75. NKDC also provided a full response to ExQ2 LUS 2.4 [\[REP4-056\]](#) and the Applicant's ISH3 speaking notes [\[REP3-038\]](#). It maintained concerns regarding weight to be applied to policy considerations and use of BMV over the 40-year life of the development (not just sealed over land), suggesting that the Applicant had not avoided the use of BMV land as much as it was able to. It pointed to the revised NPPF (December 2023) in referencing the need to consider food production impacts, albeit in relation to plan-making and site allocations.
- 3.6.76. NKDC accepted that in 40 years Government policy may be entirely different, but highlighted the increasing presumption through the NPPF and November 2023 NPS that CNP schemes are likely to be repowered beyond their initial temporary operational period. It considered that the recent policies serve to blur the lines between the consideration of temporary and permanent effects, and the mitigations that need to flow from such schemes, noting that it is clearly no longer the case that such land uses would automatically revert from year 40. NKDC noted the tension between energy security and food security, and reiterated that the overall need for the Proposed Development is not disputed.
- 3.6.77. In terms of the Applicant's assessment of significance and the January 2022 IEMA guidance, NKDC put that CLLP policy S67 paragraph 11.8.3 defines a 'significant' loss of BMV as being 1ha or more. It agreed that there is no 'food production' policy, and that there is no requirement for land to be actively farmed and used for growing food. Nevertheless, it noted the consistency of local and national policy in highlighting the importance of protecting the best and most versatile agricultural land so as to safeguard opportunities for food production and the continuance of the agricultural economy.
- 3.6.78. LCC in its response to ExQ2 LUS 2.2 [\[REP4-055\]](#) was content that sufficient provisions had been made in the OEMP and LEMP, and the wording of Requirement 19, to ensure that sheep grazing is secured. In response to ExQ2 LUS 2.4, LCC stated that the Applicant's arguments made out at ISH3 did not alter its concerns regarding impact and loss of BMV land and considered CLLP policy to be consistent with the approach taken in the November 2023 NPS.
- 3.6.79. LCC further noted that a 40-year lifespan is all but equivalent to an entire lifetime and could not be regarded as 'temporary' in the common use of the word. As recognised by GLVIA3, effects of this longevity should be assessed as essentially permanent effects as that is how they are experienced in reality. Whilst LCC supported the Applicant's commitment to carrying out sheep grazing during the operational life of the development, it does not represent a like for like and although the soil resource may eventually become available again, its loss for 40 years is a significant and weighty adverse effect of the proposal. LCC consider this is particularly so when assessed in combination with other projects in Lincolnshire which are all for similar timescales and as such should be assessed on this basis.
- 3.6.80. The Applicant's response to the RPAs submissions was provided in full at Deadline 5 [\[REP5-002\]](#). The Applicant described the further amendments made to the outline OEMP [\[REP5-011\]](#) and outline SMP [\[REP5-064\]](#) with regard to comments made.

This includes confirmation that the RPA will be notified after 12 continuous months of no grazing, and to provide a plan of how agriculture would otherwise continue on the Energy Park Site. Other methods for maintaining the grass would also be included in such a notification. Raising sheep densities from 2 to 3 sheep up to 4 to 8 sheep per hectare as suggested by NKDC was not considered appropriate. The Applicant stated that the minimum number is based on the fenced area to provide a conservative approach, and cannot include a larger number of sheep without assessing the condition of the vegetation after planting. This remains as a point of disagreement between the Applicant and NKDC in the SoCG [\[REP6-006\]](#).

- 3.6.81. The Applicant also made reference to recent appeal decisions relating to solar farms less than 50MW, highlighting inconsistency in Planning Inspectors' conclusions regarding loss of BMV and weight in the planning balance. In terms of policy considerations, the Applicant disagreed with the weight to be given to Development Plan policy and it is its view that the 2024 NPS should be given significant weight [\[REP5-002\]](#).
- 3.6.82. Regarding LCC and NKDC's fundamental concerns with the use of BMV land, the parties accept that agreement is not possible on this issue. This is confirmed at paragraph 7.2 of the SoCG with the RPAs [\[REP6-006\]](#).
- 3.6.83. The SoCG with Natural England [\[REP5-048\]](#) confirms agreement that the cable route would be surveyed prior to construction, and the methodology is secured in the outline SMP. It is also noted that the 2024 NPS EN-3 removed the wording in the previous 2021 draft of NPS EN-3, which stated that ALC surveys should be extended to underground cabling and access routes. Natural England also agreed that the outline SMP adequately considers soil disturbance and storage during cable trenching activity. The Applicant highlighted examples seen of the same process in the same landscape, with the recent reinstatement of both Triton Knoll and Viking Link cable routes.

Land Use and Soils: Conclusion

- 3.6.84. The ExA notes the agreement of the methodology for the ALC surveys by the RPAs and Natural England, and considers the assessment in Chapter 16 of the ES and accompanying documentation (as updated at Deadline 2) [\[REP2-028\]](#) to be robust.
- 3.6.85. Having regard to the outline SMP [\[REP5-064\]](#) and construction methodology (as it affects soils) [\[APP-224\]](#), which are secured by Requirements 13 (CEMP) and 20 (SMP) of the Recommended DCO, the ExA is satisfied that the installation of solar panels would not result in significant adverse effects on soils and would not result in any change to the ALC grade. The effect of installing solar panels on the agricultural land would be medium term, reversible, of local extent and of negligible significance during the construction and decommissioning phases. There would be a moderate beneficial effect for the quality of the soils during operation, as a result of the cessation of intensive cropping (and use of chemical fertilisers) and replacement with grassland maintained by grazing sheep.
- 3.6.86. The ExA considers that the Applicant's arguments regarding the existing wheat crop use of land (and its potential uses other than for human food), and issues of blackgrass have little bearing on its conclusions. The ExA welcomes the iterative design process which since scoping and PEIR has excluded areas of BMV to the south and west of the Solar Park Site, and notes that they would be retained in arable use. The onsite substation and energy storage facility has been appropriately

sited in an area of lower graded land (also taking account of other factors including distance from dwellings and landscape and visual impact).

- 3.6.87. The ALC classification clearly varies across the Solar Park Site. The haphazard nature of parcels of BMV, and the presence of numerous drains crossing the Site as well as the siting of associated bridges and tracks means that keeping further areas of BMV free from development would be complex and uneconomic given that it cannot practicably be farmed separately to the lower grade land. Overall, whilst the proportion of BMV at 49% is sizeable, the ExA accepts the Applicant's case on this point.
- 3.6.88. The ExA recognises the concerns of LCC and NKDC and other IPs, who have highlighted Government statements, including the WMS, which discourage the use of higher quality agricultural land. There is a balance to be made between the policy tension which seeks to safeguard land for agricultural use (and food production in particular), and the urgent need for renewable energy. The recent classification in the 2024 NPS of solar PV development as a Critical National Priority has increased the weight to be given in favour of the land being used to generate clean energy over and above a range of other environmental factors.
- 3.6.89. The use of higher quality agricultural land is discouraged but not precluded by national or local policy. Where such land is not within a discrete parcel that could be retained in agricultural use, then any harm must be considered in that context. The proposal is for a temporary period of 40 years. While this remains a very long period, a lifetime for some, the agricultural land would not be permanently lost. The ExA is satisfied that the OEMP and the SMP, secured by Requirements 19 and 20 respectively, provide assurance that the land can be returned to equal ALC value or indeed has the potential to be improved by the temporary cessation of intensive arable use.
- 3.6.90. The ExA accepts that the amount of BMV land to be 'sealed over' and lost for the duration of the Proposed Development is more limited at less than 3ha, and the design of the fixed equipment elements of the Proposed Development has largely avoided use of BMV with the majority being located on lower value Grade 3b land.
- 3.6.91. On the majority of the Site, agricultural use would continue through sheep farming, and the ExA considers this would be robustly secured in the Recommended DCO through the OEMP (Requirement 19). The document evolved throughout the Examination to take into account representations, by NKDC in particular. Sufficiently detailed investigation of the potential of the land for sheep farming and that it could be carried out economically and in an environmentally sensitive manner has taken place. The ExA agrees with the Applicant that the sheep densities as currently set out in the draft version of the OEMP are appropriate, and could be increased once the grassland is established and monitored. There are also appropriate controls in the document should sheep farming cease for a continuous period of 12 months. In concluding this, it is accepted that such continuing agricultural use would not represent the productivity potential of the land under full stocking or cultivation levels.
- 3.6.92. The 2011 NPS EN-1 and 2024 NPS EN-1 and EN-3 are all important and relevant considerations, with the 2024 NPS being given greater weight as a result of its more up-to-date reflection of the latest Government policy. The ExA is satisfied that the Applicant has justified the siting of the Proposed Development on areas of BMV land, and identified effects and sought to minimise impacts on soil quality, taking

into account the mitigation measures proposed in accordance with paragraphs 5.10.8 and 5.10.15 of 2011 NPS EN-1, and paragraph 5.11.12 of 2024 NPS EN-1.

- 3.6.93. Furthermore, the ExA is content that appropriate and detailed consideration has been given to continuation of agriculture use and co-location with other functions (including storage) to maximise the efficiency of land use, in accordance with paragraph 2.10.32 of 2024 NPS EN-3.
- 3.6.94. Overall the Proposed Development would result in long term but not irreversible or permanent loss of agricultural land. The ExA ascribes the loss of BMV a little negative weight against making the order.

3.7. SOCIO-ECONOMICS

POLICY CONSIDERATIONS

- 3.7.1. NPS EN-1 section 5.12 deals with the socio-economic effects of major energy infrastructure and requires applications to include an assessment of relevant impacts including:
- The creation of jobs and training opportunities.
 - The provision of additional local services and improvements to local infrastructure, including the provision of educational and visitor facilities;
 - effects on tourism.
 - The impact of a changing influx of workers during the different construction, operation, and decommissioning phases of the energy infrastructure.
 - Cumulative effects.
- 3.7.2. 2024 NPS EN-1 makes reference to a list of potential impacts to consider which mirror those set out above, with an additional reference to the contribution to low carbon industries. It also refers to the need for the SoS to require the approval of an employment and skills plan.

THE APPLICATION

- 3.7.3. ES Chapter 11 [\[REP4-026\]](#), together with the Statement of Need and Planning Statement [\[REP2-060\]](#), set out the Applicant's case in relation to socio-economic effects of the Proposed Development.
- 3.7.4. Baseline conditions consider the local authority areas of Lincolnshire County, North Kesteven and Boston as well as comparator areas in the East Midlands and England as a whole. A range of topics are assessed including population growth, deprivation, employment and travel to work areas. Effects are considered at all phases in relation to employment, economic contribution, accommodation demand and business rates revenue.

Construction Effects

- 3.7.5. The Applicant estimates that there will be around 436 on-site jobs generated during the construction phase, with 109 workers on site during the peak period of construction which is expected to take up to 30 months. Jobs are expected in civil works, electricians, mechanical installation, security installation, landscaping and fencing. Indirect employment is also expected in the wider economy, bringing the total amount of jobs both on and off site to 1,016. The temporary effects are assessed to be moderate beneficial overall.

- 3.7.6. Gross value added (GVA) impact associated with the construction phase is estimated at £190.6 million over the 30-month build phase, assessed as a major beneficial effect.
- 3.7.7. The Applicant estimates, as a worst-case scenario, that between 50% and 70% of construction workers (a maximum of 327 workers) will need to be sourced from outside of the local area, and that they will require accommodation for the duration of the construction period. The accommodation capacity of both North Kesteven and Boston has been assessed in peak and off-peak times of the year with up to 2,142 bed spaces remaining, with much less occupancy available in the peak period of August. Overall bedspaces are expected to be sufficient in both local authority areas, and the significance of the temporary effect is assessed to be minor to moderate adverse.
- 3.7.8. Up to 6.5 full time equivalent jobs are expected to be created on site once the Proposed Development is operational. These relate to general operation and maintenance, as well as a shepherd for managing the sheep grazing. Security jobs are likely to be outsourced, with an estimated 9 jobs supported in the wider economy; 15.5 full time equivalent jobs in total.
- 3.7.9. The Energy Park Site is part of a landholding which forms part of a larger business where seven full time equivalent jobs are supported, and these will continue into the future with no job losses associated with the Proposed Development. The significance of the operational effect on jobs is considered by the Applicant to be negligible beneficial and not significant.
- 3.7.10. Related to the creation of employment, the economic output during the operational phase is estimated at around £815,137 per annum which is in excess of that generated by the existing employment on site. Over the 40-year operational lifespan this is estimated at around £18.1 million, assessed by the Applicant to be a minor to moderate beneficial effect in both local authority areas.
- 3.7.11. The business rates generated by the Proposed Development are estimated by the Applicant to be up to £1.3 million per annum; £29.3 million over its 40-year lifespan, which is assessed as a moderate beneficial effect.
- 3.7.12. The Applicant estimates that the decommissioning phase will generate around 218 on-site and 290 off-site jobs, a total of 508 during the 18 months period. This is estimated to lead to £57.1 million of GVA. Both of these temporary effects are assessed to be moderate beneficial.
- 3.7.13. Demand for accommodation during decommissioning is expected to be 50% of the construction phase, which amounts to 164 workers seeking accommodation as a worst-case scenario in the peak phase of decommissioning. As with the construction phase, bedspaces are expected to be sufficient and the significance of the temporary effect considered to minor to moderate adverse (Not Significant in EIA terms).
- 3.7.14. Given that most impacts are assessed as beneficial and accommodation demand would not be significant, no specific mitigation measures have been put forward by the Applicant.
- 3.7.15. An outline Supply Chain, Employment and Skills Plan (SCES) [\[REP5-062\]](#) has been submitted by the Applicant and Requirement 16 of the draft DCO secures its implementation. It aims to maximise local employment opportunities and develop

opportunities for apprenticeships. It also sets out intentions to partner with local educational institutions and job centres to develop local skills and raise awareness of solar and energy storage technologies.

- 3.7.16. A summary of effects, mitigation and residual effects is set out in Table 11.20 of ES Chapter 11 [\[REP4-026\]](#). The Applicant concludes that most effects are beneficial, largely during the construction process. Only the accommodation demand effects are assessed as being minor to moderate adverse which is not significant in EIA terms. No mitigation is required for any effects. Benefits in relation to maximising employment benefits for the local workforce are secured via the SCES [\[REP5-062\]](#), secured by Requirement 16.

THE EXAMINATION

- 3.7.17. Section 17 of **NKDC's** LIR [\[REP1-033\]](#) questioned the District-wide assessment of bed space occupancy rates and requested further information regarding how construction workers could be accommodated more locally (Sleaford area) without causing capacity issues. NKDC also questioned the detail as to whether the existing agricultural jobs would be subsumed into farming enterprises elsewhere in the District.
- 3.7.18. NKDC's Economic Development team support the initiatives in the draft Supply Chain, Employment and Skills Plan, and recommended hosting local recruitment and contracting opportunity fairs as well as the potential to enhance both visitor and resident engagement through providing an interpretation facility.
- 3.7.19. **BBC** in its LIR [\[REP1-025\]](#) recognised the positive socio-economic effects of the Proposed Development particularly in relation to employment during construction and climate change. It disagreed with the Applicant's assessment of employment benefits when operational, and benefits from business rates, given that the solar park site is not located in the BBC area. BBC considered ES Chapter 11 contains adequate information for the ExA to assess the socio-economic impacts.
- 3.7.20. In its response to the LIRs [\[REP2-078\]](#), the Applicant updated the accommodation demand assessment in the Deadline 2 version of ES Chapter 11 [\[REP2-026\]](#). An increase in bedspaces in both North Kesteven and Boston in 2022 from the original 2019 study was assessed, as detailed in Tables 11.11 to 11.16 of ES Chapter 11. The Applicant identified that there remains surplus bedspaces in each district, which would be further increased if workers are accommodated within both districts rather than limited to just one. The Applicant contends that this represents a more realistic scenario.
- 3.7.21. In terms of existing farming jobs on the Energy Park landholding, the Applicant confirmed that the landowner could accommodate the existing jobs within other farming practices. The Applicant also set out that it would consider hosting recruitment and contracting opportunity fairs, and the provision of an interpretation facility [Table 2, [REP2-078](#)]
- 3.7.22. The ExA asked at ExQ1 (SET 1.1) [\[PD-012\]](#) why an identification and assessment of the Local Impact Area or Travel to Work Area were not included in the baseline in ES Chapter 11. The Applicant confirmed it is not possible to calculate the business rates and GVA effects at these Area levels, and accommodation data was only available at a local authority level, therefore for consistency throughout the analysis impacts were considered at a local authority level.

- 3.7.23. In response to ExQ1 (SET 1.2) [\[REP2-077\]](#) the Applicant confirmed that communications with local education providers had commenced, and that these included Boston College, Grantham College, Grimsby College and the University of Lincoln.
- 3.7.24. In response to ExQ2 SE 2.1 [\[REP4-047\]](#) it was confirmed by the Applicant that a s106 Agreement was being progressed to deliver the proposed contribution to facilitate training and apprenticeship and that this is likely to be completed after the close of the Examination. The outline SCES Plan was amended [\[REP4-044\]](#) to reflect the Applicant's commitment to a fund to facilitate training and apprenticeships for the 40-year operational lifetime of the development via a s106 Agreement, which would coincide with the submission and approval of the final plan under Requirement 16 of the recommended DCO.
- 3.7.25. Section 9 of the SoCG with the RPAs [\[REP6-006\]](#) notes that whilst NKDC continue to highlight some negative impact on accommodation availability during construction, all socio-economics issues are agreed. The RPAs were satisfied with the reference in the SCES Plan relating to funding of training and apprenticeships for the operational lifetime of the development. NKDC and BBC noted that the method of securing funding should not be deferred to post-determination. Heads of Terms were signed by all RPAs prior to the close of the Examination, and are included at Appendix 1 to the Applicants Response to Rule 17 Letter [\[REP5-003\]](#).

SOCIO-ECONOMICS: CONCLUSIONS

- 3.7.26. The ExA is satisfied that the Applicant has provided sufficient evidence to support its assessment of socio-economic effects and in response to issues raised by the RPAs and in written questions.
- 3.7.27. A s106 agreement had not been submitted by the close of the Examination to secure funding of training and apprenticeships for the 40-year lifetime of the development. As such, this element of the proposed socio-economic enhancements does not weigh for or against the making of the Order.
- 3.7.28. Nonetheless, the ExA is content that the final SCES Plan secured by Requirement 16 of the Recommended DCO provides an appropriate mechanism to support local employment, and assisting in promotion of careers locally which relate to solar energy and battery storage in particular.
- 3.7.29. The ExA is satisfied that the Proposed Development would support economic development in the area and would accord with all relevant policies, including both the 2011 and 2024 NPS EN-1. The ExA affords the socio-economic matters moderate positive weight in the planning balance.

3.8. TRANSPORT, ACCESS AND PUBLIC RIGHTS OF WAY

INTRODUCTION

- 3.8.1. This Section considers the effects of the Proposed Development on transport, traffic and access matters. It also addresses matters affecting non-motorised users and Public Rights of Way (PRoW).

POLICY CONSIDERATIONS

- 3.8.2. The assessment for traffic and transport as set out in paragraph 5.13.3 of 2011 NPS EN-1 sets out that if a project is likely to have significant transport implications the

Applicant's ES should include a transport assessment using appropriate methodology. In reaching a decision the SoS should be satisfied that the Applicant has sought to mitigate the impacts on traffic and transport, as set out in paragraph 5.3.16 of 2011 NPS EN-1 including during the construction phase of the development. Paragraph 5.13.7 indicates that development consent should not be withheld if requirements can be imposed to mitigate transport impacts, and appropriately limited weight should be given to residual effects on the surrounding transport infrastructure.

- 3.8.3. Paragraph 5.14.21 of 2024 NPS EN-1 states that the SoS should only consider refusing development on highways grounds if there would be an unacceptable impact on highway safety, residual cumulative impacts on the road network would be severe, or it does not show how consideration has been given to the provision of adequate active public or shared transport access and provision.
- 3.8.4. 2024 NPS EN-3 recognises that solar PV development may affect PRow networks and applicants are encouraged to design site layouts to ensure continued recreational use both during construction and operation. Paragraph 2.10.44 encourages applicants to consider and maximise opportunities to facilitate PRow enhancements including new opportunities for the public to access sites.

THE APPLICATION

- 3.8.5. The Applicant's case regarding transport and access matters is primarily contained within ES Chapter 14 'Transport and Access' [\[PS-073\]](#). It is supported by the following documents and plans (the final versions are referenced):
- Streets and Access Plan [\[REP4-010\]](#).
 - Appendix 14.1: Summary of the personal injury collision records [\[APP-217\]](#).
 - Appendix 14.2: Automatic Traffic Count [\[PS-130\]](#).
 - ES Transport and Access Technical Note: Sensitivity of Cowbridge Road, Bicker Drove and Vicarage Drove [\[REP3-030\]](#).
 - ES Transport and Access technical note: Assessment of Triton Knoll access track, Doubletwelves Drove and Bicker Drove [\[REP5-006\]](#).
 - Outline Construction Traffic Management Plan [\[REP5-061\]](#).
- 3.8.6. Access to the Energy Park Site during both construction and operation is proposed directly from the A17 to the south of the Site. The A17 is a long-distance main road linking the A1 at Newark to Kings Lynn. Prior to construction of the main Energy Park Site access, temporary construction access would be taken via the existing access off the A17 to Elm Grange.
- 3.8.7. To the south of the A17, Cable Route Corridor access is proposed in several locations. To the north of South Forty Foot Drain access would be taken from an existing junction with the A17. To the south of the Drain the principal construction access is proposed via the existing Triton Knoll access from the A17 (Station Road) between Swineshead Bridge and Swineshead. Localised access is also proposed via Royalty Lane and Timms Drove.
- 3.8.8. The existing National Grid access to the Bicker Fen substation is via a haul road from the A52 between Bicker and Donington and then via Ing Drove, Cowbridge Road, Bicker Drove and Vicarage Drove.
- 3.8.9. The local highway network (A17, A52, and local access roads as well as the Triton Knoll and National Grid access roads), and PRow's principally Heck/15/1 (to the

north boundary of the Energy Park Site) are considered at section 14.5 of ES Chapter 14 [PS-073]. The Applicant's assessment considers the A17 within the vicinity of the Build-a-Future school at Elm Grange to be of high sensitivity significance, with the remainder of the study area of negligible sensitivity significance.

- 3.8.10. The Applicant states that personal injury collision data from the most recent five-year period indicates that there are no obvious highway safety patterns or problems within the study area [APP-217].
- 3.8.11. Baseline traffic flows are detailed from paragraph 14.5.31 of ES Chapter 14 [PS-073], including locations of Automatic Traffic Count surveys taken on the A17 in March 2022 and at Cowbridge Road, Bicker Drove and Vicarage Drove in May 2023. The link locations are shown at plates 14.2 and 14.3, with a summary of the 2022 baseline annual average daily traffic (AADT) flows summarised in Table 14.7. Table 14.8 summarises the expected heavy goods vehicle (HGV) construction traffic flows. Around 107 Abnormal Indivisible Loads would be required for transformer and crane deliveries, with no significant impacts anticipated with measures as outlined in the Construction Traffic Management Plan (CTMP) [REP5-061].
- 3.8.12. Table 14.9 of ES Chapter 14 [PS-073] summarises the AADT at the baseline, and with total development traffic for each of the seven links. During the construction phase there would be direct, short-term, temporary, negative effects with an overall negligible level of impact significance (Not Significant in EIA terms). Decommissioning effects are not yet known in detail, but are not expected to be higher than those experienced during the construction period. The buried cable and substation extension at Bicker Fen are expected to remain in place following decommissioning of the solar park, therefore effects would be focused on the Energy Park Site. Effects of decommissioning are also likely to be negligible (Not Significant).
- 3.8.13. In the operational phase, around five visits per day to the Energy Park site are expected for equipment maintenance, tending of sheep and maintenance of biodiversity areas and the community orchard. The Applicant assesses this to be of negligible significance.
- 3.8.14. Mitigation during construction is contained within Table 14.10 of ES Chapter 14 and within the outline CTMP [REP5-061]. Mitigation by design includes a left in-left out arrangement at the permanent Energy Park access and provision of contractors compounds within the site. There would be management of HGV movements, wheel washing facilities, construction working hours, use of temporary signage and other measures agreed as part of the final CTMP.
- 3.8.15. With mitigation in the CTMP, secured by Requirement 14 of the draft DCO, the Applicant concludes there would be no significant adverse effects, and as such there are no highways or transportation reasons which should prevent the Proposed Development.

Non-Motorised Users

- 3.8.16. The assessment ES Chapter 14 [PS-073] assumes a relatively low number of pedestrians within the vicinity of the Proposed Development, given the absence of continuous footway provision within the study area. Pedestrians are likely to be limited to those using the PRow Heck/15/1 in the northwest corner of the site (which is not fully continuous due to collapsed bridges across drains). Impacts relating to

pedestrian severance, delay, amenity and fear/intimidation were therefore not considered in the assessment.

- 3.8.17. The Proposed Development includes a permissive path through the Solar Park (Work No.9B) [\[REP2-043\]](#), which would provide a circular route via the community orchard and linking to the existing PRow Heck/15/1.

THE EXAMINATION

- 3.8.18. **LCC**, as Highway Authority, noted in its RR [\[RR-013\]](#) and LIR [\[REP1-028\]](#) that the assessment in Chapter 14 of the ES is appropriate and provides a reasonable estimate of HGV and car traffic associated with the development during construction, indicating that the impact would be within acceptable levels on the highway network. With agreement of the requirements relating to detailed design and the CTMP it considered traffic and transport impacts to be neutral.
- 3.8.19. **NKDC** in its LIR [\[REP1-033\]](#) concluded that there would be positive impacts associated with the provision of a new permissive footpath, designed to offer linkages to from the PRow network. It considered impacts upon the PRow itself and the traffic and transport impacts during all phases (subject to agreement of the final CTMP) as neutral. **BBC** also considered traffic and transport impacts to be neutral [\[REP1-025\]](#), deferring detailed comments on the CTMP to LCC.

Public Rights of Way

- 3.8.20. The British Horse Society set out concerns in its RR [\[RR-025\]](#) regarding increasing incidents involving equestrian users in Lincolnshire, emphasising the importance of protecting and improving safe off-road provision. It highlighted that the bridleway and byway network in the area is limited and fragmented, and that a permissive route within the site (including Heck/15/1) provides an opportunity for multi-user access rather than solely pedestrians and could connect with Sidebar Lane. Public Bridleway Swinehead 13 was also mentioned as having opportunities for improvement. The British Horse Society also referred to potential conflict with HGVs on the local highway network.
- 3.8.21. In response, the Applicant confirmed that the Proposed Development would not stop up any existing bridleways, and that it was unable to offer anything further than the permissive path which connects into the existing PRow network (which is not a bridleway). It noted that access at Royalty Lane would not be impeded due to use of directional drilling under the South Forty Foot Drain, and that Timms Drove does not connect to the bridleway Swineshead 13 (Triton Knoll is a private track). The Applicant referred to the outline CTMP as including measures to minimise effects and stated that appropriate signage and training for contractors will be given as necessary [\[REP1-022\]](#). The British Horse Society did not respond to this, nor participate any further in the Examination.
- 3.8.22. The ExA sought further details on the proposed creation of a permissive path, its maintenance and any related legal status [\[PD-012\]](#). The Applicant explained that the path would be open to the public prior to the date of the final commissioning of the phases of works incorporating the path, and would be provided and maintained in accordance with approved details for the lifetime of the development, as secured by Requirement 17 of the draft DCO. The path would, in part, reinstate public footpath Heck/15/1. As the path would not be surfaced, maintenance would involve periodic grass cutting only [\[REP2-077\]](#).

- 3.8.23. The western-most section of public footpath is outside of the main Energy Park boundary. The Applicant stated that it is progressing discussions with the landowner to reinstate the collapsed footbridge so as to give public access to the permissive path. Should this agreement not be reached then the Applicant has sought compulsory acquisition of rights in the draft DCO for a small parcel of land to enable it to reinstate the public footpath footbridge (as shown at plot 279 of the Land Plans) [\[REP4-004\]](#). The Applicant confirmed that the legal status of the path would be permissive for the lifetime of the Proposed Development. It clarified that the permissive path within the Order Limits is agreed with the landowner for the Energy Park. No legal agreement is necessary and the obligation for its delivery is provided through Requirement 17. PRow Heck/15/1 would be temporarily stopped up during construction, albeit that it is not currently usable due to the absence of footbridges [\[ExQ1 TT 1.1, REP2-077\]](#).

Traffic Growth

- 3.8.24. The ExA sought clarification regarding traffic growth factors in the baseline. The Applicant's answer to ExQ1 TT 1.2 indicates that an assessment has been undertaken to check the impacts if growth is applied. With a 1.0546 growth rate to 2028 (the end of the construction period), the percentage impact of development traffic would still be within the same thresholds assessed against Table 14.1 of the ES [\[PS-073\]](#). This would result in no change to the significance of effect for the Proposed Development on these roads even with growth applied. The Applicant stated that the low and temporary number of vehicles per day associated with the construction phase are considered to be within the daily variation of flows, not impacting on the capacity of links and junctions on the A17 [\[REP2-077\]](#).

Cowbridge Road, Bicker Drove and Vicarage Drove

- 3.8.25. Mr and Mrs Bowler in their RR [\[RR-008\]](#) raised concerns regarding volumes of traffic accessing the National Grid substation at Bicker Fen via Cowbridge Road, relating not just to the Proposed Development but a range of other projects in the area. The RR highlighted the width and condition of Cowbridge Road and its use by walkers, horseriders and cyclists, and sought the use of the Triton Knoll access road by the Applicant and for National Grid to use one of the alternative routes other than Cowbridge Road for their traffic. The Applicant pointed out [\[REP1-022\]](#) that it had considered the cumulative schemes where applicable, and that to mitigate the impact on Cowbridge Road it is proposing to use the Triton Knoll access track instead for the cable route construction. National Grid, in constructing the extension to Bicker Fen substation, would also need to operate under a CTMP and impacts would be avoided where possible. Mr and Mrs Bowler did not participate any further in the Examination.
- 3.8.26. The ExA questioned the negligible sensitivity value applied to Links Four to Six (Cowbridge Road, Bicker Drove and Vicarage Drove) given ES Chapter 14 indicates a high impact significance from HGV traffic flows (ExQ1 TT 1.6) [\[PD-012\]](#). The Applicant clarified that these particular links do not serve any trip attractors such as schools, hospitals or tourist destinations and do not have any collision clusters or road safety concerns, nor are any junctions at or over capacity. It pointed out that the roads are rural in nature and serve only a handful of dwellings and agricultural uses. There are no footways but neither are there any PRow connections nor desire lines for non-motorised users, therefore a high number of pedestrians is unlikely. The route is already used by National Grid to access its substation and this would not in itself change the assessment. Consequently the Applicant concluded

that these highways were not considered to be sensitive and as such were classified as negligible significance overall [\[REP2-077\]](#).

- 3.8.27. LCC responded to the same question ExQ1 TT 1.6, stating that these roads are subject to the national speed limit of 60mph and do not have footways, and whilst unlikely to be heavily used by pedestrians they may still be used by other non-motorised users as recreational routes. It suggested the sensitivity should be considered to instead fall within the definition of medium to high rather than negligible, which if applied the significance of effect would increase to moderate or major and therefore Significant in EIA terms. With mitigation and subject to the agreement of the CTMP LCC agreed the traffic and transport impacts at all phases would be neutral [\[REP2-092\]](#).
- 3.8.28. The matter was discussed at ISH4 [\[EV-019\]](#), where it was noted that the assessment criteria of the IEMA guidance 'Environmental Assessment of Traffic and Movement' has since been updated (July 2023), and that the new document is not prescriptive in defining roads with no footways as a high sensitivity receptor. The Applicant did not disagree with LCC's conclusions in its answer to ExQ1 TT 1.6 [\[REP2-077\]](#). The ExA requested further explanation regarding the sensitivity assessment of the aforementioned roads, with reference to the amended IEMA guidance.
- 3.8.29. The Applicant subsequently provided a Technical Note regarding the sensitivity of Cowbridge Road, Bicker Drove and Vicarage Drove [\[REP3-030\]](#). With consideration to the amended IEMA guidance, the Applicant maintained that the sensitivity of links four to six should still be considered as negligible, but revised the assessment in view of LCC's comments that the sensitivity would be high. The re-assessment confirms that the significance of effect is likely to be moderate for total vehicles, and major for HGVs. Overall effects would be Significant during construction in EIA terms, but the Applicant stressed that the impact of construction traffic on these links is skewed by the existing very low traffic flows on these roads. Subject to routing and mitigation measures proposed in the CTMP, impacts would be negligible and Not Significant. Operational effects would remain at negligible (Not Significant) and there would be no decommissioning effects given that the substation extension would remain in place as summarised at Table 5.1 of the Technical Note [\[REP3-030\]](#).
- 3.8.30. The ExA sought LCC's comments on the Technical Note (ExQ2 TT 2.1), and in response LCC welcomed the Note and its conclusions, raising no further comments on the matter [\[REP4-055\]](#).
- 3.8.31. At Deadline 5 the Applicant submitted an additional ES Technical Note: Assessment of Triton Knoll Access Track, Doubletwelves Drove and Bicker Drove [\[REP5-006\]](#). It confirms that the agreement between the Applicant and National Grid that HGVs associated with the construction of the Bicker Fen substation extension works would be routed via the Triton Knoll private access track. The Applicant and National Grid would not use the A52 access road, Ing Drove, Bicker Drove (south of Vicarage Drove) or Cowbridge Road for use by HGVs, otherwise than in the event of an emergency or as a result of matters outside of its control (such as the Triton Knoll access track being blocked or impassable).
- 3.8.32. The Applicant stressed that National Grid can utilise the Triton Knoll access track route because it sits within the proposed DCO order limits, and only for the purposes of its construction of the substation extension works in the Order (Work No. 6B and 6C), and in connection with no other works or projects. All other vehicles

accessing the existing Bicker Fen National Grid Substation for other operational or construction purposes (now and in the future), except for the Bicker Fen National Grid Substation extension works (Work No. 6B and 6C) in the proposed Order, will not benefit from the necessary access rights to utilise the Triton Knoll access track and will access the Bicker Fen National Grid Substation from the existing routes.

- 3.8.33. The Technical Note considers, in EIA terms, the transport and access effects of a potential construction traffic route for the entirety of the HGVs associated with the construction of the Bicker Fen Substation extension works (Work No. 6A, 6B and 6C) accessing the substation via the Triton Knoll access track. It is concluded that the impacts at the transport and access assessment links eight (Triton Knoll Access Track), nine (Doubletwelves Drove) and ten (Bicker Drove – north of Vicarage Drove) during the construction period would be negligible (Not Significant) [[REP5-006](#)].
- 3.8.34. Given that the effects are no worse than the scenario of HGVs using the alternative routes, the ExA did not seek any further comments on this matter.

TRANSPORT, ACCESS AND PUBLIC RIGHTS OF WAY: CONCLUSIONS

- 3.8.35. The ExA notes that, at the close of the Examination, all RPAs including LCC as Highway Authority confirmed in the SoCG [[REP6-006](#)] that there were no outstanding concerns and that the impacts on the local road network can be dealt with through submission of a final CTMP, secured by Requirement 14 of the Recommended DCO. The ExA acknowledges that whilst comments were raised in RRs regarding matters relating to traffic and public rights of way, there were no further submissions into the Examination.
- 3.8.36. The provision of a permissive path through the Energy Park Site, linking to the PRoW network and secured by Requirement 17, is welcomed. There would be no significant effects on non-motorised users. Whilst full reinstatement of footpath Heck/15/1 is outside of the Applicant's control the ExA is content that overall the proposals represent an enhancement, and other benefits would arise including public access to the site and the community orchard which would be attractive to walkers.
- 3.8.37. Taking the above matters into account, the ExA is satisfied that the traffic and transport assessment as set out in ES Chapter 14 meets the requirements of both 2011 NPS EN-1, and 2024 NPS EN-1 and EN-3. The Proposed Development would not lead to an unacceptable impact on highway safety, residual cumulative impacts on the road network would not be severe, and consideration has been given to non-motorised users. Overall, issues of transport, access and PRoWs are considered to be neutral, not weighing for or against the order.

3.9. WATER ENVIRONMENT, FLOOD RISK AND DRAINAGE

INTRODUCTION

- 3.9.1. This Section considers the effects of the Proposed Development on the water environment, including considerations of flood risk and drainage and water quality.

POLICY CONSIDERATIONS

- 3.9.2. Section 5.7 of 2011 NPS EN-1 indicates that development and flood risk must be taken into account at all stages in the planning process to avoid inappropriate development in areas at risk of flooding, and to direct development away from areas

at highest risk. In determining applications, 2011 NPS EN-1 advises that the SoS should be satisfied that the proposal also meets the requirements of the Water Framework Directive (WFD). In addition, it notes that where a project is likely to have effects on the water environment, applicants should undertake an assessment of the status of, and the impacts of the proposed project on, water quality, water resources and the physical characteristics of the water environment as part of their ES.

- 3.9.3. 2024 NPS EN-1 sets out flood risk considerations at section 5.8 of the document. Further detail is given on application of the sequential test and the sustainable drainage hierarchy. The SoS should be satisfied that the application is supported by an appropriate Flood Risk Assessment (FRA), that the sequential test has been properly applied and that sustainable drainage systems are fully considered together with their operation and maintenance for the lifetime of the development. In flood risk areas the project should be designed and constructed to remain safe and operational during its lifetime without increasing flood risk elsewhere.
- 3.9.4. Water quality considerations are set out at section 5.16 of 2024 NPS EN-1. It recognises that all phases of development can lead to increased demand for water, involve discharges to water, and cause ecological effects to the water environment. Paragraph 5.16.12 states that the SoS will need to give impacts on the water environment more weight where a project would have an adverse effect on the achievement of the environmental objectives established under the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017. The SoS must also consider duties under other legislation including duties under the Environment Act 2021 in relation to environmental targets and have regard to the policies set out in the Government's Environmental Improvement Plan 2023. Proposals should also have regard to River Basin Management Plans, and other plans such as Water Resources Management Plans.
- 3.9.5. There are no considerations specifically relating to solar PV development regarding the water environment within 2024 NPS EN-3.
- 3.9.6. The NPPF and Development Plan policies contain similar considerations to 2024 NPS EN-1 in relation to the sequential test in areas of high flood risk and sustainable drainage. The Central Lincolnshire Strategic Flood Risk Assessment (Levels 1 and 2) (2015 and 2022) and the Southeast Lincolnshire Strategic Flood Risk Assessment (2017), and the Joint Lincolnshire Local Flood Risk and Water Management Strategy (2019) are also of relevance.

THE APPLICATION

- 3.9.7. The Applicant's case is primarily contained within ES Chapter 9 'Hydrology, Hydrogeology, Flood Risk and Drainage' [\[PS-065\]](#). It is supported by the following appendices and figures:
- Appendix 9.1: Flood Risk Assessment including drainage strategy [\[AS-021\]](#) and [\[AS-023\]](#).
 - Appendix 9.2: Ground Investigation Report [\[APP-205\]](#).
 - Figure 9.1: Hydrology and Drainage [\[PS-111\]](#).
 - Figure 9.2: Superficial Geology [\[PS-112\]](#).
 - Figure 9.3: Bedrock Geology [\[PS-113\]](#).
- 3.9.8. The Proposed Development is situated within the Lincolnshire Fens, a large area of flat marshland. The South Forty Foot Drain, a main river, is located within the Order Limits where part of the route of the Cable Corridor is proposed. The Energy Park

Site is bound along its northern boundary by the Head Dike/ Skerth Drain which is also classed as a main river. The Energy Park Site is also bisected by a number of drains and ditches, some of which are operated and maintained by the Black Sluice IDB.

- 3.9.9. The Environment Agency flood map indicates that the majority of the Energy Park Site lies within Flood Zone (FZ) 3a (high probability) for fluvial flooding, and it benefits from flood defences offering a 1 in 10 year standard of protection. The Cable Corridor Site and Bicker Fen substation are also within FZ3a. The flood zones are illustrated in Figure 6.1 of the FRA [\[AS-021\]](#) and reproduced in Figure 6 below.

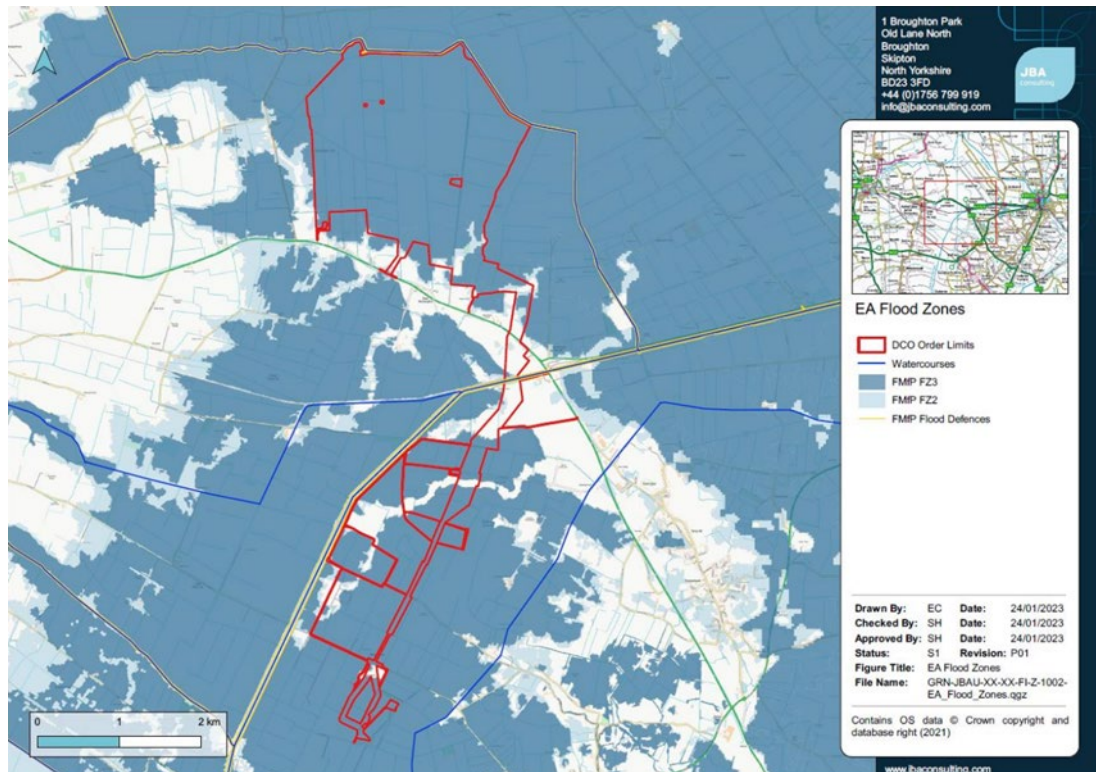


Figure 6: Environment Agency Flood Map for Planning Flood Zones [\[AS-021\]](#)

- 3.9.10. The Applicant explains that the majority of the order limits are at very low risk of surface water flooding as illustrated at Figure 6.3 of the FRA, and may be affected by flooding as a result of a breach of the nearest reservoir 8km to the west of the Energy Park Site as shown at Figure 6.4 of the FRA [\[AS-021\]](#).
- 3.9.11. The FRA [\[AS-021\]](#) and [\[AS-023\]](#) provides an overview of flood risk at the Energy Park Site, focusing on residual flood risk arising from failure/breaching of the flood defence embankments associated with the watercourse forming the northern boundary of the Energy Park. The management of surface water run-off arising from the Proposed Development is also addressed, together with details of the Sequential Test and Exception Test as set out in Appendix D of the FRA.
- 3.9.12. The FRA sets out at paragraph 6.4.3 that the Environment Agency has confirmed that it does not have any records of flooding affecting the area of the Proposed Development. The Applicant confirms in the FRA that the sequential test was applied following consultation with the RPAs. It builds upon the assessment of 13 alternative sites set out in Chapter 3 of the ES [\[PS-053\]](#) and as discussed in Section

3.2 of this Recommendation, which concludes overall that there are no reasonably available alternative sites appropriate for the Proposed Development located in areas with a lower risk of flooding. The exception test seeks to demonstrate that the Proposed Development would be safe for its lifetime.

- 3.9.13. ES Chapter 9 (section 9.6) [\[PS-065\]](#) sets out that construction activities have the potential to impact upon the surface water regime and increase surface water run-off. There is also the potential for the construction phase to give rise to contamination of surface water arising from construction plant spillages and the mobilisation of silts and contaminants during soil stripping and earthworks operations, potentially leading to increased silt loading in watercourses.
- 3.9.14. Furthermore, the Applicant explains in ES Chapter 9 that construction works in close proximity to flood defences have the potential to affect the stability of embankments. Floodplain storage and routing processes may also be affected, such that there is potential to increase flood risk locally and downstream. In the operational phase, there is a potential to increase surface water run-off to adjacent drains and potentially increase flood risk elsewhere. There is also potential for contamination of surface water resulting from flushing of silts and hydrocarbons from areas of hardstanding.
- 3.9.15. The assessment at section 9.6 of ES Chapter 9 [\[PS-065\]](#) finds these likely effects during both construction and operation to be Not Significant on account of the mitigation by design. Embedded mitigation measures include appropriate separation distances from watercourses and drains, the elevation of energy generation infrastructure above the breach flood level, and flood resilient construction of equipment as set out in the FRA [\[AS-021\]](#) and [\[AS-023\]](#).
- 3.9.16. Additional mitigation during the construction phase would be delivered through the CEMP [\[REP5-054\]](#), secured by Requirement 13 of the draft DCO. This sets out various measures to control impacts on watercourses, flood defences, surface water drainage, water quality and flood plain storage and flows. Requirement 11 requires agreement of a surface water management strategy by LCC, the Black Sluice IDB and Anglian Water, and this would include details of pollution control.
- 3.9.17. In terms of effects on groundwater, paragraphs 9.6.9 to 9.6.16 of the assessment sets out that potential construction and operational phase effects upon groundwater aquifers were found to be Not Significant, principally on account of the low permeability of the ground and the unproductive nature of the bedrock aquifers.
- 3.9.18. ES Chapter 9 [\[PS-065\]](#) concludes that potential effects arising from construction of the Proposed Development are likely to be localised and temporary and controlled by embedded mitigation measures. The Applicant states that the residual effects are therefore Negligible and Not Significant. With the implementation of embedded mitigation measures, the residual effects associated with operation of the Energy Park are Negligible and Not Significant.
- 3.9.19. ES Chapter 9 (paragraphs 9.6.29 to 9.6.49) [\[PS-065\]](#) sets out that impacts upon hydrology, hydrogeology, flood risk and drainage from the cable route corridor and works to the National Grid Bicker Fen Substation at all phases would be negligible and Not Significant.

THE EXAMINATION

Water Supply

- 3.9.20. **Anglian Water** is the statutory undertaker for water and sewerage services in the area. Anglian Water's representations [\[RR-012\]](#) and [\[AS-032\]](#) primarily relate to protective provisions for its infrastructure, which is dealt with in Chapter 7 of this Recommendation. It also noted that no connections to Anglian Water's services for potable water, surface water and foul water are sought for the Proposed Development, and the Applicant confirmed this in its response [\[REP1-022\]](#).
- 3.9.21. The SoCG [\[REP1-009\]](#), signed at Deadline 1, sets out that the Proposed Development would not impact Anglian Water's assets as surface water would be discharged to watercourses and not the sewage network. Welfare facilities would be containerised and could make use of rainwater harvesting. Water is currently available on site for farming activities, and this is considered to be sufficient for any construction and operational needs. In the event that the detailed design of the ESS requires water on site, the Applicant expects a fire hydrant could be extended into the site from the A17 and emergency abstractions could also take place in the nearby drains should water be available. Tanks are provided in the layout to ensure a worst-case assessment, should detailed design prior to construction require them.
- 3.9.22. The ExA sought clarification of Anglian Water's reference to the draft Water Resources Management Plan at ExQ1 (WW 1.2). Anglian Water responded that the Plan remains in draft form until its approval by regulators around December 2024. Its relevance to the Proposed Development is that Anglian Water is now having to decline requests from new business development in order to ensure sufficient supplies are available for current and future domestic customers. As the project minimises the need for potable water supplies through including rainwater harvesting in the design to supply non potable uses during construction and operation, Anglian Water confirmed that there is no need to include a requirement for a Water Resources Assessment in the draft DCO [\[REP2-085\]](#).
- 3.9.23. The SoCG with the **Environment Agency** notes that should water be required to be stored on-site for emergency use, there are no details provided of where this water is to be sourced. It pointed out that East Anglia is an area of serious water stress and that if the Applicant wants to abstract more than 20m³ per day, in order to fill this storage from the adjacent watercourses, then they would need an abstraction licence. The Environment Agency stated that whilst there is no guarantee that an application for a licence to abstract water would be successful, it was pleased to see acknowledgement of the need to apply to the Agency for such a licence in the 'Consents and Licences Required Under Other Legislation' document [\[REP5-035\]](#).

Flood Risk

- 3.9.24. **NKDC** confirmed in its LIR [\[REP1-033\]](#) that it had agreed the Applicant's sequential assessment search area and noted that the proposals had been subject to extensive Pre-application discussion including with the Environment Agency in relation to flood defence breach modelling. As such, NKDC agreed that impacts would be neutral and that, taken in isolation, the other sustainability criteria noted in the exception test would outweigh flood risk considerations.
- 3.9.25. Section 7.4 of **LCC's** LIR [\[REP1-028\]](#) (as Lead Local Flood Authority) agreed with the principles of the FRA and that the draft DCO would include appropriate

requirements such that impacts on issues of flood risk and drainage would be neutral.

- 3.9.26. The Environment Agency noted in its RR [\[RR-009\]](#) that the assessment of risk from a fluvial perspective is appropriate to the scale, nature and location of the development, but requested clarification in respect of the setting of floor levels for the control rooms. In response the Applicant provided further details within the Outline Design Principles document at Deadline 2 [\[REP2-051\]](#), and updated Figures 4.21 [\[REP2-044\]](#) and 4.22 [\[REP2-045\]](#) to indicate the finished floor levels of the control rooms to be at or above 2.25m AOD.
- 3.9.27. The Environment Agency confirmed the matter had subsequently been resolved [\[REP2-103\]](#) and the SoCG [\[REP5-040\]](#) confirms that flood risk mitigation is secured at Requirement 6(2).

Watercourse Crossings

- 3.9.28. The ExA asked a question at ExQ1 (WE 1.4) seeking clarification of the watercourse crossing methods. The Applicant responded [\[REP2-077\]](#) that the Protective Provisions at Part 7 of Schedule 13 of the draft DCO (for the benefit of the Drainage Authorities) provides for submission of further information to the relevant drainage authority and its approval prior to commencement of works. This would include drawings, specifications, assessments, and method statements about the proposed crossing works. The Applicant also clarified the measures for controlling and minimising silt loading of smaller field ditches in its answer to ExQ1 WE 1.4, and referred to its updated outline CEMP [\[REP2-071\]](#) in securing details of monitoring. Both the Black Sluice IDB and the Environment Agency had agreed Protective Provisions by the close of the Examination.

Other Matters

- 3.9.29. The SoCG [\[REP5-040\]](#) confirms the Environment Agency is satisfied that the development poses a negligible risk to controlled waters and agrees that further intrusive investigation is not required at this time, in so far as it relates to the risk to controlled waters. The Environment Agency support the approach to implement a watching brief during construction work, to ensure that the risk from any unforeseen contamination can be appropriately managed.
- 3.9.30. In relation to the WFD, the SoCG with the Environment Agency [\[REP5-040\]](#) confirms its satisfaction that subject to the identified mitigation in the outline CEMP being fully implemented together with the relevant water abstraction licences and discharge permits being obtained, there should be no deterioration on waterbody status.

Water Environment, Flood Risk and Drainage: Conclusion

- 3.9.31. Taking the above matters into account, the ExA is content that an appropriate FRA, meeting the requirements of 2011 and 2024 NPS EN-1, has been carried out and includes a detailed sequential test and exceptions test as agreed by the RPAs. The ExAs conclusions on the tests are set out in Chapter 5 of this Recommendation.
- 3.9.32. The ExA is satisfied that no further mitigation in respect of flooding, drainage or effects on water quality and resources is necessary beyond that set out in Requirements 6 (detailed design), 11 (surface and foul water drainage), and 13 (CEMP) of the Recommended DCO. There are no outstanding concerns from the

Environment Agency subject to the agreement of these requirements and an abstraction licence (if necessary). In this respect the Proposed Development accords with the requirements of the WFD Regulations.

- 3.9.33. The ExA therefore concludes that the requirements in respect of water quality and flood risk are met, and considers that the effects would not weigh for or against the making of the Order.

3.10. OTHER PLANNING ISSUES

- 3.10.1. This section of the Recommendation considers various remaining policy topics and important and relevant considerations that need to be taken into account in the planning balance. They are matters addressed in the NPSs or otherwise cover legislative and policy considerations drawn to the attention of the ExA.

AIR QUALITY

- 3.10.2. Section 5.2 of 2011 NPS EN-1 considers generic impacts of air quality and emissions, recognising that all phases can involve emissions to air which could lead to adverse impacts on health, on protected species and habitats, or on the wider countryside. It sets out that CO₂ emissions are not reasons to prohibit the consenting of projects which use decarbonisation technologies and that individual applications do not need to be assessed in terms of carbon emissions against carbon budgets. It acknowledges that many activities involving air emissions are subject to pollution control, and in all cases account must be taken of relevant statutory air quality limits. Mitigation measures should be considered for both operational and construction emissions, which may be assisted by a construction management plan.
- 3.10.3. 2024 NPS EN-1 section 5.2 also refers to duties under other legislation, including the Environment Act 2021 in relation to environmental targets, and requires air quality considerations to be given substantial weight where a project is proposed near a sensitive receptor. Air quality is not a specific consideration within section 2.10 of 2024 NPS EN-3 relating to solar PV generation.
- 3.10.4. The Applicant's case is contained within ES Chapter 15 [\[PS-075\]](#). It focuses on potential effects at existing sensitive receptors during the construction phase. The site is not within or near to an Air Quality Management Area, and monitoring indicates that pollutant concentrations have been below the Air Quality Objectives for the past five years of data. Construction traffic flows are not considered by the Applicant to be significant. Dust and other emissions created during the construction phase are proposed to be controlled via the outline CEMP. Table 15.6 of ES Chapter 15 summarises all effects as negligible during all phases both before and after mitigation.

Conclusions

- 3.10.5. The ExA notes that no air quality issues were raised by IPs during the Examination.
- 3.10.6. Construction and decommissioning activities would entail activities that give rise to increased dust and vehicular emissions, particularly around construction compounds and access routes. The location of these, together with the mitigation measures contained within the CEMP as secured by Requirement 13 and would minimise effects to sensitive receptors. The Applicant's assessment and the overall air quality effects are acceptable and would comply with the relevant policy tests. In conclusion, the impacts would not weigh for or against the making of the Order.

GLINT AND GLARE

- 3.10.7. The 2011 NPS does not contain any specific considerations relating to glint and glare. 2024 NPS EN-3 section 2.10 includes glint and glare as a key consideration in solar PV proposals. It recognises that solar panels need to be reflective in order to absorb irradiation, but that the impact of glint and glare on nearby homes, motorists, public rights of way, and aviation infrastructure should be assessed. Paragraph 2.10.159 notes that there is no evidence that glint and glare from solar farms results in significant impairment on aircraft safety.
- 3.10.8. The Applicants case is set out in ES Chapter 17 [\[APP-070\]](#) which assesses the possible effects on various receptors during operation of the solar park via a computer model. Such effects will vary during the course of the year. Mitigation through design has taken place through the selection of fixed panels. Additional mitigation takes the form of hedgerow planting screening.
- 3.10.9. The effects on each type of receptor (rail, roads, aviation, and dwellings) are summarised in Table 17.8 of ES Chapter 17 [\[APP-070\]](#). The Applicant concludes that residual effects for all receptors during all phases are negligible.

Conclusions

- 3.10.10. The ExA notes that no comments were submitted by IPs in relation to glint and glare effects. The embedded design (fixed south facing panels) assists in mitigation of any negative effects and additional mitigation in the form of landscaping, secured by Requirement 8 (the LEMP) would further assist in reducing effects on the identified sensitive receptors. Taking this into account, the ExA therefore concludes that glint and glare impacts would not weigh for or against the making of the Order.

MAJOR ACCIDENTS AND DISASTERS

- 3.10.11. Section 4.11 of 2011 NPS EN-1 relates to health and safety legislation and the Control of Major Accident Hazards Regulations 1999 and includes reference to potential generic mitigation measures for environmental impacts for aspects which must be addressed by the ES.
- 3.10.12. 2024 NPS EN-1, EN-3 and EN-5 are silent regarding consideration of major accidents and disasters and other safety issues which may arise specifically from solar PV development and associated energy storage systems as well as electricity networks infrastructure.
- 3.10.13. The PPG 'Renewable and low carbon energy' provides specific guidance regarding potential risks arising from battery ESS, including engagement with the relevant local fire and rescue service so that its views can be taken into account regarding potential mitigations which could be put in place in the event of an incident (Paragraph 035 Reference ID: 5-035-20230814).
- 3.10.14. The Applicant's case in relation to major accidents and disasters is contained within section 18.3 of ES Chapter 18 'Miscellaneous Issues' [\[PS-077\]](#). Here, matters of health and safety at work, fire, rail accidents, utilities failure and criminal damage were assessed.

Health and Safety

- 3.10.15. The construction of the Proposed Development would be managed in accordance with the Health and Safety at Work Act 1974 and all other relevant Regulations. The

appointed contractor(s) would be required to provide a plan and risk assessments for construction and decommissioning as detailed in the outline CEMP [\[REP5-054\]](#) and outline Decommissioning and Restoration Plan (DRP) [\[REP5-058\]](#). This would include relevant Regulations for AIS and GIS switchgear as part of the substation works. Safety of workers once operational would be subject to National Grid Electricity Safety Rules and National Safety Instructions. Traffic during the operational phase would be negligible.

Unexploded Ordnance (UXO)

- 3.10.16. The UXO Assessment at ES Appendix 18.1 identified the Energy Park and cable route corridor as low risk, apart from a central section of the corridor as medium risk where a WWII Home Guard Auxiliary Base was located, and an expended shotgun cartridge was noted during trial trenching in 2022. An UXO Risk Management Plan and awareness briefing would be provided to construction workers. In the medium risk areas a UXO specialist would monitor intrusive works.

Fire Risk

- 3.10.17. This relates largely to the ESS. An outline ESS Management Plan (ESSMP) [\[REP4-042\]](#) has been provided and would be secured by Requirement 7, in consultation with Lincolnshire Fire and Rescue Service. The outline ESSMP considers the risks associated with fires from ESS equipment and minimises the impact of an incident during all phases.
- 3.10.18. The design includes tanks for containment of water or other fire suppressant, as well as a lagoon, if required, to capture run-off during a fire incident. The Applicant explains that provision for 1,500m³ of water is made within the site layout at the Energy Storage Compound to accommodate the water supply requirements. A Site Emergency Response Plan would also be produced for the Energy Storage Compound area and also secured through the ESSMP. Fire detection and suppression systems would also be installed within battery containers, with adequate separation and firewalls built into the design. Following commissioning of the ESS, the Applicant confirms that the whole installation would be monitored at a central hub.
- 3.10.19. LCC raised the issue of costs for monitoring the ESS at ISH4, and indicated a preference for Protective Provisions to secure this. The Applicant responded that although Protective Provisions may not be the appropriate mechanism, it was not opposed to the principle of providing a contribution [\[REP3-039\]](#). An update was subsequently made to the outline ESSMP at Deadline 3 [\[REP3-013\]](#).
- 3.10.20. The ExA questioned the calculation of the contributions and the mechanism for securing the funding (ExQ2 GEN 2.8), and it was initially considered that this might form part of a s106 [\[REP4-047\]](#). However following similar discussions as part of other solar DCO Examinations in Lincolnshire and precedent contained in the Longfield Solar Farm Order 2023, the Applicant subsequently agreed to include Protective Provisions for Lincolnshire Fire and Rescue at Part 9 of Schedule 13 of the draft DCO.

Rail Accidents

- 3.10.21. The cable route corridor crosses the Grantham to Skegness railway line. Trenchless techniques are proposed for crossing deep below the railway so not interfering with rail operations and safety. The construction and decommissioning would be

managed to the requirements of Network Rail, and will be subject to risk assessments as contained in the CEMP [REP5-054] and DRP [REP5-058]. Furthermore, Protective Provisions are contained at Part 8 of Schedule 13 of the Recommended DCO.

Utilities Failure

- 3.10.22. The potential exists for utilities to be affected during the construction of the Proposed Development through damage caused as a result of excavation and engineering operations. Without any precautionary measures to avoid damage to utilities, this could lead to a short-term adverse effect. Precautionary measures form part of the embedded mitigation, including locating the Proposed Development outside of protection zones including the Feeder 7 East Heckington to Gosberton high-pressure gas pipeline. Ground penetrating radar before excavation would identify any unknown utilities. Risk assessments are required by the outline CEMP [REP5-054] and DRP [REP5-058], both secured by requirements. Furthermore, Protective Provisions are included in the Recommended DCO for numerous statutory undertakers.

Criminal Damage

- 3.10.23. The design would include safety measures to protect the Energy Park Site from criminal damage, including fencing, CCTV cameras and lighting in critical areas. The security fencing will be the last infrastructure to be removed during the decommissioning phase to ensure the Energy Park Site is secure. Therefore, the Proposed Development is expected to have no significant effect on the environment as a result of criminal damage during construction and decommissioning.
- 3.10.24. The site would be manned by permanent operations staff during the day, allowing fast response to an intruder security alert.

Conclusions

- 3.10.25. Taking into account the good industry practice and additional mitigation measures discussed above, the ExA considers the risk of accidents and disaster events at the Proposed Development to be low. Such matters do not weigh for or against the Order being made.

NOISE AND VIBRATION

- 3.10.26. 2011 NPS EN-1 section 5.11 sets out considerations in relation to noise and vibration. It notes that excessive noise can result in adverse effects on a range of receptors including impacts on the quality of human life, health, and enjoyment of areas of value as well as on wildlife and biodiversity. Projects should demonstrate reduction of noise transmission through good design, and adverse impacts should be mitigated and minimised.
- 3.10.27. 2024 NPS EN-1 section 5.12 includes similar advice, and includes specifications for noise assessment and indicates the type of mitigation measures which may form part of the project application. 2024 NPS EN-3 section 2.10 recognises that traffic movements related to operational solar farms are generally very light, therefore the SoS is unlikely to give any more than limited weight to traffic and transport noise and vibration impacts.

- 3.10.28. The Applicant's case is contained within ES Chapter 12 [\[PS-069\]](#) and the supporting figures and appendices: Figure 12.1 Noise Survey Locations, Figure 12.2 Noise Assessment Locations, Appendix 12.1 Background Noise Survey, and Appendix 12.2 Noise Modelling [\[APP-216\]](#). Together they set out baseline conditions, take into account relevant BS guidance, identify the study area, significance criteria and key noise sensitive receptors and assess the likely significance of effect.
- 3.10.29. In order to avoid, reduce, prevent or offset potential noise and vibration effects during construction and decommissioning the Applicant has included embedded mitigation in the design of the Proposed Development. This includes maximising the distance between noise-generating equipment (such as solar inverters) and noise sensitive receptors. The main source of noise identified and associated with potential significant noise effects in the PEIR was the energy storage area and onsite substation. Following the consultation process, this area of equipment was moved to a more central part of the Energy Park Site. Section 12.6 of ES Chapter 12 indicates that this has substantially reduced the noise impacts predicted, with no significant operational noise effects identified even in the absence of mitigation.
- 3.10.30. In terms of the grid connection route, ES Chapter 12 [\[PS-069\]](#) also explains that this has also been designed to maximise the distance of HDD crossing points, in particular from noise-sensitive properties. Further mitigation is provided for by Requirements 13 (CEMP), 14 (CTMP) and 18 (DRP) for the construction and decommissioning phases.
- 3.10.31. Mitigation for directional drilling works would be determined at a later stage once the final locations of such works have been set. Drilling locations would not be closer than 300m from properties located along the A17 and at least 500m from other properties. The Applicant confirms that any such works likely to result in significant noise effects would be carried out where possible during the daytime, with minimised duration and following notification to those local residents potentially affected. Alternative techniques, temporary noise barriers and monitoring and interrupting the noisiest works would be secured within the CEMP. Such mitigation is predicted in the ES to reduce the potential effects of most construction activities to a short term, temporary minor adverse effect (not significant).
- 3.10.32. Requirement 15 requires an operational noise assessment for the solar PV, ESS and onsite substation to ensure that noise rating levels as set out in Table 12.8 of ES Chapter 12 and any measures to reduce noise are complied with. Residual effects of operational noise are assessed as minor or negligible adverse (Not Significant).
- 3.10.33. Noise during construction was raised as an issue in RRs [\[RR-008, RR-022\]](#). No concerns were raised by the RPAs regarding noise and vibration nor the methodology and assessment contained in ES Chapter 12 and accompanying appendices. NKDC in its LIR [\[REP1-033\]](#) considered construction and decommissioning impacts on certain residential receptors (Elm Grange/Build-a-Future school and Rectory Cottages) would be negative albeit temporary.
- 3.10.34. Paragraph 12.3.2 of ES Chapter 12 [\[PS-069\]](#) notes that Build-A-Future school accommodates young people with Autistic Spectrum Disorder (ASD) or learning difficulties, and recognises that sudden noise events of sufficient amplitude and character has the potential to disturb some people with ASD. It goes on to assume that the design of the school will account for management of the existing baseline environment for ASD pupils sensitive to noise. Table 12.4 sets out the Applicant's response to NKDC on this matter, stating that the school was contacted and no

concerns were raised with regard to noise effects on pupils. Paragraphs 12.6.6 and 12.6.7 consider effects of noise and vibration on the school and recommends that the school is informed at the start of piling works.

- 3.10.35. The ExA asked the Applicant about effects on the Build-a-Future school (ExQ1 NV 1.2). In its response [\[REP2-077\]](#), the Applicant noted that the school is already exposed to relatively elevated baseline noise levels from road traffic on the A17 as well as from farm machinery. It expected the school to provide some level of noise insulation and take steps to manage any sensitivity of some of the pupils to sudden noises, but notwithstanding this the noise assessment was undertaken on a precautionary basis that did not rely on such measures. The Applicant confirmed that the outline CEMP [\[PS-146\]](#) includes a provision to specifically alert the school of certain works (paragraph 5.3), and consultation on the details to be included in the final CEMP of this would be carried out by the appointed contractor in advance. This is also set out in paragraph 1.2.9 of Appendix G of the outline CEMP (outline Noise Management Plan), secured through Requirement 13.
- 3.10.36. Furthermore, consideration of relevant protected groups was undertaken in the Equality Impact Assessment as subsequently submitted in response to ExQ GEN 1.13 [\[REP3-031\]](#). No concerns were raised by the RPAs or any other IPs regarding the Equality Impact Assessment and the Applicants approach to the Public Sector Equality Duty (PSED) in this regard.

Conclusions

- 3.10.37. The ExA accepts that noise and vibration would arise as a result of the Proposed Development, primarily during the construction phase. The CEMP and CTMP secured by Requirements 13 and 14 respectively would contain good practice construction practice methods, and there is provision for pre-construction local consultation and notification including with the Build-a-Future school. PSED considerations are outlined in Chapter 6 of this Recommendation. Impacts from the operational phase have been satisfactorily minimised through design, which would be further refined through Requirement 6 to be agreed with the RPAs.
- 3.10.38. The ExA is satisfied that the Applicant's assessment of noise and vibration impacts meets the requirements of 2011 NPS EN-1 and no conflict has been identified with any of the 2024 NPS. Nonetheless, disturbance during construction and decommissioning would be inevitable albeit short-term and temporary. Accordingly, it is concluded that noise and vibration effects carry a little weight against the making of the Order.

WASTE

- 3.10.39. Para 5.14.2 of 2011 NPS EN-1 makes reference to the waste hierarchy and paragraph 5.14.6 requires that the applicant should prepare a Site Waste Management Plan. The decision-maker should consider whether the applicant has proposed an effective system for managing hazardous and non-hazardous waste (para 5.14.7).
- 3.10.40. Section 5.15 of 2024 NPS EN-1 advocates sustainable waste management implemented through the waste hierarchy. The SoS should have regard to any potential impacts on the achievement of resource efficiency and waste reduction targets set under the Environment Act 2021, and wider goals set out in the Environmental Improvement Plan 2023.

- 3.10.41. Section 18.4 of ES Chapter 18 (Miscellaneous Issues) [\[PS-077\]](#) considers waste matters. It sets out how the waste hierarchy would be adopted and secured via the CEMP and DRP for the construction and decommissioning phases.
- 3.10.42. The Applicant clarified in its answer to ExQ1 GEN 1.7 the methodology used in its assessment, including the use of the 2020 IEMA guidance [\[REP2-077\]](#).
- 3.10.43. The ExA asked at ExQ1 (GEN 1.6) for the Applicant to clarify the calculations made in concluding that significant quantities of waste are not anticipated during construction, and to provide further detail on anticipated volumes of waste and effects on the capacity of waste management facilities, particularly when considering other waste arising in the area. Estimates were provided, with the final Site Waste and Materials Management Plan (Appendix K of the outline CEMP) [\[REP5-054\]](#) to provide further detail at a later stage. The Applicant has had regard to the Lincolnshire Minerals and Waste Local Plan (2016) and the Lincolnshire Waste Needs Assessment 2021 which predicts sufficient capacity to meet future predicted waste streams of the type expected [\[REP2-077\]](#).
- 3.10.44. Substantially less waste is expected during the construction phase. Should equipment fail and need replacement, it is anticipated that the part would be returned to the manufacturer if still under warranty for refurbishment if possible or recycled if facilities allow. There are also legal obligations under the Waste Electrical and Electronic Equipment Directive 2012. The Applicant also provided details of solar panel recycling services which are expected to increase over time [\[REP2-077\]](#).
- 3.10.45. The Environment Agency welcomed additional text added to Appendix K of the outline CEMP (Paragraph 1.6.18, outline Site Waste and Materials Management Plan) at Deadline 2 [\[REP2-053\]](#) which referred to a management and reporting system to minimise and track the fate of construction waste, and ensuring that waste contractors are suitably responsible for ensuring waste goes to legitimate destinations [\[REP2-103\]](#).
- 3.10.46. No further comments were received from any IPs about waste management matters. The SoCG with the RPAs confirms that LCC (as waste authority) has no comments [\[REP6-006\]](#).

Conclusions

- 3.10.47. The ExA has no reason to disagree with the Applicant's assessment and considers that the Site Waste and Materials Management Plan (forming Appendix K of the CEMP secured by Requirement 13) would adequately secure waste management objectives including the application of waste hierarchy principles. Consequently, the ExA concludes that the Proposed Development would accord with NPS EN-1 in regard to waste management.

3.11. CUMULATIVE EFFECTS

POLICY CONSIDERATIONS

- 3.11.1. The EIA Regulations at Schedule 4 require that an ES should include *"a description of the likely significant effects on the environment resulting from, inter alia, (e) the cumulation of effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources"*.

- 3.11.2. 2011 NPS EN-1 requires the ES to provide information on how the effects of the proposed development would combine and interact with the effects of other development (including projects for which consent has been sought or granted and projects already in existence). The accumulation of, and interrelationship between, effects might affect the environment, economy or community as a whole should be considered, even though they may be acceptable when considered on an individual basis with mitigation measures in place (paragraphs 4.2.5 to 4.2.6).
- 3.11.3. 2024 NPS EN-1, which is an important and relevant consideration for the purposes of this Recommendation, retains this emphasis on taking account of any cumulative adverse impacts arising from proposals.

THE APPLICATION

- 3.11.4. The Applicant's assessment of cumulative effects arising from the Proposed Development is presented for each topic within the individual ES chapters. Section 2.13 of ES Chapter 2 [\[PS-051\]](#) sets out the methodology including the four-stage process of the assessment including identifying a long list and short list of other developments and a summary of the consultation carried out. The long and short lists were initially contained within ES Appendix 2.3 [\[APP-175\]](#), and illustrated at Figures 2.2a and b [\[PS-084\]](#) and [\[PS-085\]](#).
- 3.11.5. Since submission of the Application a number of the identified projects had progressed into Examination, and new applications and projects added or removed. It became clear at an early stage that given the number of other projects in the Lincolnshire region, in particular other solar PV proposals, that changes would need to be made to the cumulative assessment and it would not be practical to make changes to each individual ES Chapter. At ISH2 [\[EV-009\]](#) and in ExQ1 GEN 1.9 the ExA requested a suitable update to the assessment [\[PD-012\]](#).
- 3.11.6. At Deadline 2, the information was instead collated in an ES Technical Note, 'Updated Information on Cumulative Projects' [\[REP2-050\]](#). The lists are at Appendix 1, and the maps at Appendix 2 of the Note. The Cumulative Traffic Assessment is at Appendix 3. The final version of the Note was submitted at Deadline 5 [\[REP5-004\]](#).
- 3.11.7. An Interrelationship Report with other NSIPs was requested by the ExA by a Procedural Decision in the Rule 6 letter [\[PD-009\]](#), with the first version being submitted at Deadline 1 [\[REP1-021\]](#). The ExA sought to ensure that this was consistent with the cumulative assessment.
- 3.11.8. The cumulative long list at Table 1.2 of Appendix 1 of the final ES Technical Note [\[REP5-004\]](#) lists a total of 43 sites at various stages. Of these, five DCOs are listed which at the time of the close of the Examination in February 2024 were at the following stage:
- Boston Alternative Energy Facility 2023 – Post-decision.
 - Mallard Pass Solar Farm - completed Examination and in Recommendation.
 - Gate Burton Energy Park - completed Examination and in Recommendation.
 - Cottam Solar Project – Examination.
 - West Burton Solar Project – Examination.
- 3.11.9. A further nine DCOs were in Pre-application as at February 2024:
- Temple Oaks Renewable Energy Park
 - Outer Dowsing Offshore Wind
 - Tillbridge Solar Project

- Beacon Fen Energy Park
- Springwell Solar Farm
- Fosse Green Energy (solar farm)
- One Earth Solar Farm
- Lincolnshire Reservoir
- Great North Road Solar Park

3.11.10. The cumulative short list at Table 1.3 of Appendix 1 of the final ES Technical Note [REP5-004] contains 16 of the 43 sites. These are illustrated at Figure 2.2a and reproduced at Figure 7 below.

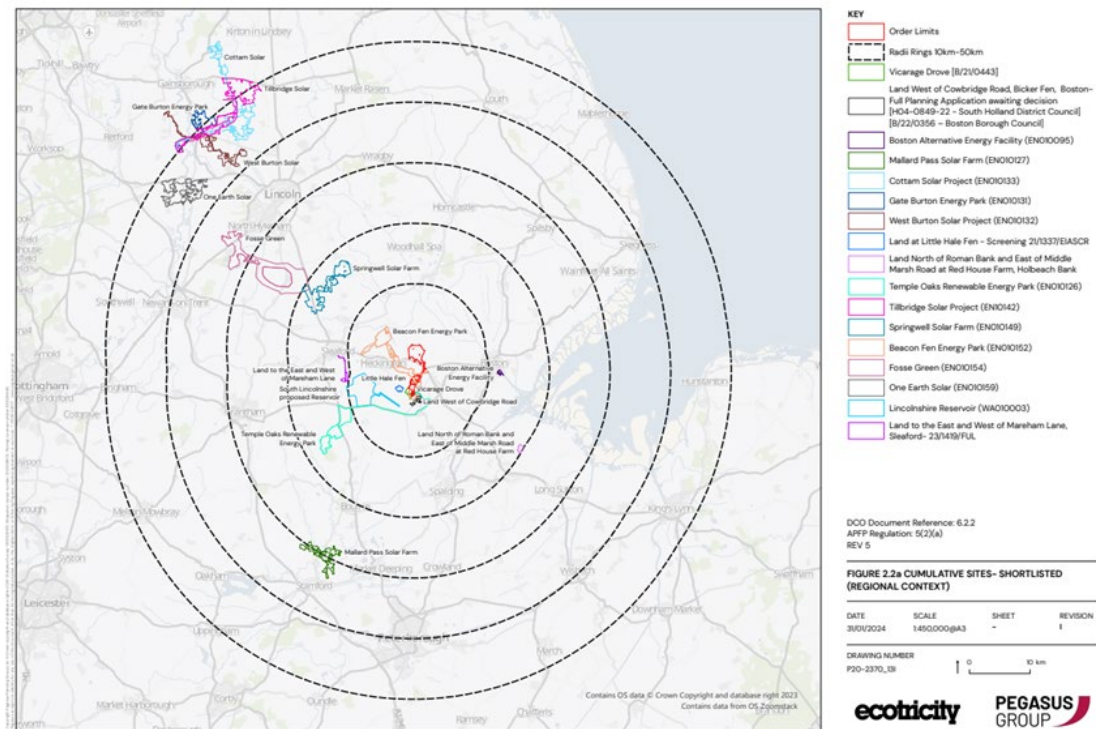


Figure 7: Cumulative Sites [REP5-004]

3.11.11. The Applicant's summary of potential cumulative effects relating to each relevant ES Chapter is contained at Table 4.1 of the ES Technical Note [REP5-004]. Significant effects prior to mitigation were assessed for Landscape and Visual (Chapter 6), Ecology and Ornithology (Chapter 8), Socio-Economics (Chapter 11), Climate Change (Chapter 13), Transport and Access (Chapter 14) and Land Use and Agriculture (Chapter 16).

3.11.12. For many of the NSIPs at Pre-application stage, assumptions have been made by the Applicant regarding a number of effects, and a worst-case scenario applied as necessary. Shortly before the close of the Examination, both Beacon Fen Energy Park and Springwell Solar Farm had commenced the statutory consultation process. The ES Technical Note [REP5-004] was updated at Deadline 5 to reflect the latest information available.

3.11.13. Table 4.1 of the ES Technical Note [REP5-004] sets out residual cumulative effects for the following:

- **Landscape and Visual** (with Beacon Fen Energy Park only): Temporary major adverse significant effects on landscape character and road receptors during construction and decommissioning of the off-site cable route corridor.

- **Socio Economics:** Short-term beneficial significant effects during construction and decommissioning as a result of increase in employment and increase in economic contribution (Gross Value Added).
- **Climate Change:** Moderate beneficial significant effects on net GHG emissions as a consequence of operation of the Proposed Development in addition to the other solar schemes considered.
- **Land Use and Agriculture:** Major adverse significant effects relating to loss of BMV for site 3 (Boston Alternative Energy Facility) and site 16 (Lincolnshire Reservoir) only. Such effects would be permanent and cannot be mitigated, and the Reservoir site alone would lead to a major adverse significant effects. Taking away the Reservoir site, the Proposed Development would result in a minor increase in the cumulative loss of BMV (by around 3ha). The Applicant summarises that the inclusion of all the other cumulative (predominately solar PV development) sites would not lead to a significant increase in the residual adverse impact predominately due to the overall levels of BMV land in the region as explained in Section 3.6 of this Recommendation.

THE EXAMINATION

- 3.11.14. A number of IPs raised concerns in relation to cumulative effects, in particular relating to the other large-scale ground mounted solar PV applications within Lincolnshire. NKDC and LCC commented on cumulative effects throughout the Examination, focusing on matters of loss of BMV agricultural land and landscape and visual impacts. The RPAs kept the Examination updated with their knowledge of new projects which were at an early stage of consultation. Construction traffic, socio-economic effects and biodiversity were also raised as cumulative effects to be considered during the Examination.
- 3.11.15. The concurrent Examination of five solar projects in the region was also raised by the RPAs, in particular LCC, as a matter of resourcing the Examination process but also in considering matters such as future discharge of requirements [\[RR-013\]](#).
- 3.11.16. Following discussion at ISH2 [\[EV-009\]](#) and ExQ1 GEN 1.9 [\[PD-012\]](#) the cumulative assessment within the ES was updated by way of a Technical Note [\[REP5-004\]](#) as set out above. In answer to ExQ1 GEN 1.10, LCC [\[REP2-092\]](#), NKDC [\[REP2-101\]](#) and BBC [\[REP2-087\]](#) noted the need for the cumulative assessment to be updated to take the further emerging projects and planning applications into account, but otherwise all RPAs generally agreed with the overall approach to the assessment. NKDC made more detailed comments relating to cumulative effects with Beacon Fen Energy Park, particularly in relation to BMV land.
- 3.11.17. The Interrelationship with other Nationally Significant Infrastructure Projects Report (the Interrelationship Report) [\[REP5-008\]](#) was requested by the ExA prior to the start of the Examination as a Procedural Decision in Annex G(4) of the Rule 6 letter [\[PD-009\]](#), and likewise all other solar Examinations in Lincolnshire requested a similar Report. The Interrelationship Report was initially received at Deadline 1 [\[REP1-021\]](#). It has some overlap with the cumulative assessment contained in the ES, but it also includes information relating to the approach taken to coordinate with other projects, shared DCO provisions and requirements, and details of any shared mitigation measures.
- 3.11.18. The solar PV DCO projects included in the Interrelationship Report are:

- Cottam Solar Project
- Gate Burton Energy Park
- West Burton Solar Project
- Mallard Pass Solar Project
- Tillbridge Solar Project
- Beacon Fen Energy Park
- Springwell Solar Farm
- Fosse Green Energy
- One Earth Solar Farm
- Temple Oaks Renewable Energy Park

- 3.11.19. The Applicant also considered it worthwhile to include the made DCO for the Boston Alternative Energy Facility 2023, the proposed Lincolnshire Reservoir (Pre-application) and Outer Dowsing Offshore Wind (Pre-application) and two approved planning applications for solar farms under 50MW; Vicarage Drove (BBC reference B/21/0443) and Land West of Cowbridge Road (B/21/0043).
- 3.11.20. Table 1.1 of the Interrelationship Report sets out an initial assessment of each of the projects, with the final version at Deadline 5 [\[REP5-008\]](#) representing the details as known at February 2024, noting that the Order Limits for those projects not yet submitted are evolving and may change over time. The progress of other projects including the addition of new projects was discussed at all ISHs.
- 3.11.21. The Interrelationship Report sets out the potential for cumulative effects with the Proposed Development and Beacon Fen Energy Park and the two BBC planning applications, and goes on to include a justification for progression to further assessment for Beacon Fen Energy Park only. The reasoning includes the extensive physical separation distances from the other solar NSIPs.
- 3.11.22. It was made clear during the Examination that the proposals for Beacon Fen Energy Park were evolving, and that previous estimates for submission to the Planning Inspectorate had been delayed. Previous public consultation and EIA scoping on the project related to different Order Limits to those presented in the most recent statutory public consultation. This commenced in January 2024, shortly before the closure of the Examination. The first version of the Interrelationship Report [\[REP1-021\]](#) set out that the previous proposals was for two land parcels 'Beacon Fen North' and 'Beacon Fen South'. The South site was withdrawn following non-statutory consultation in May/June 2023.
- 3.11.23. The updated ES Technical Note on cumulative projects [\[REP5-004\]](#) confirmed that the current proposals for Beacon Fen Energy Park are proposed west of South Kyme and east of Ewerby, with the nearest Order Limits of the solar park some 3.3km to the north west of the Proposed Development. The Order Limits indicate a cable route corridor crossing the A17 between Heckington and East Heckington, and leading to Bicker Fen Substation. Here, there would be some overlap between Order Limits of both projects. This is illustrated on the Interface Area Plan [\[REP5-007\]](#) as illustrated on Figure 8 below.
- 3.11.24. The Applicant's assessment sets out that the PEIR for Beacon Fen Energy Park indicates that a point of connection into the substation is likely to be to the north of Bicker Fen. It is unclear if any extension works to the substation would be needed. The cable route corridor is likely to be further refined as the project progresses towards submission. The Applicant also notes that it has not been disclosed in the public domain if the Beacon Fen Energy Park has a connection agreement in place with NGET to date.

- 3.11.25. Figure 1.2 of the Interrelationship Report [[REP5-008](#)] is replicated at Figure 8 below and shows the overlap between the cable corridors of the Proposed Development and Beacon Fen Energy Park:

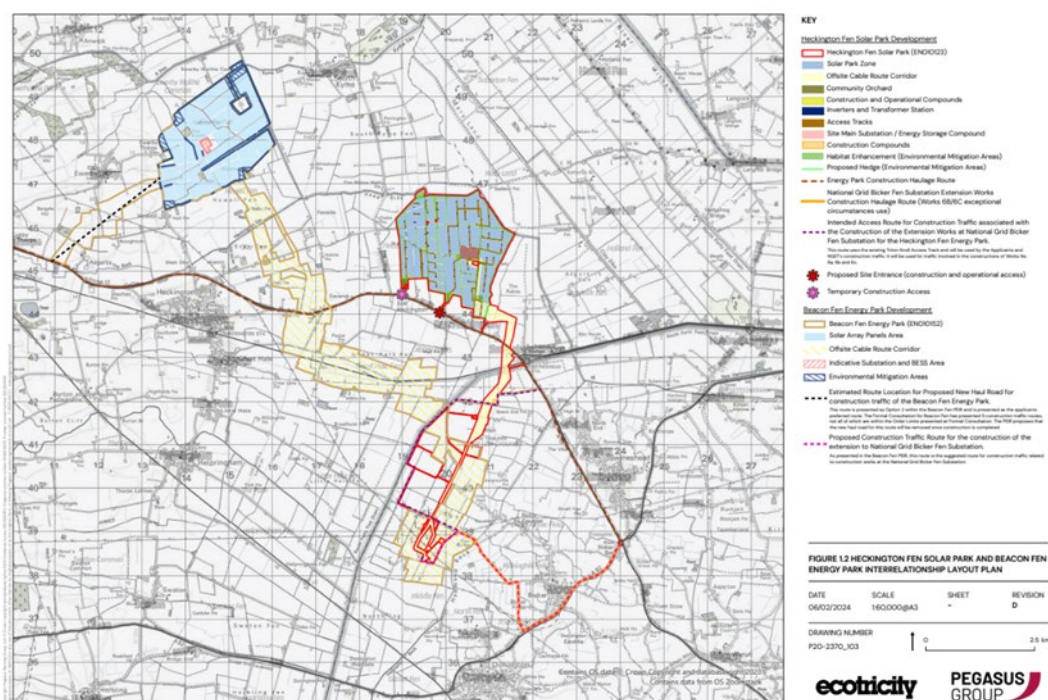


Figure 8: Heckington Fen Solar Park and Beacon Fen Energy Park Interrelationship Layout Plan [[REP5-008](#)]

- 3.11.26. The ExA sought for the Applicant to explain its approach taken to coordinate the Proposed Development with other projects, and this is outlined in section 4 of the Interrelationship Report [[REP5-008](#)].
- 3.11.27. The Applicant noted that an Examination of the Beacon Fen Energy Park is likely to be towards the end of 2024 and, if approved, the construction programme is expected to start in 2026-2027. It confirmed that despite the difference in stages, both are open and willing to collaboratively work together to understand project interactions and explore the potential for sharing a cable route connection and reduce impacts. The Applicant also set out a willingness to share survey data for areas of overlap, and a Joint Position Statement was submitted to confirm the co-operation between the parties [[REP5-010](#)]. Protective Provisions were added to Part 11 of Schedule 13 of the draft DCO at Deadline 5 [[REP5-020](#)], with cross-reference to the Interface Area Plan [[REP5-007](#)]. The Joint Position Statement also sets out that a reciprocal set of Protective Provisions would be included in the Beacon Fen Energy Park DCO, and that a private Co-operation Agreement will be entered into.
- 3.11.28. The following topics were raised during the Examination, as having potential cumulative effects:
- Landscape and Visual
 - Ecology and Ornithology
 - Heritage Assets
 - Soils and Agriculture
 - Socio Economics
 - Transport and Access

Landscape and Visual

- 3.11.29. As set out in Section 3.4 of this Recommendation, LCC raised concerns about the landscape and visual effects of the Proposed Development including disagreement on the methodology, considering that overall effects would be Significant. Cumulative effects arising when assessed alongside other NSIPs in the area, in particular the Beacon Fen Energy Park, were highlighted in paragraph 7.1.21 of its LIR [\[REP1-028\]](#). It sought for the Applicant to update its assessment as further details emerged, but overall LCC's view is that negative cumulative impacts are likely to arise. No comments were made in relation to cumulative residential visual effects.
- 3.11.30. As previously explained, pre-application consultation on Beacon Fen Energy Park had only just commenced at the end of the Examination. Given the overlapping time periods, no further comments were sought by the ExA on this matter.
- 3.11.31. Cumulative landscape and visual impacts from the two projects at all phases are considered at paragraphs 7.5 to 7.14 of the Interrelationship Report [\[REP5-008\]](#). Figure 1.3 (cumulative screened ZTV) indicates highly localised significant effects within the site itself and immediately around it are expected when judged in isolation, but the Applicant considers the schemes to be set sufficiently apart as not to cause any significant cumulative landscape character effects. Certain visual receptors, such as users of the PRow alongside Head Dike, may be subject to sequential significant visual effects. The above conclusion is supported by the Beacon Fen Energy Park PEIR LVIA Chapter 6, which states in its paragraph 6.9.25: *"The cumulative landscape effects at the regional scale will not be significant due to the limited extent of the Schemes within the landscape of the NCA"*.
- 3.11.32. Mitigation planting associated with the Proposed Development is considered by the Applicant to be sufficient to reduce significant cumulative landscape character and visual effects during the construction phase, with no residual effects expected during the operational phase.

Ecology and Ornithology

- 3.11.33. As set out in Section 3.3 of this Recommendation, ground nesting birds (in particular skylark) were further assessed (including on a cumulative basis) and mitigation proposed following comments from NKDC [\[REP1-033\]](#). Lincolnshire Wildlife Trust noted the lack of research into skylark breeding spaces, and stated that in principle an individual solar farm may not have a negative impact on ground nesting birds but that cumulatively there is a true potential to impact populations in greater Lincolnshire [\[AS-030\]](#). The SoCG notes a commitment to working with NKDC and Lincolnshire Wildlife Trust to contribute to a strategy for the benefit of skylarks [\[REP1-012\]](#), as secured in the outline LEMP [\[REP5-056\]](#).
- 3.11.34. Ecology and ornithology was considered for further cumulative assessment given the aforementioned reductions in habitats. The assessment predicted that no significant adverse effects would result, following mitigation measures that avoid, retain and mitigate the impact of reductions in habitats for ground nesting birds. The ES Technical Note summarises that this is an issue with the entire shortlist of cumulative projects and the permanent loss of habitat has the potential to result in moderate adverse effects without mitigation. With mitigation put forward in the skylark mitigation strategy [\[REP3-027\]](#) the residual cumulative effects are assessed by the Applicant as Not Significant.

- 3.11.35. Following the submission of details of the mitigation strategy [\[REP3-027\]](#), none of the relevant IPs had outstanding concerns on this matter at the end of the Examination.

Heritage Assets

- 3.11.36. As previously identified in Section 3.5 of this Recommendation, the Energy Park Site would be visible from the Grade I listed Kyme Tower and is within its wider setting. NKDC and Historic England disagreed with the Applicant's assessment, but made no comments relating to cumulative effects.
- 3.11.37. Beacon Fen Energy Park would be located much closer to Kyme Tower and the group of other heritage assets associated with the Scheduled Monument. The Interrelationship Report [\[REP5-008\]](#) sets out that the PEIR for Beacon Fen indicates a moderate adverse effect on Kyme Tower. The Applicant's own assessment of 'no harm' to Kyme Tower from the Proposed Development, leads to its conclusion that there would not be a significant cumulative effect. Nonetheless, as set out in Section 3.5 the ExA has concluded that such harm would be less than substantial for the Proposed Development alone.
- 3.11.38. In considering archaeological assets, a minor cumulative effect (not significant) has been identified by the Applicant in relation to the areas where the Order Limits for both projects interact in the area of the cable route corridors. Such harm is assessed by the Applicant to be less than substantial during construction only.

Soils and Agriculture

- 3.11.39. Section 3.6 of this Recommendation sets out the concerns of LCC and NKDC and other IPs in respect of loss of BMV land associated with the Proposed Development. This includes cumulative effects of the overall loss within the county of Lincolnshire.
- 3.11.40. The cumulative assessment on this topic is presented in paragraphs 3.241 to 3.267 of the ES Technical Note [\[REP5-004\]](#). It focuses on the areas of land that will be sealed over or 'lost' as defined in the IEMA guidance. The Applicant highlighted that most of the schemes set out in Table 3.17 of the cumulative assessment involve land shown as Grades 1 and 2 mixed with undifferentiated Grade 3, which are not broken down between subgrades A and B unless an ALC detailed survey has been conducted. Where subgrade information cannot be provided the assessment assumes the land falls into subgrade 3A, so is BMV land. It is also noted that many of the DCO proposals are at an early stage and are subject to change. Collectively over the 15 solar sites across Lincolnshire there is estimated to be a permanent loss of 60.42 ha of BMV land. Adding the estimated area of 3 ha of BMV land sealed over or lost for the life of the Proposed Development, the total cumulative temporary disturbance is calculated by the Applicant as 63.42 ha.
- 3.11.41. The total exceeds 20ha so exceeds the IEMA guidance where it would fall into the category of major to moderate adverse effects. When considered against the total area of BMV within Lincolnshire, estimated to be 402,900 ha, it equates to 0.01% of BMV land in the county. The Applicant summarises: "*When this temporary change (i.e. not permanent sealing or downgrading) is placed into context with the BMV resource within the County, the cumulative effect would be not significant in EIA terms*" [paragraph 3.256, [REP5-004](#)]. The assessment makes assumptions that the solar parks would all be subject to design principles which aim to site structures including substations and access tracks so that they minimise use of BMV land, and that each would be required to secure a SMP for all phases which would be agreed

by Natural England. Some of the other solar farms may also choose to continue agricultural use of the land such as grazing.

- 3.11.42. The ES Technical Note also stresses that most solar PV sites are temporary developments and are therefore reversible and believes there is no permanent 'loss' of agricultural land by way of sealing or downgrading. It also assumes that SMPs would be implemented for their construction and decommissioning. The Applicant concluded that *"The updated cumulative sites assessment... has shown that the operation of the 15 No. cumulative solar sites would have low magnitude of change on the BMV resource which has medium sensitivity within Lincolnshire. It can therefore be concluded that cumulative impact for the solar farms on the loss of BMV land in Lincolnshire would have a minor to moderate effect which is not a significant impact" (paragraph 3.260)*
- 3.11.43. Two NSIP developments are listed in the cumulative assessment which are not solar farms; the approved Boston Alternative Energy Facility and the proposed Lincolnshire Reservoir – together, if consented and built would result in a permanent loss of 998.8 ha of BMV land; this would result in a major adverse significant impact on the loss of BMV land in Lincolnshire. It is noted that the Lincolnshire Reservoir is a standalone project at a very early stage in the DCO process with no scoping report to date. No comments were received from IPs in relation to these particular projects, only in relation to other solar farms. The Applicant concluded that the residual cumulative effect is not significant, except for the Lincolnshire Reservoir which could potentially be significant due to permanent loss of over 900ha of BMV land if granted consent. The additional cumulative sites result in greater land use change, but this is not an environmental impact [\[REP5-004\]](#).
- 3.11.44. Appendix 2 of the Interrelationship Report [\[REP5-008\]](#) notes that if all 11 NSIP solar farms were granted in Lincolnshire, the effect would not be significant, and emphasises that an alternative agricultural practice (sheep grazing) would continue at the Proposed Development site.
- 3.11.45. The loss of BMV both individually and cumulatively was an outstanding matter of concern for both LCC and NKDC at the end of the Examination [\[REP6-006\]](#).

Socio-Economics

- 3.11.46. NKDC highlighted the potential negative cumulative impact on accommodation availability during construction (for tourists) in its LIR [\[REP1-033\]](#).
- 3.11.47. Table 11.16 of ES Chapter 11 [\[REP4-026\]](#) provides a summary of cumulative schemes, which scopes in a number of proposals for smaller (less than 50 MW) solar parks in the North Kesteven and Boston local authority areas as well as other solar NSIPs currently in the Pre-application phase including Beacon Fen Energy Park. The overall conclusions of the updated cumulative assessment [\[REP5-004\]](#) were that there would be major beneficial effects in relation to employment and economic contribution during the construction and decommissioning phases, and moderate beneficial effects to business rates during the operational phase. Accommodation demand is predicted to be minor to moderate adverse but not significant, and the Applicant made it clear that the assessment of accommodation provision was of a worse case, and that the projects are unlikely to be in their peak construction phase at the same time.
- 3.11.48. By the end of Examination the SoCG confirmed that the RPA's have no concerns with the assessment [\[REP6-006\]](#).

Transport and Access

- 3.11.49. Mr and Mrs Bowler in their RR [\[RR-008\]](#) raised concerns regarding cumulative volumes of traffic accessing the National Grid substation at Bicker Fen via Cowbridge Road (but made no further submissions). LCC's LIR [\[REP1-028\]](#) considers cumulative transport impacts and agreed that effects would be neutral. The ExA also asked a question relating to cumulative transport effects (ExQ1 TT 1.7) and noise relating to cumulative construction traffic (NV 1.2) [\[PD-012\]](#). BBC agreed that effects would be neutral in answer to ExQ1 [\[REP2-087\]](#).
- 3.11.50. As explained in Section 3.8 of this Recommendation, during the Examination the Applicant provided two additional ES Technical Notes relating to transport and access; 'Sensitivity of Cowbridge Road, Bicker Drove and Vicarage Drove' [\[REP3-030\]](#) and 'Assessment of Triton Knoll access track, Doubletwelves Drove and Bicker Drove' [\[REP5-006\]](#). The documents include consideration of the use of the local road network not just by the Applicants for construction of the cable route corridor and substation extension but by NGET and other projects that may connect to Bicker Fen.
- 3.11.51. Use of the Triton Knoll access track by both projects to access the Bicker Fen substation is a possibility, but Beacon Fen Energy Park's proposals at Bicker Fen substation currently assumes construction traffic utilising the A17, A52 and the existing National Grid haul route.
- 3.11.52. The ES Technical Note [\[REP5-004\]](#) assesses the situation for both projects using the same routes. During the construction phase cumulative direct, short-term, temporary, negative effects on traffic flows would have a major level of impact significance at some links, which without mitigation would be significant in EIA terms. With mitigation, including use of the Triton Knoll access traffic for all trips associated with the extension works at the Bicker Fen substation as secured by Requirement 14 of the DCO (CTMP), this would reduce major adverse significant impacts on the identified links.
- 3.11.53. As a result of this mitigation secured in the CTMP, the Applicant concludes that there would be no cumulative effects in relation to works at Bicker Fen substation and in relation to overall traffic flow volumes at all phases would not be of significant effect. By the end of the Examination, LCC did not have outstanding concerns on this matter.

CUMULATIVE EFFECTS: CONCLUSIONS

- 3.11.54. The nature of potential cumulative effects evolved through the Examination and were appropriately collated and assessed by the Applicant both in the ES Technical Note – Updated information on cumulative projects [\[REP5-004\]](#) and the Interrelationship Report [\[REP5-008\]](#). Both final versions were received at Deadline 5 at which time more details were available on Beacon Fen Energy Park following commencement of its statutory consultation in January 2024. Given the information available at the time of the Examination, the ExA considers that the Applicant has carried out a thorough assessment of cumulative effects and reached informed conclusions.
- 3.11.55. The two projects share numerous similarities and are clearly in close proximity to each other. Nonetheless they are on differing timelines, with an estimated decision date by the SoS for Heckington Fen Solar Park in August 2024 (prior to a likely start of the Examination for Beacon Fen Energy Park). Submission to the Planning

Inspectorate is expected in Summer 2024. If both DCOs are made, there is the potential for construction of both solar parks to be concurrent in 2026.

- 3.11.56. When considering cumulative effects with all other short-listed developments in Lincolnshire, the ExA agrees with the Applicant that these would not be significant in EIA terms. In concluding this, regard has been had to the nature and stage of all other developments and most importantly their physical distance from the site of the Proposed Development. Heckington Fen Solar Park would not have the same direct cumulative effects as may be experienced in relation to other solar parks in the region, notably those in the Cottam area.
- 3.11.57. Notwithstanding this, the emerging details of the Beacon Fen Energy Park project indicate that a number of cumulative adverse effects are predicted (prior to mitigation) given the scale and proximity of the two projects and their interface where they would both connect to the Bicker Fen substation. The ExA agrees with LCC and NKDC that there would be negative effects arising from the wider use of BMV land in Lincolnshire and, more locally, that there would be less than substantial harm to the setting of Kyme Tower (albeit at the lower end of the scale). As such it is inevitable that the cumulative effects would be harmful. Kyme Tower is a heritage asset of the highest significance to which the SoS should give great weight. The ExA is unable to quantify the degree of harm without sight of Beacon Fen Energy Park's full assessment of effects on heritage assets, nonetheless on the information available the cumulative harm to its significance would be less than substantial. Consequently, such harm should be weighed against the public benefits and this is considered at Chapter 5 of this Recommendation.
- 3.11.58. The ExA is satisfied that mitigation through design and then by additional mitigation, particularly by way of landscape screening and via the CEMP and CTMP, would sufficiently reduce any negative cumulative landscape and visual effects. On the basis of the information currently available, whilst some effects remain negative, the projects would not cumulatively result in residual effects which are significant. The ExA is also encouraged by the submission of the Joint Position Statement with Beacon Fen Energy Park [REP5-010] which states that both parties are satisfied that it will be possible to ensure co-ordinated delivery in any overlap area and have agreed appropriate Protective Provisions. The forthcoming Beacon Fen Energy Park submission will include Heckington Fen Solar Park in its own cumulative assessment and Interrelationship Report, and once full details of the project are known cumulative impacts would be further assessed.
- 3.11.59. The ExA considers the Applicants cumulative effects assessment fulfils the requirements of the EIA Regulations and both 2011 and 2024 NPS EN-1, which are important and relevant considerations. The ExA finds there to be moderate adverse effects arising from the cumulative loss of BMV land in the Lincolnshire region, and moderate adverse effects (together with Beacon Fen Energy Park only) in terms of landscape and visual effects (albeit localised). There would also be potential additional harm with Beacon Fen to the setting of the Grade I listed Kyme Tower, albeit not significant in EIA terms. Overall, these cumulative matters attract moderate negative weight in the planning balance.

3.12. ASSESSMENT OF THE PLANNING ISSUES: CONCLUSIONS

- 3.12.1. The ExA is satisfied that there has been a thorough consideration of the principal environmental and other issues in the Examination. The planning balance is applied in Chapter 5 of this Report following consideration of the HRA matters outlined in Chapter 4.

4. SUMMARY OF CONCLUSIONS IN RELATION TO THE HABITATS REGULATIONS ASSESSMENT

4.1. INTRODUCTION

- 4.1.1. This chapter sets out a summary of the Examining Authority's (ExA) conclusions relevant to the Habitats Regulations Assessment (HRA), which can be found at Appendix C of this Report.
- 4.1.2. In accordance with the precautionary principle embedded in the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations), consent for the Proposed Development may be granted only after having ascertained that it will not adversely affect the integrity of European sites and no reasonable scientific doubt remains.
- 4.1.3. The ExA has been mindful throughout the Examination of the need to ensure that the Secretary of State (SoS) has such information as may reasonably be required to carry out its duties as the Competent Authority. The ExA has sought evidence from the Applicant and the relevant Interested Parties (IPs), including Natural England as the Appropriate Nature Conservation Body.

4.2. HABITATS REGULATIONS ASSESSMENT IMPLICATIONS

- 4.2.1. The Proposed Development is not directly connected with or necessary to the management of a European site. Therefore, the SoS must make an appropriate assessment of the implications of the Proposed Development on potentially affected European sites with regard to their conservation objectives.
- 4.2.2. The Applicant's assessment of effects is presented in the Shadow Habitats Regulations Assessment (HRA) to Inform Appropriate Assessment [[REP4-022](#)] (HRA Report). There were four updates to the HRA Report during the Examination.
- 4.2.3. Three European sites within the UK National Site Network and their qualifying features were considered in the Applicant's assessment of likely significant effects, which are located approximately 14.5km from the Proposed Development:
- North Norfolk Coast and Wash Special Area of Conservation (SAC)
 - The Wash Special Protection Area (SPA)
 - The Wash Ramsar site
- 4.2.4. The locations of the three European sites relative to the Proposed Development are referenced in Appendix C of the Applicant's HRA Report [[REP4-022](#)] and Environmental Statement (ES) figure 8.2 [[PS-108](#)].
- 4.2.5. The following potential impact pathways were scoped in for assessment by the Applicant:
- Silt laden run-off from surface water
 - Contamination from surface water pollution events impacting on water quality downstream
 - Loss of functionally linked habitat

- 4.2.6. A summary of likely significant effects (LSE), including the construction and decommissioning phases is provided in Appendix D of the HRA Report and these potential impacts were taken forward to appropriate assessment in Section 7 of the HRA Report [\[REP4-022\]](#).
- 4.2.7. The ExA is satisfied, on the basis of the information provided by the Applicant and Natural England's agreement, that the correct European sites have been considered in the HRA Report and that all potential impacts which could give rise to significant effects have been identified.

4.3. EXAMINATION ISSUES

- 4.3.1. The main HRA matters raised by the ExA during the Examination include:
- The need to update the HRA Report following the Change Application.
 - The need to update the assessment of in-combination effects to incorporate new projects for which information was not publicly available when the application HRA Report was prepared, and updates to projects for which additional information had become available.
- 4.3.2. Natural England did not raise concerns regarding the selected European sites and agreed with the approach set out in the HRA Report [\[REP5-048\]](#). All relevant planning authorities (RPAs) agreed in their Statement of Common Ground (SoCG) [\[REP6-006\]](#) that impacts on the European sites identified by the Applicant had been adequately assessed and offered no other comments in relation to HRA generally. North Kesteven District Council noted that the assessment of wintering birds was appropriate, provided that Natural England agreed with the findings of the HRA Report.
- 4.3.3. Natural England did not raise any concerns over the in-combination assessment and the Applicant's conclusion that in-combination effects are unlikely to occur. Table 3 of the HRA Report document was updated with reference to the cumulative projects that were reassessed as part of the ES for Deadline 2 in the ES Technical Note - Updated Information on Cumulative Projects [\[REP2-050\]](#).
- 4.3.4. The ExA produced a Report on the Implications for European Sites (RIES) [\[PD-014\]](#), which compiled, documented, and signposted HRA-relevant information provided in the DCO application and Examination representations up to Deadline 4 of the Examination (16 January 2024). Following consultation on the RIES no comments were received during the Examination.

4.4. SUMMARY OF FINDINGS IN RELATION TO ADVERSE EFFECTS ON INTEGRITY

Silt laden run off from surface water

- 4.4.1. The Applicant's HRA Report [\[REP4-022\]](#) states that there is a hydrological link between The Wash SPA/SAC/Ramsar site and the Proposed Development, and therefore a need to consider silt-laden run-off at the appropriate assessment stage of an HRA. Any potential negative impacts of possible dust deposition or silt runoff into the drainage ditches within the Proposed Development area would be mitigated for by the implementation of a Construction Environmental Management Plan (CEMP) and appropriate mitigation measures to prevent any silt laden run-off during construction. It concluded no adverse effects on integrity resulting from adverse

effects on the European sites due to silt-laden run-off from the Proposed Development.

Contamination from surface water pollution events impacting on water quality downstream

- 4.4.2. The Applicant's HRA Report [[REP4-022](#)] concluded no LSE on this impact pathway due to the initial design for development of the Energy Park which includes a 9m standoff from all Internal Drainage Board (IDB) drains and an 8m stand-off from all other drains within the Proposed Development's Energy Park area, and the design of the bus-bar extension and bus-coupler which will include appropriate drainage to ensure there would be no water quality effects. The HRA Report states that appropriate mitigation measures would also prevent any water quality effects during construction.

Loss of functionally linked land used by qualifying bird species of The Wash SPA and Ramsar site

- 4.4.3. The Applicant's HRA Report [[REP4-022](#)] concluded no LSE on this impact pathway for the three qualifying bird species (pink footed goose, golden plover and lapwing) that will feed on farmland considered functionally linked land, based on the distance of the designated European sites. The golden plover and lapwing bird species were recorded occasionally using the Energy Park area but the HRA Report considered this to be a very small proportion (less than 1%) of the winter bird population in the east of England. The HRA Report stated that there were no records of the Pink-footed goose population of The Wash using the Proposed Development's Energy Park area for foraging, and a small flock had been recorded just once within the Grid Connection Corridor. The HRA Report concluded that the land of the Proposed Development cannot be regarded as functionally linked habitat important to the integrity of The Wash SPA/SAC/Ramsar site.

4.5. CONCLUSIONS

- 4.5.1. The ExA is satisfied that the correct European sites and qualifying features have been identified for the purposes of assessment, and that all potential impacts which could give rise to significant effects have been identified.
- 4.5.2. The ExA's findings are that adverse effects on integrity on all the European sites considered in the HRA Report can be excluded from the Proposed Development when considered alone or in-combination with other plans or projects from the impact-effect pathways assessed, subject to the mitigation measures to be secured in the Recommended DCO.
- 4.5.3. In its answer to ExQ2 BIO 1.7 Natural England agreed with the conclusions of the HRA Report and stated that it is unlikely that the Proposed Development would have an adverse effect on integrity of the European sites alone or in-combination [[AS-035](#)]. This is also confirmed in section 3 of its SoCG [[REP5-048](#)].
- 4.5.4. Taking into account the reasoning set out above, the ExA considers that the Proposed Development is unlikely to have a significant effect from impacts on the qualifying features of the European sites identified in the HRA Report when considered alone or in-combination with other plans or projects.

5. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

5.1. INTRODUCTION

- 5.1.1. This Chapter provides an evaluation of the planning merits of the Proposed Development. It does so in the light of the legal and policy context set out in Chapter 2 and as identified in Chapters 3 and 4 of this Recommendation. Whilst the Habitats Regulations Assessment (HRA) has been documented separately in Appendix C (summary in Chapter 4), relevant facts and issues set out in that Chapter are taken fully into account.
- 5.1.2. The Examining Authority (ExA) has taken into account all Relevant Representations, Written Representations and responses to the Examining Authority's First Written Questions and Second Written Questions and Rule 17 requests for further information as well as all other representations made during the course of the Examination including the Local Impact Reports (LIRs) from Lincolnshire County Council, North Kesteven District Council and Boston Borough Council.
- 5.1.3. The statutory framework for deciding Nationally Significant Infrastructure Project (NSIP) applications where there is no relevant designated NPS is set out in section (s) 105 of the Planning Act 2008 (PA2008). In deciding the application, the Secretary of State (SoS) must have regard to:
- any 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 SoS thinks are both important and relevant to the SoS's decision.

5.2. SUMMARY OF THE MAIN PLANNING ISSUES

PRINCIPLE OF DEVELOPMENT

- 5.2.1. The ExA is satisfied that there is a compelling and urgent need for the Proposed Development, supporting the UK's transition towards a low carbon economy and its Net Zero strategy. The need has been demonstrated by the Applicant in accordance with the provisions of both 2011 and 2024 NPS EN-1, which are important and relevant considerations.
- 5.2.2. The electricity expected to be generated by the Proposed Development would make a modest but material contribution to this overarching need and towards the UK Government's legally binding commitments in achieving Net Zero, commensurate with the size and scale of the Proposed Development.
- 5.2.3. The ExA is satisfied that the Applicant has applied an appropriate methodology and sought to contextualise the carbon emissions and other GHGs (including SF6) that could result from the Proposed Development in the context of relevant carbon budgets and against the whole life of the Proposed Development.
- 5.2.4. The ExA is satisfied that the Applicant has considered potential alternatives, including the 'do nothing' scenario. The approach to site selection, layout and technologies and how these were considered as part of the overall project design have been suitably provided.

- 5.2.5. The ExA concludes that the Applicant has demonstrated that the overarching need argument for the Proposed Development is very strong in terms of meeting the urgent need for renewable and low carbon energy infrastructure and this weighs heavily in favour of making the Order and carries very great positive weight in the planning balance. This is further enhanced by the identification of solar photovoltaic (PV) development in the designated 2024 NPS EN-1 as a Critical National Priority (CNP). The 2024 NPS EN-1 is an important and relevant consideration to which the ExA prescribes very great weight, and as such the ExA also affords very great positive weight in the final balance to the principle of development in terms of its demonstration of need.

ENVIRONMENTAL IMPACT ASSESSMENT

- 5.2.6. The ExA considers that the Environmental Statement (ES), as supplemented with additional information during the Examination, is sufficient to enable the Secretary of State (SoS) to take a decision in compliance with the EIA Regulations. 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.
- 5.2.7. The ExA has taken full account of all environmental information in its consideration of the Application.

HABITATS REGULATIONS ASSESSMENT CONSIDERATIONS

- 5.2.8. The Proposed Development is development for which a HRA Report has been provided, and the ExA has considered this and all relevant supporting documentation in reaching the overall conclusions and recommendations.
- 5.2.9. The SoS is the competent authority under the Habitats and Species Regulations 2017 (as amended) (Habitats Regulations) and will make the definitive assessment. The ExA considers that there is sufficient information before the SoS to enable them to undertake an appropriate assessment in order to fulfil its duty under the requirements of the Habitats Regulations.

BIODIVERSITY AND THE NATURAL ENVIRONMENT

- 5.2.10. The ExA considers that the Applicant's assessment of both biodiversity and the natural environment (including trees), as set out in ES Chapter 8 and accompanying plans and appendices, provides sufficient information to understand the effects of the Proposed Development on biodiversity and ecological receptors. The Applicant has taken opportunities to conserve and enhance biodiversity and taken account of the need for protected species licences to be obtained from Natural England.
- 5.2.11. The mitigation hierarchy has been appropriately applied, through design and a range of other mitigations, secured principally in the Landscape and Ecological Management Plan (LEMP) by Requirement 8 and in the Construction Environmental Management Plan (CEMP) by Requirement 13 of the Recommended Development Consent Order (DCO).
- 5.2.12. The ExA has considered the views of the RPAs, Natural England and Lincolnshire Wildlife Trust in respect of effects on biodiversity and protected species, and the ExA is satisfied that by the close of the Examination the Applicant had adequately addressed their concerns.
- 5.2.13. Consequently, the ExA accepts the assessment's conclusions that there would be no significant residual adverse effects on biodiversity or ecology receptors as a

result of the Proposed Development. Following mitigation, the effects on species (including ground nesting birds) and the natural environment (including loss of trees) would not weigh for or against the making of the Order.

5.2.14. At least 65% Biodiversity Net Gain (BNG) is also secured by Requirement 8, with the final BNG of habitat units expected to reach 113%. This is a substantial gain over and above the current habitat baseline of the site in its intensive arable use. Great weight is therefore applied to the benefits arising from BNG.

5.2.15. The ExA ascribes the overall effects of the Proposed Development on biodiversity and the natural environment great positive weight in the planning balance, and this is primarily due to the significant levels of BNG secured.

DESIGN, LANDSCAPE AND VISUAL

5.2.16. The ExA is satisfied that the methodologies for both landscape and visual effects as set out in ES Chapters 6 and 7 are appropriate and the assessments take account of the relevant guidance and landscape character assessments on a regional and local level.

5.2.17. The ExA agrees with Lincolnshire County Council (LCC) that the predicted residual moderate adverse landscape and visual effects could be described as Significant in EIA terms. The effects would be significant during construction and in the first five years of operation. However, due to the relatively low height of the infrastructure, this would be limited to relatively short-range views. Beyond a distance of around 500m, and after five years allowing for maturation of vegetation, the ExA agrees that the effects on the wider landscape would reduce to minor adverse.

5.2.18. The ExA is satisfied that the effects on sensitive receptors have been appropriately assessed including selection of and quality of viewpoints. Visual effects on users of highways at the A17 and Sidebar Lane, the railway line and public rights of way (PRoW) would be adversely affected during construction, however this major adverse impact would be limited both in terms of extent and duration.

5.2.19. A number of residential properties around East Heckington, the A17 and Sidebar Lane would experience major adverse visual effects during construction and the first five years of operation. The ExA acknowledges that such effects would vary between properties depending on a number of variables including orientation and boundary features, but overall would reduce over time to moderate adverse.

5.2.20. The ExA is content that neither the Proposed Development nor associated screen planting would have such an adverse effect that it would turn any otherwise satisfactory dwelling into an unattractive place to live.

5.2.21. In terms of design, the ExA is satisfied that there is adequate detail and parameters to assess the effects of the Proposed Development and that its design has evolved through an iterative process which has incorporated embedded mitigation into the design to reduce its landscape and visual impacts. The parameters and further details of design are appropriately secured in the Recommended DCO.

5.2.22. Both 2011 and 2024 NPS EN-1 are clear that all proposed energy infrastructure will have visual effects. The Proposed Development does not fall within or near to any nationally or locally designated landscapes and while the scale of the Energy Park Site is extensive, it is well-contained and lends itself well to effective mitigation through vegetation screening as detailed on the Landscape Strategy Plan and

secured in the LEMP by Requirement 8. Over time, the extensive proposed planting would provide effective screening as well as biodiversity benefits. The majority of the adverse effects would also be reversible upon decommissioning following its 40-year life. Whilst there is no doubt that this is a significant period of time, it represents a positive element of the scheme given that the landscape is eventually able to revert to its current condition.

- 5.2.23. Overall, both the landscape and visual harm, including residential visual amenity, weighs against the Proposed Development and the ExA affords this moderate negative weight in the overall planning balance.

HISTORIC ENVIRONMENT

- 5.2.24. The ExA considers that the Applicant has appropriately and adequately assessed the significance of the heritage assets affected by the Proposed Development, as well as its assessment of the likely impact on significance. In this regard the Application meets the requirements of both 2011 and 2024 NPS EN-1.
- 5.2.25. The Infrastructure Planning (Decisions) Regulations 2010 (Decisions Regulations) which require the SoS to have regard to the desirability of preserving, amongst other things, the setting of a listed building. The Grade I listed Kyme Tower is a heritage asset of exceptional historic and architectural interest. Its setting is far reaching, given its prominence in the landscape and its historic role in its surveillance of the surrounding countryside. The ExA considers that its immediate setting is of the highest significance, and intervisibility between the site and Kyme Tower remains at numerous viewpoints, albeit at a long distance. Consequently, the ExA agrees with NKDC and Historic England that the site is within the setting of Kyme Tower, and currently its open undeveloped nature has a neutral effect on its significance.
- 5.2.26. The Proposed Development would be discernible from Kyme Tower and its immediate setting, and its presence would result in a level of harm which would be less than substantial. Mitigation measures including perimeter planting that would assist in reducing the wider effects of the Proposed Development, and the residual harm would be at the lower end of the scale.
- 5.2.27. In respect of above ground non-designated heritage assets (NDHA) both within the site and in close proximity, the ExA is satisfied that there would be a neutral effect. The CEMP, secured by Requirement 13, would secure pre-construction recording of the on-site NDHAs.
- 5.2.28. In respect of archaeology comprehensive surveys and assessment have taken place of the Energy Park Site and for a proportion of the Cable Route Corridor which are proportionate to the overall archaeological potential of the site. The ExA accepts that trial trenching of the Cable Route Corridor would continue post-Examination and notes that the RPAs are satisfied with the approach. Requirement 12 appropriately secures the individual WSIs for both areas of the Site, and Requirement 6 would ensure that the results of the archaeological surveys are considered in the final design.
- 5.2.29. Overall, the ExA considers that the Proposed Development would result in less than substantial harm to the setting of designated heritage assets, and that there would be minor harm arising to NDHAs following mitigation (principally archaeology during construction). Effects to both are not significant in EIA terms.

- 5.2.30. Where there is a harm, the SoS must give that harm considerable importance and weight. The ExA considers the minor adverse effects arising to the significance of the Grade I listed Kyme Tower would be at the lower end of the scale of less than substantial harm. Overall, a little negative weight is prescribed against the making of the Order.
- 5.2.31. This harm should be weighed against the public benefits of the Proposed Development as stated in paragraph 5.8.15 of 2011 NPS EN-1 and paragraph 5.9.32 of 2024 NPS EN-1. Such benefits are considered in the overall conclusion below.

LAND USE AND SOILS

- 5.2.32. The ExA considers the assessment of land use and soils in Chapter 16 of the ES and accompanying documentation [REP2-028] to be robust.
- 5.2.33. Having regard to the outline Soil Management Plan (SMP) and construction methodology (as it affects soils) which are secured by Requirements 13 (CEMP) and 20 (SMP) of the Recommended DCO, the ExA is satisfied that the installation of solar panels would not result in significant adverse effects on soils and would not result in any change to the agricultural land classification (ALC) grade. The effect of installing solar panels on the agricultural land would be medium term, reversible, of local extent and of negligible significance during the construction and decommissioning phases.
- 5.2.34. There would be a moderate beneficial effect for the quality of the soils during operation, as a result of the cessation of intensive cropping (and use of chemical fertilisers) and replacement with grassland maintained by grazing sheep.
- 5.2.35. Mitigation through the iterative design process has excluded areas of best and most versatile (BMV) land to the south and west of the Solar Park Site, and the design of the fixed equipment elements of the Proposed Development has largely avoided use of BMV with the majority being located on lower value Grade 3b land.
- 5.2.36. The loss of any BMV agricultural land is discouraged but not precluded by national or local policy, and requires justification. The ExA acknowledges that the proportion of BMV is sizeable at 49%. However the ALC classification clearly varies across the Site. The haphazard nature of parcels of BMV, and the presence of numerous drains crossing the Site, as well as the siting of associated bridges and tracks means that keeping further areas of BMV free from development would be complex and uneconomic given that it cannot practicably be farmed separately to the lower grade land.
- 5.2.37. There is a balance to be made between the policy tension which seeks to safeguard land for agricultural use (and food production in particular), and the urgent need for renewable energy. The recent classification in the 2024 NPS of solar PV development as CNP has increased the weight to be given in favour of the land being used to generate clean energy over and above a range of other environmental factors.
- 5.2.38. The Proposed Development has a consenting period of 40 years. While this remains a very long period, the agricultural land would not be permanently lost. The ExA is satisfied that the Operational Environmental Management Plan (OEMP) and the SMP, secured by Requirements 19 and 20 respectively, provide assurance that the land can be returned to equal ALC value or indeed has the potential to be

improved by the temporary cessation of intensive arable use and associated chemicals.

- 5.2.39. On the majority of the Energy Park Site, agricultural use would continue through sheep farming, and the ExA considers this would be robustly secured in the Recommended DCO through the OEMP (Requirement 19).
- 5.2.40. The 2011 NPS EN-1 and 2024 NPS EN-1 and EN-3 are important and relevant considerations. The ExA is satisfied that the Applicant has justified the siting of the Proposed Development on areas of BMV land, and identified effects and sought to minimise impacts on soil quality, taking into account the mitigation measures proposed in accordance with paragraphs 5.10.8 and 5.10.15 of 2011 NPS EN-1, and paragraphs 5.11.12 of 2024 NPS EN-1.
- 5.2.41. Furthermore, the ExA is content that appropriate and detailed consideration has been given to continuation of agriculture use and co-location with other functions (including storage) to maximise the efficiency of land use, in accordance with paragraph 2.10.32 of 2024 NPS EN-3.
- 5.2.42. Overall the Proposed Development would not result in irreversible or permanent loss of agricultural land. The ExA ascribes the loss of BMV a little negative weight in the planning balance.

SOCIO-ECONOMICS

- 5.2.43. The ExA is satisfied that the Applicant has provided sufficient evidence to support its assessment of socio-economic effects.
- 5.2.44. The ExA is content that the final Supply Chain, Employment and Skills Plan secured by Requirement 16 of the Recommended DCO provides an appropriate mechanism to support local employment, and would assist in promotion of careers locally which relate to solar energy and battery storage in particular.
- 5.2.45. The ExA is satisfied that the Proposed Development would support economic development in the area and would accord with all relevant policies, including both the 2011 and 2024 NPS EN-1. The ExA affords the socio-economic matters moderate positive weight in the planning balance.

TRANSPORT, ACCESS AND PUBLIC RIGHTS OF WAY

- 5.2.46. The ExA is satisfied that the impacts on the local road network during construction can be dealt with through submission of a final Construction Traffic Management Plan, secured by Requirement 14 of the Recommended DCO.
- 5.2.47. The provision of a permissive path through the Energy Park site, linking to the PRoW network and secured by Requirement 17, represents a positive benefit of the project.
- 5.2.48. The ExA is satisfied that the traffic and transport assessment as set out in ES Chapter 14 meets the requirements of both 2011 NPS EN-1 and 2024 NPS EN-1 and EN-3. The Proposed Development would not lead to an unacceptable impact on highway safety, residual cumulative impacts on the road network would not be severe, and consideration has been given to non-motorised users.
- 5.2.49. Overall, issues of transport, access and PRoWs are considered to be neutral and therefore do not affect the planning balance.

WATER ENVIRONMENT, FLOOD RISK AND DRAINAGE

- 5.2.50. The ExA is content that an appropriate Flood Risk Assessment (FRA), meeting the requirements of 2011 and 2024 NPS EN-1, has been carried out. The information within the FRA together with the Applicant's assessment of alternatives set out in ES Chapter 3 is sufficient for the ExA to conclude that the sequential test and exceptions test have been met, and it is noted that this is also agreed by the RPAs.
- 5.2.51. The ExA is satisfied that no further mitigation in respect of flooding, drainage or effects on water quality and resources is necessary beyond that set out in Requirements 6 (detailed design), 11 (surface and foul water drainage), and 13 (CEMP) of the Recommended DCO. The Proposed Development also accords with the requirements of the Water Framework Directive Regulations.
- 5.2.52. The ExA therefore concludes that the requirements in respect of water quality and flood risk are met, and considers that the effects are neutral in the planning balance so do not weigh for or against the making of the Order.

OTHER MATTERS

- 5.2.53. The ExA has concluded that the Applicant has appropriately demonstrated that no significant effects would arise in respect of air quality and human health, glint and glare, major accidents and disasters, noise and vibration, and waste.
- 5.2.54. All these other matters are neutral in the planning balance except for noise and vibration which is ascribed a little negative weight in the planning balance albeit only short term and temporary during the construction and decommissioning phases.

CUMULATIVE EFFECTS

- 5.2.55. The ExA considers the Applicants cumulative effects assessment fulfils the requirements of the EIA Regulations and both 2011 and 2024 NPS EN-1, which are important and relevant considerations. The ExA finds there to be moderate adverse effects arising from the cumulative loss of BMV land in the Lincolnshire region, and moderate adverse effects (together with Beacon Fen Energy Park only) in terms of landscape and visual effects (albeit localised). There would also be potential additional harm with Beacon Fen to the setting of the Grade I listed Kyme Tower, albeit not significant in EIA terms. Overall, these cumulative matters attract moderate negative weight in the planning balance.

5.3. THE PLANNING BALANCE

- 5.3.1. In reaching conclusions on the case of the Proposed Development, the ExA has had regard to:
- The LIRs submitted by Boston Borough Council, Lincolnshire County Council and North Kesteven District Council.
 - Any matters prescribed in relation to development of the description to which the application relates, including the Infrastructure Planning (Decision) Regulations 2010.
 - Any other matters considered by the ExA to be both important and relevant to the SoS's decision. These include the 2011 NPS EN-1 and EN-5, 2024 NPS EN-1, EN-3, and EN-5, the NPPF and the relevant policies of the local development plans.
- 5.3.2. In weighing factors in the planning balance the ExA has used the following scale:

- Neutral weight (would not weigh for or against)
- A little weight
- Moderate weight
- Great weight
- Very great weight

- 5.3.3. The 2011 NPS makes it clear, and this is strengthened by the designation of the 2024 NPS which includes solar PV development as CNP that there is an urgent need for additional electricity generating capacity. The Proposed Development would comprise a clean source of renewable energy which would contribute to energy security, network resilience and a secure, diverse and affordable energy supply. The electricity generated would make a meaningful contribution to the UK's transition to low carbon and renewable energy generation and Net Zero target. The ExA affords this very great positive weight in the planning balance.
- 5.3.4. The Option Agreement in place with the owner of the Energy Park Site, which although extensive in size is well contained, together with the relatively short cable route to the National Grid Bicker Fen substation and associated grid connection agreement indicate that the Proposed Development can be built out in a relatively quick timeframe. This is in accordance with 2024 NPS EN-1 which makes clear that *"Government strongly supports the delivery of CNP infrastructure and it should be progressed as quickly as possible"* (paragraph 3.3.63).
- 5.3.5. The Recommended DCO would secure at least 65% Biodiversity Net Gain (BNG) as part of the Proposed Development, which has the potential to significantly exceed this level of BNG of habitat units. This attracts great positive weight in the planning balance. Positive benefits would also arise from the creation of a community orchard and permissive path through the Energy Park Site, and there would be visual benefits associated with the planting proposals secured by the Landscape Ecological Management Plan.
- 5.3.6. The Proposed Development would result in a range of socio-economic benefits, particularly in relation to job creation during construction. Such matters attract moderate positive weight in the planning balance.
- 5.3.7. The ExA has found that the Proposed Development would result in less than substantial harm to the setting of designated heritage asset of the highest significance (the Grade I listed Kyme Tower). This harm, to which great weight should be afforded, is to be weighed against the public benefits of the proposal. The ExA considers that the less than substantial harm would be outweighed by the public benefits as outlined above. Overall such harm attracts a little negative weight in the planning balance.
- 5.3.8. Landscape and visual effects would also result in harm. This would reduce beyond 500m of the Energy Park Site and over time as landscaping matures. The residual effects are afforded moderate negative weight in the planning balance.
- 5.3.9. The ExA has considered that the loss of BMV agricultural land has been justified by the Applicant and acknowledges that the majority of the losses would be temporary and reversible, nonetheless this attracts a little negative weight in the planning balance.
- 5.3.10. The ExA has found that adverse effects would arise from the cumulative loss of BMV land in the Lincolnshire region, and (together with Beacon Fen Energy Park only) moderate adverse landscape and visual effects, and potential additional harm

to the setting of the Grade I listed Kyme Tower. These matters attract moderate negative weight in the planning balance.

- 5.3.11. Other issues considered in this Recommendation which, following mitigation as secured in the Recommended DCO, are neutral in the planning balance and do not weigh for or against the Order being made are:
- Transport, Access and Public Rights of Way
 - Water Environment, Flood Risk and Drainage
 - Air Quality and Human Health
 - Glint and Glare
 - Major Accidents and Disasters
 - Noise and Vibration
 - Waste
- 5.3.12. Taking the above factors into account, and having had regard to all important and relevant matters, The ExA concludes that the harm identified is clearly outweighed by the substantial benefits from the provision of energy to meet the need identified in both 2011 and 2024 NPS EN-1 which are important and relevant considerations. There are also other benefits as summarised above. The ExA further concludes that the Proposed Development would accord with the 2011 and 2024 NPS in all material respects, which s105 of PA2008 requires the SoS to have regard to as important and relevant to the decision, along with any LIR and any other matters which the SoS thinks are both important and relevant to the decision. The SoS also has a statutory sustainable development duty, under s10 of the PA2008, to have regard to mitigating and adapting to climate change.
- 5.3.13. These are public benefits which the ExA is satisfied would outweigh the less than substantial harm to the setting of the Grade I listed Kyme Tower.
- 5.3.14. Moreover, the ExA is fully satisfied that the Applicant has properly applied the mitigation hierarchy and demonstrated that residual impacts are capable of being addressed. All adverse effects, of which the majority of the Proposed Development (and all of the Energy Park Site) would be of time-limited duration and reversible, would be mitigated as far as possible through controls secured through the Recommended DCO.
- 5.3.15. No exceptional circumstances have been identified, and consequently the CNP policy in 2024 NPS EN-1 indicates that any residual impacts are unlikely to outweigh the urgent need for this type of infrastructure. As a result of the transitional arrangements the 2024 NPS does not have direct effect for this Application, nonetheless it is an important and relevant matter that adds further support and weight to the ExA's conclusions. Given the 2024 NPS reflects the most up-to-date Government policy the ExA gives it considerable weight.
- 5.3.16. The ExA concludes that none of the matters which have been weighed against consent being granted, either in isolation or cumulatively, outweigh the significant benefits identified. The SoS should note that the cumulative assessment was carried out at the end of the Examination in February 2024, and that its currency should be considered at the point of decision, including if there have been any changes in the status of the other projects.
- 5.3.17. The final balance weighs strongly in favour of granting Development Consent.

5.4. OVERALL CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

- 5.4.1. For the reasons set out in the preceding Chapters of this Recommendation and as summarised above, the ExA finds that the Proposed Development is acceptable in principle in planning terms and that the case for Development Consent is made out. This conclusion is carried forward to the consideration of land and rights matters in Chapter 6, and in consideration of the draft DCO in Chapter 7 below.

6. LAND RIGHTS AND RELATED MATTERS

6.1. INTRODUCTION

- 6.1.1. This Section sets out the relevant legislative requirements relating to Compulsory Acquisition (CA) and Temporary Possession (TP), describes the request by the Applicant for CA and TP powers, explains the purposes for which land would be required, sets out the examination of the CA and TP case and gives the Examining Authority's (ExA's) conclusions and recommendations.

6.2. LEGISLATIVE REQUIREMENTS

Compulsory Acquisition

- 6.2.1. CA powers can only be granted if the conditions set out in s122 and s123 of the Planning Act 2008 (PA2008) are met. Section 122(2) requires that the land must be required for the development to which the development consent relates or is required to facilitate or is incidental to the development.
- 6.2.2. Section 122(3) requires that there must be a compelling case in the public interest, which means that the public benefit derived from the CA must outweigh the private loss that would be suffered by those whose land would be affected. In balancing public interest against private loss, CA must be justified in its own right. This does not mean, however, that the CA proposal can be considered in isolation from the wider consideration of the merits of the Proposed Development. There must be a need for the Proposed Development to be carried out and there must be consistency and coherency in the decision-making process. A conclusion on this matter is reached later in this Section.
- 6.2.3. Section 123 requires that one of three conditions in s123(2) to (4) must be met by the proposal. The ExA is satisfied that the condition in s123(2) is met because the application for the Development Consent Order (DCO) includes a request for CA of the land to be authorised.
- 6.2.4. Several general considerations also need to be addressed as a result of the 2013 Guidance published by the Department for Communities and Local Government: 'Planning Act 2008 Guidance related to procedures for the compulsory acquisition of land' (CA Guidance), as well as the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (CA Regulations). These include that all reasonable alternatives to CA must be explored, that the Applicant must have a clear idea of how it intends to use the land and demonstrate funds are available, and that the purposes stated for the acquisition are legitimate and sufficiently justify the inevitable interference with the human rights of those affected. In respect of land required for the development, the land to be taken must be no more than is reasonably required and proportionate.

Statutory Undertakers

- 6.2.5. Section 127 applies to statutory undertakers' land. Section 127(2) and (3) state that an order granting development consent may include provisions authorising the CA of such land only to the extent that the Secretary of State (SoS) is satisfied that it can be purchased and not replaced without serious detriment to the carrying on of the undertaking or if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the undertaking. Similarly, s127(5) and (6) of PA2008 provide that an order granting

development consent may only include provision authorising the CA of rights belonging to statutory undertakers to the extent that the SoS is satisfied that the right can be taken without serious detriment to the carrying out of the undertaking, or that any detriment can be made good.

- 6.2.6. Section 138 of PA2008 relates to the extinguishment of rights on statutory undertakers' land. It states that an order may include a provision for the extinguishment of the relevant rights, or the removal of the relevant apparatus only if the SoS is satisfied that the extinguishment or removal is necessary for the purposes of carrying out the development to which it relates.

Temporary Possession

- 6.2.7. TP powers are also capable of being within the scope of a DCO under Part 1 of Schedule 5 to PA2008 which allows for the suspension of interests in or rights over land compulsorily or by agreement. PA2008 and the associated CA Guidance do not contain the same level of specification and tests to be met in relation to the granting of TP powers, as by definition such powers do not seek to permanently deprive or amend a person's interests in land. However, TP is an interference with human rights of Affected Persons (AP) and so there must be adequate justification of the scope of the powers and the degree of interference.

- 6.2.8. The Neighbourhood Planning Act 2017 has been enacted and contains provisions which amount to a codification of new TP practice. In recognition of the greater extent to which TP is being sought by scheme promoters and of the extended durations for which TP can be sought, the provisions of the Act seek to ensure that persons subject to TP have equivalent or proportionate rights to notice and to relevant compensation to those already available to APs subject to CA. However, at the time of submission of this Recommendation to the SoS, the relevant provisions of the Neighbourhood Planning Act 2017 had not commenced.

Crown Land

- 6.2.9. Section 135(1) of the PA2008 precludes the CA of interests in Crown Land unless the land is held otherwise than by or on behalf of the Crown, and the appropriate Crown authority consents to the acquisition. Section 135(2) precludes a DCO from including any provision applying to Crown Land or Crown rights without consent from the appropriate Crown authority.

6.3. THE REQUEST FOR COMPULSORY ACQUISITION AND TEMPORARY POSSESSION POWERS

- 6.3.1. The request for CA and TP powers is made through the inclusion of Part 5 (Powers of Acquisition) of the draft DCO and other provisions.

- 6.3.2. At the commencement of the Examination the Application was accompanied by:

- a Statement of Reasons (SoR) [[APP-018](#)]
- a Book of Reference (BoR) [[APP-020](#)]
- Land and Crown Land Plans [[APP-006](#)]
- Crown Land Plans [[AS-003](#)]
- a Funding Statement [[APP-019](#)]

- 6.3.3. As set out in Chapter 1 Section 1.5 relating to the Change Application, revisions to the BoR and Land and Crown Plans were received in the Pre-examination period to

reflect an increase in the extent of land required for Work No. 6 [\[PS-001\]](#). The changes were accepted shortly after commencement of the Examination [\[PD-010\]](#). The accepted change included the relevant consent from National Grid Electricity Transmission plc (NGET) as landowner and operator of the Bicker Fen substation. During the Examination a small number of plots were removed from the Application as they were no longer required.

6.3.4. The final Examination version of the documents are as follows:

- Statement of Reasons [\[REP5-027\]](#)
- Book of Reference [\[REP5-029\]](#)
- Land and Crown Land Plans [\[REP4-004\]](#)
- Crown Land Plans [\[PS-022\]](#)
- Funding Statement [\[REP2-016\]](#)

6.3.5. At each Deadline a Schedule of Negotiations was supplied which kept the ExA updated throughout the Examination of the progress of negotiations with Affected Persons (APs) and included statutory undertakers. A final Schedule [\[REP5-031\]](#) was submitted at Deadline 5 setting out the position at the close of the Examination, and Appendix 2 of the Applicant's Closing Submissions provides a s127 and s128 statement [\[REP6-003\]](#) relating to the final position with statutory undertakers.

6.3.6. These documents, taken together, form the basis of the analysis in this Chapter. References to the BoR and Land Plans should be read as references to the final versions listed above.

6.3.7. The Application draft DCO version 1 [\[APP-015\]](#) and all subsequent versions include provision for CA of land and rights as principally contained within Articles 18 and 20 of the Order. Temporary rights are set out in Articles 27 and 28 of the draft DCO, and the power to extinguish or suspend private rights are set out in Article 21 and 24.

6.4. THE PURPOSES FOR WHICH LAND IS REQUIRED

6.4.1. The purposes for which CA and TP powers are required are set out in section 7 of the SoR [\[REP5-027\]](#). In summary, the Applicant explains that the powers for CA of rights over land (including restrictions) in the Order are required for the construction, operation and maintenance of the Proposed Development. The power to compulsorily acquire rights over land is required to ensure there is no impediment to the delivery of the project. The Applicant puts that the location and extent of the rights has been carefully considered and designed in order to take the minimum amount of rights required, and is therefore proportionate and necessary.

6.4.2. None of the land included in the request is special category land. Crown Land forms part of the request.

6.4.3. At paragraph 6.1.26 of the SoR [\[REP5-027\]](#) the Applicant explains that it has an Option Agreement in place with the freehold owner of the majority of the Order land which contains the Energy Park site to secure the rights to construct and maintain the Proposed Development.

6.4.4. The land over which new rights (including the imposition of restrictions) are being compulsorily sought is shown edged red and shaded blue or yellow on the Land and Crown Land Plans [\[REP4-004\]](#).

- 6.4.5. The Statement of Reasons (SoR) [\[REP5-027\]](#) explains why the Applicant considers CA and related powers are necessary, and that there is a clear and compelling case in the public interest in accordance with s122 of the PA2008.
- 6.4.6. The Solar Park (Work no.1) comprises four plots as identified on the Land and Crown Land Plans [\[REP4-004\]](#). The largest plots 282, 283 make up the majority of the area of the Site, and plots 330 and 331 relate to a drain which runs through the site. The existing National Grid Substation (Work nos 6A, 6B and 6C) comprises plots 99A to 99I inclusive. The Cable Route Corridor associated with works 2, 3, 4, 5A and 5B leads between the Solar Park and the Substation and is made up of a larger number of individual plots as summarised in paragraph 5.1.16 of the SoR. Optionality relates to Work Nos 5A and 5B as explained in paragraph 5.1.15 of the SoR [\[REP5-027\]](#).
- 6.4.7. No CA of land is proposed, only of rights. Class rights are broken down into four types as the following, and as summarised in Table 1 of the SoR [\[REP5-027\]](#):
- Class 1 - Permanent easement and access (Article 20: CA of Rights)
 - Class 2 - Permanent access only (Article 20: CA of Rights)
 - Class 3 - Temporary use (Articles 27 and 28)
 - Class 4 - Override of private rights or extinguish other rights (Articles 21 and 24)
- 6.4.8. The Applicant is not seeking CA powers to secure freehold rights to or new rights over the Solar Park Site. It has completed an Option Agreement with the landowner of the Solar Park Site to secure rights to construct and maintain it (and the energy storage facility). Only Class 4 rights are sought over plots 282, 283, 330 and 331 to ensure that title can be secured with certainty and to protect the deliverability of the Proposed Development from circumstances which may otherwise cause a delay, including a general right to acquire any unknown freehold or leasehold rights over the land.
- 6.4.9. In respect of the affected public highways and streets, Part 3 Articles 8 to 11 and 26 of the draft DCO relate to a right to enter onto streets and maintain apparatus in them, to construct means of access and to create temporary restrictions on their use. Article 23 relates to subsoil only rights, which are sought to ensure that the minimum amount of rights under the land required to construct and operate the Proposed Development are acquired.

Statutory Undertakers

- 6.4.10. If a statutory undertaker makes a representation about the CA of land or a right over land which has been acquired for the purpose of its undertaking, and this is not withdrawn, s127 of PA2008 applies. In these circumstances, the DCO can only include a provision authorising the CA of that land or right if the SoS is satisfied that the land or right can be purchased without serious detriment to the carrying on of the undertaking, or that any such detriment can be made good by use of alternative land.
- 6.4.11. Section 138 of the PA2008 applies where a statutory undertaker has a relevant right or relevant apparatus in land over which CA is sought. In those circumstances, the DCO can only authorise the extinguishment of the right or removal of the apparatus if the SoS is satisfied that this is necessary for the purpose of carrying out the development to which the Order relates.

- 6.4.12. The land affected by the Proposed Development includes interests owned by several statutory undertakers, which are considered further in from paragraph 6.7.4 below.

6.5. THE APPLICANT'S CASE

Introduction

- 6.5.1. In seeking CA and TP powers in the draft DCO the Applicant set out its case with regard to s122 of PA2008 and to the tests within the CA Guidance both in writing and at the Compulsory Acquisition Hearing (CAH). It is set out in full in the SoR [\[REP5-027\]](#). The Applicant's Closing Submissions [\[REP6-003\]](#) provide a summary of the position at the end of the Examination, together with the Schedule of Negotiations with Landowners and Statutory Undertakers [\[REP5-031\]](#).

Need for and Justification of CA Powers

- 6.5.2. The Applicant sets out that the land which would be subject to CA powers is required for the Proposed Development, is needed to facilitate the Proposed Development or is incidental to the Proposed Development. The Applicant considers that the location and the extent of rights has been carefully considered and designed in order to take the minimum amount of rights required to construct, operate and maintain the Proposed Development and therefore that it is proportionate and necessary.
- 6.5.3. The Applicant states that the CA powers are necessary to achieve its objectives, noting that detailed design has yet to take place. In the event that less land proves to be required following the detailed design, the Applicant would only seek to acquire that part of the land that is required.
- 6.5.4. The CA powers are also required to override any existing rights and interests in the land as well as to grant the right to take TP of land for construction and maintenance purposes. Without these rights over the land, the Applicant considers that the Proposed Development cannot be delivered. The Applicant considers that there has been sufficient and ongoing engagement with APs and that they are satisfied that the condition in s122(2) of PA2008 is met.
- 6.5.5. The need case for and the benefits of the Proposed Development have been previously set out in Section 3.2 of this Recommendation and are summarised by the Applicant in section 8 of the SoR [\[REP5-027\]](#). In particular, the UK Government's urgent need for renewable energy generation is set out in 2011 National Policy Statement (NPS) EN-1 and EN-3, 2024 NPS EN-1 and EN-3, as well as various other policy documents which are summarised in Section 3.2 of this Recommendation.
- 6.5.6. The Applicant is therefore satisfied that the condition set out in s122(3) of PA2008 is met and that there is a compelling case in the public interest.

Alternatives

- 6.5.7. The CA Guidance indicates that the Applicant should be able to demonstrate to the satisfaction of the SoS that all reasonable alternatives to CA (including modifications to the scheme) have been explored.
- 6.5.8. The Applicant's approach to the consideration of alternatives in relation to CA is set out in paragraphs 7.6.10 to 7.6.14 of the SoR [\[REP5-027\]](#). It notes the range of

technical, environmental and economic factors considered for the Energy Park, and refers to the Grid Route Selection Report [Appendix A, [REP5-027](#)] in relation to the alternative routes considered for the cable route corridor. Where practicable, lesser powers of TP would be used to narrow down the grid route when considering detailed design.

- 6.5.9. Chapter 3 of the ES [[PS-053](#)], as detailed in Section 3.2 of this Recommendation, sets out the Applicant's approach to alternative sites and designs. The Consultation Report [[APP-022](#)] further explains how community and statutory consultees, together with negotiations with landowners, have influenced consideration of the design and layout of the Proposed Development. The Applicant summarises that none of the alternatives or modifications considered for the Proposed Development would remove the need for powers of CA and TP over the Order land.
- 6.5.10. The single ownership and Option Agreement on the majority of the Energy Park site, on which the Applicant has had an interest in for many years since its plans for a wind farm on the land, is heavily influential in the overall location of the site. This minimises the need for CA powers. Furthermore, notwithstanding the request for CA and TP powers, the Applicant has conducted negotiations with APs in parallel with the Examination with the aim of acquisition of rights by voluntary agreement.

Funding

- 6.5.11. The project cost is set out in the Funding Statement [[REP2-016](#)] as approximately £400 million, including an allowance for inflation and project contingencies.
- 6.5.12. The Funding Statement explains that the Applicant has been formed to create the Proposed Development, and that Ecotricity Generation Limited is the beneficiary of a grid connection with National Grid. Both are part of the group owned by Green Britain Group Limited ('the Ecotricity Group'). The Ecotricity Group has assets of over £62 million as detailed in its most recent accounts at Appendix 1 of the Funding Statement. The preparation of the Application and taking it through Examination has been funded from its own capital resources.
- 6.5.13. Further funding would be sought through finance for the construction, operation and decommissioning of the Proposed Development. A final decision has not yet been taken on the type of finance that will be used, but paragraph 2.1.10 states that the approach is tried and tested in the market and the Ecotricity Group has no concerns that it would be unable to obtain finance for the construction, operation and decommissioning of the Proposed Development.
- 6.5.14. The cost estimates include an amount to cover the total cost of the payment of compensation for the CA and TP required for the project. The Applicant also confirmed that should any claims for blight arise as a consequence of the Application, the Ecotricity Group has sufficient funds to meet such costs. Nonetheless no holders of interests in the DCO land who it considers could be eligible to serve a blight notice have been identified.
- 6.5.15. Since the original Funding Statement was produced the Applicant has progressed the procurement of the project on an engineering, procurement and construction (EPC) basis, as explained in its answer to first written question (ExQ1) CA1.10 [[REP2-077](#)].
- 6.5.16. Neither the adequacy of funding for CA nor the ability of the Applicant to secure funding were raised by any AP during the Examination. The ExA has no reason to

doubt the validity of the estimated cost of the Proposed Development nor does the type of funding give reason for concern. The ExA is satisfied that the Ecotricity Group has significant experience in delivering multiple projects across the UK on the same basis as that described in the Funding Statement. The financial statements provided indicate that the Applicant has the ability to procure the financial resources required for the Proposed Development, including the cost of acquiring any land and rights and compensation payments.

- 6.5.17. Article 43 of the Recommended DCO requires a guarantee or alternative form of security for compensation that may be payable pursuant to the DCO before the provisions of CA can be exercised. This provides a clear mechanism whereby the necessary funding for CA can be guaranteed and it is noted that this form of Article was approved by the SoS in respect of the Cleve Hill Solar Park Order 2020.

6.6. EXAMINATION OF THE COMPULSORY ACQUISITION AND TEMPORARY POSSESSION CASE

- 6.6.1. In examining the Application the ExA considered all written material in respect of CA and TP, asked written questions in ExQ1 [\[PD-012\]](#) and ExQ2 [\[PD-013\]](#), and held a CAH [\[EV-017\]](#) where the issues were explored orally. At Unaccompanied Site Inspection 1 [\[EV-001\]](#) and the Accompanied Site Inspection [\[EV-001a\]](#), the ExA viewed land proposed for CA and TP.
- 6.6.2. ExQ1 [\[PD-012\]](#) was issued between Deadline 1 and 2, where the ExA put questions CA 1.1 to CA 1.10 to both the Applicant and APs on high level and general matters relating to the Applicant's case for CA and TP. In ExQ2 [\[PD-013\]](#), further questions CA 2.1 to CA 2.8 asked more detailed questions and requested updates from both the Applicant and APs.
- 6.6.3. At the CAH [\[EV-017\]](#) on 21 November 2023 the Applicant was given the opportunity to summarise and provide further information to the ExA regarding its case for CA and TP and how it considered the tests of PA2008 would be met together with compliance with relevant Guidance.
- 6.6.4. Oral questions from the ExA sought information on and clarification of a number of matters including:
- matters not clear from the written evidence;
 - progress on negotiations with APs;
 - the need to acquire rights and alternatives;
 - updates to the BoR and Land Plans;
 - protective provisions in relation to statutory undertakers and others; and
 - whether there is a compelling case in the public interest.

6.7. CONSIDERATION OF INDIVIDUAL OBJECTIONS AND ISSUES

- 6.7.1. At the start of the Examination, the following APs submitted representations regarding land rights and related matters:
- Anglian Water Services Limited
 - Bicker Fen Windfarm Limited
 - Black Sluice Internal Drainage Board
 - Environment Agency
 - Lincolnshire County Council
 - National Gas Transmission Plc (National Grid Gas Plc)

- National Grid Electricity Transmission Plc
- National Grid Viking Link Limited
- Network Rail Infrastructure Limited
- Triton Knoll OFTO Limited

- 6.7.2. The Schedule of Negotiations with Statutory Undertakers and Landowners [\[REP5-031\]](#) provided updates at each Deadline on how matters were progressing with the above parties as well as other APs who had not submitted representations. Statements of Common Ground (SoCGs) were produced for all of the above listed APs, who are also statutory undertakers.
- 6.7.3. A private landowner listed in the BoR (Christopher Hinge joint owner of plot 63A) submitted an Relevant Representation (RR) [\[RR-006\]](#) but this was not construed as an objection, rather a wish to be kept informed of the progress of the Application. No other private individual landowners or occupiers listed in the BoR submitted representations as an AP.

STATUTORY UNDERTAKERS

- 6.7.4. Given the status of the above listed APs as statutory undertakers, this Section of the Recommendation therefore considers the representations against s127 and s138 of the PA2008 as well as the overarching tests in s122(3).
- 6.7.5. A number of additional statutory undertakers are also listed in the BoR [\[REP5-029\]](#) but did not engage in the Examination – these are the BT Group Plc, Vodafone Limited, National Grid Electricity Distribution (East Midlands) Plc and National Grid Electricity Distribution Plc.
- 6.7.6. At the end of the Examination, in its Closing Submissions, the Applicant provided a s127 and s138 statement [Section 7 and Appendix 2, [REP6-003](#)]. Section 127 of PA2008 is applicable where (a) the land or interest has been acquired by statutory undertakers for the purposes of their undertaking; (b) a representation has been made about an application for an order granting development consent before the completion of the examination of the application, and the representation has not been withdrawn; and (c) as a result of the representation the Secretary of State is satisfied that the land is used for the purposes of carrying on the statutory undertakers' undertaking, or an interest in the land is held for those purposes.
- 6.7.7. No CA of statutory undertaker's land is proposed, only rights over their land. In this respect, s127(5) of PA2008 states that an order granting development consent may only include provision authority authorising the CA of a right over statutory undertaker's land by the creation of a new right over land to the extent that: (a) the right can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or (b) any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of the other land belonging to or available for acquisition by them.
- 6.7.8. Section 138 of PA 2008 applies if a DCO authorises the acquisition of land (compulsorily or by agreement) and: (a) there subsists over the land a relevant right (defined in s138(2)); or (b) there is on, under or over the land relevant apparatus (defined in s138(3)).
- 6.7.9. Section 138(4) of PA2008 states that an order may only include provision for the extinguishment of the relevant right, or the removal of the relevant apparatus, if the SoS is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the order relates.

- 6.7.10. Protective Provisions included in Schedule 13 of the draft DCO [\[REP5-020\]](#) seek to cover all statutory undertakers listed in the BoR. For those without bespoke Protective Provisions in Parts 3 to 12, Part 1 covers electricity, gas, water and sewerage undertakers and Part 2 covers electronic communications code networks. No representations were received in respect of these more generic Protective Provisions. Where Protective Provisions are applicable they are set out below, and are discussed in further detail in Chapter 7 of this Recommendation in considering the DCO.

AGREEMENTS

- 6.7.11. Formal agreements were reached and/or objections were withdrawn from the following statutory undertakers and APs by the close of the Examination:

Anglian Water Services Limited (Anglian Water)

(Plots 63A, 63B, 63C, 63D, 72, 73A, 73B, 76A, 76B, 284, 289, 294, 295, 296, 298, 299, 307, 324, 335, 337, 341, 347, 348)

- 6.7.12. Anglian Water has category 2 and 3 interests and underground water pipes through the site. Its RR [\[RR-012\]](#) set out that protection of its assets would need to be achieved through the Protective Provisions. At the start of the Examination, its submission [\[AS-032\]](#) confirmed outstanding issues with the Applicant had been resolved and Protective Provisions at Part 3 of Schedule 13 of the draft DCO were agreed. This was also confirmed in the SoCG [\[REP1-009\]](#). Whilst Anglian Water has assets within the Order Limits, the SoCG notes that the Proposed Development would not impact Anglian Water's assets as surface water would be discharged to watercourses and not to the sewage network.

Bicker Fen Windfarm Limited

(Plots 104A to 104E, 109A and 109B)

- 6.7.13. Schrodgers Greencoat for the owners and operators of the Bicker Fen Windfarm submitted representations seeking to ensure that the Proposed Development would not be detrimental to its operations [\[RR-023\]](#). It was confirmed at Deadline 5 that an agreement had been signed [\[REP5-070\]](#). Appendix 2 of the Applicant's Closing Submissions [\[REP6-003\]](#) sets out that it also has the benefit of Protective Provisions under Part 1 of Schedule 13 to the draft DCO and the CA provisions are able to be granted without serious detriment to the undertaking of the Windfarm.

Black Sluice Internal Drainage Board (Black Sluice IDB)

(Plots 12, 60A to 60C, 67A, 68C, 68E, 69, 75D, 75G, 75I, 76B, 89, 94, 99A, 99C to 99E, 100B, 101B, 101C, 104B to 104E, 108A, 184, 248, 255, 282, 283, 289, 290, 293A, 293B, 294, 295, 296, 298, 313, 316, 317, 322, 323, and 331)

- 6.7.14. The Black Sluice IDB have category 2 and 3 interests in respect of drainage ditches throughout the site and a right of way. Its RR sets out its role and powers under the Land Drainage Act 1991 [\[RR-003\]](#). The IDB confirmed its satisfaction with the Protective Provisions at ISH2 [\[EV-009\]](#) and in its answers to ExQ1 WE.1.4 [\[REP3-050\]](#). The SoCG [\[REP5-039\]](#) confirms the completion of the legal agreement this together with the agreement of Protective Provisions within Part 7 of Schedule 13 of the draft DCO.

Environment Agency

(Plots 63A to 63D, 72, 73A, 73B, 245 and 286)

- 6.7.15. The Environment Agency is the freehold owner of plots adjacent to the South Forty Foot Drain and in its RR submitted an objection to any acquisition of rights over its land [\[RR-009\]](#). The Environment Agency provided an update at Deadline 5. This confirmed that the draft Option Agreement and Deed had progressed and that it was confident of the parties reaching agreement, as well as its satisfaction that it does not object to the project in terms of its potential to impede an ability to carry out its flood risk management operations [\[REP5-068\]](#). This is also set out in Appendix 2 of the Applicant's Closing Submissions [\[REP6-003\]](#).

Examining Authority's Response

- 6.7.16. As a consequence of the agreed position between the Applicants and the above listed Statutory Undertakers, the ExA is satisfied that the requirements of s127 and s138 of the PA2008 are met.

Other Statutory Undertakers

- 6.7.17. Two other Statutory Undertakers are listed in Table 1 of the Applicant's Closing Submissions [\[REP6-003\]](#), and did not submit any representations to the Examination. Therefore s127 of PA2008 is not engaged. These are both telecommunications operators; Vodafone Limited and BT Group plc. Table 1 indicates that following discussions, Vodafone confirmed that its assets at Plot 99F would not be impacted by the Proposed Development. BT issued the Applicant with a Letter of Proximity regarding its process for relocations, diversions or alterations of its assets which may be required as a result of the Proposed Development, and the Applicant has confirmed that it intends to comply with this. General Protective Provisions for the benefit of operators of the electronic communications code are included under Part 2 of Schedule 13 in the Recommended DCO. Consequently, the ExA is satisfied that CA provisions can be granted without serious detriment to the carrying on of undertakings by either of these Statutory Undertakers.

LAND TO WHICH NO OBJECTION HAS BEEN RECEIVED

- 6.7.18. A number of other landowners whose land would be subject to CA and TP did not raise objections to the Proposed Development during the Examination. Notwithstanding the lack of representation from the majority of the landowners or occupiers affected, the ExA has considered whether the land required for the Proposed Development, to facilitate or is incidental to that development and there is a compelling case in the public interest for the Rights to be acquired compulsorily. The same considerations apply to land sought to be acquired for TP, whether or not with permanent rights.
- 6.7.19. The Schedule of Negotiations [\[REP5-031\]](#) appropriately sets out the latest position. The ExA is satisfied that the APs have had every opportunity to engage with the Examination, that adequate progress has been made with ongoing discussions to address concerns which are capable of being resolved at the detailed design stage.

Unknown Interests

- 6.7.20. A number of plots are listed in the BoR [\[REP5-029\]](#) as having unknown Category 2 interests, and two plots have unknown Category 1 owners and occupiers (plots 313 and 317). The ExA asked the Applicant as part of ExQ1 CA.1.2 [\[PD-012\]](#) to detail efforts made to identify unknown parties.
- 6.7.21. The Applicant explained that these are generally in relation to historic rights granted by conveyances from pre-1990; in many cases, the Land Registry does not hold copies of these historic conveyances and the Applicant has been unable to establish the beneficiaries or the nature of the rights reserved, but they remain in the BoR as potential Category 3 interests. Where interests in the land could not be identified through due diligence, site notices were erected on the land for a minimum of five weeks with the relevant contact details. Site notices were erected in July 2022 and January 2023 following the identification of further small plots of land with unknown ownership, primarily due to the plotting of the full extent of the adopted highway. A further set of site notices were erected in April 2023. No responses were received to any of the site notices.
- 6.7.22. The ExA sought an update at ExQ2 (CA 2.6) [\[PD-013\]](#) The Applicant replied that since Deadline 3, it had continued to engage with identified interested parties who have an interest in parcels of land adjacent to those unknown parcels in an attempt to clarify ownership. Visits were made and further site notices were also erected. It confirmed that efforts to identify unknown interests in land will continue until such time that any exercise of CA powers is required to secure the required rights. Parcels 313 and 317 (which have unknown freehold owners) are small sections of access track, over which rights of permanent access only are sought. These plots of land fall between registered titles and land identified as adopted highway on the County Council maps [\[REP4-054\]](#). The Applicant confirmed that this was also the remaining position at close of the Examination [\[REP6-003\]](#).

REPRESENTATIONS OUTSTANDING

Lincolnshire County Council

(Plots 64, 72, 76A & B, 279, 282, 283, 284, 285, 286, 287, 288, 289, 290, 293A & B, 294, 295, 296, 303, 307, 341, 299, 297, 298, 335, 338, 347, 348)

- 6.7.23. Lincolnshire County Council (LCC) are landowners and the Highway Authority, so has rights in respect of numerous adopted highways and public rights of way (PRoW).
- 6.7.24. LCC did not raise comments regarding land interests in its RR [\[RR-013\]](#). In ExQ2 CA.2.3 [\[PD-013\]](#) the ExA questioned the Council on the matter of land and rights, and LCC responded that: *'Politically LCC does not support the use of best and most versatile land for the large scale solar and renewable energy projects and accordingly the development of land that it holds for such purposes. For these reasons, LCC as an affected landowner, has taken the stance not to engage with Applicants where proposals affect its land'*. Notwithstanding this, LCC confirmed that it does not consider there to be any significant constraints which would prevent the rights sought by the Applicant being exercised should the SoS grant the DCO [\[REP4-055\]](#).
- 6.7.25. The Schedule of Negotiations [\[REP5-031\]](#) indicates that proposed Heads of Terms for an Option for Easement were issued in December 2021 and updated on 18 October 2023. LCC's land agents are part of the 'Land Interest Group' formed in

May 2023 with the intention of producing a consistent Heads of Terms for an Option for Easement and agreeing terms of entry for ongoing surveys within the Order Limits. The Schedule of Negotiations notes that whilst the Applicant is hopeful that the necessary rights can be acquired by voluntary agreement, this would not be within the Examination. Section 2 of Table 2 of the SoCG [\[REP6-006\]](#) sets out LCC landownership as an unresolved matter, with no further details given by LCC.

Examining Authority's Response

- 6.7.26. The ExA does not expect negotiations on Heads of Terms relating to land and rights to progress in the post-Examination period given the aforementioned political stance of LCC. Nonetheless, the ExA is conscious that LCC's fundamental concerns relate to environmental matters and that it has not raised specific objections relating to the CA or TP powers sought. The ExA cannot see anything to suggest that the relevant powers sought in the Order would be unacceptable, and is therefore satisfied that there are no outstanding matters on CA or TP powers sought in relation to LCC in its capacity as landowner.

National Gas Transmission Plc (National Grid Gas plc)

(Plots 67A, 68B, 75I, 75J, 76A, 76B, 282, 289, 307, 335, 337)

- 6.7.27. National Gas Transmission Plc (NGT) are now known as National Grid Gas plc. For the purposes of this Recommendation the ExA has continued to refer to the organisation as NGT for consistency purposes.
- 6.7.28. NGT has a high pressure underground gas transmission pipeline located within the Order Limits, which forms part of the gas transmission network Feeder Main 7 Hatton to Gosberton. Its RR did not raise objections but noted that where the Applicant intends to acquire land or rights, further discussion was required and that it would continue to liaise with the Applicant with a view to reaching a satisfactory agreement [\[RR-016\]](#).
- 6.7.29. In response to ExQ2 DCO 2.1, NGT confirmed that Protective Provisions at Part 4 of Schedule 13 to the draft DCO were agreed, and that the terms of the commercial agreement was substantially agreed and that there were no substantive outstanding issues to report [\[REP4-062\]](#).
- 6.7.30. The SoCG [\[REP6-007\]](#) confirms that the parties have concluded negotiations on the commercial side agreement and signatures are awaited. Appendix 3 of the Applicant's Closing Submissions [\[REP6-003\]](#) notes that formal withdrawal of NGT's representation is expected shortly following legal completion of the side agreement.

Examining Authority's Response

- 6.7.31. The agreed Protective Provisions are as set out in Part 4 of Schedule 13 of the Recommended DCO. As such the ExA considers there would be no serious detriment caused to the carrying on of NGT's undertaking should CA powers be granted, in accordance with s127 of PA2008. In the case of s138, the ExA is satisfied that the extinguishment of the relevant rights, or the removal or relocation of the relevant apparatus, would be necessary for the purpose of carrying out the Proposed Development.
- 6.7.32. Notwithstanding this, the ExA is satisfied that the safety of the high pressure gas pipeline would be protected in compliance with NGT's policies for safe working in proximity to gas apparatus 'Specification for safe working in the vicinity of National

Grid High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22' and relevant Health and Safety Executive guidance HSG47 'Avoiding Danger from underground services' (included in paragraph 11 of the Protective Provisions).

National Grid Electricity Transmission Plc

(Plots 99A, 99B, 99C, 99D, 99E, 99F, 99G, 99H, 99I, 101A, 101B, 101C, 104A)

- 6.7.33. NGET are the owners and operators of the Bicker Fen 400KV substation, to which the Proposed Development seeks to establish a grid connection. Its RR confirms the Applicant has entered into a connection agreement which necessitates the connection bay and additional National Grid infrastructure in order to connect the Project, but that further discussion was required on the impact to its apparatus and rights [\[RR-017\]](#).
- 6.7.34. In response to ExQ2 DCO 2.1 [\[PD-013\]](#) NGET confirmed that Protective Provisions at Part 6 of Schedule 13 to the draft DCO were agreed, and that the terms of the commercial agreement was substantially agreed and that there were no substantive outstanding issues to report [\[REP4-062\]](#).
- 6.7.35. The SoCG [\[REP6-008\]](#) confirms that a connection agreement is in place, the side agreement is agreed (but unsigned) and Protective Provisions are agreed. Appendix 3 of the Applicant's Closing Submissions [\[REP6-003\]](#) notes that formal withdrawal of NGET's representation is expected shortly following legal completion of the side agreement.

Examining Authority's Response

- 6.7.36. The ExA understands that legal completion of the side agreement is imminent. The connection agreement is in place, and Protective Provisions are agreed, consequently the ExA considers there would be no serious detriment caused to the carrying on of NGET's undertaking should CA powers be granted, in accordance with s127 of PA2008. In the case of s138, the ExA is satisfied that the extinguishment of the relevant rights, or the removal or relocation of the relevant apparatus, would be necessary for the purpose of carrying out the Proposed Development.

National Grid Ventures (Viking Link Limited)

(Plots 60A, 99A, 99C, 99E, 99F, 99G)

- 6.7.37. National Grid Ventures Viking Link Limited (Viking Link) is the owner and operator of the UK onshore element of a 760km interconnector between the UK and Denmark. The proposed cable route would cross Viking Link's underground cable which leads to its substation at Bicker Fen.
- 6.7.38. In its RR [\[RR-018\]](#) Viking Link highlighted that it has cable rights for its own nationally significant infrastructure running through the Cable Corridor Site and would need to sign off a crossing agreement where applicable. Its WR [\[REP2-015\]](#) notes that it requires bespoke Protective Provisions to ensure its interests are adequately protected and to ensure compliance with relevant safety standards, and for which it is in negotiations with the Applicant together with supplementary agreements which may be required.

- 6.7.39. Viking Link's response to ExAQ2 DCO.2.2 [\[REP4-063\]](#) confirmed the forthcoming inclusion of Protective Provisions in the draft DCO, and that negotiations on an associated side agreement were ongoing. Protective Provisions were subsequently inserted into the draft DCO at Deadline5 at Part 10 of Schedule 13.
- 6.7.40. The SoCG [\[REP6-009\]](#) notes that the Protective Provisions are largely in agreed form except for paragraph 112(1), which relates to a continuing ability for the Applicant to CA rights from Viking Link should a voluntary agreement not be achieved.
- 6.7.41. The Applicant's Closing Submissions [\[REP6-003\]](#) explains the matter further. It includes at Table 2 its preferred wording for paragraph 112(1) which states: *"Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of Viking Link otherwise than by agreement (such agreement not to be unreasonably withheld)"*.
- 6.7.42. It is Viking Link's position that the underlined wording in brackets should not be included. The Applicant accepts the principle of the CA restriction but wishes to retain the underlined wording because the Applicant cannot commence construction of the Proposed Development until the crossing agreement has been entered into by the parties. This goes to the heart of the viability of the Project and could put the delivery of the project at risk. Viking Link has not directly submitted detailed representations to the Examination on this matter, apart from an indication in the SoCG of its importance *"as its apparatus are of national importance and it must retain discretion as to the protection of the same"* [\[REP6-009\]](#).
- 6.7.43. The SoCG and Closing Submissions both indicate that the parties are shortly expected to reach agreement on the side agreement, but timescales are not provided.

Examining Authority's Response

- 6.7.44. Given progress on negotiations so far, the ExA sees no reason why voluntary agreement of the side agreement cannot be comfortably completed within the post-Examination period. However, in the event that such an agreement is not forthcoming, in order to ensure deliverability of the project, the ExA recommends that the wording of the Protective Provisions as put by the Applicant in paragraph 112(1) is retained in the Recommended DCO.
- 6.7.45. With the Protective Provisions at Part 10 of Schedule 13, the ExA considers there would be no serious detriment caused to the carrying on of Viking Link's undertaking should CA powers be granted, in accordance with s127 of PA2008. In the case of s138, the ExA is satisfied that the extinguishment of the relevant rights, or the removal or relocation of the relevant apparatus, would be necessary for the purpose of carrying out the Proposed Development.

Network Rail Infrastructure Limited

(Plot 190)

- 6.7.46. Network Rail Infrastructure Limited (Network Rail) is the owner and operator of the Grantham to Skegness line and verges which run through the Order Limits to the north of the South Forty Foot Drain. Network Rail's RR [\[RR-001\]](#) objected on the

grounds that the rights sought might interfere with the safe and efficient operation of the railway.

- 6.7.47. In response to ExQ1 DCO 1.6 Network Rail clarified that Protective Provisions were agreed save for one provision [\[REP2-095\]](#), and in its WR [\[REP2-106\]](#) Network Rail restated its objection to the use of CA powers and the exercise of the class rights over Plot 190. It noted concerns that the exercise of the Class Right 1 on Network Rail property without the necessary provisions in place would be at the detriment of public safety. It sought an agreement to regulate the works to safeguard its statutory undertaking.
- 6.7.48. Network Rail provided a further update in response to ExQ2 DCO 2.4, clarifying that Protective Provisions in Part 8 of Schedule 13 of the draft DCO could not be agreed unless an agreement was reached, but that the parties were actively engaging in negotiations hopefully that agreement would be achieved by Deadline 6 [\[REP4-064\]](#).
- 6.7.49. At Deadline 5 Network Rail stated that it had been actively engaging in direct discussions with the Applicant and had reached an agreement in principle, subject to the negotiation of the required legal documentation in order to grant the Applicant the necessary rights which was expected shortly after the close of Examination. Until such agreement is completed Network Rail supplied a copy of its Preferred Protective Provisions [\[REP5-069\]](#).
- 6.7.50. The SoCG [\[REP5-050\]](#) clarifies that Network Rail have issued both a Business Clearance Certificate (Stage 1) and a Technical Clearance Certificate (Stage 2), with final technical details of the crossing works being subject to Protective Provisions which are not yet fully agreed. The SoCG also indicates that the parties are discussing a commercial side agreement, which is agreed subject to a handful of minor legal drafting points and the agreement on the drafting which restricts the CA of Network Rail's rights. The Applicant proposes that the restriction on CA powers will only become operative following completion of the voluntary agreement.
- 6.7.51. Table 2 of the Applicant's Closing Submissions [\[REP6-003\]](#) sets out that paragraph 85 of the Protective Provisions is the only outstanding point not agreed with Network Rail. As set out in Table 2, the Applicant's wording reads "*The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work*" whereas Network Rail's preferred wording is much more prescriptive in terms of the Articles of the DCO which cannot be exercised without its consent.
- 6.7.52. The Applicant maintains that its wording should be preferred in the absence of a voluntary agreement, because it could otherwise prevent delivery of the project. It also makes clear that the rights to use CA powers are a distinct and separate issue from the notion of public safety and/or serious detriment to Network Rail's undertaking. The two issues should not, in the Applicant's view, be conflated. The Applicant considers that the Protective Provisions included at part 8 of Schedule 13 to the draft DCO address design/safety matters and sets out that the SoS can proceed to make a decision notwithstanding the status of the commercial agreement (paragraph 7.2.1 and Table 1, [\[REP6-003\]](#)).

Examining Authority's Response

- 6.7.53. The ExA notes that it is anticipated that the Applicant will not be required to exercise its CA powers given the progress of the voluntary commercial agreement, expected to be completed shortly. However, no agreement was in place by the end of the

Examination, therefore the ExA recommends that the Applicant's wording of paragraph 85 in the draft DCO should be retained to ensure the Proposed Development can be delivered in the event that a voluntary agreement cannot be completed. In the event that a voluntary agreement is completed prior to the SoS's decision on the Application, Network Rail's preferred wording of paragraph 85 could be inserted to the DCO.

- 6.7.54. The ExA notes that public safety of the railway is a separate matter. Nonetheless, the ExA considers that as a result of the imposition of Protective Provisions there would be no serious detriment caused to the carrying on of Network Rail's undertaking should CA powers be granted, in accordance with s127 of PA2008. In the case of s138, the ExA is satisfied that the extinguishment of the relevant rights, or the removal or relocation of the relevant apparatus, would be necessary for the purpose of carrying out the Proposed Development.

Triton Knoll OFTO Limited

(Plots 104E, 107A, 108C, 109A, 173, 273, 274, 294, 301, 317, 349)

- 6.7.55. Triton Knoll OFTO Limited (TK OFTO) submitted a RR which noted that TK OFTO has apparatus within the Order Limits and wishes to protect its future rights and interests in land and its apparatus [\[RR-007\]](#). TK OFTO did not engage any further with the Examination.
- 6.7.56. An unsigned SoCG sets out both parties' position, which remains under discussion in respect of CA matters [\[REP5-052\]](#) but sets out that agreement is expected to be shortly reached on an Option Agreement. It states that the parties have agreed Protective Provisions except for paragraph 134 which relates to use of CA powers over the access track.
- 6.7.57. Protective Provisions for the benefit of TK OFTO were added to the draft DCO at Deadline 5, within Part 12 of Schedule 13. All other elements of the Protective Provisions (apart from paragraph 134) are agreed. Similar to the situation with Network Rail, in the event that the commercial agreement is completed the Applicant accepts the restriction on its CA powers unless otherwise agreed with TK OFTO.
- 6.7.58. The Applicant also makes clear in the SoCG and Appendix 2 of its Closing Submissions [\[REP6-003\]](#) that in the event that an agreement is not reached CA is needed in order to ensure the deliverability of the project. This is particularly pertinent in respect of the use of the access track (which is a key mitigation measure for transport effects). The Applicant puts that its Protective Provisions provide adequate safeguards so that the granting of the DCO would not have a serious detriment on TK OFTO's undertaking.

Examining Authority's Response

- 6.7.59. Given progress on negotiations so far, the ExA sees no reason why voluntary agreement of the Option Agreement for the use of the access track and a commercial side agreement cannot be comfortably completed within the post-Examination period. In view of this, the wording of the Protective Provisions as put by the Applicant in its draft DCO is included in the ExA's Recommended DCO. The matter at paragraph 134 should be retained in the event that there is no voluntary agreement.

- 6.7.60. With imposition of the Protective Provisions, the ExA considers there would be no serious detriment caused to the carrying on of TK OFTO's undertaking should CA powers be granted, in accordance with s127 of PA2008. In the case of s138, the ExA is satisfied that the extinguishment of the relevant rights, or the removal or relocation of the relevant apparatus, would be necessary for the purpose of carrying out the Proposed Development.

Examining Authority's Conclusion on Outstanding Representations

- 6.7.61. In view of all the above considerations, the ExA cannot see anything in these objections from APs that would prevent the grant of the CA or TP powers sought. The ExA is therefore satisfied that the land which is the subject of these objections is required and proportionate for the Proposed Development and that there is a compelling case for the corresponding CA powers sought and that the related TP powers are justified.
- 6.7.62. Overall, the ExA is satisfied that the Applicant has demonstrated that the land is needed and would be no more than reasonably required for the Proposed Development. The ExA is also content that all of the land included is required either for the development, to facilitate it, or is incidental to it. Consequently, the test set out in s122(2) of the PA2008 is met.
- 6.7.63. In respect of the APs role as statutory undertakers, all agreed Protective Provisions are included in the Recommended DCO. In terms of outstanding disagreement by Network Rail, TK OFTO and Viking Link, the ExA recognises the advanced progress of negotiations on relevant agreements and on the majority of the Protective Provisions save for a single point in each. In the absence of voluntary agreements, the Applicant's Protective Provisions as set out in the final version of the draft DCO are retained.
- 6.7.64. Consequently, the ExA is satisfied that the CA powers sought would not result in serious detriment to the carrying on of their undertakings under s127 of the PA2008, and cannot see anything relating to Statutory Undertakers that would prevent the grant of the CA powers sought. The ExA is satisfied that there is no reason to withhold CA of the land and interests held by the Statutory Undertakers.
- 6.7.65. In respect of TP, the Applicant has explained its requirements to include TP of land and rights to enable construction of the Proposed Development. The ExA is satisfied that the TP powers sought would be appropriately used ahead of acquiring rights permanently. This would allow the Applicant to enter onto land for purposes such as site investigations and preparation works in advance of versing the relevant permanent rights. This would enable the Applicant to CA only the minimum amount of land and rights required to construct, operate and maintain the Proposed Development. TP of land and rights only remains in dispute for TK OFTO, in relation to outstanding negotiations on the use of the Triton Knoll access track. Overall, the ExA considers that the related TP powers are justified.
- 6.7.66. Section 138 of the PA 2008 is engaged by Article 29 of the draft DCO. This Article will permit the undertaker to extinguish, remove, or relocate the apparatus of statutory undertakers. Such power may only be included in the DCO if the SoS is satisfied the extinguishment or removal is necessary for the authorised development.
- 6.7.67. The exercise of such powers would be carried out in accordance with the Protective Provisions contained in Schedule 13 of the DCO which set out constraints on their

exercise with a view to safeguarding each of the Statutory Undertakers' interests. As such, the ExA is satisfied that these Protective Provisions are necessary and appropriate and safeguard the interest of those parties they are set out to protect. The ExA therefore considers that the test set out in s138 of the PA 2008 is satisfied.

Crown Land

6.7.68. The following plots have Crown land interests:

- **Plot 69** 476.7m² (Crown Estate) – Class 1, 3 and 4 – land north of South Forty Foot Drain and railway
- **Plot 184** 36,096.3m² (Duchy of Lancaster) – Class 1, 3 and 4 – land to south of North Drove
- **Plot 283** 3,199,400m² (Crown Estate) – Class 4 – Six Hundreds Farm (mines and mineral rights)
- **Plot 293A** 511.5m² (Duchy of Lancaster) – Class 1, 3 and 4 – Highway forming North Drove to the northwest of White House Farm and east of South Forty Foot Drain (subsoil up to half width of the adopted highway)
- **Plot 293B** 186.8m² (Duchy of Lancaster) – Class 1, 3, 4 - Highway forming North Drove to the northwest of White House Farm and east of South Forty Foot Drain (subsoil up to half width of the adopted highway)

6.7.69. Full details of the five individual plots are listed in Parts 1 and 4 of the BoR [[REP5-029](#)] and shown on the Land and Crown Plans [[REP4-004](#)].

6.7.70. No representations have been received from either the Crown Estate or Duchy of Lancaster. Neither Crown authority have engaged with the Examination, notwithstanding issue of questions by the ExA, so only the Applicant's position is before the ExA.

6.7.71. The need for the Applicant to obtain Crown Consent in order to satisfy s135 of PA2008 was the subject of questions at ExQ1 [[PD-012](#)] and ExQ2 [[PD-013](#)]. The matter was also discussed at the CAH [[EV-017](#)] (and was the subject of a Rule 17 request) [[PD-015](#) and [PD-016](#)].

6.7.72. The ExA acknowledges that throughout the Examination the Applicant has been actively engaged in discussions with the Crown Estate and the Duchy of Lancaster in order to obtain Crown Consent. However, by the end of the Examination the Applicant had not obtained such consent under s135 from the relevant Crown Authority. Despite the requests of the ExA [[PD-015](#) and [PD-016](#)] the Applicant did not provide an explanation outlining how the Proposed Development could proceed if all of the Crown land had to be removed from the Order land, and nor was a response received from the Crown authorities.

6.7.73. In response to the ExA's Rule 17 letter [[REP5-003](#)] the Applicant confirmed it remains in negotiations with the Crown Estate and its agents, but that significant progress has been made and it is confident that agreement will be reached. It notes that this situation is not unique in other DCOs.

6.7.74. The Applicant clarified that no CA of an interest in Crown Land held otherwise than by or on behalf of the Crown is being sought and therefore no consent is necessary pursuant to s135(1) Planning Act 2008. Section 135(2) precludes a DCO from including any provision applying to Crown Land or Crown rights without consent from the appropriate Crown authority. The Applicant is confident that any consent necessary pursuant to s135(2) will be delivered by the Crown Estate in good time for the SoS to make its decision, however no timescales were provided.

- 6.7.75. In view of this and the lack of comments from the Crown authorities, the ExA is unable to conclude on this matter and therefore recommends that the SoS seeks confirmation from the parties that s135 consent has been obtained.

6.8. OTHER CONSIDERATIONS

Human Rights

- 6.8.1. The Human Rights Act 1998 incorporates the European Convention on Human Rights into UK law. Schedule 1 of the Act sets out the Articles. Article 6 (right to a fair trial) and Article 1 of the First Protocol (protection of property) are engaged. There are no residential properties to be acquired for the Proposed Development and, as such, the ExA has no reason to believe that Article 8 (Right to respect for private and family life) would be engaged.
- 6.8.2. In terms of the overarching aims of the Human Rights Act 1998, the CA Guidance and the required balancing exercise, the ExA is satisfied that the public benefit from the Proposed Development would clearly outweigh any interference with the human rights of those with an interest in the land affected. The ExA therefore considers that any interference with human rights would be for legitimate purposes, proportionate and justified in the public interest.

Equality Act 2010

- 6.8.3. The Equality Act 2010 establishes a duty to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. The ExA has had regard to this duty throughout the Examination and in their consideration of the issues raised in this Recommendation.
- 6.8.4. The ExA is of the view that there is no evidence in the Applicant's Equality Impact Assessment [\[REP3-031\]](#) to suggest that the Proposed Development would have any specific impact in relation to persons who share a protected characteristic as compared to persons who do not, or that there has been any lack of regard to the duties identified in the Public Sector Equality Duty (PSED). Whilst not a land rights matter, in respect of environmental matters raised during the Examination regarding the effects during construction on the users of the Build-a-Future school at Elm Grange (as discussed in Section 3.10 of this Recommendation), the ExA considers that due regard has been paid to the needs identified in the PSED by the Applicant, the public authorities and the ExA.
- 6.8.5. Overall, the ExA finds that 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, no breach of the PSED has been found.

6.9. CONCLUSIONS

Sections 122 and 123 of the Planning Act 2008

- 6.9.1. The ExA is satisfied that the CA powers sought in all the plots of land included in the final BoR and shown on the final Land Plans would be required and are proportionate for, to facilitate or to be incidental to the Proposed Development. Both the principal development and the Associated Development would be needed for that purpose. The ExA therefore concludes that the requirements of s122(2)(a) and

(b) of the PA2008 are met. The ExA is also satisfied that the Applicant has met the relevant parts of the CA Regulations and the CA Guidance.

- 6.9.2. In respect of s122(3), the ExA agrees that there is a compelling case in the public interest for the land to be acquired compulsorily.
- 6.9.3. The ExA is satisfied that the Applicant has explored all reasonable alternatives to CA, including modifications to the Proposed Development and acquisition by negotiation and agreement. The ExA concludes that there are no alternatives to the CA powers sought which ought to be preferred. The ExA is also satisfied that the Applicant has demonstrated a clear idea of how it intends to use the land rights which it proposes to acquire. It has shown that there would be a reasonable prospect of the requisite funds both for acquiring the land and implementing the Proposed Development becoming available within the statutory timescale.
- 6.9.4. The ExA therefore concludes that the public benefits associated with the Proposed Development would strongly outweigh the private loss which would be suffered by those whose land would be affected by CA powers to enable the construction, operation, and maintenance of the Proposed Development. Taking these various factors together, there is a compelling case in the public interest for the CA powers sought in respect of the CA land shown on the Land Plan. The ExA concludes that the Proposed Development would comply with s122(3) PA2008.
- 6.9.5. Turning to s123 of PA2008 the ExA confirms that it is content that the application for the Order includes a request for CA of the land to be authorised. Also, the SoS can be satisfied that at least one of the prescribed conditions have been met with regards diligent enquiry and the right for an AP to be heard regarding CA matters.

Sections 127 and 138 of the Planning Act 2008

- 6.9.6. Section 127 representations have been made and not withdrawn. These have been considered as set out above. In the case of each s127 representation, the ExA concludes that the SoS can be satisfied that there would be no serious detriment caused to the carrying on of the undertaking of the statutory undertaker in question should the CA powers sought be granted. In the case of s138, the ExA is satisfied that the extinguishment of the relevant rights, or the removal or relocation of the relevant apparatus, would be necessary for the purpose of carrying out the Proposed Development.
- 6.9.7. The ExA's conclusion for both s127 and s138 matters is based on the wording of the Protective Provisions which are included at Schedule 13 of the Recommended DCO at Appendix D of this Recommendation. In the case of the sustained statutory undertaker objections, indication has been given that discussions would continue, and agreements are under discussion.
- 6.9.8. Should the SoS receive agreed wording between the parties regarding the Protective Provisions, which differs from that recommended by the ExA, it would be appropriate for the SoS to give weight to their agreed wording and consider amending the recommending the DCO.

Section 135 of the Planning Act 2008

- 6.9.9. As set out in paragraphs 6.7.68 to 6.7.75 above the ExA does not have the benefit of the Crown authorities' position in relation to s135. This is necessary for the Proposed Development to proceed, therefore the ExA recommends that the SoS consults both the Crown Estate and the Duchy of Lancaster on this matter. The

Order should not be granted until it has been confirmed that the necessary Crown authority, consistent with the BoR and in accordance with s135 of PA2008, has been obtained for Plots 69, 184, 283, 293A and 293B as shown on the Land and Crown Plans.

Temporary Possession

- 6.9.10. In respect of TP, the Applicant has explained its requirements to include TP of land and rights to enable construction of the Proposed Development. The ExA is satisfied that the TP powers sought would be appropriately used ahead of acquiring rights permanently. This would allow the Applicant to enter onto land for purposes such as site investigations and preparation works in advance of versing the relevant permanent rights. This would enable the Applicant to compulsorily acquire only the minimum amount of land and rights required to construct, operate and maintain the Proposed Development. TP of land and rights only remains in dispute for TK OFTO, in relation to outstanding negotiations on the use of the Triton Knoll access track. Overall, the ExA considers that the related TP powers are justified.
- 6.9.11. The ExA is satisfied that the TP powers sought have been justified and are necessary to implement and maintain the Proposed Development. The Applicant has explained its requirements to include TP of land and rights to enable construction of the Proposed Development. The ExA is also satisfied that the TP powers sought would be appropriately used ahead of acquiring rights permanently.

Human Rights and Equalities

- 6.9.12. The ExA is satisfied that, in relation to the inclusion of CA and TP powers in the Recommended DCO, any interference with human rights would be for legitimate purposes, proportionate and justified in the public interest. The ExA is also satisfied that there is no evidence that the Proposed Development would not accord with s149 of the Equality Act 2010 and that due regard has been paid to the needs identified in the PSED during the Examination.

Funding and Delivery

- 6.9.13. The identified sources of funding do not provide the ExA with any cause for concern or reason to doubt that the Proposed Development could be implemented if granted consent. Article 43 of the Recommended DCO provides security for the funding. The Funding Statement also identifies the Applicant's history in developing similar projects and intentions for obtaining additional funding.
- 6.9.14. The ExA is satisfied that, at the close of the Examination, there is a reasonable prospect of funding becoming available for CA, that any potential impediments to funding have been properly managed and that there is no potential impediment to the implementation of the Proposed Development arising from any other regulatory requirement.

6.10. THE EXAMINING AUTHORITY'S RECOMMENDATIONS ON LAND RIGHTS AND RELATED MATTERS

- 6.10.1. On the basis of the conclusions drawn above the ExA concludes that, the Applicant's case for CA and TP has been made in its own right. The ExA concludes that there is compelling evidence that the public benefits that would be derived from the CA will outweigh the private loss that would be suffered by those whose land is to be acquired.

6.10.2. The ExA recommends that subject to obtaining the necessary Crown authority in accordance with s135 of the PA2008:

- the compulsory acquisition powers included in the Recommended DCO be granted;
- the temporary possession powers included in the Recommended DCO be granted;
- the compulsory acquisition powers sought in respect of Crown land should be granted;
- the powers authorising the compulsory acquisition of rights over Statutory Undertakers' land included in the Recommended DCO be granted;
- the powers authorising the extinguishment of rights, and removal of apparatus, of Statutory Undertakers included in the Recommended DCO be granted; and
- the powers included in the Recommended DCO to apply, modify or exclude a statutory provision be granted.

7. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

7.1. INTRODUCTION

- 7.1.1. The first version of the draft Development Consent Order (DCO) [\[APP-015\]](#) together with an Explanatory Memorandum (EM) [\[APP-017\]](#) were submitted as part of the Application and a further six revisions were submitted with the final copy being version 7 at Deadline 5 [\[REP5-020\]](#) and [\[REP5-024\]](#). A tracked changes version and a Schedule of Changes to the draft DCO were submitted with each copy.
- 7.1.2. This Chapter comments on the structure of the draft DCO, and reports on processes used to examine it and its progress through the Examination. Matters which were subject to discussion and changes subsequently made are reported on. The Examining Authority (ExA) only reports on the main discussion points and contentious matters and does not report on every change made to each version. Many amendments were made as a result of typographical or referencing errors and minor changes to drafting following discussions at Hearings, and as a result of written representations from Interested Parties (IPs) and written questions from the ExA.
- 7.1.3. Finally, the ExA summarises whether any amendments to version 7 are considered necessary for its Recommended DCO which is presented at Appendix D.

7.2. THE ORDER AS APPLIED FOR

- 7.2.1. The Application draft DCO was based on the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 but departs from those clauses to draw upon drafting used in made Orders for similar development under the PA2008. Although there has been a change of approach to the use of Model Provisions since the Localism Act 2011, they remain a starting point for the consideration of the DCO.
- 7.2.2. Precedent cases have also been considered where appropriate. In particular, it draws on the Cleve Hill Solar Park Order 2020, the Little Crow Solar Park Order 2022 and the Longfield Solar Farm Order 2023 and broadly follows the approach they adopt.
- 7.2.3. The Recommended DCO is structured as follows. There are six parts containing 34 Articles:
- **Part 1:** Articles 1 and 2 deal with preliminary matters including how the Order may be cited when it comes into force, and sets out the meaning of the various defined terms used in the Order.
 - **Part 2:** Articles 3 to 7 provide development consent for the Authorised Development, and allow it to be constructed, operated and maintained by the undertaker. Articles 6 and 7 relate to legislative provisions and statutory nuisance.
 - **Part 3:** Articles 8 to 13 provide powers in relation to street works.
 - **Part 4:** Articles 14 to 17 set out supplementary powers relating to the discharge of water, the removal of human remains, protective works to buildings, and the authority to survey and investigate land.

- **Part 5:** Articles 18 to 31 provide for the undertaker to be able to compulsorily acquire order land and rights over and within it, including temporary use of land. The provisions provide compensation for Affected Persons in respect of these powers (where not secured elsewhere) and powers in relation to apparatus and rights of statutory undertakers.
- **Part 6:** Articles 32 to 45 contain various miscellaneous and other general provisions. These include, amongst others, powers in relation to trees and hedges, certification of plans and documents, legislation to be disapplied, and protection of Crown rights. A provision in respect of the substation extension works allows for National Grid Electricity Transmission plc (NGET) to undertake Work Nos 6B or 6C pursuant to planning permission if granted separately and to cease effect of conditions for its 2005 planning permission which relate to plots 99G and 99H.

7.2.4. There are 14 Schedules to the Order which are:

- **Schedule 1:** Description of the Authorised Development.
- **Schedule 2:** The Requirements that apply to the Authorised Development.
- **Schedule 3:** Legislation to be disapplied, relating to rivers, watercourses, railways and water supply infrastructure (insofar as any provisions are inconsistent with the powers contained in the Order).
- **Schedules 4 to 7:** Matters relating to street works, accesses and rights of way.
- **Schedule 8:** Details of land in which only new rights may be required.
- **Schedule 9:** Amendments to legislation to ensure appropriate compensation is payable where new rights over land are acquired under the Order.
- **Schedule 10:** Hedgerows to removed, their location and reason for removal.
- **Schedule 11:** A list of documents and plans to be certified.
- **Schedule 12:** Arbitration rules.
- **Schedule 13:** Protective Provisions.
- **Schedule 14:** Procedure for discharge of requirements contained within Schedule 2.

7.2.5. An Issue Specific Hearing (ISH1) was held at the start of the Examination [\[EV-004\]](#) to enable the Applicant to present and explain its draft DCO and summarise any amendments made as a result of the Change Application (Section 1.5 of this Recommendation). The ExA asked numerous questions and sought comments from IPs present on many of the Articles and Schedules.

7.2.6. The ExA asked eight questions in relation to matters concerning the draft DCO in its first written questions (ExQ1) [\[PD-012\]](#), and seven questions in second written questions (ExQ2) [\[PD-013\]](#). The Applicant responded [\[REP2-077\]](#) and [\[REP4-047\]](#), clarifying matters sought and making changes to the draft DCO. Responses were also received from numerous IPs. The Applicant also had ongoing discussions with various IPs beyond the questions asked by the ExA. ISH3 was held between Deadlines 2 and 3 [\[EV-018\]](#). The ExA asked questions and sought clarification on the numerous amendments which had been made to version 4 of the draft DCO [\[REP2-008\]](#).

The Rochdale Envelope

7.2.7. A 'Rochdale Envelope' approach has been used within the Application in assessing the maximum (and the minimum, where relevant) and worst case parameters of the Proposed Development. This is a common approach used in energy generation projects where a degree of flexibility is required, and technology regularly progresses to increase efficiency of relevant apparatus.

- 7.2.8. As previously noted in Chapter 2 of this Recommendation the Applicant has not included a maximum limit on generating capacity in the draft DCO. The total generation capacity is linked to the size of the site, the height and spread and final design selection of solar photovoltaic (PV) panel. The Applicant has received and accepted a Grid connection offer for 400MW. To not impose a limit would allow the Applicant to take advantage of future technologies to make the Proposed Development as efficient as possible.
- 7.2.9. The approach is consistent with 2024 National Policy Statement (NPS) EN-3 which at paragraph 2.10.56 states that *“installed export capacity should not be seen as an appropriate tool to constrain the impacts of a solar farm. Applicants should use other measurements, such as panel size, total area and percentage of ground cover to set the maximum extent of development when determining the planning impacts of an application”*.
- 7.2.10. The ExA notes that a similar approach was adopted in the Cleve Hill Solar Park Order 2020, the Little Crow Solar Park Order 2022 and the Longfield Solar Farm Project 2023.
- 7.2.11. The parameters within the Rochdale Envelope are set out in the Outline Design Principles (ODP) document [\[REP4-031\]](#) and these correspond with the areas set out in the Works Plans [\[REP5-019\]](#). Article 38 and Schedule 11 of the draft DCO [\[REP5-020\]](#) secure these within the documents and plans to be certified.
- 7.2.12. Requirement 5 cross references to the certified documents and plans and allows for any amendments where the subject matter is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the ES. Requirement 6 secures detailed design approval of all elements including their layout, scale and external appearance by the relevant planning authority (RPA). Such details should accord with the ODP document.

Parameters of the Order

- 7.2.13. A range of certified documents and plans listed at Schedule 11 of the draft DCO, together with a range of other DCO Requirements, also operate to control and manage the detailed design of the Proposed Development and all phases; construction, operation (and maintenance) and decommissioning. The way in which these mechanisms work together is explained in more detail in section 7 of the EM [\[REP5-024\]](#).
- 7.2.14. In summary, Article 3 and Schedule 2 operate to create a consent envelope within which the Proposed Development would be brought forward. Together with Requirement 6, the design of the Proposed Development is also controlled by a number of other Requirements including 8 (in relation to landscaping and ecology), 10 (fencing and other means of enclosure), 11 (drainage), 17 (permissive path) and 21 (community orchard). The construction phase of the Proposed Development is also controlled by Requirements, including 3 (phasing), 10 (fencing and other means of enclosure), 12 (archaeology), 13 (construction environmental management plan), and 14 (construction traffic management plan).
- 7.2.15. The ongoing operation and maintenance of the Proposed Development would be controlled by Requirements 7 (fire safety management), 8 and 9 (landscape ecological management plan), 11 (drainage), 15 (noise), 16 (supply chain employment and skills plan), 17 (permissive path maintenance), 19 (operational

environmental management plan), and 20 (soil management plan). Requirement 18 secures notification of and details of decommissioning and restoration.

7.3. ITERATIONS OF THE DRAFT DEVELOPMENT CONSENT ORDERS

7.3.1. Table 3 below sets out the iterations of the draft DCO since its initial submission with a summary of the alterations made, which are set out in more detail within each corresponding Schedule of Changes.

Table 33: Iterations of the Draft DCO Post Submission

Deadline / Version	Examination Library Reference (Schedule of Changes Reference)	Notable Changes Made
Pre-examination V2	AS-008 (AS-029)	Schedule 7 updated to refer to colour changes on streets and access plan.
Pre-examination V3	PS-024 (PS-005)	<p>Relating to the Change Application:</p> <p>Article 45 added in relation to the NGET substation extension works.</p> <p>Work no 6A definition amended and Work nos 6B and 6C added to refer to the substation extension creation of a new electrical generation bay and associated works at the NGET substation including associated switchgear, cable sealing end and cables.</p> <p>A number of requirements amended so that the substation works are excluded.</p> <p>The definition of substation connection rights added to Schedule 8.</p>
Deadline 2 V4	REP2-008 (REP2-013)	<p>Amendments made to numerous requirements and Schedules to reflect discussions with RPAs regarding the consenting authority and other minor changes to wording.</p> <p>Article 2(1) definitions amended and inserted including: county authority, maintain, outline operational environmental management plan and outline Soil Management Plan.</p>

		<p>Articles 9 to 12: amendments relating to Part 3 (Streets) made in response to Lincolnshire County Council (LCC) comments.</p> <p>Requirements 3 (Phasing) and 6 (Detailed design) amended in response to RPAs comments.</p> <p>Requirement 8 Landscape ecological management plan (LEMP) amended including establishing a minimum of 60% biodiversity net gain using the Biodiversity Metric 4.0 and the need for replacement planting.</p> <p>Requirement 18 (Decommissioning and restoration) amended to refer to a notification of intended date of decommissioning.</p> <p>New Requirement 19 Operational Environmental Management Plan (OEMP) inserted, including specification of details of management and maintenance of sheep grazing.</p> <p>New Requirement 20 Soil Management Plan inserted so that the plan becomes a standalone Requirement rather than part of the LEMP.</p> <p>New Requirement 21 (Community orchard) inserted to include details of provision and maintenance of the orchard, and new Work No. 9C added to Schedule 1.</p> <p>Removal of Protective Provisions for Cadent Gas from Schedule 13 Part 5.</p> <p>Protective Provisions with Anglian Water, Environment Agency, and Black Sluice Internal Drainage Board superseded by agreed versions.</p> <p>Timescales in Schedule 14 (discharge procedures) increased following discussions with RPAs.</p> <p>Part 5 of Schedule 14 added to include discharge fees for RPAs.</p>
3 V5	REP3-004 (REP3-036)	<p>Minor drafting amendments made to a number of Schedules and Requirements.</p> <p>Requirement 8 (Landscape ecological management plan) amended including establishing and increase in minimum of biodiversity net gain to 65%.</p> <p>Schedule 14 (discharge procedure) notice period increased from eight to ten weeks.</p>
4 V6	REP4-014 (REP4-050)	<p>Minor drafting amendments made to a number of Schedules and requirements.</p> <p>Requirement 8 (LEMP) amended including reference to Statutory Biodiversity Metric published on 29 November</p>

		<p>2023. Replacement planting period increased from five to seven years.</p> <p>Schedule 14 (discharge procedures) amended to specify a fee for the discharge of each requirement whether in a separate or combined application, and reference to SI 2023/1197 and Regulation 18A of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(b).</p> <p>Protective Provisions for Lincolnshire Fire and Rescue inserted to Schedule 13 part 9.</p>
5 V7	REP5-020 (REP5-013)	<p>Definition of 'interface area plan' added to Article 2 (interpretation).</p> <p>Revisions to Articles 20 and 32 to refer to NGET works.</p> <p>Updates to Protective Provisions for Network Rail.</p> <p>Protective Provisions added to Schedule 13 for National Grid Viking Link Limited, Beacon Fen Energy Park Limited and Triton Knoll OFTO Limited.</p> <p>Schedule 14 (discharge procedures) amended to include a bespoke fee schedule as agreed with the RPAs.</p>

7.3.2. No IPs raised any concern with the description of the Proposed Development during the Examination nor with the description of each Work no. nor the documents to be certified.

7.3.3. The EM describes the purpose of the draft DCO and the content of each of its Articles and Schedules and an update was provide with each iteration of the draft DCO. The final version was submitted at Deadline 5 [\[REP5-024\]](#).

7.4. EXAMINATION OF THE DEVELOPMENT CONSENT ORDER

7.4.1. Discussions on the provisions contained within the draft DCO were undertaken throughout the Examination and resulted in a number of changes as set out in Table 3 above. Many of the changes followed the addressing of inconsistencies, provision of clarification and certainty, and updates following agreement reached between the Applicant and IPs. Fuller details of the changes made between each version can be found in the Schedule of Changes to the draft DCO [\[REP5-013\]](#). Version 7 of the draft DCO [\[REP5-020\]](#) consolidates all previous versions. The more minor drafting points raised at the start of the Examination were addressed at an early stage following ISH1 [\[EV-004\]](#). This led to the majority of amendments being made to the draft DCO in version 4 [\[REP2-008\]](#) to reflect such discussions. The comments from the RPAs raised in their Local Impact Reports and responses to Hearing action points were also largely addressed in version 4.

7.4.2. Nevertheless, for much of the Examination a limited range of matters remained under discussion and/or unresolved between the Applicant and IPs. These related to the wording and content of numerous Requirements in Schedule 2, Protective

Provisions in Schedule 13, and the procedure for discharge of requirements in Schedule 14.

Schedule 1 (Authorised Development)

- 7.4.3. Schedule 1 of the draft DCO includes definitions of numerous components of the Authorised Development further to Article 2 (Interpretation). Minor drafting amendments were made to Article 2 and Schedule 1, largely following discussions at ISH1 [[EV-004](#)].
- 7.4.4. Work No.1, described in Schedule 1, relates to the solar PV generating station. Article 4 sets out that the undertaker is authorised to use and operate the generating station comprised in the Authorised Development. ‘Generating station’ is not defined in the draft DCO. Consequently, the definition in the enabling legislation (PA2008) applies. Section 14(1)(a) of PA2008 confirms that the construction or extension of a generating station comprises a NSIP for the purposes of the Act. Section 235 (Interpretation) sets out that “*generating station*” has the same meaning as in Part 1 of the Electricity Act 1989 (see section 64 (1) of that Act)”.
- 7.4.5. However, s64(1) of the Electricity Act 1989 sets out the interpretation of “*generating station*” as being “*in relation to a generating station wholly or mainly driven by water, includes all structures and works for holding or channelling water for a purpose directly related to the generation of electricity by that station*”. That definition is irrelevant to solar powered generating stations.
- 7.4.6. The matter of the definition of ‘generating station’ was not raised by the parties, nonetheless the ExA draws it to the attention of the SoS.

Schedule 2 (Requirements)

- 7.4.7. Numerous comments in relation to requirements were made, principally by the RPAs, at the Hearings and in written submissions throughout the Examination on various environmental matters. Minor drafting amendments were made to a range of requirements in each version of the draft DCO as set out in Table 2 above. These included those relating to the exclusion of the substation works by NGET, so such works could take place separately by NGET and in advance of the Energy Park [version 3, [PS-024](#)].
- 7.4.8. Requirements 3 (phasing), 6 (design), 18 (decommissioning and restoration) were amended to the satisfaction of the RPAs in version 4 [[REP2-008](#)]. A new Requirement 21 was also inserted to version 4 to reflect the addition of Work no. 9C (community orchard) and ensure details of its provision and maintenance. Other minor amendments to Requirements reflect comments by the Black Sluice IDB [[RR-003](#)], the Environment Agency [[RR-009](#)], and the RPAs as set out in their LIRs and at ISH2 [[EV-009](#)].
- 7.4.9. Throughout the Examination, representations from the RPAs were largely focused on:
- Future use of the agricultural land and the Operational Environmental Management Plan (OEMP) as set out in Requirement 19.
 - Matters relating to the Landscape Ecological Management Plan (LEMP) as set out in Requirement 8, in particular securing Biodiversity Net Gain (BNG).

These Requirements are considered further below.

Requirement 19: Operational Environmental Management Plan

- 7.4.10. The use of Best and Most Versatile (BMV) agricultural land, and other considerations relating to land and soils including the SMP are covered in Section 3.6 of this Recommendation. The outline SMP previously formed part of the LEMP, and following discussion at ISH1 and ISH2 it became a standalone document [\[REP2-059\]](#) and thereby a standalone Requirement (20).
- 7.4.11. The outline OEMP was initially submitted at Deadline 2 [\[REP2-075\]](#) and was prepared to provide a framework for the operational and maintenance activities of the Proposed Development. It is intended to be complementary to other control plans including the LEMP and SMP. In respect of agricultural land and soils, Table 3.11 of the OEMP sets out how grazing sheep would be managed to avoid surface compaction (and any subsequent increase in run-off).
- 7.4.12. As part of discussions at ISH3 in relation to decommissioning (Requirement 18) the RPAs requested an obligation to decommission the scheme in the event of non-generation. The Applicant responded that this is not proportionate or reasonable as set out in its oral case to Agenda Item 4 [\[REP3-038\]](#). Instead, it inserted additional wording to version 3 of the outline OEMP [\[REP5-011\]](#) at section 6 which relates to notice to be provided to the RPA in the event of a period of extended outage. Here, details were added relating to additional periods of outage and the circumstances in which decommissioning would not apply. The SoCG [\[REP6-006\]](#) sets out the RPAs' agreement to the amended wording of the OEMP in this respect, resulting in no changes being made to the DCO.
- 7.4.13. Following concerns from North Kesteven District Council (NKDC) at ISH2 [\[EV-009\]](#) and ISH3 [\[EV-018\]](#) that there was insufficient commitment to sheep grazing, the outline OEMP was updated at Deadline 3 [\[REP3-034\]](#) to include a section on grazing management (see section 3.6 of this Recommendation). This included a commitment to a grazing density of 2/3 sheep per hectare on newly established grassland and, if sheep are not grazed on the Solar Park Site for more than 12 months, a scheme would be provided to outline how the Applicant proposes to continue agricultural processes at the Solar Park Site. The outline OEMP was updated again [\[REP5-011\]](#) to further clarify how sheep grazing would be managed to maintain its projected BNG condition.
- 7.4.14. NKDC continued to raise concerns about the content of the outline OEMP ([\[REP5-011\]](#)) and in point 7.2 of the SoCG [\[REP6-006\]](#) this remains as a not agreed matter. Whilst the SoCG sets out in point 7.3 that the mechanism of Requirement 19 in securing the OEMP is agreed by NKDC, it continues to require revisions to the OEMP and LEMP to reflect the Council's submissions in response to ExQ2 LUS 2.2. and LUS 2.4, and Action point ISH3 AP13 [\[REP4-056\]](#).
- 7.4.15. The majority of the requirements were agreed by the RPAs in the final SoCG at section 3 [\[REP6-006\]](#). The SoCG with Natural England notes that it made no specific comments on the drafting of the DCO [\[REP5-048\]](#).

Requirement 8 (Landscape Ecological Management Plan)

- 7.4.16. Requirement 8 sets out a number of details which should be contained within the LEMP, and at paragraph 2(c) it states that it should include details of how a minimum BNG in habitat units would be secured during the operation of the authorised development. A commitment to a minimum of 60% was inserted to the

draft DCO in version 4 at Deadline 2 [\[REP2-008\]](#) and this was increased to 65% in version 5 [\[REP3-004\]](#).

- 7.4.17. The SoCG sets out that LCC and NKDC welcome the commitment to 65% BNG in Requirement 8 but consider there is still scope for a higher percentage given the presented BNG calculations, in order to ensure that a key benefit is secured and delivered. BNG calculations [\[REP4-028\]](#) indicate that the site is capable of delivering a 113% net gain in habitat units, a 393% net gain in hedgerow units and a 36% net gain in watercourse units. Natural England have not raised concerns in relation to the Applicant's approach to securing BNG.
- 7.4.18. As explained in Section 3.3 of this Recommendation, the minimum percentage of 65% BNG set out in Requirement 8 provides a significant benefit of the Proposed Development and the ExA considers it possible that the actual level of BNG could significantly exceed this with the measures secured in the LEMP. The Applicant's point that it is unnecessary to increase the percentage in the Requirement is accepted by the ExA, and therefore Requirement 8 remains unchanged in the Recommended DCO.
- 7.4.19. In the SoCG [\[REP6-006\]](#) LCC and NKDC agree the broad mechanism in Requirement 19 to secure sheep grazing but sought amendments to the OEMP and LEMP. NKDC continued to request further commitments to minimum sheep densities in the OEMP, once the grassland has been established. The Applicant maintains that a larger number of sheep cannot be committed to without assessing the condition of the vegetation beforehand.
- 7.4.20. As set out in Section 3.6 of this Recommendation, the ExA agrees with the Applicant on this point and consider that the OEMP properly secures ongoing agricultural use of the Energy Park site and provides sufficient assurances that sheep numbers could be increased in the future if deemed viable. No amendments to Requirement 19 are required in this respect.

Schedule 13 (Protective Provisions)

- 7.4.21. Representations relating to Protective Provisions are considered in Section 7.5 below.

Schedule 14 (Procedure for Discharge of Requirements)

- 7.4.22. There was discussion at ISH1 relating to paragraphs 2 to 4 of Schedule 14 of version 2 of the draft DCO [\[AS-008\]](#). This relates to timescales for the RPAs to give notice of their decision on an application for discharge of requirements, timescales for a request for further information and carrying out consultations, together with the deemed consent and appeal provisions. All RPAs considered the timescales to be insufficient given the amount of work involved and resource pressures.
- 7.4.23. The Applicant stressed that the timescales reflected the necessity to ensure that applications are dealt with efficiently and do not hold up the project, so requires certainty. Deemed consent is required to ensure the timely delivery of a nationally significant renewable energy project, in which there is a public interest to proceed efficiently given the net zero imperative. It explained that the concept of deemed consent has precedence in solar DCOs including the recently made Longfield Solar Farm Order 2023. The Applicant considered that the Application was already very detailed and the additional details submitted to the relevant RPA for discharge would be familiar to them [\[REP1-019\]](#).

- 7.4.24. Nonetheless, the Applicant stated a willingness to be flexible and to discuss the timeframes with the RPAs following the Hearing. Subsequently at D2, version 4 of the draft DCO [\[REP2-008\]](#) included the following amendments to timeframes at Schedule 14:
- Paragraph 2(1) – timeframe for the RPA to give notice to the undertaker of its decision on the application extended from six to eight weeks.
 - Paragraph 3(2) – timeframe for the RPA to request further information increased from 10 working days to 20 working days.
 - Paragraph 3(3) – timeframe for the RPA to issue a consultation to the relevant requirement consultee, and notification specifying any further information considered necessary, both increased from five working days to 10 working days (total period within 20 working days of receipt of the application).
 - Paragraph 4(2c) – timeframe for submission of written representations to an appeal increased from five working days to 10 working days.
- 7.4.25. Paragraphs 2(1) and 5(2b) of Schedule 14 were further amended in version 5 of the draft DCO [\[REP3-004\]](#), increasing the timeframe for the RPA from eight weeks to 10 weeks.
- 7.4.26. The draft DCO as submitted did not include provision in Schedule 14 for fees for the discharging authority. Such provision was added at Paragraph 5 to version 4 of the draft DCO [\[REP2-008\]](#), to include a fee per application for discharge in line with Regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(a) (the Fees Regulations).
- 7.4.27. The ExA asked a question at ExQ2 (DCO 2.7) [\[PD-013\]](#) regarding the recently published Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2023 which came into force on 6 December 2023. The ExA sought consideration of the 2023 Regulations and views on whether the fees set out in paragraph 5 should be per application or per requirement. Schedule 14(5) was subsequently amended in version 6 of the draft DCO [\[REP4-014\]](#) so that (1) a fee would be received per requirement whether dealt with in a single application or combined, and inserted an additional paragraph (3) to reflect the index linking of fees set out in Regulation 18A of the Fees Regulations.
- 7.4.28. Paragraph 5 of Schedule 14 was subsequently amended in its entirety in version 7 of the draft DCO [\[REP5-020\]](#) to remove reference to the Fee Regulations. Instead it contains a staggered fee structure, specifying higher discharge fees to the RPAs for specified requirements, in order to reflect their complexity and the time and expertise (including input from consultees) likely to be needed by the RPAs for those particular requirements. The SoCG with the RPAs notes that this follows that submitted for the Cottam Solar Project and is similar to Mallard Pass. The RPAs confirmed agreement with the final wording of Schedule 14 in the SoCG [\[REP6-006\]](#).
- 7.4.29. The ExA is satisfied that due regard has been taken by the Applicant of the ExA's questioning and of the RPA's views on the matter of timescales and fees for discharge. Therefore, no amendments have been made from version 7 of the dDCO into the Recommended DCO.

7.5. PROTECTIVE PROVISIONS

7.5.1. Schedule 13 of the draft DCO [REP5-020](#) includes a set of 12 Protective Provisions, most of which are bespoke to named statutory undertakers. Representations were received by the following statutory undertakers who all expressed in their representations that they wished to see appropriate protection for their assets and apparatus.

- Anglian Water Services Limited [\[RR-012\]](#) (Anglian Water)
- Bicker Fen Windfarm Limited [\[RR-023\]](#)
- Black Sluice Internal Drainage Board [\[RR-003\]](#) (Black Sluice IDB)
- Environment Agency [\[RR-009\]](#)
- National Gas Transmission Plc (National Grid Gas Plc) [\[RR-016\]](#) (NGT)
- National Grid Electricity Transmission Plc [\[RR-017\]](#) (NGET)
- Network Rail Infrastructure Limited [\[RR-001\]](#) (Network Rail)
- National Grid Viking Link Limited [\[RR-018\]](#) (Viking Link)
- Triton Knoll OFTO Limited [\[RR-007\]](#) (TK OFTO)

7.5.2. Preferred Protective Provisions were submitted by Network Rail only.

7.5.3. Section 6.7 of this report sets out the issues considered in the Examination as a result of the representations from the above statutory undertakers who are also listed in the Book of Reference (BoR) and are affected by Compulsory Acquisition (CA) and Temporary Possession (TP) matters, considers them against s127 and s128 of PA2008, and summarises those representations which remain outstanding at the end of the Examination.

7.5.4. An additional bespoke Protective Provision was inserted to Part 11 at Deadline 5. This is for the protection of Beacon Fen Energy Park, a matter which is discussed at Section 3.11 of this Recommendation in relation to cumulative effects. No representations were received from Beacon Fen Energy Park, albeit a signed Joint Position Statement [\[REP5-010\]](#) was submitted by the Applicant which states that the parties have agreed Protective Provisions.

7.5.5. As explained in Section 3.10 of this Recommendation, LCC raised the issue of costs for monitoring the energy storage systems (ESS) at ISH4 [\[EV-019\]](#), and indicated a preference for Protective Provisions to secure this. The ExA questioned the mechanism for securing the funding for the Fire Service (ExQ2 GEN 2.8) [\[PD-013\]](#). Following similar discussions as part of other solar DCO Examinations in Lincolnshire, and precedent contained in the Longfield Solar Farm Order 2023, the Applicant subsequently inserted a further bespoke Protective Provision for the benefit of Lincolnshire Fire and Rescue to Part 9 of Schedule 13 of version 6 of the draft DCO [\[REP4-014\]](#).

7.5.6. In respect of Protective Provisions for the aforementioned statutory undertakers who made representations, by the end of the Examination all had agreed the Protective Provisions as set out in Schedule 13 of the Recommended DCO with the exception of Network Rail, Viking Link, and TK OFTO. The position for each statutory undertaker is set out in the Applicant's Closing Submissions (Tables 1 and 2 of Appendix 2) [\[REP6-003\]](#) and summarised below.

Network Rail Infrastructure Limited

7.5.7. Network Rail is the owner and operator of the Grantham to Skegness line and verges which run through the Order Limits to the north of the South Forty Foot

Drain. The cable route would cross underneath the railway (and South Forty Foot Drain) by way of Horizontal Directional Drilling.

- 7.5.8. Updates on negotiations with Network Rail were provided throughout the Examination. At Deadline 5 Network Rail stated that it had reached an agreement in principle, subject to the negotiation of the required legal documentation in order to grant the Applicant the necessary rights which is expected shortly after the close of Examination [\[REP5-069\]](#). Disagreement on the Protective Provisions at Part 8 of Schedule 13 relates to the inclusion of paragraph 85 of Network Rail's preferred Protective Provisions. This relates to a restriction on the Applicant from the CA of rights and interests without the prior consent of Network Rail.
- 7.5.9. The Applicant's position is that unless a voluntary land agreement is in place which grants the Applicant all the rights it requires to deliver the Proposed Development, the restrictions in paragraph 85 should not be included as it could otherwise prevent the Applicant from delivering the project, for which the Applicant requires certainty.
- 7.5.10. The Applicant considers the Protective Provisions as currently drafted provide adequate safeguards and these include the ability for Network Rail to approve plans and method statements for the works. The Applicant also explained that the rights to use CA powers are a distinct and separate issue from public safety matters and/or serious detriment to Network Rail's undertaking and should not be conflated.

National Grid Viking Link Limited

- 7.5.11. Viking Link has cable rights associated with its interconnector between Denmark and the UK which crosses the Order land to its substation at Bicker Fen. Its WR [\[REP2-015\]](#) notes that it requires bespoke Protective Provisions to ensure its interests are adequately protected and to ensure compliance with relevant safety standards, and for which it is in negotiations with the Applicant together with supplementary agreements which may be required. Updates were provided at Deadline 4 by Viking Link [\[REP4-063\]](#) and throughout the Examination by the Applicant.
- 7.5.12. The SoCG [\[REP6-009\]](#) notes that the Protective Provisions at Part 10 of Schedule 13 as inserted at Deadline 5 are in an agreed form subject to the wording of paragraph 112 regarding a continuing ability to CA rights from Viking Link should a voluntary agreement not be achieved. It states that the parties are shortly expected to reach agreement on the side agreement but timescales are not provided. Viking Link have not submitted its preferred Protective Provisions to the Examination but Table 2 of the Applicant's closing submissions [\[REP6-003\]](#) sets out the paragraph in dispute.
- 7.5.13. The Applicant maintains that with Viking Link's proposed wording, it cannot commence construction of the Proposed Development until the crossing agreement has been entered into by the parties so they need to ensure that the ability to CA rights from Viking Link is not unreasonably prevented without the completion of the crossing agreement. As such, the Applicant considers its Protective Provisions as currently drafted, inserted at Deadline 5, provide adequate safeguards for Viking Link's undertaking.

Triton Knoll OFTO Limited

- 7.5.14. TK OFTO own and operate the transmission infrastructure which connects the Triton Knoll offshore windfarm to its substation and the electricity network at Bicker Fen.

- 7.5.15. Updates on negotiations with TK OFTO (previously Triton Knoll Wind Farm Limited) were provided throughout the Examination. The SoCG [\[REP5-052\]](#) notes that the Protective Provisions at Part 12 of Schedule 13 as inserted at D5 are in an agreed form subject to the wording of paragraph 134. This relates to a restriction on the Applicant from compulsorily acquiring rights and interests in land from TK OFTO. The Applicant agrees to be subject to a restriction save in respect of the Triton Knoll Access Track which provides construction and maintenance access to Bicker Fen away from the highway network.
- 7.5.16. The Applicant's position is that until a voluntary agreement is in place granting them a right of access over the Access Track, the restriction in paragraph 134 should not apply as it could prevent the Applicant from delivering the project (extension works to Bicker Fen substation) with certainty.
- 7.5.17. It is understood that the voluntary land agreement is nearing its final form. However, should legal completion not take place before the SoS makes a decision the Applicant considers that the Protective Provisions as currently drafted provide adequate safeguards for TK OFTO's undertaking.

Examining Authority's Conclusions on Protective Provisions

- 7.5.18. The ExA agrees with the Applicant that the rights over the relevant land in which the statutory undertakers have interests are necessary in order to deliver the Proposed Development. It is understood that completion of voluntary agreements with Network Rail, Viking Link and TK OFTO are imminent and likely to take place within the post-Examination period.
- 7.5.19. Nonetheless, in the event that such agreements are not forthcoming the ExA is satisfied with the wording of all Protective Provisions in Schedule 13, and that adequate protection is provided to statutory undertakers such that there would be no serious detriment to the carrying out of its respective roles and functions.
- 7.5.20. The SoS may wish to seek an update from the parties on the position of side agreements prior to making its decision.

7.6. EXAMINING AUTHORITY'S RECOMMENDED DEVELOPMENT CONSENT ORDER

- 7.6.1. In light of the conclusions above the ExA does not consider any further substantive changes to revision 7 of the draft DCO [\[REP5-020\]](#) are necessary to address the issues that have come to light during the Examination.

7.7. CONCLUSIONS

- 7.7.1. The SoS can be satisfied that the ExA has considered all versions of the draft DCO as provided by the Applicant, and considered the degree to which the final version [\[REP5-020\]](#) has addressed outstanding matters.
- 7.7.2. The Requirements set out in Schedule 2 provide appropriate mitigation for potential adverse effects identified in the ES and sufficiently address the issues raised during the course of the Examination. The ExA's Recommended DCO at Appendix D is identical to version 7 of the draft DCO [\[REP5-020\]](#).
- 7.7.3. The ExA therefore recommends that the SoS should make this Order as set out, if it is satisfied that the Proposed Development should be consented.

8. SUMMARY OF FINDINGS AND CONCLUSIONS

8.1. INTRODUCTION

- 8.1.1. This Chapter summarises the Examining Authority's (ExA) conclusions arising from the Recommendation as a whole and sets out its recommendation to the Secretary of State (SoS) for Energy Security and Net Zero.

8.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS

- 8.2.1. There is no National Policy Statement (NPS) that has effect in place for either the Proposed Development that accords with section (s)104 of the Planning Act 2008 (PA2008). The Application therefore falls to be determined under s105 of PA2008. Subsection 2(c) of s105 requires the SoS to have regard to any other matters which the SoS thinks are both important and relevant to the decision.
- 8.2.2. In reaching its conclusions, the ExA has had particular regard to the Local Impact Reports (LIR) from Boston Borough Council (BBC), North Kesteven District Council (NKDC) and Lincolnshire County Council (LCC), given the importance afforded to LIR under s105 of PA2008.
- 8.2.3. The Application was submitted before the designation of the 2024 suite of energy NPS. In this case, the transitional arrangements apply as set out in section 1.6 of 2024 NPS EN-1 and the 2011 suite of NPS should have effect, however any emerging draft NPSs (or those designated but not yet 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 SoS to consider within the framework of PA2008 and with regard to the specific circumstances of the Development Consent Order (DCO) application.
- 8.2.4. The ExA concludes that the following NPS are important and relevant considerations in the decision-making process:
- 2011 NPS EN-1: Overarching National Policy Statement for Energy
 - 2011 NPS EN-5: National Policy Statement for Electricity Networks Infrastructure
 - 2024 NPS EN-1: Overarching National Policy Statement for Energy
 - 2024 NPS EN-3: National Policy Statement for Renewable Energy
 - 2024 NPS EN-5: National Policy Statement for Electricity Networks Infrastructure
- 8.2.5. In several instances many of the policy considerations included in the 2011 NPSs are reconfirmed in the 2024 versions, but where there are new, updated or amended policy considerations the ExA has applied greater weight to the 2024 NPSs as they are the most up-to-date statement of Government policy.
- 8.2.6. The ExA does not consider that the Recommended DCO would substantially conflict with the National Planning Policy Framework, relevant development plan policy or other relevant policy, all of which have been taken into account in this Recommendation.
- 8.2.7. Whilst the SoS is the competent authority under the Conservation of Habitats and Species Regulations 2017, and will make the definitive assessment, the ExA concludes that subject to mitigation secured in the Recommended DCO, adverse effects on the integrity of the identified European sites and their features from the

Proposed Development when considered alone or in-combination with other plans or projects can be excluded from the impact-effect pathways assessed. The ExA has taken this finding into account in reaching its conclusion.

- 8.2.8. The ExA has considered the case for Compulsory Acquisition (CA) and Temporary Possession (TP) of land and rights in order to implement the Proposed Development. The ExA is satisfied that the legal interests in all plots of land included in the final Book of Reference and indicated on the final Land Plans would be required for the Proposed Development with regard to both CA and TP powers. In relation to land subject to CA, the ExA has concluded that the land to be taken is no more than is reasonably required and the proposed land take is proportionate. The Applicant has a clear idea of how it intends to use the land and funds are available for the implementation of the Proposed Development.
- 8.2.9. At the close of the Examination there were outstanding objections from a number of Statutory Undertakers and as a consequence s127 and s138 of the PA2008 were engaged. The ExA is satisfied that the Protective Provisions contained within the Recommended DCO would afford the Statutory Undertakers the protection that they require and ensure that they could continue to carry out their statutory functions without any serious detriment, irrespective of whether matters were agreed. As a result, the ExA considers that the Proposed Development would comply with s127 and s138 of PA2008.
- 8.2.10. The ExA has also had regard to the provisions of the Human Rights Act 1998, and considers that the Examination has ensured a fair and public hearing, that any interference with human rights arising from implementation of the Proposed Development is proportionate and strikes a fair balance between the rights of the individual and the public interest. The ExA is satisfied that compensation would be available in respect of any quantifiable loss. There is no disproportionate or unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.
- 8.2.11. Throughout the Examination and in producing this Recommendation, the ExA has had due regard to the Public Sector Equality Duty (PSED). The PSED is principally considered in Chapter 6 of this Recommendation. The Proposed Development would 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, there would be no breach of the PSED.
- 8.2.12. The ExA has also had regard to the Natural Environment and Rural Communities Act 2006 (as amended) and the biodiversity duty in its conclusions and in reaching its recommendation.
- 8.2.13. With regard to designated heritage assets and in consideration of Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, the ExA has found the Proposed Development would result in less than substantial harm to designated heritage assets. However, those harms are outweighed by the substantial public benefit from the provision of low carbon energy to meet the need identified in 2011 and 2024 NPS EN-1 and by the other benefits of the Application as summarised in Chapter 5 of this Recommendation.
- 8.2.14. The ExA has attributed very great weight to the benefits of the Proposed Development which include its contribution to meeting the legal commitment to Net Zero and in seeking to ensure a secure, diverse and affordable energy supply.

Energy generation from solar photovoltaics (PV), amongst other types of infrastructure, is urgently required.

- 8.2.15. The option agreement in place with the owner of the Energy Park Site, which although extensive in size it is well contained, together with the relatively short cable route to the National Grid Bicker Fen substation and associated grid connection agreement indicate that the Proposed Development can be built out in a relatively quick timeframe. This is in accordance with paragraph 3.3.63 of 2024 NPS EN-1 which makes clear that “*Government strongly supports the delivery of CNP infrastructure and it should be progressed as quickly as possible*”.
- 8.2.16. Notwithstanding the identification of solar PV development in the 2024 NPS as CNP, the ExA would have concluded in favour of the Proposed Development. If the SoS wishes to consider the CNP, the ExA is satisfied that the mitigation hierarchy has been fully explored.
- 8.2.17. In respect of all other matters and representations received, the ExA is satisfied that there are no important or relevant matters that would individually or collectively lead to a different recommendation from that set out below. Taking account of the mitigation secured through the Recommended DCO in Appendix D of this Recommendation, there are no adverse impacts arising from the Proposed Development that would outweigh its benefits.

Matters on which the Secretary of State requires confirmation

- 8.2.18. The SoS must obtain confirmation that Crown consent under s135 of PA2008 has been obtained before the Order can be made.

Matters for the attention of the Secretary of State

- 8.2.19. There are outstanding objections from Statutory Undertakers: Network Rail Infrastructure Limited, Triton Knoll OFTO Limited and National Grid Ventures (Viking Link Limited). If agreement has been reached during the post-Examination recommendation period on these matters then the SoS may reach different findings on those matters from those of the ExA, and may wish to seek the views of the Applicant and the aforementioned Statutory Undertakers as to whether the wording of the relevant Protective Provisions should be amended accordingly. Nonetheless, the ExA does not anticipate that any such matters would alter its overall recommendation and the ExA is satisfied that the Applicant’s wording in its final draft DCO is appropriate.
- 8.2.20. No representations have been submitted by LCC in regard to CA of rights on land which it owns or has an interest in. The SoS may also wish to seek clarification from LCC in terms of progress with agreement on land matters, putting aside its fundamental concerns in terms of the environmental impacts of the Proposed Development.
- 8.2.21. Heads of Terms in relation to planning obligations under Section 106 of the Town and Country Planning Act 1990 were agreed by the relevant planning authorities but no legal agreement submitted before the end of the Examination. It relates to contributions to offsite planting in the BBC area, and apprenticeships in all local authority areas. The SoS may wish to seek an update on the progress of the Section 106 Agreement, however it should note that the ExA has concluded that such matters do not weigh for or against the making of the Order.

8.3. RECOMMENDATION

- 8.3.1. For all of the above reasons and having had regard to the LIRs produced by BBC, LCC and NKDC as well as findings and conclusions on important and relevant matters set out in this Report, the ExA concludes that development consent should be granted, and that the SoS for Energy Security and Net Zero should make the Order in the form attached at Appendix D to this Recommendation.

APPENDICES

APPENDIX A: REFERENCE MATERIAL

APPENDIX B: LIST OF ABBREVIATIONS

APPENDIX C: HABITATS REGULATIONS ASSESSMENT

APPENDIX D: THE RECOMMENDED DEVELOPMENT CONSENT ORDER

APPENDIX A: REFERENCE MATERIAL

Environmental Statement Chapter/Figure/Appendix	Examination Library Reference at Close of the Examination
Non-Technical Summary	APP-231
Chapter 0: Contents and Statement of Competence	PS-047
Chapter 1: Introduction	PS-049
Figure 1.1: Order Limits	PS-082
Figure 1.2: Administrative Boundaries	PS-083
Figure 1.3: Energy Park Boundary	APP-076
Figure 1.4: Field Plan	APP-077
Chapter 2: EIA Methodology and Consultation	PS-051
Figure 2.1: Indicative Site Layout	
Figure 2.2a: Cumulative Sites – Shortlisted (Regional Context)	Appendix 1 REP5-004
Figure 2.2b: Cumulative Sites – Shortlisted (Local Context)	Appendix 1 REP5-004
Figure 2.3: Proposed Development	PS-086
Chapter 3: Site Description, Site Selection, Iterative Design Process	PS-053
Figure 3.1: Working Indicative Site Layout (Revision A)	APP-082
Figure 3.2: Working Indicative Site Layout (Revision E)	APP-083
Figure 3.3: Working Indicative Site Layout (Revision H)	APP-084
Figure 3.4: Site Search Exercise	APP-085
Figures 3.4a to 3.4m: Back Check and Review Site Options 1 to 13	APP-086 to APP-098
Figure 3.5: Indicative Cable Route	APP-099
Figure 3.6: Environmental Designations Plan	APP-100
Figure 3.7: Indicative Site Layout (Revision J)	APP-101
Chapter 4: Proposed Development	REP4-024
Figure 4.1a: Current assets on Energy Park Site	APP-102
Figure 4.1b: Proposed site access and internal access	APP-103

Figure 4.1c: Proposed solar PV development areas	APP-104
Figure 4.1d: Proposed Energy Storage System and new infrastructure	APP-105
Figure 4.1e: Proposed ecological enhancements for proposed Energy Park	APP-106
Figure 4.1f: Proposed permissive footpath (Revision 2)	REP2-043
Figure 4.1g: Indicative energy storage development	APP-108
Figure 4.2: Indicative Drill (or similar technology) Locations	PS-089
Figure 4.3: Indicative Phasing Plan	APP-110
Figures 4.4 to 4.8, 4.10, 4.11, 4.18 to 4.23 Elevations	APP-111 , APP-112 , APP-113 , APP-114 , APP-115 , APP-117 , APP-118 , APP-125 , APP-126 , APP-127 , REP2-044 , REP2-045 , APP-130
Figure 4.9: Indicative launch pit design for HDD	APP-116
Figure 4.12: 400kV Trench working swathe	APP-119
Figure 4.13: Indicative HDD crossing sections	APP-120
Figure 4.14: Watercourse configuration (dam and pump method)	APP-121
Figure 4.15: Typical road crossing section	APP-122
Figure 4.16: 400kV Jointing bay general arrangement	APP-123
Figure 4.17: Construction Compound arrangement	APP-124
Figure 4.24: Site entrance details including culvert	APP-131
Figure 4.25: Access Track	APP-132
Figure 4.26: Bicker Fen Substation Extension	APP-133
Chapter 5: Planning Policy	REP2-032
Chapter 6: Landscape and Visual	REP5-033
Figure 6.1: Site Location Plan	PS-090
Figure 6.2: Landscape Strategy Plan	REP3-012
Figure 6.3: Landscape Character Plan	PS-092
Figure 6.4: Visual Receptors Plan	PS-093

Figure 6.5a: Screened Zone of Theoretical Visibility - Solar Areas and Proposed Viewpoint Locations Plan	APP-138
Figure 6.5b: Screened Zone of Theoretical Visibility - Substation Equipment with ESS and Proposed Viewpoint Locations Plan	APP-139
Figure 6.5c: Screened Zone of Theoretical Visibility - National Grid Bicker Fen Substation	PS-094
Figure 6.6: Context Baseline Views Parts 1 to 4	APP-141 to APP-144
Figure 6.7: Photomontages	PS-096 to PS-101
Appendix 6.1: LVIA Methodology	APP-177
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Appendix 6.3: Arboricultural Impact Assessment, Tree survey and Tree protection plan	APP-179
Appendix 6.4: Extract from NCA 46 The Fens	APP-180
Appendix 6.5: Extract from North Kesteven Landscape Character Assessment	APP-181
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Appendix 6.7: Scoping Out - Landscape Character Receptors	APP-183
Appendix 6.8: Scoping Out - Visual Assessment	APP-184
Appendix 6.9 - Detailed Visual Assessment	APP-185
Chapter 7: Residential Visual Amenity	PS-061
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Figure 7.3: Photomontages	APP-150 and APP-151
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Chapter 8: Ecology and Ornithology	PS-063
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Appendix 8.1: Preliminary Ecological Appraisal	APP-190
Appendix 8.2: Lincolnshire Environmental Records Centre search report	APP-191
Appendix 8.3: Phase 1 Habitat Survey Report – Energy Park	APP-192
Appendix 8.4: Further Phase 1 Survey Report - Energy Park	APP-193
Appendix 8.5: Extended Phase 1 Survey Report - Cable Route Corridor	APP-194
Appendix 8.6: Botany Report including Aquatic Plants and Rare Arable Plants	APP-195
Appendix 8.7: Confidential Badger Report	APP-196
Appendix 8.8: Bat Survey Report - Energy Park	APP-197
Appendix 8.9: Water Vole Report - Energy Park and Cable Route Corridor	APP-198
Appendix 8.10: Ornithological Survey	APP-200
Appendix 8.11: Great Crested Newts - Energy Park and Cable Route Corridor	APP-201
Appendix 8.12: Biodiversity Net Gain Calculation	REP4-028
Appendix 8.13: Biodiversity Net Gain Assessment Report	REP4-029
ES Technical Note: Additional Ecology Information	REP3-027
Chapter 9: Hydrology, Hydrogeology, Flood Risk and Drainage	PS-065
Figure 9.1: Hydrology and Drainage	PS-111
Figure 9.2: Superficial Geology	PS-112
Figure 9.3: Bedrock Geology	PS-113
Appendix 9.1: Flood Risk Assessment including Drainage Strategy	AS-021 and AS-023
Appendix 9.2: Ground Investigation Report	APP-205
Chapter 10: Cultural Heritage	REP2-024
Appendix 10.1: Heritage Desk-Based Assessment	APP-206

Appendix 10.2: Geophysical Survey Results for Energy Park Parts 1 to 5	APP-207 to APP-211 inclusive
Appendix 10.3: Archaeological Evaluation of Energy Park	APP-212
Appendix 10.4: Geophysical Survey Report of Cable Route Corridor Parts 1 and 2	APP-213 and APP-214
Appendix 10.5: Archaeological Evaluation of Offsite Cable Route Corridor	REP2-048
Figure 10.1: Designated Heritage Assets	PS-114
Figure 10.2: Energy Park Geophysical Survey Interpretation	APP-160
Figure 10.3: Cable Route Geophysical Survey	APP-161
Figure 10.4: Energy Park Archaeological Mitigation Areas	REP2-036
Chapter 11: Socio-Economics	REP4-026
Figure 11.1: Administrative Boundaries	PS-115
Figure 11.5: Index of Multiple Deprivation for the Proposed Development 2019	PS-116
Chapter 12: Noise and Vibration	PS-069
Appendix 12.1: Background Noise Survey	APP-215
Appendix 12.2: Noise Modelling	APP-216
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Chapter 13: Climate Change	PS-071
Chapter 14: Transport and Access	PS-073
Appendix 14.1: Summary of the personal injury collision records	APP-217
Appendix 14.2: Automatic Traffic Count	PS-130
ES Technical Note: Assessment of Triton Knoll access track, Doubletwelves Drove and Bicker Drove	REP5-006
ES Technical Note: Sensitivity of Cowbridge Road, Bicker Drove and Vicarage Drove	REP3-030
Chapter 15: Air Quality	PS-075
Figure 15.1: Air Quality Monitoring Locations in the Vicinity of the Proposed Development	APP-167
Chapter 16: Land Use and Agriculture	REP2-028

Figure 16.1: Agricultural Land Classification Plan	APP-168
Appendix 16.1: Savills Farming Report	APP-220
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Appendix 16.4: British Society of Soil Science Note 'Soil Carbon'	APP-223
Appendix 16.5: Construction methodology (as it effects soils)	APP-224
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Figure 17.1: Panel Area Boundary and Zone of Theoretical Visibility	APP-169
Appendix 17.1: Forge Solar Modal (Fixed Panels) Glint Report	APP-225
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Appendix 17.5 - OP Description and summary for 10 degree and 20 degree panel angles	APP-229
Chapter 18: Miscellaneous Issues	PS-077
Appendix 18.1: UXO Risk Assessment	APP-230
Chapter 19: Summary	REP2-030
Chapter 20: Glossary	PS-081
Technical Notes	
ES Technical Note – Updated information on cumulative projects	REP5-004
ES Transport and Access Note: Sensitivity of Cowbridge Road, Bicker Drove and Vicarage Drove	REP5-006
ES Transport and Access Technical Note: Assessment of Triton Knoll access track, Doubletwelves Drove and Bicker Drove	REP5-006

A2 - Statements of Common Ground

The table below lists an alphabetical list of the Statements of Common Ground between the Applicant and Interested Parties at the end of the Examination, with Examination Library references.

Interested Party	Examination Library Reference
Final Signed Statements of Common Ground	
Anglian Water	REP1-009
Black Sluice Internal Drainage Board	REP5-039
Boston Borough Council, Lincolnshire County Council and North Kesteven District Council	REP6-006
Environment Agency	REP5-040
Lincolnshire Wildlife Trust	REP1-012
National Gas Transmission plc	REP6-007
National Grid Electricity Transmission plc	REP6-008
National Grid Ventures (Viking Link Ltd)	REP6-009
Natural England	REP5-048
Network Rail Infrastructure Limited	REP5-050
Unsigned (Final) Statement of Common Ground	
Triton Knoll OFTO Limited	REP5-052

A3 - CHANGE APPLICATION DOCUMENTS

Summary of changes:

The changes relate to land at Bicker Fen substation (Work No.6) and additional land and works are required to enable the grid connection, comprising:

- 1) A new section of National Grid Electricity Transmission plc infrastructure at the Bicker Fen Substation comprising a busbar extension including a section breaker, a bus coupler and a feeder circuit on land to the south of Bicker Fen Substation (Plot 99H)
- 2) A new cable sealing end compound on land to the west of Bicker Fen Substation which is owned by NGET (Plot 99I)

Document	Examination Library Reference
Cover Letter	PS-003
Change consultation report	PS-004
Schedule of changes to draft development consent order	PS-005
Appendix 1 – Joint position statement with Ecotricity and National Grid	PS-006
Appendix 2 – Cover letter to the Planning Inspectorate and the reduced consultee list	PS-007
Appendix 3 – Example of change consultation letter	PS-008
Appendix 4 – Copies of change consultation notices	PS-009
Appendix 5 – Photos of change consultation notices	PS-010
Appendix 6 – Change consultation information leaflet	PS-011
Updated plans, Environmental Statement and other documents	PS-012 to PS-153 inclusive

A4 – NATIONAL POLICY, STATEMENTS, AND GUIDANCE

- 2011 Overarching National Policy Statement for Energy (NPS EN-1)
- 2011 National Policy Statement for Electricity Networks Infrastructure (NPS EN-5)
- 2024 Overarching National Policy Statement for Energy (NPS EN-1)
- 2024 National Policy Statement for Renewable Energy Infrastructure (NPS EN-3)
- 2024 National Policy Statement for Electricity Networks Infrastructure (NPS EN-5)
- National Planning Policy Framework (December 2023)
- National Planning Practice Guidance: Renewable and Low Carbon Energy
- Noise Policy Statement for England
- Achieving Net Zero (2020)
- British Energy Security Strategy (2022)
- Clean Growth Strategy (2017)
- Design Manual for Roads and Bridges
- Energy White Paper: Powering our Net Zero Future (2020)
- Industrial Decarbonisation Strategy (2021)
- National Infrastructure Assessment (Second, 2023)
- National Infrastructure Strategy (2020)
- Net Zero: Opportunities for the Power Sector (2020)
- Net Zero: The UK's Contribution to Stopping Global Warming (2019)
- Net Zero Strategy: Build Back Greener (2021)
- Powering Up Britain – The Net Zero Growth Plan (2023)
- Reducing UK Emissions: progress report
- Ten Point Plan for a Green Industrial Revolution (2020)
- UK Biodiversity Action Plan (1994)
- UK Government press release of acceleration of carbon reduction to 2035 (April 2021)
- UK Government Solar Strategy (2014)
- UK Parliament declaration of an Environmental and Climate Change Emergency (2019)
- UK Renewable Energy Strategy (2009)
- Written Ministerial Statement on Solar Energy 2015

A5 – RELEVANT LEGISLATION

- Air Quality (Amendment) (England) Regulations 2002
- Air Quality (England) Regulations 2000
- Air Quality Standards (England) Regulations 2010
- Air Quality Standards (Amendment) Regulations 2016
- Ambient Air Quality Directive (2008/50/EC)
- Ancient Monuments and Archaeological Areas Act 1979
- Birds Directive (2009/147/EC)
- Climate Change Act 2008
- Climate Change Act 2008 (2050 Target Amendment) Order 2019
- Conservation of Habitats and Species Regulations 2017 (as amended)
- Construction Design and Management Regulations 2015
- Control of Pollution Act 1974 (as amended)
- Countryside and Rights of Way Act 2000
- Electricity Act 1989
- Energy Act 2013, 2016, 2023
- Environment Act 1995, 2021
- Environmental Impact Assessment (EIA) Directive (2011/92/EU) (as amended by EIA Directive 2014/52/EU)
- Environmental Protection Act 1990 (as amended)
- Equality Act 2010
- EU Floods Directive (2007/60/EC)
- Flood and Water Management Act 2010
- Flood Risk Regulations 2009
- Habitats Directive (92/43/EEC)
- Hedgerow Regulations 1997
- Highways Act 1980
- Human Rights Act 1998
- Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended) (EIA Regulations)
- Land Drainage Act 1991, 1994
- Natural Environmental and Rural Communities Act 2006 (as amended)
- New Roads and Street Works Act 1991
- Noise and Statutory Nuisance Act 1993 c.40
- Planning (Listed Buildings and Conservation Areas) Act 1990
- Planning Act 2008
- Priority Substances Directive (2008/105/EC) Revision of the Priority Substances Directive (2013/39/EU)
- Protection of Badgers Act 1992
- Protection of Military Remains Act 1986
- Traffic Management Act 2004
- Treasure Act 1996
- Water Act 2003, 2014
- Water Act 2014
- Water Environment (Water Framework Directive) (England and Wales) Regulations 2017
- Water Framework Directive (2000/60/EC)
- Water Resources Act 1991
- Wildlife and Countryside Act 1981 (as amended)

A6 – RELEVANT LOCAL DEVELOPMENT PLAN POLICIES

The Local Impact Reports identify the following adopted Development Plan policies as being of relevance to the consideration of the Proposed Development:

Development Plan	Policy / Guidance
<p>North Kesteven District Council area:</p> <p>Central Lincolnshire Local Plan</p> <p>(April 2023)</p>	<p>S1 – Spatial Strategy and Settlement Hierarchy</p> <p>S5 – Development in the Countryside</p> <p>S7 – Historic Environment</p> <p>S10 – Supporting a Circular Economy</p> <p>S11 – Embodied Carbon</p> <p>S14 – Renewable Energy</p> <p>S16 – Wider Energy Infrastructure</p> <p>S21 – Flood Risk and Water Resources</p> <p>S28 – Spatial Strategy for Employment</p> <p>S47 – Accessibility and Transport</p> <p>S53 – Design and Amenity</p> <p>S54 – Health and Wellbeing</p> <p>S57 – Historic Environment</p> <p>S59 – Green and Blue Infrastructure Network</p> <p>S60 – Protecting Biodiversity and Geodiversity</p> <p>S61 – Biodiversity Opportunity and Delivering Measurable Net Gains</p> <p>S66 – Trees, Woodland and Hedgerows</p> <p>S67 – Best and Most Versatile Agricultural Land</p> <p>S84 – Ministry of Defence Establishments</p>
<p>Boston Borough Council area:</p> <p>South East Lincolnshire Local Plan</p> <p>(March 2019)</p>	<p>2 – Development Management</p> <p>3 – Design of New Development</p> <p>28 – Natural Environment</p> <p>29 – Historic Environment</p> <p>30 - Pollution</p> <p>31 – Climate Change and Renewable and Low Carbon Energy</p>

A7 – OTHER DEVELOPMENT CONSENT ORDERS

The following made Development Consent Orders have been referred to by the Applicant and other Interested Parties:

- A428 Black Cat to Caxton Gibbet Order 2022
- Cleeve Hill Solar Park Order 2020
- Drax Power (Generating Stations) Order 2019
- East Anglia Three Offshore Wind Farm Order 2017
- Great Yarmouth Third River Crossing Order 2020
- Hinkley Point C (Nuclear Generating Station) Order 2013
- Hornsea Two Offshore Wind Farm Order 2016
- Lake Lothing (Lowestoft) Third Crossing Order 2020
- Little Crow Solar Park Order 2022
- Longfield Solar Farm Order 2023
- Millbrook Gas Fired Generating Station Order 2019
- Norfolk Boreas Offshore Wind Farm Order 2021
- Norfolk Vanguard Offshore Wind Farm Order 2022
- Progress Power (Gas Fired Power Station) Order 2015
- Riverside Energy Park Order 2020
- Silvertown Tunnel Order 2018
- Wrexham Gas Fired Generating Station Order 2017

The following draft Development Consent Orders have been referred to by the Applicant and other Interested Parties:

- Cottam Solar Project
- Gate Burton Energy Park
- Lower Thames Crossing
- Mallard Pass Solar Project
- Sunnica Energy Farm
- West Burton Solar Project

APPENDIX B: LIST OF ABBREVIATIONS

Abbreviation	Description
AA	Appropriate Assessment
AADT	Average Annual Daily Traffic flow
AEoI	Adverse Effects on Integrity
AIS	Air Insulated Switchgear
ALC	Agricultural Land Classification
AP(s)	Affected Person(s)
ASD	Autistic Spectrum Disorder
ASI	Accompanied Site Inspection
BBC	Boston Borough Council
BMV	Best and Most Versatile (agricultural land)
BNG	Biodiversity Net Gain
BoR	Book of Reference
CA	Compulsory Acquisition
CAH	Compulsory Acquisition Hearing
CA Regs	Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (as amended)
CEMP	Construction Environmental Management Plan
CLLP	Central Lincolnshire Local Plan
CNP	Critical National Priority
CO₂	Carbon Dioxide
CTMP	Construction Traffic Management Plan
DCO	Development Consent Order
DEFRA	Department for Environment, Food and Rural Affairs
DRP	Decommissioning and Restoration Plan
EEA	European Economic Area
EIA	Environmental Impact Assessment

Abbreviation	Description
EIA Regs	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
ES	Environmental Statement
ESS	Energy Storage System
ExA	Examining Authority
ExQ	Examining Authority's written questions (ExQ1, ExQ2)
FRA	Flood Risk Assessment
GHG	Greenhouse Gas
GIS	Gas Insulated Switchgear
GLVIA	Guidelines for Landscape and Visual Impact Assessment
GVA	Gross Value Added
Ha	Hectares
Habitats Regulations	The Conservation of Habitats and Species Regulations 2017
HDD	Horizontal Directional Drilling
HGV	Heavy Goods Vehicle
HRA	Habitats Regulations Assessment
IAP	Initial Assessment of Principal Issues
IDB	Internal Drainage Board
IEMA	Institute of Environmental Management and Assessment
IP(s)	Interested Party (Parties)
IROPI	Imperative Reasons of Overriding Public Interest
ISH	Issue Specific Hearing
kg	Kilogram
km	Kilometre
LCA	Landscape Character Assessment
LCC	Lincolnshire County Council
LEMP	Landscape and Ecological Management Plan
LIR	Local Impact Report

Abbreviation	Description
LLFA	Lead Local Flood Authority
LSE	Likely Significant Effects
LVIA	Landscape and Visual Impact Assessment
m	Metre
MW	Mega Watt
NDHA	Non-Designated Heritage Asset
NGET	National Grid Electricity Transmission Plc
NKDC	North Kesteven District Council
NPPF	National Planning Policy Framework
NSIP	Nationally Significant Infrastructure Project
NPS	National Policy Statement
2011 NPS	The energy suite of National Policy Statements published and designated in July 2011
2024 NPS	The energy suite of National Policy Statements published in November 2023 and designated in January 2024
NPS EN-1	Overarching National Policy Statement for Energy
NPS EN-3	National Policy Statement for Renewable Energy Infrastructure
NPS EN-5	National Policy Statement for Electricity Networks Infrastructure
ODP	Outline Design Principles
OEMP	Operational Environmental Management Plan
PA2008	Planning Act 2008
PEIR	Preliminary Environmental Information Report
PM	Preliminary Meeting
PPG	Planning Practice Guidance
PRoW	Public Right of Way
PSED	Public Sector Equality Duty
PV	Photovoltaic
RPAs	Relevant Planning Authorities
RR	Relevant Representation

Abbreviation	Description
RVAA	Residential Visual Amenity Assessment
S	Section
S106	Legal agreement under Section 106 of the Town and Country Planning Act 1990
SAC	Special Area of Conservation
SCES	Supply Chain, Employment and Skills plan
SELLP	South East Lincolnshire Local Plan
SF6	Sulphur hexafluoride
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoS	Secretary of State
SMP	Soil Management Plan
SPA	Special Protection Area
SSSI	Site of Special Scientific Interest
SUDS	Sustainable Drainage Systems
TCPA 1990	Town and Country Planning Act 1990
TP	Temporary Possession
USI	Unaccompanied Site Inspection
UXO	Unexploded Ordnance
WFD	Water Framework Directive
WMS	Written Ministerial Statement
WR	Written Representation
WSI	Written Scheme of Investigation
ZTV	Zone of Theoretical Visibility

APPENDIX C: HABITATS REGULATIONS ASSESSMENT

C.1 INTRODUCTION

- C.1.1 This appendix sets out the Examining Authority's (ExA) analysis and conclusions relevant to the Habitats Regulations Assessment (HRA). This will assist the Secretary of State (SoS) for Energy Security and Net Zero, as the Competent Authority, in performing their duties under the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').
- C.1.2 In accordance with the precautionary principle embedded in the Habitats Regulations, consent for the Proposed Development may be granted only after having ascertained that it will not adversely affect the integrity of European sites¹ and no reasonable scientific doubt remains².
- C.1.3 Policy considerations and the legal obligations under the Habitats Regulations are described in Chapter 2 of this Report.
- C.1.4 The ExA has been mindful throughout the Examination of the need to ensure that the SoS has such information as may reasonably be required to carry out their duties as the Competent Authority. The ExA has sought evidence from the Applicant and the relevant Interested Parties (IPs), including Natural England as the Appropriate Nature Conservation Body, through the ExA's written questions (ExQs) and Issue Specific Hearings (ISHs).

C.2 REPORT ON THE IMPLICATIONS FOR EUROPEAN SITES (RIES) AND CONSULTATION

- C.2.1 The ExA produced a Report on the Implications for European Sites (RIES) [[PD-014](#)], which compiled, documented, and signposted HRA relevant information provided in the DCO application and Examination representations up to Deadline 4 of the Examination.
- C.2.2 The RIES was issued to set out the ExA's understanding of HRA relevant information and the position of the IPs in relation to the effects of the Proposed Development on European sites at that point in time.
- C.2.3 Consultation on the RIES took place between 23 January and 13 February 2024. No comments were received on the RIES during the Examination.
- C.2.4 The ExA's recommendation is that the RIES, and consultation on it, may be relied upon as an appropriate body of information to enable the SoS to fulfil its duties of consultation under Regulation 63(3) of the Habitats Regulations, should the SoS wish to do so.

C.3 HRA IMPLICATIONS OF THE PROPOSED DEVELOPMENT

- C.3.1 The Proposed Development is described in Chapter 1 of this Recommendation.

¹ The term 'European sites' includes Special Areas of Conservation (SACs) and Special Protection Areas (SPAs), proposed SACs, potential SPAs, Ramsar, proposed Ramsar, and any sites identified as compensatory measures for adverse effects on any of the above.

² 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

- C.3.2 The spatial relationship between the Order Limits of the Proposed Development and European sites is shown in Figure 8.2 of the Environmental Statement (ES) [\[PS-108\]](#).
- C.3.3 The Proposed Development is not directly connected with or necessary to the management of a European site. Therefore, the SoS must make an 'appropriate assessment' (AA) of the implications of the Proposed Development on potentially affected European sites in light of their Conservation Objectives.
- C.3.4 The Applicant's assessment of effects is presented in its Shadow Habitats Regulation Assessment (HRA) to inform Appropriate Assessment [\[APP-049\]](#).
- C.3.5 A revised HRA Report was submitted as part of the Applicant's Change Application [\[PS-041\]](#), as described in Chapter 1 of this report. This change required additional land (approximately 0.9ha) to be included within the Order Limits for a new section of National Grid Electricity Transmission (NGET) infrastructure on land to the south of Bicker Fen Substation, and a new cable sealing end compound on land to the west of Bicker Fen Substation, as shown on Figure 1 of the Change Notification Cover Letter [\[PS-001\]](#).
- C.3.6 In response to the ExA's questions and representations made by IPs during the Examination, the Applicant provided an updated HRA Report [\[REP2-022\]](#), at Deadline 2 which included an update to the assessment of in-combination effects (ICE) that incorporated new projects for which information was not publicly available when the application HRA Report was prepared, and updates to projects for which additional information had become available.
- C.3.7 The HRA Report was also updated following second written questions by the ExA and submitted at D4 [\[REP4-022\]](#) to include the project sites in Table 3 of the HRA Report omitted from the version submitted at D2 which had been included in the previous versions [\[APP-049\]](#) and [\[PS-041\]](#).
- C.3.8 Any references to the Applicant's HRA Report refer to this updated version [\[REP4-022\]](#) unless otherwise specified.
- C.3.9 The Applicant did not identify any likely significant effects (LSE) on European sites in European Economic Area States in its HRA Report or within its Environmental Statement (ES). No such impacts were raised for discussion by any IPs during the Examination.
- C.3.10 The ExA is satisfied, on the basis of the information provided by the Applicant and Natural England's agreement, that the correct sites have been considered in the HRA and that the Proposed Development would not have an LSE on European sites in any European Economic Area States.
- C.4 FINDINGS IN RELATION TO LIKELY SIGNIFICANT EFFECTS**
- C.4.1 Under Regulation 63 of the Habitats Regulations the Competent Authority must consider whether a development will have LSE on a European site, either alone or in combination with other plans or projects. The purpose of the LSE test is to identify the need for an AA and the activities, sites or plans and projects to be included for further consideration in the AA.

- C.4.2 The Applicant's HRA Report sets out the methodology applied to determining what would constitute a 'significant effect'.
- C.4.3 No part of the application site is within any European site. The Applicant identified European sites within 15km of the Proposed Development.
- C.4.4 The European sites and qualifying features that were considered in the Applicant's assessment of LSE are presented in Appendix A of the Applicant's HRA Report [[REP4-022](#)]. These are:
- North Norfolk Coast and Wash Special Areas of Conservation (SAC).
 - The Wash Special Protected Area (SPA).
 - The Wash Ramsar.
- C.4.5 Natural England concurred in its SoCG that the correct sites and features had been considered in the HRA Report [[REP5-048](#)]. North Kesteven District Council (NKDC), Boston Borough Council (BBC) and Lincolnshire County Council (LCC) agreed in its SoCG [[REP6-006](#)] that impacts on the European sites identified by the Applicant had been adequately assessed and offered no other comments in relation to HRA generally. NKDC noted that the assessment of wintering birds was appropriate, provided that Natural England agreed with the findings of the HRA Report.
- C.4.6 The initial effect pathways on the European sites were identified in Sections 5 and 6 of the HRA Report. Appendix D of the HRA Report lists the potential impact pathways identified. Of the potential effects identified in Section 5 (Table 2) most were excluded by the Applicant, on the basis that the majority of the potential effects listed in Table 2 were not present in the Proposed Development, or there was no pathway for LSE based on the distance from the Order Limits and the nature of the Proposed Development. No IPs disputed this approach during the Examination.
- C.4.7 Section 6 of Applicant's HRA Report [[REP4-022](#)] lists the potential impact pathways that were scoped in for assessment (as set out in paragraph C.5.1 below), and no additional impact pathways were identified by IPs for inclusion within the assessment in the Examination.
- C.4.8 The ExA is satisfied that the correct European sites and qualifying features have been identified for the purposes of assessment, and that all potential impacts which could give rise to significant effects have been identified.

C.5 LSE from the Proposed Development Alone

- C.5.1 The Applicant identified potential impacts of the Proposed Development considered to have the potential to result in LSE alone in Section 6 of the Applicant's HRA Report [[REP4-022](#)]. These were:
- Silt laden run-off from surface water.
 - Contamination from surface water pollution events impacting on water quality downstream.
 - Loss of functionally linked habitat use by bird species.

- C.5.2 A summary of LSE, including the construction and decommissioning phases is provided in Appendix D. These potential impacts were taken forward to AA in Section 7 of the HRA Report.

C.6 LSE from the Proposed Development in Combination

- C.6.1 Section 8 and Table 3 of the Applicant's HRA Report [REP4-022] set out the Applicant's approach to assessing the potential in-combination effects arising from the Proposed Development. The projects included in the in-combination assessment were listed in Table 3 of the HRA Report and their locations depicted on Figure 8.2 [PS-108] of the ES and on Figure 2.2a in Appendix 2 (Regional Context) of the ES Technical Note: Updated Information on Cumulative Projects [REP5-004].

- C.6.2 In-combination effects were screened out on the basis that the Proposed Development would not have any effects on European sites for the reasons set out in Table 3 of the HRA Report [REP4-022].

- C.6.3 During Examination at ISH2, the ExA requested further information including the methodology used to inform this decision along with other plans and projects considered which the Applicant provided at Deadline 2. The ExA was satisfied that the further information requested for clarity had been provided.

- C.6.4 Natural England did not raise any concerns over the in-combination assessment and the Applicant's conclusion that in-combination effects are unlikely to occur. Table 3 of the HRA Report document was updated with reference to the cumulative projects that were reassessed as part of the ES for Deadline 2 in ES Technical Note: Updated Information on Cumulative Projects [REP2-050].

C.7 LSE Assessment Outcomes

- C.7.1 The Applicant's HRA Report [REP4-022] concluded that LSE from the Proposed Development alone or in-combination on any of the European sites considered in its assessment through silt laden run-off, water quality effects and/or loss of functionally linked habitats could not be ruled out.

C.8 FINDINGS IN RELATION TO ADVERSE EFFECTS ON INTEGRITY

- C.8.1 Section 7 of the HRA Report [REP4-022] considered whether the Proposed Development would result in AEol of the European sites assessed. The AA focused on those impacts that are judged likely to have a significant effect on the qualifying features of a European site. Section 8 considered potential for in-combination effects from other plans and projects in the local area. Mitigation measures to avoid potential impacts, or to reduce the likelihood and significance of effects were also considered in Section 7 of the HRA Report.

Silt laden run off from surface water

- C.8.2 The Applicant's HRA Report [REP4-022] states that there is a hydrological link between The Wash SPA/SAC/Ramsar site and the Proposed Development, and therefore a need to consider silt-laden run-off at the AA stage of an HRA.

- C.8.3 Any potential negative impacts of possible dust deposition or silt runoff into the drainage ditches within the Proposed Development area would be mitigated for by the implementation of a Construction Environmental Management Plan (CEMP) and appropriate mitigation measures to prevent any silt laden run-off during construction. The HRA Report states that the design of the bus-bar extension and bus-coupler would include appropriate drainage to ensure no extra silt laden run-off. The Applicant's HRA Report concluded no AEoI resulting from adverse effects on the European sites due to silt-laden run-off from the Proposed Development.

Contamination from surface water pollution events impacting on water quality downstream

- C.8.4 A potential impact pathway exists between The Wash SPA/SAC/Ramsar site approximately 14.5km from the Proposed Development through a hydrological link. However, the Applicant's HRA Report [REP4-022] concluded no LSE on this impact pathway due to the initial design for development of the Energy Park which includes a 9m standoff from all Internal Drainage Board drains and an 8m stand-off from all other drains within the Proposed Development's Energy Park area, and the design of the bus-bar extension and bus-coupler which will include appropriate drainage to ensure there would be no water quality effects. The HRA Report states that appropriate mitigation measures would also prevent any water quality effects during construction.

Loss of functionally linked land used by qualifying bird species of The Wash SPA and Ramsar site

- C.8.5 The Applicant's HRA Report [REP4-022] concluded no LSE on this impact pathway for the three bird species (pink footed goose, golden plover and lapwing) that will feed on farmland considered functionally linked land, based on the distance of the designated European sites approximately 14.5km from the order limits.
- C.8.6 The golden plover and lapwing bird species were recorded occasionally using the Energy Park area but the HRA Report considered this to be a very small proportion (less than 1%) of the winter bird population in the east of England. The HRA Report stated that if areas of farmland could be linked to particular internationally important sites the change from open arable field to permanent grass land beneath solar panels within the Proposed Development would not be significant in relation to the total area of farmland available in eastern England. The HRA Report stated that there were no records of the pink-footed goose population of The Wash using the Proposed Development's Energy Park area for foraging, and a small flock had been recorded just once within the Grid Connection Corridor of the order limits. Because of this evidence, the HRA Report concluded that the land of the Proposed Development cannot be regarded as functionally linked habitat important to the integrity of The Wash SPA/SAC/Ramsar site.

C.9 HRA CONCLUSIONS

- C.9.1 The Proposed Development is not directly connected with or necessary to the management of a European site, and therefore the implications of the

Proposed Development with respect to adverse effects on potentially affected sites must be assessed by the SoS.

- C.9.2 The following European Sites and their qualifying features were considered in the Applicant's assessment of LSE:
- North Norfolk Coast and Wash SAC.
 - The Wash SPA.
 - The Wash Ramsar.
- C.9.3 LSE could not be screened out for the European sites and impact pathways both from the Proposed Development alone and in-combination with other plans or projects.
- C.9.4 The ExA notes that the sites and features assessed, and the conclusions reached, were not disputed by any IP during the Examination.
- C.9.5 Considering all the evidence provided, the ExA is satisfied that the correct European sites and qualifying features have been identified for the purposes of assessment, and that all potential impacts which could give rise to significant effects have been identified.
- C.9.6 The ExA's findings are that adverse effects on integrity on all the European sites considered in the HRA Report can be excluded from the Proposed Development when considered alone or in-combination with other plans or projects from the impact-effect pathways assessed, subject to the mitigation measures to be secured in the dDCO.
- C.9.7 Natural England agreed with the conclusions of the HRA Report and stated that it is unlikely that the Proposed Development would have any adverse effects on integrity of the European sites alone or in-combination [[AS-035](#) and [REP5-048](#)].
- C.9.8 Taking into account the reasoning set out above, the ExA considers that the Proposed Development is unlikely to have a significant effect from impacts on the qualifying features of the European sites identified in the HRA Report when considered alone or in combination with other plans or project

APPENDIX D: THE RECOMMENDED DEVELOPMENT CONSENT ORDER

202* No. ****

INFRASTRUCTURE PLANNING

The Heckington Fen Solar Park Order 202*

Made - - - - - ***

Laid before Parliament ***

Coming into force ***

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An application has been made to the Secretary of State for an order granting development consent under section 37 of the Planning Act 2008 (“the 2008 Act”)(a) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(b).

The application has been examined by the Examining Authority 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 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 to the Localism Act 2011 (c. 20).

(b) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524, S.I. 2017/572 and S.I. 2018/378.

(c) S.I. 2010/103.

The Examining Authority, having considered the application together with the documents that accompanied it, and the representations made and not withdrawn, has, in accordance with section 74(2)(a) of the 2008 Act made a report and recommendation to the Secretary of State;

The Secretary of State has considered the report and recommendation of the Examining Authority, has taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(b) and has had regard to the documents and matters referred to in section 105(2)(c) of the 2008 Act;

The Secretary of State, having decided the application, has determined to make an Order giving effect to the proposals comprised in the application on the terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

The Secretary of State, in exercise of the powers conferred by sections 114(d), 115(e), 120(f), 122(g) and 123(h) of the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Heckington Fen Solar Park Order and comes into force on [X] 202*.

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(i);

“the 1965 Act” means the Compulsory Purchase Act 1965(j);

“the 1980 Act” means the Highways Act 1980(k);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(l);

“the 1989 Act” means the Electricity Act 1989(m);

“the 1990 Act” means the Town and Country Planning Act 1990(n);

“the 1991 Act” means the New Roads and Street Works Act 1991(o);

“the 2008 Act” means the Planning Act 2008(p);

(a) As amended by paragraph 29(1) and (3) of Part 1 of Schedule 13 to the Localism Act 2011 (c. 20).

(b) S.I. 2017/572.

(c) Section 105(2) was amended by paragraph 50 of Schedule 13 to the Localism Act 2011.

(d) As amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act 2011.

(e) As amended by section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).

(f) As amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011.

(g) As amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.

(h) Ibid.

(i) 1961 c. 33.

(j) 1965 c. 56.

(k) 1980 c. 66.

(l) 1981 c. 66.

(m) 1989 c. 29.

(n) 1990 c. 8.

(o) 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).

(p) 2008 c. 29.

“the 2015 Order” means the Town and Country Planning (General Permitted Development) (England) Order 2015(a);

“apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act except that, unless otherwise provided, it further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks, electricity cables, telecommunications equipment and electricity cabinets;

“authorised development” means the development and associated development described in Schedule 1 (authorised development) which is development within the meaning of section 32 (meaning of “development”) of the 2008 Act authorised by this Order;

“book of reference” means the document of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

“commence” means beginning to carry out a material operation, as defined in section 155 of the 2008 Act (which explains when development begins), comprised in or carried out for the purposes of the authorised development other than the permitted preliminary works (except where stated to the contrary) and “commencement”, “commenced” and cognate expressions are to be construed accordingly;

“county authority” means Lincolnshire County Council;

“date of final commissioning” means in respect of each phase of the authorised development as notified under requirement 3 of Schedule 2 (requirements) that contains part or all of numbered work 1, the date on which each such phase commences operation by generating electricity on a commercial basis but excluding the generation of electricity during commissioning and testing;

“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 of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the environmental statement for the purposes of this Order;

“flood risk assessment” means the document of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the flood risk assessment for the purposes of this Order;

“footpath” and “footway” have the same meaning as in the 1980 Act;

“highway” and “highway authority” have the same meaning as in the 1980 Act(b);

“holding company” has the same meaning as in section 1159 of the Companies Act 2006(c);

“interface area plan” means the plan of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the interface area plan for the purposes of this Order;

“land and crown land plans” means the plans of that name identified in the table at Schedule 11 (documents and plans to be certified) and which are certified by the Secretary of State as the land and crown land plans for the purposes of this Order;

“limits of deviation” means the limits of deviation shown for each numbered work on the works plans;

“maintain” includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part of, but not remove, reconstruct or replace the whole of, the authorised development to the extent that such works do not give rise to any materially new or materially

(a) 2015 No. 596.

(b) “highway” is defined in section 328(1). For “highway authority” see section 1.

(c) 2006 c. 46.

different environmental effects than those identified in the environmental statement and “maintenance” and “maintaining” are to be construed accordingly;

“NGET” means National Grid Electricity Transmission Plc (company number 2366977) whose registered office is at 1 to 3 Strand, London WC2N 5EH;

“NGET 2005 Permission” means planning permission B/05/0046 granted by Boston Borough Council on 20 April 2005 (and any variation thereof);

“Order land” means the land shown on the land and crown land plans which is within the limits of land to be acquired or used and described in the book of reference;

“Order limits” means the limits shown on the land and crown land plans and works plans within which the authorised development may be carried out and land acquired or used;

“outline energy storage safety management plan” means the plan of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the outline energy storage safety management plan for the purposes of this Order;

“outline construction environmental management plan” means the document of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the outline construction environmental management plan for the purposes of this Order;

“outline construction traffic management plan” means the document of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the outline construction traffic management plan for the purposes of this Order;

“outline decommissioning and restoration plan” means the plan of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the outline decommissioning and restoration plan for the purposes of this Order;

“outline design principles” means the document of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the outline design principles for the purposes of this Order;

“outline landscape ecological management plan” means the document of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the outline landscape ecological management plan for the purposes of this Order;

“outline operational environmental management plan” means the plan of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the outline operational environmental management plan for the purposes of this Order;

“outline soil management plan” means the plan of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the outline soil management plan for the purposes of this Order;

“outline supply chain, employment and skills plan” means the plan of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the outline supply chain, employment, and skills plan for the purposes of this Order;

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(a);

“permitted preliminary works” means all or any of—

(a) 1981 c. 67.

- (a) environmental surveys, geotechnical surveys, intrusive archaeological surveys and other investigations for the purpose of assessing ground conditions, demolition of buildings and removal of plant and machinery;
- (b) above ground site preparation for temporary facilities for the use of contractors;
- (c) remedial work in respect of any contamination or other adverse ground conditions;
- (d) diversion of existing services and the laying of temporary services;
- (e) the provision of temporary means of enclosure and site security for construction;
- (f) the temporary display of site notices or advertisements; or
- (g) site clearance (including vegetation removal, demolition of existing buildings and structures).

“relevant planning authority” means the local planning authority for the area in which the land to which the provisions of this Order apply is situated and as more particularly described for the purposes of the requirements in Schedule 2 (requirements);

“requirements” means those matters set out in Schedule 2 (requirements) and “requirement” means any one of the requirements;

“rights of way plan” means the plan of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the rights of way plan for the purposes of this Order;

“statutory undertaker” means any person falling within section 127(8) (statutory undertakers’ land) of the 2008 Act and includes a public communications provider defined by section 151(1) (interpretation of chapter 1) of the Communications Act 2003(a);

“street” means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes any footpath and part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act(b);

“streets and access plans” means the plans of that name identified in the table at Schedule 11 (documents and plans to be certified) and which are certified by the Secretary of State as the streets and access plans for the purposes of this Order;

“street works” means the works listed in article 8(1) (street works);

“subsidiary” has the same meaning as in section 1159 of the Companies Act 2006(c);

“undertaker” means Ecotricity (Heck Fen Solar) Limited (company number 13225224);

“Upper Tribunal” means the Lands Chamber of the Upper Tribunal;

“watercourse” includes every river, stream, creek, ditch, drain, canal, cut, culvert, dyke, sluice, sewer and passage through which water flows except a public sewer or drain; and

“works plans” means the plans of that name identified in the table at Schedule 11 (documents and plans to be certified) and which is certified by the Secretary of State as the works plans for the purposes of this Order;

(2) References in this Order to rights over land include references to rights to do or restrain or to place and maintain anything in, on or under land or in the airspace above its surface and to any trusts or incidents (including restrictive covenants) to which the land is subject and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or over which rights are created and acquired under this Order or is otherwise comprised in this Order.

(a) 2003 c. 21.

(b) “street authority” is defined in section 49, which was amended by paragraph 117 of Schedule 1 to the Infrastructure Act (c. 7).

(c) 2006 c. 46.

(3) All distances, directions, capacities and lengths referred to in this Order are approximate and distances between lines or points on a numbered work comprised in the authorised development and shown on the works plans, the streets and access plans, and rights of way plan are to be taken to be measured along that work.

(4) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 (authorised development) and shown on the works plans.

(5) In this Order, the expression “includes” is to be construed without limitation.

(6) In this Order, references to any statutory body include that body’s successor bodies.

(7) All areas described in square metres in the book of reference are approximate.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by this Order

3.—(1) Subject to the provisions of this Order and the requirements, 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 plans and within the limits of deviation.

Operation of generating station

4.—(1) The undertaker is authorised to use and operate the generating station comprised in the authorised development.

(2) This article 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.

Power to maintain authorised development

5.—(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 maintenance works within the Order limits.

(3) This article does not authorise the carrying out of any works which are likely to give rise to any materially new or materially different effects that have not been assessed in the environmental statement.

Application and modification of legislative provisions

6.—(1) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purposes of, or in connection with, the construction, operation or maintenance of any part of the authorised development—

- (a) Section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991(a);
- (b) section 32 (variation of awards)(b) of the Land Drainage Act 1991;

(a) 1991 c. 59. Section 23 was amended by paragraph 192(2) of Schedule 22 to the Environment Act 1995 (c. 25), paragraphs 25 and 32 of Schedule 2 to the Flood and Water Management Act 2010 (c. 29) and S.I. 2013/755.

(b) Section 32 was amended by S.I. 2013/755.

- (c) the provisions of any byelaws made under section 66 (powers to make byelaws)(a) of the Land Drainage Act 1991;
- (d) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw-making powers of the authority) to the Water Resources Act 1991(b);
- (e) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(c) in respect of a flood risk activity only;
- (f) the legislation listed in Schedule 3 (legislation to be disapplied) in so far as the provisions still in force are incompatible with the powers contained within this Order; and
- (g) the provisions of the Neighbourhood Planning Act 2017(d) insofar as they relate to temporary possession of land under articles 27 (temporary use of land for carrying out the authorised development) and 28 (temporary use of land for maintaining the authorised development) of this Order.

(2) For the purposes of section 9 of the Forestry Act 1967(e), any felling comprised in the carrying out of any work or operation required for the purposes of the authorised development, or in connection with, the construction of the authorised development is deemed to be felling immediately required for the purposes of carrying out development authorised by planning permission granted under the 1990 Act under sub-paragraph (4) of that section.

(3) Regulation 6 of the Hedgerows Regulations 1997(f) is modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following—

“or (k) for carrying out development which has been authorised by an order granting development consent pursuant to the Planning Act 2008.”

Defence to proceedings in respect of statutory nuisance

7.—(1) Where proceedings are brought under section 82(1) (summary proceedings by a person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(g) in relation to a nuisance falling within paragraph (g) of section 79(1) (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act no order may be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction, maintenance or decommissioning of the authorised development and that the nuisance is attributable to the construction, maintenance or decommissioning of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or section 65 (noise exceeding registered level) of the Control of Pollution Act 1974(h); or
 - (ii) is a consequence of the construction, maintenance or decommissioning of the authorised development and that it cannot reasonably be avoided; or

(a) Section 66 was amended by paragraphs 25 and 38 of Schedule 2 to the Flood and Water Management Act 2010 and section 86 of the Water Act 2014 (c. 21).

(b) 1991 c. 57. Paragraph 5 was amended by section 100 of the Natural Environment and Rural Communities Act 2006 (c. 16), section 84 of, and paragraph 3 of Schedule 11 to the 2009 Act and S.I. 2013/755. Paragraph 6 was amended by section 105 of, and paragraph 26 of Schedule 15 to, the Environment Act 1995, sections 224, 233 and 321 of and paragraphs 20 and 24 of Schedule 16 and Part 5(B) of Schedule 22 to the 2009 Act and S.I. 2013/755. Paragraph 6A was inserted by section (3) of the Environment Act 1995.

(c) S.I. 2016/1154. Regulation 12 was amended by S.I. 2018/110.

(d) 2017 c. 20.

(e) Section 9 was amended by section 4 of, and paragraph 141 of, Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11) and S. I. 2013/755. There are other amendments to section 9 that are not relevant to this Order.

(f) S.I. 1997/1160.

(g) 1990 c. 43.

(h) 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c. 25. There are other amendments to the 1974 Act which are not relevant to the Order.

- (b) is a consequence of the use of the authorised development and that it cannot be reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974 (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) and section 65(8) of the Control of Pollution Act 1974 (corresponding provision in relation to consent for registered noise level to be exceeded), do not apply where the consent relates to the use of the premises by the undertaker for purposes of, or in connection with, the construction or maintenance of the authorised development.

PART 3

STREETS

Street Works

8.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 4 (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) drill, tunnel or bore under the street;
- (c) place and keep apparatus under the street;
- (d) maintain apparatus in or under the street, change its position or remove it;
- (e) repair, replace or otherwise alter the surface or structure of the street; and
- (f) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (e).

(2) The authority given by paragraph (1) is a statutory right or licence for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

(4) Where the undertaker is not the street authority, the provisions of sections 54 (notice of certain works) to 106 (index of defined expressions) of the 1991 Act apply to any street works carried out under paragraph (1).

Power to alter layout, etc., of streets

9.—(1) The undertaker may for the purposes of the authorised development alter the layout of or carry out any works in the street—

- (a) in the case of the streets specified in Part 1 of Schedule 5 (permanent alteration of layout of streets) permanently in the manner specified in relation to that street in column 3; and
- (b) in the case of the streets specified in Part 2 of Schedule 5 (temporary alteration of layout of streets) temporarily in the manner specified in relation to that street in column 3.

(2) Without prejudice to the specific powers conferred by paragraph (1), but subject to paragraphs (3) and (4), the undertaker may, for the purposes of constructing, operating or maintaining the authorised development, alter the layout of any street and, without limitation on the scope of this paragraph, the undertaker may—

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge; and
- (b) make and maintain passing places.

(3) The undertaker must restore any street that has been temporarily altered under this Order to the reasonable satisfaction of the street authority.

(4) The powers conferred by paragraph (2) may not be exercised without the prior consent of the street authority, such consent to be in a form reasonably required by the street authority.

(5) Paragraphs (3) and (4) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

(6) Paragraph (4) does not apply if the street authority has already provided detailed design approval pursuant to paragraph 6(1)(f) of Schedule 2 (requirements) in relation to a street in which the undertaker seeks to use the powers given by paragraph (2).

Construction and maintenance of altered streets

10.—(1) The permanent alterations to each of the streets specified in Part 1 of Schedule 5 (permanent alteration of layout of streets) must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed by the street authority, the alterations must be maintained by and at the expense of the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the street authority.

(2) Subject to paragraph (3), the temporary alterations to each of the streets specified in Schedule 5 (temporary alteration of layout of streets) must be completed to the reasonable satisfaction of the street authority and the temporary alterations must be maintained by and at the expense of the undertaker for the duration that the temporary alterations are used by the undertaker for the purposes of construction or decommissioning of the authorised development.

(3) Those restoration works carried out pursuant to article 9(3) (power to alter layout, etc., of streets) must be completed to the reasonable satisfaction of the street authority and must be maintained by the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the street authority.

(4) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(5) For the purposes of a defence under paragraph (4), a court must in particular have regard to the following matters—

- (a) the character of the street including the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

Temporary stopping up of public rights of way

11.—(1) The undertaker may, in connection with the carrying out of the authorised development, temporarily stop up each of the public rights of way specified in column (2) of Schedule 6 (public rights of way to be temporarily stopped up) to the extent specified in column (3), by reference to the letters shown on the rights of way plan.

(2) Prior to temporarily stopping up the public rights of way referred to under paragraph (1), the undertaker must notify the relevant planning authority and the county authority.

Access to works

12.—(1) The undertaker may, for the purposes of the authorised development—

- (a) form and lay out the permanent means of access, or improve existing means of access, in the locations specified in Part 1 (permanent means of access to works) of Schedule 7 (access to works);
- (b) form and lay out the temporary means of access, or improve existing means of access, in the location specified in Part 2 (temporary means of access to works) of Schedule 7 (access to works); and
- (c) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) If the relevant planning authority fails to notify the undertaker of its decision within 28 days of receiving an application for approval under paragraph (1)(c) that relevant planning authority is deemed to have granted approval.

(3) Unless otherwise agreed with the relevant planning authority, the undertaker must restore any access that has been temporarily created under this Order to the reasonable satisfaction of the relevant planning authority.

(4) Paragraph 1(c) does not apply if the relevant planning authority has already provided detailed design approval pursuant to paragraph 6(1)(f) of Schedule 2 (requirements) for that access.

Agreement with street authorities

13.—(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (b) any stopping up, prohibition, restriction, alteration or diversion of a street authorised by this Order;
- (c) the undertaking in the street of any of the works referred to in article 8 (street works), article 9 (power to alter layout, etc., of streets) and article 10(1) (construction and maintenance of altered streets); or
- (d) the adoption by a street authority which is the highway authority of works—
 - (i) undertaken on a street which is existing public maintainable highway; or
 - (ii) which the undertaker and highway authority agree to be adopted as public maintainable highway.

(2) If such an agreement provides that the street authority must undertake works on behalf of the undertaker the agreement may, without prejudice to the generality of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) specify a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

14.—(1) Subject to paragraphs (3), (4) and (8), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance 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 1991(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, whose consent may be given subject to terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not 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) Where the undertaker discharges water into, or makes any opening into, a watercourse, public sewer or drain belonging to or under the control of the Black Sluice Internal Drainage Board, the provisions of Part 7 of Schedule 13 (protective provisions) apply in substitution for the provisions of paragraphs (3) and (4).

(6) 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.

(7) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(8) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters requires a licence pursuant to the Environmental Permitting (England and Wales) Regulations 2016(b).

(9) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Environment Agency, an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(c) have the same meaning as in that Act.

(10) If a person who receives an application for consent or approval fails to notify the undertaker of a decision within 28 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case may be.

(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 this section which are not relevant to this Order.

(b) S.I. 2016/1154.

(c) 1991 c.57.

Removal of human remains

15.—(1) Before the undertaker constructs any part of the authorised development or carries out works which will or may disturb any human remains in the Order land it must remove those human remains from the Order land, 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 land the undertaker must give notice of the intended removal, describing the Order land 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 on or near the Order land.

(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 the relevant planning authority.

(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 in the Order land 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 reinterred 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 reinterment 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 cannot be identified, the question is to 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 is to 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 reintering 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 in the Order land; 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 (10) the undertaker must remove the remains and cause them to be reinterred 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 must be reinterred 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 reinterment or cremation of the remains.

(10) On the reinterment or cremation of any remains under this article—

- (a) a certificate of reinterment or cremation must be sent by the undertaker to the Registrar General by the undertaker giving the date of reinterment or cremation and identifying the place from which the remains were removed and the place in which they were reinterred or cremated; and
- (b) a copy of the certificate of reinterment or cremation and the record mentioned in paragraph (8) must be sent by the undertaker to the relevant planning authority mentioned in paragraph (3).

(11) 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.

(12) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(13) Section 25 (offence of removal of body from burial ground) of the Burial Act 1857^(a) is not to apply to a removal carried out in accordance with this article.

Protective works to buildings

16.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building located within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the construction of any part of the authorised development in the vicinity of the building; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of five years beginning with the date of final commissioning.

(3) For the purpose of determining how the powers under this article are to be exercised, the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building, the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a), (c) or (d), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 39 (arbitration).

(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 Schedule 1 paragraphs 1).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of five years beginning with the date of final commissioning it appears protective works are inadequate to protect the building against damage caused by the construction or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 10(2) (compensation for injurious affection) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) must be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or use of the authorised development.

(12) In this article “building” includes any structure or erection or any part of a building, structure or erection.

Authority to survey and investigate the land

17.—(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 or upon which entry is required in order to carry out monitoring or surveys in respect of 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 before 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 are to 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 for trial holes 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.

(7) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of, land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

18.—(1) The undertaker may—

- (a) acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate, or as is incidental, to it; and
- (b) use any land so acquired for the purpose authorised by this Order or for any other purposes in connection with or ancillary to the undertaking.

(2) This article is subject to paragraph (2) of article 20 (compulsory acquisition of rights), article 27 (temporary use of land for carrying out the authorised development) and article 44 (Crown rights).

Time limit for exercise of authority to acquire land compulsorily

19.—(1) After the end of the period of five years beginning on the start date—

- (a) no notice to treat is to be served under Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 22 (application of the 1981 Act).

(2) The authority conferred by article 27 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

(3) In this article “start date” means the later of—

- (a) the day after the period for legal challenge in section 118 of the 2008 Act expires; or
- (b) the final determination of any legal challenge under that section,

whichever is later.

Compulsory acquisition of rights

20.—(1) Subject to paragraph (2), the undertaker may acquire compulsorily such rights over the Order land or impose such restrictive covenants over the Order land, including rights and restrictive covenants for the benefit of NGET, as may be required for any purpose for which that

land may be acquired under article 18 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) Subject to the provisions of this paragraph, article 21 (private rights) and article 29 (statutory undertakers), in the case of the Order land specified in column 1 of Schedule 8 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights and the imposition of restrictive covenants for the purpose specified in relation to that land in column 2 of that Schedule.

(3) Subject to section 8 (other provisions as to divided land) and Schedule 2A (counter-notice requiring purchase of land) of the 1965 Act (as substituted by paragraph 5(8) of Schedule 9 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants)), where the undertaker creates or acquires an existing right over land or the benefit of a restrictive covenant under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 9 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of restrictive covenants.

(5) In any case where the acquisition of new rights or imposition of a restriction under paragraph (1) or (2) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(7) This article is subject to article 44 (Crown rights).

Private Rights

21.—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory acquisition under article 18 (compulsory acquisition of land) cease to have effect in so far as their continuance would be inconsistent with the exercise of the powers under article 18 (compulsory acquisition of land)—

- (a) from the date of acquisition of the land, or of the right, or of the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under article 20 (compulsory acquisition of rights) cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant—

- (a) as from the date of the acquisition of the right or imposition of the restrictive covenant by the undertaker (whether the right is acquired compulsorily, by agreement or through the grant of a lease of the land by agreement); or
- (b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act in pursuance of the right; or
- (c) on commencement of any activity authorised by the Order which interferes with or breaches those rights, whichever is the earliest.

(3) Subject to the provisions of this article, all private rights or restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable, in so far as their continuance would be inconsistent with the purpose for which

temporary possession is taken, for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right or restrictive covenant under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 29 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) have effect subject to—

(a) any notice given by the undertaker before—

- (i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;
- (ii) the undertaker's appropriation of the land;
- (iii) the undertaker's entry onto the land; or
- (iv) the undertaker's taking temporary possession of the land, that any or all of those paragraphs do not apply to any right specified in the notice; or

(b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(7) If an agreement referred to in paragraph (6)(b)—

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

the agreement is effective in respect of the persons so deriving title, whether that title was derived before or after the making of the agreement.

(8) References in this article to private rights over land include any right of way, trust, incident, restrictive covenant, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support; and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Application of the 1981 Act

22.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of the Act), for subsection 2 substitute—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”.

(4) In section 5(2) (earliest date for execution of declaration) omit the words from “and this subsection” to the end.

(5) Section 5A (time limit for general vesting declaration) is omitted(a).

(6) In section 5B(1) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in 5A” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the five year period mentioned in article 19 (time limit for exercise of authority to acquire land compulsorily) of the Heckington Fen Solar Park Order 202*”.

(a) Section 5A to the 1981 Act was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).

(7) In section 6 (notices after execution of declaration), in subsection (1)(b) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.

(8) In section 7 (constructive notice to treat), in subsection (1)(a) omit the words “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—

“(2) But see article 23(3) (acquisition of subsoil only) of the Heckington Fen Solar Park Order 202*, which excludes the acquisition of subsoil only from this Schedule.”.

(10) References to the 1965 Act in the 1981 Act must be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 25 (modification of Part 1 of the Compulsory Purchase Act 1965)) to the compulsory acquisition of land under this Order.

Acquisition of subsoil only

23.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 18 (compulsory acquisition of land) or article 20 (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Power to override easements and other rights

24.—(1) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by any contractors, servants or agents of the undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) In this article “authorised activity” means—

- (a) the erection, construction or maintenance of any part of the authorised development;
- (b) the exercise of any power authorised by the Order; or
- (c) the use of any land within the Order limits (including the temporary use of land).

(3) The interests and rights to which this article applies include any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by the virtue of a contract.

(4) Where an interest, right or restriction is overridden by paragraph (1), compensation—

- (a) is payable under section 7 (measure of compensation in case of severance) or 10 (further provision as to compensation for injurious affection) of the 1965 Act; and

(b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—

- (i) the compensation is to be estimated in connection with a purchase under that Act; or
- (ii) the injury arises from the execution of works on or use of land acquired under that Act.

(5) Where a person deriving title under the undertaker by whom the land in question was acquired—

- (a) is liable to pay compensation by virtue of paragraph (4); and
- (b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(6) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph.

Modification of Part 1 of the Compulsory Purchase Act 1965

25.—(1) Part 1 of the 1965 Act (compulsory acquisition under Acquisition of Land Act 1946), as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the five year period mentioned in article 19 (time limit for exercise of authority to acquire land compulsorily) of the Heckington Fen Solar Park Order 202*.”

(3) In section 11A (powers of entry: further notice of entry)— (a) in subsection (1)(a), after “land” insert “under that provision”; and (b) in subsection (2), after “land” insert “under that provision”.

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 19 (time limit for exercise of authority to acquire land compulsorily) of the Heckington Fen Solar Park Order 202*”.

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

- (a) for paragraphs 1(2) and 14(2) substitute— “(2) But see article 23(3) (acquisition of subsoil only) of the Heckington Fen Solar Park Order 202*, which excludes the acquisition of subsoil only from this Schedule.”; and
- (b) after paragraph 29 insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 16 (protective works to buildings), article 27 (temporary use of land for carrying out the authorised development) or article 28 (temporary use of land for maintaining the authorised development) of the Heckington Fen Solar Park Order 202*.”.

Rights under or over streets

26.—(1) The undertaker may enter on, appropriate and use so much of the subsoil of or airspace over any street within the Order limits as may be required for the purposes of the authorised

development and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

27.—(1) The undertaker may, in connection with the construction of the authorised development, enter on and take temporary possession of any of the Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act and no declaration has been made under section 4 (powers of entry) of the 1981 Act (execution of declaration) in order to—

- (a) remove any buildings, agricultural plant and apparatus, drainage, fences, debris and vegetation from that land;
- (b) construct temporary works, haul roads, security fencing, bridges, structures and buildings on that land;
- (c) use the land for the purposes of a temporary working site with access to the working site in connection with the authorised development;
- (d) construct any works, on that land as are mentioned in Schedule 1 (authorised development); and
- (e) carry out mitigation works required under the requirements in Schedule 2 (requirements).

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker must not remain in possession of any land under this article for longer than reasonably necessary and in any event must not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of final commissioning of the part of the authorised development for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(5) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or otherwise acquired the land or rights over land subject to temporary possession, the undertaker must before giving up possession of land of which temporary possession has been taken under this article, remove all works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace any building, structure, drain or electric line removed under this article;
- (b) remove any drainage works installed by the undertaker under this article;
- (c) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 4 (streets subject to street works); or
- (d) restore the land on which any works have been carried out under paragraph (1)(e) insofar as the works relate to mitigation works identified in the environmental statement or required pursuant to the requirements in Schedule 2 (requirements).

(6) The undertaker must pay compensation to the owners and occupiers of land which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(11) Nothing in this article prevents the taking of temporary possession more than once in relation to any land that the undertaker takes temporary possession of under this article.

Temporary use of land for maintaining the authorised development

28.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order land if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any land within the Order land for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(11) In this article "the maintenance period" means the period of five years beginning with the date of final commissioning of the part of the authorised development for which temporary possession is required under this article except in relation to landscaping where "the maintenance period" means such period as set out in the landscape ecological management plan which is approved by the relevant planning authority pursuant to requirement 8 beginning with the date on which that part of the landscaping is completed.

Statutory undertakers

29. Subject to the provisions of Schedule 13 (protective provisions) the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers shown on the land plan and Crown plan within the Order land; and
- (b) extinguish the rights of, remove, relocate the rights of or reposition the apparatus belonging to statutory undertakers over or within the Order land.

Apparatus and rights of statutory undertakers in stopped up streets

30. Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 8 (street works), article 19 (power to alter layout, etc., of streets), article 10 (construction and maintenance of altered streets) or article 11 (temporary stopping up of public rights of way) any statutory undertaker whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to Schedule 13 (protective provisions), as if this Order had not been made.

Recovery of costs of new connections

31.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 29 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 29 (statutory undertakers), any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003(a); and

“public utility undertaker” has the same meaning as in the 1980 Act.

PART 6

MISCELLANEOUS AND GENERAL

Benefit of the Order

32. Subject to article 33 (consent to transfer the benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker save for Work No. 6B, Work No. 6C, Work No. 7 and Work No. 10 (to the extent that Work No. 10 is to facilitate access to Works No. 6B, 6C and 7) in relation to which the provisions of this Order have effect for the benefit of the undertaker and NGET.

Consent to transfer the benefit of the Order

33.—(1) Subject to the powers of this Order, the undertaker may—

- (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.

(2) Where a transfer or grant has been made references in this Order to the undertaker, except in paragraph (8), are to include references to the transferee or lessee.

(3) The consent of the Secretary of State is required for the exercise of the powers of paragraph (1) except where—

- (a) the transferee or lessee is the holder of a licence under section 6 (licences authorising supplies etc.) of the 1989 Act;
- (b) the transferee or lessee is a holding company or subsidiary of the undertaker; or
- (c) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
 - (i) no such claims have been made;
 - (ii) any such claim has been made and has been compromised or withdrawn;
 - (iii) compensation has been paid in full and final settlement of any such claim;
 - (iv) payment of compensation into court has taken place in lieu of settlement of any such claim; or
 - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation is payable.

(a) 2003 c. 21.

(4) Where the consent of the Secretary of State is not required, the undertaker must notify the Secretary of State in writing before transferring or granting a benefit referred to in paragraph (1).

(5) The notification referred to in paragraph (4) must state—

- (a) the name and contact details the person to whom the benefit of the powers will be transferred or granted;
- (b) subject to paragraph (6), the date on which the transfer will take effect;
- (c) the powers to be transferred or granted;
- (d) pursuant to paragraph (8), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and
- (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

(6) The date specified under paragraph (5)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notification.

(7) The notification given 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 notification.

(8) Where the undertaker has transferred any benefit, or for the duration of any period during which the undertaker has granted any benefit—

- (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 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.

Application of landlord and tenant law

34.—(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,

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 prejudices the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law 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.

Operational land for purposes of the 1990 Act

35.—(1) 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) of the 1990 Act.

Felling or lopping of trees and removal of hedgerows

36.—(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 from—

- (a) obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development;
- (b) constituting a danger to persons using the authorised development; or
- (c) obstructing or interfering with the passage of construction vehicles to the extent necessary for the purposes of construction of 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, is to be determined under Part 1 of the 1961 Act.

(4) The undertaker may, for the purposes of the authorised development and subject to paragraph (2), remove the hedgerows specified in column 2 in the Schedule 10 (hedgerows to be removed) for the purpose specified in relation to the relevant hedgerow in column 3 of that table.

(5) The undertaker may not pursuant to paragraphs (1) and (4) fell or lop a tree or remove hedgerows within the extent of the publicly maintainable highway without the prior consent of the highway authority.

(6) In this article “hedgerow” has the same meaning as in the Hedgerows Regulations 1997^(a).

Trees subject to tree preservation orders

37.—(1) The undertaker may fell or lop any tree within or overhanging land within the Order limits subject to a tree preservation order or cut back its roots, if it reasonably believes it to be necessary to do so in order to prevent the tree from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development.

(2) In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker must do no unnecessary damage to any tree and must pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act does not apply.

(3) The authority given by paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

^(a) S.I. 1997/1160.

Certification of plans and documents, etc.

38.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans listed in the table at Schedule 11 (documents and plans to be certified) 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.

(3) Where a plan or document certified under paragraph (1)—

- (a) refers to a provision of this Order (including any specified requirement) when it was in draft form; and
- (b) identifies that provision by number, or combination of numbers and letters, which is different from the number, or combination of numbers and letters by which the corresponding provision of this Order is identified in the Order as made

the reference in the plan or document concerned must be construed for the purposes of this Order as referring to the provision (if any) corresponding to that provision in the Order as made.

Arbitration

39.—(1) Any difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled in arbitration in accordance with the rules set out in Schedule 12 (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.

(2) Any matter for which the consent or approval of the Secretary of State is required under any provision of this Order shall not be subject to arbitration.

Protective Provisions

40. Schedule 13 (protective provisions) has effect.

Service of notices

41.—(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 (6) 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

^(a) 1978 c. 30.

(b) in any other case, the last known address of that person at that time of service.

(4) Where for the purpose 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 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 the 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 seven days of receipt that the recipient requires a paper copy of all or any 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 an electronic transmission 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 seven 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.

Procedure in relation to certain approvals etc.

42.—(1) Where an application is made to or request is made of any authority or body named in any of the provisions of this Order for any consent, agreement or approval required or contemplated by any of the provisions of the Order, such consent, agreement or approval to be validly given, must be given in writing and must not be unreasonably withheld or delayed.

(2) Subject to paragraph (4), Schedule 14 (procedure for discharge) has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to any provision of this Order.

(3) Schedule 14 (procedure for discharge) does not apply in respect of any consents, agreements or approvals contemplated by the provisions of Schedule 13 (protective provisions) or any dispute under article 17(6) (protective work to buildings) to which paragraph (4) applies.

(4) Subject to any other provision in this Order, any difference or dispute arising under any provision of Schedule 13 (protective provisions) or article 16(6) (protective work to buildings) must, unless otherwise agreed in writing between the undertaker and the party in question, be referred to and settled in arbitration 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.

Guarantees in respect of payment of compensation

43.—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any land unless it has first put in place either—

- (a) a guarantee, the form and amount of which has been approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2); or
- (b) an alternative form of security, the form and amount of which has been approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2).

(2) The provisions are—

- (a) article 18 (compulsory acquisition of land);
- (b) article 20 (compulsory acquisition of rights);
- (c) article 21 (private rights);
- (d) article 26 (rights under or over streets);
- (e) article 27 (temporary use of land for carrying out the authorised development);
- (f) article 28 (temporary use of land for maintaining the authorised development); and
- (g) article 29 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

Crown Rights

44.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee to take, use, enter upon or in any manner interfere with any land or rights of any description—

- (a) belonging to His Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to His Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

(3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions and is deemed to have been given in writing where it is sent electronically.

NGET extension works

45.—(1) If NGET elects to undertake any elements of the works described in Work No. 6B or 6C pursuant to planning permission granted under Part 3 of the 1990 Act or Article 3 of the 2015 Order then the requirements contained in Schedule 2 will not have effect in so far as they relate to those works and NGET will serve written notice of the same on the relevant planning authority.

(2) As from the date on which Work No. 6A, 6B, or 6C is commenced any conditions of the NGET 2005 Permission that relate to the land at plot 99G and 99H cease to have effect to the

extent they are inconsistent with the authorised development or with anything done or approved under the requirements in Schedule 2 (requirements).

Signatory by authority of the Secretary of State

Address
Date

Signature
Parliamentary Under Secretary of State
Department

SCHEDULE 1

Article 2

AUTHORISED DEVELOPMENT

1. In this Schedule—

“community orchard” means a new orchard within the Order limits in the area shown on the works plan;

“energy storage stations” means a station comprising transformers, switchgear, power conversion system (PCS) or inverter, and other ancillary equipment with each component either—

- (a) located outside, sitting on either ground bearing or piled reinforced concrete foundation slabs; or
- (b) housed together within a container sitting on either a ground bearing or piled reinforced concrete foundation slab;

“electrical cables” means—

- (c) cables of differing types and voltages installed for the purposes of conducting electricity, auxiliary cables, cables connecting to direct current (DC) boxes, earthing cables, control cables, security cables, communication cables, and optical fibre cables; and
- (d) works associated with cable laying including cable sealing ends, jointing pits, handstanding adjoining the jointing pits, combiner boxes, link boxes, fibre bays, cable ducts, cable protection, joint protection, manholes, kiosks, marker posts, underground cable marker, tiles and tape, send and receive pits for horizontal directional drilling, trenching, lighting, and a pit or container to capture fluids associated with drilling;

“energy storage” means equipment used for the storage of electrical energy;

“existing substation” means the existing substation at Bicker Fen, Bicker, Lincolnshire, PE20 3BQ, owned and operated by NGET;

“inverter” means electrical equipment required to convert direct current power generated to alternating current;

“mounting structure” means a frame or rack or table made of galvanised steel or other material designed to support the solar modules and mounted on piles driven into the ground by one of the following methods—

- (e) piles rammed into a hole;
- (f) a pillar attaching to a steel ground screw; or
- (g) a pillar set in concrete in a pre-made hole in the ground (micro piled);

“permissive path” means a new access path providing public access with permission within the Order limits along the route shown on the works plan;

“solar module” means a solar photovoltaic panel designed to convert solar irradiance to electrical energy fitted to mounting structures;

“solar stations” means a station comprising inverters, transformers, switchgear and associated ancillary and control equipment with each component either—

- (h) located outside, sitting on either ground bearing or piled reinforced concrete foundation slabs; or
- (i) housed together within a container sitting on either a ground bearing or piled reinforced concrete foundation slab;

“substation” means a compound, containing electrical equipment required to switch, transform, convert electricity and provide reactive power compensation mounted on a reinforced foundation slab or piling;

“switchgear” means a combination of electrical disconnect switches, fuses or circuit breakers used to control, protect and isolate electrical equipment; and

“transformer” means a structure containing an electrical device to transform electricity by increasing or reducing the voltage.

2. In the Districts of North Kesteven and Boston in the County of Lincolnshire, a nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act and associated development under section 115(1)(b) of the 2008 Act.

The nationally significant infrastructure project comprises up to one generating station with a gross electrical output capacity of over 50 megawatts 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 ground mounted solar photovoltaic generating station with a gross electrical output capacity of over 50 megawatts including—

(a) Work No. 1A—

- (i) solar modules;
- (ii) solar stations;
- (iii) inverters;
- (iv) solar module mounting structures; and
- (v) a network of electrical cables; and

(b) Work No. 1B—

- (i) electrical cables between solar stations and solar modules within Work No. 1A and connecting Work No. 1A to Work No. 2 and Work No. 4.

Associated Development

Associated development within the meaning of section 115(2) of the 2008 Act including—

Work No. 2— an energy storage facility comprising—

- (c) energy storage cells;
- (d) a network of electrical cable circuits;
- (e) electrical cables connecting to Work No. 1A and Work No. 1B and Work No. 4;
- (f) a structure protecting the energy storage cells and ancillary equipment, being either one container or multiple containers, mounted on a reinforced concrete foundation slab or concrete piling;
- (g) heating, ventilation and air conditioning (HVAC) or liquid cooling systems;
- (h) energy storage stations comprising—
 - (i) inverters and transformers; and
 - (ii) switchgear and ancillary equipment;
- (i) monitoring and control systems;
- (j) fire safety infrastructure comprising fire suppression system; and
- (k) storage structures for the purposes of firefighting comprising containment tanks or a concrete water storage basin or lagoon for the purpose of firefighting.

Work No. 3— reception areas, temporary cabins, construction compounds and parking, gatehouses, and service areas in connection with Work No. 1A, Work No. 1B, Work No. 2, Work No. 4, and Work No. 5.

Work No. 4— an onsite substation and works in connection with the onsite substation including—

- (l) transformers, including associated cooling equipment, bunding and blast walls;

- (m) switchgear, including circuit breakers, disconnectors and earth switches;
- (n) substation electrical apparatus, including bus-bars, steel supports, insulation posts, cable sealing ends, surge arrestor, instrument transformers;
- (o) harmonic filtering reactive power compensation equipment;
- (p) substation buildings;
- (q) control buildings or containers;
- (r) welfare facilities and hardstanding areas;
- (s) a network of cable circuits;
- (t) electrical cables connecting to Work No. 1A, Work No. 1B, and Work No. 2; and
- (u) flood protection measures.

Work No. 5— works to lay electrical cables between Work No. 4 and Work No. 6A.

Work No. 5A— works to lay electrical cables from Work No. 5 at approximately 52° 56' 14.1" N, 0° 13' 12.0" W, and 52° 56' 09.9" N, 0° 13' 11.3" E, running in a southerly and south easterly direction to Work No. 5 at approximately 52° 55' 51.1" N, 0° 13' 19.0" W, and 52° 55' 48.7" N, 0° 13' 21.2" W.

Work No. 5B— works to lay electrical cables from Work No. 5 at approximately 52° 56' 15.5" N, 0° 13' 07.7" W, and 52° 56' 09.9" N, 0° 13' 11.3" W running in a south east and south westerly direction to Work No. 5 at approximately 52° 55' 51.1" N, 0° 13' 19.0" E, and 52° 55' 50.0" N, 0° 13' 17.9" W.

Work No. 6A— creation of a new generation bay and associated works at the existing substation, including—

- (v) an electrical bay to connect into the existing network at Work No. 6B, including associated outdoor air insulated switchgear (AIS) or indoor gas insulated switchgear (GIS) and electrical apparatus, circuit breakers, disconnectors and earth switches;
- (w) substation electrical apparatus, including bus-bars, steel supports, insulation posts, cable sealing ends, surge arrestors, instrument transformers;
- (x) control building; and
- (y) underground and above ground electrical cables and electrical connectors, including cables for power, control and communication with electrical bays and to connect into Work No. 6B, including associated outdoor AIS or indoor GIS and electrical apparatus.

Work No. 6B— an extension to the existing substation, including—

- (z) outdoor AIS or indoor GIS, including circuit breakers, disconnectors and earth switches;
- (aa) substation electrical apparatus, including bus-bars, bus-section and a bus-coupler, steel supports, insulation posts, cable sealing ends, surge arrestors, instrument transformers; and
- (bb) underground and above ground electrical cables and electrical conductors, including cables for power, control and communication with electrical bays and to connect into Work No. 6A and the existing network within the existing substation, including associated outdoor AIS or indoor GIS and electrical apparatus.

Work No. 6C— works in connection with the extension to the existing substation, including—

- (cc) a cable sealing end compound and construction of a new circuit bay connecting into the existing substation; and
- (dd) underground and above ground electrical cables and electrical conductors, connecting the existing 400kV transmission tower and the new feeder bay.

Work No. 7— two temporary laydown areas in connection with Work No. 5 and Work No. 6A, 6B, and 6C including—

- (ee) areas of hardstanding, compacted ground or tracking matting;
- (ff) car parking and access;
- (gg) area to store materials and equipment, including electrical cables;
- (hh) site and welfare offices and cabins;
- (ii) security infrastructure, including cameras, perimeter fencing and lighting;
- (jj) site drainage and waste management infrastructure (including sewerage); and
- (kk) electricity, water, waste water and telecommunications connections.

Work No. 8— works to create and maintain a permanent means of access from the A17 to Work No. 1A, Work No. 1B, Work No. 2, Work No. 3 and Work No. 4.

Work No. 9A— works to create, enhance and maintain green infrastructure and create biodiversity net gain areas, including—

- (ll) soft landscaping and planting, including tree planting;
- (mm) landscape and biodiversity enhancement measures;
- (nn) earth works;
- (oo) hard standing and hard landscaping;
- (pp) drainage and irrigation infrastructure and improvements or extensions to existing irrigation systems;
- (qq) fencing, gates, boundary treatment and other means of enclosure; and
- (rr) improvement, maintenance and use of existing private tracks.

Work No. 9B— works to create a permissive path, including installing up to two footbridges, fencing, gates, boundary treatment and other means of enclosure.

Work No. 9C— works to create a community orchard.

Work No. 10— works to existing streets to facilitate access to Work Nos. 1 to 9B.

Further Associated Development

In connection with and in addition to Work Nos. 1 to 10 further associated development including—

- (ss) works within highways, including—
 - (i) alteration of the layout of any street permanently or temporarily, including increasing or reducing the width of the carriageway of any street by increasing or reducing the width of any kerb, footway, cycleway, or verge within the street including removal of any vegetation; and altering the level or increasing the width of any such kerb, footway, cycleway or verge within the street including removal of any vegetation; and works for the strengthening, improvement, repair, maintenance or reconstruction of any street;
 - (ii) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it, and tunnelling or boring under a street;
 - (iii) relocation, removal or provision of new road traffic signs, signals, street lighting, road restraints and carriageway lane markings;
 - (iv) works to place, alter, remove or maintain street furniture or apparatus (including statutory undertakers' apparatus) in, under or above a street, including mains, sewers, drains, pipes, cables, cofferdams, lights, fencing and other boundary treatments; and
 - (v) works to facilitate traffic management and to deliver information relating to the authorised development; and
- (tt) other works and development, including—

- (i) works for the provision of fencing and security measures such as CCTV, lighting, communication boxes and access control booths;
- (ii) laying down of internal access tracks, ramps, means of access, footpaths, and roads;
- (iii) bunds, embankments, trenching and swales;
- (iv) boundary treatments, including means of enclosure;
- (v) laying out and surfacing of permissive paths, including the laying and construction of drainage infrastructure, signage and information boards;
- (vi) foundations for structures of buildings being reinforced concrete pad foundations with piled foundations employed in locations where the ground is not sufficiently stiff to allow for pad foundations;
- (vii) works to the existing irrigation system and works to alter the position and extent of such irrigation system;
- (viii) electrical, gas, water, foul water drainage and telecommunications infrastructure connections and works to, and works to alter the position of, such services and utilities connections;
- (ix) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (x) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage systems;
- (xi) site establishments and preparation works including site clearance (including vegetation removal, demolition of existing buildings and structures); earthworks (including soil stripping and storage and site levelling) and excavations; the alteration of the position of services and utilities; and works for the protection of buildings and land;
- (xii) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development; and
- (xiii) tunnelling, boring and drilling works,

and further associated development comprising such other works or operations as may be necessary or expedient for the purposes of or in connection with the construction, operation and maintenance of the authorised development but only within the Order limits and insofar as they are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

SCHEDULE 2 REQUIREMENTS

Article 3

Interpretation

1. In this Schedule—

“county authority” means Lincolnshire County Council;

“both relevant planning authorities” means North Kesteven District Council and Boston Borough Council each being the relevant planning authority for part of the authorised development.

Commencement of the authorised development

2. The authorised development must commence no later than the expiration of five years beginning with the date this Order comes into force.

Phasing the authorised development and date of final commissioning

3.—(1) No part of the authorised development may commence until a written scheme setting out the phase or phases of construction of the authorised development has been submitted to both relevant planning authorities and the county authority.

(2) The scheme submitted pursuant to paragraph (1) must include—

- (a)** a timetable for the construction of the phase or phases of the authorised development;
- (b)** a plan identifying the phasing area(s); and
- (c)** a statement that the phasing is in line with the assumptions in the environmental statement and is unlikely to give rise to any materially new or materially different environmental effects compared to those assessed in the environmental statement.

(3) The phasing scheme must be implemented as notified under paragraph (1).

(4) The written scheme referred to in paragraph (1) must include notification of whether the undertaker will proceed with Work No. 5A or Work No. 5B.

(5) In respect of the phase or phases, the undertaker must give notice to both relevant planning authorities within seven days of the date of final commissioning that final commissioning of the phase or, where there is more than one phase, each phase has taken place.

Requirement for written approval

4. Where under any of the requirements the approval, agreement or confirmation of both relevant planning authorities or the county authority or relevant planning authority (as applicable) or another person is required, that approval, agreement or confirmation must be provided in writing.

Approved details and amendments to them

5.—(1) With respect to the documents certified under article 38 (certification of plans and documents, etc.) and any plans, details or schemes which have been approved pursuant to any requirement (together the “Approved Documents, Plans, Details or Schemes”), the undertaker may submit to the county authority or relevant planning authority or both relevant planning authorities (as applicable) for approval any amendments to any of the Approved Documents, Plans, Details or Schemes and, following approval by the county authority or relevant planning authority or both relevant planning authorities (as applicable), the relevant Approved Documents, Plans, Details or Schemes is to be taken to include the amendments as so approved pursuant to this paragraph.

(2) Approval under sub-paragraph (1) for the amendments to any of the Approved Documents, Plans, Details or Schemes must not be given except where it has been demonstrated to the satisfaction of the county authority, the relevant planning authority or both relevant planning authorities (as applicable) that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

Detailed design approval

6.—(1) No phase of the authorised development may commence until details of—

- (a) the layout;
- (b) scale;
- (c) proposed finished ground levels;
- (d) external appearance;
- (e) hard surfacing materials;
- (f) vehicular and pedestrian access, parking and circulation areas, junction improvements and passing places;
- (g) refuse or other storage units, signs and lighting;
- (h) drainage, water, power and communications cables and pipelines; and
- (i) programme for landscaping works,

relating to that phase have been submitted and approved in writing by the relevant planning authority for that phase or, where the phase falls within the administrative areas of both the District of North Kesteven and the Borough of Boston, both relevant planning authorities in consultation with the county authority.

(2) The details submitted must accord with the outline design principles and the flood risk assessment and, where relevant, demonstrate how they have taken account of relevant results of any archaeological investigations or archaeological evaluations carried out pursuant to requirement 12.

(3) The authorised development must be carried out in accordance with the approved details.

(4) Sub-paragraph (1) does not apply to the matters listed under sub-paragraph (1)(f) if consent has already been given to the details of those works pursuant to articles 9, 10, or 12.

Fire safety management

7.—(1) Work No. 2 must not commence until an energy storage safety management plan (“ESSMP”), substantially in accordance with the outline energy storage safety management plan, has been submitted to and approved by the county authority in consultation with North Kesteven District Council, Boston Borough Council, and the Lincolnshire Fire and Rescue Service.

(2) The ESSMP must prescribe measures to facilitate safety during the construction, operation and decommissioning of Work No. 2 including the transportation of new, used and replacement energy storage cells both to and from the authorised development.

(3) The ESSMP must be implemented as approved.

Landscape ecological management plan

8.—(1) No phase of the authorised development may commence until a written landscape ecological management plan (which is substantially in accordance with the outline landscape ecological management plan) has been submitted to and approved by the relevant planning authority for that phase or, where the phase falls within the administrative areas of both the District of North Kesteven and the Borough of Boston, both relevant planning authorities.

(2) The landscape ecological management plan must include details relevant for the phase of works in relation to—

- (a) the location, number, species, size and planting density of any proposed planting including details of any proposed tree and hedgerow planting and the proposed times of such planting;
- (b) an implementation timetable, including whether any further survey work is to be carried out;
- (c) how a minimum of 65% biodiversity net gain in habitat units, calculated using The Statutory Biodiversity Metric published by Department for Environment Food and Rural Affairs on 29 November 2023 (or such other biodiversity metric approved by the relevant planning authority in consultation with the relevant statutory nature conservation body), will be secured during the operation of the whole of the authorised development; and
- (d) how the landscaping and ecology measures will be managed, maintained, and monitored during the operational life of the authorised development to the date on which the decommissioning and restoration plan is implemented pursuant to requirement 18 (decommissioning and restoration).

(3) Any hedgerow, shrub or tree planted as part of the approved plan that, within a period of seven years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority (as applicable), seriously damaged or diseased, must be replaced in the first available planting seasons with a specimen of the same species and size as that originally planted (unless a different species is otherwise approved by the relevant planning authority).

(4) The landscape ecological management plan must be implemented as approved.

Implementation and maintenance of landscaping

9.—(1) All landscaping works must be carried out in accordance with the landscape ecological management plan approved under requirement 8 (landscape ecological management plan) as relevant to that phase.

Fencing and other means of enclosure

10.—(1) No phase of the authorised development may commence until written details of all proposed temporary fences, walls or other means of enclosure, including those set out in the construction environmental management plan, for that phase have been submitted to and approved by the relevant planning authority or, where the phase falls within the administrative areas of both the District of North Kesteven and the Borough of Boston, both relevant planning authorities.

(2) No phase of the authorised development may commence until written details of all permanent fences, walls or other means of enclosure for that phase (which must be substantially in accordance with the details within the outline design principles) have been submitted to and approved by the relevant planning authority or, where the phase falls within the administrative areas of both the District of North Kesteven and the Borough of Boston, both relevant planning authorities.

(3) Any construction site must remain securely fenced in accordance with the approved details under paragraph (1) at all times during construction of the authorised development.

(4) Any temporary fencing must be removed on completion of the phase of construction of the authorised development for which it was used.

(5) In the event that temporary fences, walls or other means of enclosure are required for the permitted preliminary works, no permitted preliminary works may take place until written details of all proposed temporary fences, walls or other means of enclosure required for such works have been submitted to and approved by the relevant planning authority or, where the permitted preliminary works fall within the administrative areas of both the District of North Kesteven and the Borough of Boston, both relevant planning authorities.

Surface and foul water drainage

11.—(1) No phase of the authorised development may commence until details of the surface water drainage strategy and (if any) foul water drainage system (including means of pollution control) (which must be substantially in accordance with the outline drainage strategy in the flood risk assessment) for that phase have been submitted to and approved by the county authority, such approval to be in consultation with the Black Sluice Internal Drainage Board and Anglian Water (in respect of its sewerage undertaker functions).

(2) Any scheme approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the construction and operation of the authorised development.

Archaeology

12.—(1) Any part of Work No. 5, Work No. 5A, and Work No. 5B that has not already been subject to archaeological evaluation must not commence until a written scheme of archaeological investigation (which must accord with the outline written scheme of investigation – evaluation) has been submitted to and approved by the county authority, in consultation with the relevant planning authority.

(2) No phase of the authorised development may commence until a written scheme of archaeological investigation (which must accord with the outline written scheme of investigation – mitigation) for that phase has been submitted to and approved by the county authority, in consultation with the relevant planning authority.

(3) In the event that archaeological site investigation is required, the scheme(s) must include details of the following—

- (a) an overview of the previous archaeological site investigations and their results;
- (b) the programme and methodology of the forthcoming site investigation, analysis, and recording (including reference to regional research frameworks as applicable);
- (c) the programme and methodology of the post site investigation assessment (with additional method statements needing to be prepared and approved once the archaeological resource is better known from the site investigation);
- (d) provision for archive deposition, publication, and dissemination of the analysis and records of the site investigation; and
- (e) nomination of a competent person, persons or organisation to undertake the works set out within the written scheme of investigation.

(4) Any archaeological works (including any watching brief) must be carried out in accordance with the approved scheme.

(5) No pre-commencement intrusive archaeological surveys, site preparation works and archaeological investigations may take place until a specific scheme(s) of investigations which is in accordance with the relevant details set out in the outline written scheme of investigations has been submitted to and approved by the relevant county authority, in consultation with the relevant planning authority.

Construction environmental management plan

13.—(1) No phase of the authorised development may commence until a construction environmental management plan (which must be substantially in accordance with the outline construction environmental management plan) for that phase has been submitted to and approved by the relevant planning authority for that phase or, where the phase falls within the administrative areas of both the District of North Kesteven and the Borough of Boston, both relevant planning authorities, such approval to be in consultation with the county authority and the Environment Agency.

(2) All construction works associated with the authorised development must be carried out in accordance with the approved construction environmental management plan.

Construction traffic management plan

14.—(1) No phase of the authorised development may commence until a construction traffic management plan (which must be substantially in accordance with the outline construction traffic management plan) for that phase has been submitted to and approved by the county authority, such approval to be in consultation with the relevant planning authority for that phase or, where the phase falls within the administrative areas of both the District of North Kesteven and the Borough of Boston, both relevant planning authorities.

(2) The construction traffic management plan must be implemented as approved.

Operational noise

15.—(1) Work No. 1A, Work No. 2, and Work No. 4 must not begin operating until an operational noise assessment containing details of how the design of Work No. 1A, Work No. 2 and Work No. 4 ensures the operational noise rating levels set out in Table 12.8 of Chapter 12 of the environmental statement are to be complied with has been submitted to and approved by both relevant planning authorities.

(2) The measures as described in the operational noise assessment must be implemented and maintained as approved throughout the operation of the authorised development.

Supply chain, employment and skills

16.—(1) No part of Works No. 1, 2, 3, 4, 5, 5A and 5B may commence until a supply chain, employment, and skills plan (which must be substantially in accordance with the outline supply chain, employment, and skills plan) has been submitted to and approved by both relevant planning authorities, such approval to be in consultation with the county authority.

(2) The supply chain, employment, and skills plan must identify opportunities for individuals and businesses to access employment and supply chain opportunities associated with the construction, operation and maintenance of the authorised development (excluding Work No. 6B and 6C), and the means for publicising such opportunities.

(3) The supply chain, employment, and skills plan must be implemented as approved.

Permissive path

17.—(1) Prior to the construction of the permissive path, the undertaker must submit details of the permissive path to the county authority for approval, such approval to be in consultation with North Kesteven District Council, such details to cover—

- (a) final routing of the permissive path to be provided, such routing to be substantially in accordance with the routing as shown on the plans contained within the outline landscape ecological management plan;
- (b) the specification of the permissive path; and
- (c) the maintenance regime for the permissive path.

(2) The permissive path must be provided and open to the public prior to the date of final commissioning in respect of the phase which includes the permissive path.

(3) The permissive path must be provided and maintained in accordance with the permissive path details and retained until the part of the authorised development in which the permissive path is located is decommissioned pursuant to requirement 18 (decommissioning and restoration).

Decommissioning and restoration

18.—(1) No later than 12 months prior to the date the undertaker intends to decommission any part of the authorised development, the undertaker must notify the relevant planning authority and county authority of the intended date of decommissioning.

(2) Within 12 months of the date notified pursuant to paragraph (1) but no later than 6 months prior to the 40 year period referred to in paragraph (3), the undertaker must submit to the relevant planning authority for that part (or both relevant planning authorities where that part falls within the administrative areas of both the District of North Kesteven and the Borough of Boston) for approval a decommissioning and restoration plan for that part, such approval to be in consultation with the county authority and the Environment Agency.

(3) Save for Work No. 6B, 6C and Work No. 9C, decommissioning must commence no later than 40 years following the date of final commissioning that is the subject of the last notice given by the undertaker pursuant to requirement 3(5) (phasing of the authorised development and date of final commissioning).

(4) The plan submitted and approved pursuant to paragraph (2) must be substantially in accordance with the relevant part of the outline decommissioning and restoration plan.

(5) No decommissioning works must be carried out until the relevant planning authority or both relevant planning authorities (as applicable) has or have approved the plan submitted under paragraph (2) in relation to such works.

(6) The plan submitted and approved pursuant to paragraph (2) must be implemented as approved.

(7) This requirement is without prejudice to any other consents or permissions which may be required to decommission any part of the authorised development.

Operational Environmental Management Plan

19.—(1) Prior to the date of final commissioning for any phase of the authorised development, an operational environmental management plan (which must be substantially in accordance with the outline operational environmental management plan) for that phase must be submitted to and approved by the relevant planning authority for that phase or, where the phase falls within the administrative areas of both the District of North Kesteven and the Borough of Boston, both relevant planning authorities.

(2) The relevant plan submitted pursuant to paragraph (1) must include details of how sheep grazing will be managed and maintained within the fenced areas of the solar park at Work No. 1 throughout the operation of the authorised development.

(3) The operation of any phase of the authorised development must be carried out and maintained in accordance with the approved operational environmental management plan for that phase.

Soil Management Plan

20.—(1) No phase of the authorised development may commence until a soil management plan (which must be substantially in accordance with the relevant part of the outline soil management plan) for that phase has been submitted to and approved by the relevant planning authority for that phase or, where the phase falls within the administrative areas of both the District of North Kesteven and the Borough of Boston, both relevant planning authorities.

(2) The construction of any phase of the authorised development must be carried out in accordance with the approved soil management plan for that phase.

Community Orchard

21.—(1) Prior to the construction of the community orchard, the undertaker must submit the community orchard details to North Kesteven District Council for approval, such details to cover—

- (a) location and layout, the number, species, size and planting density of any proposed planting including details of any proposed tree planting and the proposed times of such planting of the community orchard, to be substantially in accordance with the plans contained within the outline landscape ecological management plan; and

(b) the maintenance regime for the community orchard.

(2) The community orchard must be provided within six months of the date of final commissioning of the last phase of Work No. 1.

(3) The community orchard must be provided and maintained in accordance with the approved maintenance regime.

SCHEDULE 3

Article 6

LEGISLATION TO BE DISAPPLIED

1. The following provisions do not apply in so far as they relate to the construction of any numbered work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation, maintenance or decommissioning of the authorised development—

- (a) Witham Drainage Act 1762**(a)**
- (b) Witham Navigation and Drainage Act 1812**(b)**
- (c) River Witham Outfall Improvement Act 1880**(c)**
- (d) Land Drainage (Black Sluice) Provisional Order Confirmation Act 1925**(d)**
- (e) Black Sluice Drainage Act 1846**(e)**
- (f) Black Sluice Internal Drainage Board Complete Land Drainage Byelaws 1988**(f)**
- (g) Great Northern Railway (Spalding to Lincoln) Act 1878**(g)**
- (h) Great Northern and Great Eastern Railway Companies Act 1879**(h)**
- (i) Boston, Sleaford and Midland Counties Railway Act 1853**(i)**
- (j) Anglian Water Authority Act 1977**(j)**
- (k) Lincoln Waterworks Act 1846**(k)**

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- (a) 1762.
 - (b) 1812 c.108.
 - (c) 1880 c. cliii.
 - (d) 1925 c. lxxi.
 - (e) 1846 c.ccxvii.
 - (f) 1988.
 - (g) 1878 c. xeviii.
 - (h) 1879 c. civ.
 - (i) 1853 c. ccxxiii.
 - (j) 1977 c. i.
 - (k) 1846 c. cxi.

SCHEDULE 4

Article 8

STREETS SUBJECT TO STREET WORKS

Interpretation

1. In this Schedule “cable works” means works to place, retain and maintain underground electrical and communications apparatus.

<i>(1) District in which street is located</i>	<i>(2) Street</i>	<i>(3) Description of the street works</i>
Boston Borough Council	A17	Cable works beneath the width of the highway between the points marked G to H shown in blue on sheet 7 of the streets and access plan
Boston Borough Council	Public Right of Way Swhd/14/1	Cable works beneath the width of the highway between the points marked C to D shown in blue on sheet 7 of the rights of way plan
Boston Borough Council	Royalty Lane	Cable works beneath the width of the highway between the points marked I to J shown in blue on sheet 7 of the streets and access plan
Boston Borough Council	Timms Drove	Cable works beneath the width of the highway between the points marked S to T shown in blue on sheet 9 of the streets and access plan.
Boston Borough Council	North Drove	Cable works beneath the width of the highway between the points marked U to V shown in blue on sheet 10 of the streets and access plan
Boston Borough Council	Private Track leading from Timms Drove	Cable works beneath the width of the highway between the points marked Y to Z shown in blue on sheet 11 of the streets and access plan
Boston Borough Council	Bicker Drove	Cable works beneath the width of the highway between the points marked AA to AB shown in blue on sheet 12 of the streets and access plan

SCHEDULE 5

Article 9 and Article 10

ALTERATION OF LAYOUT OF STREETS

PART 1

PERMANENT ALTERATION OF LAYOUT OF STREETS

<i>(1)</i> <i>District in which street is located</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of alteration</i>
North Kesteven District Council	A17	Works for the provision of a permanent means of access to the authorised development from the north side of the A17, at point EP/B and within the area shown hatched in pink on sheet 5 of the streets and access plan, (document reference 2.7).
Boston Borough Council	A17	Works for the provision of a permanent means of access to the authorised development from the south side of the A17, at point CR/B and the area shown hatched in pink on sheet 7 of the streets and access plan (document reference 2.7).
Boston Borough Council	A17	Works for the provision of a permanent means of access to the authorised development from the north side of the A17, at point CR/C and the area shown hatched in pink on sheet 7 of the streets and access plan (document reference 2.7).
Boston Borough Council	Private Track	Works for the provision of a permanent means of access to the authorised development from the Triton Knoll access track and Timms Drove, at point CR/F and the area shown hatched in pink on sheet 9 of the streets and access plan (document reference 2.7).
Boston Borough Council	Timms Drove	Works for the provision of a permanent means of access to the authorised development from the south side of Timms Drove, at point CR/G and the area shown hatched in pink on sheet 9 of the streets and

		access plan (document reference 2.7).
Boston Borough Council	North Drove	Works for the provision of a permanent means of access to the authorised development from the north side of North Drove, at point CR/H and the area shown hatched in pink on sheet 10 of the streets and access plan (document reference 2.7).
Boston Borough Council	North Drove	Works for the provision of a permanent means of access to the authorised development from the south side of North Drove, at point CR/I and the area shown hatched in pink on sheet 10 of the streets and access plan (document reference 2.7).
Boston Borough Council	Private Track	Works for the provision of a permanent means of access to the authorised development from the north of the private track to the east of Timms Drove, at point CR/J and the area shown hatched in pink on sheet 11 of the streets and access plan (document reference 2.7).
Boston Borough Council	Private Track	Works for the provision of a permanent means of access to the authorised development from the south of the private track to the east of Timms Drove, at point CR/K and the area shown hatched in pink on sheet 11 of the streets and access plan (document reference 2.7).
Boston Borough Council	Private Track	Works for the provision of a permanent means of access to the authorised development from the private track to the east of Timms Drove, at point CR/L and the area shown hatched in pink on sheet 11 of the streets and access plan (document reference 2.7).
Boston Borough Council	Bicker Drove	Works for the provision of a permanent means of access to the authorised development from the south side of Bicker Drove, at point CR/M and the area shown hatched in pink on sheet 12 of the streets and

		access plan (document reference 2.7).
Boston Borough Council	Bicker Drove	Works for the provision of a permanent means of access to the authorised development from the north side of Bicker Drove, at point CR/N and the area shown hatched in pink on sheet 12 of the streets and access plan (document reference 2.7).
Boston Borough Council	Bicker Drove	Works for the provision of a permanent means of access to the authorised development from the south side of Bicker Drove, at point CR/O and the area shown hatched in pink on sheet 12 of the streets and access plan (document reference 2.7).
Boston Borough Council	Vicarage Drove	Works for the provision of a permanent means of access to the authorised development from the west side of Vicarage Drove, at point CR/P and the area shown hatched in pink on sheet 12 of the streets and access plan (document reference 2.7).
Boston Borough Council	Vicarage Drove/Private Track	Works for the provision of a permanent means of access to the authorised development from the north side of Vicarage Drove, at point CR/Q and the area shown hatched in pink on sheet 12 of the streets and access plan (document reference 2.7).

PART 2

TEMPORARY ALTERATION OF LAYOUT OF STREETS

<i>(1) District in which street is located</i>	<i>(2) Street</i>	<i>(3) Description of alteration</i>
North Kesteven District Council	A17	Works to enable the construction of the authorised development, including the temporary widening of the carriageway between the points marked C and D shown cross hatched on sheet 5 of the streets and access plan (document reference 2.7).

North Kesteven District Council	A17	Works for the provision of a temporary means of access to the authorised development from the north side of the A17, at point EP/A and the area hatched purple on sheet 5 of the streets and access plan (document reference 2.7).
Boston Borough Council	A17/Royalty Lane	Works for the provision of a temporary means of access to the authorised development from the west side of the A17, at point CR/D and the area hatched purple on sheet 7 of the streets and access plan (document reference 2.7).

SCHEDULE 6

Article 11

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>District in which public right of way is located</i>	<i>(2)</i> <i>Public right of way to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
North Kesteven District Council	Footpath Heck 15/1	Between the points marked A to B as shown on sheets 1 to 3 the rights of way plan.

SCHEDULE 7

ACCESS TO WORKS

Article 12

PART 1

PERMANENT MEANS OF ACCESS TO WORKS

<i>(1)</i> <i>District in which access is located</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of means of access</i>
North Kesteven District Council	A17	The provision of a permanent means of access to the authorised development from the north side of the A17, at point EP/B and the area coloured pink on sheet 5 of the streets and access plan (document reference 2.7).
Boston Borough Council	A17	The provision of a permanent means of access to the authorised development from the south side of the A17, at point CR/B and the area coloured pink on sheet 7 of the streets and access plan (document reference 2.7).
Boston Borough Council	A17	The provision of a permanent means of access to the authorised development from the north side of the A17, at point CR/C and the area coloured pink on sheet 7 of the streets and access plan (document reference 2.7).
Boston Borough Council	A17/Triton Knoll Private Track	The provision of a permanent means of access to the authorised development from the west side of the A17, at point CR/E and the area coloured pink on sheet 8 of the streets and access plan (document reference 2.7).
Boston Borough Council	Private Track	The provision of a permanent means of access to the authorised development from the Triton Knoll access track and Timms Drove, at point CR/F and the area coloured pink on sheet 9 of the streets and access plan (document reference 2.7).
Boston Borough Council	Timms Drove	The provision of a permanent means of access to the

		authorised development from the south side of Timms Drove, at point CR/G and the area coloured pink on sheet 9 of the streets and access plan (document reference 2.7).
Boston Borough Council	North Drove	The provision of a permanent means of access to the authorised development from the north side of North Drove, at point CR/H and the area coloured pink on sheet 10 of the streets and access plan (document reference 2.7).
Boston Borough Council	North Drove	The provision of a permanent means of access to the authorised development from the south side of North Drove, at point CR/I and the area coloured pink on sheet 10 of the streets and access plan (document reference 2.7).
Boston Borough Council	Private Track	The provision of a permanent means of access to the authorised development from the north of the private track to the east of Timms Drove, at point CR/J and the area coloured pink on sheet 11 of the streets and access plan (document reference 2.7).
Boston Borough Council	Private Track	The provision of a permanent means of access to the authorised development from the south of the private track to the east of Timms Drove, at point CR/K and the area coloured pink on sheet 11 of the streets and access plan (document reference 2.7).
Boston Borough Council	Private Track	The provision of a permanent means of access to the authorised development from the private track to the east of Timms Drove, at point CR/L and the area coloured pink on sheet 11 of the streets and access plan (document reference 2.7).
Boston Borough Council	Bicker Drove	The provision of a permanent means of access to the authorised development from the south side of Bicker Drove, at point CR/M and the area coloured pink on sheet 12 of the streets and access plan

		(document reference 2.7).
Boston Borough Council	Bicker Drove	The provision of a permanent means of access to the authorised development from the north side of Bicker Drove, at point CR/N and the area coloured pink on sheet 12 of the streets and access plan (document reference 2.7).
Boston Borough Council	Bicker Drove	The provision of a permanent means of access to the authorised development from the south side of Bicker Drove, at point CR/O and the area coloured pink on sheet 12 of the streets and access plan (document reference 2.7).
Boston Borough Council	Vicarage Drove	The provision of a permanent means of access to the authorised development from the west side of Vicarage Drove, at point CR/P and the area coloured pink on sheet 12 of the streets and access plan (document reference 2.7).
Boston Borough Council	Vicarage Drove/Private Track	The provision of a permanent means of access to the authorised development from the north side of Vicarage Drove, at point CR/Q and the area coloured pink on sheet 12 of the streets and access plan (document reference 2.7).

PART 2

TEMPORARY MEANS OF ACCESS TO WORKS

<i>(1) District in which access is located</i>	<i>(2) Street</i>	<i>(3) Description of means of access</i>
North Kesteven District Council	A17	The provision of a temporary means of access to the authorised development from the north side of the A17, at point EP/A and the area coloured purple on sheet 5 of the streets and access plan (document reference 2.7).
Boston Borough Council	A17/Royalty Lane	The provision of a temporary means of access to the authorised development from the west side of the A17, at point CR/D and the area coloured purple on sheet 7 of the streets and access plan

		(document reference 2.7).
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LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

Interpretation**1. In this Schedule—**

“access rights” means rights over land to—

- (a) alter, improve, form, maintain, retain, use (with or without vehicles, plant and machinery), remove, reinstate means of access to the authorised development including visibility splays and to remove impediments to such access;
- (b) pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface) for all purposes in connection with the authorised development; and
- (c) restrict the erection of buildings or structures, restrict the altering of ground levels, restrict the planting of trees or carrying out operations or actions which may obstruct, interrupt or interfere with the exercise of the access rights.

“cable rights” means rights over land to—

- (d) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical underground cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other apparatus and structures;
- (e) to alter, improve, form, maintain, retain, use (with or without vehicles, plant and machinery), remove, reinstate means of access to the authorised development including visibility splays and to remove impediments to such access;
- (f) install, use, support, protect, inspect, alter, remove, replace retain, renew, improve and maintain watercourses, public sewers and drains and drainage apparatus and equipment;
- (g) remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with the authorised development;
- (h) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development; and
- (i) to install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain soft landscaping and biodiversity measures.

“substation connection rights” means rights over land to—

- (j) in connection with and for the purposes of facilitating Work No. 6A, install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other apparatus and structures and to connect such cables and services to the National Grid Bicker Fen substation;
- (k) in connection with and for the purposes of facilitating Work No. 6A, install, use, support, protect, inspect, alter, remove, replace retain, renew, improve and maintain watercourses, public sewers and drains and drainage apparatus and equipment;
- (l) remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface) for all purposes in connection with Work Nos. 6A;

- (m) in connection with and for the purposes of facilitating Work No. 6A restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development; and
- (n) remove landscaping measures.

<i>(1)</i> <i>Plot reference number shown on the land plans</i>	<i>(2)</i> <i>Purposes for which rights over land may be acquired and restrictive covenants imposed</i>
12	Access rights and cable rights
60A	Access rights and cable rights
60B	Access rights and cable rights
60C	Access rights and cable rights
63A	Access rights and cable rights
63B	Access rights and cable rights
63C	Access rights
63D	Access rights
64	Access rights
66A	Access rights
66B	Access rights and cable rights
67A	Access rights
67B	Access rights and cable rights
67C	Access rights
67D	Access rights
68A	Access rights
68B	Access rights
68C	Access rights and cable rights
68D	Access rights
68E	Access rights
68F	Access rights
69	Access rights and cable rights
72	Access rights and cable rights
73A	Access rights
73B	Access rights
75A	Access rights
75B	Access rights
75C	Access rights
75D	Access rights and cable rights
75E	Access rights
75F	Access rights
75G	Access rights
75H	Access rights
75I	Access rights and cable rights
75J	Access rights
76A	Access rights
76B	Access rights and cable rights
89	Access rights
90	Access rights
94	Access rights
97	Access rights
99B	Access rights and cable rights
99C	Access rights and cable rights

99D	Access rights and cable rights
99E	Access rights
99F	Access rights
99G	Substation connection rights
99H	Substation connection rights
100A	Access rights and cable rights
100B	Access rights and cable rights
101A	Access rights and cable rights
101B	Access rights and cable rights
101C	Access rights and cable rights
104A	Access rights and cable rights
104B	Access rights
104C	Access rights
104D	Access rights and cable rights
104E	Access rights and cable rights
107A	Access rights
107B	Access rights
108A	Access rights and cable rights
108B	Access rights and cable rights
108C	Access rights and cable rights
109A	Access rights
109B	Access rights
124	Access rights and cable rights
173	Access rights
184	Access rights and cable rights
190	Access rights and cable rights
245	Access rights and cable rights
248	Access rights and cable rights
255	Access rights and cable rights
265	Access rights
266A	Access rights and cable rights
266B	Access rights and cable rights
269	Access rights and cable rights
273	Access rights
274	Access rights
279	Access rights
284	Access rights and cable rights
285	Access rights and cable rights
286	Access rights and cable rights
287	Access rights
288	Access rights and cable rights
289	Access rights
290	Access rights
293A	Access rights and cable rights
293B	Access rights and cable rights
294	Access rights
295	Access rights and cable rights
296	Access rights
297	Access rights
298	Access rights
301	Access rights
302A	Access rights and cable rights
302B	Access rights

303	Access rights and cable rights
304	Access rights and cable rights
307	Access rights
312	Access rights
313	Access rights
316	Access rights and cable rights
317	Access rights
322	Access rights
323	Access rights and cable rights
324	Access rights
325	Access rights
326	Access rights
329	Access rights and cable rights
333	Access rights and cable rights
334	Access rights and cable rights
335	Access rights
337	Access rights
338	Access rights
339	Access rights
341	Access rights
346	Access rights and cable rights
347	Access rights and cable rights
348	Access rights and cable rights
349	Access rights

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR THE CREATION OF NEW RIGHTS AND IMPOSITION OF NEW RESTRICTIVE COVENANTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 41(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5—

- (a) for the words “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

3.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) In section 5A(5A) (relevant valuation date), omit the words after “if—” and substitute—

- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 9 to the Heckington Fen Solar Park Order 202*);
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 9 to the Heckington Fen Solar Park Order 202*) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,
the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.”.

Application of Part 1 of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act to the acquisition of land under article 18 (compulsory acquisition of land) and as modified by article 25 (modification of Part 1 of the Compulsory Purchase Act 1965), applies to the compulsory acquisition of a right by the creation of a new right under article 20 (compulsory acquisition of rights)—

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

(a) 1973 c.26.

5.—(1) The modifications referred to in paragraph 4(a) are as follows—

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is to be enforceable.

(3) For section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11 (powers of entry)(a) of the 1965 Act is modified to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 18 (compulsory acquisition of land)), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 11A (powers of entry: further notices of entry)(b), 11B (counter-notice requiring possession to be taken on specified date)(c), 12 (penalty for unauthorised entry)(d) and 13 (refusal to give possession to acquiring authority)(e) of the 1965 Act are modified correspondingly.

(6) Section 20 (tenants at will, etc.)(f) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

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- (a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.
 - (b) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.
 - (c) Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016.
 - (d) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23) and paragraphs (2) and (4) of Schedule 16 to the Housing and Planning Act 2016.
 - (e) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to the Tribunals, Courts and Enforcement Act 2007 (c. 15).
 - (f) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 25(4) (modification of Part 1 of the Compulsory Purchase Act 1965) is so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or restrictive covenant imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A (counter notice requiring purchase of land not in notice to treat) to the 1965 Act substitute—

“SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE LAND

1.—(1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 22 (application of the 1981 Act) of the Heckington Fen Solar Park Order 202* in respect of the land to which the notice to treat relates.

(2) But see article 23(3) (acquisition of subsoil only) of the Heckington Fen Solar Park Order 202* which excludes the acquisition of subsoil only from this Schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of three months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decides to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority does not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by the Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of six weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

SCHEDULE 10

Article 36

HEDGEROWS TO BE REMOVED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of hedgerow and extent of removal</i>	<i>(3)</i> <i>Purpose of removal</i>
North Kesteven District Council / Boston Borough Council (border)	Removal of that part of the hedgerow (including four goat willows and one Lombardy poplar) shown approximately within the pink area identified on sheet 6 of the important hedgerows plan	To facilitate construction of the authorised development (Work No. 5)
Boston Borough Council	Removal of those parts of the hedgerow (including sections of hawthorn hedgerow within the drainage ditch) shown approximately within the pink area identified on sheets 7 and 8 of the important hedgerows plan	To facilitate construction of the authorised development (Work No. 5)
Boston Borough Council	Removal of that part of the hedgerow (including a section of hawthorn) shown approximately within the pink area identified on sheet 12 of the important hedgerows plan	To facilitate construction of the authorised development (Work No. 5A)
Boston Borough Council	Removal of that part of the hedgerow (which includes various woodland comprising oak, goat willow, silver birch, hazel, field maple, aspen, lime, ash and dogwood) shown approximately within the pink area on sheet 13 of the important hedgerows plan	To facilitate construction of the authorised development (Work No. 5B)

SCHEDULE 11

Article 38

DOCUMENTS AND PLANS TO BE CERTIFIED

(1) <i>Document name</i>	(2) <i>Applicant's Document reference</i>	(3) <i>Revision number</i>	(4) <i>Date</i>
book of reference environmental statement	4.3	7.0	February 2024
	6.1, 6.2, and 6.3	2.0	August 2023 (unless otherwise stated below)
	6.1.17	1.0	February 2023
	6.2.5		
	6.2.7		
	6.2.13 - 6.2.14		
	6.2.16-6.2.20		
	6.3.1 - 6.3.3		
	6.3.6 - 6.3.10		
	6.3.12		
	6.3.14 - 6.3.18		
	6.3.4.1	1.0	March 2023
	ExA.6.3.7.13-D3.V2	1.0	November 2023
	6.1.0 - 6.1.3	2.0	August 2023
	6.1.7 - 6.1.9		
	6.1.12 - 6.1.15		
	6.1.18		
	6.1.20		
	6.2.1 - 6.2.3		
	6.2.6 - 6.2.12		
	6.2.15		
	6.3.6		
	6.3.14		
	6.1.10	2.0	November 2023
	6.1.16		
	6.1.19		
	6.2.3 - 6.2.4		
	6.2.10		
	6.3.6.9	3.0	August 2023
	6.1.5	3.0	November 2023
	6.2.2		
	6.2.6		
	6.2.6	4.0	December 2023
	6.1.4	5.0	January 2024
	6.1.11	4.0	January 2024
	6.1.6	3.0	February 2024
ES technical note – updated information on cumulative projects	ExA.ESTN- Cumulative-D5.V4	4.0	February 2024
Appendix 8.13 – biodiversity net gain assessment report	ExA.6.3.8.13-D4.V2	2.0	January 2024
ES transport and	ExA.ESATN.D3.V1	1.0	December 2023

access technical note – sensitivity of cowbridge road, bicker drove, and vicarage drove			
ES technical note – additional ecology information	ExA.ESTNE.D3.V1	1.0	December 2023
equality impact assessment	ExA.EIA-D3.V1	1.0	December 2023
ES transport and access technical note – assessment of triton knoll access track, doubletwelves drove and bicker drove	ExA.ESTATN- Access-D5.V1	1.0	February 2024
flood risk assessment	6.3.9.1	2.0	March 2023
important hedgerows plan	2.9	3.0	January 2024
interface area plan	ExA.BFInterface.D5. V1	1.0	February 2024
land and crown land plan	2.1	5.0	January 2024
outline energy storage safety management plan	7.11	3.0	January 2024
outline construction environmental management plan	7.7	6.0	February 2024
outline construction traffic management plan	7.10	5.0	February 2024
outline decommissioning and restoration plan	7.9	4.0	February 2024
outline design principles	7.1	4.0	January 2024
outline landscape ecological management plan	7.8	6.0	February 2024
outline operational environmental management plan	ExA.oOEMP-D5.V3	3.0	February 2024
outline soil management plan	7.15	3.0	February 2024
outline supply chain, employment and skills plan	7.12	4.0	February 2024
outline written scheme of investigation – evaluation	7.13	2.0	November 2023
outline written scheme of investigation – mitigation	7.14	2.0	November 2023
rights of way plan	2.3	4.0	January 2024
streets and access	2.7	5.0	January 2024

plans
works plans

2.2

6.0

February 2024

SCHEDULE 12

ARBITRATION RULES

Article 39

Commencing an arbitration

1.—(1) The arbitration is deemed to have commenced when a party (“the claimant”) serves a written notice of arbitration on the other party (“the respondent”).

(2) 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 39 of the Order.

Time periods

2.—(1) All time periods in these arbitration rules are measured in days and include weekends, but not bank or public holidays.

(2) Time periods are calculated from the day after the arbitrator is appointed which is 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 that which is set out in sub-paragraphs (2) to (4) below unless amended in accordance with 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 difference between the parties, the legal and factual issues, the claimant’s contentions as to those issues, the amount of its claim or 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 consisting of a response to the claimant’s statement of claim, its statement in respect of the nature of the difference, the legal and factual issues in the claimant’s claim, its acceptance of any elements of the claimant’s claim and 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 reports (if submitted by the claimant) and explanations of the objections.

(4) Within seven days of the respondent serving its statements under 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) its 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. A single pleading must not exceed 30 single-sided A4 pages using 10pt Arial font.

(2) The arbitrator will make an award on the substantive differences 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 two days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(4) Within seven 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 a hearing is to be held, the date and venue for the hearing are to be fixed by agreement with the parties, save that if there is no agreement the arbitrator must direct a date and venue which the arbitrator 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 must 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 experts attending the hearing may be asked questions by the arbitrator.

(7) There is to be no examination or cross-examination of experts, but the arbitrator must invite the parties to ask questions of the experts by way of clarification of any answers given by the experts in response to the arbitrator's questions. Prior to the hearing in relation to the experts—

- (a) at least 28 days before a hearing, the arbitrator must provide a list of issues to be addressed by the experts;
- (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 seven 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 must 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 four 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 information before the arbitrator attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure or direction.

(11) The arbitrator's award must include reasons. The parties must 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, save where modified in this Schedule.

(2) There must be no discovery or disclosure, except that the arbitrator is to 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 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 then; 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 or interrelated issues, the arbitrator must consider the relevant costs collectively.

(3) The final award must fix the costs of the arbitration and decide which of the parties are to bear them or in what proportion they are to be borne by the parties.

(4) The arbitrator must 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 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) Hearings in this arbitration are to take place in private.

(2) Materials, documents, awards, expert reports and any matters relating to the arbitration 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 13

PROTECTIVE PROVISIONS

Article 40

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Part of this Schedule, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned.

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility 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 electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that utility undertaker;
- (b) in the case of 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 utility 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 of the Water Industry Act 1991;
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991(b); and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) 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 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;

“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

“utility undertaker” means—

- (e) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (f) a gas transporter within the meaning of Part 1 of the Gas Act 1986(c);
- (g) water undertaker within the meaning of the Water Industry Act 1991; and

(a) 1989 c. 29

(b) 1991 c. 56.

(c) 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).

(h) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991, for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

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 utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 11 (temporary stopping up of public rights of way), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

No acquisition etc. except by agreement

5. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility 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 a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility 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.

(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 utility 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.

(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 the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 39 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 39 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), 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 notice in writing to the utility 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 utility undertaker, must be executed by the undertaker 85 without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) 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

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility 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 utility undertaker in question or in default of agreement settled by arbitration in accordance with article 39 (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 utility 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 utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

8.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2), the undertaker must submit to the utility 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 utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility 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 a utility 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 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(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 utility 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.

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility 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 6(2).

(2) There is to 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 39 (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 utility undertaker in question by virtue of sub-paragraph (1) is to 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 where such extension is required in consequence of the execution of any such works as are referred to in paragraph 6(2); 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 a utility undertaker in respect of works by virtue of sub-paragraph (1), 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 utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

Expenses and costs

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 6(2), 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 a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility 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 a utility undertaker, its officers, servants, contractors or agents.

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

11. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking 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 OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

12.—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

(2) In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003^(a);

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in section 106 (application of the electronic communications code) of the 2003 Act;

“electronic communications code network” means—

(a) so much of an electronic communications network or conduit 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 Secretary of State 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; and

“operator” means the operator of an electronic communications code network.

13. The exercise of the powers of article 29 (statutory undertakers) is subject to Part 10 (undertakers’ works affecting electronic communications apparatus) of the electronic communications code.

14.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

(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 those works), 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 expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(a) 2003 c. 21.

(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.

(3) 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 which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) 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 42 (procedure in relation to certain approvals etc.).

15. 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.

16. 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 laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF ANGLIAN WATER

Application

17. For the protection of Anglian Water the following provisions have effect, unless otherwise agreed in writing between the undertaker and Anglian Water.

Interpretation

18. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in a manner no less efficient than previously;

“Anglian Water” means Anglian Water Services Limited;

“apparatus” means:

- (a) 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;
- (c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,
- (d) any drainage system constructed for the purpose of reducing the volume of surface water entering any public sewer belonging to Anglian Water, and
- (e) includes a sludge main, disposal main 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,

and for the purpose of this definition, where words are defined by section 219 of that Act, they shall be taken to have the same meaning;

“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;

“Ofwat” means The Water Services Regulation Authority;

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;

Protective works to buildings

19. The undertaker, in the case of the powers conferred by article 16 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of Anglian Water (such consent not to be unreasonably withheld or delayed).

Acquisition of land

20. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

21.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that Anglian Water’s apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Anglian Water to maintain that apparatus in that land must not be extinguished, until—

- (a) alternative apparatus has been constructed and is in operation to the reasonable satisfaction of Anglian Water in accordance with sub-paragraphs (2) to (8); and
- (b) facilities and rights have been secured for that alternative apparatus in accordance with paragraph 22.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Anglian Water 28 days’ written notice of that requirement, together with a plan 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 undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Anglian Water 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.

(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 Anglian Water must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(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 Anglian Water and the undertaker or in default of agreement settled by arbitration in accordance with article 39 (arbitration).

(5) Anglian Water must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 39, and after the grant to Anglian Water of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), 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 Anglian Water determines acting reasonably that there is a technical requirement for the undertaker to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker and Anglian gives notice in writing to the undertaker that it desires the undertaker to execute such reasonably required works, or to the extent that Anglian Water fails to proceed with that work in accordance with sub-paragraph (5), or the undertaker and Anglian Water otherwise agree, that work, instead of being executed by Anglian Water, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Anglian Water.

(7) If Anglian Water fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved. For the avoidance of doubt, any such “deemed consent” does not extend to the actual undertaking of the removal works, which shall remain the sole responsibility of Anglian Water or its contractors.

(8) Whenever alternative apparatus is to be or is being substituted for existing apparatus, the undertaker shall, before taking or requiring any further step in such substitution works, use reasonable endeavours to comply with Anglian Water’s reasonable requests for a reasonable period of time to enable Anglian Water to:

- (a) make network contingency arrangements; or
- (b) bring such matters as it may consider reasonably necessary to the attention of end users of the utility in question.

Facilities and rights for alternative apparatus

22.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility 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 are to be granted upon such terms and conditions as may be agreed between the undertaker and Anglian Water or in default of agreement settled by arbitration in accordance with article 39 (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 Anglian Water 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 Anglian Water as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

(3) Such facilities and rights as are set out in this paragraph are deemed to include any statutory permits granted to the undertaker in respect of the apparatus in question, whether under the Environmental Permitting Regulations 2010 or other legislation.

Retained apparatus

23.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus (or any means of access to it) the removal of which has not been required by the undertaker under paragraph 21(2), the undertaker must submit to Anglian Water a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan 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 requirements made by Anglian Water under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If Anglian Water 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 20 to 22 apply as if the removal of the apparatus had been required by the undertaker under paragraph 21(2).

(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 instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to Anglian Water notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances using its best endeavours to keep the impact of those emergency works on Anglian Water's apparatus, on the operation of its water and sewerage network and on end-users of the services Anglian Water provides to a minimum.

(7) For the purposes of sub-paragraph (1) and without prejudice to the generality of the principles set out in that sub-paragraph, works are deemed to be in land near Anglian Water's apparatus (where it is a pipe) if those works fall within the following distances measured from the medial line of such apparatus:

- (a) 4 metres where the diameter of the pipe is less than 250 millimetres;
- (b) 5 metres where the diameter of the pipe is between 250 and 400 millimetres, and
- (c) 8 metres where the diameter of the pipe exceeds 400 millimetres.

Expenses and costs

24.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Anglian Water all expenses reasonably incurred by Anglian Water 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 this Part of this Schedule.

(2) There must be deducted from any sum payable under subparagraph (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 situated, 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 39 (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 Anglian Water by virtue of subparagraph (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 pipe or 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 Anglian Water in respect of works by virtue of sub-paragraph (1), 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 Anglian Water any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

(6) For the purpose of sub-paragraph (5), and for the avoidance of doubt, Anglian Water and the undertaker acknowledge that no financial benefit will exist in the event that Ofwat's final determination of Anglian Water's price control is set by reference to a capital maintenance allowance of apparatus at its actual age rather than the age it would have been if it had not been substituted.

25.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 19 and 21(2), or by reason of any subsidence resulting from such development or 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 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 such damage or restoring the supply; and
- (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by Anglian Water on behalf of the undertaker or in accordance with a plan approved by Anglian Water or in accordance with any requirement of Anglian Water or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless Anglian Water fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

(3) 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 unlawful or unreasonable act, neglect or default of Anglian Water, its officers, servants, contractors or agents.

(4) Anglian Water must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made, without the consent of the undertaker (such consent not to be unreasonably withheld or delayed) who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) To the extent that Anglian Water has not used its reasonable endeavours to mitigate and minimise in whole or in part any costs, expenses, loss, demands, and penalties to which the provisions of this Part apply, that amount of such costs, expenses, loss, demands and penalties shall not be recoverable from the undertaker. If requested to do so by the undertaker, Anglian Water shall provide an explanation of how any claim has been minimised. The undertaker shall not be liable under paragraph 25 for any claims to the extent that such claims are unreasonably incurred by Anglian Water or where Anglian Water fails to provide an explanation of how a claim has been minimised.

Cooperation

26. Where in consequence of the proposed construction of any of the authorised development, the undertaker or Anglian Water requires the removal of apparatus under paragraph 21(2) or Anglian Water makes requirements for the protection or alteration of apparatus under paragraph 23, the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Anglian Water's undertaking, using existing processes where requested by Anglian Water, provided it is appropriate to do so, and Anglian Water must use all reasonable endeavours to co-operate with the undertaker for that purpose.

27. Where the undertaker identifies any apparatus which may belong to or be maintainable by Anglian Water but which does not appear on any statutory map kept for the purpose by Anglian Water, it shall inform Anglian Water of the existence and location of the apparatus as soon as reasonably practicable.

28. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Anglian Water in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

29. The undertaker and Anglian Water may by written agreement substitute any period of time for those time periods set out in this Part of this Schedule.

PART 4

FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER

Application

30.—(1) For the protection of National Gas as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Gas.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Gas, where the benefit of this Order is transferred or granted to another person under article 33 (consent to transfer benefit of Order) –

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Gas and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Gas on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Gas (but without prejudice to 38(3)b).

Interpretation

31. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Gas to enable National Gas to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by National Gas for the purposes of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National

Gas for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” and “commencement” in this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Gas (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Gas’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Gas: construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Gas” means National Gas Transmission plc (Company Number 02006000) whose registered office is at 1 National Grid House Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“Network Code” means the network code prepared by National Gas pursuant to Standard Special Condition A11(3) of its Gas Transporter’s Licence, which incorporates the Uniform Network Code, as defined in Standard Special Condition A11(6) of National Gas’s Gas Transporters Licence, as both documents are amended from time to time;

“Network Code Claims” means any claim made against National Gas by any person or loss suffered by National Gas under the Network Code arising out of or in connection with any failure by National Gas to make gas available for off take at, or a failure to accept gas tendered for delivery from, any entry point to or exit point from the gas national transmission system, as a result of the authorised works or any costs and/or expenses incurred by National Gas as a result of or in connection with, it taking action (including purchase or buy back of capacity) for the purpose of managing constraint or potential constraint on the gas national transmission system which may arise as a result of the authorised works;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which:

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 35(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 35(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Gas's policies for safe working in proximity to gas apparatus, Specification for safe working in the vicinity of National Gas, High pressure Gas pipelines and associated installation requirements for third parties (T/SP/SSW/22)); and

“undertaker” means the undertaker as defined in article 2(1) of this Order.

On Street Apparatus

32. Except for paragraphs 37 (retained apparatus: protection), 38 (expenses) and 39 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Gas, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Gas are regulated by the provisions of Part 3 of the 1991 Act.

Protective works to buildings

33. The undertaker, in the case of the powers conferred by article 16 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Gas.

Acquisition of land

34.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or ((b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Gas otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Gas and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Gas or affect the provisions of any enactment or agreement regulating the relations between National Gas and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Gas reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Gas and the undertaker acting reasonably and which must be no less favourable on the whole to National Gas unless otherwise agreed by National Gas, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) Save where otherwise agreed in writing between National Gas and the undertaker the undertaker and National Gas agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Gas and/or other enactments relied upon by National Gas as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Gas under paragraph 37 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

35.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Gas to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Gas in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Gas advance written notice of that requirement, together with a plan 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 National Gas reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Gas to its satisfaction (taking into account paragraph 36(1) below) the necessary facilities and rights

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by 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, National Gas will, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker 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 National Gas to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by 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 National Gas and the undertaker.

(5) National Gas must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Gas of any such facilities and rights as are referred to in sub-paragraph (2) or (3), 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.

Facilities and rights for alternative apparatus

36.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Gas facilities and rights in land for the construction, use, maintenance and protection 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 National Gas and must be no less favourable on the whole to National Gas than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Gas.

(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 less favourable on the whole to National Gas 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 matter may be referred to arbitration in accordance with paragraph 43 (Arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Gas as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

37.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Gas a plan and, if reasonably required by National Gas, a ground monitoring scheme in respect of those works.

(2) In relation to specified works the plan to be submitted to National Gas under sub-paragraph (1) must include a method statement and describe—

- (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;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Gas has given written approval of the plan so submitted.

(4) Any approval of National Gas required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (6); and,
- (b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, National Gas may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and National Gas and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Gas for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Gas will be entitled to watch and inspect the execution of those works.

(7) Where National Gas requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Gas' satisfaction prior to the commencement of any specified works for which protective works are required and National Gas must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Gas in accordance with sub-paragraphs (5) or (7) 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 30 to 32 and 34 to 36 apply as if the removal of the apparatus had been required by the undertaker under paragraph 35(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works,

a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Gas notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (11) at all times;

(11) At all times when carrying out any works authorised under the Order National Gas must comply with National Gas's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Gas retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 39.

Expenses

38.—(1) Save where otherwise agreed in writing between National Gas and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Gas within 30 days of receipt of an itemised invoice or claim from National Gas all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Gas in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Gas in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Gas as a consequence of National Gas;
- (b) using its own compulsory purchase powers to acquire any necessary rights under paragraph 35(3); or
- (c) exercising any compulsory purchase powers in the Order transferred to or benefitting National Gas;
- (d) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (e) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (f) the approval of plans;
- (g) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (h) 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 Part of this Schedule.

(2) There will 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 and which is not re-used as part of the alternative apparatus, 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 situated, 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 paragraph 43 (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 National Gas by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will 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 will not 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 pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Gas in respect of works by virtue of sub-paragraph (1) will, 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 National Gas 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.

Indemnity

39.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works 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 him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of 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 the authorised works) or property of National Gas, or there is any interruption in any service provided, or in the supply of any goods or energy, by National Gas, or National Gas becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from National Gas the cost reasonably and properly incurred by National Gas in making good such damage or restoring the supply; and
- (b) indemnify National Gas for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Gas, by reason or in consequence of any such damage or interruption or National Gas becoming liable to any third party and including Network Code Claims other than arising from any default of National Gas.

(2) The fact that any act or thing may have been done by National Gas on behalf of the undertaker or in accordance with a plan approved by National Gas or in accordance with any requirement of National Gas or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Gas fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of-

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Gas, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Gas as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 8 (consent to transfer benefit of Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 39; and/or
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable;

(4) National Gas must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Gas must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Gas must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Gas’s reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Gas’s control and if reasonably requested to do so by the undertaker National Gas must provide an explanation of how the claim has been minimised, where relevant.

(7) Before carrying out any specified works the undertaker must put in place a policy of insurance with a reputable insurer the coverage and level of cover to be first agreed in writing between the undertaker and National Gas, and evidence of such insurance to be provided on request and thereafter maintained for the duration of the carrying out of any specified works.

(8) Any dispute between the undertaker and NGET regarding the terms, cover or insured level of the insurance policy shall be resolved in accordance with paragraph 43.

Enactments and agreements

40. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Gas and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Gas 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

41.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Gas requires the removal of apparatus under paragraph 35(2) or National Gas makes requirements for the protection or alteration of apparatus under paragraph 37, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Gas’s undertaking and National Gas shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Gas’s consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

42. If in consequence of the agreement reached in accordance with paragraph 34(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Gas to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

43. Save for differences or disputes arising under paragraph 35(2), 35(4), 36(1) and 37 any difference or dispute arising between the undertaker and National Gas under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Gas, be determined by arbitration in accordance with article 39 (arbitration).

Notices

44. Notwithstanding article 41 (service of notices), any plans submitted to National Gas by the undertaker pursuant to paragraph 37 must be submitted to <https://lsbud.co.uk/> or such other address as National Gas may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 5

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

45.—(1) The following provisions apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

(2) In this part of this Schedule—

“Agency” means the Environment Agency;

“construction” includes execution, placing, altering, replacing, relaying and removal and excavation and “construct” and “constructed” is construed accordingly;

“drainage work” means any main river and includes any land which provides or is expected to provide flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

“fishery” means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

“main river” has the same meaning given in section 113 of the Water Resources Act 1991;

“plans” includes sections, drawings, specifications, calculations and method statements;

“remote defence” means any berm, wall or embankment that is constructed for the purposes of preventing or alleviating flooding from, or in connection with, any main river;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within;

(a) 8 metres of the base of a remote defence which is likely to –

(i) endanger the stability of, cause damage or reduce the effectiveness of that remote defence, or

(ii) interfere with the Agency’s access to or along that remote defence;

(b) 8 metres of a drainage work or is otherwise likely to—

(i) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;

(ii) affect the flow, purity or quality of water in any watercourse or other surface waters

- (iii) cause obstruction to the free passage of fish or damage to any fishery;
 - (iv) affect the conservation, distribution or use of water resources; or
 - (v) affect the conservation value of the main river and habitats in its immediate vicinity;
- or which involves:
- (c) an activity that includes dredging, raising or taking of any sand, silt, ballast, clay, gravel or other materials from or off the bed or banks of a drainage work (or causing such materials to be dredged, raised or taken), including hydrodynamic dredging or desilting; and
 - (d) any quarrying or excavation within 16 metres of a drainage work which is likely to cause damage to or endanger the stability of the banks or structure of that drainage work.
- “watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, basins, sewers and passages through which water flows except a public sewer.

Submission and approval of plans

46.—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 56.

(3) Any approval of the Agency required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval (under sub-paragraph (1)) whichever is later; and
- (c) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or for nature conservation or in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

(5) In the case of a refusal, if requested to do so, the Agency must provide reasons for the grounds of that refusal.

Construction of protective works

47. Without limiting paragraph 46, the requirements which the Agency may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

Timing of works and service of notices

48.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 47, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

and the Agency is entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work to which the protective works relate.

Works not in accordance with this Schedule

49.—(1) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(2) Subject to sub-paragraph (3) if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (1) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(3) In the event of any dispute as to whether sub-paragraph (1) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (2) until the dispute has been finally determined in accordance with paragraph 56.

Maintenance of works

50.—(1) Subject to sub-paragraph (6) the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (5) if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with these protective provisions the Agency may serve written notice requiring the undertaker to cease all or part of the specified works and the undertaker must cease

the specified works or part thereof until it has obtained the consent or complied with the condition unless the cessation of the specified works or part thereof would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 56.

(6) This paragraph does not apply to-

- (a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so; and
- (b) any obstruction of a drainage work expressly authorised in the approval of specified works plans and carried out in accordance with the provisions of this Part provided that any obstruction is removed as soon as reasonably practicable.

Remediating impaired drainage work

51. If by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure incurred by the Agency in so doing from the undertaker.

Agency access

52. If by reason of construction of the specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction within 24 hours of or as soon as reasonably practicable after the undertaker becoming aware of such obstruction.

Free passage of fish

53.—(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) If within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the undertaker fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and any expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any expenditure incurred in so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

Indemnity

54. The undertaker indemnifies the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and
- (c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

55.—(1) The undertaker is responsible for and indemnifies the Agency against all costs and losses, liabilities, claims and demands not otherwise provided for in this Schedule which may be reasonably incurred or suffered by the Agency by reason of, or arising out of—

- (a) the authorised development; or
- (b) the construction, operation or maintenance of any specified works comprised within the authorised development or the failure of any such works comprised within them; or
- (c) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction, operation or maintenance of the authorised development or dealing with any failure of the authorised development.

(2) For the avoidance of doubt, in sub-paragraph (1)—

- (a) “costs” includes—
 - (i) expenses and charges;
 - (ii) staff costs and overheads;
 - (iii) legal costs;
- (b) “losses” includes physical damage.
- (c) “claims” and “demands” include as applicable—
 - (i) costs (within the meaning of sub-paragraph (2(a)) incurred in connection with any claim or demand;
 - (ii) any interest element of sums claimed or demanded;
- (d) “liabilities” includes—
 - (i) contractual liabilities;
 - (ii) tortious liabilities (including liabilities for negligence or nuisance);
 - (iii) liabilities to pay statutory compensation or for breach of statutory duty;
 - (iv) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(3) The Agency must give to the undertaker reasonable notice of any such claim or demand and must not settle or compromise a claim without the agreement of the undertaker and that agreement must not be unreasonably withheld or delayed.

(4) The Agency must, at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.

(5) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, must not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

(6) Nothing in this paragraph imposes any liability on the undertaker with respect to any costs, charges, expenses, damages, claims, demands or losses to the extent that they are attributable to the neglect or default of the Agency, its officers, servants, contractors or agents.

Disputes

56. Any dispute arising between the undertaker and the Agency under this Part of this Schedule must, if the parties agree, be determined by arbitration under article 39 (arbitration), but failing agreement be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for Energy Security and Net Zero or its successor acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

PART 6

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER

Application

57.—(1) For the protection of NGET as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and NGET.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and NGET, where the benefit of this Order is transferred or granted to another person under article 33 (consent to transfer benefit of Order) –

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between NGET and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to NGET on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to NGET (but without prejudice to paragraph 66(3)(b)).

Interpretation

58. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of NGET to enable NGET to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by NGET together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of NGET for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” and “commencement” in this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by NGET (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for NGET’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“Incentive Deduction” means any incentive deduction NGET receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the authorised works;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of NGET: construct, use, repair, alter, inspect, renew or remove the apparatus;

“NGET” means National Grid Electricity Transmission Plc (Company Number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

“NGESO” means as defined in the STC;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which:

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 62(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 62(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines”.

“STC” means the System Operator Transmission Owner Code prepared by the electricity Transmission Owners and NGESO as modified from time to time;

“STC Claims” means any claim made under the STC against NGET arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector’s equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of NGET’s transmission system which arises as a result of the authorised works;

“Transmission Owner” means as defined in the STC;

“undertaker” means the undertaker as defined in article 2(1) of this Order;

On Street Apparatus

59. Except for paragraphs 64 (retained apparatus: protection), 65 (expenses) and 66 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of NGET, the other provisions of this Schedule do not apply to

apparatus in respect of which the relations between the undertaker and NGET are regulated by the provisions of Part 3 of the 1991 Act.

Protective works to buildings

60. The undertaker, in the case of the powers conferred by article 16 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of NGET.

Acquisition of land

61.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of NGET otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between NGET and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of NGET or affect the provisions of any enactment or agreement regulating the relations between NGET and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as NGET reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between NGET and the undertaker acting reasonably and which must be no less favourable on the whole to NGET unless otherwise agreed by NGET, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) Save where otherwise agreed in writing between NGET and the undertaker the undertaker and NGET agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by NGET and/or other enactments relied upon by NGET as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by NGET under paragraph 64 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

62.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of NGET to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of NGET in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to NGET advance written notice of that requirement, together with a plan 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 NGET reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to NGET to its satisfaction (taking into account paragraph 63(1) below) the necessary facilities and rights

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by 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, NGET will, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker 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 NGET to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by 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 NGET and the undertaker.

(5) NGET must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to NGET of any such facilities and rights as are referred to in sub-paragraph (2) or (3), 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.

Facilities and rights for alternative apparatus

63.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for NGET facilities and rights in land for the construction, use, maintenance and protection 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 NGET and must be no less favourable on the whole to NGET than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by NGET.

(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 less favourable on the whole to NGET 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 matter may be referred to arbitration in accordance with paragraph 70 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to NGET as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

64.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to NGET a plan of the works to be executed and seek from NGET details of the underground extent of their electricity assets.

(2) In relation to specified works the plan to be submitted to NGET under sub-paragraph (1) must include a method statement and describe—

- (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;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(h) a ground monitoring scheme, where required.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing; -

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;
- (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by NGET's engineers; and
- (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until NGET has given written approval of the plan so submitted.

(5) Any approval of NGET required under sub-paragraphs (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and,
- (b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, NGET may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and NGET and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by NGET for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and NGET will be entitled to watch and inspect the execution of those works.

(8) Where NGET requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to NGET's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and NGET shall give notice its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If NGET in accordance with sub-paragraphs (6) or (8) 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 57 to 59 and 61 to 63 apply as if the removal of the apparatus had been required by the undertaker under paragraph 62(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to NGET notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with NGET's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

65.—(1) Save where otherwise agreed in writing between NGET and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to NGET within 30 days of receipt of an itemised invoice or claim from NGET all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by NGET in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by NGET in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by NGET as a consequence of NGET;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 62(3); or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting NGET;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (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;
- (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 Part of this Schedule.

(2) There will 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 and which is not re-used as part of the alternative apparatus, 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 situated,

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 paragraph 70 (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 NGET by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the

circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will 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 will not 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 pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to NGET in respect of works by virtue of sub-paragraph (1) will, 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 NGET 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.

Indemnity

66.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works 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 him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of 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 the authorised works) or property of NGET, or there is any interruption in any service provided, or in the supply of any goods, by NGET, or NGET becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from NGET the cost reasonably and properly incurred by NGET in making good such damage or restoring the supply; and
- (b) indemnify NGET for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from NGET, by reason or in consequence of any such damage or interruption or NGET becoming liable to any third party and including STC Claims or an Incentive Deduction other than arising from any default of NGET.

(2) The fact that any act or thing may have been done by NGET on behalf of the undertaker or in accordance with a plan approved by NGET or in accordance with any requirement of NGET or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless NGET fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of-

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of NGET, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by NGET as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 33 (consent to transfer benefit of Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 66; and/or
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business

interruption) arising from any such damage or interruption, which is not reasonably foreseeable;

(4) NGET must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) NGET must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) NGET must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within NGET's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of NGET's control and if reasonably requested to do so by the undertaker NGET must provide an explanation of how the claim has been minimised, where relevant.

(7) Before carrying out any specified works the undertaker must put in place a policy of insurance with a reputable insurer the coverage and level of cover to be first agreed in writing between the Undertaker and NGET, and evidence of such insurance to be provided on request and thereafter maintained for the duration of the carrying out of any specified works.

(8) Any dispute between the undertaker and NGET regarding the terms, cover or insured level of the insurance policy shall be resolved in accordance with paragraph 70.

Enactments and agreements

67. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between NGET and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and NGET 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

68.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or NGET requires the removal of apparatus under paragraph 62(2) or NGET makes requirements for the protection or alteration of apparatus under paragraph 64, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of NGET's undertaking and NGET shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever NGET's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

69. If in consequence of the agreement reached in accordance with paragraph 61(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable NGET to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

70. Save for differences or disputes arising under paragraph 62(2), 62(4), 63(1) and 64 any difference or dispute arising between the undertaker and NGET under this Part of this Schedule

must, unless otherwise agreed in writing between the undertaker and NGET, be determined by arbitration in accordance with article 39 (arbitration).

Notices

71. Notwithstanding article 41 (service of notices), any plans submitted to NGET by the undertaker pursuant to paragraph 64 must be submitted using the LSBUD system (<https://lsbud.co.uk/>) or to such other address as NGET may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 7

FOR THE PROTECTION OF DRAINAGE AUTHORITIES

72. The provisions of this Part have effect for the protection of the drainage authority unless otherwise agreed in writing between the undertaker and the drainage authority.

73. In this Part—

“authorised development” has the same meaning as in article 2(1) (interpretation) of this Order and (unless otherwise specified) for the purposes of this Part of this Schedule includes the operation and maintenance of the authorised development and the construction of any works authorised by this Part of this Schedule;

“construction” includes execution, placing, altering, replacing, relaying and removal; and “construct” must be construed accordingly;

“drainage authority” means—

- (a) in relation to an ordinary watercourse, the drainage board concerned within the meaning of section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991; or
- (b) in the case of any area for which there is no such drainage board, the lead local flood authority within the meaning of section 6 (other definitions) of the Flood and Water Management Act 2010;

“drainage work” means any ordinary watercourse and includes any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence, which is the responsibility of the drainage authority;

“ordinary watercourse” has the meaning given by section 72 (interpretation) of the Land Drainage Act 1991;

“plans” includes any information reasonably required by the drainage authority including location details, grid references, sections, drawings, specifications, assessments and method statements;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 9 metres of a drainage work which is the responsibility of Black Sluice Internal Drainage Board, or, in the case of a drainage work which is the responsibility of a drainage authority other than Black Sluice Internal Drainage Board, within 8 metres of such drainage work or which is otherwise likely to affect the flow of water in any watercourse.

74.—(1) Before commencing construction of a specified work, the undertaker must submit to the drainage authority plans of the specified work and such further particulars available to it as the drainage authority may within 28 days of the submission of the plans reasonably require.

(2) A specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority or determined under paragraph 81.

(3) Any approval of the drainage authority required under this paragraph—

- (a) must not be unreasonably withheld or delayed;

- (b) is deemed to have been given if it is neither given nor refused within 28 days of the submission of the plans for approval, or submission of further particulars (where required by the drainage authority under sub-paragraph (1)) whichever is the later; and
 - (c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work taking into account the terms of this Order
- (4) Any refusal under this paragraph must be accompanied by a statement of the reasons for refusal.

75. Without limiting the scope of paragraph 74, the requirements which the drainage authority may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified work (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary taking into account the terms of this Order—

- (a) to safeguard any drainage work against damage by reason of any specified work; or
- (b) to secure that the efficiency of any drainage work for flood defence and land drainage purposes is not impaired, and that the risk of flooding is not otherwise increased beyond the level of flood risk that was assessed in the environmental statement, by reason of any specified work.

76.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 75, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part; and
- (b) to the reasonable satisfaction of the drainage authority,

and an officer of the drainage authority is entitled to watch and inspect the construction of such works.

(2) The undertaker must give to the drainage authority—

- (a) not less than 14 days' notice in writing of its intention to commence construction of any specified work; and
- (b) notice in writing of its completion not later than seven days after the date on which the completed specified work is brought into use.

(3) If the drainage authority reasonably requires, the undertaker must construct all or part of the protective works so that they are in place before the construction of the specified work.

(4) If any part of a specified work or any protective work required by the drainage authority is constructed otherwise than in accordance with the requirements of this Part, the drainage authority may by notice in writing require the undertaker at the undertaker's expense to comply with the requirements of this Part (provided such expense would be reasonable) or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is agreed, to restore the site to its former condition to such extent and within such limits as the drainage authority reasonably requires.

(5) Subject to sub-paragraph (6), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served on the undertaker, the undertaker has failed to begin taking reasonably necessary steps to comply with the reasonable requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the drainage authority may execute the works specified in the notice and any expenditure reasonably incurred by it in so doing is recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the drainage authority must not except in an emergency exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined.

77.—(1) Subject to sub-paragraph (5), the undertaker must from the commencement of the construction of the specified work until the completion of the specified work maintain in reasonable repair and condition and free from obstruction any drainage work which is situated within the limits of deviation on land held by the undertaker for the purposes of or in connection with the specified work, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the drainage authority, the drainage authority may by notice in writing require the undertaker to repair and restore the work, or any part of the work, or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed), to remove the specified work and restore the site to its former condition, to such extent and within such limits as the drainage authority reasonably requires.

(3) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking reasonably necessary steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the drainage authority must not except in a case of emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

(5) This paragraph does not apply to—

- (a) drainage works which are vested in the drainage authority, or which the drainage authority or another person is liable to maintain and is not prevented by this Order from so doing; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part provided that any obstruction is removed as soon as reasonably practicable.

78. If by reason of the construction of a specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes or land drainage is impaired, or that drainage work is otherwise damaged, the impairment or damage must be made good by the undertaker as soon as reasonably practicable to the reasonable satisfaction of the drainage authority and, if the undertaker fails to do so, the drainage authority may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

79. The undertaker must pay reasonable compensation to the drainage authority in respect of costs, charges and expenses which the drainage authority may reasonably incur—

- (a) in the examination or approval of plans under this Part; and
- (b) in inspecting the construction of the specified work or any protective works required by the drainage authority under this Part; and
- (c) in carrying out any surveys or tests by the drainage authority which are reasonably required in connection with the construction of the specified work.

80.—(1) The undertaker must pay reasonable compensation to the drainage authority in respect of liabilities, costs and losses, which may be reasonably incurred or suffered by the drainage authority, by reason of—

- (a) the construction of any specified works comprised within the authorised development; or
- (b) any act or omission of the undertaker, its employees, contractors or agents or others while engaged upon the construction of the authorised development.

(2) The drainage authority must give to the undertaker reasonable notice of any such claim or demand.

(3) The undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom.

(4) The drainage authority must not compromise or settle any such claim or make any admission which might be prejudicial to the claim without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

(5) The drainage authority will, having regard to its statutory functions, at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or losses.

(6) The drainage authority will, at the request of the undertaker and having regard to its statutory functions, afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid its reasonable expenses reasonably incurred in so doing.

(7) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the drainage authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under this Part.

(8) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage to the extent that it is attributable to the act, neglect or default of the drainage authority or the breach of a statutory duty of the drainage authority, its officers, servants, contractors or agents.

81. Any dispute arising between the undertaker and the drainage authority under this Part must, unless otherwise agreed in writing between the parties, be determined by arbitration under article 39 (arbitration).

PART 8

FOR THE PROTECTION OF RAILWAY INTERESTS

82. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 101 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

83. In this Part of this Schedule—

“asset protection agreement” means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

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

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

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

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

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

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

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail for the purposes of such railway or works, apparatus or equipment;

“regulatory consents” means any consent or approval required under:

- (c) the Railways Act 1993;
- (d) the network licence; and/or
- (e) any other relevant statutory or regulatory provisions;

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

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

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

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

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

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

86.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 39 (arbitration) of this Order.

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

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on

the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

87.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 86(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 86;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

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

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

88. The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as they may reasonably require with regard to a specified work or the method of constructing it.

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

90.—(1) If any permanent or temporary alterations or additions to railway property are identified as being reasonably necessary in consequence of the construction or completion of a specified work during a period of 36 months after completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which

must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 86(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 91(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

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

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

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 86(3) or in constructing any protective works under the provisions of paragraph 86(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

92.—(1) In this paragraph—

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

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

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 86(1) for

the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

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

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

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 86(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 86(1) has effect subject to the sub-paragraph.

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

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and
- (d) the undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

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

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 87.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 96(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the

implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 91(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

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

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

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

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

- (a) by reason of the construction, maintenance or operation of a specified work or the failure thereof; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;
- (c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development;
- (d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;
- (e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development;

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

(2) Network Rail must—

- (a) give the undertaker reasonable written notice of any such claims or demands
- (b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and

(c) take such steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands.

(3) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

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

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

(6) In this paragraph—

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

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

97. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 96) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

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

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

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

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

101. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State’s consent, under article 30 (consent transfer of benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

102. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 38 (certification of plans etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

103. In relation to any dispute arising under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Network Rail, be determined in accordance with the provisions of article 39 (arbitration).

PART 9

FOR PROTECTION OF LINCOLNSHIRE FIRE AND RESCUE

Interpretation

104.—(1) For the protection of Lincolnshire Fire and Rescue as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and Lincolnshire Fire and Rescue.

(2) In this Part of this Schedule—

“Index Linked” means an increase in the sums payable on an annual basis or pro rata per diem in accordance with the most recent published figure for the Consumer Price Index, or during any period when no such index exists the index which replaces it or is the nearest equivalent to it; and

“Lincolnshire Fire and Rescue” means Lincolnshire County Council in its capacity as a fire and rescue authority pursuant to section 1(2)(a) of the Fire and Rescue Services Act 2004.

Site visits

105.—(1) The undertaker must, prior to the date of final commissioning of Work No. 2, use reasonable endeavours to facilitate a site familiarisation exercise in connection with Work No. 2 of the authorised development for Lincolnshire Fire and Rescue for the purposes of providing the necessary assurance to Lincolnshire Fire and Rescue that all the required systems and measures are in place in accordance with the battery safety management plan.

(2) Following the first anniversary of the date of final commissioning of Work No. 2 of the authorised development, the undertaker must use reasonable endeavours to facilitate an annual review of Work No. 2 by Lincolnshire Fire and Rescue at the reasonable request of Lincolnshire Fire and Rescue, up until the year in which the undertaker commences decommissioning of Work No. 2.

Costs

106.—(1) Pursuant to the provisions set out at paragraph 105, the undertaker must pay to Lincolnshire Fire and Rescue:

- (a) £16,665 in the first year of operation of the authorised development for, or in connection with Lincolnshire Fire and Rescue’s attendance at the site familiarisation exercise facilitated by the undertaker pursuant to paragraph 105(1), such sum to be paid within 30 days following the date of the site familiarisation exercise; and
- (b) £1,530 in each subsequent year of operation of the authorised development until the date of decommissioning of Work No. 2, such sums to be paid within 30 days of the date of the annual review for that year, if in that year an annual review has taken place pursuant to paragraph 105(2).

(2) The costs payable under this sub-paragraph (1)(b) are to be Index Linked.

Arbitration

107. Any difference or dispute arising between the undertaker and Lincolnshire Fire and Rescue under this Part of this Schedule must be determined by arbitration in accordance with article 39 (arbitration).

PART 10

FOR THE PROTECTION OF NATIONAL GRID VIKING LINK LIMITED

Application

108.—(1) For the protection of Viking Link as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and Viking Link.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and Viking Link, where the benefit of this Order is transferred or granted to another person under article 33 (consent to transfer benefit of Order)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between Viking Link and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to Viking Link on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to Viking Link (but without prejudice to 115(3)b).

Interpretation

109. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“apparatus” means any electric lines, cables or electrical plant as defined in the Electricity Act 1989 and including convertor stations and sub-stations, belonging to or maintained by Viking Link together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of Viking Link for the purposes of the conveyance of electricity between Great Britain and Denmark and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” and “commencement” in this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“CUSC” means the Connection and User of Systems Code, being the contractual framework for connecting to and using the National Electricity Transmission System administered by the National Grid ESO;

“CUSC Claims” means any claim made under the CUSC against Viking Link arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector’s equipment) of a generator or interconnector party or solely as a result of the de-energisation of plant and apparatus forming part of Viking Link’s interconnector system which arises as a result of the authorised works;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and

interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by Viking Link (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for Viking Link’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“Interconnector Owner” Viking Link or such other entity which holds the licence to operate the apparatus from time to time;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus of Viking Link: construct, use, repair, , inspect, renew or remove the apparatus;

“Viking Link” means National Grid Viking Link Limited (Company Number 09075537) whose registered office is at 1-3 Strand, London, UK WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which:

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus; and/or
- (b) may in any way adversely affect any apparatus;

“undertaker” means the undertaker as defined in article 2(1) of this Order;

On Street Apparatus

110. Except for paragraphs 113 (apparatus: protection), 114 (expenses) and 115 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of Viking Link, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and Viking Link are regulated by the provisions of Part 3 of the 1991 Act.

Protective works to buildings

111. The undertaker, in the case of the powers conferred by article 16 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of Viking Link.

Acquisition of land

112.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish,

interfere with or override any easement, other interest or right and/or apparatus of Viking Link otherwise than by agreement (such agreement not to be unreasonably withheld).

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between Viking Link and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of Viking Link or affect the provisions of any enactment or agreement regulating the relations between Viking Link and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Viking Link reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Viking Link and the undertaker acting reasonably and which must be no less favourable on the whole to Viking Link unless otherwise agreed by Viking Link, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) Save where otherwise agreed in writing between Viking Link and the undertaker the undertaker and Viking Link agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Viking Link and/or other enactments relied upon by Viking Link as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by Viking Link under paragraph 113 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Apparatus: protection

113.—(1) Not less than 56 days before the commencement of any specified works, the undertaker must submit to Viking Link a plan of the works to be executed and seek from Viking Link details of the underground extent of their electricity assets.

(2) In relation to specified works the plan to be submitted to Viking Link under sub-paragraph (1) must include a method statement and describe—

- (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;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.
- (h) a ground monitoring scheme, where required.

(3) The undertaker must not commence any works to which sub-paragraph (2) applies until Viking Link has given written approval of the plan so submitted.

(4) Any approval of Viking Link required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,
- (b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraph (2) applies, Viking Link may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing

its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraph (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and Viking Link and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by Viking Link for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Viking Link will be entitled to watch and inspect the execution of those works.

(7) Where Viking Link requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Viking Link's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and Viking Link shall give notice its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(9) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to Viking Link notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances.

Expenses

114.—(1) Save where otherwise agreed in writing between Viking Link and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to Viking Link within 30 days of receipt of an itemised invoice or claim from Viking Link all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by Viking Link in, or in connection with, the inspection, or protection of any apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by Viking Link in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by Viking Link as a consequence of Viking Link exercising any compulsory purchase powers in the Order transferred to or benefitting Viking Link;
- (b) the approval of plans;
- (c) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (d) 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 Part of this Schedule.

Indemnity

115.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works 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 him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of 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 the authorised works) or property of Viking Link, or there is any interruption in any service provided, or in the supply of any goods, by Viking Link, or Viking Link becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from Viking Link the cost reasonably and properly incurred by Viking Link in making good such damage or restoring the supply; and
- (b) indemnify Viking Link for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Viking Link, by reason or in consequence of any such damage or interruption or Viking Link becoming liable to any third party other than arising from any default of Viking Link.

(2) The fact that any act or thing may have been done by Viking Link on behalf of the undertaker or in accordance with a plan approved by Viking Link or in accordance with any requirement of Viking Link or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless Viking Link fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of-

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Viking Link, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by Viking Link as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 8 (consent to transfer benefit of Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 115; and/or
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable;

(4) Viking Link must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) Viking Link must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) Viking Link must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within Viking Link’s reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of Viking Link’s control and if reasonably requested to do so by the undertaker Viking Link must provide an explanation of how the claim has been minimised, where relevant.

(7) Before carrying out any specified works the undertaker must put in place a policy of insurance with a reputable insurer the coverage and level of cover to be first agreed in writing between the undertaker and Viking Link, and evidence of such insurance to be provided on request and thereafter maintained for the duration of the carrying out of any specified works.

(8) Any dispute between the undertaker and NGET regarding the terms, cover or insured level of the insurance policy shall be resolved in accordance with paragraph 119.

Enactments and agreements

116. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between Viking Link and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Viking Link 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

117.—(1) Where in consequence of the proposed construction of any part of the authorised works, Viking Link makes requirements for the protection or alteration of apparatus under paragraph 113, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of Viking Link's undertaking and Viking Link shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Viking Link's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

118. If in consequence of the agreement reached under paragraph 112(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable Viking Link to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

119. Save for differences or disputes arising under paragraph 113, any difference or dispute arising between the undertaker and Viking Link under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Viking Link, be determined by arbitration in accordance with article 39 (arbitration).

Notices

120. Notwithstanding article 41 (service of notices), any plans submitted to Viking Link by the undertaker pursuant to paragraph 113 must be submitted using the LSBUD system (<https://lsbud.co.uk/>) or to such other address as Viking Link may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 11

FOR THE PROTECTION OF BEACON FEN ENERGY PARK LIMITED

121. The provisions of this Part apply for the protection of Beacon Fen unless otherwise agreed in writing between the undertaker and Beacon Fen.

122. In this Part –

“Beacon Fen” means Beacon Fen Energy Park Limited (company registration number 13347752) whose registered office address is at Stirling Square, 5-7 Carlton Gardens, London SW1Y 5AD;

“Beacon Fen Energy Park” means the proposed solar and battery storage park on land to the east of Sleaford, Lincolnshire and which will be subject to a development consent order

application to be made to the Secretary of State pursuant to section 37 of the Planning Act 2008 (Planning Inspectorate Case Reference: EN010151);

“Beacon Fen Works” means works to install cables, structures or other infrastructure within the Interface Area in conjunction with the proposed Beacon Fen Energy Park;

“Interface Area” means those areas hatched yellow on the Interface Area Plan; and

“Interface Area Plan” means the plan entitled Interface Area Plan and certified as the Interface Area Plan for the purposes of this Part of this Schedule.

123. The undertaker does not need to comply with the obligations in this Part where the order authorising the Beacon Fen Energy Park has expired without the authorised development having been commenced.

124. The undertaker must consult with Beacon Fen in the formulation of the proposed method of working and timing of execution of the undertaker’s works within the Interface Area, not less than 60 days prior to such works commencing, and have regard to reasonable representations received from Beacon Fen made at least 30 days prior to such works commencing.

125. The undertaker and Beacon Fen must act in good faith and use reasonable endeavours to co-operate to formulate the proposed method of working and timing of execution of works within the Interface Area (in accordance with paragraph 124 above) in a way which enables the undertaker and Beacon Fen to deliver the authorised development and the Beacon Fen Works respectively.

126. The undertaker must give to Beacon Fen not less than 30 days’ written notice of its intention to commence the construction of the undertaker’s works within the Interface Area and, not more than 14 days after completion of their construction, must give Beacon Fen written notice of the completion.

127. The undertaker must at all reasonable times during construction of the undertaker’s works in the Interface Area allow Beacon Fen and its servants and agents reasonable access to the Interface Area and all reasonable facilities for inspection of the works within the Interface Area.

128. In the event that Beacon Fen notifies the undertaker that it no longer has an interest in the Interface Area or no longer proposes to carry out works in the Interface Area, the undertaker does not need to comply with the obligations in paragraphs 124 to 127 above.

129. Any difference or dispute arising between Beacon Fen and the undertaker must, unless otherwise agreed in writing between Beacon Fen and the undertaker, be determined by arbitration in accordance with article 39 (arbitration) of the Order.

PART 12

FOR THE PROTECTION OF TRITON KNOLL OFTO LIMITED

Application

130. For the protection of Triton Knoll as referred to in these Protective Provisions the following provisions have effect, unless otherwise agreed in writing between the undertaker and Triton Knoll.

Interpretation

131. In these Protective Provisions —

“1991 Act” means the New Roads and Street Works Act 1991;

“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of Triton Knoll to enable Triton Knoll to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by Triton Knoll together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of Triton Knoll for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of these Protective Provisions includes the use and maintenance of the authorised works and construction of any works authorised by these Protective Provisions;

“commence” and “commencement” in these Protective Provisions shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by Triton Knoll (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for Triton Knoll’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities

set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Triton Knoll: construct, use, repair, alter, inspect, renew or remove the apparatus;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which:

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 135(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 135(2) or otherwise;

“Triton Knoll” means Triton Knoll OFTO Limited;

“Triton Knoll access track” means the area of the Order land comprised of plots 64, 66A, 67A, 67B, 67C, 67D, 68A, 68B, 68D, 68E, 90, 97, 273, 274, 301, 317 and 349 contained in the book of reference to the Order connecting the A17 to Doubletwelves Drove required in connection with Work No.10;

“undertaker” means the undertaker as defined in article 2(1) of this Order;

On Street Apparatus

132. Except for paragraphs 137 (retained apparatus: protection), 138 (expenses) and 139 (indemnity) of these Protective Provisions which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of Triton Knoll, the other provisions of

these Protective Provisions do not apply to apparatus in respect of which the relations between the undertaker and Triton Knoll are regulated by the provisions of Part 3 of the 1991 Act.

Protective works to buildings

133. The undertaker, in the case of the powers conferred by article 16 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of Triton Knoll.

Acquisition of land

134.—(1) Save for in respect of the Triton Knoll access track (to which the restrictions of this paragraph do not apply for the avoidance of doubt), the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of Triton Knoll otherwise than by agreement (such agreement not to be unreasonably withheld).

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between Triton Knoll and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of Triton Knoll or affect the provisions of any enactment or agreement regulating the relations between Triton Knoll and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Triton Knoll reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Triton Knoll and the undertaker acting reasonably and which must be no less favourable on the whole to Triton Knoll unless otherwise agreed by Triton Knoll, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and Triton Knoll agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Triton Knoll and/or other enactments relied upon by Triton Knoll as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by Triton Knoll under paragraph 137 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

135.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under these Protective Provisions and any right of Triton Knoll to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of Triton Knoll in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Triton Knoll advance written notice of that requirement, together with a plan 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 Triton Knoll reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative

apparatus and afford to Triton Knoll to its reasonable satisfaction (taking into account paragraph 136(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by 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, Triton Knoll must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour 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 Triton Knoll to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under these Protective Provisions must be constructed in such manner and in such line or situation as may be agreed between Triton Knoll and the undertaker.

(5) Triton Knoll must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to Triton Knoll of any such facilities and rights as are referred to in sub-paragraph (2) or (3), 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 these Protective Provisions.

Facilities and rights for alternative apparatus

136.—(1) Where, in accordance with the provisions of these Protective Provisions, the undertaker affords to or secures for Triton Knoll facilities and rights in land for the construction, use, maintenance and protection 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 Triton Knoll and must be no less favourable on the whole to Triton Knoll than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by Triton Knoll (acting reasonably).

(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 Triton Knoll 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 Triton Knoll as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

137.—(1) Not less than 56 days (or such lesser period agreed by Triton Knoll, acting reasonably) before the commencement of any specified works the undertaker must submit to Triton Knoll a plan of the works to be executed including a ground monitoring scheme and seek from Triton Knoll details of the underground extent of their electricity assets.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to Triton Knoll under sub-paragraph (1) must include a method statement and describe—

- (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;

- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
 - (f) any intended maintenance regimes. regimes;
 - (g) an assessment of risks of rise of earth issues; and
 - (h) a methodology to demonstrate that all such works will have no adverse effect on the rating of the apparatus.
- (3) The undertaker must not commence any works to which sub-paragraph (1) or (2) apply until Triton Knoll has given written approval of the plan so submitted.
- (4) Any approval of Triton Knoll required under sub-paragraph (3)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (7) or (8); and,
 - (b) must not be unreasonably withheld or delayed.
- (5) In relation to any work to which sub-paragraph (1) or (2) apply, Triton Knoll may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.
- (6) Works executed under sub-paragraph (2) must be executed in accordance with the plan, submitted under sub-paragraph (1), as approved or as amended from time to time by agreement between the undertaker and Triton Knoll and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by Triton Knoll for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Triton Knoll will be entitled to watch and inspect the execution of those works.
- (7) Where Triton Knoll requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Triton Knoll's reasonable satisfaction prior to the commencement of any authorised development (or any relevant part thereof) (unless otherwise agreed by Triton Knoll, acting reasonably) for which protective works are required and Triton Knoll must give notice its requirement for such works as soon as reasonably practicable and in any event within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).
- (8) If Triton Knoll in accordance with sub-paragraphs (5) or (7) 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 130 to 132 and 134 to 136 apply as if the removal of the apparatus had been required by the undertaker under paragraph 136(2).
- (9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.
- (10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to Triton Knoll notice as soon as is reasonably practicable and a plan of those works. and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances.
- (11) Following completion of the work the undertaker shall submit a written report demonstrating that the works have had no adverse effect on the rating of the apparatus.
- (12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker will implement an appropriate ground mitigation scheme except that Triton Knoll retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs pursuant to paragraph 139.

Expenses

138.—(1) Save where otherwise agreed in writing between Triton Knoll and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to Triton Knoll within 40 days of receipt of an itemised invoice or claim (accompanied by supporting evidence) from Triton Knoll all charges, costs and expenses reasonably and properly incurred by Triton Knoll in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by Triton Knoll in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by Triton Knoll as a consequence of Triton Knoll;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 135(3); or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting Triton Knoll;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (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;
- (f) the supervision and surveillance of all specified works by Triton Knoll and its engineers including the cost of travel; and
- (g) 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 these Protective Provisions.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of these Protective Provisions and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of these Protective Provisions—

- (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 situated,

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 paragraph 143 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under these Protective Provisions 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 Triton Knoll by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will 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 will not 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 pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to Triton Knoll in respect of works by virtue of sub-paragraph (1) will, 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 Triton Knoll 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.

Indemnity

139.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by these Protective Provisions or in consequence of the construction use maintenance or failure of any of the authorised works 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 him) in the course of carrying out such works, including without limitation works carried out by the undertaker under these Protective Provisions 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 the authorised works) or property of Triton Knoll, or there is any interruption in any service provided, or in the supply of any goods, by Triton Knoll, or Triton Knoll becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from Triton Knoll the cost reasonably and properly incurred by Triton Knoll in making good such damage or restoring the supply; and
- (b) indemnify Triton Knoll for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Triton Knoll, by reason or in consequence of any such damage or interruption or Triton Knoll becoming liable to any third party.

(2) The fact that any act or thing may have been done by Triton Knoll on behalf of the undertaker or in accordance with a plan approved by Triton Knoll or in accordance with any requirement of Triton Knoll as a consequence of the authorised works or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless Triton Knoll fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Triton Knoll, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by these Protective Provisions carried out by Triton Knoll as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 33 (consent to transfer benefit of Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of these Protective Provisions including this paragraph 139; and/or
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) Triton Knoll must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must unless payment is required in connection with a statutory compensation scheme be made without first consulting the

undertaker and considering their representations (such representations not to be unreasonably withheld or delayed).

(5) Triton Knoll must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) Triton Knoll must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity provisions under this paragraph apply where it is within Triton Knoll's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of Triton Knoll's control and if reasonably requested to do so by the undertaker Triton Knoll must provide an explanation of how the claim has been minimised, where relevant.

Enactments and agreements

140. Save to the extent provided for to the contrary elsewhere in these Protective Provisions or by agreement in writing between Triton Knoll and the undertaker, nothing in these Protective Provisions affects the provisions of any enactment or agreement regulating the relations between the undertaker and Triton Knoll 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

141.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or Triton Knoll requires the removal of apparatus under paragraph 135(2) or Triton Knoll makes requirements for the protection or alteration of apparatus under paragraph 137, the undertaker shall use its reasonable endeavours to co-ordinate the execution of any works (which are subject to these Protective Provisions) in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of Triton Knoll's undertaking and Triton Knoll shall use its reasonable endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Triton Knoll's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

142. If in consequence of the agreement reached in accordance with paragraph 134(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable Triton Knoll to maintain or use the apparatus no less effectively than was possible before such obstruction,

Arbitration

143. Save for differences or disputes arising under paragraph 135(2), 135(4) 136(1) and 137, any difference or dispute arising between the undertaker and Triton Knoll under these Protective Provisions must, unless otherwise agreed in writing between the undertaker and Triton Knoll, be determined by arbitration in accordance with article 39 (arbitration).

Notices

144. Notwithstanding article 41 (service of notices), any plans submitted to Triton Knoll by the undertaker pursuant to paragraph 137 must be submitted to Triton Knoll at its registered office or to such other address as Triton Knoll may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Interpretation**1. In this Schedule—**

“appeal documentation” means a written statement of appeal which describes the nature of the differences between the parties, the factual issues, the undertaker’s case and evidence relied on;

“working day” means a day other than a Saturday or Sunday which is not Christmas Day, Good Friday or a public holiday or bank holiday under section 1 of the Banking and Financial Dealings Act 1971(a);

“relevant authority” means any authority or body named in any of the provisions of this Order and whose consent, agreement or approval is sought; and

“requirement consultee” means any body or authority named in a requirement as a body to be consulted by the relevant planning authority in discharging that requirement.

Applications made under provisions of this Order

2.—(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement the relevant planning authority must give notice to the undertaker of its decision on the application within a period of ten weeks beginning with the later of—

- (a) the day immediately following that on which the application is received by the authority;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 3; or
- (c) such longer period that is agreed in writing by the undertaker and the relevant planning authority.

(2) Subject to paragraph 4, in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (1), the relevant planning authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Any application made to the relevant planning authority pursuant to sub-paragraph (1) must include a statement to confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement and if it will then it must be accompanied by information setting out what those effects are.

(4) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement included in this Order and the relevant planning authority does not determine the application within the period set out in sub-paragraph (1) and is accompanied by a report pursuant to sub-paragraph (3) which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement then the application is to be taken to have been refused by the relevant planning authority at the end of that period.

(a) 1971 c. 80.

Further information and consultation

3.—(1) In relation to any application to which this Schedule applies, the relevant planning authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that the relevant planning authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required, the relevant planning authority must, within 20 working days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within 10 working days of receipt of the application, and must notify the undertaker in writing specifying any further information the relevant planning authority considers necessary or that is requested by the requirement consultee within 10 working days of receipt of such a request and in any event within 20 working days of receipt of the application (or such other period as is agreed in writing between the undertaker and the relevant planning authority).

(4) In the event that the relevant planning authority does not give notification as specified in sub-paragraph (2) or (3) it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

(5) Where further information is requested under this paragraph in relation to part only of an application, that part is to be treated as separate from the remainder of the application for the purposes of calculating time periods in paragraph 2 and paragraph 3.

Appeals

4.—(1) The undertaker may appeal in the event that—

- (a) the relevant planning authority refuses an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions;
- (b) the relevant planning authority is deemed to have refused an application pursuant to paragraph 2(4);
- (c) on receipt of a request for further information pursuant to paragraph 3 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or
- (d) on receipt of any further information requested, the relevant 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 steps to be followed in the appeal process are as follows—

- (a) 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 relevant planning authority and any requirement consultee;
- (b) the Secretary of State must appoint a person to determine the appeal as soon as reasonably practicable and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person's attention should be sent;
- (c) the relevant planning authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within 10 working days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;

- (d) the undertaker may make any counter-submissions to the appointed person within 10 working days of receipt of written representations pursuant to sub-paragraph (c);
- (e) the appointed person must make their decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within 30 working days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d); and
- (f) the appointment of the person pursuant to sub-paragraph (b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal they must, within five working days of the appointed person's appointment, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the relevant party to the appointed person and the other appeal parties on the date specified by the appointed person (the "specified date"), and 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 10 working days of the specified date, but otherwise the process and time limits set out in sub-paragraphs (c) to (e) of sub-paragraph (2) apply.

(5) The appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the relevant 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 them in the first instance.

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

(7) 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 them that there is sufficient material to enable a decision to be made on the merits of the case.

(8) The decision of the appointed person on an appeal is to be final and binding on the parties, unless proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person pursuant to this Schedule, it is to be deemed to be an approval for the purpose of Schedule 2 (requirements) as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties 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 advice on planning appeals and award costs published in Planning Practice Guidance: Appeals (March 2014) or any circular or guidance which may from time to time replace it.

Fees

5.—(1) Where an application is made to the relevant planning authority for a discharge, a fee is to apply and must be paid to the relevant planning authority for each application.

(2) The fee payable for each application under sub-paragraph (1) is as follows—

- (a) a fee of £2,535 for the first application for the discharge of each of the requirements 6, 7, 8, 11, 12, 13, 14, 15, 16, 18, 19, and 20;
 - (b) a fee of £578 for each subsequent application for the discharge of each of the requirements listed in paragraph (a) and any application under requirement 5 in respect of the requirements listed in paragraph (a); and
 - (c) a fee of £145 for any application for the discharge of—
 - (i) any other requirements not listed in paragraph (a);
 - (ii) any application under requirement 5 in respect of requirements not listed in paragraph (a); and
 - (iii) any approval required by a document referred to by any requirement or a document approved pursuant to any requirement.
- (3) Any fee paid under this Schedule must be refunded to the undertaker within four weeks of—
- (a) the application being rejected as invalidly made; or
 - (b) the relevant planning authority failing to determine the application within ten weeks from the relevant date in paragraph 2(1) unless—
 - (i) within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application; or
 - (ii) a longer period for determining the application has been agreed pursuant to paragraph 2(1) of this Schedule.

EXPLANATORY NOTE

(This note is not part of the Regulations)

This Order authorises Ecotricity (Heck Fen Solar) Limited (referred to in this Order as the undertaker) to construct, operate, maintain and decommission a ground mounted solar photovoltaic generating station with a gross electrical output capacity over 50 megawatts and associated development. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 38 of this Order (documents and plans to be certified) may be inspected free of charge during working hours at North Kesteven District Council and Boston Borough.