Planning Inspectorate

The Planning Act 2008

Stonestreet Green Solar

Inspector's Report

of Findings and Conclusions

and

Recommendation to the Secretary of State for

Energy Security and Net Zero

Examining Authority

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August 2025

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OVERVIEW

File Ref: **EN010135**

The application, dated 11 June 2024, was made under section 37 of the Planning Act 2008 and was received by The Planning Inspectorate on 11 June 2024.

The applicant is EPL 001 Ltd.

The application was accepted for examination on 9 July 2024.

The examination of the application began on 19 November 2024 and was completed on 19 May2025.

The proposed development comprises the construction, operation, maintenance and decommissioning of ground mounted solar photovoltaic (PV) panel arrays, on-site battery storage and associated infrastructure. The proposal includes associated infrastructure which includes, but is not limited to, access provision and an underground 320kV electrical connection of approximately 2km to the Sellindge National Grid Substation.

Summary of Recommendation:

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

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1. INTRODUCTION

1.1. BACKGROUND TO THE EXAMINATION

1.1.1. An application (the application) for Stonestreet Green Solar (the proposed development) reference EN010135 was submitted by EPL 001 Limited (the applicant) to the Planning Inspectorate (the Inspectorate) on 11 June 2024 under section 31 (s31) of the Planning Act 2008 (PA2008) and accepted for examination under section 55 (s55) of the PA2008 on 9 July 2024 [PD-001]. This report sets out the Examining Authority's (ExA) findings, conclusions and recommendations to the Secretary of State for Energy Security and Net Zero (SoSENZ).

1.1.2. The legislative tests for whether the proposed development is a Nationally Significant Infrastructure Project (NSIP) were considered by the Secretary of State (SoS) for the Ministry of Housing, Communities and Local Government (MHCLG) in its decision to accept the application for examination in accordance with s55 of the PA2008 [PD-001]

1.1.3. The proposed development includes the construction of a generating station. As the proposed generating station is in England, it does not generate electricity from wind, is not an offshore generating station and its capacity is more than 50 megawatts (MW), the proposed development falls within s15(2) of the PA2008. As such, the proposed development requires development consent in accordance with s31 of the PA2008.

1.1.4. The Examination Library (EL) provides a record of all application documents and submission to the examination, each of which is given a unique reference number e.g. [APP-001]. The reference numbers are used throughout this report and hyperlinks are included to allow the reader to access them directly.

1.1.5. This report does not contain extensive summaries of the documents and representations received. Readers are referred to relevant material using linked EL references. Full regard has been had to all such material and to all important and relevant matters arising from it in all conclusions drawn by the ExA and the recommendation made in this report.

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

1.2.1. On 10 July 2024, Graham Sword was appointed as the ExA for the application under s61 and s65 of the PA2008 [PD-003A].

1.3. THE APPLICATION

LOCATION OF THE PROPOSED DEVELOPMENT

1.3.1. The site lies within the Kent County Council (KCC) and Ashford Borough Council (ABC) administrative areas and is wholly in England, the location of which is illustrated in Figure 1.

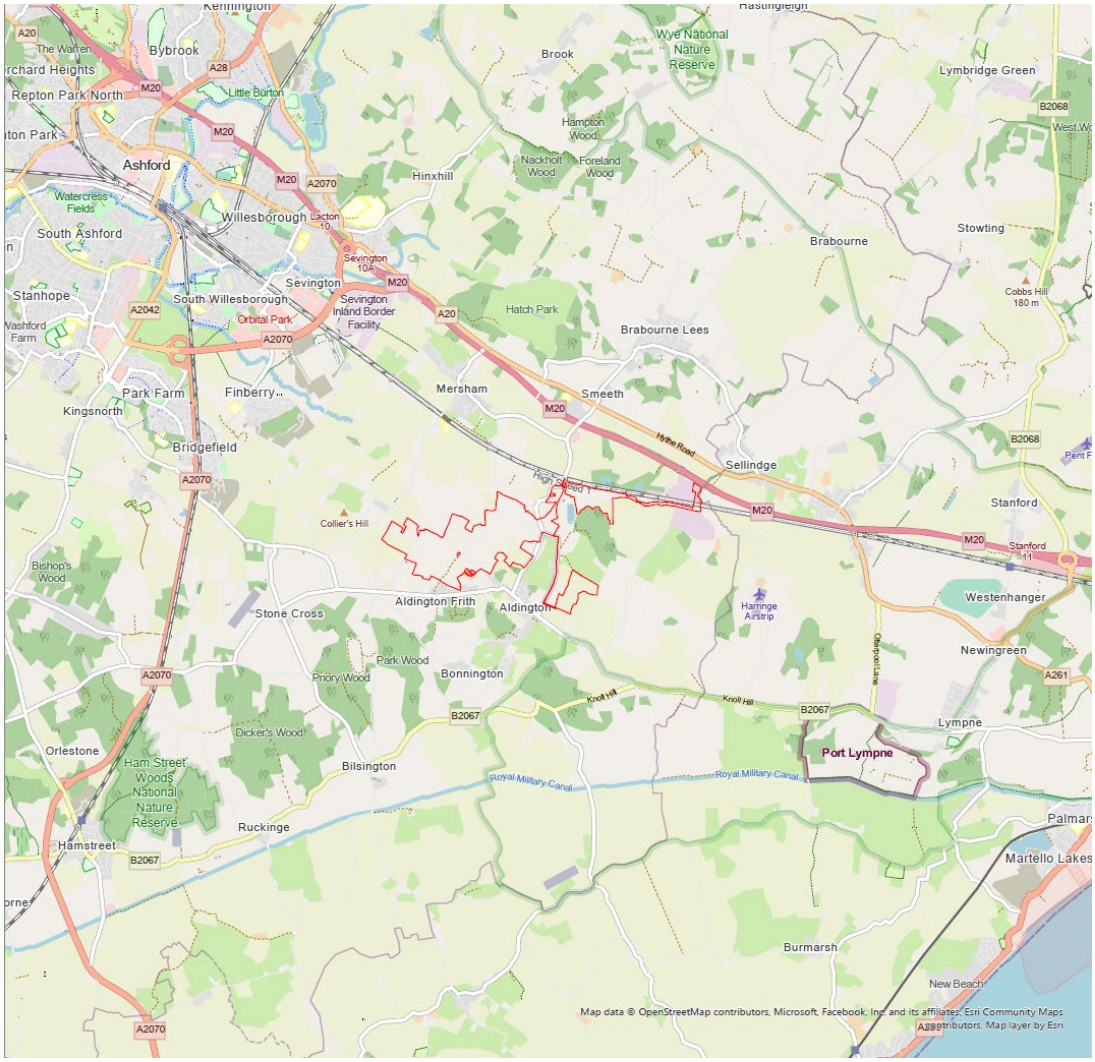

Figure 1: Site location context (Source: Environmental Statement Volume 3: Figures Chapter 1: Introduction Figures 1.1 [APP-043])

1.3.2. The order limits of the proposed development are shown in Figure 2 and in the final version of the Land Plans [APP-007].

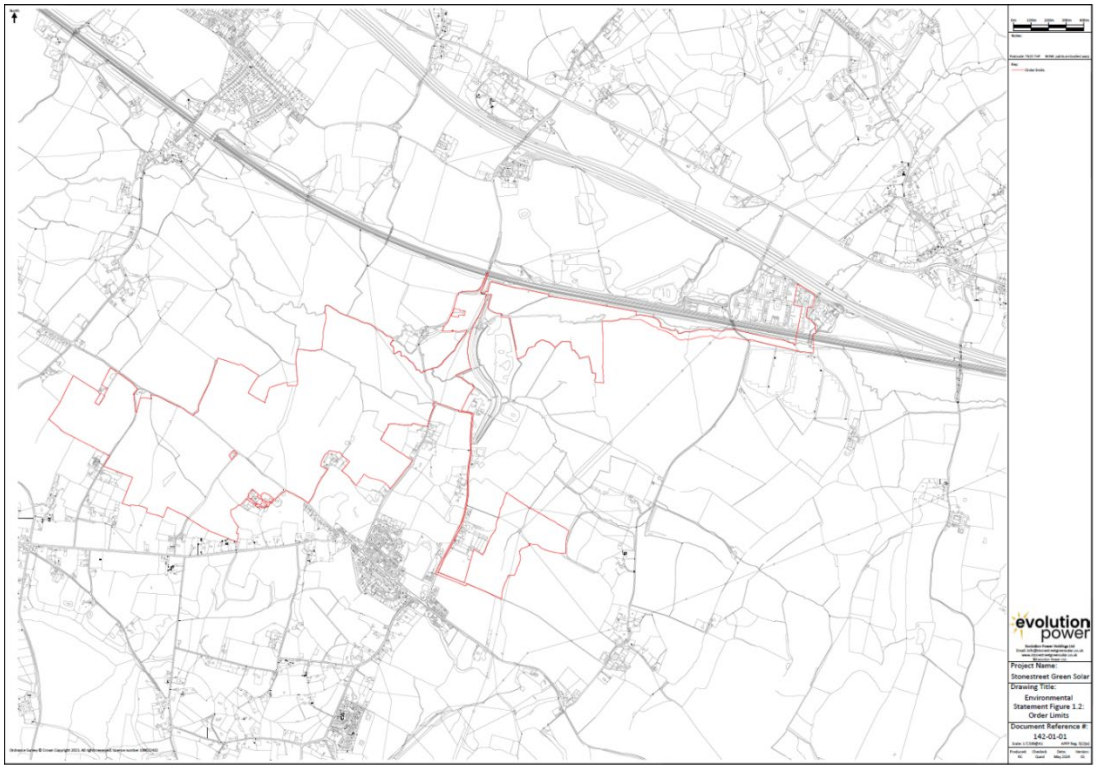

Figure 2: Order Limits Plan (Source: Site Location Plan [APP-043]

1.3.3. Chapter 2 of the Environmental Statement "Site and Context" [REP1-016] includes a description of the surrounding area. In summary the characteristics of the surrounding area are:

- Primarily agricultural fields for arable crops and grazing delineated by hedgerows and tree belts with a number of unnamed drains;
- The village of Aldington lies to the south, west and east of the fields where the solar arrays are proposed with residential properties positioned along the roads that radiate out from Aldington;
- The East Stour River flows in an east to west direction through the Northern and Central area of the site. The Aldington Flood Relief Area (AFRA) is designed to store (attenuate) fluvial flows from the East Stour River during periods of fluvial flooding to reduce the flood risk downstream; and
- The High Speed 1 (HS1) railway line alongside Network Rails (NR) railway line run in an east/ west manner along the northern boundary of the site with the existing Sellindge Substation immediately beyond the railway lines forming the most north easterly part of the application site.

1.3.4. Aside from the existing National Grid transmission lines connecting the Sellindge Substation across the south eastern area of the site, there are no other existing built development structures within the application site. There is an existing UK Power Networks (UKPN) 11kV substation and access track

adjacent to the northern part of the application site which does not form part of the project.

1.3.5. There are a number of public rights of way (PRoW) that cross the application site. The site is dissected by Bank Road and Roman Road which run in a north west/ south east manner through the application site whilst Calleywell Lane and Evegate Mill Lane run in a north/ south manner through the application site.

1.3.6. There are no listed buildings within the application site but it does contain one designated heritage asset comprising the crash site of the Second World War aircraft Messerschmitt Bf109E-4 (HER DKE22255) which crashed on or near the Site (in the vicinity of Handen Farm). The crash site is site of Protected Military Remains ('PMR'). There are a number of designated heritage assets in the vicinity including listed buildings and sites of archaeological interest. These issues will be explored in the Heritage Section at Chapter 3.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

1.3.7. The proposed development is for the construction, operation, maintenance and decommissioning of ground mounted solar photovoltaic (PV) panel arrays, on-site battery storage and associated infrastructure. The proposal includes associated infrastructure which includes, a Grid Connection via a single 132kV cable circuit, itself consisting of three smaller cables which will run approximately 2 kilometres (‘km’) underground from the Project Substation to Sellindge Substation (paragraph 2.2.2 Grid Connection Statement [APP-148]).

1.3.8. The proposed development works comprise:

- Work No. 1 – a ground mounted solar PV generating station with a gross electrical output capacity of over 50MW including solar PV panels and mounting structures;
- Work No. 2 – balance of system and battery and energy storage system (BESS) including inverter stations, BESS, DC-DC converters, intermediate substations, fire hydrants, bunding and other water retention features; and acoustic barriers;
- Work No. 3 – project substation and associated works project substation, including switch room and control room buildings, circuit breakers, 132kV bus-bars, pad mounted transformers, earthing circuits, office facilities (to include welfare unit, water closet, cesspit) and ancillary equipment; monitoring and control systems for Work No.1, Work No.2 and Work No.3; car parking; metal palisade security fencing with gates; access track with separate access provision; geotechnical works and retaining structures; drainage and water retention system works; acoustic barriers; and two spare parts storage containers; ;
- Work No. 4 – works to lay high voltage electrical cables and extend Sellindge Substation to facilitate grid connection including: Laying of electrical cables to connect Work No.3 to Sellindge Substation, including

tunnelling, boring, open cut trenching and horizontal directional drilling works for trenchless crossings;
A) Works to allow electrical cable crossings of non-navigable rivers, other watercourses and drains, permissive paths, public rights of way and other highways; Works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains;
B) Crossing of Network Rail infrastructure either-
I) Using existing electrical ducts; or
II) Through the installation of new cable ducts;
C) Laying down of internal access tracks, ramps, means of access, footpaths, roads, landscaping and vegetation management, signage, information boards and temporary secured construction laydown areas; and
D) Extension of the Sellindge Substation including –
I) Installation of new or amended structure, including outdoor air insulated switchgear or indoor gas insulated switchgear, circuit breakers, disconnectors, earth switches, bus-bars, steel supports and ancillary electrical infrastructure;
II) Laying down of access tracks, ramps, means of access, footpaths and roads;
III) Construction of a retaining wall, landscaping and vegetation management, signage, information boards and temporary construction laydown areas;
IV) Fencing, gates, boundary treatment and other means of enclosures;
V) Provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, cameras, and communication infrastructure; and
VI) Drainage works.
;

- Work No. 5 – associated works including –
  A. Fencing, gates, boundary treatment and other means of enclosure;
  B. Provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, a fence detection system, cameras, weather stations, and communication infrastructure;
  C. Laying of electrical cables, including but not limited to electrical cables connecting Work No.1, Work No.2 and Work No.3 including works to allow electrical cables crossings of non-navigable rivers, other watercourses and drains, permissive paths, public rights of way and other highways;
  D. Works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains
  E. Laying down of internal access tracks (including fire access tracks), improvement of existing tracks, ramps, means of access, and roads, including construction signage and information boards;
  F. Provision of water tanks and pipework connection to hydrants located at inverter stations where BESS installed; and
  G. Equipment and materials storage during construction and decommissioning phases.
  ;

- Work No. 6 – works to provide site access including creation of accesses from the highway, creation of visibility splays, upgrading and repairing of existing accesses; and highway improvements;
- Work No. 7 – construction and decommissioning works including compound areas comprising hardstanding, turning and loading areas, car parking, offices/ welfare facilities, storage areas, waste skips areas, solar PV panel testing area, bunded area for storage of fuels and hydrocarbons, security fencing and hoarding and an internal haulage road comprising temporary permeable ground protection mats including passing bays, means of access and signage;
- Work No. 8 - works to create, enhance and maintain green infrastructure, boundary treatments and crossing structures; including:

1.3.9. **Site Wide Works –** further associated development in connection with and in addition to Work Nos. 1 to 8, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the authorised development and which are within the Order limits and fall within the scope of work:

- Site preparation works and site clearance, including vegetation removal;
- Earthworks;
- Remediation of contamination;
- Alteration to locations of services and utilities infrastructure;
- Works for the benefit or protection of land affected by the proposed development;
- Landscaping and biodiversity mitigation and enhancement measures including planting to the extent not undertaken under Work No.8;
- Sustainable drainage system ponds, depression storage, runoff outfalls, general drainage and irrigation infrastructure, including bunds, embankments, trenching and swales, systems and improvements, maintenance or extension to existing drainage and irrigation systems;
- Laying down of public rights of way diversions, signage and information boards and extinguishment of existing public rights of way; and
- Works to alter, maintain and repair streets and access roads, including relocation, removal or provision of street signage and furniture in, under or above a street and works to facilitate traffic management.

1.3.10. As submitted the application for the proposed development comprised Work No.1 for which development consent is required, as a NSIP and Associated Development under Works Nos. 2 to 8 and including Site Wide Works.

1.3.11. An element of the illustrative layout is shown below in Figure 3 (extract from the Illustrative Landscape Drawings - Not for Approval (Version 3) [REP3-004] to enable the reader to have a feel for what could be implemented if the Proposed Application was approved.

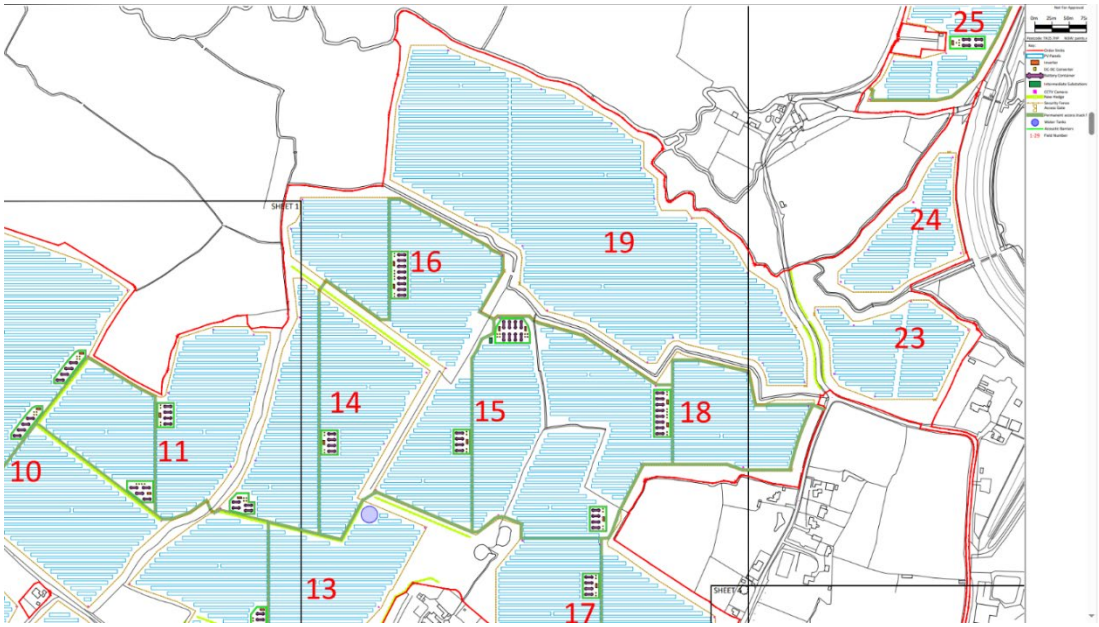

Figure 2: Illustrative plan of Proposed Development (with key added)

RELEVANT PLANNING HISTORY

1.3.12. The applicant has carried out a planning history search within 8.5 kilometres (km) radius of the Order limits. The applicant notes that as the application site is largely agricultural the relevant planning history within the Order limits, especially within the numbered fields, is limited. The relevant planning applications the applicant has considered can be found in Tables 17.5 and 17.6 in Chapter 17 of the ES – Cumulative Assessment [APP-041].

1.4. THE EXAMINATION

LOCAL AUTHORITIES

1.4.1. The application site is within the administrative boundaries of Ashford Borough Council (ABC) and Kent County Council (KCC). Both local authorities participated in the examination and submitted Local Impact Reports (LIR) and entered into Statements of Common Ground (SoCG) with the applicant.

RELEVANT REPRESENTATIONS

1.4.2. 306 Relevant Representations were received prior to the start of the examination. 5 of these were subsequently withdrawn by parties affected by CA/TP by the close of the examination.

START OF THE EXAMINATION

1.4.3. The Preliminary Meeting (PM) took place on 19th November 2024 and recordings of the event can be found at [EV2-002]. 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-005], dated 28 November 2024.

1.4.4. The examination began on 19 November 2024 and concluded on 19 May 2025. The principal components of and events around the examination can be seen in the examination timetable and are summarised below. No party requested to join or leave the examination.

PROCEDURAL DECISIONS

1.4.5. The procedural decisions taken by the ExA are recorded in the EL referenced [PD-]. They detail the ExA's decisions relating to the procedure of the examination and did not bear on the ExA's consideration of planning merits of the proposed development. Further, they were generally complied with by the applicant and relevant IPs.

1.4.6. They included the Rule 6 letter [PD-004] informing IPs of the PM and the Rule 8 [PD-005] letter confirming the examination timetable as referenced above. They also included the ExA's various written questions, and the issue of a Rule 17 letter. The details of these are further discussed below.

STATEMENTS OF COMMON GROUND

1.4.7. By the end of the examination, the following bodies had concluded and signed Statements of Common Ground (SoCG) with the applicant:

- Ashford Borough Council [REP8-016] areas of disagreement noted and explored in the relevant planning matters sections);
- Natural England [REP4-021] ;
- National Highways [REP3-036];
- Environment Agency [REP4-015] (entitled 'draft' but was signed by both parties);
- Historic England [REP4-017]
- National Grid [REP8-020]
- Network Rail [REP8-021].

1.4.8. An unsigned SoCG was submitted at D8 with Kent Country Council [REP8-018]. There remained outstanding matters between the two parties that could not be agreed by the close of the examination and these issues will be explored in the relevant planning matters sections.

1.4.9. The signed SoCGs have been taken fully into account by the ExA in all relevant sections of this report. The weight to be afforded to unsigned SoCGs in particular contexts is considered in the relevant sections of this report.

WRITTEN QUESTIONS

1.4.10. The ExA asked 2 rounds of written questions:

- ExQ1 [PD-006] 10 January 2025; and
- ExQ2 [PD-008] 25 March 2025

1.4.11. The ExA made the following requests for further information and comments under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010:

- Clarification on the SoCG and Statement of Commonality [PD-010] 13 May 2025

SITE INSPECTIONS

1.4.12. The ExA carried out the following Unaccompanied Site Inspections (USIs):

- USI1 [EV1-001], 11 July 2024 to visit publicly accessible locations in the vicinity of the application site and along the local highway network to gain an understanding of the site, highway network and the site surrounds;
- USI2 [EV1-002], 26 September 2024 to visit publicly accessible locations in the vicinity of the application site and along the local highway network to gain an understanding of the access requirements, potential impacts on the landscape setting and character, as well as any potential impacts on the setting of heritage assets in close proximity to the Order Limits; and
- USI3 [EV1-003], 24 February 2025 to visit publicly accessible locations in the vicinity of the application site, particularly in regard with the potential impact on PROWs.

1.4.13. The ExA did not carry out any Accompanied Site Inspections (ASIs).

1.4.14. I have had regard to the information and impressions obtained during my site inspections in all relevant sections of this report.

HEARINGS

1.4.15. Hearings were held under s91 PA2008 into specific issues (ISHs), under s 92 PA2008 into the compulsory acquisition of land and rights (CAHs) and under s93 PA2008 providing for open floor hearings (OFHs).

1.4.16. The following ISHs were held:

- ISH1 relating to the draft Development Consent Order 20 November 2024, recordings are available at [EV5-001 and EV5-003]
- ISH2 relating to the impact of construction traffic 21 November 2024, recordings are available at [EV6-001 and EV6-003];

- ISH3 relating to the potential impact on PRoW network in and surrounding the proposed site, recordings are available at [EV8-002 and EV8-004]; and
- ISH4 relating to the potential impact of the Battery Energy Storage Systems located on the proposed site, recordings are available at [EV9-002 and EV9-004].

1.4.17. The following CAHs were held:

- CAH1 on the general case for CA 20 November 2024 recordings are available at [EV4-001 and EV4-003]; and
- CAH2 on an update on the general case, plus an opportunity for Network Rail to outline its concerns in relation for CA 26 February 2025 recordings are available at [EV10-002].

1.4.18. The following OFHs were held:

- OFH1 on the 19 November 2024. Recordings are available at [EV3-001]; and
- OFH2 on the 25 February 2025. Recordings are available at [EV11-001]

1.4.19. All hearings were held at the Ashford International Hotel, Ashford, Kent and were conducted on a blended basis to enable on-line access as well as in-person participation. All IPs were provided with an opportunity to be heard on any relevant subject matter that they wished to raise.

1.5. CHANGES TO THE APPLICATION

1.5.1. Changes to the key application documents, including the wording of the dDCO, were submitted and updated during the examination. The changes sought to address points raised by Interested Parties (IP) and the ExA and to update or provide additional information resulting from changes and discussions that 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 Application Guide submitted at D8 [REP8-002]. This provides a guide to all documents submitted as part of the Application and was updated at each deadline when new or revised documents were submitted. It provides a full record of all documentation submitted into the examination.

CHANGE REQUEST

1.5.3. The applicant did not submit a formal change request during the examination.

1.6. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

1.6.1. Whilst the applicant was questioned during the examination there were no Planning Obligations pursuant to s106 of the Town and Country Planning Act 1990 (as amended) (the TCPA) were submitted by them before the end of the examination:

S106 agreements

1.6.2. ABC submitted a proposed S106 in relation to the PRoW network at D8 [REP8-030] and this is dealt with in Chapter 3 Transport and PRoW section.

1.7. OTHER CONSENTS

The applicant set out in its 'Other Consents and Licences Report' [REP4-008] detail of the consents and licences that it considers would be, or could be, required during the construction and operation of the proposed development in addition to the DCO the subject of this report. In summary these consents relate to:

- Flood Risk Activity Permits;
- Internal Drainage Board Land Drainage Consent;
- Water Discharge Activity Permit;
- Licence under the Protection of Military Remains Act 1986;
- Electricity Generation Licence;
- Bilateral Connection Agreement;
- Section 61 Control of Pollution Act Consent;
- Protected Species Licenses;
- Access Licenses;
- Traffic Regulation Orders; and
- Health and Safety related consents

1.8. STRUCTURE OF THIS REPORT

1.8.1. The structure of the remainder of this report is as follows:

- **Chapter 2** identifies how the application is to be determined and summaries the key legislation and policy context that applies to the decision.
- **Chapter 3** sets out the findings and conclusions in relation to the individual planning issues that arose from the Application and during the Examination.
- **Chapter 4** summarises considerations arising from Habitats Regulations Assessment (HRA).
- **Chapter 5** sets out the balance of planning considerations arising from Chapters 2, 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.

1.8.2. This report is supported by the following appendices:

- **Appendix A** – Abbreviations
- **Appendix B** – Legislation and Policy.
- **Appendix C** – The Recommended DCO

2. HOW THE APPLICATION IS DETERMINED

2.1. INTRODUCTION

2.1.1. This chapter identifies the key and most relevant legal and policy context for the application. A full list of legislation considered relevant to this application is found at Appendix B to this report. In this chapter, I outline the legislation and policies I have considered and applied in carrying out the examination and in making my findings and recommendations to the SoS. Each chapter in the ES contains a section setting out of the overarching environmental legislation, policy and guidance for each topic.

2.1.2. The LIRs [REP1-078] and [REP1-087] amongst other things, set out the Local Authorities' position on the applicable development plan policies and other local strategies.

2.2. LEGISLATION AND POLICY

2.2.1. This section identifies the key legislation and policy that the ExA considers to be important and relevant to its findings and recommendations to the SoS. More detail is provided in Appendix B to this report.

PLANNING ACT 2008

2.2.2. The application is for a DCO in respect of development that falls within the definition of energy generating stations set out in s15(2) of the PA2008. The proposed development would primarily involve the provision of solar arrays for generating electricity. However, it would also include a BESS as well as an import/ export connection to the National Grid via a high voltage grid connection cable to the substation at Sellindge Substation.

2.2.3. The Planning Act 2008 (PA2008) provides a different basis for decision-making for Nationally Significant Infrastructure Project (NSIP) applications where a relevant National Policy Statement (NPS) (s 104) has effect from that where no NPS has effect (s105). This is an application in respect of which there are more than one NPS in effect.

2.2.4. I have considered the statutory basis for examination, reporting and decision-making and have concluded that this must proceed under PA2008 s104 (decisions in cases where NPSs have effect). There are no substantial elements of the proposed development that fall outside the remit of relevant NPS policies and so PA2008 s105 (decisions in cases where no NPSs have effect) is not relevant.

2.2.5. A NPS has effect once it has been designated as such by Parliament. It continues then to have effect until it is withdrawn. In the process of withdrawal, a draft replacement NPS may include transitional provisions which clarify how an application prepared under a withdrawn NPS is to be managed moving forward. Draft (including replacement) NPSs do not have effect until they in turn are designated, and then only subject to any transitional provisions that may apply. However, the content of draft NPSs is a matter that is capable of forming an important and relevant matter (PA2008

s104(2)(d)) to be considered by the Secretary of State for Energy Security and Net Zero (SoSESNZ) in their decision.

2.2.6. Section 104(2) of the PA2008 sets out the matters to which the SoS must have regard when making its decision. These include:

- any relevant NPS;
- any duly submitted Local Impact Report (LIR);
- any matters prescribed in relation to the development; and
- any other matters the SoS thinks are both important and relevant to the decision.

2.2.7. Section 104(3) of the PA2008 requires the SoS to decide the application in accordance with any relevant NPS that has effect in relation to this application, subject to the exceptions in s104(4) to (8) as follows:

- where deciding the application in accordance with any relevant NPS would lead to the UK being in breach of any of its international obligations;
- where deciding the application in accordance with any relevant NPS would lead to the SoS being in breach of any duty imposed on her or him by or under any enactment;
- where deciding the application in accordance with any relevant NPS would be unlawful by virtue of any enactment;
- where the adverse impact of the proposed development would outweigh its benefits; and /or
- where any condition prescribed for deciding an application otherwise than in accordance with a NPS is met.

2.2.8. This report sets out the ExA's findings, conclusions and recommendations taking these matters into account and applying s104 of the PA2008.

2.2.9. S104 of the PA2008 places a statutory sustainable development duty on the SoS. The duty makes specific reference to having regard to the desirability:

- Mitigating and adapting to climate change; and
- Achieving good design.

2.2.10. This report sets out the ExA's findings, conclusions and recommendations taking these matters into account.

OTHER LEGISLATION

2.2.11. A full list of relevant primary and secondary legislation, including but not limited to duties arising under the Equality Act 2010, Human Rights Act 1998 and the Climate Change Act 2008 (as amended), can be found in Appendix B of this report. All applicable legislation has been considered by the ExA as required and the findings and recommendations in this report are framed so as to identify and enable the SoS to discharge all applicable statutory considerations or duties.

2.3. NATIONAL POLICY STATEMENTS

2.3.1. NPSs set out Government policy on different types of national infrastructure development. Having regard to the purposes of s104(2)(a) of the PA2008, I consider that the following NPS(s) are relevant to the Application:

- Overarching National Policy Statement for Energy (January 2024) (NPS EN-1);
- National Policy Statement for Renewable Energy Infrastructure (January 2024) (NPS EN-3); and
- National Policy Statement for Electricity Networks (January 2024) (NPS EN-5).

2.3.2. These NPSs form the primary policy context for this examination. This report sets out my findings, conclusions and recommendations taking these matters into account and applying the approach set out in s104 of the PA2008. The purpose and broad content of these NPSs is summarised here. Appendix B provides further detail on the relevant NPSs.

INDIVIDUAL HEADING FOR INDIVIDUAL NPS SUMMARY

NPS EN-1

2.3.3. NPS EN-1 sets out the overarching policy and has effect for decision making, in combination with five technologies specific NPSs for energy. The remaining energy NPSs should be read in conjunction with NPS EN-1 where they are relevant.

2.3.4. NPS EN-1 sets out the general principles that should be applied in the assessment of development consent applications alongside the Government's commitment to increasing renewable generation capacity. It also considers the large scale infrastructure which will be required to ensure the UK can provide a "secure, reliable, and affordance supply of energy" while also meeting decarbonisation targets (paragraph 2.1.6). Section 4.2 of NPS EN-1 states that to support the urgent need for new low carbon infrastructure, all onshore and offshore electricity generation covered within the NPS that do not involve fossil fuel combustion are considered to be Critical National Priority (CNP) infrastructure. This includes NSIPs for solar photovoltaic.

2.3.5. Paragraph 3.1.2 of EN-1 recognises that in developing the necessary amounts of large scale energy infrastructure to meet its energy objectives, this may not be without some significant residual adverse effects. The paragraph goes on to say that these effects will be minimised by the application of policy set out within EN-1.

NPS EN-3

2.3.6. NPS EN-3 sets out additional policies for renewable energy infrastructure that should be read in addition to the overarching policies set out in EN-1.

2.3.7. Paragraph 1.1.2 states that electricity generation from renewable sources is an essential element of the transition to net zero and meeting targets for the sixth carbon budget.

2.3.8. Paragraph 1.6.1 explicitly states that EN-3 covers solar photovoltaic generating stations that are over 50MW. Paragraph 2.10.9 goes on to state that the government has committed to sustained growth in solar capacity to contribute towards meeting net zero emissions by 2050 and as such, "*solar is a key part of the government's strategy for low-cost decarbonisation of the energy sector".*

2.3.9. Paragraph 2.10.10 of EN-3 goes on to state that solar has an important role in "*delivering the government's goals for greater energy independence*".

NPS EN-5

2.3.10. NPS EN-5 sets out policy relevant to electricity transmission and distribution systems, from transmission systems to end user. Whilst principally focussing on long distance transmission and distribution systems, it also covers substations and converter stations.

2.3.11. Paragraph 1.6.4 notes that it can cover development "*if it constitutes associated development for which consent is sought along with an NSIP*".

2.3.12. The application includes a new substation on site, Work No.3 and grid connection cables, Work No.4, amongst other elements of associated development. These would enable and facilitate the connection of the Solar Arrays and BESS (also identified as associated development, Work No.2) to the national grid at substation at Sellindge Substation

2.3.13. These elements of the proposed development, as associated development forming part of the proposed development, would come within the scope of EN-5.

2.4. OTHER NATIONAL POLICY

2.4.1. Other important and relevant Government policy has been taken into account by the ExA, including the following:

- The National Planning Policy Framework;
- Noise Policy Statement for England (NPSE);
- Written Ministerial Statement 2024;
- Net Zero: The UK's Contribution to Stopping Global Warming Emissions;
- National Infrastructure Strategy;
- Industrial Decarbonisation Strategy 2021;
- Net Zero Strategy: Build Back Greener;
- British Energy Security Strategy (2022);
- Powering Up Britain (DESNZ, 2023);
- Clean Power 2030: Advice on Achieving Clean Power for Great Britain by 2030; and
- Clean Power 2030 Action Plan: A New Era of Clean Electricity.

2.4.2. These policies are also discussed in more detail in Chapter 3 within 'The Principle of Development and Planning Issues'.

2.5. LOCAL IMPACT REPORTS

2.5.1. 2 LIRs were submitted into the examination at D1 by the following local authorities:

- Ashford Borough Council (ABC) [REP1-078]
- Kent County Council (KCC) [REP1-087]

2.5.2. LIR content has been considered through the examination and in this report. It must be considered during the decision by the SoS pursuant to PA2008 s105(2)(a).

2.5.3. The issues raised are considered in further detail in relation to relevant planning issues in Chapter 3 of this report.

2.5.4. Amongst other matters, LIRs identify local policies (including those from the Development Plan) which are capable of being important and relevant considerations under s105(2)(a) of the PA2008. Where a relevant local policy and designated NPS policy are in conflict, the effect of this duty (subject to any applicable exception) is to establish a presumption in favour of NPS policy in the SoS' decision-making.

2.6. ENVIRONMENTAL IMPACT ASSESSMENT

2.6.1. 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.

2.6.2. On 19 April 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 (a Scoping Opinion) [APP-059], [APP-060], and [APP-061].

2.6.3. On 30 May 2022 the Planning Inspectorate provided a Scoping Opinion [APP-062].

2.6.4. 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.

2.6.5. The ExA considered that changes to the documentation, comprising the ES during the examination, did not individually or cumulatively undermine the scope and assessment of the ES. of this report will summarise the environmental effects under each topic section.

2.7. HABITATS REGULATIONS ASSESSMENT

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

2.7.2. 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). This is further considered in Chapter 4 of this report.

2.8. TRANSBOUNDARY EFFECTS

2.8.1. A transboundary screening [OD-004] under Regulation 32 of the EIA Regulations was undertaken on behalf of the SoS on 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.

3. 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. The chapter is structured firstly to review the initial assessment of principal issues (IAPI) and explains how the issues identified there have been managed. It then examines matters of principle, including need and alternatives. It then addresses individual planning issues, set out in individual sections. The order in which these section headings are presented should not be taken to imply any order of merit.

3.1.2. In each section, the ExA identifies the policy background, followed by a summary of the Application as made, then reports on the main issues for each topic. Findings and conclusions are drawn for each topic. These in turn identify whether the effects carry little weight, moderate weight, great weight, or very great weight for or against the making of the Development Consent Order (DCO).

INITIAL ASSESSMENT OF PRINCIPAL ISSUES (IAPI)

3.1.3. As required by section (s) 88 of the Planning Act 2008 (PA2008) and Rule 5 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR), the ExA made an IAPI 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 IAPI was raised at the PM and whilst other matters were discussed such as rural character and the cumulative impact on heritage assets were identified, these were added to sub issues of landscape and visual and heritage issues respectively. The IAPI can be found in Annex C of the Rule 6 letter [PD-004]. The issues identified in the IAPI are as follows:

- Biodiversity
- Compulsory Acquisition
- Development Consent Order
- General Matters including safety and security
- Heritage
- Landscape and Visual Impact
- Noise and Vibratiobn – construction and decommissioning
- Site Selection
- Soils and Best and Most Versatile Land/ Agriculture
- Traffic – construction and decommissioning
- Water Environment

THE PLANNING ISSUES IN THIS REPORT

3.1.4. The ExA considers that the issues raised by Interested Parties (IP) were broadly in line with the IAPI. Matters of safety were raised concerning the Battery Energy Storage Systems (BESS) during the course of the

examination, and this was explored in depth at ISH4, as well as being subject to written and oral questioning during the examination. As a consequence, I have devoted a section in Chapter 3 to Safety and Security. These are the issues that the ExA has used to structure most of the following sections in this report. The ExA has nevertheless had regard to all important relevant matters arising from submissions from IPs and has reported on these, if required, within each chapter below.

3.2. THE PRINCIPLE OF THE DEVELOPMENT

3.2.1. In addition to the issues arising from the IAPI, the ExA has also given consideration on an overarching basis to the principle of the development in terms of:

- Need;
- Conformity with designated NPS policy;
- Applicability of other NPS policy;
- Applicability of other policy; and
- Applicability of legislation

Need

3.2.2. This section addresses the overall need for the proposed development, the alternatives considered in the site selection, and the grid connection. The planning balance and the case for development are considered in Chapter 5.

3.2.3. The Climate Change Act 2008 sets a target for the year 2050 for the reduction of targeted GHG emissions and to provide for a system of carbon budgeting. The Climate Change Act 2008 (2050 Target Amendment) Order 2019 amends the 2050 target in the Climate Change Act 2008 to net zero i.e., that the net United Kingdom (UK) carbon account, in terms of carbon dioxide and other targeted GHG, for the year 2050 is at least 100% lower than the relevant baseline year. A series of Carbon Budgets Orders set the carbon budgets for relevant periods.

NPS EN-1

3.2.4. Paragraph 3.2.6 establishes that there is an urgent need for the types of energy infrastructure covered by NPS EN-1. The SoS must assess all Development Consent Order (DCO) applications on the basis that this need has already been demonstrated by the government.

3.2.5. Paragraph 3.2.7 states that substantial weight should be given to this established need when the SoS considers DCO applications. This reinforces the presumption in favour of approving such projects.

3.2.6. Paragraph 4.2.4 highlights the existence of a Critical National Priority (CNP) for delivering nationally significant low-carbon infrastructure. This further strengthens the policy support for projects that contribute to decarbonisation and energy security.

3.2.7. These policies collectively mean that energy infrastructure projects, especially those contributing to low-carbon goals, benefit from strong in-principle support under NPS EN-1. The urgent need and CNP status significantly influence the decision-making process in favour of such developments.

3.2.8. The applicant at paragraph 7.2.2 of the Closing Statement [REP8-029] outlines that they consider that the proposed development is an essential component of the UK's future energy generation mix. It directly supports the key objectives of NPS EN-1 and EN-3, particularly in achieving energy security and reaching net zero emissions. The need for rapid expansion of solar capacity is also emphasized in the National Energy System Operator's (NESO) Clean Power 2030 advice and Action Plan, highlighting the proposed development's alignment with national clean energy priorities.

Alternatives

EIA Regulations

3.2.9. Regulation 14(2)(d) requires the Environmental Statement (ES) to describe the reasonable alternatives studied by the applicant that are relevant to the proposed development and its specific characteristics, and an indication of the main reasons for the option chosen, considering the effects of the development on the environment.

3.2.10. Notwithstanding the EIA Regs, NPS EN-1 sets out the consideration of reasonable alternatives is addressed in Section 4.3. In broad terms there is no general requirement under EN-1 to consider alternatives or to prove that the proposed project is the best possible option from a policy standpoint (para 4.3.9).

3.2.11. At para 4.3.22, of NPS EN-1 it states that the SoS should:

- Consider alternatives proportionately;
- Focus on whether alternatives can realistically deliver the same infrastructure capacity (e.g. energy security, climate benefits) within the same timeframe;
- It also sets out that the key principles for weighting alternatives. It states that the SoS should be guided by;
- The urgency of need for new energy infrastructure;
- Whether alternatives meet the objectives of the proposed development; and
- The realistic prospect of alternatives achieving similar outcomes.

NPS EN-3

3.2.12. Paragraph 2.3.5 outlines that the government does not direct applicants to specific sites. It is up to the developer to decide which sites to bring forward for renewable energy infrastructure. In addition, there is no Sequential Test Required (Para 2.3.9), because renewable energy can only be developed where the resource exists and is economically viable, and due to the unlimited need established in NPS EN-1.

3.2.13. In relation to site preference, paragraph 2.10.31 outlines that applicants should justify their site selection. There is a preference not a requirement for:

- Brownfield Land;
- Industrial Land; or
- Low and medium grade agricultural land

3.2.14. Paragraph 2.10.22 references that the capacity of the local grid network to accept the likely output from a proposed solar farm is critical to the technical and commercial feasibility of a development proposal.

3.2.15. Finally, paragraph 2.10.67 suggest applicants may wish to replace panels over the course of the lifetime of the proposed development to take into account panel degradation.

Regional

3.2.16. KCC declared a climate emergency in 2019 and committed to reducing GHG emissions for the whole county to net zero by 2050

Local

3.2.17. ABC Local Plan Policy ENV10 – Renewable and Low Carbon Energy is relevant to need.

3.2.18. ABC have set targets to have net zero carbon emissions on their own estate and services by 2030 and borough wide by 2050 but voted against declaring a climate emergency in July 2019.

The Application

3.2.19. The applicant [APP-029] identifies the need established in the NPS and considers that substantial weight should be given to this need. It refers to the NPPF policies for renewable and low carbon energy. The need for large-scale solar projects is set out in Section 5 of the Planning Statement [APP-151] and is established in NPS EN-1. The principal need for large-scale solar projects is centred on the significant contribution they can make to the three important national energy policy aims including decarbonisation, security of supply and affordability.

3.2.20. The applicant in ES Chapter 5: Designs and Alternatives [APP-029] outlines the wider context of the UK's approach to energy generation and net zero. It refers to the Net Zero Strategy (2021), and the British Energy Security Strategy (2022 [REP5-027], which it considers add to the need case for low carbon and renewable energy generation. The rapid deployment of a significant increase in solar capacity is also acknowledged by the applicant in their Closing Statement [REP8-029] as a fundamental part of NESO's and the UK Government's Clean Power 2030 advice and Action Plan.

3.2.21. The applicant suggests at paragraph 7.2.2 of the Closing Statement [REP8-029] that the proposed development would make a valuable contribution towards the UK's national energy policy aims of decarbonisation and reducing carbon emissions, energy security, and affordability. It would do this by providing a large scale, low carbon, renewable energy generating asset to contribute towards achieving net zero by 2050, providing a secure supply of energy with direct connection to the National Grid transmission network at Sellindge and with the integration of Battery Energy Storage System (BESS).

3.2.22. The applicant points out that national policy identifies large-scale, ground-mounted solar generation as CNP infrastructure. This policy creates a strong presumption in favour of approving such projects, which should be the primary basis for evaluating the proposed development.

3.2.23. In terms of alternatives, the applicant outlines in paragraph 5.6.4 of ES Chapter 5: Alternatives and Design Solutions [APP-029] that the proximity to, and availability of capacity on the electricity network is key to the feasibility of solar and battery storage projects. The applicant determined that a maximum distance of 5km is likely to be at, or beyond, the limit of viability for a point of connection ('POC') to the national grid for the scale of the proposed development. Beyond the 5km distance, the environmental and social effects are likely to increase, more land (which may necessitate the use of compulsory acquisition powers) may be required and the proposed development would become less economically viable. A distance of 5km of the POC to the Sellindge Substation was therefore used as the area of search for potential alternative sites that would meet the project requirements of the proposed development.

3.2.24. In light of the nature of the area surrounding the Sellindge Substation grid connection and the current national policy provisions for renewable energy technologies, it is considered by the applicant that ground-mounted solar PV panels, together with energy storage, represents the most appropriate renewable energy technology for deployment within the order limits. Alternative renewable energy technologies such as wind, pumped hydro-storage or small scale nuclear would not meet the proposed development requirements and have therefore not been considered by the applicant. Onshore wind technology was not considered to be suitable due to the significant landscape and visual impacts that this type of development would have, in particular on the Kent Downs National Landscape. The topography and nature of the order limits means that pumped hydro-storage schemes would not be viable.

3.2.25. The applicant confirms it has received a Grid Offer from UK Power Networks (UKPN) to connect the proposed development to the distribution network at the National Grid Sellindge Substation and that it has accepted an all-works package offer. National Grid own the electricity transmission system in England and Wales. UK Power Networks then distributes the electricity through high voltage cables so it can be used by homes and businesses across London, the South East and East of England. This means that UKPN is responsible for delivery of all works required to connect the project Substation (which the applicant will be primarily responsible for delivering) to the electricity grid at Sellindge Substation, including the design and build of the Grid Connection [APP-148].

3.2.26. The applicant has not supplied evidence of a secured grid connection agreement but National Grid's legal representatives [REP8-033] indicate that this will be forthcoming on the basis of their protective provisions being included within the DCO. The applicant confirms they have an agreement in the signed SoCG [REP8-020] with National Grid Electricity Transmission PLC and the protective provisions have been included in the dDCO [REP8-004] submitted by the applicant.

3.2.27. An alternative location for the proposal's substation was initially identified in the eastern part of the order limits adjacent to the East Stour River (i.e. adjacent to the north eastern corner of Field 27). This location was identified as it would deliver the shortest possible high voltage grid connection cable between the Project Substation and the Sellindge Substation. Shorter distances have commercial and energy efficiency advantages and would also minimise environmental effects and temporary disruption associated with construction. However, the location in Field 27 was discounted as it is not sequentially preferable to the proposal's substation in Field 26 due to flood risk. ES Volume 3, Figure 10.4: Flood Map for Planning [REP5-011] shows that Field 27 is located within Flood Zone 3 and could be subject to up to 2.0m of flood water.

Issues considered during Examination

3.2.28. The need for renewable energy was generally accepted with IPs such as Stuart Buckland [RR-277] supporting the proposed development, whilst others thought it was either too big or in the wrong location such as the representation made by Ann Burles [RR-016].

3.2.29. In response [REP1-061] the applicant argues that the proposed development is supported by current and authoritative national policy, which highlights an urgent need for new low-carbon energy sources. Solar energy is specifically identified as a key element in the government's strategy for affordable decarbonisation. The development is also said to align with the National Planning Policy Framework (NPPF) and other relevant planning policies, as well as NPS EN-1.

3.2.30. In relation to representations in regard to size and location, the applicant responded by referring back to the Planning Statement [APP-151] where they set out that the proposed development's design includes extensive

mitigation measures to reduce adverse impacts. They argue that the national and local benefits outweigh any localised effects, making the project compliant with NPS EN-1. Reducing the scale of the project is not seen as a reasonable alternative, as it would limit energy generation potential tied to the grid connection offer. They further report that this approach aligns with recent precedent of the SoS's approval of the Sunnica Energy Farm in July 2024.

3.2.31. They also point to paragraph 6.8.19 of the Planning Statement [APP-151] notes that there are no other alternative sites within the search area (5km from the point of connection) that could fulfil the requirements of the proposed development that would have a lesser effect on BMV agricultural land

3.2.32. In their LIR [REP1-078], ABC agree that by the proposed development's very nature, it would have positive impacts in terms of the production of clean renewable energy and the transition and movements towards net zero in accordance with local planning policies. However, they then set out that other local policies such as ENV10 of the ALP 2030 and Policies AB9 and AB10 of the A&BNP 2030 set out that it must be demonstrated that there are no significant adverse environmental impacts that cannot be appropriately managed and/or mitigated through the DCO process.

3.2.33. ABC's concerns are also highlighted within the SoCG [REP8-016] regarding the scale of the development, and by the end of the examination they had failed to reach agreement on this with the applicant.

3.2.34. The applicant contends that that a reduction in scale of the proposed development would not have a significant benefit in terms of reducing any significant impacts such as those on visual and landscape impacts but the associated loss in function would be more than a "marginal loss". In this context the applicant does not consider the proposed development represents an "exceptional" case that requires the applicant to consider an alternative project design that would reduce the generating capacity of the proposed development.

3.2.35. KCC agreed in their SoCG [REP8-018] with the applicant that there is a need for the proposed development and all suitable alternative locations have been explored.

Conclusions on need, alternatives, electricity generation, and Decommissioning

Need case, including effects on climate change

3.2.36. I set out earlier that the proposed development, as a solar PV electricity generating station with associated development, falls within the scope of NPSs EN-1, EN-3 and EN-5. I consider whether there is a CNP for the proposed development, and the implications of that, in Chapter 5.

3.2.37. I find that the proposed development is low carbon infrastructure in accordance with paragraph 4.2.5 of NPS EN-1 as it would generate electricity without fossil fuel generation, includes power lines and a substation within the scope of NPS EN-5, and has storage infrastructure (the BESS) within the normal definition of 'low-carbon'.

3.2.38. I have carefully considered the concerns of those that consider that the proposed development is too large or is in the wrong location. I note the applicant's comments about the feasibility of this type of proposed development and the need for a relatively close grid connection and that logistically this site represents an appropriate location.

3.2.39. In considering paragraphs 3.2.6, 3.2.7, 3.3.26 and 4.2.2 of NPS EN-1, I find that there is an urgent need for the proposed development that should be given substantial weight, that it is needed for the UK Government to meet its energy security and net zero ambitions, and that the electricity storage is needed to reduce the costs of the electricity system and increase reliability by storing surplus electricity in times of low demand to provide electricity when demand is higher.

3.2.40. In relation to objections to this location, I agree with the applicant that there is an urgent need for the development and notes that national policy does not exclude the site based solely on its location. A full assessment of local impacts and benefits will follow, in accordance with relevant laws and policies.

3.2.41. ABC and KCC both support the proposed provision of renewable energy as set out in local policy. I note ABC's concerns about non compliance with other Local Plan policy in respect of the development having some significant adverse effects. However, this is a proposal for nationally significant infrastructure and as such, must be assessed principally against national policy, which sets out that a priority need for such development exists.

Alternatives

3.2.42. Although alternative locations for solar panels and other ways of generating solar electricity are suggested by some IPs, paragraphs 4.2.21, 4.3.25 and 4.3.9 of NPS EN-1 lead me to conclude that the applicant's approach is reasonable and proportionate and that other alternatives have been considered to the extent that they are important and relevant.

3.2.43. I find that Regulation 14(2)(d) of the EIA Regulations and paragraphs 4.3.15 of NPS EN-1 and 2.10.23 of NPS EN-3 are complied with, as the applicant demonstrates that it has considered reasonable alternatives in the vicinity of the Sellindge Power Station and the applicant's selection principles and logic provides sufficient indication of the reasons for their choice. In relation to paragraph 4.3.17 of NPS EN-1, I address any other relevant policy or legal requirement to consider alternatives elsewhere in this report as necessary.

3.2.44. I am also satisfied that the applicant's evidence of a grid connection agreement with National Grid is sufficient for the purposes of paragraph 4.11.12 of NPS EN-1.

Conclusion

3.2.45. For the purposes of Chapter 5 and the planning balance, I conclude that:

- the proposed development is low carbon infrastructure under paragraph 4.2.5 of NPS EN-1;
- paragraphs 3.2.6, 3.2.7 and 4.2.2 of NPS EN-1 establish an urgent need for the proposed development that should be given substantial weight, that it is needed for the UK Government to meet its energy security and net zero ambitions, and that it should be developed at speed;
- paragraph 3.3.26 of NPS EN-1 includes that the energy storage provided by the BESS is needed to reduce the costs of the electricity system and increase reliability; and
- the combination of the urgent need for the proposed development and beneficial impacts on climate change bring very great weight for the making of the Order.

3.3. Biodiversity

INTRODUCTION

3.3.1. The main issues raised in the examination relating to potential adverse effects on biodiversity and ecology related to the following:

- The effects on internationally, nationally and locally designated sites;
- The effects on protected species;
- The effects on habitats; and
- The extent to which the DCO would deliver Biodiversity Net Gain (BNG).

POLICY BACKGROUND

National Policy

3.3.2. Paragraph 4.6.6 of NPS-1 states that proposals should "seek opportunities to contribute to and enhance the natural environment by providing net gains for biodiversity, and the wider environment where possible". These wider environmental gains are defined under Paragraph 4.6.13 and include landscape enhancement, increased access to natural greenspace and expansion of trees and woodlands.

3.3.3. NPS EN-3 states in paragraph 2.10.89 that "Solar farms have the potential to increase the biodiversity value of a site, especially if the land was previously

intensively managed. In some instances, this can result in significant benefits and enhancements beyond Biodiversity Net Gain, which result in wider environmental gains which is encouraged".

3.3.4. NPS EN-5 paragraph 2.10.8 states that "since long-term management of the selected mitigation schemes is essential to their mitigating function, a management plan, developed at least in outline at the conclusion of the examination, and which sets out proposals within a realistic timescale, should secure the integrity and benefit of these schemes. This should also uphold the landscape commitments made to achieve consent, alongside any pertinent commitments to environmental and biodiversity net gain".

NPPF

3.3.5. The NPPF provides additional policy guidance and requires planning decisions to contribute to and enhance, the natural and local environment, and provide net gains for biodiversity. It requires that where significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

Local Policy

ABC Local Plan

3.3.6. Policy ENV 1 states that "Proposals that conserve or enhance biodiversity will be supported. Proposals for new development should identify and seek opportunities to incorporate and enhance biodiversity. In particular, development should take opportunities to help connect and improve the wider ecological networks. "Proposals should safeguard features … including ancient woodland, water features, ditches, dykes and hedgerows, as corridors and stepping stones for wildlife."

Aldington and Bonnington Neighbourhood Plan (ABNP) [REP1-103]

3.3.7. Policy AB1 relating to Green and Blue infrastructure and delivering biodiversity net gain is split in three parts, and seeks to ensure that the multiple benefits of the area's green and blue spaces – including their importance in combating pressure on wildlife, habitats, biodiversity and geodiversity, and in off-setting the effects of air pollution – are recognised and enhanced. This applies particularly where individual spaces have a greater collective value as part of wider chains of green infrastructure. They will serve to support the requirement to conserve and, where possible, provide a net gain in biodiversity through planning policy whilst accommodating sustainable development.

3.3.8. The third part of the policy sets out that proposals that seek to improve the connectivity between wildlife areas and green spaces will be encouraged, to enhance the green infrastructure of the neighbourhood area. Proposals that support the enhancement and management of the identified biodiversity

opportunity areas will be supported. Conversely, proposals that threaten to damage such connectivity will be strongly resisted.

3.3.9. In addition, criterion 'c' of Policy AB8 relating to promoting local character through high quality design, requires development proposals to demonstrate how they have responded positively to matters including (vi) landscaping, biodiversity and open space stating that "proposals should conserve and sensitively incorporate existing natural features such as trees and hedgerows within the site, with the aim of delivering a net environmental benefit for local people and wildlife, in accordance with Policy AB1 (Green and blue infrastructure and delivering biodiversity net gain)".

THE APPLICATION

3.3.10. ES Volume 2: Chapter 9: Biodiversity [APP-033] presents an assessment of the potential significant effects of the proposed development on ecology and biodiversity. The assessment considers effects on designated sites, habitats, protected species and other notable species.

3.3.11. The Chapter is supported by the following figures and appendices:

ES Volume 3 – Figures [APP-051]:

- Figure 9.1: Locations of Statutory Designated Sites;
- Figure 9.2: Locations of Local Wildlife Sites;
- Figure 9.3: Locations of Ancient Woodland Sites;
- Figure 9.4: River Basin Management Plan Waterbodies and Stodmarsh Location and Pathway (2 sheets);
- Figure 9.5: East Stour River Proximity Plans (3 sheets);
- Figure 9.6: Habitat Prior to Development Plans (4 sheets);
- Figure 9.7: Water Body Location Plan;
- Figure 9.8: Locations of Habitats of Principal Importance;
- Figure 9.9: Important Hedgerows;
- Figure 9.10: Habitat Impacts Plan; and
- Figure 9.11: Post-Development Habitat Plan.

ES Volume 4 – Appendices:

- Appendix 9.1: Legislation, Planning Policy and Guidance [APP-085];
- Appendix 9.2: Scoping Opinion Responses [APP-086];

- Appendix 9.3: Arboricultural Impact Assessment [APP-087];
- Appendix 9.4: Preliminary Ecological Appraisal [APP-088];
- Appendix 9.5: Baseline Survey Reports;
- 9.5a – Hedgerow Condition and Importance Assessment [APP-089];
- 9.5b – Invertebrate Survey Report [APP-089];
- 9.5c – Fungi Survey Report 9.5d – Amphibian Survey Report [APP-089];
- 9.5e – Reptile Survey Report [APP-089];
- 9.5f – Wintering Bird Survey Report [APP-089];
- 9.5g – Breeding Bird Survey Report [APP-090];
- 9.5h – Bat Activity (Transect and Static) Survey Report [APP-090];
- 9.5i – Hazel Dormouse Survey Report [APP-090];
- 9.5j – Hedgehog Survey Report [APP-090];
- 9.5k – Riparian Mammal Survey Report [APP-090];
- 9.5l – Bat Tree Survey Report [APP-090];
- 9.5m - Badger Report (CONFIDENTIAL NOT POSTED ON EXAM LIBRARY); and
- 9.5n – Schedule 1 Bird Species Report (CONFIDENTIAL NOT POSTED ON EXAM LIBRARY)
- Appendix 9.6: Biodiversity Air Quality Screening Report [REP1-030];
- Appendix 9.7: Assessment of Effects [REP1-032]; and
- Appendix 9.8: Cumulative Assessment [APP-093].

3.3.12. The Biodiversity assessment has also been informed by data from other assessments and documents including:

- ES Volume 2, Chapter 8: Landscape and Views [AS-012];
- ES Volume 2, Chapter 10: Water Environment [REP1-022];
- ES Volume 2, Chapter 13: Traffic and Access [REP3-012];
- ES Volume 2, Chapter 14: Noise [APP-038];

- Biodiversity Net Gain ('BNG') Assessment [APP-146];
- Outline Construction Environmental Management Plan ('oCEMP') [REP1-044];
- Outline Operational Management Plan ('oOMP') [REP1-050];
- Outline Landscape and Ecological Management Plan ('oLEMP') [REP3-020];
- Outline Decommissioning Environmental Management Plan ('oDEMP') [APP-157]; and
- Information for Habitats Regulations Assessment ('IHRA') [APP-164].

Baseline

3.3.13. Surveys of Badger setts, Bats, Otters, Water Voles, Great Crested Newts (GCN), and breeding birds were undertaken. From these, baseline conditions were evaluated having consulted with Natural England (NE), Kent Wildlife Trust and the Environment Agency (EA).

3.3.14. The methodology applied the standard approach in the UK to Ecological Impact Assessment developed by the Chartered Institute of Ecology and Environmental Management (CIEEM) in 2018 and revised in 2019. The significance of residual effects is described as significant or not significant. Those which are reported as significant are then qualified by reference to an appropriate geographical scale: site, local or district importance.

3.3.15. The applicant's approach takes the significant effects reported for protected and notable species and habitats and then considers embedded and additional mitigation measures set out in the outline Landscape and Ecological Management Plan (oLEMP) [REP3-020] and the Biodiversity Net Gain Assessment [APP-146]. The oCEMP [REP1-044] also provides measures to limit environmental impact.

3.3.16. The purpose of the oLEMP [REP3-020] is to provide the overarching principles for minimising, managing and / or mitigating and enhancing the environmental effects of the proposed development and is secured by Requirement 8 of the dDCO [REP8-004].

3.3.17. The oCEMP [REP1-044] provides the overarching principles to ensure that all works associated with the construction of the Project are mitigated appropriately to minimise local disruption and to reduce environmental effects and is secured by Requirement 6 of the dDCO [REP8-004]. More specifically, the oCEMP:

- Secures the relevant mitigation measures set out in the ES [APP-046] submitted as part of the DCO application are secured and implemented during construction activities; and

- Identifies the relevant legislation, government and industry standards, and construction industry codes of practice and good practice standards that will be complied with.

Protected Species

3.3.18. The applicant identifies the likelihood of protected species being present, and surveys being necessary within the order limits in Table 2 of the Preliminary Ecological Appraisal Environmental Statement Volume 4: Appendices Chapter 9: Biodiversity Appendix 9.4 [APP-088] the following Protected Species:

- Great Crested Newt
- All Reptile species
- All Nesting Birds
- Water Vole
- Hazel Dormouse
- Bats
- Otter
- Badger
- Hedgehog
- Brown Hare
- Harvest Mouse

3.3.19. Paragraph 9.6.21 of Chapter 9: Biodiversity [APP-033] states that pre-construction surveys would be undertaken to validate and, where necessary, update the baseline survey findings, as secured by the oLEMP [REP3-020]. The purpose of these pre-construction surveys is to ensure mitigation during the construction phase is based on the latest protected species information. These include, but are not limited, to Schedule 1 nesting birds, Badger, Otter and non-native invasive species.

3.3.20. If pre-commencement surveys identify the need for a NE mitigation licence or species mitigation strategy, this will be reviewed with the undertaker and Principal Contractor. Required mitigation strategies will be submitted to and reviewed by the relevant statutory body (e.g., NE) for protected species such as badgers, otters, hazel dormice, or great crested newts (GCN). All works will follow the licensed mitigation measures outlined in the Outline LEMP [REP3-020].

Habitats

3.3.21. The applicant reports at paragraph 9.5.37 of ES Chapter 9 Biodiversity [APP-033] that the order limits support hedgerows, arable margins, woodland and ponds that qualify as Habitats of Principal Importance (HPI) i.e., 'priority habitats' under the NERC Act 2006 and Kent Biodiversity Strategy Priority Habitats. In total, the Site supports circa 11.30km of native hedgerow and circa 2.25 ha of lowland mixed deciduous woodland. The applicant identifies the locations of HPI (priority) hedgerows, woodland and ponds on the Habitat Prior to Development Plans in ES Volume 4, Appendix 9.3: Arboricultural Impact Assessment [AS-017]. The locations of HPI habitats are shown on the Habitats of Principal Importance Plan provided in ES Volume 3, Figure 9.8: Locations of Habitats of Principal Importance [APP-051].

Biodiversity Net Gain

3.3.22. The Environment Act 2021 makes a 10% Biodiversity Net Gain (BNG) mandatory for all but exemptions and small sites. For NSIPs this is scheduled for implementation in November 2025.

3.3.23. BNG is a way of creating and improving biodiversity by requiring development to have a positive impact ('net gain') on biodiversity.

3.3.24. The applicant's Biodiversity Net Gain Assessment [APP-146] at paragraph 1.1.11 indicates that the total predicted net biodiversity unit change (based on the Vegetation Removal Plan [APP-014] and the Illustrative Landscape Drawings [REP3-005] is as follows:

- Habitat units + 186.65 % (507.21 baseline - 1453.91 operational stage = +946.70 units);
- Hedgerow units +36.28% (160.09 baseline – 218.17 operational stage units) = + 58.08 units); and
- River +15.24% (25.33 baseline - 29.20 operational stage = +3.86 units).

3.3.25. The design of the landscape proposals, through submission of the detailed LEMP as well as the submission of a Biodiversity Design Strategy, are secured by Requirement 8 in the dDCO [REP8-004]. The final BNG Assessment included in the future detailed LEMP will be informed by the further surveys and ecological works that are set out within the oLEMP.

3.3.26. The oLEMP [REP3-020] includes management and maintenance prescriptions and would establish a programme of visual inspections to check for good strong foliage, growth and the success of habitats, so that the most suitable management regime/operations can be defined. Annex 2 of this oLEMP proposes Habitat Conditions Monitoring at years 2, 5, 7, 10 and then every 5 years for the period up to 30 years for the purposes of BNG.

3.3.27. Paragraph 5.5.4 of the oLEMP [REP3-020] states that monitoring will measure habitat condition against the target condition requirements of the BNG Assessment [APP-146]. The proposed monitoring programme, its objectives and what remedial actions will be taken, should it be found that objectives are not being met, would be set in the relevant habitat and species strategies reviewed with stakeholders as part of the detailed LEMP.

3.3.28. There are no international designated sites within the order limits.

3.3.29. However, Stage 1 of the IHRA screens out several potential effects on the basis of:

- distance to international designated sites
- lack of hydrological connection
- vehicle movements remaining below threshold criteria within relevant guidance
- affected land is not functionally linked to European sites

3.3.30. The IHRA reviews potential impact pathways in respect of the following sites:

- Wye and Crundale Downs SAC (and underpinning SSSI and NNR);
- Dungeness, Romney Marsh and Rye Bay SAC, SPA and Ramsar (and underpinning SSSI);
- Folkestone to Etchinghill Escarpment SAC; and
- Stodmarsh SPA, SAC and RamsarO

More detail on the HRA Assessment can be found in Chapter 4 of this report.

3.3.31. One statutory designated site of local importance, Poulton Wood LNR, is located within 2km of the Site boundary, approximately 470m to the south-east of the order limits. At its closest point the LNR is known to support ancient and semi-natural woodland, which is characterised as a coppiced woodland with oak (Quercus sp.), hornbeam (Carpinus betulus) and ash (Fraxinus excelsior) that provides habitats for a diverse mix of flora and fauna, and ponds are present within the LNR.

3.3.32. Paragraph 9.5.5 of ES Chapter 9: Biodiversity [APP-033] states that there is one statutory designated site of local importance, Poulton Wood LNR. This is located within 2km of the Site boundary, approximately 470m to the south-east of the Site at its closest point Information regarding the features for which this LNR was designated is not publicly available.

Construction Phase

3.3.33. The applicant has assessed the potential effects of construction upon designated sites, habitats (removal, degradation, fragmentation and

pollution) and species (habitat effects, disturbance and risk of mortalities) have been identified from review of the following:

- Works Plans [REP1-003];
- Illustrative Project Drawings [REP3-004];
- Design Principles [REP3-016];
- Vegetation Removal Plan [APP-014];
- Construction activity description and programme (ES Volume 2, Chapter 3: Project Description [REP1-018];
- ES Volume 2, Chapter 9 Biodiversity [APP-033]
- oCEMP [REP1-044]; and
- oLEMP [REP3-020]

Operational Phase

3.3.34. For the Operational Phase, the following documents have been used to review the potential effects upon designated sites, habitats and species (potential effect of management and maintenance operations):

- ES Volume 2, Chapter 9 Biodiversity [APP-033]
- Illustrative Landscape Drawings [REP3-005];
- Design Principles [REP3-016];
- oLEMP [REP3-020]; and
- oOMP [REP1-050]

Decommissioning Phase

3.3.35. The potential effects of decommissioning upon designated sites, habitats (removal, degradation, fragmentation and pollution) and species (habitat effects, disturbance and risk of mortalities) have been identified from review of the following:

- Works Plans [REP1-003];
- Illustrative Project Drawings [REP3-004];
- Design Principles [REP3-016];
- Vegetation Removal Plan [APP-014];

- Construction activity description and programme (ES Volume 2, Chapter 3: Project Description [REP1-018];
- oDEMP [APP-157]; and
- oLEMP [REP3-020]

Cumulative Assessment

3.3.36. The cumulative assessment for biodiversity [APP-093] identifies ecological features where the predicted effects of the proposed development could interact with effects arising from other projects based on a spatial and/or temporal basis. In paragraph 9.4.49 ES Chapter 9: Biodiversity [APP-033] the applicant states that the long list of cumulative schemes identified in ES Volume 4, Appendix 6.1: List of Cumulative Schemes [APP-068] have been screened for spatial and temporal overlaps with the proposed development. Where it was assessed that there is potential spatial and/or temporal overlap of effects upon ecological features, the specific ecological features that fall within any area of overlap were identified.

3.3.37. The applicant further states at 9.4.50 ES Chapter 9: Biodiversity [APP-033] that if the ecological features identified were considered to be sensitive, the overlapping development was taken forward for cumulative assessment. There is no potential for cumulative effects where the proposed development has a negligible effect, so this assessment has only considered those significant effects reported in Section 9.9 'Residual Effects' of ES Chapter 9: Biodiversity [APP-033]. These were then assessed with the cumulative projects where the Zone of Influences overlapped.

3.3.38. The ecological short list of cumulative schemes are primarily considered within Table A6 of ES Volume 4, Appendix 6.1: List of Cumulative Schemes [APP-068].

Mitigation Proposed

Construction

3.3.39. The applicant reports that embedded mitigation has been incorporated into the proposed development as a result of their iterative design process and has been included within the assessment of effects. Embedded mitigation is described within Section 9.6 and includes relevant Design Principles [APP-033] described in Table 9.11. The landscape and ecology mitigation included within the oCEMP [REP1-044], oDEMP [APP-157] and oLEMP [REP3-020] are integral components of the proposed development and are included as Embedded Mitigation.

3.3.40. The oCEMP [REP1-044] sets out the measures that will be implemented during construction of the proposed development to mitigate construction-related effects on biodiversity associated with dust deposition, air pollution, pollution incidents, water quality, light, noise and vibration.

3.3.41. The following general measures will be implemented:

- Pollution prevention measures;
- Retention and protection of ecological features and habitats, including vegetation;
- Avoidance of retained woodland areas and root protection areas ('RPAs') where possible;
- Pre-construction surveys, to validate and update baseline findings, as secured in the oLEMP [REP3-020]
- Adjusting the phasing of works to avoid significant adverse effects on protected species;
- Implementation of precautionary ecological watching briefs when clearing vegetation or piles of debris;
- Watercourse pollution prevention measures;
- No trenches or pits to be left open overnight unless fitted with a means of escape for mammals;
- Measures to prevent and control the spread of invasive non-native species;
- Staff to receive toolbox talks on ecological risks present, legal requirements and working arrangements necessary to comply with legislation, with talks repeated as necessary over the duration of the relevant works;
- Following good practice guidelines; and
- Any relevant NE mitigation licences required will be adhered to.

3.3.42. The oCEMP [REP1-044] sets out that the pre-construction surveys would be undertaken to validate and, where necessary, update the baseline survey findings, as secured by the oLEMP [REP3-020]. The applicant reports that the purpose of these pre-construction surveys is to ensure mitigation during the construction phase is based on the latest protected species information.

3.3.43. The applicant further outlines that where pre-commencement surveys determine that a NE mitigation licence or species mitigation strategy is required, this will be reviewed with the undertaker and Principal Contractor. Mitigation strategies if required will be submitted and reviewed by the relevant statutory body (e.g. NE as appropriate). Such works will be conducted under a mitigation licence from NE, in accordance with the licensed mitigation measures. These measures are set out in the oLEMP [REP3-020].

Operational

3.3.44. The applicant proposes to minimise potential impacts during the operational phase by provisions included in the oLEMP [REP3-020]. It contains the following habitat and species mitigation principles and proposes to deliver substantial new areas of habitat for a broad range of the important species and species groups:

- Site maintenance and management operations would include seasonal timing constraints to minimise the likelihood of adverse effects upon important species. These activities are proposed to be informed by a series of ecological constraints and management plan drawings that are proposed to be updated following periodic monitoring and advice from a suitably experienced ecologist;

- Winter bird crop strips would be planted and maintained on the boundaries of PV Arrays to provide food sources for farmland birds. Skylark plots will be incorporated adjacent to PV Arrays, to provide open areas for Skylarks to nest and forage. Both features are part of a wider combined suite of further mitigation measures for wintering and breeding birds (particularly skylark and yellowhammer) and brown hare;

- Boundary fences are proposed to contain mammal gates to allow free movement of species, such as brown hare and badger;

- The current hedgerow management regime would be adjusted to benefit a broad range of important species recorded on the Site, as well as biodiversity in general. The new and existing hedgerows will be allowed to establish to dimensions that will ensure that they are robust habitat features and will be managed to benefit wildlife;

- Extensive native grassland would be managed (via a mix of rotational cutting, low density conservation grazing with sheep or via a regime of ecologically sensitive mechanical mowing and topping) to benefit biodiversity;

- Where infrastructure or habitat management is to occur outside the scope of the Outline LEMP [REP3-020] or Outline OMP [REP1-050], this is to be reviewed by an ecologist who will determine the requirement for a pre-commencement survey or ecological watching brief as required;

- In order to assess the effectiveness of habitat creation, establishment and any remedial actions needed for habitats or ecological features post development, ecological monitoring surveys are proposed at a frequency to be reviewed with stakeholders as part of the detailed LEMP(s). The monitoring programme, its objectives and remedial actions will be developed with stakeholders and set out in the detailed LEMP(s); and

- Habitat condition assessment surveys are to be carried out to record habitat types, establishment and condition against the requirements of the BNG Assessment [APP-146]. An ecologist will also undertake a periodic suite of detailed habitat and species surveys to review the progression of habitat creation and enhancement measures and any effects of the presence of solar photovoltaic modules on important species and species groups.

Decommissioning

3.3.45. Paragraph 9.9.7 of ES Chapter 9: Biodiversity [APP-033] reports that no significant adverse effects on ecological features are predicted during the decommissioning phase of the proposed development.

3.3.46. However, paragraph 4.9.1 of the oDEMP [APP-157] describes the general mitigation measures for mitigation of impacts on biodiversity, where they relate to best practice decommissioning measures or specific decommissioning activities, where associated with dust deposition, air pollution, pollution incidents, water quality, light, noise and vibration.

ISSUES CONSIDERED DURING THE EXAMINATION

3.3.47. As well as a general concern about the impact on wildlife, there were a number of Relevant Representations submitted and also written representations from IPs during the examination, which expressed concern over specific elements relating to Biodiversity.

3.3.48. In particular concern was expressed in relation to:

- Destruction of Skylark habitat such as Brian Carter [RR-026] Sue Canney [RR-278]
- Detrimental impact on Badger such as East Kent Badger Group [RR-075], Ian Howard [RR-103]
- inadequate mitigation measures are being implemented to safeguard populations of aquatic invertebrate, Buglife [RR-028]
- impact on Yellowhammer, Badgers, Barn Owl and Skylarks such as Bernadette Gregory [RR-023]
- Impact on raptors such as Buzzards and Barn Owl such as Ian Howard [RR-103] Maureen Howard [RR-184]
- Lack of Barn Owl surveys such as Kent Wildlife Trust [RR-159].

THE EFFECTS ON INTERNATIONALLY, NATIONALLY AND LOCALLY DESIGNATED SITES

3.3.49. The effects on internationally designated sites are considered within Chapter 4 of this report. The SoS is the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended)

(Habitats Regulations). The Habitats Regulations were amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.

3.3.50. 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).

3.3.51. By the close of the examination, all matters on biodiversity had been agreed in SoCGs with NE [REP4-021], EA [REP4-015] and KCC [REP8-018].

3.3.52. NE have agreed matters on International and national designations, as well as agreeing the scope of the oLEMP to provide the necessary controls via the requirements in the DCO. They also see no impediment to licenses being granted in relation to Protected Species.

3.3.53. The EA have agreed requirements including consideration of rivers, river margins, the need for river habitat surveys and species surveys for some riparian mammals. In addition, invasive species, tree planting and aquatic/marginal planting have all been agreed with the applicant.

3.3.54. KCC confirmed that they are now agreed on all ecological matters. The oLEMP [REP3-020] details information regarding the Species monitoring surveys (wintering and breeding birds) that would be secured for incorporation within a notable bird strategy as part of a detailed LEMP.

ExA's reasoning: effects on designated sites

3.3.55. Chapter 4 of this report sets out the ExA's findings and conclusions in relation to the HRA. With regards to nationally and locally designated sites, the ExA is also satisfied that the methodology, baseline conditions, proposed mitigation and assessment of effects set out in the ES Chapter 9 [APP-047] are acceptable, including the conclusions drawn.

THE EFFECTS ON PROTECTED SPECIES

3.3.56. A number of IPs expressed concern that there would be potential for disturbance and displacement of birds such as Lauren Atkinson [RR-162]. In response, the applicant identified that many bird species would benefit from the enhancements proposed. The applicant highlighted the package of measures and embedded mitigation.

3.3.57. At ExQ1 [PD-006] I asked the applicant a number of questions relating to species and the process of undertaking the pre-commencement surveys. The applicant in their response [REP3-047] pointed to measures set out as part of the detailed LEMP [REP3-020] submitted to discharge Requirement 8 (Landscape and biodiversity) of Schedule 2 to the dDCO [REP8-004], which require further surveys to be completed prior to commencement of work.

3.3.58. I also asked ABC if there were plans to publish and adopt a Local Nature Recovery Strategy. In their response [REP3-049] that they expected KCC to adopt the Strategy in May 2025 following public consultation in January

2025. The Local Nature Recovery Strategy will set out the County's priorities for nature recovery and the recommended actions to deliver these.

3.3.59. At ExQ2 [PD-008] I further explored if Barn Owl surveys had been undertaken following concerns raised by the Kent Wildlife Trust. In their response [REP5-024] the applicant stated that Barn Owl was assessed as part of a site-specific survey. ES Volume 4, Appendix 9.5n: Schedule 1 Bird Species Report [APP-090] provides the examination with details of the methods and findings of a Schedule 1 Breeding Bird Survey, which included Barn Owl.

ExA's reasoning: effects on protected species

3.3.60. Where harm to species would result NPS EN-1 advises that consent can be refused unless the benefits of the development outweigh that harm. The applicant and other parties agree that there remain a number of significant adverse residual effects on protected species. The SoCGs with NE, EA, and the host authorities accept that mitigation would be secured to minimise these adverse effects.

3.3.61. NPS EN-1 also recognises that there may be opportunities for building-in beneficial biodiversity features as part of good design. Elements of the proposed development representing beneficial biodiversity features, such as those that would result in enhanced habitat creation for protected species, should be accorded positive weight.

3.3.62. The ExA has set out considerations relating to the need for the proposed development within Section 3.2 of this report. Current policy provisions establish the urgent need for renewable energy generation. Large scale solar generation will be part of the mix of infrastructure and technology required to achieve this. The proposed development would make a meaningful contribution to meeting this need, in general accordance with the provisions of NPS EN-1. In addition to the other beneficial effects, the ExA considers that the benefit would outweigh the adverse impact on species identified.

THE EFFECTS ON HABITATS

3.3.63. Specific concerns were raised about the biodiversity and habitat implications of the extent of loss in relation to trees and hedgerow during construction. The applicant's assessment confirms that there would be a limited loss of hedgerows of no more than 150m in length However, overall there is a 10% net gain of hedgerows as part of the BNG proposals.

3.3.64. Overall, the proposed development would have a low impact on the trees and hedgerows within the order limits. The proposed development also includes significant additional tree and hedgerow planting which will mitigate the limited loss of trees and hedges within the order limits.

3.3.65. The current hedgerow management regime will be relaxed and adjusted to benefit a broad range of important species recorded on the Site, as well as biodiversity in general. The new and existing hedgerows will be allowed to

establish to dimensions that will ensure that they are robust habitat features and will be managed to benefit wildlife.

3.3.66. The applicant reports that this is likely to constitute an adverse residual effect significant at a site level in the medium term, given that it would take approximately 3-5 years for the full re-establishment of re-planted hedgerows, including gapping up.

ExA's reasoning: the effects on habitats

3.3.67. The applicant has reported that negligible adverse effects on trees and hedgerows, would arise during construction. The effects on trees and hedgerows would be largely temporary and would be followed by an increase in hedgerow provision. This and other measures provided for by the oLEMP, and the ecological enhancements secured by Requirement 8 of the dDCO.

3.3.68. There would be a number of habitat benefits arising from the proposed development which, overall, the ExA considers would outweigh the adverse effects. As such the ExA is satisfied that the assessment of effects on habitats is acceptable, and those matters considered would not weigh against the proposed development,

THE EXTENT TO WHICH THE DCO WOULD DELIVER BNG

3.3.69. The approach set out by the applicant reflects that taken in other recent NSIP cases. The Applicant's figures have been agreed with KCC as the relevant authority and therefore are deemed to be achievable. There is a commitment in the oLEMP [REP3-020] to deliver all habitat enhancement measures. The level of BNG that would be delivered would be a significant benefit of the proposed development.

3.3.70. Therefore, whilst not currently mandatory for NSIP development, it is not unreasonable to expect developments of this nature to achieve significant levels of BNG. The ExA considers that BNG can be secured at this scale and agrees it appropriate to secure it through the DCO.

CONCLUSIONS

3.3.71. Overall, the ExA is satisfied that biodiversity and ecology matters have been adequately assessed in the ES. The ExA has taken into consideration the agreement between the applicant, NE and the EA on these matters, as well as with KCC. Consideration of the impacts of the proposed development has been appropriately informed by survey data, and adequate mitigation would be secured to manage the effects on designated habitats and species. Mitigation would be secured through the dDCO.

3.3.72. No additional mitigation measures have been identified as it is not feasible, so the residual ecological effects during construction remain as previously assessed after applying embedded mitigation. Monitoring is proposed for any required habitat management interventions to minimise any significant effects

3.3.73. Significant short-term, reversible adverse effects of local significance are expected for:

- Yellowhammer – Loss of winter foraging habitat and disturbance during construction may displace individuals and affect the local population for one to two seasons.
- Skylark – Loss of breeding and winter foraging habitat during construction is expected to impact nesting opportunities for one to two seasons.
- Brown Hare – Loss of resting, foraging, and breeding habitat due to construction disturbance may deter use of the site for one to two seasons.

3.3.74. The proposed development aims to preserve and enhance ecologically valuable habitats on-site. The objectives are to establish a high-quality, connected habitat network, improving connectivity across the wider landscape. Key enhancements proposed include the creation, restoration, and improvement of hedgerows, field margins, and botanically rich grasslands, resulting in significant ecological gains over the current arable land.

3.3.75. The ExA has considered the mitigation and enhancements proposed and the residual effects and has concluded that the benefits from the BNG and the need for the development clearly outweigh any remaining adverse effects.

3.3.76. The ExA concludes overall that the proposed development would accord with NPS EN-1, NPS EN-3, and NPS EN-5, the NPPF and development plan policy on these matters. Whilst adverse effects for sites and habitats have been identified, beneficial effects would also arise for certain species. The proposed development would also secure a significant level of BNG. Overall, the ExA gives biodiversity and ecology a little positive weight in the planning balance.

3.4. HERITAGE

INTRODUCTION

3.4.1. The main issues raised in the examination related to the following.

- the archaeological investigations undertaken by the applicant;
- The adequacy of the Written Scheme of Investigation;
- The effect of the Proposed Development on designated and undesignated heritage assets; and
- Cumulative effects.

POLICY BACKGROUND

NPS EN1

3.4.2. The assessment of heritage matters as set out in NPS EN-1 requires the applicant to:

- Provide an assessment of any likely significant heritage impacts for a development (paragraph 5.9.1);

- provide a description of the significance of the heritage assets affected by the proposed development, including any contribution made by their setting (paragraph 5.9.10);

- Where a site on which development is proposed includes, or the available evidence suggests it has the potential to include, heritage assets with an archaeological interest, the applicant should carry out appropriate desk-based assessment (paragraph 5.9.11);

- ensure that the extent of the impact of the proposed development on the significance of any heritage assets affected can be adequately understood from the application and supporting documents (Paragraph 5.9.12); and

- where opportunities exist, prepare proposals which can make a positive contribution to the historic environment, and to consider how their scheme takes account of the significance of heritage assets affected.' (Paragraph 5.9.13).

3.4.3. This confirms that solar developments may affect heritage assets (sites, monuments, buildings, and landscape) both above and below ground, and their impacts will require expert assessment in most cases. It also recognises, however, that 'Equally solar PV developments may have a positive effect, for example archaeological assets may be protected by a solar PV farm as the site is removed from regular ploughing and shoes or low-level piling is stipulated' (paragraph 2.10.110).

3.4.4. It also reiterates the need of an appropriate desk based assessment and, where necessary, a field evaluation, (paragraph 2.10.113).

3.4.5. In addition, NPS EN-3 goes on to state that "In some instances, field studies may include investigative work (and may include trial trenching beyond the boundary of the proposed site) to assess the impacts of any ground disturbance, such as proposed cabling, substation foundations or mounting supports for solar panels on archaeological assets." (paragraph 2.10.114).

3.4.6. It also states that, "The extent of investigative work should be proportionate to the sensitivity of, and extent of proposed ground disturbance in, the associated study area." (paragraph 2.10.115).

3.4.7. Paragraphs 2.10.116 – 2.10.119 of NPS EN-3 also advises that; applicants should take account of the results of historic environment assessments in their design proposal. They should also consider what steps can be taken to ensure heritage assets are conserved in a manner appropriate to their significance, including the impact of proposals on views important to their setting. As the significance of a heritage asset derives not only from its physical presence but also from its setting, careful consideration should be given to the impact of large scale solar farms which depending on their scale,

design and prominence, may cause substantial harm to the significance of the asset.

3.4.8. With regards to mitigation paragraphs 2.10.137 – 2.10.138 of NPS EN-3 state that: “The ability of the applicants to microsite specific elements of the proposed development during the construction phase should be an important consideration by the SoS when assessing the risk of damage to archaeology. Where requested by the applicant, the SoS should consider granting consents which allow for the micro siting within a specified tolerance of elements of the permitted infrastructure, so that precise locations can be amended during the construction phase if unforeseen circumstances, such as the discovery of previously unknown archaeology, arise.”

3.4.9. Finally for NPS EN-3, it outlines that Solar farms are generally consented on the basis that they will be time limited in operation. The SoS should therefore consider the length of time for which consent is sought when considering the impacts of any indirect effect on the historic environment, such as effects on the setting of designated heritage assets. (paragraph 2.10.160).

NPPF

3.4.10. Paragraph 207, among other matters, states that: ‘In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets’ importance and no more than is sufficient to understand the potential impact of the proposal on their significance’.

3.4.11. Paragraph 212 requires that: ‘When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.’

3.4.12. Paragraph 213 then states that: ‘Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.’

3.4.13. Paragraph 215 of the NPPF states that: ‘Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.’

Local Policy

ABC Local Plan

3.4.14. In their LIR [REP1-078], ABC set out that the following Local Plan policies are relevant to the Proposed Development:

- SP1 Strategic Objectives in respect of conserving and enhancing designated and non-designated heritage assets ;

- ENV5 Protecting Important Rural Features, in respect of conserving historic landscape features;

- ENV10 Renewable and Low Carbon Energy, in respect of ensuring development does not have a significant adverse impact on heritage assets;

- ENV13 Conservation and Enhancement of Heritage Assets. This sets out that development will not be permitted where it will cause loss or substantial harm to the significance of heritage assets or their settings unless it can be demonstrated that substantial public benefits will be delivered that outweigh the harm or loss; and

- ENV15 Archaeology in respect of the protection and enhancement of archaeological assets.

ABNP

3.4.15. ABC also refer to the following policies of the Aldington and Bonnington Neighbourhood Plan:

- AB4 Protection of locally significant views, in respect of the setting of Aldington and its local character;

- AB10 Renewable and community energy, again in respect of local setting and character; and

- AB11 Conserving heritage assets in respect of recognising the important contribution that heritage assets – designated and non-designated – make to the local character and distinctiveness of Aldington and Bonnington, both individually and collectively.

THE APPLICATION

3.4.16. The consideration of heritage, historic landscape character and archaeological matters is contained in ES Chapter 7: Cultural Heritage [AS-011]. The assessment considers the potential significant effects on designated and non-designated heritage assets, including archaeology, built heritage and historic landscape. Cultural heritage includes all aspects of the environment resulting from the interaction and relationships between people and places through time. Heritage assets include buildings, monuments, sites, places, areas or landscapes identified as having a degree of significance due to their heritage interest.

3.4.17. In addition, the applicant submitted the following appendices and plans to accompany the application:

- Appendix 7.1 Archaeological Desk Based Assessment (in two parts), includes an archaeological landscape assessment, geophysical

survey, and targeted archaeological trial trenching [APP-070] and [APP-071];

- Appendix 7.2 Heritage Statement includes an assessment of elements of the historic environment and their relative significance [APP-072];
- Figure 7.1a: Designated Heritage Assets within 2km of the order limits and Figure [APP-048];
- Figure 7.1b: Designated Heritage Assets within 5km of the order limits [APP-048]; and
- Figure 7.6: Protected Military Remains within 1km of the order limits [APP-048].

Baseline

3.4.18. The study area included a 2km radius from the order limits for all designated heritage assets, up to 5km for heritage assets of the highest significance and some assets, of the highest significance, have also been considered beyond 5km. This was agreed with KCC and ABC (Paragraph 7.2.2 of ES Chapter 7 [AS-011]).

3.4.19. There are no scheduled monuments, listed buildings, registered parks and gardens or conservation areas within the order limits. The crash site of WWII German Meschersmitt is designated as Protected Military Remains and the Ministry of Defence has issued a licence to the applicant under The Protection of Military Remains Act 1986 that identifies the location as the area of land having a radius of 100m around a location north east of Handen Farm (which extends partly outwith the Order limits).

3.4.20. Designated heritage assets recorded within 5km of the order limits include 30 Scheduled Monuments, 18 Grade I Listed buildings and 11 Grade II* Listed buildings. There are 155 Grade II Listed buildings within 2km of the order limits and 5 Conservation Areas and one Registered Park and Garden within 5km of the order limits. The nearest heritage assets to the order limits are the Grade II Listed assets at Bank Farm; 'Bank Farmhouse and wall attached' and 'Barn and 2 stable ranges attached, about 20 metres north of Bank Farmhouse'. Designated heritage assets within 2km and 5km of the order limits are shown on Three further PMR sites are within 1km of the order limits (as shown on Environmental Statement Volume 3: Figures Chapter 7: Cultural Heritage Figures 7.1 - 7.11 [APP-048] Figure 7.6: Protected Military Remains within 1km of the order limits).

Construction Phase

3.4.21. The applicant reports at paragraph 7.7.2 of ES Chapter 7: Cultural Heritage [AS-011] that there is the potential for physical (direct) effects on below ground archaeological remains and other heritage assets, such as historic hedgerows, and the historic landscape character within the order limits. These effects would arise as a result of ground disturbance associated with

the installation of the PV panels and associated infrastructure, including the cable route, and landscaping, including the removal of limited sections of hedgerow.

3.4.22. They further outline at Paragraph 7.7.6 of ES Chapter 7: Cultural Heritage [AS-011] that the PMR crash site within the order limits is of high value although evidence suggests that the remains are no longer present. The effects would therefore in the opinion of the applicant be slight (not significant).

3.4.23. Table 7.10 of ES Chapter 7: Cultural Heritage [AS-011] outlines the anticipated construction phase direct effects on cultural heritage assets. This reports that no more than slight/moderate adverse impact will be experienced.

3.4.24. Construction activities associated with the proposed development could indirectly affect the setting of heritage assets, for example construction traffic and noise, vibration, lighting and the presence of temporary construction compounds. The applicant states that these effects would be controlled through the construction management plans, and Archaeological Management Strategy are assessed by the applicant as slight adverse (not significant) (Paragraph 7.7.28 of ES Chapter 7 : Cultural Heritage [AS-011].

Operational Phase

3.4.25. ES Volume 4, Appendix 1.2: EIA Scoping Opinion [APP-062] confirmed that an assessment of the direct physical effects on below ground assets (i.e. archaeological remains) during the operational phase could be scoped out of the ES as direct physical effects will only occur during construction phase of the proposed development. It is anticipated by the applicant the direct impact on the historic landscape would be not significant.

3.4.26. The applicant has assessed the likely significant environmental effects of the proposed development on off-site heritage assets and the overall character of the historic landscape, following completion of the construction phase, with embedded design mitigation as set out in the Design Principles document [REP5-017]. It defines the value of heritage assets that are receptors to the indirect effect of development, i.e. changes to their setting, such that its contribution to their heritage value is affected. It then defines the significance of the effect on these receptors.

3.4.27. The applicant predicts at paragraph 7.7.35 of Chapter 7: Cultural Heritage [AS-011] that the effects on off-site heritage assets as a result of the proposed development will be indirect and adverse. They state that they will be largely temporary and reversible in the eventuality of the decommissioning of the proposed development following its 40-year operational phase, although landscape planting measures will have a residual permanent effect, which is judged to be neutral and not significant.

3.4.28. Effects on off-site heritage assets as a result of the proposed development will be indirect and adverse and not significant as outlined at paragraph

7.4.48 of the Non-Technical Summary volume 1 [APP-023]. The applicant expands that these effects will be largely temporary and reversible on decommissioning of the proposed development following its 40-year operational phase, although landscape planting measures will have a residual neutral permanent effect (not significant).

3.4.29. The applicant also makes reference to the indirect impacts that a number of heritage assets will suffer, largely as a result of a change in setting to the respective assets from the proposed development and this is reported by the applicant at paragraphs 7.7.33 – 7.7.198, and the Operational Phase Cultural Heritage Indirect Effects are summarised in Table 7.11 of ES Chapter 7 :Cultural Heritage [AS-011].

3.4.30. In all cases the magnitude of impact is described as no more than low or very low with the exception of the non designated asset of Aldington Mount. The significance of effect is reported as slight and not significant. In all other cases the applicant reports that there is not a significant effect by the proposed development on any designated or non-designated heritage assets within the zone of theoretical visibility (ZTV). The ZTV highlights any potential intervisibility between the proposed development and heritage assets. However, this assessment also takes into consideration the fact that setting goes beyond visual relationships.

Decommissioning

3.4.31. Direct effects on below ground assets during decommissioning were scoped out of the assessment as physical effects will only occur during the construction phase. Indirect effects on the setting of heritage assets during the decommissioning phase would be slight adverse (not significant) paragraphs 7.7.199-200, ES Chapter 7: Cultural Heritage [AS-011].

Cumulative Effects

3.4.32. Section 7.10 of ES Chapter 7: Cultural Heritage [AS-011] reports that a long list of cumulative schemes were scoped out due to their scale, type of developments proposed, distance between the proposed development and the scheme, or lack of intervisibility. During the construction and decommissioning phase, it is considered that the cumulative effects would be no worse than from the proposed development in isolation as outlined above.

3.4.33. The assessment has identified potential indirect cumulative effects on a number of receptors identified at paragraph 7.10.14 , from which the proposed development and the other schemes are visible. These effects are assessed by the applicant as slight, neutral or neutral/slight adverse (not significant). The only potential cumulative effects indicated by the prepared visualisations are those on the Grade I listed Church of St Martin.

3.4.34. The cumulative ZTV analysis suggests that the Otterpool Park Development may be visible from around the church, potentially affecting views of the church tower. However:

- Viewpoint 1aH shows the church tower clearly visible in the landscape. While Otterpool Park and East Stour Solar Farm may be visible at year 1 planting, Otterpool Park would not be visible by year 15 planting.

- Viewpoint 2H shows that Pivot Power Battery and Walsh Power Condenser might be partially visible in the background at year 15, but the proposed development would not be visible.

3.4.35. The church tower remains a prominent landmark, and the overall cumulative visual impact is considered slight adverse and not significant.

ISSUES CONSIDERED DURING THE EXAMINATION

3.4.36. During the examination a SoCG was agreed with HE [REP4-017] agreeing matters by the close of the examination. In particular HE noted that the proposed development lies in a sensitive area for the historic environment and would impact upon a wide range of heritage assets. Within the 5km study area, the Environmental Assessment [AS-011] identified three Grade I listed buildings, three Grade II* listed buildings, three Conservation Areas, one Grade II Registered Park and two Schedules Monuments. HE focused their advice on the assets they believed to be most impacted by the proposed development. HE noted that a detailed assessment of the impact upon the historic environment and a cumulative assessment had been undertaken.

3.4.37. HE's primary concern relates to the impact upon the significance of the Grade I Church of St Martin in Aldington, the Grade II* Church of St John the Baptist in Mersham, and Stonelees House, as well as the scheduled (and unscheduled) Bronze Age barrows which would be affected through development within their setting. HE agreed with the applicant that the identified harm to significance to all assets would be less than substantial. Notwithstanding this, they suggested the applicant should take any further opportunities to buffer the impact on Stonelees.

3.4.38. The SOCG [REP8-016] with ABC sets agreement on the heritage assets identified for assessment, and also the viewpoints used for assessment. In their LIR [REP1-078] ABC agreed that the proposed development would result in a low level of less than substantial harm for all of these assets less than substantial harm at the lower end of the spectrum. Subject to securing mitigation as outlined, ABC is satisfied there would be no residual significant effects on designated and non-designated heritage assets.

3.4.39. KCC in their SoCG [REP8-018] confirmed that the applicant had adequately provided a scope, methodology and assessment within the ES Chapter 7: Cultural Heritage. They also confirmed that they agreed with the applicant's assessment of the impact on Designated Heritage Assets, which are considered to be of less than substantial harm. It was suggested by KCC in their LIR [REP8-018] that further consideration should be given to impact of glint and glare from the solar panels on heritage assets. However, this was scoped out of the assessments as no significant effects were anticipated.

3.4.40. In addition, KCC did not initially consider that adequate trial trenching had been undertaken to robustly inform the Archaeological Management Strategy (AMS), which is a document that relates to elements of archaeological fieldwork and details specific measures to be applied or adopted as part of the programme of archaeological mitigation works. and as a consequence could not agree with the applicant's assessment that there would be no likely significant effects upon below ground archaeological remains. The question of whether the extent of trial trenching undertaken to date was an adequate basis for informing the WSI was a particular focus of the examination by other IPs such as Vera Atkinson [RR-301], Belinda Spinney [RR-021] and CPRE Kent [RR-059], and also referenced at OFH2. As a result, the applicant agreed to undertake further trial trenching and submitted the results at D8 [REP8-014] as part of a revised AMS and appendices.

3.4.41. Included within Appendix C of the revised AMS is a Written Scheme of Investigation (WSI). The WSI which was approved by KCC for targeted evaluation works within the order limits post-submission of the proposed development. This was undertaken to provide a targeted evaluation of potential archaeological features identified by the geophysical survey, LiDAR, historical records and aerial photography to ensure a reasonable assessment of the potential archaeology within the order limits was completed.

3.4.42. This latest phase of archaeological evaluation comprised sixty-two trenches across the order limits: sixteen measured 20m in length x 1.8m in width, thirty-six 30m x 1.8m, eight 50m x1.8m, one 40m x 1.8m and one 26m x 1.8m. It identified low to moderate archaeological potential across the majority of the order limits. The geophysical assessment identified a number of areas of potential archaeology which were assessed by the targeted trial trenching with only limited areas of archaeology identified.

3.4.43. An approach to mitigation where archaeology was identified, Fields 2, 9, 10, and 26, will be agreed with KCC prior to any construction activities. This may include preservation in-situ, preservation in record or watching brief. The applicant proposes that the post DCO consent archaeological investigation works in areas where archaeology have not been identified would be limited to a reasonable number of informed trenches and/or geo-archaeological test pits across the order limits at locations to be agreed with KCC. In addition, they also propose that archaeological mitigation will be assessed following review of the decommissioning works and will be agreed with KCC prior to decommissioning works being undertaken.

3.4.44. In the Cultural Heritage Technical note [REP8-028] submitted at D8, the applicant outlines that the approach to further archaeological work may include preservation in-situ, preservation in record or watching brief. In addition, the post DCO consent archaeological investigation works will include a further programme of 60 trenches across the order limits at locations to be agreed with KCC but likely to include the Work No. 2 areas, being the location of Inverter Stations.

3.4.45. By the end of the examination there was no dispute from KCC that the applicant had undertaken full and detailed desk-based assessments and that these have been used to inform the intrusive field evaluations and the production of a detailed mitigation strategy (as set out in ES Chapter 7 [AS-011]).

3.4.46. The Aldington and Mersham Support Group submitted in their D2 submission [REP2-039] that they were concerned that the Grade II* listed Stonelees would be very badly affected by the proposed industrial landscape of the proposed development. The applicant responded at D3 by stating that the position in respect of impacts to Stonelees, including the mitigation proposals, have been agreed with Historic England, and is set out in Table 2-2 of the Statement of Common Ground with Historic England [REP4-017].

3.4.47. Concerns were also expressed by the owner of Stonelees in their D4 submission [REP4-051] regarding their unimplemented consent to convert a barn building within the curtilage of their property to a residential unit. The applicants in their response [REP5-023] agreed that they would provide a buffer of open land of circa 18m north of the barn to a new hedgerow, with the first panels located a further 8m north. This would assist in part addressing HE's prompts to explore opportunities to reduce harm to Stonelees.

3.4.48. HE agreed in their SOCG [REP4-017] that the potential cumulative harm that could be caused by proposals has been adequately assessed by the applicant.

3.4.49. Similarly, ABC in their LIR [REP1-070] also agree that the assessment of cumulative effects identifies there is potential for cumulative effects to 12 designated and 3 non-designated heritage assets where the proposed development and other proposed, consented or built out developments would be visible; however in all instances the cumulative effects would remain the same as identified from the proposed development in isolation.

CONCLUSIONS

3.4.50. In reaching my conclusions I:

- have regard to the desirability of preserving any listed building, preserving or enhancing the character or appearance of conservation areas, and preserving scheduled monuments or their setting (Regulation 3 of The Infrastructure Planning (Decisions) Regulations 2010);

- have considered the desirability of sustaining heritage assets (paragraph 5.9.25 of NPS EN-1);

- given considerable importance and weight to the desirability of preserving all heritage assets (paragraph 5.9.25 of NPS EN-1);

- given great weight to the asset's conservation when considering the impact on the significance of a designated heritage asset (paragraph 5.9.25 of NPS EN-1);

- given appropriate weight to the desirability of preserving the setting of designated heritage assets (paragraph 5.9.36 of NPS EN-1); and

- made a balanced judgement regarding the scale of any harm or loss and the significance of non-designated heritage assets (paragraph 5.9.36 of NPS EN-1).

3.4.51. In general terms the applicant has adequately assessed the significance of the heritage assets affected by the proposed development and the extent of the likely impact can be understood. The application therefore meets the relevant requirements of NPS EN1, NPS EN3, the NPPF, and local development plan policy.

3.4.52. The ExA has identified a range of cultural heritage matters where adverse effects would be minor and cause less than substantial harm, particularly where such effects would be minimised and/or mitigated to the extent that they do not weigh significantly against the DCO being made on cultural heritage matters. A number of IPs cited adverse impacts on the setting of the Grade I church of St Martin and Stonelees. However, having carefully examined the potential impacts on site, the ExA considers that the impacts would be minimally adverse, but nevertheless would cause moderate harm to the significance of this asset.

3.4.53. The ExA also agrees that the impact on the setting of the non-designated asset of Aldington Mount lying west of Field 9 may experience some small scale slight adverse effect, but the asset would remain untouched, and its relationship with Roman Road would still be maintained.

3.4.54. In respect of archaeology, comprehensive surveys and assessment have taken place of the land within the order limits. These are proportionate to the overall archaeological potential of the site and in line with advice supplied by KCC.

3.4.55. Whilst the layouts provided are for illustrative purposes only, this includes some flexibility to respond to archaeological features to minimise effects on archaeology. The ExA accepts that the latest AMS submitted at D8 [REP8-014] sets out the approach to archaeological mitigation works in relation to the proposed development which will include further archaeological evaluation before the commencement of construction works.

3.4.56. The AMS will inform measures to avoid impacts on archaeological remains. If required, a non-invasive alternative to piling could be used to avoid impacts on archaeology. Requirement 9 in Schedule 2 to the dDCO [REP8-004] secures that no phase of the proposed development may commence until certain specified details for that phase have been submitted to and approved by the local planning authority, and such approval to be in consultation with KCC. The specified details are a written scheme for the investigation of

areas of archaeological interest within that phase; identification of any areas where a programme of archaeological investigation is required within that phase, and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found. I therefore consider that the impacts on below ground archaeological assets are likely to be no more than slight adverse during construction and decommissioning, which is not significant and there will be less than substantial harm.

3.4.57. The ExA is satisfied with the applicant's assessment of the Cumulative effects and it is considered that cumulative effects would be no worse than from the proposed development alone, so no more than slight adverse effect.

3.4.58. I conclude that:

- the harm to heritage assets and archaeology brings moderate weight against the making of the Order; and
- the low level of less than substantial harm to designated heritage assets and the less than substantial harm in archaeological terms are to be weighed against the public benefits of the proposal in accordance with paragraphs 5.9.28, 5.9.32 and 5.9.36 of NPS EN-1 and paragraph 2.3.8 of NPS EN-3.

3.5. LANDSCAPE AND VISUAL

INTRODUCTION

3.5.1. The main issues raised in the examination related to the following:

- methodology including study area, viewpoints and zone of theoretical visibility and approach to cumulative/ in combination effect;
- the effect of the solar panels, battery storage and other structures on landscape character and the Kent Downs National Landscape;
- the visual impact of glint and glare;
- the visual impact of lighting;
- cumulative impact on visual amenity and landscape character; and
- the determining factors for the size and location of the solar panel arrays and associated development.

LEGISLATIVE CONTEXT

3.5.2. The legislation of relevance to the Landscape and Visual topic is as follows:

- Infrastructure Planning (Environmental Impact Assessment) Regulations 2017;

- Countryside and Rights of Way Act 2000;

- The Planning (Listed Buildings and Conservation Areas) Act 1990;

- Hedgerows Regulations 1997; and
- Levelling Up and Regeneration Act 2023 (Protected Landscapes)

3.5.3. POLICY BACKGROUND

NPS EN- 1

3.5.4. Paragraph 5.10.1 states that the "landscape and visual effects of energy projects will vary on a case by case basis according to the type of development, its location and the landscape setting of the proposed development"; and paragraph 5.10.4 further expands by stating "Landscape effects arise not only from the sensitivity of the landscape but also the nature and magnitude of change proposed by the development, whose specific siting and design make the assessment a case-by-case judgement".

3.5.5. Paragraph 5.10.5 clarifies that "Virtually all nationally significant energy infrastructure projects will have adverse effects on the landscape, but there may also be beneficial landscape character impacts arising from mitigation" while 5.10.6 states that "Projects need to be designed carefully, taking account of the potential impact on the landscape. Having regard to siting, operational and other relevant constraints the aim should be to minimise harm to the landscape, providing reasonable mitigation where possible and appropriate".

3.5.6. The approach to the setting of National Landscapes is clarified by paragraph 5.10.8 which states that the "duty to seek to further the purposes of nationally designated landscapes also applies when considering applications for projects outside the boundaries of these areas which may have impacts within them. In these locations, projects should be designed sensitively given the various siting, operational, and other relevant constraints".

3.5.7. Paragraph 5.10.12 states "Outside nationally designated areas, there are local landscapes that may be highly valued locally. Where a local development document in England or a local development plan in Wales has policies based on landscape or waterscape character assessment, these should be paid particular attention. However, locally valued landscapes should not be used in themselves to refuse consent, as this may unduly restrict acceptable development."

3.5.8. Paragraphs 5.10.13 and 5.10.14 state that all energy projects are likely to result in visual effects and that the "Secretary of State will have to judge whether the visual effects on sensitive receptors, such as local residents, and other receptors, such as visitors to the local area, outweigh the benefits of the project".

3.5.9. Paragraph 5.10.19 states that "The applicant should consider landscape and visual matters in the early stages of siting and design, where site choices and design principles are being established. This will allow the applicant to demonstrate in the ES how both negative effects have been minimised and opportunities for creating positive benefits or enhancement have been

recognised and incorporated into the design, delivery and operation of the scheme".

3.5.10. With regard to mitigation, paragraph 5.10.26 states: "Reducing the scale of a project can help to mitigate the visual and landscape effects of a proposed project. However, reducing the scale or otherwise amending the design of a proposed energy infrastructure project may result in a significant operational constraint and reduction in function".

3.5.11. Paragraph 5.10.27 states that "Adverse landscape and visual effects may be minimised through appropriate siting of infrastructure within its development site and wider setting. The careful consideration of colours and materials will support the delivery of a well-designed scheme, as will sympathetic landscaping and management of its immediate surroundings".

3.5.12. Paragraph 5.10.34 states that in considering applications outside National Landscapes, the duty to seek to further the purposes of nationally designated areas also applies, however it goes on to state "The fact that a proposed project will be visible from within a designated area should not in itself be a reason for the Secretary of State to refuse consent".

3.5.13. Paragraph 5.10.35 provides further clarity, noting that 'The scale of energy projects means that they will often be visible across a very wide area. The Secretary of State 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". In conclusion, "The Secretary of State should consider whether the project has been designed carefully, taking account of environmental effects on the landscape and siting, operational and other relevant constraints, to minimise harm to the landscape, including by appropriate mitigation" (Paragraph 5.10.37).

NPS EN-3

3.5.14. This sets out primary policy for decisions relating to specific renewable energy types including Solar Photovoltaic Generation. Paragraph 2.10.17 states that the scale of solar farms varies, but that the "scale of development will inevitably have impacts, particularly if sited in rural areas". It further identifies at paragraph 2.10.27 that "Utility-scale solar farms are large sites that may have a significant zone of visual influence" and that "The two main impact issues that determine distances to sensitive receptors are therefore likely to be visual amenity and glint and glare".

3.5.15. In relation to public rights of ways', it encourages applicants in paragraph 2.10.43 to where possible to minimise visual impacts of the development for those using existing public rights of way, considering the impacts this may have on any other visual amenities in the surrounding landscape. It further encourages applicants at 2.10.44 to consider and maximise opportunities to facilitate enhancements to the public rights of way network as part of any proposed development.

3.5.16. Paragraph 2.10.94 sets out that the “approach to assessing cumulative landscape and visual impact of large-scale solar farms is likely to be the same as assessing other onshore energy infrastructure”.

3.5.17. Paragraph 2.10.95 provides advice in relation to the zone of visual influence of projects and that whilst it may be the case that the development covers a significant surface area, in the case of ground-mounted solar panels it should be noted that with effective screening and appropriate land topography, the area of a zone of visual influence could be appropriately minimised”. However, it then advises at paragraph 2.10.98 that applicants will be expected to direct considerable effort towards minimising the landscape and visual impact of solar PV arrays.

3.5.18. Furthermore, paragraph 2.10.100 looks to applicants to protect and retain, wherever possible, the growth of vegetation on site boundaries, as well as the growth of existing hedges, established vegetation, including mature trees within boundaries.

3.5.19. In addition, applicants should consider the potential to mitigate landscape and visual impacts through, for example, screening with native hedges, trees and woodlands (paragraph 2.10.131); minimise the use and height of security fencing. Where possible applicants should utilise existing features, such as hedges or landscaping, to assist in site security, or screen security fencing” (paragraph 2.10.132); and they should minimise the use of security lighting. Any lighting should utilise a passive infra-red (PIR) technology and should be designed and installed in a manner which minimises impact” (paragraph 2.10.133).

NPS EN-5

3.5.20. Paragraph 2.9.25 highlights that the SoS should only grant development consent for underground cables when they are satisfied that the proposal considers “the landscape and visual baseline characteristics of the setting of the proposed route, in particular, the impact on high sensitivity visual receptors (as defined in the current edition of the Landscape Institute’s Guidelines for Landscape and Visual Impact Assessment), residential areas, designated landscapes, valued landscapes, designated heritage assets and Heritage Coasts (including, where relevant, impacts on the setting of designated features and areas)”.

NPPF

3.5.21. Paragraph 135 of the NPPF stipulates that (amongst other things) that developments should be sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change.

3.5.22. In addition paragraph 165 relating to Climate Change seeks to help increase the use and supply of renewable and low carbon energy and heat, by encouraging plans to provide a positive strategy for energy from these sources, which maximises the potential for suitable development, and their

future re-powering and life extension, while ensuring that adverse impacts are addressed appropriately , including cumulative landscape and visual impacts.

LOCAL PLANNING POLICY

ABC Local Plan

3.5.23. Policy ENV3a – Landscape Character and Design provides a criteria-based policy to protect landscape characteristics, proportionately, according to the landscape significance of the site.

3.5.24. Policy ENV3b, looks at Landscape Character and Design in the AONB, whilst Policy ENV4 looks at controlling light pollution and promoting dark skies. In addition, Policy ENV5 seeks to protect important rural features such as landscape quality.

ABC Landscape Character guide.

3.5.25. Policy TRS17 looks at development in the rural areas to protect and enhances the particular landscape character area within which it is located, and, where relevant, any adjacent landscape character area.

3.5.26. Policy TRS18 looks to protect important rural features such as public rights of way.

ABNP

3.5.27. Policy AB10: Renewable and Community Energy looks at minimising any harm to Landscape and visual matters through appropriate mitigation. It also points to ABC's Supplementary Planning Document, Renewable Energy Planning Guidance v2, and the relevant landscape descriptions contained within the Ashford Landscape Character Study 2005 to inform their landscape and visual impact assessment.

Other Guidance

3.5.28. The Kent Downs National Landscape partnership produced the Kent Downs AONB Management Plan 2021-2026. The Management Plan provides the strategic framework for the future of the management of the landscape. The Plan provides a series of sustainable development principles and policies to help manage development and its impact on the AONB and its setting

3.5.29. The Kent Downs AONB Setting Position Statement is an advisory document that is intended to provide guidance on issues relating to the setting of the National Landscape. Section 4 states "The setting of the Kent Downs AONB does not have a geographical border. In most cases, the setting comprises land outside the AONB which is visible from the AONB and from which the AONB can be seen. The setting may be wider however, for example when affected by features such as noise and light. In some cases, the setting area will be compact and close to the AONB 2022-2030 boundary, perhaps because of natural or human made barriers or because of the nature of the

proposed change. However, the setting area maybe substantial for example where there is a contrast in topography between higher and lower ground".

3.5.30. Section 5 highlights that in most cases, the further away a development is from the AONB boundary, the more the impact is likely to be reduced, however a very large or high development may have an impact even if some considerable distance from the AONB boundary. The section also points out that cumulative impacts can also arise from multiple developments within the setting of the AONB.

3.5.31. The Kent Downs AONB Renewable Energy Position Statement has bn published to provide a clearly articulated position for the Kent Downs AONB partnership with regards to renewable energy technologies. It outlines that "the Kent Downs AONB Joint Advisory Committee supports the need for renewable energy sources as part of the mitigation response to climate change".

3.5.32. Considering renewable energy development proposals' the position statement states, "All proposals will need to clearly demonstrate how conservation and enhancement of the area will not be compromised and satisfactorily address the potential impacts, particularly with regard to landscape character, views and setting."

3.5.33. In relation to Photovoltaic Arrays the position statement sets out that "it is extremely unlikely that any location could be found in or within the setting of the AONB where field-scale photovoltaics would not have a significant adverse effect on the landscape and the sense of remoteness, natural beauty and landscape character for which the Kent Downs are valued".

THE APPLICATION

3.5.34. ES Volume 2: Chapter 8: Landscape and Views [AS-012] presents an assessment of the likely significant effects on Landscape and Views in relation to effects arising from the construction, operation and maintenance, and decommissioning of the proposed development. Mitigation measures are identified, where appropriate, to avoid, reduce or offset any significant adverse effects identified and/or enhance likely beneficial effects.

3.5.35. ES Volume 2: Chapter 8: Landscape and Views [AS-012] is supported by the following appendices, included within ES Volume 3:

- Appendix 8.1: Legislation, Planning Policy and Guidance;
- Appendix 8.2: LVIA Methodology;
- Appendix 8.3: Viewpoint Correspondence;
- Appendix 8.4: Site Appraisal Photographs;
- Appendix 8.5: Representative Views - Winter;
- Appendix 8.6: Representative Views – Summer;

- Appendix 8.7: Night-time Photographs;
- Appendix 8.8: Landscape Effects Table;
- Appendix 8.9: Visual Effects Table;
- Appendix 8.10: LVIA Visualisations (Winter and Summer);
- Appendix 8.11: Cumulative LVIA Visualisations; and
- Appendix 8.12: Cumulative Effects Table.

3.5.36. ES Volume 2: Chapter 8: Landscape and Views [AS-012] is supported by the following Figures included within ES Volume 3, Figures [REP4-012]::

- Figure 8.1: Zone of Theoretical Visibility;
- Figure 8.2: Site Context Plan;
- Figure 8.3: Topography Plan;
- Figure 8.4: Topography Plan - Site Level;
- Figure 8.5: Landscape Character Plan - National Character and Kent Downs National Landscape.

3.5.37. ES Volume 2: Chapter 8: Landscape and Views [AS-012] is also informed by data and information in the following:

- ES Volume 2, Chapter 9: Biodiversity [APP-033];
- ES Volume 4, Appendix 9.3: Arboricultural Impact Assessment [AS-017]; and
- ES Volume 4, Appendix 16.2: Solar Photovoltaic Glint and Glare Study [APP-123].

Baseline

3.5.38. The applicant reports in Section 8.5 of ES Chapter 8: Landscape and Views [APP-032] that the landscape and visual baseline conditions have been reviewed and recorded by way of desktop studies and field surveys during winter and summer. It has also been undertaken in accordance with standard guidance the reports. They also reference that the baseline with respect to site context, land-use and pattern, topography, access, and designations has been described. The character and physical features of the application site and the visual baseline have also been described. The future baseline of the order limits has been considered based on the year 2026.

3.5.39. Also within this section the applicant also sets out that the assessment of the likely landscape and visual effects of the proposed development has been undertaken during the construction phase and at Years 1 and 15 of

operation, the latter taking account of the residual effects of the proposed development. The effects relating to the decommissioning of the proposed development have also been assessed. A night-time assessment has been carried out of the construction and decommissioning phases of the proposed development. The assessments have been carried out on the basis of the Landscape and Visual Impact Assessment ('LVIA') Methodology set out in ES Volume 4, Appendix 8.2 [AS-016] which was agreed with ABC and their appointed landscape advisers.

3.5.40. The order limits are not designated for landscape value, although it is within the setting of the Kent Downs NL, and there are conservation areas and numerous listed buildings within the study area, as well as ancient woodland adjacent to the order limits. The order limits are also partially within an area proposed to be designated as a Dark Sky Zone.

3.5.41. Review and analysis of national, county and borough level published landscape character assessments were carried out by the applicant. These assessments describe a raised landscape of mixed, open farmland with dramatic views to the North Downs enclosing a flat, open and sometimes denuded (eroded) valley landscape featuring historic mills; a mosaic of fields with mixed 'crest top' woodlands.

3.5.42. From my USIs I can see that the order limits include an extensive area of mixed farmland with hedgerows and occasional trees which is sub-divided by country roads and sporadic clusters of houses and other buildings. The landform varies from gently undulating to rolling, with the order limits broadly occupying the East Stour River valley and a ridge known as 'Aldington Ridge'. Fields within the order limits are often large scale. Their landscape also is impacted by infrastructure from the adjacent HS1 / Network Rail railway lines, Sellindge Substation and overhead power lines in the east. There are views from higher ground towards the Kent Downs NL.

3.5.43. The hedgerow field boundaries of many of the fields mean that close range views from outside the order limits are only typically glimpsed from the adjacent country roads. The open nature of the East Stour River valley allows more open views, including from the network of PRoW in the immediate landscape to the north, north-east and northwest of the order limits. Because of the scale and topography of the order limits, it is not visible in its entirety from any one location. There are close range views of the order limits from a limited number of residential properties that lie adjacent to them. There are no views from the centre of local settlements, including the two conservation areas in Aldington, or from within the village of Mersham. Collier's Hill provides an elevated perspective over the western part of the order limits, and there are glimpses of the parts of the order limits closest to the East Stour River from the Aldington Ridge to the east of the site.

3.5.44. To the north, beyond the HS1 / Network Rail railway lines, the order limits are only partially visible due to intervening landform and vegetation, with only more distant glimpses possible from the undulating landscape to the north of the M20 motorway. The site is barely perceptible from the Kent Downs NL

due to distance, intervening landform and vegetation, and existing built form within the landscape.

Construction Phase

3.5.45. The applicant at Section 8.5 of ES Volume 2: Chapter 8: Landscape and Views [AS-012] outlines that no landscape receptors are expected to experience significant effects during the construction phase of the proposed development. This is due to the scale of Landscape Character Areas (LCA) in relation to the order limits, the lack of widespread, permanent and substantial changes to the physical fabric of the order limits and the very short duration of effects relating to the construction and decommissioning phases. The level of effect on landscape receptors would be negligible adverse to minor adverse (not significant).

3.5.46. Three of the 44 assessed visual receptors are predicted by the applicant to experience moderate adverse (significant) effects during the construction phase of the proposed development. These are users of PRoWs within/adjacent to the proposed PV Arrays (two receptor groups) and users of PRoW AE401, Collier's Hill.

3.5.47. Four further receptors have been identified by the applicant as having temporary, minor-moderate adverse (not significant) effects including residents on Laws Lane, PRoW AE449 users, residents on the northern edge of Aldington and Station Road. No significant effects on night-time receptors have been identified as a result of the construction phase.

Operational Phase

3.5.48. The applicant sets out at paragraph 8.13.17 of ES Chapter 8: Landscape and Views [AS-012] that once operational, at Year 1 following completion, three landscape receptors are considered by the applicant to likely experience significant effects. The open fields of the application site and the overall landscape character of the order limits will be subject to major-moderate adverse (significant) effects, while the Aldington Ridge LCA will experience a moderate adverse (significant) effect.

3.5.49. The applicant then goes on to say that following establishment of proposed planting at Year 15, these three receptors are considered likely to experience a combination of moderate adverse and moderate beneficial (significant) effects. Two further landscape receptors (hedgerows and canopy trees) will be subject to moderate beneficial (significant) effects at Year 15 following establishment of proposed planting. Woodland will be subject to a minor-moderate beneficial (not significant) effect due to the creation of new areas of woodland within the order limits.

3.5.50. Two landscape receptors, Postling Scarp and Vale LCAs, are identified at paragraph 8.13.26 ES Chapter 8: Landscape and Views [AS-012] where the applicant reports they will experience minor-moderate adverse (not significant) effects at Year 1 due to physical changes in the landscape, which reduce to minor neutral and minor adverse (not significant), respectively, at Year 15.

3.5.51. The remaining landscape receptors will be subject to effects that are negligible (not significant).At paragraph 8.9.9 ES Chapter 8: Landscape and Views [AS-012] the applicant outlines that at Year 1, 19 of the 44 assessed visual receptors are considered likely to experience moderate adverse (significant) effects as a result of the proposed development, with one receptor judged to experience a moderate-major (significant) effect. Most of these receptors are near or within the order limits and include:

- PRoW users (various);
- Local residents (Laws Lane, Frith Road, Bank Road, Handen Farm/Cottage, Callywell Lane, Station Road (Evegate Mill House), on the northern edge of Aldington and Mersham); and
- People travelling on local roads (Bank Road, Goldwell Lane / Station Road).

3.5.52. Three receptors have been identified as likely to experience minor-moderate effects which are not significant at Year 1 including users of PRoW (in Fields 26-29 and AE475 - outside of the order limits) and residents of The Forstal. Other visual receptors are likely to experience effects that are either minor, minor-negligible, negligible or nil (no effect) (not significant).

3.5.53. The applicant sets out at paragraph 8.13.8 of ES Chapter 8: Landscape and Views [AS-012] that following establishment of mitigation planting at Year 15, the number of visual receptors experiencing significant effects will reduce to four, all of which are moderate adverse (significant): users of PRoW (within the Site), AE401 Colliers Hill and AE428 and people travelling on Bank Road.

3.5.54. Visual effects on users of PRoW within/adjacent to the order limits with open panoramic views towards the Kent Downs NL and users of PRoW AE370, and residents on Bank Road and in Mersham would reduce to minor-moderate adverse (not significant). Other visual receptors are likely to experience effects that are either minor, minor-negligible, negligible or nil (no effect) (not significant).

3.5.55. The proposals for landscape and ecological mitigation and enhancement are presented in [REP3-020]. These measures would be secured by Requirement 8 of the dDCO [REP8-004] relating to the Landscape and Ecological Management Plan [REP3-020]. The DCO sets out that this must be substantially in accordance with the outline Landscape and Ecological Management Plan (oLEMP) [REP3-020]. The purpose of the oLEMP is to provide the overarching principles for minimising, managing and / or mitigating and enhancing the environmental effects of the Project. The applicant states at paragraph 1.3.2 of the oLEMP [REP3-020] sets out how the proposed development will integrate into the existing landscape to minimise impacts on environmental receptors;

- The mitigation measures to reduce the effects of the proposed development on landscape features and biodiversity; and

- Measures that will allow the proposed development to meet its biodiversity net gain requirement as secured by a Requirement in the dDCO [REP8-004] by outlining the potential range of enhancements to the biodiversity, landscape, and green infrastructure value.

3.5.56. Table 2.1 of the oLEMP [REP3-020] sets out a series of design objectives in relation to managing the landscape strategy for the proposed development. Objectives 2 and 3 look to sensitively locate the proposal within the landscape and to minimise views from various receptors including dwellings and vantage points.

3.5.57. No significant night time effects are identified as the proposed development would not require permanent lighting.

Decommissioning Phase

3.5.58. Effects during the decommissioning phase are predicted by the applicant to be largely similar to the construction phase in terms of the nature of change and duration. It is assumed that decommissioning will not involve the removal of hedgerows or woodland. No significant effects have therefore been identified for landscape receptors during decommissioning.

3.5.59. One receptor has been identified by the applicant as likely to experience significant effects during the decommissioning phase, where users of PRoW AE401, Collier's Hill would experience a temporary moderate adverse (significant) visual effect. The remainder of receptors will experience effects that are minor adverse, negligible minor or negligible (not significant).

3.5.60. No significant effects on any landscape and visual receptors within the Kent Downs NL have been identified at any stage of the proposed development by the applicant.

Cumulative Effects

3.5.61. A cumulative assessment has been carried out including the following cumulative schemes:

- Pivot Power Battery Storage;
- Walsh Power Condenser;
- Land north of 1 Church View, Aldington;
- Land south-west of Goldwell Court, Goldwell Lane;
- East Stour Solar Farm; and
- Otterpool Park Development.

3.5.62. Section 8,12 of ES Chapter 8: Landscape and Visual [AS-012] outlines that the cumulative assessment identifies that most receptors are unlikely to experience significant cumulative effects. Paragraph 8.12.22 outlines that

one receptor (Users of PRoW within / adjacent to the Site) is likely to experience a moderate adverse (significant) cumulative effect during the construction phase. No receptors will experience significant cumulative effects during the decommissioning phase.

3.5.63. During the operational phase, four visual receptors will be subject to significant cumulative effects at Year 1: People travelling along the North Downs Way in the Kent Downs NL (moderate adverse); users of PRoW within / adjacent to the Site (moderate adverse); people travelling along Goldwell Lane (moderate adverse); and users of PRoW AE474 (moderate adverse).

3.5.64. The applicant then reports at paragraph 8.12.56 of ES Chapter 8: Landscape and Visual [AS-012] that the above conclusion is supported by the findings of the cumulative assessment submitted as part of the Supplementary Environmental Information by EDF for East Stour Solar Farm. It is also supported by the responses provided by the Kent Downs AONB Unit for East Stour Solar Farm, that the proposals are not considered to 'result in significant or unacceptable impacts on the setting of the Kent Downs National Landscape', and for the proposed development 'it is not likely to result in any material harm to those seeking to enjoy the Kent Downs AONB within the nationally protected landscape'.

ISSUES CONSIDERED DURING THE EXAMINATION

3.5.65. A number of IPs such as Aldington and Bonnington Parish Council [RR-002], Isabel Hunt [RR-107] and John Henderson [RR-130] raised concerns regarding the impact of the Proposed Development on the landscape, particularly from areas of high ground surrounding the site.

3.5.66. ABC in their LIR [REP1-078] concluded that the proposed development would have a negative impact on landscape character and visual amenity within the local and wider area contrary to Policies SP1, ENV3a, ENV3b, ENV5 and ENV10 of the ABC Local Plan 2030 and Polices AB4, AB8 and AB10 of the ABPCNP 2030.

3.5.67. By the close of the examination agreement had not been reached on the effects on all matters relating to Landscape Character between ABC and the applicant. Whilst agreement was reached on the individual impacts on individual receptors, ABC considered that the proposed development would change the character of the wider rural area in combination with other projects, and that the scale of development had not been justified or the applicant's Landscape Strategy. In addition, ABC did not agree that the aim to minimise harm to the landscape as required by NPS EN-1 had been complied with.

3.5.68. It is noted as set out in row 2.3.10 of the signed Statement of Common Ground with ABC [REP8-016] contends that different effects should have been identified, and the applicant points out that this is not consistent with the views of their commissioned landscape consultant, or with the

submission of any evidence that has been set out in a way that would be consistent with the findings of the LVIA.

3.5.69. The applicant contended in the Statement of Commonality at D6 [RR-012] that their approach to the proposed development is consistent with Landscape Institute guidance (LITGN-2024-01: Notes and Clarifications on Aspects of Guidelines for Landscape and Visual Impact Assessment Third edition (GLVIA3) which states (at paragraph 5(1)) 'It is not necessary to assess effects on every landscape character type or area identified by assessments at different levels for any development – the best scale of assessment for the project should be selected'. The applicant elaborates that the county level LCAs have been used for the assessment of landscape effects, as previously agreed with ABC in addition to the character of the site itself and the National Landscape LCAs. The applicant considers this approach to be robust and proportional to the scale and extent of the Project and in accordance with up-to-date best-practice guidance and NPS EN-1.

3.5.70. Referring back to NPS EN-1 paragraph 4.7.6, this accepts applicants may not have any or very limited 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, land form and vegetation. It is noted that there seems to be general agreement on the LVIA methodology used, which would inform the landscape strategy outlined in the oLEMP. [REP3-020]. In addition, the application defers the approval of design matters to ABC as LPA by virtue of Requirement 4, and that those details should be in accordance with the design principles document submitted with the application.

3.5.71. The applicant sets out that in ES Volume 4, Appendix 8.12: Cumulative Effects Table [REP3-014] and LCA Upper Stour Valley, that the likely landscape effects of the proposed development on its own and in combination with the agreed list of cumulative schemes have been assessed in accordance with the agreed LVIA methodology on the basis of criteria for the scale, extent and duration of effects. With respect to the cumulative assessment, the assessment identifies moderate-minor (adverse) Effects at Year 1 and moderate effects at Year 15 with a combination of adverse and beneficial effects. The magnitude of change for the cumulative effects to the LCA Upper Stour Valley are assessed in ES Volume 4, Appendix 8.12: Cumulative Effects Table [REP3-014] as 'very small/ small / medium'. The applicant considered this to be a robust magnitude judgement taking into account the geographic scale of the LCA Upper Stour Valley and the spatial extent of both the proposed development and the East Stour Solar Farm.

3.5.72. Within the final SoCG [REP8-016] the applicant states that they consulted ABC in accordance with section 42 of the PA 2008, about the proposed development and environmental impact assessment as part of the formal pre-application consultation procedure. This afforded ABC with the opportunity to provide responses to the information provided at various stages of the pre-application process. They then elaborated in Table 2.1 that the design of the proposed development has been subject to consultation with a range of IPs, including ABC and the Council's appointed landscape

consultant. These discussions, they state, have shaped the landscape strategy and the design of the proposed development. Through the design process, the applicant states that they have refined the proposals through ongoing and engagement with a wide range of interested parties.

3.5.73. A Rule 17 [PD-010] was issued on the 13th May 2025 seeking further clarification on the level of agreement on Landscape and Visual matters between the applicant and ABC, as the ExA was unclear between the then latest version of the SoCG and the Statement of Commonality [REP6-012], in relation to the Landscape Strategy and mitigation proposed. The applicant responded at D8 [REP8-016] by pointing out that the Landscape Strategy was amended during the pre-application stage to incorporate a greater amount of landscape and tree planting, which was in direct response to ABC's request for an increased level of tree planting. In addition, they state that the principles of the landscape and ecology strategy have been based on the objectives set out in the Design Approach Document [APP-149].

3.5.74. NE in their RR [RR-206] set out that they consider that the Landscape Visual Impact Assessment (LVIA) and additional documents are sufficient to accurately explain the effects of the proposed development on the landscape, visual resources and special qualities of the Kent Downs National Landscape. The landscape consultant appointed by ABC also confirms that the LVIA methodology is acceptable (2.3.2 SoCG [REP8-016]).

3.5.75. In their SoCG [REP4-021] with the applicant they agree that the proposed development does not include land which falls within the designated area. They further elaborate that the majority of the Kent Downs NL's Special Qualities relate to the characteristics of the designated area itself, which the proposed development will not have a direct effect on. Notwithstanding, a draft of the Kent Downs National Landscape Special Qualities Assessment [REP1-076] provides further consideration of how key characteristics or Special Qualities of the Kent Downs NL could be affected by the proposed development. They are confident and agree that the oLEMP [REP3-020] then secures satisfactory mitigation measures.

3.5.76. The Kent Downs National Landscape Team submit in their [RR-157] that the proposal will result in a change in the landscape outside the AONB. However, they go on to report that they consider that given the context of the site, it is not likely to result in any material harm to those seeking to enjoy the Kent Downs AONB within the nationally protected landscape and, subject to the incorporation of sufficient landscaping, should not have a material impact on the setting of the Kent Downs AONB.

CONCLUSIONS

3.5.77. Having assessed all of the information before me I acknowledge ABC's concerns relating to the scale of the development and that they consider that this has not been justified. I also accept that there will be harm to the landscape which varies due to the nature of the individual receptor. I also acknowledge that National policy accepts that due to the need, proposals are likely to be large scale and will inevitably have some significant effects.

Policy also asks applicants to look to minimise the impacts through reasonable and proportionate mitigation.

3.5.78. Because of the scale of the proposed development and the topography of the local area, the whole site cannot be viewed as a whole. The topography therefore assists with some reduction of impact. I also note from many vantage points within the area the proposed development would be largely screened from view because of the dense network of hedgerows. I acknowledge that from within the site, users of PRoWs will have clear views of the solar arrays and temporary construction and decommissioning effects, which would be significant adverse effects, which will diminish their experience of using the PRoWs. However, with the establishment of planting by Year 15, the impact during the operation phase will reduce to a moderate adverse effect.

3.5.79. NPS EN-1, which concerns the duty to seek to further the purposes of nationally designated landscapes, including AONBs, outlines that the aim of applicants "should be to avoid harming the purposes of designation or to minimise adverse effects on designated landscapes, and such projects should be designed sensitively given the various siting, operational, and other relevant constraints. The fact that a proposed project will be visible from within a designated area should not in itself be a reason for the SoS to refuse consent".

3.5.80. I concur with the applicant that the proposed development alone is expected to have a minor to negligible negative impact on people using the North Downs Way in the Kent Downs. However, when combined with other nearby developments—Sellindge Battery Storage, Walsh Power Condenser Project, East Stour Solar Farm, and especially Otterpool Park—the cumulative visual impact becomes significantly adverse. Otterpool Park would contribute most to this effect. I share NE's confidence that the oLEMP [REP3-020] could secure satisfactory mitigation measures which would reduce the impact to minor/moderate adverse which would not be significant.

3.5.81. I consider the proposed development is compliant with statutory duties and policies within NPS EN-1 to protect national landscapes. A point reinforced by the written representation of NE [REP1-096] and the SOCG [REP4-022] with them. Natural England also submit in their LCA Quality Assessments Review [REP1-098] : "The Project is not located on or in close proximity to the dramatic landform that characterises the Kent Downs NL" .The National Landscape is therefore not compromised by the proposed development.

3.5.82. The issue around the Landscape Strategy and mitigation proposed, is also a level of detail that can be subsequently dealt with via the LEMP, which would need to be approved by ABC as the local planning authority. I note that there is agreement from both NE and ABC that the LEMP can deliver the necessary mitigation needed, and in ABC's case, this is something they could control prior to any development commencing. Therefore, I consider that the provisions within the dDCO and the Requirements relating to the LEMP and other landscape and ecological mitigations are appropriate and

proportionate to the proposed development, and to mitigate the potential impacts of the proposed development.

3.5.83. As set out in row 2.3.10 of the signed SoCG with ABC [REP8-016] contends that different effects should have been identified, however I do not consider that this is consistent with the views of their commissioned landscape consultant, or with the submission of any evidence that has been set out in a way that would be consistent with the findings of the LVIA.

3.5.84. The ExA is satisfied that ES Chapter 8, supporting figures and appendices and the additional information presented, is in sufficient detail to inform the baseline, to underpin the LVIA process and to identify the likely significant effects of the proposed development. Overall, the ExA considers that the applicant has satisfactorily assessed that the proposed development would give rise to some significant effects, or that those which may arise have been considered and adequately mitigated where possible. I consider that due to some moderate significant effects, at least for the first 15 years of the project until mitigation established, there should be a little weight against granting consent in relation to the impact on the landscape.

3.6. LAND AND SOIL

INTRODUCTION

3.6.1. This section considers matters relating to land use and soil. It includes the use of agricultural land, including the Agricultural Land Classification (ALC) and the use and extent of Best and Most Versatile (BMV) agricultural land, as well as soil management.

POLICY BACKGROUND

NPS EN-1

3.6.2. In relation to BMV, paragraph 5.11.12 of EN-1 states that applicants should seek to minimise impacts on BMV land, this being defined as land in grades 1, 2 and 3a of the Agricultural Land Classification; and use land in areas of poorer quality (grades 3b, 4 and 5).

3.6.3. Paragraph 5.11.13 then outlines that applicants should identify any effects and seek to minimise impacts on soil health and protect and improve soil quality taking into account any mitigation measures proposed.

3.6.4. Paragraph 5.11.14 encourages the development and use of a Soil Management Plan alongside the use of good practice guidance when seeking the sustainable reuse of soils where large quantities of soils are surplus to requirements.

3.6.5. EN-1 paragraph 5.11.34 goes on to advise the Secretary of State that applicants should not site their schemes on BMV agricultural land without justification. It advises where schemes are to be sited on BMV agricultural land the Secretary of State should take into account the economic and other benefits of that land. Where development of agricultural land is demonstrated

to be necessary, areas of poorer quality land should be preferred to those of higher quality.

NPS EN-3

3.6.6. The use of poorer quality land is echoed in EN-3 which states that where the use of agricultural land is shown to be necessary, poorer quality land should be preferred to higher quality land avoiding the use of BMV agricultural land where possible.

3.6.7. Paragraph 2.10.29 of EN-3 refers to BMV also as Grades 1, 2 and 3a of the Agricultural Land Classification. Paragraph 2.10.32 states that consideration should be given to whether the proposal allows for continual agricultural use and/ or whether it can be co-located with other functions to maximise efficiency of the land.

3.6.8. Paragraph 2.10.33 outlines that the Agricultural Land Classification (ALC) is the only approved system for grading agricultural quality in England and Wales. Field surveys should be used to establish the ALC of the application site and soil types which in turn should inform soil management at the construction, operation and decommissioning phases in line with Defra Construction Code.

3.6.9. Paragraph 2.10.34 encourages applicants to produce and implement Soil Resource and Management Plans to help the use and management of soils sustainably and to minimise the adverse impacts on soil health and provides details on soil handling to ensure damage to soil is minimised.

3.6.10. Paragraph 2.10.81 provides guidance on soil stripping stating that where it occurs, topsoil and subsoil should be stripped, stored and replaced separately to minimise soil damage.

3.6.11. Paragraph 2.10.127 advises the use of mitigation measures including the use of green cover utilising the Defra Construction code of practice should be used to assist in preserving soil health.

NPPF

3.6.12. Paragraph 187 advises that planning policies and decisions should recognise the intrinsic character and beauty of the countryside and the wider benefits from natural capital and ecosystem services – including the economic and other benefits from BMV agricultural land, and of trees and woodland. The Glossary defines BMV as land in grades 1, 2 and 3a of the ALC. Footnote 65 of the NPPF advises that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality.

Written Ministerial Statement May 2024

3.6.13. The Written Ministerial Statement dated May 2024 is also an important and relevant matter and which makes clear that when considering planning proposals for solar development on BMV agricultural land that due weight

should be afforded. The WMS goes on to state that the highest quality agricultural land is least appropriate for solar development and as the land grade increases, there is greater onus on an applicant to show that the use of the higher-grade land is necessary. For NSIP proposals the WMS specifically states that BMV agricultural land should be avoided where possible. The WMS also outlines that where solar development proposals are in close proximity to each other, it is important to consider not just the impacts of individual proposals, but also whether the cumulative impacts where several proposals come forward in the locality.

Local Policy

ABC Local Plan

3.6.14. Policy ENV10 states that renewable and low carbon energy proposals will be permitted provided the development either individually or cumulatively does not result in significant adverse impacts on the natural assets within the borough.

ABNP

3.6.15. Policy AB10 sets out in relation to renewable and community energy a range of criteria that proposals should accord to in order to comply with the Neighbourhood Plan policy. At point vi, the proposal is expected to demonstrate how land beneath or surrounding the panels will be managed and how the applicant has avoided land with high potential for agriculture ('Best and Most Versatile Land').

THE APPLICATION

3.6.16. The applicant's case relating to the effect on soils and agriculture is set out in ES Volume 4: Appendices Chapter 16: Other Topics Appendix 16.1: Soils and Agricultural Land Report [REP5-013]. The document includes findings of soil surveys and Agricultural Land Classification (ALC) grading within the order limits alongside Drawing GM12014/002 APFP 5(2)(a) Agricultural Land Classification Map (p106) and provides an assessment of the potential impacts on agricultural land and soils.

3.6.17. The applicant states that the land is currently predominantly used for arable and grazing use with fields delineated by hedges and tree belts. The applicant also outlines that part of the order limits includes land at Sellindge Substation and land immediately to the east of it.

3.6.18. The applicant advises that a detailed survey was undertaken between 29 November and 15 December 2021, by three competent soil surveyors, using auger soil cores and soil profile pits. A further soil survey was carried out on 4 January 2023. The soil survey included both the agricultural land and the cable route. The survey points were distributed evenly across the order limits including 185 survey points across agricultural land and 10 survey points across the cable route area. The soil survey also included sending 33 soil samples to a laboratory for further assessment. Drawing GM12014/002 APFP 5(2)(a) dated May 2024 (ES Volume 4: Appendices Chapter 16: Other

Topics Appendix 16.1: Soils and Agricultural Land Report [REP5-013]) shows the location of the auger points and soil pits. The applicant states at paragraph 1.3.2 of Appendix 16.1 [REP5-013] that as long as the land continues to be managed in the same manner, the ALC within the order limits would not alter.

3.6.19. An Outline Soil Management Plan (oSMP) was also submitted with the application within the outline CEMP [REP1-044]. This sets out the principles and procedures for general good practice for the handling, storage and reinstatement of soil to be used on the proposed development. The oSMP therefore focuses on minimising damage to soil that remains in place, and to soil being excavated and stockpiled, in accordance with NPS EN-3.

Baseline

3.6.20. The order limits mainly comprises agricultural fields, hedgerows and tree belts with a section of the land being within Sellindge Substation. The baseline conditions for agricultural land quality and soil structure are set out within Appendix 16.1 [REP5-013] of ES Chapter 16: Other Topics.

3.6.21. The ALC results for the order limits as a whole, as well as the solar PV arrays area and field margins, are set out in Table 1 below:

Table 1: Agricultural Land Classification (Source: Table 5.2 in Appendix 16.1 of Chapter 16 of the ES [REP5-013])

Agricultural Land Classification or other land category	Area (ha)	Area (sq metres)	Percentage %
Grade 2 (very good)	1.95	19,500	1.02
Grade 3a (good)	36.69	366,900	19.16
Grade 3b (moderate)	143.47	1,434,700	74.90
Non-Agricultural	9.43	94,300	4.92
Total	**191.54**	**1,915,400**	**100**

3.6.22. The applicant states at paragraph 5.6.1 of Appendix 16.1of ES Chapter 16 [REP5-013] that most of the land within the order limits is Grade 3b, and therefore does don't constitute Best and Most Versatile Land. However, the applicant does acknowledge the use of BMVL as it then goes on to say this represents 0.12% of all BMV agricultural land within Ashford Borough Council (ABC).

3.6.23. The proposed development principally comprises arable land. Of this, approximately 50% is farmed for wheat, 20% for barley, 20% for beans and the remainder as grass for grazing. The wheat and barley are sold to domestic markets with beans often exported. There are also approximately 90 livestock (cows) kept within the order limits and part of the site is also used for clay pigeon shooting.

3.6.24. The applicant states that the magnitude of the proposed development impact on mineral resources is assessed to be negligible and the sensitivity of the resource is assessed to be low. Therefore, applying the standard matrix set out in ES Volume 2, Chapter 6: EIA Methodology [REP1-020], the overall effect of the proposed development on mineral resources is assessed to be negligible (not significant).

3.6.25. Embedded mitigation is set out in the oSMP submitted with the application within the outline CEMP [REP1-044], providing general principles to avoid soil structure damage for stripping, storing and re-use.

3.6.26. The applicant established a long list of cumulative development which was discussed and agreed with ABC and KCC. This long list includes a variety of different schemes and is not solely focused on solar schemes or NSIPs. From this the cumulative impact assessment for the loss of agricultural land during the operational phase is not significant in relation to the ability of the UK to produce food products. No plan was provided showing the general disposition of land quality within the region or county and no data concerning farming circumstances of the s within the long list.

3.6.27. No information is provided as to whether any structures proposed would be located on any BMV land within the order limits or where stockpiling of soils would take place or should there be soils stockpiled for the duration of the development.

Construction Phase

3.6.28. The applicant outlines in paragraph 5.6.5 of Appendix 16.1 of ES Chapter 16 [REP5-013] that during the construction phase, the requirement for stripping, temporary stockpiling or storage of topsoil would only be associated with the construction of any required cable trenches, access tracks, Inverter Stations, Project Substations, and Intermediate Substations which is estimated to be approximately 10ha (5%) of the total application area.

3.6.29. The applicant recognises that the incorrect handling and storage of soils, alongside compaction, has the potential to lead to the loss of, or damage to, soil resources. As such the applicant proposes to implement a Soil

Management Plan (SMP) which would be embedded within the Outline Construction Environmental Management Plan (oCEMP) [APP-153] to ensure good practice soil management measures.

3.6.30. In terms of agricultural use of the land, during the construction phase this would cease.

Operational Phase

3.6.31. Some 129ha (67%) of the order limits would be covered by the solar arrays. The applicant has said that the use of the land for arable crop production and grazing of cattle would cease. However, the applicant has said that there is potential for the land beneath and around the solar arrays to be made available for sheep grazing agricultural use during the proposed development operational lifetime, but this is dependent on demand. The applicant intends for unimproved grassland to establish beneath the solar arrays.

Decommissioning Phase

3.6.32. With the exception of elements within Work No.4, any repairs, upgrades or replacements of/ to the existing bridge/ drain crossings, PRoW footbridges and highway improvements; all other infrastructure built as part of the proposed development would be removed.

ISSUES CONSIDERED DURING THE EXAMINATION

3.6.33. IPs raised concerns relating to the loss of agricultural land. ABC LIR [REP1-078] stated that they believed that the development would have a negative impact on the availability of BMV land contrary to Policy AB10 of the A&BNP, albeit this could be reduced to neutral if it can be demonstrated that the built infrastructure has been located so as to avoid high quality agricultural land. KCC in their LIR [REP1-087] deferred comment on BMV to ABC.

3.6.34. NE consider in their RR [REP1-096] that the proposed development, if temporary as described, is unlikely to lead to significant permanent loss of BMV agricultural land. This is also confirmed in their SOCG [REP4-021].

3.6.35. A number of RRs cited concerns at the loss of agricultural land in terms of food security, including The Village Alliance [RR-267], James Murr [RR-113], and Fergus Presswell [RR-088].

3.6.36. In response to ExQ1 relating to the implementation of grazing during the operational phase of the proposed development, the applicant responded in [REP3-047] that Table 5 of the Planning Statement [APP-151] sets out the assumed scenario that has formed the basis of the assessment. This assumes as a worst-case scenario that there would be no agricultural use during the operation of the proposed development.

3.6.37. In addition, at ExQ2 [PD-008] I asked for clarity from the applicant relating to the reference made in Appendix 16.1 of Chapter 16 [APP-122] of the ES at paragraph 5.61 where it states ‘The majority of land within the order limits is

ALC Subgrade 3b and therefore does not fall within the definition of BMV agricultural land'. In response [REP5-024] the applicant clarified, with the submission of a revised Appendix 6.1 of Chapter 16 [REP5-013], which included revised wording as follows in bold: "The majority of land (approximately 143 ha of the total site area of 192ha**)** within the order limits is ALC Subgrade 3b and therefore does not fall within the definition of BMV agricultural land.

3.6.38. Also, at ExQ2 [PD-008] I asked for clarity on whether structures or stockpiling of soil will take place on BMVL. In response the applicant [REP5-024] confirmed that less than 1% of BMV will have structures located on them. In relation to stockpiling, they confirmed that the only potential requirement for the stripping, temporary stockpiling or storage of topsoil would be associated with the construction of any required cable trenches, access tracks, Inverter Stations, Project Substation and Intermediate Substations associated with Work No.s 2, 3, 4 and 5 (referred to here as 'built infrastructure'), this is estimated to be approx. 10 ha (5%) of the site total area.

CONCLUSIONS

3.6.39. The ExA considers the applicant's ALC survey is acceptable and sufficiently informative from which to draw conclusions. The ALC survey follows NE's guidance. It provides the classification of land required in order to understand and assess the impacts of the proposed development, including the amount of BMV.

3.6.40. The SMP, which will be part of the CEMP, would ensure the appropriate management of the soil resource in this area. Specific measures relating to the soil quality include soil survey and investigation prior to construction, so that it would be preserved as far as possible. In the worst-case scenario event that the soil quality in BMV land was potentially impacted, the measures would minimise degradation of handled and trafficked soil. As such, the ExA considers that mitigation measures would be adequately secured in the oSMP [REP1-044] through measures for soil stripping, storage and replenishment.

3.6.41. ABC confirmed [REP5-029] in response to ExQ2 [PD-008] that the use of BMV Land and the degree of impact on BMV Land is a matter of agreement between the applicant and NE. The Council agree that the proposed use of the land would not have a material impact on the nation's food security and the use of BMV would have a neutral local impact.

3.6.42. Government seeks to discourage the siting of solar farms on BMV agricultural land. In this case the amount of BMV land required as a proportion of the order limits would be modest, representing 0.12% of all BMV agricultural land within ABC and the ExA accepts that the applicant has sought to minimise the impact on BMV land, including through the design evolution alterations.

3.6.43. Whilst effects on the soil resource would be managed by the oSMP [REP1-044] and in many respects the effects of the proposed development would be reversible, the extent to which the quality of land resource itself would improve is not clear. However, any loss of agricultural land here would be over a relatively modest area and for a short duration. Further, the oSMP [REP1-044] would ensure the management of the soil in this area. Specific measures relating to the soil quality include soil survey and investigation prior to construction, so that it would be preserved as far as possible. As such, the ExA considers that mitigation measures would be adequately secured in the oSMP [REP1-044].

3.6.44. The ALC survey follows NE's guidance. It provides the classification of land required in order to understand and assess the impacts of the proposed development, including the amount of BMV. The ExA therefore considers the ALC survey to provide sufficient information for an assessment to be made.

3.6.45. The proposed development would be decommissioned within 40 years of the final commissioning date. The oSMP [REP1-044] provides a commitment to the restoration of the land grades and includes decommissioning arrangements which cover all aspects of the proposed development. Because the agricultural land would lie fallow, arable farming would be possible following decommissioning and the decommissioning process would be secured through a Requirements as part of the dDCO [REP8-004].

3.6.46. In general terms the proposed development would accord with the requirements of the 2024 NPSs, NPPF, the 2024 WMS, and development plan policy in terms of seeking to minimise and justify the use of BMV land. Nonetheless, on the basis of a temporary loss to agricultural production, the ExA affords the effects on soils and agriculture a little negative weight.

3.7. NOISE

INTRODUCTION

3.7.1. The main issues raised in the examination related to the following.

- Noise experienced during the construction phase from plant, machinery and traffic; and
- Noise generated by the photovoltaic cells and Battery Energy Storage System (BESS) facilities.

LEGISLATIVE CONTEXT

3.7.2. The legislation of relevance to Noise is as follows

- The Environmental Protection Act 1990 (as amended by the Noise and Statutory Nuisance Act 1993) (particularly Section 79) ('EPA'); and

- The Control of Pollution Act 1974 (particularly Sections 60 and 61)

POLICY BACKGROUND

NPS EN-1

3.7.3. This refers to the relevant British Standards for the assessment of operational noise and construction noise (where 'noise' is used as an umbrella term for noise and vibration) and refers to further information provided in the technology specific National Policy Statements e.g. EN-5.

3.7.4. Paragraph 5.12.14 sets out potential mitigation measures. Paragraph 5.12.15 requires applicants to demonstrate good design through measures such as selection of the quietest or most acceptable cost-effective plant; containment of noise within buildings wherever possible; optimisation of plant layout to minimise noise emissions; and the use of landscaping, bunds or noise barriers to reduce noise transmission.

3.7.5. Paragraph 5.12.17 states that the Secretary of State should not grant development consent unless they are satisfied that the proposals will meet: the following aims, through the effective management and control of noise:

- avoid significant adverse impacts on health and quality of life from noise;
- mitigate and minimise other adverse impacts on health and quality of life from noise; and
- where possible, contribute to improvements to health and quality of life through the effective management and control of noise.

NPS EN-3

3.7.6. Section 2.5.2 requires that proposals for renewable energy infrastructure should demonstrate good design of the project to mitigate impacts such as noise and effects on ecology and heritage.

3.7.7. Section 2.7.40 encourages applicants to include in the ES a noise assessment of the impacts on amenity in case of excessive noise from the project in line with guidance set out in Section 5.12 in EN-1.

NPS EN-5

3.7.8. Paragraph 2.11.7 sets out that the SoS should ensure that appropriate assessment methodologies have been used in the evidence presented to it and that the appropriate mitigation options have been considered and adopted. Where the applicant can demonstrate that appropriate mitigation measures will be put in place, the residual noise impacts are unlikely to be significant.

NPPF

3.7.9. Paragraph 180 states that the planning system should contribute to and enhance the natural and local environment by (amongst other considerations) preventing new and existing development from contributing

to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of noise pollution.

3.7.10. Paragraph 191 states that planning policies and decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution. This involves mitigating and reducing to a minimum potential adverse impact resulting from noise from new development and avoiding noise that gives rise to significant adverse impacts on health and the quality of life. In addition, tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value should be identified and protected.

3.7.11. Paragraph 193 states that planning policies and decisions should ensure that new development can be integrated effectively with existing business and community facilities. Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on a new development, the application should provide suitable mitigation before the development is completed.

Noise Policy Statement for England (NPSE)

3.7.12. Paragraph 1.6 sets out the long-term vision of Government noise policy, i.e. to 'Promote good health and a good quality of life through the effective management of noise within the context of Government policy on sustainable development.'

3.7.13. Paragraph 1.7 states that the NPSE vision is supported by aims to effectively manage and control environmental, neighbour and neighbourhood noise within the context of Government policy on sustainable development by avoiding significant adverse impacts, mitigating and minimising adverse impacts and where possible contributing to the improvement of health and quality of life.

3.7.14. Paragraph 2.20 states that to identify "significant adverse" and "adverse" impacts in line with the three aims of the NPSE, there are two established concepts from toxicology that are currently being applied to noise impacts, for example, by the World Health Organization:

- No Observed Effect Level: This is the level below which no effect can be detected. In simple terms, below this level, there is no detectable effect on health and quality of life due to the noise.

- Lowest Observed Adverse Effect Level (LOAEL): This is the level above which adverse effects on health and quality of life can be detected. Extending these concepts for the purpose of the NPSE leads to the concept of a significant observed adverse effect level.

- Significant Observed Adverse Effect Level (SOAEL). This is the level above which significant adverse effects on health and quality of life occur."

3.7.15. Paragraph 2.22 states 'It is not possible to have a single objective noise-based measure that defines SOAEL that is applicable to all sources of noise in all situations. Consequently, the SOAEL is likely to be different for different noise sources, for different receptors and at different times. It is acknowledged that further research is required to increase our understanding of what may constitute a significant adverse impact on health and quality of life from noise. However, not having specific SOAEL values in the NPSE provides the necessary policy flexibility until further evidence and suitable guidance is available.

3.7.16. Paragraph 2.24 states that where an "impact lies somewhere between LOAEL and SOAEL, all reasonable steps should be taken to mitigate and minimise adverse effects on health and quality of life while also taking into account the guiding principles of sustainable development). This does not mean that such adverse effects cannot occur."

Local Policy

Ashford Local Plan

3.7.17. Policy ENV10 – Renewable and Low Carbon Energy sets out that 'Planning applications for proposals to generate energy from renewable and low carbon sources will be permitted provided that: … b) The development does not generate an unacceptable level of traffic or loss of amenity to nearby residents (visual impact, noise, disturbance, odour).

ABNP

3.7.18. Policy ABP10 sets out that commercial PV proposals should not adversely effect residential amenity through increased noise and links back to ABC Local Plan policy ENV10.

THE APPLICATION

3.7.19. Noise was assessed through ES Chapter 14: Noise [APP-038] and was supported by the following figures and appendices:

ES Volume 3 – Figures [APP-057]:

- Figure 14.1: Noise Sensitive Receptors;
- Figure 14.2: Noise Monitoring Positions;
- Figure 14.3: Daytime 1.5m; and
- Figure 14.4: Night-time 4.0m.

ES Volume 4 – Appendices:

- Appendix 14.1: Noise Legislation, Planning Policy and Guidance [APP-114];
- Appendix 14.2: Consultation Correspondence [APP-115];
- Appendix 14.3: Monitoring Data [APP-116];
- Appendix 14.4: Traffic Flows and Noise Calculations [APP-117];
- Appendix 14.5: Construction Phase Plant List [APP-118]; and
- Appendix 14.6: Assessment Data and Hot Weather Assessment [APP-119].

Baseline

3.7.20. The applicant reports at paragraph 14.4.15 of ES Chapter 14: Noise [APP-038] that a baseline sound survey was undertaken in May 2022 to measure the noise levels at locations which are representative of the nearby sensitive receptors. The applicant then reports at paragraph 14.5.8 that the existing noise environment is influenced by local road traffic, rail traffic, aircraft, domestic noise, noise from a nearby school and natural sounds (i.e. birdsong and a breeze). As is typical for rural areas, night-time background noise levels are low, and daytime levels are dominated by local traffic flows.

3.7.21. At paragraph 14.4.23 of ES Chapter 14: Noise [APP-038] the applicant outlines that to determine the likely significant noise effects of the proposed development, receptors sensitive to noise were identified. 45 noise sensitive receptors ('NSR') were identified within 300m of the boundary of the order limits which included residential properties, a hotel, and a school. As well as these NSRs, the baseline noise level experienced by the users of PRoW which cross the order limits may change because of the proposed development as they move along their chosen route. These were also included in the assessment. The applicant reports that all sensitive residential receptors are assessed as medium sensitivity. Other receptors, such as PRoW users are considered to be low sensitivity.

3.7.22. The applicant proposes at Section 14.6 of ES Chapter 14: Noise [APP-038] that construction noise levels will be controlled through embedded mitigation and measures contained in the oCEMP [REP1-044]. The proposed development incorporates measures such as distancing of noise sources away from sensitive receptors and locating the Project Substation away from large concentrations of receptors and close to the existing noise sources of the railway and M20 motorway. Noise barriers in the form of fencing are also proposed at the Project Substation and Inverter Stations.

Construction Phase

3.7.23. Table 14.9 of ES Chapter 14: Noise [APP-038] sets out that the applicant considers that the effects of construction traffic noise from traffic flows have been shown to be negligible (not significant) at all receptors. Predicted impacts on NSRs are assessed for the construction works as temporary,

short term negligible to minor adverse (not significant) effects. Construction effects on users of PRoW which cross the order limits are assessed as negligible (not significant).

3.7.24. At paragraph 14.6.8 of ES Chapter 14: Noise [APP-038] the applicant confirms that in small areas, closest to identified receptors, construction works will be required to use low noise techniques and undertake noise monitoring. These measures are secured through the oCEMP [REP1-044].

Operational Phase

3.7.25. Table 14.9 of ES Chapter 14: Noise [APP-038] sets out that noise emissions of plant and equipment associated with the proposed development, including the Inverter Stations, BESS Units, Intermediate Substations and the Project Substation are predicted at the nearest human receptors within 300m of the order limits. The impact of operational noise from this plant and equipment has been modelled with noise barriers in place as these will be secured through the DCO to avoid adverse effects.

3.7.26. An Operational Noise Mitigation and Monitoring Scheme (ONMMS) will be developed before any noise-generating infrastructure begins operation. It will outline the equipment specifications, noise control measures, and monitoring procedures. The ONMMS will confirm that, with these measures in place, the proposed development will not cause any significant new or different noise impacts compared to those already assessed. This requirement is legally secured in the dDCO [REP8-004]. As such, the effects on all noise sensitive receptors are assessed as negligible to minor adverse (not significant).

3.7.27. During periods of hot weather, when the cooling systems are required to operate to ensure appropriate conditions for the electricity generating equipment, localised high impacts are possible. However, paragraphs 14.4.73 and 14.4.74 of ES Chapter 14: Noise [APP-038] reports that on the rare occurrence of such conditions above a temperature of 35 degrees centigrade, mitigation will be secured via measures to be approved in the ONMMS would ensure that the overall effect of operational noise is negligible to minor adverse (not significant).

Decommissioning Phase

3.7.28. The applicant submits that the decommissioning phase will be similar to the construction phase and the significance of the noise effects will be the same (i.e. negligible (not significant) for traffic noise and negligible to minor adverse (not significant) for on-site works).

Cumulative Effects

3.7.29. Predicted construction traffic from the proposed development are assessed and reported at Section 14. of ES Chapter 14: Noise [APP-038] together with traffic from other schemes and the cumulative effects will remain negligible (not significant). Two NSRs have been identified as receptors for other development projects which are identified as cumulative schemes. However, with embedded mitigation measures the combined construction, operation

and decommissioning phase impacts at these receptors are assessed as negligible at NSR' 40 and minor adverse at NSR 34 (not significant).

ISSUES CONSIDERED DURING THE EXAMINATION

3.7.30. A number of IPs raised concern regarding the noise impacts from both construction activities (Nigel Emmerson [RR- 214] and Linda Harman [RR-167]) and the operational phase (Jacob Mann [RR-110] and Jeremy Gordon Newson [RR-122]) of the proposed development, particularly around the noise emanating from the BESS units.

3.7.31. However, the applicant responded at D1, section 4.11 [REP1-061] that an assessment of noise effects from BESS Units and other electrical infrastructure has been undertaken by a competent expert as reported in paragraphs 14.7.27 to 14.7.81 of ES Volume 2, Chapter 14: Noise [APP-038]. This concludes that effects would be negligible to minor adverse (not significant).

3.7.32. At ExQ1 [PD-006] I asked the applicant to clarify the position on abnormal deliveries. In their response at Table 2.9 [REP3-047] the applicant responded by setting out that Section 6.7 of the oCTMP [REP3-018] provides that local residents, businesses and schools will receive correspondence prior to commencement of construction and during key stages of the construction. This would include abnormal loads or night time construction works.

3.7.33. The applicant further reports that in respect of the operation of the proposed development, Requirement 13 in Schedule 2 to the dDCO [REP8-004] secures that prior to the operation of Work No. 2 or Work No. 3, an ONMMS must be submitted to and approved by the local planning authority. The ONMMS must (a) include details of the plant specification, noise mitigation measures and monitoring procedures; and (b) demonstrate that, with those noise mitigation measures and monitoring procedures in place, the proposed development is not likely to result in any materially new or materially different noise effects from those assessed in ES Volume 2, Chapter 14: Noise [APP-038]. The applicant then states that the ONMMS must be implemented as approved.

3.7.34. The applicant also outlined that any noise during construction from the likes of generators or other plant and equipment will be controlled through the approval and implementation of the CEMP. Likewise, any noise disturbance that wildlife may experience will be controlled via construction exclusion zones and environmental good practice, again through the CEMP.

3.7.35. At ISH4 [EV9-003], Mr. Bromley raised concerns regarding noise emanating from the Battery storage facilities, and this was followed by the submission of noise assessment report at D4 [REP4-050] by Dr Bromley. However, the report submitted was undertaken for a different site and therefore was not relevant to the assessment of the proposed development. The applicant did confirm at D4 [REP4-031] that the inverter stations would be enclosed by a 4m acoustic fence, and that this had been considered and assessed as part

of the ES Chapter 14: Noise and Requirement 13 of the dDCO would secure the necessary mitigation.

3.7.36. In relation to ABC, in Paragraph 18.6 of their LIR [REP1-080] they are satisfied that noise and vibration impacts have been identified appropriately and are assessed as neutral.

ExA's reasoning: Noise effects

3.7.37. In terms of noise and vibration, the ExA is satisfied that the assessment of potential impacts on receptors has been undertaken and that no significant effects have been identified on receptors or on health impacts.

3.7.38. The ExA accepts that, with the implementation of mitigation such as that within the oCEMP [REP1-044] and oCTMP [REP3-018], no likely significant adverse effects would be anticipated.

CONCLUSIONS

3.7.39. The ExA considers the applicant has adequately assessed the noise and vibration effects of the proposed development and has provided sufficient evidence to support the conclusions on those effects.

3.7.40. The ExA concludes that the mitigation measures secured would avoid any significant adverse impacts on health and quality of life from noise and vibration.

3.7.41. Embedded mitigation such as that designed into the proposed development as well the control and management measures set out in the dDCO would be sufficient to mitigate the adverse effects of the proposed development to an acceptable level. In this regard the specific measures within the dDCO.

3.7.42. The noise from the construction, operation and decommissioning phases of the proposed development, both on its own and cumulatively, would remain below the significance thresholds as set out in the NPSE and NPPF.

3.7.43. Overall, the ExA finds that the information provided in terms of noise and vibration meets the requirements of NPS EN-1, NPS EN-3 and NPS EN-5. It would also accord with the NPPF. As such, noise is a matter which the ExA weighs as neutral in the planning balance.

3.8. SOCIO-ECONOMICS

INTRODUCTION

3.8.1. The main issues raised in the examination under socio-economic considerations relate to the following:

- Employment including impact on local tourism ; and
- Health and recreation emanating from the Public Rights of Way (PRoW).

POLICY BACKGROUND

NPS EN-1

3.8.2. Section 4.4 recognises the impacts which energy infrastructure may have on some people's health. It goes on to state that where the proposed project has an effect on humans, this should be assessed for each element of the project, identifying any potential adverse health impacts and identifying measures to avoid, reduce or compensate for these impacts as appropriate. It outlines that the impacts of more than one development may affect people simultaneously so consideration should be given to the cumulative impact on health where appropriate. This section also states that it is unlikely that health concerns will either constitute a reason to refuse consent or require specific mitigation, although health concerns will need to be taken account of when setting requirements.

3.8.3. Section 5.13 deals in detail with the socio-economic effects of major energy infrastructure and requires applicants to include in their application an assessment of all relevant socio-economic impacts including:

- The creation of jobs and training opportunities;
- The contribution to the development of low carbon industries at the local and regional level;
- The provision of additional local services and improvements to local infrastructure, including the provision of educational and visitor facilities;
- Any indirect benefits in relation to the use of local support services and supply chains;
- Effects on tourism;
- The impact of a changing influx of workers during the different construction, operation, and decommissioning phases of the energy infrastructure; and
- Cumulative effects.

3.8.4. Paragraph 5.11.24 also notes that PRoWs, national trails, and other rights of access to land are important recreational facilities for walkers, cyclists and horse riders. It makes clear that applicants should take appropriate mitigation measures to address adverse effects on rights of way.

3.8.5. Paragraph 5.11.2 also makes clear that applicants should safeguard any mineral resources on the proposed site as far as possible, taking into account the long-term potential of the land use after any further decommissioning has taken place.

NPS EN-3

3.8.6. Paragraphs 2.10.40 to 2.10.44 note that proposed developments may affect the provision of PRoW networks. It indicates that it should be the applicant's intention, where practicable and safe, to keep all PRoW that cross the proposed development site open during construction and to protect users where a public rights of way borders or crosses the site. Applicants are encouraged where possible to minimise the visual impacts of the development for those using existing PRoW. Applicants should look to maximise opportunities to facilitate enhancements to the PRoW and set out how PRoW would be managed to ensure they are safe to use in an outline PRoW Management Plan

NPS EN-5

3.8.7. Paragraph 2.5.1 outlines the importance of retaining connections to the environment for the public via PRoW.

National Planning Policy Framework

3.8.8. Paragraph 85 of the NPPF sets out that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.

3.8.9. Paragraph 88 goes on to state that planning decisions should enable the sustainable growth and expansion of all types of business in rural areas, including through the development and diversification of agricultural and other land-based rural businesses, amidst other matters.

3.8.10. Paragraph 200 of the NPPF also sets out the 'agent of change' principle in that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Paragraph 105 of the NPPF also recognises the importance of safe and accessible green infrastructure, and the need to protect and enhance PRoW and access, including taking opportunities to provide better facilities for users, for example by adding links to existing rights of way networks.

Local Policy

ABC Local Plan

3.8.11. ABC in their LIR [REP1-078] cite the following Ashford Local Plan (ALP) policies relevant to the assessment of the socio – economic impacts of the proposed development:

- SP1 Strategic Objectives
- ENV10 – Renewable and Low Carbon Energy
- EMP11 Tourism

3.8.12. Policy SP1 sets out the strategic vision for the borough that provides core principles that planning applications are expected to adhere to. Policy ENV10 sets out how proposals for renewable and low carbon energy generation will be considered against a set of criteria.

3.8.13. EMP11 looks to support the retention and development of additional tourist facilities in the borough but would appear to have limited relevance to the proposed development.

ABNP

3.8.14. ABC also refer to the Aldington and Bonnington Neighbourhood Plan (ABNP) policies. Part A of the ABNP policy AB10 broadly supports commercial solar farm development where it meets the requirements of Policy ENV10 of the ALP and complies with a number of other criteria and "the benefits of renewable energy can be proven to outweigh the landscape and environmental impacts".

3.8.15. Policy TRA5 of the ABNP also requires development proposals to demonstrate how safe and accessible pedestrian access and movement routes would be delivered and how they connect to the wider movement network with opportunities to connect with and enhance PRoW whenever possible. In addition, Policy ENV5 seeks to protect important features in the rural areas of the Borough and this includes PRoW.

Other Policy Guidance

3.8.16. KCC deferred to ABC on matter of socio-economic issues, however, it has published a Rights of Way Improvement Plan 2018-2028, a strategic policy document setting out its goals and priorities for Public Rights of Way and Access to maintain and enhance use of the network.

THE APPLICATION

3.8.17. The applicant's case relating to socio-economics, tourism, recreation and PRoW is set out in ES Volume 2: Main Text Chapter 12: Socio-Economics [REP1-024].

3.8.18. This is supported by the following documents:

- Environmental Statement Volume 3: Figures Chapter 12: Socio-Economics Figures 12.1 – 12.2 [APP-055]; and
- Environmental Statement Volume 4: Appendices Chapter 12: Socio-Economics Appendix 12.1: Policy Review [APP-106].

3.8.19. The socio-economic assessment considers the following effects:

- Contribution to renewable energy generation;
- Employment and labour market effects;
- Construction supply chain effects (construction);

- Effects on agricultural economy and food security;
- Effects on PRoW and access;
- Effects on community and recreational facilities and tourism; and
- Effects on amenity and human health.

3.8.20. The baseline assessment considers the current demographic, economic conditions, community uses at different spatial levels as defined in ES Volume 3, Figure 12.1: Socio-Economic Study Areas [APP-055]:

- Local Study Area – Aldington and Bonnington Parish, Mersham Parish and Smeeth Parish (LSA);
- Wider Study Area – Ashford Borough Council ('ABC') and Folkstone and Hythe District Council ('FHDC')
- County – Kent County Council ('KCC');
- Regional – South East; and
- National – UK.

3.8.21. ES Chapter 12 Socio-Economics [REP1-024] sets out that the unemployment rate is lower in the LSA than across all other spatial levels, although a slightly higher number of residents claim unemployment-related benefits. The LSA has a higher proportion of residents who are retired than across comparable areas.

3.8.22. Paragraph 12.5.7 of ES Chapter 12 Socio-Economics [REP1-024] indicates that the LSA has a higher proportion of residents in managerial and technical employment than across all spatial levels, and conversely, a lower proportion of residents in process and elementary employment.

3.8.23. Paragraph 12.5.10 of ES Chapter 12 : Socio-Economics [REP1-024] further states that the largest sector in the Wider Study Area is 'Health', which accounts for 14% of the total employment. The second largest sector is 'Retail' which account for 11%, similar to proportions seen in KCC and the South East.

3.8.24. The agricultural uses within the order limits currently support four FTE jobs, and the landowner has confirmed that there is no additional seasonal employment generated by the current land uses. This represents 0.03% of all agricultural sector jobs in KCC, or 0.15% in the Wider Study Area.

3.8.25. The effects on food security are considered in Section 3.6 on Soils and the consideration of the use of Best and Most Versatile Land.

3.8.26. For the purposes of tourism, the applicant recognises at Paragraph 12.5.31 of ES Chapter 12 Socio-Economics [REP1-024] that in policy terms tourism is a key sector for KCC and that this relies on the attractiveness of the area

and the availability and accessibility of local community facilities and commercial facilities (such as tourist accommodation, food and drink and recreation). Table 12.14 of ES Chapter 12 Socio-Economics [REP1-024] provides a list of community, recreational and tourism related premises within 1 km of the order limits.

3.8.27. In relation to the PRoW network, the applicant reports from the KCC's Definitive Map, there are 16 Public Footpaths and one Byway Open to All Traffic (BOAT) within or interacting with the order limits which are presented in Table 12.15 ES Chapter 12 Socio-Economics [REP1-024].

3.8.28. As part of the pre-consultation process the UK Health Security Agency were engaged and they stated in the response provided within the Scoping Opinion [APP-059] for the proposed development that "Should no separate health chapter be produced the socio-economics chapter should include the identification of vulnerable populations."

3.8.29. Section 12.7 of ES Chapter 12 Socio-Economics [REP1-024] sets out the applicant's consideration of any potential health impacts from the proposed development. This looks at noise, air quality, traffic, and landscape views. It identifies that (in some cases) as a result of mitigation embedded within the oCEMP [REP1-044], oOMP [REP1-050] and oLEMP [REP3-020] that each individual assessment is unlikely to result in changes of significance.

Construction Phase

3.8.30. Paragraph 12.71 of ES Chapter 12 Socio-Economics [REP1-024] states that the construction phase will generate demand for employment directly associated with the construction of the proposed development. The applicant reports that it estimates an average of 98 direct FTE jobs and a peak of up to 151 direct FTE jobs supported by the proposed development within the region.

3.8.31. Paragraph 12.7.6 ES Chapter 12 Socio-Economics [REP1-024] estimates that the construction phase of the proposed development is likely to support a total potential (direct) employee expenditure of around £395,000 over the 12 month construction phase. The applicant does suggest at Paragraph 12.7.7 that as the number of construction workers on-site would fluctuate over the course of the construction programme, and there may be on-site welfare and food/drink facilities, it would be not possible to accurately quantify the level of this spending that would be captured locally.

3.8.32. The GVA generated by the construction phase is likely to represent £6.2 million (paragraph 12.7.9 ES Chapter 12 Socio-Economics [REP1-024]) within the regional construction economy and this is likely to be largely retained within the south east region.

3.8.33. During the construction phase, some of the PRoW that interact with the order limits will experience change, including in relation to the internal construction routes at the boundary and within the order limits, and in some locations will need to be crossed intermittently by construction vehicles. Paragraph

21.7.25 ES Chapter 12 Socio-Economics [REP1-024] provides a list of the effected PRoWs and BOATS.

3.8.34. The applicant does not anticipate that any PRoW would be permanently closed during the construction phase (with the exception of AE 455 and AE 447 which are proposed to be permanently stopped up) without a suitable temporary or permanent alternative in-place, which in most cases would be the proposed alternative PRoW for the operational phase.

3.8.35. At the end of the construction phase, the applicant anticipates that all extinguishments and temporary and permanent diversions via proposed PRoW set out within the Outline Rights of Way Strategy (oRoWAS) [REP1-056] would be in-place.

3.8.36. The applicant anticipates that the proposed development could provide a temporary increase in usage of tourist accommodation in the local area during the construction stage.

3.8.37. The applicant states at paragraph 12.7.38 ES Chapter 12 Socio-Economics [REP1-024] that the construction phase of the proposed development is not likely to result in substantial, in combination or multiple significant direct or indirect environmental effects related to identified tourist sector receptors in the area including visitor accommodation or cultural or recreation attractions.

3.8.38. In relation to the impact of construction activities on the enjoyment of users of the PRoW network, the applicant notes at ES Volume 2, Chapter 8: Landscape and Views [AS-012] that three visual receptors are considered likely to experience significant residual effects during the construction phase of the proposed development. These are users of PRoW AE473 within/adjacent proposed solar PV areas (in cumulation with Pivot Power Battery Storage area and East Stour Solar Farm) and users of PRoW AE401, Collier's Hill with its elevated vantage point.

Operational Phase

3.8.39. The operational phase of the proposed development will support 4 FTE jobs consisting of operational and maintenance roles.

3.8.40. The applicant recognises that in policy terms tourism is a key sector for KCC and that this relies on the attractiveness of the area and the availability and accessibility of local community facilities and commercial facilities (such as tourist accommodation, food and drink and recreation).

3.8.41. The applicant submitted an oRoWAS [REP1-056] and this sets out the design parameters for re-routed PRoWs and new PRoWs, and includes a framework for developing their detailed design and implementation. Certain parameters, where relevant (such as PRoW width) are secured by the Design Principles [REP5-017]. It also includes commitments relating to on-going engagement, monitoring, management and maintenance of these routes during the operational phase.

3.8.42. The oLEMP [REP3-020] provides embedded mitigation related to the effects of Rights of Way and Access; and Community and Recreational Facilities and Tourism.

3.8.43. The oOMP [REP1-050] provides embedded mitigation related to the effects on Rights of Way and Access; Community and Recreational Facilities and Tourism; and the effects on Amenity and Human Health.

Decommissioning Phase

3.8.44. Paragraph 12.4.56 of ES Chapter 12 Socio-Economics [REP1-024] states that Decommissioning of the proposed development will generate direct and indirect socio-economic effects of the same type and scale/significance to those during the construction phase. The applicant further offers that the scale of these impacts is not possible to assess quantitatively due to the uncertainty over the nature and costs of this activity.

Other Considerations

3.8.45. In relation to human health, the oCEMP [REP1-044] provides that a scheme of mitigation will be provided during construction in relation to land contamination, and the control of substances. Similarly, the oOMP [REP1-050] provides measures are outlined to mitigate the effects of visual impacts and noise during the operation of the proposed development. Finally, the oDEMP [APP-157] reflects the health considerations contained in the oCEMP [REP1-044].

3.8.46. The ExA has to have regard to the Public Sector Equality Duty (PSED) throughout the examination and in producing this report. In order to assess this, the applicant submitted an Equalities Statement (EqS) [APP-163].

3.8.47. This EqS has used the relevant technical reports within the ES to consider whether the proposed development would have a differential or disproportionate impact on protected groups within the Act. With the implementation of mitigation measures identified within the ES chapters and supplementary documentation, this EqS concludes that the proposed development would not have a differential or disproportionate impact on people with protected characteristics, compared to the general population.

ISSUES CONSIDERED DURING THE EXAMINATION

3.8.48. ABC's LIR [REP1-078] submitted at D1 concludes that the production of renewable energy and provision of new PRoWS provide a positive impact from the proposed development. However, they also conclude that the following issues have a neutral impact:

- The impacts on land contamination;
- The impacts arising from noise and vibration effects;
- The impacts associated with construction employment;

- The impacts associated with construction workforce spending and construction supply chain effects;
- The impacts associated with the agricultural economy and food security;
- The impacts associated with glint and glare effects on railway and aircraft safety;
- The impacts on telecommunications, television reception and utilities;
- The impacts from a major accident and/or disaster; and
- The impacts associated with matters relating to Electric, Magnetic and Electromagnetic Fields, Air Quality and Dust and Daylight, Sunlight and Overshadowing.

3.8.49. The following were considered to have a negative impact :

- The scale and significance of the impact on the landscape and visual amenity of the area;
- The impacts arising from the harm (identified as less than substantial) to a high number of designated and non-designated heritage assets and to landscape character;
- The impacts arising from changes in environmental amenity and accessibility to local tourism;
- The impacts on amenity and human health;
- The impacts arising from glint and glare to a single dwelling;
- The impacts arising from lighting during the construction and decommissioning phases; and
- The impacts arising from the loss of agricultural land, including a small proportion of BMV, although with clarification such impacts could potentially be considered neutral.

3.8.50. In the final submitted SOCG with ABC [REP8-016] both parties agreed on the economic and social impacts and considerations for the proposed development.

3.8.51. A number of representations such as ABPC [RR-002], Isabel Hunt [RR-107] and Fergus Presswell [RR-088] suggested that the proposed Development would have an adverse impact on tourism by industrialising the landscape that visitors come to enjoy. Others such as Steve Loader [RR-254] Samuel Loader [RR-254] suggested it wouldn't provide significant jobs in manufacturing or for younger adults. Steven Meakin [RR-275] stated that it would reduce the number of jobs available for agricultural workers.

3.8.52. In addition, a number of IPs such as Christopher Graham Ward [RR-046], Shaun Perry [RR-262], and Karen Elisabeth Lumsden [RR-143] objected to the proposed development on the grounds of devaluation of house prices.

3.8.53. Finally, from IPs, concerns were raised about electro magnetic forces generated from the proposed development by Sallianne Presswell [RR-251] and Judith Elizabeth Schautonowski [RR-135]. In response to FWQs [REP3-047], the Applicant confirmed at Q9.0.1 that – in summary:

- Construction activity will support an average of 132 direct full time; equivalent (FTE) jobs and a peak of 199 direct FTE jobs (gross) for 12 months; and
- Operational activity will support 4 direct FTE jobs over the course of the lifetime of the proposed development.

3.8.54. In response to the concerns expressed regarding the impact on Tourism, the applicant in its response to representations [REP1-061] signpost back to the ES Chapter 12 Socio-Economics [REP1-025] where it is considered that the natural environment is an important aspect of Kent's rural tourist economy but is not considered to be affected substantially to translate into a change in visitor behaviour given the size, scale, diverse offer of the tourist economy, and the accessibility and availability of other national recreational resources nearby, particularly within the AONB designated landscape.

3.8.55. In relation to the perceived devaluation of property prices, the applicant responded [REP1-061] by stating that there can be many factors impacting property values, and importantly property values are not a material planning consideration for SoS in making a decision on whether or not to grant consent for the proposed development.

3.8.56. The applicant in response to representations about electromagnetic fields state on Page 5 of guidelines published by the International Commission on Non-Ionizing Radiation Protection (ICNIRP) state that 'Overhead power lines at voltages up to and including 132kV, underground cables up to and including 132kV and substations at and beyond the publicly accessible perimeter are not capable of exceeding the ICNIRP guidelines for exposure to EMF.' [REP1-061] (Table 4.7).

Conclusions

3.8.57. The loss of agricultural jobs is not disputed by the applicant. Given the relatively small number of FTE involved, the loss would be of low impact. This would be balanced by the employment created by the operational phase of the proposed development, so this would be neutral.

3.8.58. The proposed development would bring an average of 132 direct FTE jobs over the 12-month construction period of which 98 are expected to be taken up by residents within the region. The direct construction employment would generate circa £6.2m in Gross Value Added (GVA) within the regional construction economy (based on average GVA per head in the construction

industry). This is likely to be replicated at decommissioning. This would therefore be a positive benefit.

3.8.59. The ExA recognises that in policy terms tourism is a key sector for KCC and that this depends on the attractiveness of the area and the availability and accessibility of local community facilities and commercial facilities. However, given the evidence before the examination, including the changes to the local PRoW network, and changes to the landscape, I do not consider that these will result in any substantial impacts on access to cultural or recreational assets serving the local tourism sector. At worse these will result in a negligible to minor adverse effect, which will not be significant.

3.8.60. In terms of wider well being and health, although time-limited, the ExA accepts that there would be temporary adverse effects to the residents of Aldington during construction. However, where works could cause disruption, the measures set out in the oCTMP [REP3-018], secured by Requirement 7 of Schedule 2 of the dDCO [REP8-004] are considered acceptable. This is an agreed matter in both the ABC [REP8-016] and KCC SoCGs [REP8-018]. This would be cumulative medium-term temporary moderate adverse effect during construction. These effects would not be likely to be long-term, and therefore unlikely to be significant during the operational lifetime of the proposed development.

3.8.61. The ExA is satisfied that the assessment undertaken has sufficiently addressed the potential impacts of the proposed development. The proposed development would not result in adverse effects on the socio-economic groups identified. Further, there would be beneficial opportunities resulting from the proposed development, including employment opportunities. The ES has considered the relevant groups and communities within its study area.

3.8.62. The following mitigation measures within the dDCO [REP8-004] are of relevance:

- Requirement 6 (construction environmental management plan);
- Requirement 7 (construction traffic management plan);
- Requirement 10 (public rights of way); and
- Requirement 14 (decommissioning and restoration).

3.8.63. Overall, the ExA considers that the applicant has satisfactorily assessed that the proposed development would not give rise to significant effects, or that those which may arise have been considered and adequately mitigated where possible. The proposed development would meet the requirements of NPS EN-1, NPS EN-3, NPS EN-5, , the NPPF, and development plan policy. As a result, taking account of the mix of adverse and beneficial effects, the ExA concludes that socio-economic, tourism and recreation matters have neutral weight in the planning balance.

3.9. TRANSPORT INCLUDING PUBLIC RIGHT OF WAYS

INTRODUCTION

3.9.1. The main issues in the examination related to the following:

- The safety and amenity effects of the proposed development on non-motorised road and Public Rights of Way (PRoW) users;
- The impact of construction traffic on the surrounding road network; and
- Cumulative effects with other solar developments.

National Policy

NPS EN-1

POLICY BACKGROUND

NPS EN-1

3.9.2. Paragraph 5.14.18 of NPS EN-1 recognises that NSIP proposals can have a variety of substantial impacts on the surrounding transport infrastructure. The SoS should seek to ensure that the mitigation of transport impacts, including during construction, have been considered.

3.9.3. Where a proposed development is likely to have significant transport implications, a Transport Assessment (TA) using an agreed methodology should be provided. Paragraph 5.14.7 also sets out that where appropriate, applicants should provide a travel plan. Details of proposed mitigation measures should be included, as well as proposed improvements such as improved access by public transport, walking and cycling, to reduce the need for parking.

3.9.4. Paragraph 5.14.20 confirms that development consent should not be withheld if requirements can be imposed to mitigate transport impacts. Where mitigation is secured the SoS should apply appropriately limited weight to residual effects.

NPS EN-3

3.9.5. Paragraph 2.10.42 outlines that applicants are encouraged to design the layout and appearance of the site to ensure continued recreational use of PRoW where possible during construction, and in particular during operation of the site.

3.9.6. Paragraph 2.10.43 states that applicants are encouraged where possible to minimise the visual impacts of the development for those using existing Prow considering the impacts this may have on any other visual amenities in the surrounding landscape.

3.9.7. Paragraph 2.10.44 sets out that applicants should consider and maximise opportunities to facilitate enhancements to the PRoW and the inclusion, through site layout and design of access, of new opportunities for the public

to access and cross proposed solar development sites (whether via the adoption of new PRoW or the creation of permissive paths).

3.9.8. Paragraph.2.10.45 encourages applicants to set out detail on how PRoW would be managed to ensure they are safe to use in an outline Prow Management Plan.

3.9.9. Paragraph 2.10.125 seeks to ensure that all sections of roads and bridges on the proposed delivery route can accommodate the weight and volume of the loads and width of vehicles. Any modifications to roads and/or bridges are required to be identified. During the operational phase, EN-3 recognises that traffic movements to and from the site are generally very light and infrequent.

3.9.10. Paragraph 2.10.162 advises that the SoS is unlikely to give any more than limited weight to traffic and transport noise and vibration impacts from the operational phase of a solar project. EN-3 also recognises that applicants should keep, as far as is practicable and safe, all PRoW that cross the proposed development site open during construction and protect users where a PRoW orders or crosses the site. Paragraph 2.10.45 requires details on management of PRoW set out in a PRoW Management Plan.

NPPF

3.9.11. Section 9 of the NPPF promotes sustainable transport and the creation of places that are safe, secure and attractive which minimise the scope for conflicts between pedestrians, cyclists and vehicles. It sets out that transport issues should be considered from the earliest stages of development proposals.

3.9.12. Paragraph 105 looks for local planning policies and decisions to protect PRoW.

3.9.13. Paragraph 115 of the NPPF, similar to the test in paragraph 5.14.20 of NPS EN-1, makes clear that development should only be prevented or refused on highways grounds “if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”

3.9.14. Paragraph 125 of the NPPF also encourages development to secure net gains such as public access to the countryside.

Local Policy

ABC Local Plan

- Policy TRA7 – The Road Network and Development, which looks at managing traffic generation from proposals that would stimulate large volumes of traffic; and

- Policy TRA8 – Travel Plans Assessments and Statements, which requires planning applications to be supported by a transport statement and where appropriate travel plans.

ABNP

3.9.15. This sets out some expectations of development in relation to sustainable travel through Policy ABP 12. This looks at development connecting and where possible enhancing the PRoW network. The policy provides an overview of the network in Appendix E together with identifying AE474 for potential enhancements between Goldwell Lane and Aldington Church so that the footpath is capable of accommodating bicycles and pushchairs.

The Kent County Council Rights of Way Improvement Plan 2018-2028

3.9.16. This is a strategic policy document setting out its goals and priorities for PRoW and Access. It sets out the following key priorities:

- increase the provision of traffic free routes to offer a safe and sustainable alternative to car travel;
- Create links to places of work, schools and other amenities;
- Provide good circular and promoted routes for leisure and tourism;
- Remove barriers and replace stiles with gaps or gates;
- Introduce strategies and policies to ensure connectivity of the network through the consideration of PRoWs within new development and within transport plans; and
- Protect, enhance, expand and integrate the PRoW network. With the limited resources available, focus on priority routes which are promoted or provide primary access to amenities.

THE APPLICATION

3.9.17. The applicant outlines in ES Volume 2: Chapter 13: Traffic and Access [REP3-012] an assessment of the potential significant effects of the construction stage of the proposed development associated with traffic and access receptors.

3.9.18. A detailed assessment of the operational phase was scoped out of the ES due to the low number of trips associated with operation and maintenance. Effects during the decommissioning phase are estimated to be the same or lower than the construction phase and were also scoped out of assessment. The applicant proposes through works listed in article 11(1), street works and temporary closure of streets and works specified in Schedule 4 of the dDCO [REP8-004].

3.9.19. The Chapter is supported by the following figures in ES Volume 3 [APP-056]:

- Figure 13.1: Construction Traffic Route and Traffic Data Location Plan;
- Figure 13.2: PRoW Survey Locations & Average Daily Trips;
- Figure 13.3: PRoW Survey Results - Daily PRoW Trips; and
- Figure 13.4: Sensitive Receptor Location Plan 13.1.4

3.9.20. The Chapter is supported by the following appendices: ES Volume 4, Appendices:

- Appendix 13.1: Transport Planning Policy [APP-107];
- Appendix 13.2: Summary of Consultation Undertaken to Date [APP-108];
- Appendix 13.3: Traffic Survey Data [APP-109];
- Appendix 13.4: Summary of Traffic Data [APP-110];
- Appendix 13.5: Accident Data and Plots [APP-111];
- Appendix 13.6: PRoW User Survey Results [APP-112]; and
- Appendix 13.7: Access Drawings [APP-113].
- This chapter is also informed by the following documents:
- Outline Construction Traffic Management Plan (oCTMP) [REP3-018];
- Outline Decommissioning Traffic Management Plan (oDTMP) [REP3-022]

3.9.21. Schedule 8 and 9 of the dDCO [REP8-004] provide details of the PRoW to be altered and stopped up, as well as the status of new and altered PRoW provided.

Baseline

3.9.22. Baseline conditions were informed by site visits, mapping, published data and traffic surveys undertaken in 2022 and 2023. Surveys of PRoW use were also undertaken in the summer of 2022. (Paragraph 13.2.2 ES Volume 1 Non-Technical Summary [APP-023]).

3.9.23. Following questioning at ISH 2 [EV6-002] and [EV6-004] by the ExA the applicant requested updated accident data from KCC which was provided on 26 November 2024. This data relates to the period between 1 April 2023 and 30 June 2024. The applicant has reviewed this data, and it is consistent with the baseline information used for the transport assessment.

Construction Phase

3.9.24. The Construction period is estimated to be approximately 12 months in duration. Given the narrow nature of the lanes approaching the order limits, a construction route and internal haulage road has been proposed through Fields 12,13,14,15,17, and 18.

3.9.25. The construction route is provided at Figure 13.1: Construction Traffic Route and Traffic Data Location Plan [APP-056].

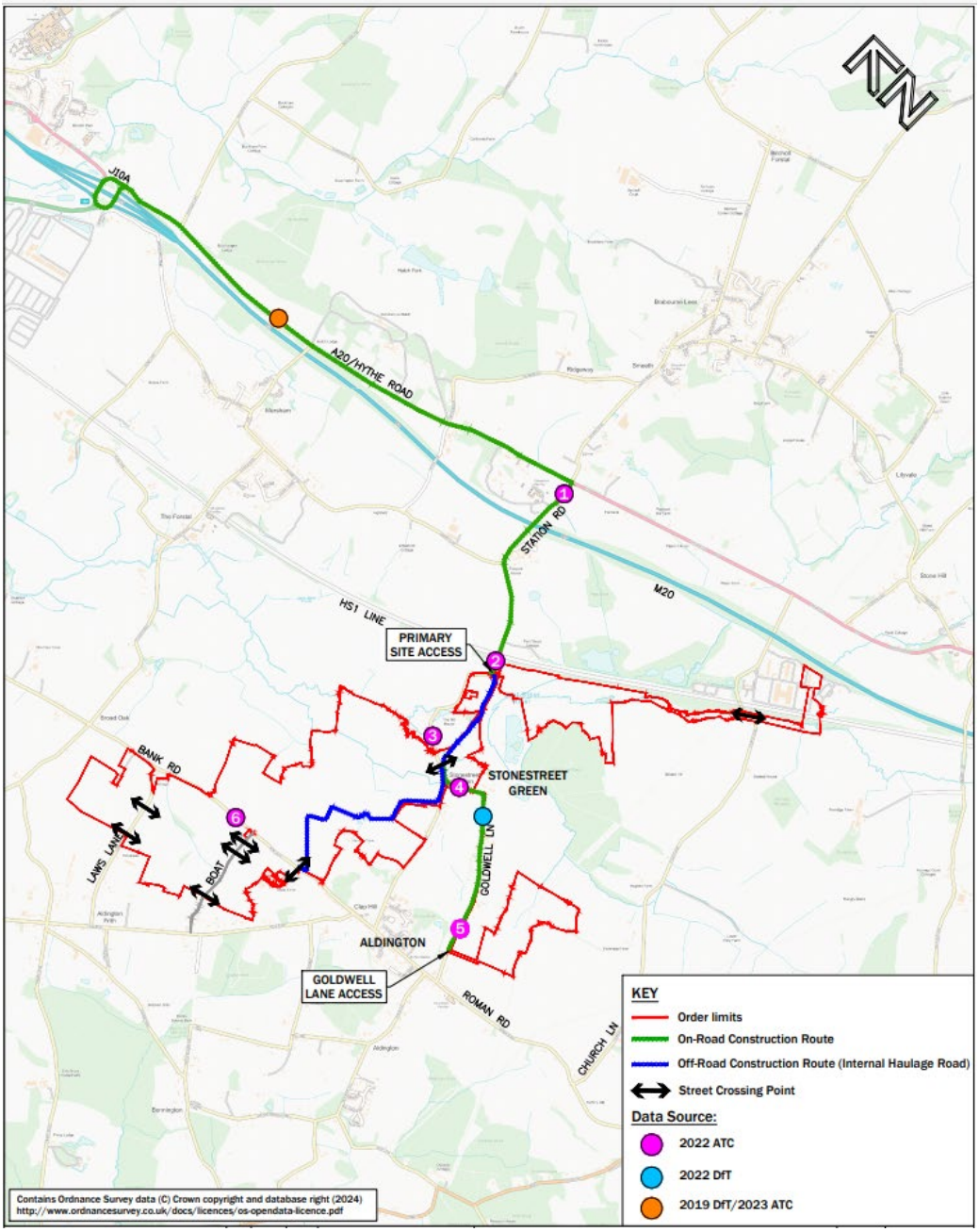

Figure 4 Construction internal haulage route

3.9.26. There is also traffic management proposed to manage two way traffic on the approaches to the order limits on Laws Lane, Banks Road, Station Road, feeding the primary and secondary accesses from Goldwell Lane. Further details are provided in the Traffic Regulations Measures Plans [APP-

010]. Indicative construction traffic vehicle trips have been calculated based on past experience of solar park construction in the UK. The applicant in paragraph 13.72 of ES Chapter 13 [REP3-012] states that the construction traffic vehicle trips are forecast on a reasonable worst-case basis, with the actual trip numbers expected to be fewer than those shown.

3.9.27. The applicant at Table 13.11 in ES Chapter 13 [REP3-012] shows that the 12-month construction phase for the proposed development is forecast to generate up to 124 two-way construction vehicle trips per day (including workers travelling to and from the order limits). Across a 12-hour working day, they say this equates to 10 two-way construction vehicle trips per hour.

3.9.28. Construction worker trips account for the majority of site traffic, with the proposed development forecast to generate up to only three HGVs per hour during the construction phase. Only two abnormal loads, the proposed development's substation transformer units, are forecast for delivery during the construction stage. Given that workers are the largest traffic generator, an assessment has been undertaken of a peak of 199 workers on-site and trip numbers for the peak worker scenario are presented in Table 13.12 of ES Chapter 13 [REP3-012].

3.9.29. The applicant anticipates that during the peak of construction up to 37 two-way HGV movements (18-19 vehicles) will be generated per day. Up to 126 two-way light movements (63 vehicles) will be generated per day.

3.9.30. The applicant proposes to mitigate the impacts of construction traffic through the oCTMP [REP3-018] and this is proposed to be secured via Requirement 7 as set out in the dDCO [REP8-004].

3.9.31. As part of the oCTMP [REP3-018] it will seek for the Principal Contractor to introduce measures to minimise the impact resulting from decommissioning activities which will be agreed with the KCC Streetworks team prior to commencement. As part of the mitigation measures proposed, the following will be addressed as part of the DMTP:

- PRoW User safety Management;
- Highway Safety Management;
- Delivery Management;
- Goldwell Lane Measures;
- A condition survey will be undertaken upon completion;
- The activities will be subject to community engagement;
- The Considerate Construction Scheme will be applied to operate best working practices;

- Vehicle cleaning will be undertaken to prevent soil and other deposits on the local highway network; and

- Ongoing monitoring to ensure the measures put in place are effective

PRoWs during Construction and Decommissioning

3.9.32. During the construction and decommissioning phases, the implementation of changes to routes will be subject to the principles of the Outline Rights of Way and Access Strategy (oROWAS) [REP1-056], and subsequent detailed RoWAS.

3.9.33. Except for those for which no alternative is to be provided (Part 3 of Schedule 8 of the dDCO [REP8-004], no PRoW will be permanently closed during the construction or decommissioning phase without a suitable alternative in place, which in most cases for the construction phase would be the proposed alternative PRoW for the operational phase (see Table 2-1) [REP1-056].

3.9.34. At the end of the construction phase, it is anticipated that all extinguishments and diversions via proposed PRoW would be in-place.

3.9.35. New or diverted PRoW temporarily implemented by the applicant as new paths or diversions to existing ProW would be re-instated to their original alignment at the end of the decommissioning phase – this applies to AE 378, AE 428, AE 448, AE 431, AE 436 and AE 454 (paragraph 6.1.4 of the oRoWAS [REP1-056]) .At paragraph 6.1.7 of the oRoWAS [REP1-056] states that the applicant and Principal Contractor will adhere to the following principles relating to any change in access to existing ProW that interact with the construction / decommissioning areas during the construction and decommissioning phase:

- Minimise as far as reasonably practicable any physical disruption or any other reductions in amenity on existing PRoW, permissive footpaths, and all other pre-existing linear and area access;

- Minimise as far as reasonably practicable any reductions in connectivity in and around the proposed development;

- Comply with the legal requirements of the Equality Act 2010 and the Highways Act 1980 in terms of temporary access infrastructure and management, by ensuring that there are no physical barriers to access without lawful authority and that reasonable adjustments are made to facilitate participation by all;

- Ensure that all new surfaces are easy to use;

- Minimise the need for temporary path closures and diversions beyond those listed in Schedule 8 of the dDCO [REP8-004], and where these are unavoidable, to provide and maintain alternative routes so as to reduce to a minimum any disruption or loss of amenity;

- Minimise road crossing points where possible and, where unavoidable, to carry out relevant road safety audits and implement recommendations to ensure user safety;

- Apply and maintain best practice in terms of on-site signage and other information provision, and to maintain visitor enjoyment and safety; and

- Justify, manage and agree temporary closures beyond those listed in Schedule 8 of the Draft DCO [REP8-004] in advance and to publicise closures to members of the public, as required.

Operational Phase

3.9.36. The vehicular traffic generated by the proposed development was scoped out due to the very small numbers predicted.

3.9.37. However, the impacts on PRoW users have been assessed (Paragraph 13.4.6 of ES Chapter 13 Traffic and Access [REP3-012] and are considered in relation to:

- Severance of communities (for example, as a result of changes in traffic flows on roads crossed by PRoW);

- Non-motorised user delay and amenity (for example, where users of the highway including walkers, cyclists and horse-riders may experience change in journey time or amenity as a result of a change in traffic flows); and

- Road user and pedestrian safety (where this relates to changes in traffic flows interacting with paths and highway used by walkers, cyclists and horse-riders) .

3.9.38. ES Volume 2, Chapter 12: Socio-Economics [REP1-024] provides a link-level assessment to evaluate the changes to each PRoW link where they interact with, or are affected by the proposed development for any part of its length. This is considered in the context of embedded mitigation (via diversions, new or alternative links) that would be provided as part of the proposed development as diverted/replacement PRoW and the commitments in the oRoWAS [REP1-056] and is proposed to be secured through Requirement 10 of the dDCO [REP8-004].

Decommissioning phase

3.9.39. A Decommissioning Traffic Management Plan (DTMP) [REP3-022] would be agreed prior to decommissioning and would be secured through Requirement 14 of the dDCO [REP8-004]. The oDTMP includes traffic calculations associated with waste removal which are not expected to be higher than the construction stage which are predicted as not significant. As for decommissioning traffic, the applicant reports at paragraph 13.4.32 of ES

Chapter 13 [REP3-012] that this is not likely to give rise to any significant effects and has been scoped out of the assessment.

3.9.40. As part of the oDTMP [REP3-022] this will seek for the Principal Contractor to introduce the same mitigation measures as proposed at construction stage.

ISSUES CONSIDERED DURING THE EXAMINATION

3.9.41. Many representations were received prior and during the examination relating to the impact of the proposed development on the PRoW network. The historic nature, the lengthened routes on some plus the visual impact for walkers using the network were the primary concerns raised by IPs such as Nigel Emmerson [RR-214], Ruth Guy [RR-248] and Andrew Swarbrick [RR-009]. Indeed, Mr Swarbrick presented a video [REP4-043] of his concerns on the impact of some of the changes and views to the examination and part of this was shown at ISH3 [EV8-002].

3.9.42. At ISH3 [EV8-003] the applicant was asked to explain its approach to the PRoW network and how the scheme was designed in relation to the PRoW network. They were challenged on whether the design of the scheme could be fragmented in order to retain some of the alignment of some of the paths and what impact this would have on the generating capacity of the proposed development.

3.9.43. The applicant responded to these challenges at D4 [REP4-030]. The applicant explained that they had sought from the outset to maximise the generating capacity of the proposed development, and therefore the benefits that can be delivered, at the same time as avoiding unacceptable harm to the environment. The applicant's approach is set out in the Design Approach Document [APP-149] in particular Objective 1 (Design the Project to optimise the amount of renewable energy that can be generated in the site area to help decarbonise electricity generation and achieving net zero carbon emissions, in line with the Government's commitments) and Objective 8 (Retain existing PRoW and connectivity where possible and seek opportunities to enhance the local network).

3.9.44. The applicant also explained that the proposed diversions to the PRoW network enable the proposed development to optimise the amount of renewable energy the development can deliver, and in doing so maximise the proposed development's contribution to meeting the UK's legally binding decarbonisation commitments. It also ensures an efficient use of the land and the grid connection capacity which, as has been previously submitted to the examination, is in short supply and has been recognised by the Government as a critical barrier to achieving Clean Power 2030.

3.9.45. They also pointed to NPS EN-3 paragraph 2.10.40 which identifies and acknowledges that solar NSIP developments may affect the provision of PRoW with the subsequent paragraphs (NPS EN-3 2.10.40-2.10.45) setting out how applicants should have regard in terms of approach to project design. In accordance with NPS EN-3 the applicant have said that they have

sought to minimise impacts on PRoW recreational use where possible and has included a number of new PRoWs which will improve the connectivity of the network, in particular through the introduction of a more direct route between Otterpool Park (towards the east) and Ashford (towards the west) as KCC and ABC had previously indicated to them that this was a key strategic network aim for the local network.

3.9.46. The applicant also reported [REP4-030] that in relation to PRoW diversions, they had engaged with residents, community groups (including Kent Ramblers), and Local Authorities on the approach to specific PRoW. This is confirmed by KCC in its Relevant Representation [RR-156] which states: "Through the pre application stage of this proposal, the County Council has proactively negotiated with the applicant a PRoW Management Strategy [APP-160], that covers the construction, operational and decommissioning stages…. the number of PRoW that were originally proposed to be extinguished has been reduced to two, and the number of routes to be diverted during the operational stage has been reduced to the minimum."

3.9.47. At paragraph 4.3.1 of KCC's LIR [REP1-054] the County Council considers that the proposal would impose a substantial adverse impact on the PRoW Network, a network that not only provides a safe, sustainable means of travel but also delivers the benefits that access to the network, countryside, and green spaces can make to improve the quality of life for Kent's residents and visitors. The severe impact on the open countryside, landscape and rural character of the area cannot be underestimated, is inescapable and cannot be mitigated for.

3.9.48. By the close of the examination, KCC SOCG [REP8-018] agreed all matters relating to construction traffic. However, the following matters relating to the PROW network were not agreed:

- That the applicant had not taken the opportunity to improve the PRoW network;
- The changes to the PRoW network could lead to more local people using cars to travel rather than using the PROWs;
- The cumulative effects in combination with other development on the PRoW network;
- The Management Plan; and
- The overall impact on to PRoW network

3.9.49. In relation to the improvement of the network, KCC are of the opinion that through pre application discussions and formal responses, the applicant was informed that the proposed development provides an opportunity to improve the PRoW network and develop new links for active travel and outdoor recreation, which would be considered as positive outcomes of the scheme. They further requested that enhancements to the PRoW network should be made in addition to mitigation, compensation, and management strategies

that would provide some form of mitigation of the severe impact in KCC's opinion that the users would experience on the quantity and quality of access provision.

3.9.50. The applicant in response set out that improvements had been made where appropriate and proportionate, including the creation of a new riverside walk. A Byway Open to all Traffic (BOAT)that is currently overgrown and unmaintained will also be cleared to improv accessibility and movement.

3.9.51. Moving on to the displacement of local people from the PRoW network into cars, the applicant articulated that the RoWAS had been developed following engagement with KCC and taking onboard feedback from stakeholders as well as relevant local and national design guidance to mitigate effects on the PRoW network and its users. They accept that the proposed development will alter the experience of some users but consider the PRoW network remains largely in place. They also pointed out that the surrounding area contains numerous other opportunities for public recreation and therefore the potential for local users to require the use of car to undertaken recreational activity is limited and therefore they do not accept that the proposed development would lead to a significant increase in local users using a motor vehicle.

3.9.52. KCC expressed concerns that the proposed Otterpool Park development would have significant interproject impacts on the PRoW network, potentially causing severe disruption to the network and its users. Public amenity across a wide expanse of the County would therefore be lost by the effective sterilisation of an area due to closures and disruptions from a parallel or concurrent project.

3.9.53. The applicant challenged this by reporting that they had reviewed the assessment undertaken for Otterpool which states in its ES that "no PRoW or bridleways would be removed as a result of the proposed development (Otterpool). The proposed development has been designed to complement and, where possible, enhance existing PRoW and bridleways within the order limits and to link in with external routes adjoining the order limits. The proposed series of walking and cycling routes will link into the existing footpaths and footways within the order limits, which will be upgraded as appropriate. As such, the existing PRoW and bridleways are expected to experience an increase in usage levels due to increased accessibility and an increase in local population".

3.9.54. KCC also consider that the overall effect on the PRoW network would have a severe impact on the open countryside, landscape and rural character of the area and is inescapable and cannot be mitigated for by the PRoW Management Plan.

3.9.55. The applicant stated that they had worked proactively with KCC to reach an agreed approach to the oRoWAS [REP1-056] and this had led to a reduction in the need for extinguishment of PRoW, and agreement on the approach to design, location and management of PRoW during operation, construction and decommissioning. They also point out that the PRoW network remains

largely intact, with the extinguishments limited to a route diversion and a removal of a 'dead end'. I also note the applicant's assertion at D4 [REP4-030] that KCC has not disagreed with the landscape and visual assessment undertaken whether in respect of landscape and visual effects on PRoW users or otherwise.

3.9.56. By the close of the examination a SOCG with National Highways [REP3-036] agreeing matters on traffic assessments, consideration of alternatives, design, the dDCO, and the oCTMP/oDTMP.

3.9.57. A number of IPS during the examination referred to the perceived impact the proposed development would have upon highway safety at Smeeth Crossroads. As set out by the applicant during ISH 2 [EV6-002] and [EV6-004] and summarised in Written Summary of Oral Submissions at ISH 2 and Response to Action Points [REP1-075], the Smeeth Road Crossing includes a ghost island which has an effective length of 50m, which is long enough to accommodate three 16.5m long articulated HGVs or around 8 cars without them blocking ahead movements on the A20.I note that KCC has confirmed in their LIR [REP1-087] that HGVs already use this part of the highway network and that "it is not considered that the resulting uplift in traffic would significantly worsen the crash risk in this location".

3.9.58. During the examination and at ISH2 [EV6-002] and [EV6-004], a number of IPs raised concern about the impact of the construction traffic on the local highway network. In response the applicant at D1 [REP1-075] set out that based on technical evidence, the applicant believes the proposed traffic management measures, especially the embedded mitigation in the IHR, comply with policy and align with advice from KCC officers. The applicant also emphasized that construction traffic volumes are low:

- Station Road: 2 HGV trips per hour in each direction for 12 months;
- Goldwell Lane: Even fewer HGV trips over just 5 months; and
- Church Lane (to Sellindge Substation): Fewer than 10 vehicles per day for 2 months.

3.9.59. At the very end of the examination [REP8-030] a S106 was proposed by ABC in relation to fund enhancements to the PROW network. Notwithstanding the limited time for the applicant to respond on this matter, they refuted that the S106 agreement met the statutory tests for such agreements.

CONCLUSIONS

3.9.60. The scope and methodology of the applicant's Traffic and Access assessment, as well as the extent of the study area, the scope of the traffic surveys, the baseline traffic data and the sensitive receptors identified along the construction traffic route are agreed with KCC as stated in Table 2-2 of the SoCG with KCC [REP8-018]. The extent of the study area has been

agreed with National Highways and KCC as highway authorities responsible for the strategic road network and the local road network respectively.

3.9.61. A number of IPs have raised matters in respect of highways, but these are countered by the submissions of the relevant statutory highway authorities – KCC and National Highways – in that the proposed development would result in no unacceptable impacts in relation to traffic and highway matters, a view which is supported by the detailed and expert traffic and highways assessment produced by the applicant and tested through the examination.

3.9.62. The proposed development gives rise to no significant traffic or highways impacts and the impacts are at most limited, involving a relatively modest number of traffic movements over a limited period of time, and benefitting from controls and mitigation in respect of routing, access, and timing, including use of an internal off-road haul road.

3.9.63. In addition, the oCTMP and oDTMPs are considered by both NH and KCC to be appropriate to provide the necessary mitigation.

3.9.64. In relation to PROWs, the applicant has been clear in its aim to maximise the generating capacity of the proposed development, and therefore the benefits that can be delivered, at the same time as avoiding unacceptable harm to the environment. They acknowledge that the design causes some significant visual impacts on PRoWs, but after mitigation, these effects are no greater than moderate adverse, which is the lowest level of significance according to the ES Volume 2, Chapter 8. Redesigning the development to avoid PRoW diversions would not reduce these visual impacts. In KCC, ABC, and ABC's expert landscape advisor all agree with the submitted landscape assessment.

3.9.65. The proposed diversions to the PRoW network enable the proposed development to optimise the amount of renewable energy the order limits can deliver, and in doing so maximise the proposed development's contribution to meeting the UK's legally binding decarbonisation commitments. The applicant has sought to be efficient in the use of the land and the grid connection capacity which is deemed to be in short supply and has been recognised by the Government as a critical barrier to achieving Clean Power 2030.It has been demonstrated by the applicant that they have sought to minimise impacts on PRoW recreational use where possible and has included a number of new PRoWs which will improve the connectivity of the network. NPS EN-3 paragraph 2.10.42 requires the design and layout of the site to ensure continued recreational use of PRoW. The proposed changes to the network meet this requirement and I consider the impacts to be minor adverse and not significant.

3.9.66. In relation to the visual impact on the users of the PRoWs I consider that the approach in ES Volume 4, Appendix 8.2: Landscape and Visual Impact Assessment Methodology [AS-016] is appropriate. I accept that visual changes would take place for PROW users when there are new physical components, such as structures, hedgerows, or changes to existing views. However, after the provision of the mitigation proposed this would be no

more than moderate adverse and these would be temporary for the life of the development.

3.9.67. No significant adverse effects are predicted to the BOAT (AE 396), which is proposed to be cleared and maintained for access to the BOAT and be a minor positive impact.

3.9.68. I concur with the applicant's view that the proposed S106 agreement proposed by ABC is not necessary or meets the tests required.

3.9.69. Having reviewed all the evidence before me I consider that the effects on PRoWs are limited, given the scale of the proposed development and the significant benefits to which the proposed development provides. I therefore give this a little weight against granting of the development consent order.

3.10. WATER ENVIRONMENT

INTRODUCTION

3.10.1. The main issues raised in the examination relating to potential adverse effects on the water environment related to the following:

- the use of land which are in areas situated within Flood Zone 2 and Flood Zone 3, for the proposed development, the sequential and exception tests and ensuring no increase to flood risk downstream;
- the methodology for the installation of the cable by either using existing cable ducts or Horizontal Directional Drilling;
- effects on water quality from the construction and decommissioning phases;
- effects of surface water runoff from compounds; and
- effects on flood storage areas

LEGISLATIVE CONTEXT

3.10.2. The following legislation relating to the water environment is relevant to the proposed development:

- The Water Framework Directive (2000/60/EC) {WFD};
- Water Environment (Water Framework Directive) (England and Wales) Regulations 2017;
- The Groundwater Daughter Directive (2006/118/EC);
- Water Environment (Water Framework Directive) (England and Wales); (Amendment) Regulations 2015 (WFD);
- The Priority Substances Directive (2008/105/EC);

- Floods and Water (Amendment etc.) (EU Exit) Regulations 2019;
- Floods Directive (2007/60/EC);
- Revised Bathing Water Directive ('RBWD') (2006/7/EC);
- Environmental Permitting (England and Wales) Regulations 2016;
- Flood and Water Management Act 2010;
- Environment Act 2021;
- Reservoir Act 1975;
- Salmon and Freshwater Fisheries Act 1975;
- Environment Protection Act 1990;
- Land Drainage Act 1991;
- Water Resources Act 1991;
- Water Act 2003;
- Water Act 2014; and
- Floods and Water (Amendment etc.) (EU Exit) Regulations 2019

POLICY BACKGROUND

NPS EN-1

3.10.3. Paragraph 4.10.11 states that applicants should demonstrate that proposals have a high level of climate resilience built-in from the outset and should also demonstrate how proposals can be adapted over their predicted lifetimes to remain resilient to a credible maximum climate change scenario.

3.10.4. Paragraphs 5.16.3-5.16.6 discusses hydrological impacts, advises that where the project is likely to have effects on the water environment, the applicant should undertake an assessment of the existing status of, and impacts of the proposed project on, water quality, water resources and physical characteristics of the water environment, and how this might change due to the impact of climate change on rainfall patterns and consequently water availability across the water environment. 'It also encourages applicants to manage surface water during construction by treating surface water runoff from exposed topsoil prior to discharging and to limit the discharge of suspended soils (e.g. from car parks or other areas of hard standing), during operation. In addition, applicants are encouraged to consider protective measures to control the risk of pollution to groundwater beyond those outlined in River Basin Management Plans and Groundwater Protection Zones.

3.10.5. Paragraphs 5.16.11 – 5.16.16 outline the SoS decision-making process with regards to water quality and resources. Impacts on the water environment will need to be given more weight where a project would have an adverse effect on the achievement of environmental objectives established under the WFD. Within paragraph 5.16.8 it is stated that whether mitigation measures over and above those included within an application are needed should be considered by the SoS.

3.10.6. Section 5.8 sets out the minimum requirements for flood risk assessments (e.g. they should be proportionate to the risk and appropriate to the scale, nature and location of the project (paragraph 5.8.15)). As part of the decision making, the SoS should be satisfied on a number of points, including that the application is supported by an appropriate flood risk assessment.

3.10.7. Paragraphs 5.8.9-11 of NPS EN-1 comment on the application of the Sequential and Exception Tests, stating that the Exception Test can be applied.

NPS EN-3

3.10.8. Paragraph 3.10.145 advises that water management is a critical component of site design for ground mount solar plants. Where previous management of the site has involved intensive agricultural practice, solar sites can deliver significant ecosystem services value in the form of drainage, flood attenuation, natural wetland habitat, and water quality management.

3.10.9. Paragraph 3.4.10 requires applicants to consider how solar photovoltaic sites proposed in low lying exposed sites will be resilient to increased risk of flooding and impact of higher temperatures.

3.10.10. Paragraph 3.10.75 refers to the need for flood risk assessments for solar projects to consider the impact of drainage within solar developments. Paragraph 3.10.76 provides further detail, requiring permeable access tracks, and for localised SuDS to be used to control drainage runoff.

3.10.11. Paragraphs 3.10.77 – 3.10.79 note that solar farms should be configured or selected to avoid the need to impact on existing drainage systems and watercourses, and the need to demonstrate that no reasonable alternatives exist in the case of culverting existing watercourses/drainage ditches. Further, any such culvert can only be in place temporarily for the construction period.

3.10.12. Paragraph 3.10.145 recognises the value that solar projects can bring for sites that have previously been used for intensive agricultural practice through the delivery of drainage and flood attenuation.

NPS EN-5

3.10.13. This addresses policy for electricity networks infrastructure, including associated infrastructure such as substations. Paragraph 2.3.2 states that as climate change is likely to increase risks to the resilience of some

infrastructure, including flooding, applicants should set out to what extent the proposed development is expected to be vulnerable and how it has been designed to be resilient to:

- flooding, particularly for substations that are vital to the network; and especially in light of changes to groundwater levels resulting from climate change; and

- earth movement or subsidence caused by flooding or drought (for underground cables).

NPPF

3.10.14. Paragraph 159 states that 'New development should be planned for in ways that provide resilience to climate change and reduce carbon emissions through the schemes design".

3.10.15. Paragraph 165 highlights that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.

3.10.16. Paragraph 175 states that 'When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment.

Local Policy

ALP

3.10.17. The ALP includes policies:

- Policy ENV6 – Flood Risk.

- Policy ENV8 – Water Quality, Supply and Treatment.

- Policy ENV9 – Sustainable Drainage.

In addition, ABC have also adopted the Ashford Sustainable Drainage Supplementary Planning Document 2010 which provides guidance to developers preparing planning applications.

THE APPLICATION

3.10.18. ES Volume 2: Chapter 10: Water Environment [REP1-022] presents an assessment of the potential significant effects of the proposed development on the water environment. The assessment considers the effect on surface water bodies, water quality, flood risk, groundwater and other related effects. This is supported by a number of appendices and documents including the following:

ES Volume 3, Figures [REP5-011]

- Figure 10.1: Water Environment Study Area;
- Figure 10.2: Site Topography;
- Figure 10.3: Local Hydrology;
- Figure 10.4: Flood Map for Planning;
- Figure 10.5: Superficial Geology;
- Figure 10.6: Bedrock Geology;
- Figure 10.7: Aquifer Characteristics; and
- Figure 10.8: Delineation of Flood Zones 3a and 3.

ES Volume 4, Appendices

- Appendix 10.1: Water Environment Legislation, Planning Policy and Guidance [APP-095];
- Appendix 10.2: Flood Risk Assessment ('FRA') [REP5-015];
- Appendix 10.3: Water Framework Directive Assessment [AS-013];
- Appendix 10.4: Aldington Flood Storage Area Risk Assessment [REP1-034];
- Appendix 10.5: Schedule of Watercourse Crossings [APP-098]

Baseline

3.10.19. The order limits lie within the 'East Stour' and 'Romney Marsh between Appledore and West Hythe' surface water catchments. The majority (around 99%) of the order limits lies within the East Stour surface water catchment. The East Stour River flows adjacent to and through the north of the order limits in a westerly direction. There are several small water features (lakes, ponds, watercourse and ditches) associated with these two surface water catchments within the order limits.

3.10.20. Due to its proximity to the East Stour River, the order limits are located across Flood Zones 1, 2 and 3. The order limits are predominantly located in Flood Zone 1 (defined as having 'low' probability of flooding), although parts of the order limits fall within areas designated as Flood Zone 2 ('medium' probability of flooding) and Zone 3 ('high' probability of flooding). A large flood storage area, the 'Aldington Flood Storage Area', and associated embankment are located in the northern part of the order limits.

3.10.21. The majority of the bedrock beneath the order limits is not considered to be an aquifer. Areas of the order limits are underlain by a principal aquifer,

although there are no current permitted abstractions or known private water supplies within 2km of the order limits; and the order limits is not within a zone designed to protect groundwater.

3.10.22. A WFD Assessment was submitted by the applicant to provide an assessment of the proposed development under the WFD. This provides details on the potential impact of the proposed development on WFD water bodies. The EA in their SoCG agree that it provides a reasonable scope and assessment of the potential effects of the proposed development.

Construction Phase

3.10.23. The potential effects that could arise from the proposed development to the water environment during construction include increased flood risk, pollution effects of machinery leaks and spills as well as sediment laden runoff, and minor changes to runoff patterns, predominantly through loss of vegetation and permeable area.

3.10.24. The oCEMP [REP1-044] sets out the embedded mitigation measures developed for the proposed development in line with industry good practice. The applicant reports from paragraph 10.10.6 - 10.10.8 of ES Chapter 10: Water Environment [REP1-022] that the CEMP will be developed before works commence which will provide further details of control measures including construction drainage arrangements. The measures within that document will control construction phase risk and cumulative effects to the water environment. This will manage the effects for surface water, groundwater and flood risk during construction. As a consequence, the effects are assessed as negligible on all receptors apart from the East Stour River which is assessed as minor adverse (paragraph 10.10.4). Effects on all receptors are assessed as not significant.

3.10.25. At paragraph 10.8.2 of ES Chapter 10: Water Environment [REP1-022] the applicant reports that the control measures include establishing the baseline water quality prior to construction with routine monitoring of potential pollution impacts. If there is a detectable adverse change in water quality, a breakout plan for it will be implemented.

Operational Phase

3.10.26. The potential effects arising from the proposed development on the water environment during operation include pollution effects from machinery leaks and spills during maintenance, changes in storm water runoff and effects on flood risk.

3.10.27. The applicant proposes to mitigate potential effects in relation to pollution, changes in storm runoff through the use of Sustainable Drainage Systems ('SuDS') and the containment of firewater through the oOSWDS [REP4-013] and Requirement 11 of the dDCO [REP8-004].

3.10.28. The design of the proposed development (including the substation) will include measures to avoid and minimise the risk of pollution to the ground and water during its operation. These include:

- Regular inspections and maintenance of all equipment to identify any leaks or damage, and procedures to address these;
- Key electrical plant (e.g., inverters, transformers and switchgear) will be installed with suitable bunding where appropriate;
- Fuels and any chemicals used on the site will be stored appropriately;
- Confined space entry control including gas monitoring and respiratory protection equipment will be adopted for works entering and working in confined spaces; and
- A marker membrane will be installed within service trenches if the presence of contaminated ground beneath is confirmed.

3.10.29. Pollution control measures relevant to the operational phase of the proposed development are secured through the oOMP [REP1-050] and requirement 8 of the dDCO [REP8-004].

3.10.30. The applicant at paragraph 10.4.8 of ES Chapter 10: Water Environment [REP1-022] reports that the proposed development's layout and design has been carefully developed to reflect the prevailing fluvial flood risk. This includes setting the location and height of key sensitive infrastructure so that flooding is not likely and siting PV panels above the proposed development height of flooding. Appropriate SuDS measures which account for future climate change will be also implemented. The FRA has also been modelled to factor in climate change and resilience in line with NPS EN-.1. The proposed development would therefore not worsen flooding within the order limits or off-site. Emergency Flood Response Plans will however form part of the oOMP [REP1-050].

3.10.31. The applicant outlines at paragraph 10.7.89 of ES Chapter 10: Water Environment [REP1-022] that the effects on all water environment receptors during the operational phase are assessed negligible.

Decommissioning Phase

3.10.32. The applicant reports at paragraph 10.7.91 of ES Chapter 10: Water Environment [REP1-022] that during the decommissioning phase, the impacts on the water environment with regard to flood risk, surface runoff and pollution will be controlled using a similar approach to the construction phase. Similar practices undertaken during construction will be implemented during decommissioning through the oDEMP [APP-157].

3.10.33. The applicant suggests that no significant residual effects on water environment receptors are predicted during the decommissioning phase of the proposed development.

Cumulative Effects

3.10.34. The applicant's cumulative assessment (ES Volume 4, Appendix 6.1: List of Cumulative Schemes [APP-068]) identified only two developments (East Stour Solar Farm and the Otterpool Development Park) which have the potential to give rise to cumulative effects in combination with the proposed development. However, the applicant predicts at Paragraph 10.10.7 of ES Chapter 10: Water Environment [REP1-022] that these effects could only be realised if the construction periods for two or more of these schemes coincided. This potential cumulative effect would be in relation to waterborne pollution derived from construction activities discharging to the East River Stour.

3.10.35. To manage potential cumulative impacts on water quality, the applicant proposes baseline monitoring will be conducted before construction during both wet and dry seasons. Monitoring will continue throughout construction to detect any changes caused by the proposed development or nearby developments like East Stour Solar Farm and Otterpool Park. If adverse changes are found, investigations and coordinated remedial actions will follow. These measures, secured by the oCEMP [REP1-044], are expected to limit the cumulative impact on East Stour River water quality to a minor adverse level, which is not considered significant.

ISSUES CONSIDERED DURING THE EXAMINATION

3.10.36. Southern Water Services (SWS) is the appointed sewerage undertaker under the Water Industry Act 1991 for the area of the proposed development. As a result, SWS is subject to a number of statutory duties for the supply of water to c. 2.6 million people and providing sewerage services to c.4.6 million people. SWS is therefore a statutory undertaker for the purposes of section 127 of the Planning Act 2008. SWS representations [RR-012], [AS-020], and [REP6-018] relate to protective provisions for its infrastructure, which is dealt with in Chapter 6 of this report. It also noted that the proposed development will not require a significant supply of potable water during the operational phase with potable water only required to serve the proposed development Substation welfare facilities (wash basin and cess tank). Water supply during construction and decommissioning will be via a bottled water, water cooler and a water tank [REP1-022]. Given the above, the additional pressure placed on the local potable water supply network during the construction, operational and decommissioning phases of the proposed development will not be significant. The impact of the proposed development on potable supplies has therefore been scoped out of the assessment.

3.10.37. The SoCG with the Environment Agency (EA) [REP4-015] agreed that the FRA and the Flood Storage calculations for the proposed development were acceptable. In addition, cable routing and the impact on the Aldington Flood Storage Area were agreed to be scoped within the oCEMP [REP1-044],

which would include a Construction Method Statement prior to commencement of the works.

3.10.38. Concerns were raised by the EA during examination that the proposed development could lead to a net loss of the Aldington Flood Storage Area. To address these concerns, the applicant agreed to update the oOSWDS [REP4-013] to include a commitment to ensure that the proposed development would not result in a net loss of flood storage and that appropriate compensation (if required) is in place before construction.

3.10.39. The EA are satisfied with the applicant's confirmation that there would not be restricted access upon any of the EA's land interests and assets. This would be controlled via a commitment in the oCEMP [REP1-044]. The EA also highlighted that the drainage strategy on the site adjacent to the East Stour, downstream of the hydro-brake outlet, on the south end of Field 24 may increase water levels in this area. There is a privately owned sluice gate downstream of the outlet that the owner operates to always ensure they have water ponding in their garden. This restricts the maximum flow on this section of river. However, following ExA's FWQs and the applicant's response, the EA are satisfied that Requirement 11 (operational surface water drainage) in Schedule 2 of the dDCO [REP8-004] would secure detailed design approval of drainage details by ABC. This would have appropriate regard to these considerations and also provide for a floodplain compensation scheme to address the mitigation necessary as part of the FRA.

3.10.40. Agreement was also reached on the applicant's approach to groundwater and land contamination, water quality and any licenses required in relation to the water environment.

3.10.41. In addition, the EA submitted a letter dated 28 February 2025 [AS-027], where they indicated their intention to publish new data in relation to flood and erosion risk on the 25 March 2025. Following a question at ExQ2, the applicant in response updated the following Figures in ES Volume 4, Appendix 10.2: Flood Risk Assessment [REP5-015] at D5:

- Figure 10.2.8: Flood Map for Planning;
- Figure 10.2.9: Long Term Flood Risk Rivers and Sea; and
- Figure 10.2.10: Long Term Flood Risk Surface Water.

3.10.42. They also updated Figure 10.4: Flood Map for Planning of ES Volume 3, Chapter 10: Water Environment Figures 10.1-10.8 to reflect the updates to the new data for flood and erosion risk [REP5-011]. In KCC'S LIR [REP1-087] they expressed concern in relation to the potential of scarification of the land following significant rainfall events, which then could lead to siltation and potential downstream blockages.

3.10.43. In addition, in their written representation at D1 [REP1-091] they submitted that there were concerns raised with regards to the technical data contained

within the detailed design aspects of the SuDs design. However, this was subsequently agreed through the SOCG [REP8-018] along with the following water related matters:

- FRA scope and methodology;
- Embedded mitigation;
- Surface Water Drainage Strategy;
- Assessment of Effects; and
- Cumulative Effects; and Residual Effects.

3.10.44. KCC agreed that these matters could largely be controlled via the oCEMP [REP1-044] and the oOSWDS [REP4-013].

3.10.45. ABC also agreed within their SOCG [REP8-016] with the applicant on the conclusions of the both the Sequential and Exception Test and that there is no reasonable alternative site with a lower probability of flooding and that the benefits of the proposed development outweigh flood risk.

3.10.46. There were also concerns expressed by various IPs during the examination such as that from the Village Alliance [RR-287]. An additional submission [AS-021] was received by Ally Payne in relation to previous flooding of Spring Cottage and the concern that the proposed development would exacerbate the flood risk to the property. The applicant was asked at FWQs [PD-006] to outline how this has been assessed and any potential mitigation proposed. In their response [REP3-047] the applicant outlined that an assessment of the effects of the proposed development on flood risk both within the order limits and to the surrounding area is provided in section 10.7 of ES Volume 2, Chapter 10: Water Environment [REP1-022] with supporting information provided in ES Volume 4, Appendix 10.2: Flood Risk Assessment [REP5-015]. The assessment concludes that with appropriate mitigation measures which are secured through the oOSWDS [REP4-013], the proposed development would not increase flood risk within the order limits or to the surrounding area.

CONCLUSIONS

3.10.47. The ExA considers that the applicant has accounted for the impacts of climate change on flood risk based on the available data. The layout of the proposed development and relevant management plans have been developed to avoid adverse effects on the water environment. With mitigation in place, including adherence to phase specific management plans, the ExA considers that the proposed development is not likely to give rise to significant effects during construction, operation or decommissioning. The same applies to cumulative effects.

3.10.48. Requirement 11 of the dDCO [REP8-004] relating to the submission of an oSWDS and flood compensation storage will require a detailed floodplain drainage scheme to be submitted prior to development commencing, This

will be submitted to the local planning authority for approval in consultation with KCC, as the LLFA and the EA. This will set out principles and an outline design for managing storm water on the order limits in line with best practice and the requirements of KCC.

3.10.49. The ExA notes that in the signed SoCG between the applicant and the EA, matters relating to mitigation to address flooding and surface water runoff were all agreed. The ExA is satisfied that the WFD Assessment is appropriate and that no material harm would arise following implementation of appropriate mitigation.

3.10.50. The ExA is satisfied that the sequential and related exception test requirements have been met, and that the requirements set out in NPS EN-1 in this regard have been addressed. The applicant has adequately considered alternative sites, none of which could be considered as reasonably available.

3.10.51. In relation to river flooding and surface water runoff, the ExA is content that the mitigation proposed would adequately deal with the impacts. This covers all phases of development. The same conclusion is drawn in relation to cumulative impacts. In reaching this conclusion the ExA has considered the relevance of 2024 NPS EN-3 paragraph 2.4.11 which identifies that solar PV sites may be proposed in low lying exposed sites.

3.10.52. For these reasons, water and flooding matters are weighted as neutral in the planning balance.

3.11. SAFETY AND SECURITY

The Main Issues

3.11.1. The main issues raised in the safety and security related to the following:

- The Battery Electrical Storage System (BESS) including number and positioning of the BESS across the order limits, the infrastructure associated with the BESS and fire safety concerns; and
- Security of the site and supply;

Legislative Context

3.11.2. The Infrastructure Planning (Electricity Storage Facilities) Order 2020 removed all forms of electricity storage, other than pumped hydroelectric storage, from the definition of nationally significant energy generating stations under the Planning Act 2008.

3.11.3. 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.

NPS-EN1

3.11.4. Paragraph 3.3.25 sets out that Battery Energy storage has a key role to play in achieving net zero and providing flexibility to the energy system, so that high volumes of low carbon power, heat and transport can be integrated.

3.11.5. Paragraph 4.16.1 states that national security considerations apply across all national infrastructure sectors. Government policy is to ensure that, where possible, proportionate protective security measures are designed into new infrastructure projects at an early stage in the project development.

3.11.6. Paragraph 4.7.12 sets out that in considering applications, the SoS should take into account the ultimate purpose of the infrastructure and bear in mind the operational, safety and security requirements which the design has to satisfy.

NPS EN-5

3.11.7. Paragraph 2.10.158 notes that, whilst solar PV panels are designed to absorb, not reflect, irradiation, the SoS should assess the potential impact of glint and glare on nearby homes, motorists, public rights of way, and aviation infrastructure (including aircraft departure and arrival flight paths).

3.11.8. Paragraph 2.10.159 notes that, as there is no evidence that glint and glare from solar farms results in significant impairment on aircraft safety, unless a significant impairment can be demonstrated, the SoS is unlikely to give any more than limited weight to claims of aviation interference because of glint and glare from solar farms.

NPS EN-5

3.11.9. Paragraph 2.4.3 advises that the SoS should bear in mind that electricity networks infrastructure must in the first instance be safe and secure, and that the functional design constraints of safety and security may limit an applicant's ability to influence the aesthetic appearance of that infrastructure

NPPF

3.11.10. The NPPF refers, at paragraph 101, to the fact that: "Planning policies and decisions should promote public safety and take into account wider security and defence requirements by: (a) anticipating and addressing possible malicious threats and natural hazards… This includes appropriate and proportionate steps that can be taken to reduce vulnerability, increase resilience and ensure public safety and security".

Renewable and Low Carbon Energy PPG

3.11.11. The PPG relating to renewable and low carbon energy encourages applicants and local planning authorities to consult with their local fire and rescue service on matters relating to the siting and location of battery storage systems and potential mitigations which could be put into place in the event of an incident.

The Applicant's Approach

3.11.12. BESS Units are to be located in fields throughout the order limits. The applicant has made provision that no BESS will be located to a residential property closer than 150 metres.

3.11.13. In relation to security the fields with PV panels and associated infrastructure will be secured with fencing and cctv cameras in line with Home Office guidelines. Energy suppliers are now required to comply with the Network and Information Systems ('NIS') EU Directive, transposed into UK law as The Network and Information Systems Regulations 2018 ('NIS Regulations'), which came into force on 10 May 2018.

3.11.14. The applicant submits that the design approach is to distribute the BESS units across the order limits which will mitigate the limited risk of a major fire incident involving multiples BESS Units in a single location. The proposed development has also been designed to comply with good practice guidance published by the National Fire Chiefs Council ('NFCC'). Primary design measures are secured through the Design Principles as follows:

- BESS Units will be spaced at least 6m apart from one another (measured wall to wall);
- BESS Units will be distributed across the order limits with up to four units at an Inverter Station. Where two Inverter Stations are paired, up to eight BESS units can be located in a single area;
- The nearest residential receptor to any BESS Unit will be a minimum of 150m;
- No BESS Units or DC-DC Converters will be included within Field 9, and Fields 20 to 22;
- Water tanks for fire suppression water will have a maximum diameter of 12m and a maximum height of 3.5m;
- Water tanks will be located at least 50m from a BESS location; and
- Internal access tracks will be provided to Inverter Stations (for maintenance and emergency access to the BESS) with a minimum width of 3.7m and a carrying load in compliance with Building Regulations and NFCC Guidance.

3.11.15. Paragraph 16.7.20 of ES Chapter 16: Other Topics [APP-040] sets out the key fire safety principles for the proposed development included in the oBSMP [REP5-019] are:

- The BESS will be designed, selected and installed in accordance with related standards, international guidance and good practice;

- The BESS will be designed with multiple layers of protection to minimise the chances of a fire or thermal runaway. This will include integrated fire detection with automated suppression systems to deal with electrical fires. Following best practice (e.g., National Fire Protection Association ('NFPA') the build-up of explosive gases will be avoided by gas venting;

- Risk assessments will be carried out for the entire system during construction and for the operational life of the BESS;

- All equipment will be monitored, maintained and operated in accordance with manufacturer instructions, with Kent Fire and Rescue Service (KFRS') alerted in the event of an incident; and

- A dedicated emergency response team shall be identified, and an emergency response plan will be put in place.

3.11.16. The oBSMP [REP5-019] provides the framework for a detailed BSMP to be prepared. The dDCO [REP8-004] includes Requirement No. 5 that secures the submission to and approval by the local planning authority of a BSMP before the commencement of the BESS. The Requirement provides that the BSMP must either accord with the oBSMP [REP5-019] or detail such changes as the undertaker considers are required. The detailed BSMP will include the detailed BESS design and specification, operational procedures and training, environmental risk assessment and an emergency plan covering all stages of the proposed development. Further specific mitigation measures relating to the risk of fire from the BESS is included within the oBSMP [REP5-019], which will be prepared in consultation with KFRS'.

3.11.17. BESS Units will house the battery systems, electrochemical components and associated equipment. At paragraph 4.2.8 of the oBSMP [REP5-019], the applicant reports that the BESS Unit gas exhaust vents and deflagration panels will direct flaming or toxic gases away from site personnel or first responders in line with NFPA and BS EN 147, as doors cannot be used as sole deflagration vents. The ventilation system will be provided with suitable ember protection to prevent embers from penetrating BESS enclosures (HVAC, gas exhaust, deflagration panels).

3.11.18. In addition, at paragraph 4.2.9 of the oBSMP [REP5-019] the applicant further states that's IEC Factory Acceptance Testing (FAT) or an independent manufacturing audit will be carried out to ensure the supplied BESS enclosures comply with the requisite certified ingress protection levels. Ingress Protection (IP) ratings of BESS enclosures will be shared with KFRS at the detailed design stage so that risks associated with boundary cooling can be understood and implemented into the Emergency Response Plan. Potential boundary cooling water ingress points such as Heating, Ventilation and Air Cooling (HVAC) systems and deflagration vents will be considered as part of an incident response strategy.

Construction

3.11.19. The applicant states that the BESS construction will comply with UK legislation and good industry practice procedures. The BESS would be constructed in two distinct phases. Firstly, the civil works and supporting components and auxiliary systems would be started. Then at a suitable point the BESS equipment will be delivered to be installed on the foundations and connected up to the supporting components and auxiliary systems of the power plant needed to deliver the energy, other than the generating unit itself.

3.11.20. Paragraph 4.3.2 of the oBSMP [REP5-019] states that the installation would be subject to pre-requisites such as a contractor emergency protocol detailing the actions to be taken in an emergency, including an emergency response plan that would be coordinated with the relevant stakeholders and emergency services. In addition, installation would not take place until practical provisions were completed such as the water tanks and associated water delivery system being installed and filled for use in an emergency.

3.11.21. The applicant assumes that the BESS would have undergone Factory Acceptance Testing prior to installation. As this would be undertaken away from the order limits, this reduces the risks during on-site installation with visual inspections and functional testing undertaken before any Site Acceptance Testing. Installation will be supervised by the original equipment manufacturer. Prior to delivery of the BESS Units, the on-site firewater provision should be installed and operational.

Operational Phase

3.11.22. The applicant sets out at paragraph 16.7.22 of ES Chapter 16: Other Topics [APP-040] that the BESS unit locations are designed to ensure that any firewater required is contained such, that there will be no leakage of polluted water into the surrounding area following a fire event. Human health and other environmental impacts resulting from plumes from battery fires are considered unlikely as BESS Units will be located at least 150m from residential receptors.

3.11.23. They also state at paragraph 16.7.23 of ES Chapter 16: Other Topics [APP-040] that with effective implementation of the Embedded Mitigation, the risk of fire or explosion is minimised and would be very low. In the event it did occur, the likely impact on the general public, in particular nearby residents, is deemed to be very low and no significant effect on the environment and people from a major accident is anticipated.

3.11.24. A Battery Management System ('BMS') will be used to monitor key electrical, mechanical and environmental parameters to ensure the system operates within its design thresholds. The BMS controls all aspects of the battery system and provides early warning, fault notification and disconnection of a BESS Unit in advance of an operational parameter being exceeded. These control systems would be failsafe by design with automatic shutdown of parts, or of the whole system, depending on circumstance. Paragraph 4.4.9

of the oBSMP [REP5-019] sets out that 24/7 monitoring will be provided via a remote-control room with staff fully trained and familiar with BESS system technology.

3.11.25. The BESS Units will have in built monitoring systems that will help identify any abnormal operation and automatically safely shutdown the system before it develops in the event abnormal conditions are identified. The following systems will be independent of the control systems and equipment that can cause the abnormal event and avoid the use of Safety Integrity Level rated risk controls:

- Thermal monitoring of the battery containers and automated cut-out beyond safe parameters
- Battery cooling systems with automated fail-safe operation
- Emergency Stop – both remote and local.

3.11.26. The BESS Unit locations will be designed to ensure any firewater within the BESS area is contained such that there will be no leakage of polluted water into the surrounding area following a fire event. Firewater collected and retained would be pumped to tanker and removed from the order limits for treatment and disposal at a suitable licenced facility. Following a fire event, the drainage network will require an assessment to confirm the absence of any contaminants prior to the penstock being released,

3.11.27. In relation to security, paragraph 4.4.21 of the oBSMP [REP5-019] states that the BESS will be located within a fenced enclosure and signage should be installed in a suitable and visible location on the outside of the BESS enclosures identifying the presence of a BESS system. Signage would be as per NFCC guidelines and will also include details of:

- Relevant hazards posed i.e., the presence of High Voltage DC Electrical Systems is a risk, therefore their location should be identified.
- The type of technology associated with the BESS.
- Any suppression system fitted.
- 24/7 Emergency Contact Information.

Decommissioning Phase

3.11.28. During decommissioning of the proposed development, the same on-site protocols and procedures employed during the construction stage will be used. At paragraph 4.5.2 of the BSMP the applicant outline they will follow the hierarchy of waste management throughout the life of the proposed development as follows:

- Reduce – lithium-ion batteries have a finite life, the operation will attempt to manage the degradation by the selection of services and cycling that maximises the overall life.

- Recycle – The supplying manufacturer will have obligations under the Waste Batteries and Accumulators Regulations 2009 (as amended) and will be contractually obliged to offer a recycling service.

- Recovery – recycling should allow any useful materials to be recovered.

- Disposal – will be undertaken in compliance with all applicable laws and all regulatory requirements, product stewardship, registration disposal and recycling or take back requirement.

Cumulative Effects

3.11.29. The applicant reports at paragraph 16.7.24 ES Chapter 16: Other Topics [APP-040] that with embedded mitigation, it is not expected that any cumulative schemes would increase the risk or severity of environmental effects from major accidents and disasters which are relevant to the proposed development. No significant cumulative effects are therefore identified.

Issues Considered During Examination

3.11.30. Safety issues associated with BESS technology were raised by a number of IPs. The main concerns were around the fire risks associated with lithium-ion batteries, particularly in terms of fire risk where located close to residential areas. Reference was also made to concerns regarding the emission of toxic and flammable fumes. It was also suggested that emergency services may have difficulty accessing these sites in these isolated areas and may also not have access to necessary equipment or services to attempt fire-fighting activities.

3.11.31. The applicant consulted the KFRS on the proposed development. It outlines at paragraph 3.1.4 of oBSMP [REP5-019] that KFRS confirmed by email on 19 December 2023 that it had no objection to the proposal provided that NFCC Guidance is followed in the design and management of the proposed development. At the Pre-Examination stage Ofgem submitted a representation [RR-217] outlining concerns that the proposed development would pose a risk to the security of UK energy supply if the design, construction and operation of the proposed development does not address the requirement for cybersecurity through the adoption of appropriate and proportionate (cyber) risk management practise. They went onto to state that the asset may become designated at a specified CNI rating or the owner / operator and be considered an Operator of Essential Services (OES) and this needs to be reflected within the planning process.

3.11.32. At D1 response 3.17 [REP1-061] the applicant responded to confirm that the proposed development includes a range of physical measures to minimise

security threats which are secured by the Design Principles. These include the use of perimeter security fencing with fully secured access points and CCTV. A range of other security measures are set out in paragraph 2.3.13 of the oOMP [REP1-050]. Details of security measures chosen will form part of the detailed OMP submitted prior to commencement of operation of the proposed development. This would be secured by Requirement 12 in Schedule 2 to the dDCO [REP8-004], which provides that prior to the operation of the proposed development, an OMP, in accordance with the oOMP [REP1-050], must be submitted to and approved by the local planning authority, and then implemented as approved.

3.11.33. At D1 Kent Police [REP1-092] made a representation and advised the applicant to ensure that the design of the proposed development accorded with the Secured By Design guidance. This is to show a clear audit trail for Designing Out Crime, Crime Prevention and Community Safety and to assist Kent Police to meet Local Authority statutory duties under Section 17 of the Crime and Disorder Act 1998.

3.11.34. The applicant at D2 [REP2-034] responded by stating that it would expect to incorporate the majority of the measures proposed where practicable, noting that this will not be possible where it may conflict with other commitments such as compliance with the NFCC guidance, or biodiversity commitments set out in the oLEMP [REP1-048]. Certain physical measures to minimise security threats are secured by the Design Principles [REP1-042]. They went on to report that Requirement 4 of Schedule 2 to the dDCO secures that the detailed design of the proposed development that is submitted for approval by the local planning authority must accord with the Design Principles.

3.11.35. At D1, ABC in their LIR [REP1-080] referenced that they were satisfied that the proposed development would have a neutral impact in respect of major accidents and/or disasters. They did recommend that it would be appropriate that consultation on the BSMP should be widened to include environmental safety measures.

3.11.36. On Page 83 of the applicant's response to LIRs [REP2-034] they report that they have consulted with KCC and the EA. KCC have confirmed they do not require consultation on the detailed BSMP. The EA have confirmed that the measures set out in the oBSMP [REP5-019] are satisfactory and would like to be consulted on the detailed BSMP. As a result, the applicant added the parties to Requirement 5 in Schedule 2 to the dDCO [REP8-004]. They also suggested that there is nothing in the text of the requirement which would prevent ABC from requesting input from any other party prior to approving the final plan if it considers this to be necessary.

3.11.37. A number of IPs such as Dr Bromley [AS-023], Bernadette Gregory [RR-023] and Elaine Rose [RR-199] cited concerns regarding fire safety in relation to the BESS. Dr Bromley in particular had serious concerns over the practical ability to manage fire and risk associated with battery placement following her suggestion that KFRS were unable to stop her property from burning down on 18th Jan 2025.

3.11.38. Dr Bromley reported that there were ‘rapid responses and heroic efforts, attendance of 6 fire engines and teams, depletion of local mains supplies across Aldington, Mersham and Bonnington, water bowsers bringing water into the area from Ashford and provision of a large temporary water tank on Bank Road (circa 6m x2 m). The house still burned for 16 hours and was damped down for a further 12 hours. Concerns were expressed by several firefighters at the scene regarding the flammable nature of the three domestic Tesla batteries at the house that they would be unable to extinguish if they caught fire. Stonestreet solar proposes 54 battery containers in the fields around. Each battery unit will contain many batteries, estimated to be 20-40. Dr Bromley considers that this equates to a minimum of 1080 batteries at risk of fire (releasing fatally toxic smoke for days) with no viable way to manage the fires. Dr Bromley went on to say that even with the water tanks now included in the proposal, the volumes of water are clearly inadequate to manage fire at even one battery unit. The volumes of water required to try to contain the fire will easily overflow the proposed bunds and contaminate the surrounding land and East Stour killing fish and wildlife for miles downstream. The batteries must be relocated to a single site where fire risk can be adequately managed and planned for, without risking the lives of local residents, our firefighters and the environment’.

3.11.39. However, at ISH4 the applicant confirmed that the BESS Units will be installed by a certified and qualified installer. The BESS Units will be UL 9540 and / or BS EN IEC 62933-5-2 certificated.

3.11.40. They also reiterated that that the oBSMP [REP5-019] anticipates that units and modules may need replacing and replacements will be installed by certified installers. They also submitted that the volume of water to be stored in the water tanks on site met the NFCC guidelines and that OBSMP [REP5-019], in Table 2.1, commits that a water supply capable of delivering no less than 1,900 litres per minute for at least 2 hours must be delivered from an onsite water tank.

3.11.41. At ISH4 Sir David Melville and Cllr Harman submitted concerns relating to toxic emissions, The applicant confirmed in writing at Deadline 4 [REP4-031] that, even under worst-case battery fire conditions, no serious or health impacts are likely to occur at any distance.

3.11.42. The applicant also submitted a Battery Fire Plume Assessment as an Appendix to their written submission at D4 [REP4-031] and this uses the AEGL Level 1 (Acute Exposure Guideline Level 1) assessment. This refers to the airborne concentration of a substance above which the general population, including sensitive individuals— may experience mild, non-disabling effects such as discomfort or irritation. These effects are reported to be transient and reversible upon cessation of exposure.

3.11.43. In the context of a battery fire scenario, the maximum area of exceedance for AEGL-1 would represent the largest geographical area where the concentration of airborne chemicals exceeds the AEGL-1 threshold. This area is typically modelled using dispersion software and depends on:

- The type and quantity of battery involved;
- Fire duration and intensity;
- Meteorological conditions (wind speed, direction, temperature); and
- Topography

3.11.44. The key findings of the assessment for the proposed development report that it is unlikely that there will be serious/permanent health impacts. The AEGL Level 1 maximum area of exceedance of 251 m for the 10-minute exposure period only reaches a small number of receptors under a reasonable worst-case fire and worst-case meteorological conditions. In this scenario the predicted impacts are transient and reversible.

3.11.45. With specific reference to identifying and mitigating the risks associated with thermal runaways, the applicant explained at ISH4 that Grid scale battery storage systems (BESS) are housed in purpose-built non-combustible containers with high levels of thermal insulation, integrating a range of monitoring and control systems to prevent and / or mitigate a thermal runaway incident.

3.11.46. In addressing site access for the Fire Service, the applicant referred to paragraphs 5.2.2 of the oBSMP [REP5-019] stating that the access plan has been designed to allow easy access to the order limits. Final design of the order limits will comply with the following:

- All site roads will be clearly labelled.
- Access roads to all BESS enclosures will be accessible from two directions, thus there will be no dead-end access routes and no allowance for turning vehicles will be required.
- All access roads will be at least 3.7m wide and will employ a grass-paving approach which has been used elsewhere in the UK for fire service access. This road composition has a load carrying capability in compliance with Building Regulations and the NFCC Guidance.
- Multiple access routes will be available into the order limits from public highways.

3.11.47. At D8 KFRS submitted a response in relation to ExQ2 [REP8-031] and [REP-032] in which they confirmed that the applicant had engaged with them and had no objection to the proposal based on the documents submitted by the applicant. They further stated that additional to the information discussed in the letter, the following details would need to be submitted to KFRS prior to the commencement of the proposed development.

- Details of any fire-resisting design features;
- Details of any: a. Fire suppression systems. b. Smoke or fire detection systems (including how these are communicated). c. Gas and/or

specific electrolyte vapour detection systems. d. Temperature management systems. e. Ventilation systems. f. Exhaust systems. g. Deflagration venting systems.

3.11.48. It is reasonable to anticipate that the approach to managing such situations would be explored further at the detailed design stage and through the oBSMP [REP5-019].

Conclusions

3.11.49. The applicant has assessed the risk of major accidents or disasters as a result of the proposed development. I agree that given the proposed mitigation and best practice measures proposed, the submissions of KFRS and the low risk of an event occurring for this type of development, no significant effects are likely.

3.11.50. The applicant has consulted with KFRS on the proposed layout, fire access and firefighting arrangements. The KRS confirm that the oBSMP [REP5-019] and the oSWDS [REP4-013] that the applicant's proposals meet, or exceed, the NFCC Guidance where applicable. Indeed, the applicant updated the oBSMP at Deadline 5 to secure additional controls that ensure the document continues to comply with the NFCC 2024 draft guidance. A number of IPs have raised general matters in respect of battery safety, and whilst I can understand those concerns, I have found no evidence to support those concerns. The view of the relevant statutory bodies (ABC, KCC, the EA and Kent FRS) is that they have raised no objection in relation to BESS or fire safety.

3.11.51. I also consider, given the evidence before the examination that the water capacity that the applicant has stated will be provided within the order limits is in line with NFCC Guidance.

3.11.52. The use of battery storage is a positive addition to the proposed development. The ExA considers that matters related to BESS have been adequately examined and I can find no reason for BESS safety matters to carry any negative weight in the planning balance.

3.12. OTHER PLANNING MATTERS

INTRODUCTION

3.12.1. This section considers other matters raised during the examination relating to

- Climate change;
- Good design;
- Waste and recycling;
- Air quality;

- Cumulative effects; and
- Procedural matters.

3.12.2. These sections differ from the others in that matters are addressed separately, with specific conclusions reached on each, where appropriate, rather than having an overall conclusion at the end.

CLIMATE CHANGE

3.12.3. This section deals primarily with the carbon emissions that would arise from the construction, operation and decommissioning of the proposed development. The consideration of the implications of policy provisions relating to decarbonisation are set out in Section 3.2 addressing the principle of development.

3.12.4. **Legislation**

- The Climate Change Act 2008;
- The Climate Change Act 2008 (2050 Target Amendment) Order 2019;
- 4th Carbon Budget Order 4;
- 5th Carbon Budget Order 5; and
- 6th Carbon Budget Order 6

3.12.5. **Policy Considerations**

National Planning Policy

- NPS EN-1;
- NPS EN-3;
- NPS EN-5; and
- National Planning Policy Framework ('NPPF')

Regional

3.12.6. KCC declared a climate emergency in 2019 and committed to reducing GHG emissions for the whole county to net zero by 2050.

Local

3.12.7. The following ABC Local Plan policies are relevant to the GHG and resilience assessment:

- Policy ENV6 – Flood Risk;

- Policy ENV9 – Sustainable Drainage;
- Policy ENV10 – Renewable and Low Carbon Energy; and
- Policy ENV11 – Sustainable Design and Construction – Non-residential.

3.12.8. ABC have set targets to have net zero carbon emissions on their own estate and services by 2030 and borough wide by 2050 but voted against declaring a climate emergency in July 2019.

Guidance

3.12.9. The following guidance is relevant to the GHG assessment of the Project:

- Institute of Environmental Management and Assessment (IEMA). Guidance on Assessing Greenhouse Gas Emissions and Evaluating their Significance (2022)('IEMA Guidance');
- The Greenhouse Gas Protocol Corporate Accounting and Reporting Standard ('GHG Protocol');
- Publicly Available Standard ('PAS') 2080: 2023 – Carbon Management in Buildings and Infrastructure;
- Climate Change Committee ('CCC'), Net Zero Technical Report (2019);
- CCC, Sixth Carbon Budget (2021);
- HM Government, Net Zero Strategy: Build Back Greener (2021);
- HM Government, Carbon Budget Delivery Plan (2023);
- Royal Institution of Chartered Surveyors : Whole life carbon assessment for the built environment (2017);
- British Standard EN15978:2011 - Sustainability of Construction Works (2011);
- ABC, Climate Change Strategy (2022); and
- Kent and Medway, Energy and Low Emission Strategy (2020).

3.12.10. The following guidance is relevant to resilience of the proposed development to climate change:

- IEMA Environmental Impact Assessment Guide to Climate Change Resilience and Adaptation (2020);
- The UK Climate Projections 2018;

- Met Office UK (2022) UK Climate Projections: Headline Findings and associated spreadsheet;
- The National Adaptation Programme and the Third Strategy for Climate Adaptation Reporting (2018); and
- UK Climate Change Risk Assessment (2022).

The Applicants Approach

3.12.11. The applicant's assessment of climate change impacts from the proposed development is set out in ES Volume 2, Chapter 15: Climate Change [APP-039] and a Climate Change Technical Note [REP5-027] provides an assessment of the proposed development's impact on the climate to meet the requirements of the EIA regulations.

3.12.12. The assessment is presented in two parts: Part A assesses the likely significant effects of the proposed development on climate change through an assessment of the proposed development's lifecycle Greenhouse Gas ('GHG') footprint. Part B assesses the resilience of the proposed development to future changes in climate projected to occur as a result of climate change.

Assessment of Effects

3.12.13. The applicant reports [APP-039] that the assessment considered the whole lifecycle GHG emissions of the proposed development from construction through to the decommissioning phase, and over a 40 year operational period. The assessment was undertaken in line with industry standard guidance. Activities that contribute to GHG emissions were identified and included in the assessment from the construction, operational and decommissioning phases of the proposed development. These activities include: transport, embodied carbon in materials, on-site machinery, energy generated by the proposed development and exported to the electricity grid, and the transport and disposal of waste materials.

3.12.14. As the land within the order limits is not previously developed land, there are no significant activities that result in GHG emissions. The assessment therefore assumes that baseline GHG emissions from the existing order limits are a zero baseline.

3.12.15. ES Volume 2 Chapter 15: Climate Change [APP-039] calculated the GHG intensity of the electricity generated over the lifetime of the proposed development as 34.8 gCO2e/kWh (equivalent to 0.0348kg CO2e per kWh). This figure considers GHG emissions over the whole lifecycle of the proposed development including the construction, operational and decommissioning stages.

3.12.16. The assessment also establishes the context of GHG emissions by comparing the net change in the GHG emissions resulting from the proposed development over its lifetime with local and national GHG emissions and

budgets for carbon. The significance of effects is established based on industry standard guidance and taking in to account the consistency of the proposed development with policies designed to limit GHG emissions and meet the UK's net zero target, and the embedded mitigation proposed to avoid, reduce and compensate for the proposed development GHG emissions.

3.12.17. Table 2.1 of the Climate Change Technical Note [REP5-027] shows that electricity generated by the proposed development results in 4.6% of the GHG emissions from the national grid in 2024. The results of this is that the electricity generated by the proposed development is nearly 22 times more GHG efficient than the current UK grid. The applicant further reports that the comparison of the GHG intensity of the proposed development to the 2024 grid electricity factor shows that the proposed development is significantly more GHG efficient than the grid today and therefore contributing to the UK grid's transition to net zero.

3.12.18. Because of the nature of the proposed development, the assessment concludes that the effects of the proposed development on Climate Change are Beneficial (significant). The proposed development's construction emissions are a very small component of national carbon budgets, and when considering the whole life GHG emissions, the proposed development will result in a net reduction in GHG emissions through provision of renewable electricity, reducing demand for fossil fuel use. An assessment of climate change resilience was also undertaken to consider the resilience of the proposed development to future changes in the climate. The assessment considers the risks of changes in the climate to the proposed development through a climate risk assessment.

3.12.19. The study area/geographical scope for the resilience assessment is the Order limits, split into various receptors. The assessment uses published climate projections for the 2070's to be consistent with the proposed development's expected lifespan. The construction phase was scoped out of this assessment as the focus of the assessment is the future when it is anticipated that changes from the existing climate may have occurred, and these may pose risks to the operation and decommissioning of the proposed development.

3.12.20. The assessment establishes climate risks on potential receptors and considers the significance of that risk through an assessment of the likelihood and consequence, taking in to account embedded mitigation. Receptors within the order limits identified are renewable energy infrastructure, site access, and landscape and biodiversity.

3.12.21. The assessment was informed by regional scale information on historic and projected changes in the climate and other studies undertaken relevant to the proposed development.

3.12.22. The assessment identifies the current baseline for extreme rainfall and flood risk, storms and drought, and extreme temperatures. It also sets out the

future predicted baseline for weather in the Order limits based on climate projections.

3.12.23. The assessment found that there are no significant effects on the proposed development due to future climate change. The assessment found that cumulative effects with respect to climate resilience are not significant.

Good Design

Introduction

3.12.24. This part of the report considers general matters in relation to good design. The need case and alternative site locations are addressed in Section 3.2 and landscape and visual aspects in Section 3.5. Other aspects of good design are considered as necessary elsewhere in this chapter under the relevant topic heading.

Legislation and policy considerations

3.12.25. PA2008 -Section 10(2) requires the SoS to have regard to achieving good design.

Policy

NPS EN-1

3.12.26. Section 4.7 relates to 'Criteria for "Good Design" for Energy Infrastructure'. Paragraph 4.7.1 states that the "visual appearance of a building, structure, or piece of infrastructure, and how it relates to the landscape it sits within, is sometimes considered to be the most important factor in good design. But high quality and inclusive design goes far beyond aesthetic considerations. The functionality of an object - be it a building or other type of infrastructure - including fitness for purpose and sustainability, is equally important". Paragraph 4.7.2 goes on to note that sustainable infrastructure that is sensitive to place can be achieved by applying good design. However, it is also acknowledged that "the nature of energy infrastructure development will often limit the extent to which it can contribute to the enhancement of the quality of the area".

3.12.27. In relation to 'Criteria for good design for Energy Infrastructure', paragraph 4.7.1 states: ''The visual appearance of a building, structure, or piece of infrastructure, and how it relates to the landscape it sits within, is sometimes considered to be the most important factor in good design. But high quality and inclusive design goes far beyond aesthetic considerations. The functionality of an object - be it a building or other type of infrastructure - including fitness for purpose and sustainability, is equally important."

3.12.28. Paragraph 4.7.6 provides further discussion on this point, stating: "Whilst the applicant may not have any or very limited 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, land form and vegetation. Furthermore, the design and sensitive

use of materials in any associated development such as electricity substations will assist in ensuring that such development contributes to the quality of the area. Applicants should also, so far as is possible, seek to embed opportunities for nature inclusive design within the design process".

NPS EN-3

3.12.29. Paragraph 2.5.2 looks for proposals for renewable energy infrastructure to demonstrate good design, particularly in respect of landscape and visual amenity.

NPPF

3.12.30. Paragraph 1.31 sets out the governments aspirations for new development, They advise that good design is essential for sustainable development, creating better living and working environments and gaining community support. Clear design expectations and effective engagement among applicants, communities, and planning authorities are key to achieving successful outcomes.

Local Policies

ABC Local Plan

3.12.31. ABC cite the following relevant policies:

- Policy SP6 Promoting High Quality Design
- ENV3a Landscape Character and Design

ABNP

3.12.32. ABC also point to policy AB9 Energy efficiency and design of the Neighbourhood Plan as relevant.

The Application

3.12.33. ES Volume 2, Chapter 5: Alternatives and Design Evolution [REP5-027] presents the proposed development's requirements, an overview of the justification for selecting the order limits, alternative sites raised during consultation, how the design has evolved, and the reasonable alternatives studied by the applicant.

3.12.34. The applicant also submitted a Design Principles report [REP5-017]. The Design Principles are intended to provide the guiding principles for the detailed design of the proposed development following the grant of development consent. The Design Principles establish a series of parameters for the proposed development, and the layout of the proposed development is then defined by the Works Plans [APP-007]. The Design Principles form part of the Rochdale Envelope for the purposes of the EIA., The Design Principles are proposed to be secured by Requirement 4 of the

dDCO [REP8-004], which requires the detailed design proposals to be developed in accordance with the Design Principles.

3.12.35. The applicant reports that the Planning Statement [APP-151], points out that the design of the proposed development has evolved since 2020 as part of an iterative, mitigation by design process in accordance with the Guidelines for Landscape and Visual Impact Assessment (Third Edition, 2013) and the NPSs. The applicant then outlines that an iterative design process has been employed to identify a robust, proportionate and deliverable mitigation strategy as part of the proposed development. Mitigation measures have been developed in response to policy requirements, relevant guidance, the physical characteristics of the order limits and views to and from the order limits from the wider landscape.

3.12.36. Furthermore, the applicant has also submitted a Design Approach Document (DAD) [APP-149]. At paragraph 1.2.7 they state that good design has been a key consideration from the outset and the DAD sets out how good design has been embedded in the Design Objectives, and how these have influenced the overall siting and aesthetics of the proposed development as a whole.

3.12.37. The outline management plans submitted with the DCO application provide a framework from which final, detailed management plans will be developed after the DCO is granted, to avoid, minimise or mitigate any likely significant effects on the environment. The management plans are secured by DCO requirements. As set out in the SoCG's with ABC [REP8-016], KCC [REP8-018], EA [REP4-015] and NE [REP4-021] the Environmental Management Plans and the requirements set out in Schedule 2 of the Draft DCO [REP8-004], have been agreed, confirming that they provide reasonable and proportionate controls for the proposed development. However, it is noted that ABC question whether enough has been submitted by the applicant to justify that good design can be achieved.

3.12.38. The applicant considers that the design objectives are achieved. It is of the view that the proposed development is sensitive to its context and would ultimately be a well-designed scheme which fully, but sensitively, utilises the order limit area available to generate renewable energy and to deliver grid resilience.

3.12.39. During the examination concerns were raised regarding the proliferation of infrastructure supporting the proposed development such as the BESS, and inverter stations and how this may impact on the visual amenity of the area. The applicant at D4 [REP4-031] in response to challenges on the design approach at ISH4 [EV9-002] responded by pointing out that documents such as the Design Principles [REP5-017] and the DAD [APP-149], together with Requirements in the dDCO [REP8-004], would ensure there were sufficient controls in place to achieve good design .Issues relating to the impact on the landscape and views from the PROW are dealt with in sections elsewhere in this report.

3.12.40. The applicant sets out relevant guidance, the design objectives, and how the design evolved, providing examples of how good design is achieved in response to comments from the consultation process.

3.12.41. Design parameters are secured in documents certified by dDCO [REP8-004], including in the Design Principles report [REP5-017]. It is acknowledged that ABC do not consider that the design approach as been justified by the applicant, particularly in relation to NPS requirements. However, I consider that sufficient design content and documents have been submitted following an iterative design process, to ensure future consenting will meet good design objectives and that sufficient controls could be secured through Requirements in the DCO to ensure good design is achieved.

3.12.42. Based on the above, I consider that good design is demonstrated and it complies in relation to paragraphs 4.7.10-12 NPS EN-1 and paragraph 2.5.2 of NPS EN-3. I have regard to the desirability of achieving good design in accordance with s104(2) of the PA2008.

3.12.43. For the purposes of the planning balance, I consider that compliance with general policies for good design bring neutral weight that does not affect the balance of the Order being made.

Waste

3.12.44. Section 16.5 of ES Chapter 16: Other Topics [APP-040] reports on how the proposed development assesses waste generated. It provides information required by Schedule 4 of the EIA Regulations and committed to in ES Volume 4: Appendix 1.1: EIA Scoping Report [APP-059], [APP-060], [APP-061], [APP-062] and [APP-063] including the expected quantities and types of waste during each phase of the proposed development. It considers the potential for significant effects and the mitigation measures which could be secured through the dDCO.

Relevant Legislation

- The Waste Framework Directive 2008/98/EC15 ('Waste Directive')
- The Waste (England and Wales) Regulations 2011 (as amended).
- The Hazardous Waste (England and Wales) Regulations 2005 (as amended)

Policy

NPS EN-1

3.12.45. This sets out at Section 5.15 'Resource and Waste Management' paragraph 5.15.1 that 'Government policy on hazardous and non-hazardous waste is intended to protect human health and the environment by producing less waste and by using it as a resource wherever possible. Where this is not possible and disposal is required as a last resort, waste management

regulation ensures that waste is disposed of in a way that is least damaging to the environment and to human health.'

3.12.46. Paragraph 5.15.2 advises that 'Sustainable waste management should be implemented through the waste hierarchy, which sets out the priorities that must be applied when managing waste. These are:

- prevention
- preparing for reuse
- recycling
- other recovery, including energy recovery
- disposal

3.12.47. Paragraph 5.15.8 requires that proposals should be accompanied by a plan for managing any waste produced and prepare a report that sets out the sustainable management of waste and use of resources throughout any relevant demolition, excavation and construction activities.' The Outline Site Waste Management Plan ('oSWMP') is embedded within the oCEMP [REP1-044] and oDEMP [APP-157].

3.12.48. Paragraph 5.15.10 states 'The applicant is encouraged to refer to the Waste Prevention Programme for England: Maximising Resources Minimising Waste and should seek to minimise the volume of waste produced and the volume of waste sent for disposal unless it can be demonstrated that this is the best overall environmental outcome.' The applicant has committed to minimise and manage waste in line with the waste hierarchy within the oCEMP [REP1-044] and oDEMP [APP-157].

3.12.49. Paragraph 5.15.12 states 'Where possible, applicants are encouraged to source materials from recycled or reused sources and use low carbon materials, sustainable sources and local suppliers. Construction best practices should be used to ensure that material is reused or recycled onsite where possible.' the oCEMP [REP1-044] and oDEMP [APP-157] include a commitment to design, construct and implement the proposed development in such a way as to minimise the creation of waste.

Local Policy

3.12.50. The Kent Minerals and Waste Local Plan (KMWLP) set out the key principles for sustainable development in line with the NPPF. Policy CSW 2 and CSW 3 encourages waste to be reduced and recycled in line with the Waste Hierarchy. Policy CSW 2 states '…proposals for waste management must demonstrate how the proposal will help drive waste to ascend the Waste Hierarchy whenever possible.' Policy CSW 3 states 'The following details shall be submitted with the planning application, except for householder applications:

- the measures to be taken to show compliance with this policy
- 2. the details of the nature and quantity of any construction, demolition and excavation waste and its subsequent management.

'New development should include detailed consideration of waste arising from the occupation of the development including consideration of how waste will be stored, collected and managed.'

The Application

3.12.51. The oSWMP (included within the oCEMP [REP1-044] and oDEMP [APP-157]) includes best practice measures to ensure materials will be reused or recycled on-site where possible in line with the waste hierarchy. The applicant also reports in the oOMP [REP1-050] that it includes similar measures of relevance to waste arisings during the operational phase of the proposed development. Estimated waste arisings from the proposed development during all stages is provided in Tables 16.6 – 16.8 of ES Chapter 16 [APP-040]. The principles of waste storage and management during construction, operation and decommissioning are set out in the oCEMP [REP1-044], oOMP [REP1-050] and the oDEMP [APP-157].

3.12.52. The majority of the order limits are currently in agricultural use and the existing waste arisings are assumed to be low. There are no allocated waste sites within or adjacent to the order limits as identified by the KMWLP or ABC Local Plan.

3.12.53. The applicant reports at paragraph 16.5.18 of ES Chapter 16: Other Topics [APP-040] that the detailed design of the proposed development will seek to minimise and design out waste streams where possible. Opportunities to re-use materials within the order limits will be sought where practicable. Where re-use and prevention are not possible, waste arisings will be managed in line with the waste hierarchy as secured by the oCEMP [REP1-044], oOMP [REP1-050] and the oDEMP [APP-157]. Commercial waste generated during all stages of the proposed development will be managed in accordance with producers' legal responsibilities in place at the time. Waste will be managed by permitted waste carriers and facilities in line with the appropriate environmental permits and requirements.

3.12.54. Tables 16.6, 16.7 and 16.8 of ES Chapter 16: Other Topics [APP-040] set out the estimated waste arisings from the construction, operational and decommissioning phases respectively of the proposed development. The majority of waste arisings during the construction phase will relate to packing materials. Solid waste materials will be segregated on-site prior to transport to appropriate recycling facilities and licensed landfill, as secured via the oCEMP [REP1-044]. The waste arisings during the operational phase are expected to be low.

3.12.55. Waste during the construction, operation and decommissioning of the proposed development are not expected to be of a magnitude which could lead to significant environmental effects in EIA terms. The CEMP, DEMP, and OMP would all provide the necessary management mitigation to ensure

no adverse effects were experienced. All waste would be managed by appropriately permitted carriers and facilities in accordance with the relevant legislation and permits.

3.12.56. The nature of the waste streams and expected volumes are such that the proposed development is not anticipated to result in significant adverse effects on landfill capacity.

3.12.57. I conclude that waste arisings do not give rise to any significant effects and would be neutral in the overall planning balance.

Air Quality and Dust

3.12.58. Air quality was scoped out of the ES on the basis that the number of anticipated movements during construction (100 HGV Average Annual Daily Traffic (AADT)) and operation (2 AADT vehicle movements) were below the threshold criteria requiring an assessment of significant effects in the 'Land Use Planning and Development Control: Planning for Air Quality' guidance (Institute of Air Quality Management (IAQM, 2017).

3.12.59. However, Section 13.7 of ES Chapter 13: Traffic and Access [REP3-012], the oCTMP [REP3-018] and the oOMP [REP1-050] present details of construction and operational traffic movements. Decommissioning traffic is expected to be similar to, lower than that of the construction phase by the applicant and is presented within the oDTMP [REP3-022]. As outlined within Section 13.7 of ES Volume 2, Chapter 13: Traffic and Access [REP3-012], the indicative Heavy Good Vehicles ('HGV') trips have been calculated at 18.5 one way or 37 two-way movements a day over the 12-month construction period. HGV movements during construction are not expected to exceed 100 Annual Average Daily Traffic ('AADT') movements over the assumed 12-month construction period.

Policy

3.12.60. NPS EN-1

- Paragraphs 4.12.15 and 4.12.1 6 discusses the Regulation of releases under the pollution control framework and the grounds for refusal based on pollution;
- Paragraph 5.2.2 outlines the Legal limits, national objectives, and targets;
- Paragraph 5.2.9 sets out matters that the ES should describe;
- Paragraph 5.2.13 describes mitigation measures for operational and construction emissions; and
- Paragraphs 5,2.16 -5.2.19 discusses the weight given to deterioration and grounds for refusal on air quality if the proposed development is near a sensitive receptor.

ABC Local Plan

3.12.61. Policy ENV12 sets out that all major development proposals should promote a shift to the use of sustainable low emission transport to minimise the impact of vehicle emissions on air quality.

Guidance

3.12.62. The EPUK/IAQM guidance outlines specific traffic generation thresholds. When these thresholds are exceeded, a detailed assessment of road traffic impacts is required. This may include:

- Air quality dispersion modelling; and
- Evaluation of pollutant concentrations near affected road.

3.12.63. The aim is to ensure that increased traffic does not lead to unacceptable air quality impacts.

3.12.64. If traffic generation is within the criteria, in line with EPUK/IAQM guidance, the impact to air quality can be considered insignificant. These criteria are where the proposed development will lead to changes in AADT flows of more than: 25 Heavy Duty Vehicles (HDVs) or 100 Light Duty Vehicles ('LDV's) inside an AQMA; or; 100 HDVs or 500 LDVs outside an AQMA. The calculated traffic movements for the proposed development fall well below the screening thresholds defined by the IAQM (i.e. 100 AADT for HDV). Once operational, the proposed development would have a negligible effect on air quality. No effects from vehicle emissions are anticipated due to the low number of vehicle movements. The proposed development would generate a maximum of 2 (two-way) AADT vehicle movements per day during the operational phase.

The Application

3.12.65. Section 5 of the oCEMP [REP1-044] and oDEMP [APP-157] provides an Outline Air Quality and Dust Management Plan which secures appropriate measures in line with the IAQM 'Assessment of dust from demolition and construction' guidance (2024) V2.24. The measures include those set out in the Scoping Report (paragraphs 6.3.21 and 6.3.22) and other best practice measures in line with the IAQM 'Assessment of dust from demolition and construction' guidance.

3.12.66. No significant adverse effects would be likely to arise through the construction, operation and decommissioning phases of the proposed development, nor would they arise when considered cumulatively.

3.12.67. The assessments undertaken provide a sufficient assessment of the effects on air quality. Therefore, the proposed development would accord with the NPSs, the NPPF and development plan policy. For these reasons, the effect of the proposed development in terms of air quality is weighted as neutral in the planning balance.

Cumulative Effects

3.12.68. Cumulative effects with other developments are considered as necessary for specific topics in the earlier sections of this chapter. The cumulative schemes assessed within the EIA are presented in ES Volume 2 Chapter 17: Cumulative Assessment [APP-041], and Appendix 6.1: List of Cumulative Schemes [APP-068] and the applicant reports that they have been prepared in accordance with EIA Regulations.

3.12.69. Table 17.5, Table 17.6 and Table 17.7 ES Volume 2 Chapter 17: Cumulative Assessment [APP-041], summarises the cumulative assessments for the construction, operational and decommissioning phases of the proposed development respectively.

3.12.70. There is an element of the cumulative landscape effect that would experience a significant adverse effect in combination with other proposed schemes, particularly Otterpool Park, to the east, when viewed at a distance from the Kent North Downs NL. In addition, users of the PRoW network plus users of surrounding highways will have a cumulative adverse effect. With established planting by Year 15 of the operational phase this will reduce its impact to minor to moderate adverse effect.

3.12.71. In addition, during construction, users of the PRoW network in parts during construction, will have moderate to minor adverse cumulative effects. However, this would be temporary in impact during the construction period.

3.12.72. The PA2008 requires that procedurally these proposals must be examined separately. Nonetheless the ExA considers that, the examination has allowed for cumulative considerations to be adequately addressed in accordance with the requirements of 1 NPS EN-1. I conclude that whilst there will be some significant adverse effects on a cumulative basis, this is in part mitigated by established planting at year 15. I therefore attribute a little negative weight against the granting of the Order in this respect.

PROCEDURAL MATTERS

3.12.73. Procedural points considered include: the adequacy of consultation and the location of the venue for the Hearings. The ExA acknowledges the concerns raised by IPs (such as Mary Herihy [RR-118], Lauren Atkinson [RR-162], and Nicole Osborne [RR-213]) about the consultation process and in particular the suggestion that the public consultation undertaken by the applicant was insufficient/inadequate or misleading. However, there is nothing before the examination to suggest that the level of information provided and the approach to consultation during the pre-application stage did not meet the legislative requirements of the PA2008 and associated guidance.

3.12.74. There has also been criticism by some IPs about the ExA's management of the examination process, particularly the decision to hold the Hearings at Ashford International Hotel. In response, the ExA confirms that every effort has been made to ensure that all parties to the examination have had a fair

opportunity to contribute. In addition, all parties could attend and participate virtually via Microsoft Teams, as a blended event. In addition, the discussions had at the Hearings were available in transcript and summary form following these events, with sufficient time given for IPs to respond in writing. On this point the ExA refers to Advice Note 8.6 in setting out that written submissions to an examination carry the same weight as oral submissions.

4. HRA SUMMARY

4.1. INTRODUCTION

4.1.1. This Chapter sets out the ExA's analysis and conclusions relevant to the Habitats Regulations Assessment (HRA). This will assist the SoSESNZ, as the competent authority, in performing their duties under The Conservation of Habitats and Species Regulations 2017 ('The Habitats Regulations').

4.1.2. This Chapter is structured as follows:

- Section 1.2: Findings in relation to Likely Significant Effects on the UK National Site Network and other European sites;
- Section 1.3: Conservation Objectives for sites and features; and
- Section 1.4: Findings in relation to Adverse Effects on Integrity**.**

4.1.3. 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 site(s) and no reasonable scientific doubt remains (CJEU Case C-127/02 Waddenzee 7 September 2004).

4.1.4. For the purpose of this report, in line with The Habitats Regulations and relevant Government policy, the term 'European sites' includes SAC, candidate SACs, proposed SACs, SP), potential SPAs, listed and proposed Ramsar sites and sites identified or required as compensatory measures for adverse effects on any of these sites.

4.1.5. Policy considerations and the legal obligations under The Habitats Regulations are described in Chapter 2 of this Report.

4.1.6. The ExA has been mindful throughout the examination of the need to ensure that the SoSESNZ has such information as may reasonably be required to carry out their duties as the competent authority. We have sought evidence from the applicant and the relevant IPs, including NE as the Appropriate Nature Conservation Body (ANCB), through written questions and ISHs.

RIES and Consultation

4.1.7. The applicant set out its assessment in its Information to Inform Habitats Regulations Assessment [APP-164]. Natural England highlighted a number of minor queries in their RR [RR-206] which the applicant addressed through an updated HRA Report [REP1-058] at Deadline 1. Subsequently Natural England's WR [REP1-096] stated agreement with the applicant's conclusions with regard to the European sites assessed and their qualifying features, subject to mitigation as set out in the application documents [APP-164; REP1-058]. No other evidence or comment against this was submitted by any other party, and therefore the ExA decided that a RIES compiling HRA-relevant information would not be required.

Proposed Development Description and HRA Implications

4.1.8. The proposed development is described in Chapter 1 of this Report.

4.1.9. The spatial relationship between the order limits of the proposed development and European sites is shown in Figure 1 of the applicants HRA Report [APP-164].

4.1.10. The proposed development is not directly connected with, or necessary to, the management of a European site. Therefore, the SoSESNZ must make an 'appropriate assessment' of the implications of the proposed development on potentially affected European sites in light of their Conservation Objectives.

4.2. INFORMATION AND EVIDENCE

4.2.1. The applicant's assessment of effects is presented in the following application document(s):

- Information to Inform Habitats Regulations Assessment [APP-164] hereafter referred to as the applicant's 'HRA Report'

4.2.2. The applicant updated its HRA Report at Deadline 1 [REP1-058] in response to requests from NE to update the in-combination air quality assessment to reflect appropriate guidance and include supporting evidence.

4.2.3. The applicant did not identify any likely significant effects (LSE) on non-UK European sites in European Economic Area (EEA) States in its HRA Report [APP-164]. Only UK European sites are addressed in this Report. No such impacts were raised for discussion by any IPs during the examination.

4.3. SUMMARY OF MATTERS CONSIDERED

4.3.1. Natural England raised the following queries in its RR [RR-206]:

- Requesting removal of reference to guidance that is not applicable to decision making in the HRA Report ;
- Requesting clarity in regard of the solar equipment's point of entry, to understand potential in-combination quality impacts on Folkestone to Etchinghill Escarpment SAC **;** and
- Requesting re-consideration of Otterpool Park in the in-combination air quality assessment for Folkestone to Etchinghill Escarpment SAC following confirmation of point of entry.

4.4. SUMMARY OF FINDINGS IN RELATION TO LSE

4.4.1. 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 'appropriate assessment' (AA) and the activities, sites or plans and projects to be included for further consideration in the AA.

4.4.2. The applicant sets out the methodology applied to determining what would constitute a 'significant effect' within its HRA Report [APP-164].

4.4.3. The European sites and qualifying features that were considered in the applicant's assessment of LSE are presented in Table 3.1 of the Applicant's HRA Report [APP-164].

4.4.4. The applicant's reasoning as to why impacts are screened out for qualifying features is presented in section 4 of the HRA Report. The applicant concluded no LSE on the qualifying features of the following sites from the project alone and in-combination with other plans and projects:

- Wye and Crundale Downs SAC
- Dungeness, Romney Marsh and Rye Bay SPA
- Dungeness, Romney Marsh and Rye Bay Ramsar site
- Dungeness SAC
- Folkestone to Etchinghill Escarpment SAC

4.4.5. NE [RR-206] confirmed agreement with the conclusions of no LSE on Wye and Crundale Downs SAC, Dungeness, Romney Marsh and Rye Bay SPA and Ramsar site and Dungeness SAC. However, it advised that further information was required to inform whether there would be a LSE on Folkestone to Etchinghill Escarpment SAC from air quality impacts in-combination with other projects. NE [RR-206] requested further information to clarify the routing of construction traffic supporting the in-combination assessment and whether in-combination effects with Otterpool park could lead to a LSE, and removal of reference to guidance inappropriate to inform decision making.

4.4.6. The applicant updated its Air Quality Screening Report [REP1-030] and HRA Report [REP1-058] with relevant further information to provide clarity as to why there would be no LSE in-combination with other plans and projects removal of the reference to JNCC guidance. This did not alter the conclusions of the assessment.

4.4.7. Following review of this information, Natural England [REP1-096] agreed with the conclusion of no LSE to Folkestone to Etchinghill Escarpment SAC from the project in-combination during construction, operation and decommissioning.

4.4.8. **LSE from the Proposed Development Alone**

4.4.9. The applicant identified potential impacts of the proposed development considered to have the potential to result in LSE alone in Table 3.2 of the HRA Report [APP-164].

4.4.10. The impacts considered by the applicant to have the potential to result in LSE are:

- Air Pollution: risk of atmospheric nitrogen deposition**;**

- Changes in species distributions (relevant to off-site functionally-linked land);
- Water Pollution ; and
- Surface water run-off

4.4.11. The applicant's HRA Report concluded no LSE from the proposed development alone on any of the qualifying features of:

- Wye and Crundale Downs SAC;
- Dungeness, Romney Marsh and Rye Bay SPA ;
- Dungeness, Romney Marsh and Rye Bay Ramsar site ;
- Dungeness SAC; and
- Folkestone to Etchinghill Escarpment SAC

4.4.12. The applicant concluded potential LSE from water pollution from on the following sites:

- Stodmarsh SAC;
- Stodmarsh SPA ; and
- Stodmarsh Ramsar

4.4.13. The source of water pollution is identified in Table 4.1 of the HRA Report [APP-164] as a cess tank proposed to be installed on site to collect foul water from operational welfare facilities including toilets and handwash basins. The HRA Report confirms that ordinarily, the foul water would be transported to a licensed treatment works within the Stour catchment where it could contribute to an existing adverse nutrient-driven effect upon Stodmarsh designated sites. The applicant considers that as no nutrient budget calculation has been undertaken, there is uncertainty around the potential impact of nutrient enrichment of the Stodmarsh sites from the proposed development and therefore, a LSE was concluded on a precautionary basis.

4.4.14. Whilst NE [RR-206] did not dispute the conclusions of the LSE assessment from the project alone, it confirmed [REP1-096, REP2-026, REP3-038, REP4-021] that it did not consider there would be potential LSE from water pollution on all sites including Stodmarsh SAC, SPA and Ramsar sites as the proposed development did not include residential or overnight accommodation. However, it welcomed a precautionary approach.

LSE from the Proposed Development In Combination

4.4.15. The applicant addressed potential in-combination effects arising from the proposed development within section 2 of the HRA Report [APP-164] which

sets out the methodology applied. The other plans and projects included in the in-combination assessment are set out in Volume 4, Appendix 9.8: Cumulative Assessment [APP-093].

4.4.16. No in-combination LSE have been identified for any of the sites their qualifying features. All in-combination effects have been excluded due to:

- lack of any hydrological connection
- the distance of the site from the Order Limits
- vehicle movements are below appropriate threshold criteria so as not to cause potential LSE
- the proposed development site is not functionally linked to any of the identified designated sites

4.4.17. NE [RR-206] only disputed one of these conclusions; the conclusions of no LSE from in-combination air quality effects on Folkestone to Etchinghill Escarpment SAC during construction. This dispute was raised on the basis that Natural England required clarity in regard of the solar equipment's point of entry and subsequent construction traffic routing to understand in-combination and cumulative potential air quality impacts on the SAC. It requested the applicant confirm the point of entry for the solar equipment to support the conclusions of the assessment and update the air quality screening report and HRA Report accordingly.

4.4.18. Following these updates, the NE requested a reconsideration of the assessment in-combination with Otterpool Park; the development was screened out (paragraph 13.4.74 of [APP-037]) on the assumption that the proposed development's main access is via Junction 11 of the M20, using the A20 and that no construction materials for Otterpool Park will arrive from the Ports of Folkestone or Dover. However, NE [RR-206] note that the routing of construction traffic is not specified to support this assumption.

4.4.19. NE [RR-206] also requested that any reliance on, and reference to JNCC 'Guidance on Decision-making Thresholds for Air Pollution' (JNCC Report No. 696) be removed on the basis that the approach set out in the guidance is not yet applied to advice or decision making as there are uncertainties over the application and implications of the evidence.

4.4.20. The applicant updated its Air Quality Screening Report [REP1-030] and HRA Report [REP1-058] to confirm that the number of traffic movements, regardless of the routing, would be below threshold criteria for potential LSE in line with Highways England (2019) guidance ('Design Manual for Roads and Bridges' (LA 105)), Natural England guidance (Natural England's approach to advising competent authorities on the assessment of road traffic emissions under the Habitats Regulations' (2018; NEA001)) and the Institute of Air Quality Management (IAQM), 2020 guidance ('A guide to the assessment of air quality impacts on designated nature conservation sites'). It demonstrated that:

- there would be no traffic from cumulative schemes on the internal haulage road and therefore the total in-combination traffic would be the same as that from the project alone

- cumulative traffic along any of the potential routing for construction traffic regardless of the point of entry of the solar equipment, would be below the 1,000 AADT for all traffic and 200 AADT for Heavy Goods Vehicles (HGVs) thresholds set out in the Design Manual for Roads and Bridges LA 105 guidance. The maximum cumulative movements (as set out in Table 3.3 of [REP1-030] would be 199 AADT for light goods vehicles and 103 AADT for HGVs.

4.4.21. Following review of this information, NE [REP1-096] agreed with the conclusion of no LSE to Folkestone to Etchinghill Escarpment SAC from the project in-combination with other schemes, including Otterpool Park, during construction.

LSE Assessment Outcomes

4.4.22. The sites for which the applicant concluded no LSE would occur from either the project alone or in combination with other projects and plans are presented in the table 4.1 of the HRA Report [APP-164].

4.4.23. The following sites and features were assessed by the applicant to determine if they could be subject to adverse effects on integrity, as a result of the proposed development alone, in view of their conservation objectives during all phases:

- Stodmarsh SAC

- Stodmarsh SPA

- Stodmarsh Ramsar

4.4.24. The ExA is satisfied, on the basis of the information provided, that the correct impact-effect pathways on each site have been assessed and is satisfied with the approach to the assessment of alone and in-combination likely significant effects.

4.4.25. Taking into account the reasoning set out above, the ExA considers that the proposed development is likely to have a significant effect from the impacts identified above on the European sites and their qualifying features when considered alone, or in combination with other plans or projects. This was not disputed by IPs/NE during the examination.

4.4.26. **CONSERVATION OBJECTIVES**

4.4.27. The conservation objectives for the sites and features identified above are set out in section 2.4 of the applicant's HRA Report [APP-164]. No matters were raised in relation to the conservation objectives.

4.5. SUMMARY OF FINDINGS IN RELATION TO AEoI

4.5.1. All qualifying features of Stodmarsh SPA, Stodmarsh Ramsar and Stodmarsh SAC were further assessed by the applicant to determine if they could be subject to adverse effects on integrity (AEoI) from the proposed development, either alone or in-combination. The assessment of AEoI was made in light of the conservation objectives for the European sites [APP-164].

4.5.2. The applicant did not undertake an in-combination assessed in relation to AEoI as all in-combination LSE were screened out (please see section 1.2 above). Based on the findings of the examination, the ExA is satisfied that an assessment of AEoI from the proposed development in combination with other plans or projects is not required and that no other plans or projects are required to be taken into account.

4.5.3. The ExA is satisfied, based on the information provided that the correct impacts have been assessed. This section discusses the conclusions with respect to AEoI for each site.

Nutrient Mitigation

4.5.4. As explained in paragraph 1.2.12 of this HRA Appendix, the source of impact would be from the foul water generated on site during operation from the welfare facilities that would be directed to a cess tank. In order to mitigate potential effects of nutrient enrichment from treatment of this water within the Stour catchment, the applicant proposes to transport the foul water from the cess tank to treatment works outside of the Stour catchment. This is secured through the oCEMP [REP1-004], Outline OMP [REP4-013] and oDEMP [REP3-022] in Requirements 6, 12 and 14 of the dDCO [REP8-004]. The potential destinations for foul water are listed in Table 5.1 of the HRA Report [APP-164]. NE [REP1-096, REP2-026, REP3-038, REP4-021] agrees with this mitigation and that it should be secured through the dDCO [REP8-004].

Sites for which the applicant concluded AEoI can be excluded

4.5.5. The applicant's HRA Report [APP-164] concluded that the proposed development will not result in AEoI of the following European sites:

- Stodmarsh SPA
- Stodmarsh Ramsar site
- Stodmarsh SAC

4.5.6. Neither NE [RR-206; REP1-096; REP2-026; REP3-038; REP4-021], nor other IPs, raised concerns in relation to the applicant's conclusions for these sites and features.

4.5.7. The ExA is satisfied on the basis of the information above that AEoI on all these sites and their qualifying features can be excluded.

AEoI Assessment Outcomes- Summary proposed development alone

4.5.8. The applicant's HRA Report concluded that AEoI can be excluded on the following European sites from the proposed development alone:

- Stodmarsh SPA
- Stodmarsh Ramsar site
- Stodmarsh SAC

4.5.9. These conclusions were agreed with NE [RR-206; REP1-096; REP2-026; REP3-038; REP4-021].

4.5.10. Based on the findings of the examination, the ExA is satisfied that AEoI on all qualifying features of the assessed European sites can be excluded from the proposed development alone.

4.6. HRA CONCLUSIONS

4.6.1. The proposed development is not directly connected with, or necessary to, the management of a European site, and therefore the implications of the project with respect to adverse effects on potentially affected sites must be assessed by the SoSESNZ.

4.6.2. Eight European sites and their qualifying features were considered in the applicant's assessment of LSE: Wye and Crundale Downs SAC, Dungeness, Romney Marsh and Rye Bay SPA, Dungeness, Romney Marsh and Rye Bay Ramsar site, Dungeness SAC, Folkestone to Etchinghill Escarpment SAC, Stodmarsh SAC, Stodmarsh SPA and Stodmarsh Ramsar. LSE were identified for three sites: Stodmarsh SAC, Stodmarsh SPA and Stodmarsh Ramsar from the proposed development alone.

4.6.3. The methodology and outcomes of the applicant's screening for LSE on European sites was subject to some discussion and scrutiny, however, the sites and features for which LSE were identified were not disputed by any IP. 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.

4.6.4. The ExA's findings are that, subject to the mitigation measures to be secured in the dDCO, AEoI on Stodmarsh SAC, Stodmarsh SPA and Stodmarsh Ramsar from the proposed development when considered alone can be excluded from the impact-effect pathways assessed.

4.6.5. The ExA considers that there is sufficient information before the SoSESNZ to enable them to undertake an appropriate assessment in order to fulfil their duty under the requirements of The Habitats Regulations.

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 individual applicable legal and policy requirements identified in Chapter 3. Whilst the Habitats Regulations Assessment (HRA) has been documented separately in Chapter 4 relevant facts and issues set out in that chapter are taken fully into account.

5.1.2. The ExA has taken into account all RRs, Written Representations and responses to the ExA'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 (LIR) from ABC and KCC.

5.2. MATTERS TO BE TAKEN INTO ACCOUNT

NPS EN-1

5.2.1. Subject to any legal requirements, the urgent need for Critical National Priority (CNP) Infrastructure to achieving our energy objectives, together with the national security, economic, commercial, and net zero benefits, will in general outweigh any other residual impacts not capable of being addressed by application of the mitigation hierarchy. Government strongly supports the delivery of CNP Infrastructure and it should be progressed as quickly as possible. (Paragraph 3.3.63).

5.2.2. Given the level and urgency of need for infrastructure of the types covered by the energy NPSs set out in Part 3 of this NPS, the SoS will start with a presumption in favour of granting consent to applications for energy NSIPs. That presumption applies unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused. (Paragraph 4.1.3).

5.2.3. 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. (Paragraph 4.1.7). Where residual non-HRA or non-MCZ impacts remain after the mitigation hierarchy has been applied, these residual impacts are unlikely to outweigh the urgent need for this type of infrastructure. Therefore, in all but the most exceptional circumstances, it is unlikely that consent will be refused based on these residual impacts. The exception to this presumption of consent are residual impacts onshore and offshore which present an unacceptable risk to, or unacceptable interference with, human health and public safety, defence, irreplaceable habitats, or unacceptable risk to the achievement of net zero. Further, the same exception applies to this presumption for residual impacts which present an unacceptable flood risk. (Paragraph 4.2.15).

5.2.4. As a result, the SoS will take as the starting point for decision-making that such infrastructure is to be treated as if it has met any tests which are set out within the NPSs, or any other planning policy, which requires a clear outweighing of harm, exceptionality or very special circumstances. (Paragraph 4.2.16).

5.2.5. This means that the SoS will take as a starting point that CNP Infrastructure will meet the following, non-exhaustive, list of tests:

- where development within a Green Belt requires very special circumstances to justify development;
- where development within or outside a Site of Special Scientific Interest (SSSI) requires the benefits (including need) of the development in the location proposed to clearly outweigh both the likely impact on features of the site that make it a SSSI, and any broader impacts on the national network of SSSIs;
- where development in nationally designated landscapes requires exceptional circumstances to be demonstrated; and
- where substantial harm to or loss of significance to heritage assets should be exceptional or wholly exceptional. (Paragraph 4.2.17).

5.2.6. Where, following Appropriate Assessment, CNP Infrastructure has residual adverse impacts on the integrity of sites forming part of the UK national site network, either alone or in combination with other plans or projects, the SoS will consider making a derogation under the Habitats Regulations. (Paragraph 4.2.19).

NPS EN-3

5.2.7. The assessment principles outlined in Section 4 of EN-1 continue to apply to CNP infrastructure. Applicants must show how any likely significant negative effects would be avoided, reduced, mitigated or compensated for, following the mitigation hierarchy. Early application of the mitigation hierarchy is strongly encouraged, as is engagement with key stakeholders including SNCBs, both before and at the formal pre-application stage. (Paragraph 3.8.13).

5.3. SUMMARY OF THE MAIN PLANNING ISSUES

Need Case and Alternatives

5.3.1. The ExA concludes, notwithstanding the consideration of project-specific issues, that the overarching need argument for the proposed development is very strong in terms of meeting the urgent need for renewable energy generation of all types and established by the NPS. Large scale solar generation will be part of the mix of infrastructure and technology that it is anticipated will deliver this, in line with wider energy and climate objectives

and this weighs heavily in favour of making the order and carries very great weight in the planning balance.

5.3.2. The proposed development would make a meaningful contribution to meeting this need. In this regard the ExA's position is that the proposed development would be in general accordance with the provisions of NPS EN-1 relating to need.

5.3.3. In meeting this need, the ExA has found that the proposed development would be implemented with relative urgency. It would therefore be able to support the Government ambition of a five-fold increase in combined ground and rooftop solar deployment by 2035. This is part of the mix of technologies that can support the delivery of a low carbon, secure and affordable UK energy supply into the future. In this regard an important and relevant consideration is the commitment set out in 2024 NSP EN-1 to the provision of low carbon infrastructure as a critical national priority. It adds strong emphasis to the need case that this proposed development would meet. The search for alternative sites has been explored and it has been demonstrated that the order limits are appropriate in policy terms when assessed against National Policy Statements, and the NPPF. It is apparent that the Point of Connection (PoC) to the National Electricity Transmission System (NETS) at Sellindge Power Station and the need for substantial land areas to accommodate the solar arrays, have been the basis for the applicant's search.

5.3.4. Designing projects with a generating capacity that is higher than the grid connection export capacity maximises the renewable energy that is generated and exported to the electricity grid. As the applicant points out in their closing statement [REP8-029] there is a significant shortage of grid capacity across the country, leading to long delays before grid connections are made available to operators, and this has been identified as a limiting factor in achieving the Government's priorities for achieving Clean Power 2030 targets. In light of that shortage, it would be counter intuitive not to maximise the existing grid capacity that is available to the proposed development, and it is therefore compliant with NPS EN-3 (paragraph 3.10.38),

THE PRINCIPLE OF DEVELOPMENT

5.3.5. The ExA concludes that the proposed development:

- makes a positive contribution to addressing the need for new nationally significant electricity infrastructure by using photovoltaic cells and battery storage;
- has generating capacity greater than 50MW available to export to the electricity distribution network via a connection to Sellindge Power Station;
- proposes an appropriate and proportionate system for managing traffic, waste, air quality, dust, safety, flooding, and drainage from the

construction, operation and decommissioning of the proposed development;

- proposes an appropriate and proportionate method for mitigating impacts on biodiversity and provides a 100% BNG;
- proposes an appropriate and proportionate method for mitigating impacts on the landscape both from the local environment, users of the PROW network, and from further afield including the Kent Downs National Landscape;
- proposes an appropriate and proportionate system for mitigating harm on heritage assets including any potential archaeological remains;
- Proposes appropriate measures to ensure the operational safety and security of the proposed development and associated BESS, and addresses the requirement.

5.3.6. The ExA concludes, notwithstanding the consideration of project-specific issues, that the overarching need argument for the proposed development is very strong in terms of meeting the urgent need for renewable energy and this weighs heavily in favour of making the order and carries very great weight in the planning balance.

Biodiversity

5.3.7. I conclude that the applicant's assessment methodology is appropriate and proportionate and acceptable. The ES sets out any effects on internationally, nationally and locally designated sites of ecological importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity is in line with NPS EN-1 (paragraph 5.4.17).

5.3.8. I consider that adequate mitigation measures would be put in place, in line with NPS EN-1 paragraph 5.4.42, to ensure that there would be no significant residual effects on biodiversity. These measures are adequately secured through the proposed ecological mitigation measures included within the oCEMP [REP1-044], and oLEMP [REP3-020], all of which would be secured through the recommended Development Consent Order (rDCO) by) Requirement 6 (CEMP), Requirement 8 (LEMP and Biodiversity Design Strategy).

5.3.9. Furthermore, I consider that the BNG of 100%, secured through Requirement 8 (LEMP and Biodiversity Design Strategy), would represent a benefit which weighs positively in favour of the proposed development in line with NPS EN-1. Overall, the ExA considers that those mitigation measures and the BNG arising from the proposed development would enhance biodiversity and as such attracts moderate weight in favour of the order being made.

Climate Change

5.3.10. I am satisfied that the applicant has taken into account the potential impacts of climate change and has identified appropriate mitigation or adaptation measures in line with paragraph 4.10.11 of NPS EN-1 and that there should not be any significant adverse effects in relation to climate change resilience from the proposed development.

5.3.11. Because of the nature of the proposed development, the assessment concludes that the effects of the proposal on Climate Change are beneficial (significant). The proposed development's construction emissions are a very small component of national carbon budgets, and when considering the whole life GHG emissions, the proposed development will result in a net reduction in GHG emissions through provision of renewable electricity, reducing demand for fossil fuel use.

5.3.12. The applicant's assessment found that there are no significant effects on the proposed development due to future climate change. The assessment found that cumulative effects with respect to climate resilience are not significant.

5.3.13. Overall, the proposed development will result in a net reduction in GHG emissions through provision of renewable electricity, reducing demand for fossil fuel use. This will have a significant positive impact which carries great weight.

Historic Environment

5.3.14. I consider that the applicant has adequately assessed the significance of the designated and non-designated heritage assets affected by the proposed development. Furthermore, that sufficient information to reach a conclusion on the nature, significance and value of identified designated and non-designated heritage assets, along with sufficient understanding of the contribution that setting makes to their significance and the implications of the proposed development for those settings, has been submitted. This allows the extent of the impact to be understood. In the ExA's view, the application meets the requirements of NPS EN-1 in that regard.

5.3.15. In relation to archaeological issues, I consider that the assessments and trial trenching undertaken so far is appropriate and proportionate. In additions controls can be secured through dDCO Requirement 6 which will outline work to be undertaken in accordance with the AMS to be included within the CEMP and Requirement 9 which would ensure that appropriate procedures are in place for the identification and treatment of assets discovered during construction, in line with NPS EN-1 Paragraph 5.9.21.

5.3.16. I consider that the proposed development would result in less than substantial harm to the designated heritage assets of St Martin's Church and Stonelees to which the ExA attach moderate weight against granting the Order. The low level of less than substantial harm to designated heritage assets and the less than substantial harm in archaeological terms are to be weighed against the public benefits of the proposal in accordance with paragraphs 5.9.28, 5.9.32 and 5.9.36 of NPS EN-1 and paragraph 2.3.8 of NPS EN-3.

Landscape and Visual

5.3.17. The ExA is satisfied that the applicant has considered appropriate siting and design in line with NPS EN-1 paragraph 5.10.19. The ExA is content that the proposed mitigation in relation to design and landscaping, secured through requirements, has mitigated as far as can reasonably be achieved in light of the scale of the proposed development in line with NPS EN-1 and NPS EN-3 (paragraph 3.7.38).

5.3.18. Nevertheless, the ExA considers that a small number of significant landscape and visual effects would result from the proposed development including:

- Moderate adverse (significant) effects during the construction phase of the proposed development for users of PRoWs within/adjacent to the proposed PV Arrays and users of PRoW AE401, Collier's Hill.
- the Aldington Ridge LCA will experience a moderate adverse (significant) effect for the first 15 years of the operational phase.
- The open fields and the overall landscape character of the order limits will be subject to major-moderate adverse (significant) effects, for the first 15 years of the operational phase.

5.3.19. Overall, the ExA considers that the applicant has satisfactorily assessed that the proposed development would give rise to some significant effects, or that those which may arise have been considered and adequately mitigated where possible. I consider that due to some moderate significant effects, at least for the first 15 years of the proposed development until mitigation established, there should be a little weight against granting consent in relation to the impact on the landscape.

Noise

5.3.20. Based on the submitted, the ExA considers the applicant's assessment of the noise and vibration impacts likely to arise from the construction, operation and decommissioning of the proposed development meets the requirements of NPS EN-1, NPS EN-3, and NPS EN-5.

5.3.21. In addition, I am satisfied that the noise resulting from the construction, operation and decommissioning of the proposed development would remain below the significance thresholds as set out in the NPSE and NPPF. The inclusion in the dDCO of Requirement 6 (CEMP), Requirement 7 (CTMP), Requirement 13 (ONMMS), and Requirement 14 (Decommissioning) provide sufficient safeguards to ensure that the adverse impacts resulting from the proposed development would be minimised.

5.3.22. The ExA is satisfied that the findings of the ES are reasonable and that, where necessary, mitigation measures are proportionate to the adverse effects that would result from the proposed development and that these are adequately secured.

5.3.23. I therefore conclude that the application accords with the Government's policy on noise and vibration as set out in NPS EN-1, NPS EN-3 and NPS EN-5, the NPSE and NPPF. It would also accord with the local planning policy. The ExA considers the effect of the proposed development would be neutral and does not weigh for or against the order being made.

Air Quality

5.3.24. It is the ExA's view that the applicant has adequately assessed the impacts of the proposed development in accordance with Section 5.2 of NPS EN-1. No significant adverse effects would be likely to arise through the construction, operation and decommissioning phases of the proposed development, nor would they arise when considered cumulatively. The assessments undertaken provide a sufficient assessment of the effects on air quality. Therefore, the proposed development would accord with the NPSs, the NPPF and development plan policy. For these reasons, the effect of the proposed development in terms of air quality is weighted as neutral in the planning balance.

Socio-Economics, Tourism, and Recreation

5.3.25. The ExA is satisfied that the findings of the ES on health are reasonable and that, where necessary, mitigation measures are proportionate to the adverse effects that would result from the proposed development and that these are adequately secured through the DCO. I therefore consider that appropriate consideration has been given to the human health matters in accordance with paragraph 4.1.7 of NPS EN-1 and the relevant Development Plan policies.

5.3.26. In relation to tourism, whilst I acknowledge that there will be changes to the local PRoW network, and changes to the landscape, I do not consider that these will result in any substantial impacts on access to cultural or recreational assets serving the local tourism sector. At worse these will result in a negligible to minor adverse effect, which will not be significant.

5.3.27. In relation to employment, the loss of agricultural jobs is not disputed by the applicant. Given the relatively small number of FTE involved, the loss would be of low impact. This would be balanced by the employment created by the operational phase of the proposed development and the jobs created during construction and decommissioning, although it is acknowledged these would be temporary. As a consequence, I consider the employment impact to be minor beneficial.

5.3.28. Overall, I consider the socio-economic impacts of the proposed development to be neutral.

Soils and Agriculture

5.3.29. Whilst effects on the soil resource would be managed by the oSMP [REP3-016] and in many respects the effects of the proposed development would be reversible. However, any loss of agricultural land here would be over a

relatively modest area and for a short duration. Further, the oSMP [REP3-016] would ensure the management of the soil in this area. Specific measures relating to the soil quality include soil survey and investigation prior to construction, so that it would be preserved as far as possible. As such, the ExA considers that mitigation measures would be adequately secured in the oSMP [REP3-016].

5.3.30. The ExA considers that the applicant has sought to minimise the impacts on BMV agricultural land in line with NPS EN-1 paragraph 5.11.2. Nevertheless, the proposed development would result in loss of BMV agricultural land. This matter carries a little weight against the order being made.

Transport including Public Rights of Way

5.3.31. Whilst a number of IPs raised concern relating to the local traffic implications of the proposed development, I consider that the applicant has appropriately addressed this within its submissions and traffic assessments. In addition, the relevant authorities have agreed that there will be no significant adverse effects for the proposed development. Various controls will be put in place through the CTMP and DTMPs and are considered by both NH and KCC to be appropriate to provide the necessary mitigation.

5.3.32. In relation to the PRoW network I consider that the applicant has demonstrated that they have sought to minimise impacts on recreational use where possible and has included a number of new PRoWs which will improve the connectivity of the network.

5.3.33. The ExA have had regard to the relevant policies set out in NPS EN-1 and NPS EN-3 in consideration of the transport impacts of the proposed development.

5.3.34. Having reviewed all the evidence before me I consider that the effects on PRoWs are limited, given the scale of the proposed development and the significant benefits to which the propose provides.

5.3.35. Overall, I consider the impacts to be minor adverse and not significant and would attribute a little weight against granting the order on the basis of the limited impact on the PRoW.

Water Environment

5.3.36. The ExA is satisfied that the FRA [REP5-015] appropriately assesses the risks for the construction and operation of the proposed development within a flood risk area in line with NPS EN-1 and that the sequential and exception tests have been appropriately applied and met.

5.3.37. The ExA agrees with the EA that the applicant has appropriately assessed the impacts of climate change within the FRA in line with the NPS EN-5 Section 2.3 and the ExA is satisfied that the flood risk elements of the proposed development have been appropriately considered and mitigated, in accordance with the tests in NPS EN-1 and NPS EN-5. The ExA is therefore

satisfied that there are no implications for the WFD in line with Section 5.16 of NPS EN-1.

5.3.38. The SoCG with the EA [REP4-015] agrees that the content of the oCEMP [REP1-044] and the oOSWDS [REP4-013] secured in dDCO requirements 6 and 11 are appropriate for managing and mitigating any potential impacts of the proposed development. The ExA is satisfied that the applicant has engaged with the EA from an early stage and that the EA is satisfied that potential releases can be adequately regulated in line with paragraph 5.16.7 of NPS EN-1. In addition, Requirement 11 of the dDCO [REP8-004] relating to the submission of an operational surface water drainage strategy and flood compensation storage will require a detailed floodplain drainage scheme to be submitted prior to development commencing. This will set out principles and an outline design for managing storm water on the order limits in line with best practice and the requirements of KCC, as the LLFA for the area.

5.3.39. I consider that there should not be any significant adverse effects in relation to flood risk, drainage and water environment from the proposed development. Taking all matters into account, the ExA concludes that the effect would be neutral and does not weigh for or against the order being made.

Major Accidents and Security

5.3.40. The concerns raised by IPs in relation to the safety of the Battery Energy Storage System (BESS) arise out of the recognised risks associated with lithium-ion batteries in terms of the issues associated with previous thermal runaway events, the proximity of the BESS to the residential areas, fire and toxic emissions and the potential for toxic run-off. Whilst the ExA appreciates these concerns, it is assured that, through the documentation and evidence presented to the examination, the applicant has demonstrated a thorough understanding of the risks involved and the measures required to ensure they are suitably mitigated. I am satisfied that the applicant's assessment methodology in relation to the BESS is appropriate, and this has been confirmed by KFRS. The oBSMP [REP5-019] would provide the necessary controls to ensure compliance with KFRS requirements and the NFCC.

5.3.41. There is no evidence that, when considered cumulatively with other solar developments, there would be any increase in risks of major accidents and disasters resulting from the proposed development. The applicant has also confirmed that the proposal's security measures will be finalised and will form part of the detailed OMP submitted prior to operation, as secured by Requirement 12 of the dDCO. As a consequence, the ExA concludes that the effect would be neutral and does not weigh for or against the order being made.

THE ENVIRONMENTAL STATEMENT

5.3.42. I consider 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. I have taken full account of all environmental information in its consideration of this application.

HRA CONSIDERATIONS

5.3.43. The SoS is the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations). The Habitats Regulations were amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019. The ExA's findings are that, subject to the mitigation measures to be secured in the dDCO, AEoI on Stodmarsh SAC, Stodmarsh SPA and Stodmarsh Ramsar from the proposed development when considered alone can be excluded from the impact-effect pathways assessed.

5.3.44. I consider that there is sufficient information before the SoSESNZ to enable them to undertake an appropriate assessment in order to fulfil their duty under the requirements of The Habitats Regulations.

OTHER MATTERS

Good Design

5.3.45. It is the ExA's view that the applicant has adequately taken into account functionality and aesthetics in designing the proposed development. The applicant has also demonstrated, within the constraints of the order limits, good design in terms of siting the proposed development. The ExA also notes that Requirement 4 of the dDCO [REP8-004] relating to the submission of design details being in accordance with the Design Principles [REP5-017] and the oLEMP [REP3-020] will secure controls within the dDCO, to ensure good design is achieved. The ExA concludes that the effect would be neutral and does not weigh for or against the order being made.

The Cumulative Effects

5.3.46. The ExA has also considered the approach to the assessment of cumulative effects with other proposed and emerging projects. There is an element of the cumulative landscape effect that would experience a significant adverse effect in combination with other proposed schemes, particularly Otterpool Park, to the east, when viewed at a distance from the Kent North Downs NL. In addition, users of the PROW network plus users of surrounding highways will have a cumulative adverse effect. With established planting by Year 15 of the operational phase this will reduce its impact to minor to moderate adverse effect.

5.3.47. In addition, during construction, users of the PROW network in parts during construction, will have moderate to minor adverse cumulative effects. However, this would be temporary in impact during the construction period.

5.3.48. I conclude that whilst there will be some significant adverse effects on a cumulative basis, in part mitigated by established planting. I therefore

attribute a little negative weight against the granting of the Order in this respect.

5.4. FINDINGS AND CONCLUSIONS

5.4.1. In reaching my conclusions on the case for making the DCO, I have had regard to the relevant NPS's, the NPPF, the LIRs and all other matters which I consider are both important and relevant to the SoS decision.

5.4.2. The ExA concludes that matters in relation to air quality, human health, noise and vibration, flood risk, drainage and water environment, safety and security and cumulative effects are neutral and do not weigh for or against the order being made.

5.4.3. The ExA comments next on the matters counting against making the DCO and matters counting in favour, before considering the balance of issues and reaching their conclusions.

5.4.4. The ExA has taken account of Regulation 3 of the Decisions Regulations in their conclusions on historic environment matters and had full regard to the desirability of preserving scheduled ancient monuments and their settings; preserving listed buildings, their settings and any features of special architectural or historic interest; and preserving or enhancing the character or appearance of conservation areas.

5.4.5. The ExA has found that the proposed development would lead to less than substantial harm to the setting of some designated heritage assets. Whilst the ExA afford great weight to the conservation of those assets, the ExA agree with the applicant that this harm would be less than substantial, and that harm is at the lower end of the scale and therefore I consider there should be a little weight against granting consent in relation to the impact on heritage assets.

5.4.6. The proposed development would result in some landscape and visual effects on residential, recreational and vehicular receptors and Kent Downs National Landscape Character Area during construction and operation. I consider that the applicant has satisfactorily assessed that the proposed development would give rise to some significant effects, or that those which may arise have been considered and adequately mitigated where possible. I consider that due to some moderate significant effects, at least for the first 15 years of the proposed development until mitigation established, there should be a little weight against granting consent in relation to the impact on the landscape.

5.4.7. The proposed development would result in loss of BMV agricultural land. However, most of the area lost would be during the temporary construction period and the ExA affords this matter a little weight against granting the Order.

5.4.8. I consider the impacts on traffic and transport to be minor adverse and not significant on the basis of the limited impact on the PRoW. I would attribute a little weight against granting the Order.

5.4.9. In relation to Biodiversity, I consider the proposed development's approach to biodiversity and mitigation proposed is appropriate and proportionate. The provision of a 100% BNG is positive factor which I consider overall on matters of biodiversity, attributes a little weight in favour of granting the Order.

5.4.10. In terms of Good Design, the applicant has approached this in a systematic and proportionate manner. The dDCO makes provision of ABC to be able to ensure that Good Design is achieved and complies with the overarching design principles. I therefore consider this provides a little positive weight in granting the Order.

5.4.11. I consider that the overarching need argument for the proposed development is very strong, that makes a positive contribution to addressing the nation's need for new nationally significant electricity infrastructure through the provision of renewable energy. Furthermore, the grid connection to Sellindge further empathises locationally that the order limits is appropriate and further makes a positive contribution to the planning balance and great weight in granting the Order.

5.4.12. The less than substantial harm to heritage assets and archaeology is outweighed by the public benefits of the proposal, in line with relevant policies in NPS EN-1 and EN-3. This and the harm identified to the landscape and BMV land is clearly outweighed by the very great benefit from the provision of renewable energy and the positive contribution to Climate Change, to meet the need identified in the National Policy Statements and by the other benefits of the application as summarised above.

Issue	Finding	Weighting	Section
Need and Alternatives	Positive	Very great	Section 3.2
Climate Change	Positive	Great	Section 3.12
Biodiversity	Positive	Moderate	Section 3.3
Noise	Neutral	Does not affect the balance	Section 3.7
Air Quality	Neutral	Does not affect the balance	Section 3.12
Socio-economics	Neutral	Does not affect the balance	Section 3.8
Water Environment	Neutral	Does not affect the balance	Section 3.10
Major Accidents and Security	Neutral	Does not affect the balance	Section 3.11
Good Design	Neutral	Does not affect the balance	Section 3.12
Landscape and Visual	Negative	A Little Weight	Section 3.5
Soils and Agriculture	Negative	A Little Weight	Section 3.6
Transport including Public Rights of Way	Negative	A Little Weight	Section 3.9
Cumulative Effects	Negative	A Little Weight	Section 3.12
Historic Environment	Negative	Moderate	Section 3.4

Table 2: Planning Balance summary

5.4.13. Taking the above factors into account and having had regard to all important and relevant matters, the ExA concludes that there are no adverse impacts of sufficient weight, either on their own or collectively, that would suggest the DCO should not be made for an application made under the currently designated NPSs.

5.4.14. In relation to the CNP policy, paragraph 4.1.7 of NPS EN-1 establishes a strong presumption in favour of nationally significant infrastructure, with the need case generally outweighing residual impacts—except in cases involving unacceptable risks to human health, public safety, defence, irreplaceable habitats, or net zero goals. I am satisfied with the application of the mitigation hierarchy and with the identification of residual impacts. I am also satisfied that the proposed development does not pose any such unacceptable risks and does not qualify as an exceptional case, and therefore CNP does not need to be applied by the SOS in my opinion.

5.4.15. For the reasons set out in the preceding chapters and summarised above, the ExA finds that the proposed development is acceptable in principle in planning terms for the currently designated NPSs and that the case for Development Consent is made.

6. COMPULSORY ACQUISITION AND RELATED MATTERS

6.1. INTRODUCTION

6.1.1. The application included proposals for the Compulsory Acquisition (CA) and Temporary Possession (TP) of land and rights over land. This chapter records the examination of those proposals and related issues.

6.2. THE REQUEST FOR CA AND TP POWERS

6.2.1. The application dDCO [APP-013] and all subsequent versions include provision for CA of freehold interests and private rights and the creation of new rights over land. They also contain provisions for the TP of land.

6.2.2. There are Crown interests within the Order land, namely various land parcels in the Dept of Transport's control The Order includes an article (Article 42 in the dDCO [REP8-004]) protecting the position of the Crown. The Applicant has engaged in discussions with the SoS for Transport in order to secure the rights and access necessary to carry out the relevant parts of the authorised development and to obtain the consent of the Crown to the inclusion of provisions applying in relation to Crown land.

6.2.3. None of the land included in the CA request is National Trust land, open space or common land

6.2.4. A Land Plan [APP-007], Crown Land Plans [APP-008], Statement of Reasons (SoR) [APP-020], Funding Statement [APP-021], Book of Reference (BoR) [APP-019] and Schedule of Negotiations [APP-022] were provided with the application. A revision to the BoR was submitted at D8 of the Examination [REP8-010], these revisions were accompanied by a Schedule of Changes but related to minor changes such as change of address or name.

6.2.5. There were no revisions to the Land Plan or Crown Land Plans submitted throughout the examination.

6.2.6. A revision to the SoR was submitted at DL1 [REP1-010]. The DL1 revision was submitted in order to update the SoR with the Status of Negotiations with the Affected Parties (APs) and include reference to Plot 3/14 and engagement with the Dept. of Transport.

6.2.7. The ExA was kept updated by the applicant throughout the examination on the progress of negotiations with APs by means of a Schedule of Negotiations and Powers Sought. A final CA schedule setting out the position at the close of the examination was submitted at D8 [REP8-012].

6.2.8. These documents, taken together, form the basis of the analysis in this chapter. References to the BoR and the Land Plans in this chapter from this point should be read as references to the latest revisions cited above.

6.3. THE PURPOSES FOR WHICH LAND IS REQUIRED

6.3.1. The Order limits for the proposed development are shown by the red line boundary on the Key Plan of the revised Land Plans [APP-007]. The land over which powers are sought is referred to in this section as the Order land. The Order land covers the land required for the construction of, operation, maintenance and decommissioning of solar photovoltaic arrays and energy storage, together with associated infrastructure and an underground cable connection to the existing National Grid Sellindge Substation.

6.3.2. The purposes for which the CA and TP powers are required are set out in the SoR [REP7-008]. Appendix A to the revised SoR [REP1-010] sets out for each plot the purpose for which it is required, the relevant Work No and DCO article.

6.3.3. The applicant states in the SoR [REP1-010] that it requires powers of CA to ensure that the proposed development can be constructed, operated (including maintenance) and decommissioned and so that the Government's policies in relation to the timely delivery of new renewable energy generating capacity and achieving the UK's net zero targets are met. The applicant further considers that, in the absence of these powers, there would remain a risk that the Order land would not be fully assembled and the proposed development would not be delivered, meaning that Government policy objectives would not be achieved.

6.3.4. The applicant, at the CAH1 and CAH2, outlined it had reached option agreements or signed Heads of Terms with the majority of the freehold owners of land within the order limits and was in advanced negotiations with the few remaining freehold owners where it is noted only easement rights are required. Whilst the applicant is continuing to seek to acquire the land and rights by voluntary agreement, it requires the powers of compulsory acquisition sought in the application in order to provide certainty that all the land required for the proposed development can be acquired in order to realise the proposed development significant public benefits.

6.3.5. Having compared the Works Plans, Land Plans and BoR carefully, the ExA is satisfied that each area of land affected by CA or TP is required for the carrying out of one or more of the works identified in Schedule 1 of the dDCO or their maintenance.

6.4. LEGISLATIVE REQUIREMENTS

Planning Act 2008

6.4.1. Section (s)122(2) provides that a Development Consent Order (DCO) may include provision authorising CA only if the Secretary of State (SoS) is satisfied that certain conditions are met. These include that the land subject to CA is required for the development to which the development consent relates or is required to facilitate or is incidental to it.

6.4.2. In addition, s122(3) requires that there must be a compelling case in the public interest for the land to be acquired compulsorily. The 'Planning Act 2008: guidance related to procedures for the compulsory acquisition of land' 2013 (the CA Guidance)29 indicates that the SoS will need to be persuaded 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.

6.4.3. S123 requires the SoS to be satisfied that one of the three procedural conditions set out in subsections (2) to (4) are met, namely:

- That the application for the order included a request for CA of the land to be authorised; or
- That all persons with an interest in the land consent to the inclusion of the provision; or
- That the prescribed procedure has been followed in relation to the land.

6.4.4. S127 of the PA2008 applies to SUs' land. S127(2) and (3) state that an order granting development consent may include provisions authorising the CA of SU land only to the extent that the 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 undertaker(s) without serious detriment to the undertaking.

6.4.5. Similarly, s127(5) and (6) provide that an order granting development consent may only include provision authorising the CA of rights over land belonging to SUs 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 by the SUs by the use of other land belonging to or available for acquisition by them.

6.4.6. S138 relates to the extinguishment of rights and the removal of apparatus on SU 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 the order relates and which does not consist of the construction or extension of one or more dwellings.

6.4.7. S115(1) provides that, in addition to the development for which consent is required under Part 3 the Act, consent may also be granted for associated development. S115(2) defines associated development as development which is associated with the principal development or any part of it.

6.4.8. TP powers are also capable of being within the scope of a DCO by virtue of Paragraph 2, Part 1 of Schedule 5 to the PA2008. This allows for, amongst other things, the suspension of interests in or rights over land compulsorily or

by agreement. The 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. Further, such powers tend to be ancillary and contingent to the application proposal as a whole, in the sense that they are only capable of proceeding if the primary development is justified.

NEIGHBOURHOOD PLANNING ACT 2017

6.4.9. This includes several provisions related to the TP of land including notice requirements, the service of counter notices and compensation. These provisions are not yet in force and are described as technical changes in the explanatory notes that accompany the Act.

6.4.10. Article 8(1)(b) of the Examining Authority's (ExA) recommended DCO (rDCO) (found at Appendix C of this report) disapplies the provisions of the Act insofar as they relate to TP of land under articles 29 (TP of land for carrying out the authorised development) and 30 (TP of land for maintaining the authorised development).

6.4.11. Whilst on this basis it is not necessary to assess the proposed development against these provisions, they provide a useful indication of how Parliament considers these matters should be addressed and how a balance can be struck between acquiring authorities and those whose interests are affected by the use of such powers.

THE CA GUIDANCE

6.4.12. In addition to the legislative requirements set out above, the CA Guidance sets out a number of general considerations which also have to be addressed including:

- Whether all reasonable alternatives to CA have been explored;
- Whether the applicant has a clear idea of how it intends to use the land subject to CA powers;
- Whether the Applicant can demonstrate that funds are available to meet the compensation liabilities that might flow from the exercise of CA powers; and
- Whether the SoS is satisfied that the purposes stated for the CA and TP are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

6.4.13. The ExA has taken all relevant legislation and guidance into account in the reasoning below and relevant conclusions are drawn at the end of this chapter.

6.5. EXAMINATION OF THE CA AND TP CASE

6.5.1. The ExA's approach to the question of whether CA powers should be granted, and if so what it should recommend to the SoS to grant, has been to seek to apply the relevant sections of the PA2008; notably s122 and s123, the CA Guidance, and the Public Sector Equality Duty (PSED) established by the Equality Act 2010. In addition, in light of the representations received and the evidence submitted, to consider whether a compelling case has been made in the public interest, balancing the public interest against private loss.

6.5.2. In examining the application, the ExA considered all written material in respect of CA and TP and asked written questions regarding the justification of the need for the CA/ TP in the ExA's first written questions (ExQ1) [PD-006] and the ExA's second written questions (ExQ2) [PD-008].

6.5.3. In addition, the issues were explored in further detail at Compulsory Acquisition Hearing (CAH) 1 [EV4-002] and [EV4-004] and a second CAH [EV10-003].

6.5.4. By the end of the examination the applicant had reached agreement with the majority of the freehold owners of the land within the order limits and is in advanced negotiations with the few remaining freehold owners where only easement rights are required. Whilst the applicant is continuing to seek to acquire the land and rights by voluntary agreement, it requires the powers of compulsory acquisition sought in the application in order to provide certainty that all the land required for the proposed development can be acquired in order to realise the proposal's significant public benefits.

6.5.5. No Affected Persons attended either of the Compulsory Acquisition Hearings held during the examination and no private landowner raised any objections to the compulsory acquisition powers sought by the proposed development. Prior to the examination, South East Water [RR-271] made an objection to the proposed Development being built over a water main in their ownership. Other statutory undertakers initially raised objection but withdrew their objection before the close of the examination.

6.5.6. The applicant sought to agree Protective Provisions with SUs. Other than South East Water, the applicant was unable to agree them with three others, Colt Technologies Limited, Lumen Technologies Limited, and OpenReach Limited. The applicant reported in their final Schedule of Negotiations at D8 [REP8-012] that despite engaging with the Undertakers in relation to Protective Provisions included at Part 2 of Schedule 13 to the Draft DCO [REP8-004] on 14 February 2024, no responses were received.

The Applicant's Case

6.5.7. The applicant's general case for CA and TP is set out in its SoR [REP1-010]. Specifically, the applicant's case for the CA and TP powers sought is set out in section 6 (Purpose and need for the powers) and section 7 (Justification for the compulsory acquisition powers). This sets out how the Applicant

considers that the proposals meet the tests set out in PA2008 s122 and the general considerations set out in the CA Guidance.

6.5.8. In summary, the applicant explains that all the land included within the Order land is needed to achieve the identified purpose of delivering the Proposed Development. The applicant also sets out that in the absence of powers of CA, it might not be possible to assemble all of the land within the Order Limits, uncertainty will continue to prevail and its objectives, and those of Government policy, would not be achieved.

6.5.9. With specific reference to section 122(3), the Applicant refers to the need for the Proposed Development in terms of ensuring meaningful and timely contributions to United Kingdom (UK) decarbonisation and security of supply. Specific reference is made to this need case being supported by NPS EN-1, NPS EN-3 and NPS EN-5.

6.5.10. The applicant refers to other public benefits including biodiversity net gain (BNG), and other benefits outlined in the Planning Statement. In this respect the Applicant sets out at paragraph 7.1.3 of the SoR [REP1-010] that there is a compelling case in the public interest for the power to compulsorily acquire land and rights over land (together with the imposition of restrictions) to be included in the Order. There is also a compelling case in the public interest for the power to extinguish, suspend or interfere with private rights to the extent necessary to deliver the proposed development.

6.5.11. Whilst the applicant acknowledges that the use of CA powers would result in a private loss by those persons whose land or interests in land is compulsorily acquired, it considers that this loss would be outweighed by the public benefits that would arise.

6.5.12. The ExA's view is that the proposed use and nature of the development establish a compelling case in terms of the land being needed for this purpose and being no more than is reasonably required to deliver the proposed development. However, in terms of the other public benefits referred to such as BNG measures, these elements are justified reasons for CA and TP if the proposed use is itself justified.

General Adequacy of Site Selection and Alternatives

6.5.13. 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. The applicant sets out at section 6.4 of the SoR that all reasonable alternatives to CA have been considered.

6.5.14. In Section 6.4 of the SoR [REP1-010] the applicant sets out this it has undertaken a clear process to identify an appropriate site and has considered alternatives in doing so. None of the alternatives would provide the compelling benefits that the proposed development would provide or

would involve additional impacts or disadvantages in terms of land take, environmental, technical or other considerations. Also, the applicant's use of CA powers is intended to be proportionate.

6.5.15. The ExA's consideration of the applicant's approach to alternatives to the proposed development is set in Chapter 3 Section 2 of this report. This refers to the Environmental Statement (ES) Chapter 5 Alternatives and Design Evaluation [AS-010], the Site Selection Assessment Appendix to ES Chapter 5 [APP-067] and the Planning Statement, Appendix 2: Sequential and Exception Test Report [APP-151]. These documents set out the applicant's rationale for site selection.

6.5.16. The lack of suitable sites resulting from this assessment meant that it was necessary to consider Grade 3 agricultural land and consequently this s subject to CA. The applicant seeks to acquire the land and rights needed by voluntary agreement and to minimise the need for CA powers wherever possible. Where agreement has been reached, powers of compulsory acquisition are retained in case the owners (where agreement has been reached) do not grant a lease in accordance with the completed option agreements and to ensure that third party private rights across the order limits can be extinguished to the extent that it is necessary to do so. Overall, the applicant's SoR [REP1-010] at paragraph 11.1.15 concludes that all reasonable alternatives to compulsory acquisition have been explored. I consider that given the national and local need for the proposed development, and it's suitability for such use, and the support for it found in policy, for, the use of compulsory acquisition powers together with the overriding of interests, rights and restrictive covenants and the suspension or extinguishment of private rights, is justified.

6.5.17. Issues have been raised in relation to the approach to alternatives such as those raised by the Aldington and Mersham Support Group [RR-003], and the overall scale and extent of land required for the proposed development by ABC [REP8-016]. However, the ExA has concluded that the applicant's approach to these matters complies with the CA Guidance in terms of being necessary and proportionate. With regards to the specific point about the flexibility sought within the order limits and the provisions for generating capacity over and above the grid connection agreement, the ExA has agreed that the flexibility sought is necessary to deliver the benefits of the proposed development and is in line with NPS EN-3 and consistent with the recent judgement Ross v Secretary of State for Housing, Communities and Local Government and Renewable Energy Systems Ltd [2025] EWHC 1183 in relation to overplanting.

6.5.18. I note that there are a relatively modest number of landowners within the order limits and that the applicant has entered into Option Agreements with the landowners within them. The ongoing efforts to reach voluntary agreements with other APs during the examination indicate that reasonable alternatives to the use of CA/TP powers have been explored.

Availability and Adequacy of Funds

6.5.19. The applicant's Funding Statement [REP1-012] and response to questions at CAH1 [EV4-002] explain that the applicant has access to finance to fund the works to be authorised by the Order.

6.5.20. Furthermore, at CAH2 the applicant was asked to expand on compensation in respect of CA. In response, the applicant stated that Article 49 of the dDCO [REP8-004] also requires a guarantee or other form of security to be in place before the undertaker can exercise the compulsory acquisition powers contained in the dDCO. I am satisfied that the applicant has sufficient funding in place to meet the costs of CA.

6.5.21. Whist I am satisfied that the applicant has access to funds to meet the costs of the proposed construction works and the operational costs, decommissioning costs have been subject to discussion during the examination. Given the concerns of some IPs and my concerns that the dDCO as suggested by the applicant may not 100% guarantee decommissioning in a timely manner, based on worst case scenario, I have recommended an additional requirement to be added relating to a financial guarantee or bond being secured prior to the development commencing and this is recommended as Requirement 15 in the rDCO.

6.5.22. Within the Funding Statement [REP1-012] decommissioning costs are excluded from the project's cost figure because the project operator was proposing to commit, through private agreements with landowners and provisions in the dDCO to set aside funds from project revenues during operation to cover the decommissioning costs. As the applicant was already intending to provide a financial guarantee to have a fund in place for decommissioning activities, this should not prove fatal to the viability of the proposed development. My recommendation through the rDCO is to have this fund sit with the local planning authority rather than the Applicant to cover a potential scenario where the Applicant was unable to meet the private agreement with landowners.

6.5.23. The ExA concludes that, based on the information provided, the necessary funds would be available to the applicant to cover the likely costs of CA and to deliver the proposed development.

Conclusion on the generality of the case for CA and TP

6.5.24. Having considered the applicant's case for CA and TP against the requirements of legislation and guidance, the ExA is satisfied with the generality of the applicant's conclusions. However, final conclusions on CA and TP cannot be reached until individual objections and all other important and relevant considerations have been addressed.

CONSIDERATION OF INDIVIDUAL OBJECTIONS AND ISSUES

6.5.25. At the start of the examination, the following SUs objected or raised concerns about CA and TP proposals:

- South East Water [RR-271]

- Southern Water Services [AS-020]
- EDF Renewables Ltd [RR-076]
- EDF Renewables Solar Ltd [RR-077]
- High Speed 1Ltd. [RR-098]
- Network Rail [RR-207]
- National Grid [RR-203]

6.5.26. The ExA was kept updated throughout the examination on how matters were progressing with the APs referred to above by means of a Schedule of Negotiations, the final version was submitted at D8 [REP8-012]. Network Rail [REP6-017], Southern Water Services [REP6-018] and the National Grid [REP8-033] subsequently withdrew their objections subject to their agreed Protective Provisions being included within the final DCO.

6.5.27. High Speed 1 Ltd initially had concerns relating to the proposed method of getting cables under the High Speed railway which they understood to be either be via existing utility ducts (their preferred approach) or via new bored undertrack crossings (which would likely to have a significant impact on High Speed rail services). By the close of the examination, they had come to an agreement with the applicant and withdrew their objection [REP8-035].

6.5.28. EDF Renewables Ltd and EDF Renewables Solar Limited withdrew their objections after entering into an interface agreement [REP8-036]. The CA Schedule set out the negotiation status of those parties that are participating, with the final version submitted at D8 [REP8-012].

6.5.29. Following South East Water's objection [RR-271], who provide water supply as distinct from Southern Water Services who provide waste water service, they did not participate in the examination, and the applicant was unable to obtain responses or progress by the close of the examination.

6.5.30. South East Water's concerns related to the potential for the proposed development to be built over a distribution water main without a reasonable stand-off distance. They suggested that the mains must either be diverted or not be built over within a certain distance. However, during the examination they did not elaborate or participate further in the examination. In addition, the applicant was unable to engage with them further.

6.5.31. Having considered the wording in the Protective Provisions in the dDCO, the ExA is satisfied that the wording in Part 5, Schedule 11 of the dDCO provides adequate protection for South Eastern Water assets.

6.5.32. No other APs objected or raised concerns about CA and TP proposals

6.5.33. I note that in relation to the DoT Crown Land, the applicant was unable to finalise agreement with them for interests in relation to roads and verges

identified in the BoR before the conclusion of the examination. Although in the D8 [REP8-012] Schedule of Negotiations and Powers Sought, the applicant states “The applicant has sought clarification on the draft s.135 consent as the draft consent did not cover all affected land parcels. The Affected Person advised the applicant that confirmation would be provided prior to Deadline 8 but this has not been received. The applicant anticipates this will be agreed swifty after the close of examination.”. Given this was updated at D8, shortly before the close of the examination, there was no time to clarify which land parcels were omitted.

6.5.34. Whilst the DoT have not made a formal submission on the application or during the examination, this matter still remains unresolved. Notwithstanding this though the ExA feels that there is a reasonable expectation that this can be resolved imminently, without prejudice to this recommendation. The SoS may wish to ensure that the DoT have formally agreed and signed the S135 consent, prior to the SoS making their decision.

6.5.35. Similarly, the ExA is aware that the applicant had been looking to secure voluntary agreement with both KCC and EA on their land interests relating to flood storage and cable drilling, before the close of the examination. Despite efforts to finalise this, the applicant has been unable to obtain this agreement from both parties prior to Close. However, it is noted that the applicant remains positive that consent will be gained shortly after the examination. Notwithstanding this though, the compelling need for the proposed development leads me to consider that not being able to finalise these arrangements post recommendation should not be an impediment to authorising the acquisition of these land rights to enable grid connection for the proposed development. Nevertheless, the SoS may wish to seek clarification prior to determining the application.

6.6. CONCLUSIONS

6.6.1. The ExA is satisfied that there is sufficient evidence that the CA powers sought over all of the land identified in the Land Plans and BoR would be required for the proposed development, to facilitate it or would be incidental to it. The ExA is therefore satisfied that the powers sought meet the condition set out in S122(2) of the PA2008

6.6.2. All reasonable alternatives to compulsory acquisition have been explored. Given the national and local need for the proposed development and the support for it found in policy, as well as the suitability of the Order land (for the reasons outlined above), compulsory acquisition of the land and rights and the temporary use of land, together with the overriding of interests, rights and restrictive covenants and the suspension or extinguishment of private rights, is justified.

Human Rights

6.6.3. The Human Rights Act 1998 incorporates the European Convention on Human Rights (ECHR) into UK statute. The ECHR is subscribed to by member states of the Council of Europe. ECHR rights are enforceable in the

domestic courts but with final recourse to the European Court of Human Rights. The ECHR, the Council of Europe and the European Court of Human Rights are not European Union (EU) institutions and are unaffected by the decision to leave the EU.

- Relevant provisions of the ECHR that are normally engaged by CA and/ or TP proposals include: Protocol 1, Article 1: the right to peaceful enjoyment of possessions and not to be deprived of this except in the public interest;

- Article 6: the right to due process in civil proceedings, including a public hearing before an independent and impartial tribunal; and

- Article 8: the right to respect for private and family life, home and correspondence, relevant where property that is a home is affected.

6.6.4. Section 10 of the applicant's SoR deals with Human Rights. It acknowledges that the DCO has the potential to infringe the rights of persons who hold interests in land within the Order Limits under Article 1 of the First Protocol, Article 6 and Article 8. Section 9 also includes consideration of compliance with the relevant provisions of the ECHR and fair compensation [REP1-010].

6.6.5. In terms of Article 1 the applicant has said they have explored all reasonable alternatives to CA (paragraph 11.1.5 of SoR [REP1-010]) and they also consider that there would be very significant public benefits arising from the grant of the DCO. The benefits would only be realised if the DCO is accompanied by the grant of powers of CA, which have allowed for APs to be heard fully, fairly and in public.

6.6.6. In terms of Article 6, IPs have raised concerns regarding the adequacy of the pre-application consultation process. In response, as set out in the Consultation Report [APP-126], in accordance with Part 5 of the PA 2008 Act, the applicant consulted persons who fell within one or more of the categories listed in section 44 of the PA 2008. This includes any: persons with an interest in the Order land; persons who have the power to sell and convey or release the Order land; and those who would or might be entitled to make a claim under section 10 of the Compulsory Purchase Act 1965 in respect of injurious affection, under Part 1 of the Land Compensation Act 1973 in respect of depreciation of land value by physical factors or under section 152(3) of the PA 2008 in respect of compensation where there is no right to claim in nuisance. These persons were given a fair opportunity to submit responses to the consultation, and the applicant had regard to all relevant responses. Consequently, the ExA concludes that the requirements of Article 6 have been satisfied.

6.6.7. In relation to Article 8, the Order land does not include, and the proposed development does not require, the acquisition of any residential dwellinghouses. Consequently, as no dwellinghouses will not be directly affected, it is not anticipated that the Convention rights protected by Article 8 will be engaged.

6.6.8. The ExA considers that the applicant has set out a compelling case in the public interest for the exercise of such powers of CA. Furthermore, the ExA considers that the proposed interference with individuals' rights would be lawful, necessary, proportionate and justified in the public interest.

6.6.9. The ExA concludes overall that there is a compelling case in the public interest for all of the land identified to be acquired compulsorily. Furthermore, the ExA considers that the proposed interference with individuals' rights would be lawful, necessary, proportionate and justified in the public interest. The ExA therefore concludes that the CA and TP sought is compatible with the Human Rights Act 1998 and the ECHR.

6.6.10. **Equality Act 2010 Considerations**

6.6.11. The Equality Act 2010 established the PSED. This is a legal obligation to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. The conclusions of the applicant's Equality Impact Assessment set out that no differentiated or disproportionate impacts on groups with protected characteristics would be predicted as a result of the proposed development [APP-163].

6.6.12. Having considered all of the evidence submitted to the examination, the ExA has reached the following conclusions:

- The application site has been appropriately selected.
- All reasonable alternatives to CA have been explored.
- The applicant would have access to the necessary funds and the dDCO provides a clear mechanism whereby the necessary funding can be guaranteed.
- There is a clear need for all the land included in the BoR to be subject to CA or TP.
- There is a need to secure the land and rights required to construct, operate and maintain the proposed development within a reasonable timeframe, and the proposed development represents a significant public benefit to weigh in the balance.
- That in all cases relating to individual objections and issues, CA and TP is justified to enable implementation of the proposed development.
- The powers sought satisfy the conditions set out in s122 and s123 of the PA2008 as well as the CA Guidance.
- The powers sought in relation to SUs meet the conditions set out in s127 and s138 of the PA2008 and the CA Guidance.

6.6.13. As referenced earlier, the SoS may wish to conform with the applicant that the S135 consent has been obtained from the DoT and that the voluntary agreements with KCC and the EA have been secured prior to determining the application.

6.6.14. Considering all of the above, the ExA finds there is a compelling case in the public interest for the CA and TP powers sought and the ExA recommends acceptance of the CA and TP powers proposed in the dDCO.

7. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

7.1. INTRODUCTION

7.1.1. The application draft Development Consent Order (dDCO) [APP-015] and the Explanatory Memorandum (EM) [APP-017] were submitted by the Applicant as part of the Application. Both the dDCO and EM were updated throughout the examination with the latest version of the dDCO being [REP8-004] and the EM being [REP8-008]. The EM explains the purpose and effect of each article of, and schedule to, the dDCO and why they are required. The changes between the submitted version and Revision 8 submitted at D8 are summarised, in Table 1 below. Unless stated otherwise, all analysis of the dDCO and EM in this chapter are based on the versions submitted at D8. The submission version of the dDCO and subsequent iterations are in the form of a statutory instrument as required by section (s)117(4) of the PA2008.

7.1.2. This chapter considers the dDCO as applied for; the changes made during the examination; the DCO provisions with matters and objections outstanding and then sets out the Examining Authority's (ExA) conclusions.

7.2. THE ORDER AS APPLIED FOR

7.2.1. The dDCO as applied for includes a number of provisions to enable the construction, operation, maintenance and decommissioning of the proposed development. Its general structure is set out below:

7.2.2. **Articles**

- Part 1 – Preliminary
- Part 2 – Principal powers
- Part 3 – Streets
- Part 4 – Public Rights of Way
- Part 5 – Supplementary powers
- Part 6 – Powers of acquisition
- Part 7 – Miscellaneous and general

Schedules

- Schedule 1 – Authorised development
- Schedule 2 – Requirements
- Schedule 3 – Legislation to be disapplied

- Schedule 4 – Streets subject to street works
- Schedule 5 – Alteration of streets
- Schedule 6 – Access to works
- Schedule 7 – Traffic Regulation Measures
- Schedule 8 – Public rights of way
- Schedule 9 – Status of Public Rights of Way Created or Improved
- Schedule 10 – Land in which only new rights etc may be acquired
- Schedule 11 – Modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants
- Schedule 12 – Acquisition of Wayleaves, Easements and Other Rights
- Schedule 13 – Protective provisions
- Schedule 14 – Documents and plants to be certified
- Schedule 15 – Hedgerows
- Schedule 16 – Arbitration rules

7.2.3. Whilst there were numerous changes made to the dDCO during the examination, its broad structure did not change.

7.3. CHANGES DURING EXAMINATION

7.3.1. During the examination the applicant sought to make various changes to the dDCO. The numerous small alterations, typographical changes, corrections and drafting improvements in each successive version of the dDCO are set out in the final version of the applicant's Schedule of Changes [REP8-023]. Therefore, any changes that the ExA accepts are necessary, and that are not the subject of outstanding disagreements and that do not materially affect the delivery of or controls over the proposed development are not discussed here.

7.3.2. The notable changes made to the dDCO during the examination, and the reasons for them, are summarised in Table 3 below. These generally flowed from submissions from IPs, responses to written questions (ExQ) and discussion at Hearings.

7.3.3. The ExA is satisfied that the majority of these changes are justified by the evidence and can be recommended for inclusion in the DCO if the SoS concludes that development consent should be granted.

Table 3: Main changes made to the dDCO during the Examination

Provision	Examination Issue /Change	Reason
Preamble (and associated footnote)	Replacement of S105 with 104 provisions and the inclusion of the reference to section 58(5) of the Marine and Coastal Access Act 2009	Amended to reflect the fact that since the first version of the Draft DCO was prepared, the Overarching NPS EN-1 and NPS EN-3 have been designated and are in force. As a result, the DCO application must be determined by the Secretary of State in accordance with section 104, rather than section 105, of the Planning Act 2008.
Article 2(1) (interpretation)	Clarification of "business day" means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or an English public holiday or bank holiday under section 1 of the Banking and Financial Dealings Act 1971(c);	Yes amended at the request of the ExA. Please see Action Point 7 in the Written Summary of Oral Submissions at Issue Specific Hearing 1 and Responses to Action Points [REP1-073]
Article 2(1) (interpretation)	Clarification of "commence" means to carry out any material operation, as defined in section 155 of the 2008 Act, forming part of the authorised development other than site enabling	This is a consequential amendment required as a result of the amendments to Requirement 8 in Schedule 2

	works (except where stated to the contrary), and “commencement” and “commenced” must be construed accordingly;	
Article 2(1) (interpretation)	Demolition removed from the definition of site enabling works,	The applicant has confirmed there will be no demolition works required as part of the site enabling works, and so this limb of the definition is no longer required.
Article 2(1) (interpretation)	Reference to National Grid Interconnectors removed	Definition moved to Part 6 of Schedule 11, as this is the only place in the Draft DCO (Doc Ref. 3.1(F)) where the definition is used. The text of the definition remains unchanged in its new location.
Article 2(1) (interpretation)	Addition of Network Rail’s registered office address	To reflect agreement between the applicant and Network Rail Infrastructure Limited on the form of the protective provisions to be included in Schedule 13 of the Draft DCO.
Article 2(8) (interpretation)	Addition of: (8) In this Order, references to materially new or materially different environmental effects in comparison with those reported in the environmental statement must not be construed so as to include the avoidance, removal or reduction of an adverse environmental effect or positive environmental effect, or the increase of an assessed positive	Added to reflects but is not identical to the recently established precedent in Article 2(10) of the A122 (Lower Thames Crossing) Development Consent Order 2025.

	environmental effect, that was reported in the environmental statement as a result of the authorised development.	
Article 7 (consent to transfer benefit of the Order)	Replacement of ‘working’ with ‘business’	Amendment for consistency to reflect the definition in Article 2(1).
Article 9 (planning permission)	Addition of: (3) Where the undertaker identifies an incompatibility between a condition of a planning permission and this Order that engages paragraph (2), it must notify the local planning authority as soon as reasonably practicable.	Paragraph (3) has been added to Article 9 following a request from the ExA during Issue Specific Hearing 1to ensure that the incompatibility can be tracked by the LPA
Schedule 2, paragraph 18	Various minor changes to the wording	Changes made at the request of Ashford Borough Council. This mirrors the drafting in Schedule 16, paragraph 3 of The Cottam Solar Project Order 2024 and Schedule 16, paragraph 3 of The Mallard Pass Solar Farm Order 2024.This allows the LPA to request additional information within 20 business days of receipt, in addition 10 business days are allowed for the LPA to issue to consultees.
Schedule 2, Requirement 3 (phases of authorised development)	3. —(1) addition of ‘and sequencing’	added following a request from the ExA during Issue Specific Hearing 1
Schedule 2, Requirement 5 (battery safety management plan)	Inclusion of the EA as a consultee	Amendment made at the request of the EA as part of discussions on the SoCG with the EA
Schedule 2, Requirement 6	Inclusion of the EA as a consultee	Amendment made at the request of the EA as part

(construction environmental management plan)		of discussions on the SoCG with the EA
Schedule 2, Requirement 7 (construction traffic management plan	Addition of “4) For the purposes of this paragraph, “relevant highway authority” means the highway authority for the highways that are the subject of a CTMP submitted pursuant to sub-paragraph (1)	Added at the request of National Highways, to make clear that they are the relevant highway authority for any effects strategic road network which are covered by the controls in the CTMP.
Schedule 2, Requirement 8 (landscape and biodiversity)	Addition of “(5) For the purposes of sub-paragraph (2), “commence” includes part (b) (site clearance and/or vegetation works) of the site enabling works.”	This is to ensure that certain site enabling works are appropriately controlled, in accordance with the relevant guidance and statutory requirements such as the Wildlife and Countryside Act 1980. This follows the precedent set in Requirement 7 in Schedule 2 to the Cottam Solar Project Order 2024.
Schedule 2, Requirement 8 (landscape and biodiversity)	Inclusion of the EA as a consultee	Amendment made at the request of the EA as part of discussions on the SoCG with the EA
Schedule 2, Requirement 11 (operational surface water drainage strategy)	Inclusion of the EA as a consultee and clarity that KCC are the Local Lead Flood Authority	Amendment made at the request of the EA as part of discussions on the SoCG with the EA and request by ExA following ExQ1
Schedule 2, Requirement 11 (operational surface water drainage)	Changes to include reference to Phasing	Changes made at the request of Ashford Borough Council
Schedule 2, Requirement 11 (operational surface	Further changes made including the insertion of (b) a detailed floodplain compensation scheme	Made at the request of the EA

water drainage strategy)	for that phase has been submitted to and approved by the local planning authority, such approval to be in consultation with the Environment Agency (4) When considered as a whole across all phases of the authorised development, the detailed floodplain compensation schemes approved pursuant to paragraph (1)(b) must include mitigation measures that are in accordance with the measures described in Appendix 10.2: FRA of the ES relating to flood storage upstream and downstream of the Aldington Flood Storage Area embankment. (5) The detailed floodplain compensation scheme for each phase of the authorised development must be implemented and maintained as approved.	
Schedule 2, Requirement 12 (operational management plan)	Inclusion of the EA as a consultee	Amendment made at the request of the EA as part of discussions on the SoCG with the EA
Schedule 2, Requirement 14 (decommissioning and site restoration)	Inclusion of the EA as a consultee	Amendment made at the request of the EA as part of discussions on the SoCG with the EA
Schedule 2, Requirement 14 – Decommissioning	Addition of “5) For the purposes of this paragraph, “relevant highway authority” means the highway authority for the highways that are the	Added at the request of National Highways to make clear that they are the responsible authority for anything that effects the strategic road network which are

	subject of a DTMP submitted pursuant to subparagraph (2)(b).”	covered by the controls in the DTMP.
Schedule 13, Part 3 (protective provisions)	Various amendment to the protective provisions for the protection of Southern Water	Made at the request of Southern Water
Schedule 13, Part 5 (protective provisions)	Various amendment to the protective provisions for the protection of National Grid Transmission	Made at the request of National Grid Transmission
Schedule 13, Part 6 (protective provisions)	Various amendment to the protective provisions for National Grid Interconnectors Ltd	Made at the request of National Grid Interconnectors Ltd
Schedule 13, Part 7 (protective provisions)	Various amendment to the protective provisions for Network Rail	Added at the request of Network Rail
Schedule 13, Part 8 (protective provisions)	Inclusion of new Part 8 of Schedule 13 – for the protection of High Speed 1 Limited and London St. Pancras Highspeed)	Added at the request of High Speed 1 Limited and London St. Pancras Highspeed)

DCO PROVISIONS WITH MATTERS AND OBJECTIONS OUTSTANDING

7.3.4. This section addresses matters which had not been agreed between IPs and the applicant by the end of the examination and certain matters which have been the subject of the ExA’s written questions and/or discussion at hearings about potential changes to the applicant’s final dDCO [REP8-004]. Table then sets out those DCO provisions that the ExA recommend are changed. The recommended changes are reflected in the recommended DCO (rDCO) at Appendix C.

7.3.5. Various points relating to the drafting of the dDCO [REP8-004] were raised during the examination, in particular the following examination events focused on elements of the DCO:

- ISH1- dDCO: Sequencing in relation to Requirement 3; timing reference in relation to Requirement 11; further clarity on the definition of ‘maintain, and referenced to precedent made DCO’s; clarity on the terms public rights of way, easement, private road, and statutory nuisance as used in the dDCO; updating the outline Operational Management Plan to emphasise the need for community interface;

providing further clarity on the purpose of Article 9(3); and further clarity sought on the justification for Articles 12, 31 and 45.

- ExQ1: Further clarity sought on Articles 16.31 and 35; suggested changes to the wording of Requirement 11; and clarification sought on schedule 15 in relation to hedgerows and tree preservation orders.

- ISH3 – Public Rights of Way: The ExA suggested an additional Requirement in relation to the provision of a decommissioning or bond to be placed with the LPA.

- ExQ2: Further questions regarding the decommissioning Requirements

7.3.6. Whilst the dDCO has been agreed with the local authorities and agencies affected by Protected Provisions, there were other IPs who raised concern regarding elements of the dDCO. The following paragraphs set out these concerns and my conclusions and reasoning.

Schedule 1 (authorised development)

7.3.7. Some IPs [PD1-004] highlighted concern regarding the definition of "authorised development" in Schedule 1 to the dDCO [REP8-004] does not include an upper limit on the capacity of the BESS, such as that imposed in the Little Crow Solar Park Order 2022. The applicant responded to this matter in the 'Project description"' section of the Response to Additional Submission made at Procedural Deadline A [REP1-060]. Here they outlined that they had been clear within the ES Chapter on Climate Change and also discussed within the Grid Connection Statement. As the applicant states having a generating capacity greater than the grid connection agreement is not unusual. This is sometimes referred to as overplanting. Indeed, the recent decision in *Ross v Secretary of State for Housing, Communities and Local Government and Renewable Energy Systems Ltd* [2025] EWHC 1183 , Eyre J found that the Inspector was correct to conclude that overplanting which went beyond that necessary to address module degradation was not inconsistent with EN-3; provided the overplanting was justified and account was taken of the full effects of the development (including overplanting), there was no separate requirement to consider whether the overplanting was reasonable; and that the potential loss of energy as a consequence of clipping was not an obviously material consideration which the Inspector was required to take into account.

7.3.8. I concur with the applicant that there is not a need to insert an upper limit given that the proposed development is already within the scope of a project defined as a NSIP, and would be counter intuitive to the urgent need to increase the Nation's ability to generate more electricity from renewable sources.

Schedule 2 (Requirements)

7.3.9. I note that the applicant has been in discussion and agreed Requirements with the relevant statutory bodies including ABC, KCC, EA and NE.

7.3.10. At ISH3 I suggested to the applicant that an additional Requirement should be added to the DCO to ensure that funding was in place to guarantee decommissioning could be undertaken and in a timely manner following the end of the 40 year period or if energy ceased to be generated at an earlier stage. I suggested this should follow the following outline:

- That requires no phase of the authorised development may commence until a decommissioning fund or other form of financial guarantee is in place that secures the cost of performance of all decommissioning obligations.

- The next part to look at an agreement on the value of the decommissioning fund or other form of financial guarantee between the undertaker and the local planning authority or, failing, agreement, determined (on application by either party) by a suitably qualified independent professional as being sufficient to meet the costs of all decommissioning obligations.

- Thirdly the decommissioning fund or other form of financial guarantee shall be maintained in favour of the local planning authority until the date of completion of the works.

- And finally, the value of the decommissioning fund or other form of financial guarantee shall be reviewed by a suitably qualified independent professional no less than every five years and increased or decreased to take account of any variation in costs of compliance with decommissioning obligations and best practice prevailing at the time of each review.

7.3.11. The applicant responded by pointing to Requirement 14 in Schedule 2 to the Draft DCO [REP8-004] which provides that decommissioning works must commence no later than the 40th anniversary of the first export date and that prior to commencement of any decommissioning works, a DEMP and DTMP must be approved by the local planning authority. They further set out that a breach of a requirement of a DCO is a criminal offence pursuant to section 161 of the PA 2008. Therefore, if the undertaker were to fail to decommission the proposed development without obtaining the approval of the DEMP and DTMP in accordance with Requirement 14, this would amount to a criminal offence. This is considered to be a sufficient deterrent by the applicant to ensure compliance.

7.3.12. I note that the applicant does not give any reasons why a decommissioning fund or other form of financial guarantee provisions would cause it significant difficulty. They point out that paragraph 2.10.68 of NPS EN-1 notes that

"Solar panels can be decommissioned relatively easily and cheaply". And that such a requirement would not meet the policy test within NPS EN-1 paragraph 4.1.16 that requirements should only be imposed that are, inter alia, necessary and reasonable.

7.3.13. Following from the above, Requirement 14 would be legally enforceable and note that there is no policy requirement for a decommissioning fund to be imposed as paragraphs 2.10.146 to 2.10.151 of NPS EN-3 set out the considerations for the Secretary of State in relation to project lifetime and decommissioning of solar developments. I note that at paragraph 2.2.3 of the revised Funding Statement [REP1-012] the applicant states that decommissioning costs are not included in the cost figures for the Funding Statement [REP1-012]. This is because there is an obligation on the undertaker, through the voluntary private agreements it has reached with landowners, to provide security during the operational phase from proposed development revenues to ensure there are funds available for decommissioning in accordance with the terms of these agreements and the proposed DCO.

7.3.14. I also note the recent decision on Oaklands Solar Farm DCO application, where the SoS omitted the recommendation to include a decommissioning fund requirement.

7.3.15. I find that an additional Requirement is not necessary noting that solar panels can be decommissioned relatively easily and cheaply, then this should not be a burdensome financial constraint on the overall viability of the project.

7.3.16. Also at ISH3, I also suggested that Requirement 14 be amended to reflect trigger dates for final decommissioning details to be agreed with the local planning authority, and also to insert a clause that should the proposed development stop generating electricity before the end of the 40 year anniversary that this triggers the need to decommission the site.

7.3.17. The applicant responded at D4 [REP4-030] that they deemed that the drafting as proposed was sufficient in relation to details being delegated to the DTMP, and DEMP. In addition, they suggested decommissioning the site so quickly after the end of a period of power generation may be at odds with NPS EN-1 in that the Proposed Development has a compelling need to meet the Nations' need and an alternative operator could use the site in the event of any premature close down of the site.

7.3.18. Upon reflection I consider that the wording as is it stands, is appropriate for Requirement 14 and I propose no further changes to this.

ExA's Recommended Changes

7.3.19. For the reasons set out above, the ExA recommends that the changes set out in Table 4

7.3.20. below are made to the Applicant's final dDCO [REP8-004]. The ExA's recommended DCO (rDCO), which can be found at Appendix C of this report, incorporates all of these amendments.

Table 4: DCO Provisions Recommended to be Changed

Provision	Examination Issue	Recommendations
Sch 2 Requirement 5(3)	Add the words "and **works maintained in accordance with the SMP thereafter**", after the word approved.	For clarity
Sch 2 Requirement 10(3)	Add the words "and **maintained**", after the word 'approved' and before 'for'.	For clarity

7.4. CONCLUSIONS

7.4.1. The ExA has considered all iterations of the dDCO as provided by the Applicant, from the submission version [APP-015] to the final version [REP8-004] and has considered the degree to which the applicant's final version has addressed outstanding matters. The ExA is in agreement with the majority of the changes made, save for the matters included in Table 4 above, which are included in the recommended DCO in Appendix C of this Report.

7.4.2. The ExA is satisfied that the Requirements (as amended) are necessary, reasonable, enforceable and sufficiently precise, as well as being relevant to planning and to the proposed development.

7.4.3. Having regard to all matters raised in this chapter and taking all other matters relevant to the DCO raised in the remainder of this report fully into account, should the SoS be minded to make the DCO, it is recommended to be made in the form set out in Appendix C of this report.

8. SUMMARY OF FINDINGS AND CONCLUSIONS

8.1. INTRODUCTION

8.1.1. This chapter summarises my conclusions arising from the report and sets out my primary recommendation to the SoSESNZ.

8.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS

8.2.1. I consider the proposed development against s104 of the Planning Act 2008 as it is within the scope of the Overarching NPS EN-1, NPS EN-3 and NPS EN-5. I find that these are relevant National Policy Statements and have effect. I find no evidence that s104(4) to (8) of the Planning Act 2008 apply and, as required by s104(3), I conclude that the application must be decided in accordance with the relevant National Policy Statements.

8.2.2. I find that the proposed development is CNP Infrastructure in accordance with the relevant National Policy Statements.

8.2.3. I have regard to matters arising from the Local Impact Reports from KCC and ABC, and to all matters that I consider to be both important and relevant in reaching my conclusions. I have also considered relevant legislation and guidance.

8.2.4. In relation to s104(2) and s104(3) of the Planning Act 2008, I conclude that making the recommended DCO would be in accordance with the relevant National Policy Statements, relevant development plans, and other relevant policy.

8.2.5. I have regard to the applicant's HRA Screening Report and Natural England' s comments. Whilst the SoSESNZ is the Competent Authority under the Conservation of Habitats and Species Regulations 2017 and will make the definitive assessment, I conclude that the proposed development would not be likely to give rise to adverse effects on the integrity of European Sites, with the mitigation measures to be secured through the DCO. I find that there is sufficient information for the SoSESNZ to enable them to undertake an appropriate assessment and to fulfil its duty under the requirements under the Conservation of Habitats and Species Regulations 2017.

8.2.6. My conclusions are subject to the provisions of the recommended DCO in Appendix C. With the mitigation secured by the recommended DCO in Appendix C, I consider that adverse impacts arising from the proposed development, and cumulatively with other developments, would be unlikely to outweigh its benefits.

8.2.7. Regarding the land rights required to implement the proposed development. I find that:

- the application site is selected appropriately, all reasonable alternatives are explored, and the applicant has a clear idea of how it intends to use the land;
- the powers sought are for a legitimate purpose, necessary to facilitate the proposed development, and no more than is reasonably required; and
- adequate funding would be likely to be available for the delivery of the proposed development and for the payment of compensation, which is secured appropriately.

8.2.8. I have regard to the provisions of the Human Rights Act 1998. In relation to Article 6 (entitlement to a fair and public hearing), the examination has ensured a fair and public hearing. The weight of national policy in favour of the proposed development and the wider public interest qualifies any interference with the human rights affected. I conclude that any interference with human rights arising from implementation of the proposed development would be proportionate and strike a fair balance between the rights of the individual and the public interest. I find that there is a compelling case in the public interest for the powers sought and conclude that the powers should be granted.

8.2.9. I have regard to the Public Sector Equality Duty and have conducted the examination process and the formulation of this report to comply with the PSED. I also conclude that the project does not give rise to any PSED issues.

8.2.10. As required by Regulation 3 of The Infrastructure Planning (Decisions) Regulations 2010, I have regard to the desirability of preserving listed buildings or their setting and any features of special architectural or historic interest which they possess, preserving or enhancing the character or appearance of conservation areas, and preserving scheduled monuments or their setting. I am satisfied with how they are addressed.

8.2.11. As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, I have regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992. I am content that those aims are accorded with.

8.2.12. I have due regard to conserving and enhancing biodiversity and fulfil the biodiversity duty in accordance with the Natural Environment and Rural Communities Act 2006.

8.2.13. I have had regard to the provisions of section 85(A1) of the CRoW Act 2000 and related 'Guidance for relevant authorities on seeking to further the purposes of Protected Landscapes' published by the Department for Environment, Food & Rural Affairs on 16 December 2024 I have considered the setting of the Kent Downs National Landscape and the proposed development will have very limited effect, as confirmed by the Kent Downs National Landscape Team.

8.2.14. I find that the benefits of the proposed development outweigh harm to heritage assets, adverse visual and landscape impacts, Public Rights of Way and the loss of a small amount of Best and Most Versatile land.

8.3. RECOMMENDATION

8.3.1. My findings and conclusions are set out in this report, and I consider important and relevant matters and all submissions. I comply with all applicable legal duties and do not take account of any matters that are not relevant to my recommendations. I find no important and relevant matters that would individually or collectively lead to a different recommendation. My conclusions are the same both with and without CNP Infrastructure considerations.

8.3.2. I find that the proposed development meets the tests in s104 of the Planning Act 2008 and I recommend that the SoSESNZ makes the Stonestreet Green Solar Development Consent Order in the form attached at Appendix C.

APPENDICES

APPENDIX A: ABBREVIATIONS I
APPENDIX B: RLEVANT POLICY AND LEGISLATION III
APPENDIX C: THE RECOMMENDED DCO IV

APPENDIX A: Abbreviations

APPENDIX A: LIST OF ABBREVIATIONS

ABC	Ashford Borough Council
ABNP	Aldington and Bonnington Neighbourhood Plan
ALP	Ashford Local Plan
AFRA	Aldington Flood Relief Area
ALC	Agricultural Land Classification
AP	Affected Person
ASI	Accompanied Site Inspection
BESS	Battery and energy storage system
BMS	Battery Management System
BMV	Best and Most Versatile
BOAT	Byway Open to All Traffic
CA	Compulsory Acquisition
CAH	Compulsory Acquisition Hearing
CEMP	Construction Environmental Management Plan
CNP	Critical National Priority
DECC	Department for Energy and Climate Change
EA	Environment Agency
EIA	Environmental Impact Assessment
ES	Environmental Statement
EqA2010	Equality Act 2010
EL	Examination Library
EM	Explanatory Memorandum
EPR	Examination Procedure Rules
ExA	Examining Authority
GCN	Great Crested Newt
Ha	Hectares
HE	Historic England
HPI	Habitats of Principal Importance
HRA	Habitats Regulation Assessment
HS1	High Speed 1
HVAC	Heating, Ventilation and Air Cooling
IAPI	Initial Assessment of Principal Issues
IP	Interested Party
ISH	Issue Specific Hearing
KCC	Kent County Council
KFRS	Kent Fire and Rescue Servicel
KM	Kilometres
LiDAR	Light Detection and Ranging
LIR	Local Impact Report
LOAEL	Lowest Observed Effect Level
LNR	Local Nature Reserve

LVIA	Landscape and Visual Impact Assessment
MAFF	Ministry of Agriculture, Food and Fisheries
MHCLG	Ministry of Housing, Communities and Local Government
MW	Megawatts
NE	Natural England
NFPA	National Fire Protection Association
NFCC	NAtional FIre Chiefs Council
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NR	Network Rail
NSIP	Nationally Significant Infrastructure Project
OBSMP	Outline Battery Safety Management Plan
OCEMP	Outline Construction Environmental Management Plan
OCTMP	Outline Construction Traffic Management Plan
ODEMP	Outline Decommissioning Environmental Management Plan
ODTMP	Outline Decommissioning Traffic Management Plan
OFH	Open Floor Hearing
OLEMP	Outline Landscape and Ecological Management Plan
OOMP	Outline Operational Management Plan
OOSWDS	Outline Operational Surface Water Drainage Strategy
ORWAS	Outline Rights of Way and Access Strategy
PA2008	Planning Act 2008
PD	Procedural Decision
PM	Preliminary Meeting
PMR	Protected Military Remains
PPG	Planning Practice Guidance
PRoW	Public Right of Way
PSED	Public Sector Equality Duty
PV	Photo voltaic
rDCO	Recommended Development Consent Order
RIES	Report on Implications for European Sites
RR	Relevant Representation
SAC	Special Areas of Conservation
SOAEL	Significant Observed Effect Level

SoCG	Statement(s) of Common Ground
SoS	Secretary of State
SosDESNZ	Secretary of State for the Department of Energy Security and Net Zero
SoSLUHC	Secretary of State for Levelling Up, Housing and Communities
SMP	Soil Management Plan
SPA	Special Protection Area
TA	Transport Assessment
TP	Temporary Possession
UKPN	UK Power Networks
USI	Unaccompanied Site Inspection
WFD	Water Framework Directive
WMS	Written Ministerial Statement
WR	Written Representations
ZTV	Zone of Theoretical Visibility

APPENDIX B: LEGISLATION AND POLICY

Appendix B - Summary of Relevant Legislation for the Proposed Development

Relevant Legislation
Human Rights Act 1998 The consideration of the land rights powers requested by the Applicant can engage various relevant articles under the Human Rights Act 1998. Climate Change Act 2008 The Climate Change Act 2008 establishes statutory climate change projections and carbon budgets. **The Climate Change Act 2008 (2050 Target Amendment) Order 2019** This came into force on 27 June 2019 and changed the Government's target for reducing greenhouse gas emissions by 2050 from at least 80% to 100% compared to 1990 levels
Other Key Relevant Legislation ▪ Acquisition of Land Act 1981 ▪ The Air Quality Directive ▪ Air Quality (England) Regulations 2000 ▪ Air Quality Standards Regulations 2010 (as amended) ▪ The Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2019 ▪ Ancient Monuments and Archaeological Areas Act 1979 ▪ Building Act 1984 and the Building Regulations 2010 ▪ Carbon Budget Order 2021 ▪ Climate Change Act 2008 (Credit Limit) Order 2021 ▪ Commons Registration Act 1965 • Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations 2017') ▪ Contaminated Land (England) (Amendment) Regulations 2012 ('Contaminated Land Regulations') ▪ Control of Pollution Act 1974 • Compulsory Purchase Act 1965 ▪ Compulsory Purchase (Vesting Declarations) Act 1981 ▪ Countryside and Rights of Way Act 2000 ▪ Electricity Act 1989 ▪ The Environment Act 1995 ▪ Environment Act 2021 ▪ Environment (Amendment etc.) (EU Exit) Regulations 2019 ▪ Environmental Damage (Prevention and Remediation) (England) Regulations 2015 ▪ Environment (Miscellaneous Amendments) (EU Exit) Regulations 2020 ▪ Environmental Impact Assessment Directive 1995 ▪ Environmental Permitting (England and Wales) Regulations 2016 ▪ Environmental Protection Act 1990 ▪ Environmental Noise (England) Regulations 2006 (as amended) ▪ Environmental Permitting (England and Wales) Regulations 2016

- Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019
- Equality Act 2010
- European Commission Circular Economy Package Environmental Protection Act 1990
- European Landscape Convention (ELC) (Council of Europe, 2016) Hedgerow Regulations 1997
- Flood Risk Regulations 2009
- Flood and Water Management Act 2010
- Groundwater (Water Framework Directive) (England) Direction 2016
- Hazardous Waste (England and Wales) Regulations 2005
- Health and Safety at Work etc. Act 1974
- Health and Social Care Act 2012
- The Hedgerows Regulations 1997
- Highways Act 1980
- Human Rights Act 1998
- The Infrastructure Planning (Decisions) Regulations 2010
- The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
  Land Drainage Act 1991
- Levelling Up and Regeneration Act 2023
- Localism Act 2011
- Marine and Costal Access Act 2009 National Parks and Access to the Countryside Act 1949
- National Parks and Access to the Countryside Act 2000 • Natural Environment and Rural Communities Act 2006
- Neighbourhood Planning Act 2017
- Noise Insulation Regulations 1975
- The Planning Act 2008
- Planning (Hazardous Substances) Act 1990
- Planning (Listed Buildings and Conservation Areas) Act 1990
- Pollution Prevention and Control Act 1999
- Protection of Badgers Act 1992
- Town and Country Planning Act 1990
- Waste (England and Wales) Regulations 2011
- Waste Electrical and Electronic Equipment Regulations 2013
- Water Abstraction and Impounding (Exemptions) Regulations 2017
- Water Act 2003 • Water Act 2014
- Water Framework Directive (2000/60/EC)
- Water Framework Directive (Standards and Classification) Directions (England and Wales) 2015
- Water Environment (Water Framework Directive) (England and Wales) Regulations 2017
- Water Industry Act 1991
- Water Resources (Abstraction and Impounding) Regulations 2006
- Water Resources Act 1991 • Water Supply (Water Quality) Regulations 2018
- Wild Mammals (Protection) Act 1996
- Wildlife and Countryside Act 1981

NATIONAL POLICY AND GUIDANCE

Key relevant national policy and guidance

Overarching National Policy Statement for Energy (NPS EN-1) (dated November 2023, designated on 17 January 2024)

This sets out the need for new nationally significant electricity infrastructure and the Critical National Priority for low carbon infrastructure, including solar photovoltaic electricity generating stations. It sets out general principles and generic impacts to be considered in considering applications for energy Nationally Significant Infrastructure Projects (NSIPs). All other energy National Policy Statements sit under the policy framework that it provides.

National Policy Statement for Renewable Energy (NPS EN-3) (dated November 2023, designated on 17 January 2024)

It details assessment criteria specific to different types of renewable energy infrastructure, including energy from solar photovoltaic electricity generating stations. The assessment criteria for energy from solar photovoltaic generation proposals include impacts relating to site selection and design, climate change, biodiversity, landscape and visual, cultural heritage, traffic, and noise and vibration**.**

National Policy Statement for Electricity Networks Infrastructure (NPS EN-5) (dated November 2023, designated on 17 January 2024)

Amongst other things, this NPS provides policy for underground electricity distribution systems that constitute Associated Development to a solar photovoltaic NSIP.

- Air Quality Strategy (2023)
- British Energy Security Strategy (2022)
- Clean Air Strategy (2019)
- Clean Growth Strategy (2018)
- Clean Power 2030 Action Plan (13 December 2024)
- Clean Power 2030: Advice on Achieving Clean Power for Great Britain by 2030 (2024)
- Energy White Paper: Powering our Net Zero Future (2020)
- Environmental Improvement Plan (2023)
- The Glasgow Pact (2021)
- A Green Future: Our 25 Year Plan to Improve the Environment (2018) and Environmental Improvement Plan (2023)
- Industrial Decarbonisation Strategy (2021)
- The Kyoto Protocol (1997)
- National Infrastructure Strategy (2020)
- National Planning Policy Framework (2023)
- Net Zero Strategy: Build Back Greener (2022)
- Net Zero: The UK's Contribution to Stopping Global Warming Emissions (2019)
- Noise Policy Statement for England (2010)
- The Paris Agreement (2015)

- Powering Up Britain - Energy Security Plan (2023)

LOCAL POLICY

Local Authority	Key relevant local policy
Ashford Borough Council	Ashford Local Plan 2030
	Aldington and Bonnington Parish Council Neighbourhood Plan
Kent County Council	Minerals and Waste Local Plan

APPENDIX C: THE RECOMMENDED DCO

STATUTORY INSTRUMENTS

2024 No. 0000

INFRASTRUCTURE PLANNING

The Stonestreet Green Solar Order 202*

Made - - - - ** **** *2025*

Coming into force ***

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

The application was examined by 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 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(**c**).

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)(**d**) 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(**e**) and has had regard to the documents and matters referred to in section 104(2)(**f**) of the 2008 Act (with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application).

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

PART 1

Preliminary

Citation and commencement

1. This Order may be cited as the Stonestreet Green Solar Order 202* and comes into force on XXX.

Interpretation

2.—(1) In this Order, unless the context requires otherwise—

"the 1961 Act" means the Land Compensation Act 1961(**l**);

(**b**) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of and Schedule 13 to the Localism Act 2011 c. 20.
(**c**) 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, S.I. 2018/378 and S.I. 2024/332.
(**d**) S.I. 2010/103, amended by S.I. 2012/635 and S.I. 2024/317.
(**e**) As amended by paragraph 29(1) and (3) of Part 1 of Schedule 13 to the Localism Act 2011 (c. 20).
(**f**) S.I. 2017/572.
(**g**) Section 104(2) was amended by paragraph 49 of Schedule 13 to the Localism Act 2011 and section 58(5) of the Marine and Coastal Access Act 2009 (c.23).
(**h**) As amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act 2011.
(**i**) As amended by section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).
(**j**) As amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011.
(**k**) As amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
(**l**) Ibid.
(**m**) 1961 c. 33.

"the 1965 Act" means the Compulsory Purchase Act 1965(**a**);

"the 1980 Act" means the Highways Act 1980(**b**);

"the 1981 Act" means the Compulsory Purchase (Vesting Declarations) Act 1981(**c**);

"the 1984 Act" means the Road Traffic Regulation Act 1984(**d**);

"the 1989 Act" means the Electricity Act 1989(**e**);

"the 1990 Act" means the Town and Country Planning Act 1990(**f**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**g**);

"the 2008 Act" means the Planning Act 2008(**h**);

"the 2015 Regulations" means the Town and Country Planning (General Permitted Development) (England) Order 2015(**i**);

"address" includes any number or address used for the purposes of electronic transmission;

"AMS" means the archaeological management strategy identified in the table in Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 43 (certification of plans, etc.);

"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) and any other development authorised by this Order which is development within the meaning of section 32 (meaning of "development") of the 2008 Act;

"BESS" means a battery energy storage system used for the storage of electrical energy, consisting of containerised units distributed across the Order limits and, where installed, located as part of an inverter station;

"biodiversity design strategy" means a strategy that provides details of how the landscape and biodiversity enhancement works provided as part of the authorised development will comply with the biodiversity net gain requirement;

"biodiversity net gain requirement" means a requirement to secure a biodiversity net gain during the operation of the authorised development of at least 100% for habitat units, at least 10% for hedgerow units and at least 10% for river units, calculated using the statutory biodiversity metric published by the Department for Environment, Food & Rural Affairs on 12 February 2024;

"book of reference" means the document of that name identified in the table in Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 43 (certification of plans, etc.);

"bridleway" has the same meaning as in section 329 (further provision as to interpretation) of the 1980 Act;

"BSMP" means a battery safety management plan;

"building" includes any structure or erection or any part of a building, structure or erection;

"business day" means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or an English public holiday or bank holiday under section 1 of the Banking and Financial Dealings Act 1971(**j**);

"cable works" means works to place, retain and maintain underground electrical cables;

(**b**) 1965 c. 56, amended by Levelling-up and Regeneration Act 2023 c. 55.
(**c**) 1980 c. 66.
(**d**) 1981 c. 66.
(**e**) 1984 c. 27.
(**f**) 1989 c. 29.
(**g**) 1990 c. 8.
(**h**) 1991 c. 22.
(**i**) 2008 c. 29.
(**j**) S.I. 2015/596 (as amended).
(**a**) 1971 c. 80.

"carriageway" has the meaning given in section 329 (further provision as to interpretation) of the 1980 Act;

"CCTV" means a closed circuit television security system;

"CEMP" means a construction environmental management plan;

"commence" means to carry out any material operation, as defined in section 155 (when development begins) of the 2008 Act, forming part of the authorised development other than site enabling works (except where stated to the contrary), and "commencement" and "commenced" must be construed accordingly;

"crown land plans" means the document of that name identified in the table in Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 43 (certification of plans, etc.);

"CTMP" means a construction traffic management plan;

"cycle track" has the same meaning as in section 329 (further provision as to interpretation) of the 1980 Act;

"cycleway" means a way constituting or comprised in a highway, being a way over which the public have the following, but no other, rights of way, that is to say, a right of way on pedal cycles (other than pedal cycles which are motor vehicles within the meaning of the Road Traffic Act 1988(**a**) with a right of way on foot and a right of way on horseback or leading a horse;

"DC" means direct current;

"DC-DC converters" means electrical infrastructure to allow communication and transmission of electricity between the inverters and the BESS;

"DEMP" means a decommissioning environmental management plan;

"design principles" means the document of that name identified in the table at Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 43 (certification of plans, etc.);

"DTMP" means a decommissioning traffic management plan;

"electrical cables" means—

(a) cables of differing types and voltages installed for the purposes of conducting electricity, auxiliary cables, cables connecting to DC boxes, earthing cables and optical fibre cables; and

(b) works associated with cable laying including jointing pits, hardstanding adjoining the jointing pits, combiner 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;

"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 in Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 43 (certification of plans, etc.);

"EPL 001 Limited" means EPL 001 Limited, company number 12444050, whose registered office is at 2nd Floor, Regis House, 45 King William Street, London EC4R 9AN;

"first export date" means the date on which the authorised development first exports electricity to the national grid on a commercial basis, but excluding the generation of electricity during commissioning and testing;

"footway" and "footpath" have the same meanings as in section 329 (further provision as to interpretation) of the 1980 Act;

(**a**) 1988 c. 52.

"inverter" means electrical equipment required to convert DC power to alternating current power;

"intermediate substations" means substations (other than the project substation) that aggregate the output of a number of inverter stations prior to transmission to the project substation;

"inverter station" means electrical infrastructure located within a bunded enclosure and comprising inverters, transformers and switchgear (either as separate units or containerised) and "inverter stations" shall be interpreted accordingly;

"land plans" means the document of that name identified in the table in Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 43 (certification of plans, etc.);

"LEMP" means a landscape and ecological management plan;

"local planning authority" means the local planning authority for the borough of Ashford;

"maintain" includes inspect, upkeep, repair, refurbish, adjust, alter, remove, reconstruct and replace in relation to the authorised development, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement; and any derivative of "maintain" must be construed accordingly;

"mounting structure" means a frame or rack used to host the solar PV panels, and "mounting structures" shall be interpreted accordingly;

"National Grid" means National Grid Electricity Transmission plc, company number 2366977, whose registered office is at 1-3 Strand, London, WC2N 5EH, being a licence holder within the meaning of Part 1 of the 1989 Act;

"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;

"OMP" means an operational management plan;

"ONMMS" means an operational noise mitigation and monitoring scheme;

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

"OSWDS" means an operational surface water drainage strategy;

"outline BSMP" means the outline battery safety management plan identified in the table in Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the for the purposes of this Order in accordance with article 43 (certification of plans, etc.);

"outline CEMP" means the outline construction environmental management plan identified in the table in Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the outline CEMP for the purposes of this Order in accordance with article 43 (certification of plans, etc.);

"outline CTMP" means the outline construction traffic management plan identified in the table in Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the outline CTMP for the purposes of this Order in accordance with article 43 (certification of plans, etc.);

"outline DEMP" means the document certified by the Secretary of State as the outline decommissioning environmental management plan for the purposes of this Order in accordance with article 43 (certification of plans, etc.);

"outline DTMP" means the outline decommissioning traffic management plan identified in the table in Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the outline DTMP for the purposes of this Order in accordance with article 43 (certification of plans, etc.);

"outline LEMP" means the outline landscape and ecological management plan identified in the table in Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the outline LEMP for the purposes of this Order in accordance with article 43 (certification of plans, etc.);

"outline OMP" means the outline operational management plan identified in the table in Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the outline OMP for the purposes of this Order in accordance with article 43 (certification of plans, etc.);

"outline OSWDS" means the outline operational surface water drainage strategy identified in the table in Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the outline OSWDS for the purposes of this Order in accordance with article 43 (certification of plans, etc.);

"outline RoWAS" means the outline rights of way and access strategy identified in the table in Schedule 14 (documents and plans to be certified) and which is certified by the Secretary of State as the outline RoWAS for the purposes of this Order in accordance with article 43 (certification of plans, etc.);

"permissive paths" means existing access tracks providing restricted public access within the Order limits;

"phase" means a defined section or part of the authorised development, the extent of which is shown in a scheme submitted to and approved by the local planning authority under requirement 3 (phases of authorised development) in Part 1 of Schedule 2 (requirements);

"project substation" means the main compound containing electrical equipment required to switch, transform, convert electricity and provide reactive power compensation with welfare facilities, means of access and other associated facilities;

"requirement" means a requirement set out in Part 1 of Schedule 2 (requirements), and a reference to a numbered requirement is a reference to the requirement set out in the paragraph of that Part of that Schedule with the same number;

"RoWAS" means a rights of way and access strategy;

"Sellindge Substation" means the existing substation at Sellindge, Church Lane, Aldington, Ashford TN25 6AF, owned by National Grid and operated by UK Power Networks;

"site enabling works" means operations consisting of—

(a) pre-construction surveys and/or monitoring;

(b) site clearance and/or vegetation works;

(c) advanced planting works;

(d) archaeological investigations;

(e) environmental surveys;

(f) investigations for the purpose of assessing ground conditions;

(g) remedial work in respect of contamination or other adverse ground conditions;

(h) diversion and laying of services;

(i) erection of any temporary means of enclosure; and

(j) the temporary display of site notices and/or advertisements;

"solar PV panel" means a solar photovoltaic panel designed to convert solar irradiance to DC electrical energy fitted to a mounting structure, and "solar PV panels" shall be interpreted accordingly;

"statutory undertaker" means any person falling within section 127(8) (statutory undertakers' land) or section 138(4A) (extinguishment of rights, and removal of apparatus, of statutory

undertakers etc.) of the 2008 Act and includes a public communications provider as defined in section 151(1) (interpretation of chapter 1) of the Communications Act 2003(**a**) and an operator of an electronic communications code network as defined in paragraph 1(1) of Schedule 17 (minor and consequential amendments) to that Act;

"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**);

"street works" means the works listed in article 11(1) (street works and temporary closure of streets and private means of access);

"streets, rights of way and access plans" means the document of that name identified in the table in Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 43 (certification of plans, etc.);

"subsoil" means any stratum of land that is below the surface of the ground;

"switchgear" means a set of electrical disconnect switches, fuses or circuit breakers used to control, protect and isolate electrical equipment;

"traffic authority" has the same meaning as in section 121A (traffic authorities) of the 1984 Act(**c**);

"traffic regulations measures plans" means the document of that name identified in the table in Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 43 (certification of plans, etc.);

"transformer" means electrical infrastructure used to transform electricity to a different voltage;

"UK Power Networks" means UK Power Networks Holdings Limited, company number 07290590, whose registered office is at Newington House, 237 Southwark Bridge Road, London, SE1 6NP and all wholly-owned subsidiary companies of UK Power Networks Holdings Limited;

"undertaker" means EPL 001 Limited or any person who for the time being has the benefit of this Order in accordance with articles 6 (benefit of the Order) and 7 (consent to transfer benefit of the Order);

"vegetation removal plan" means the document of that name identified in the table in Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 43 (certification of plans, etc.);

"watercourse" includes all rivers, streams, creeks, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

"work" means a work set out in Schedule 1 (authorised development); and

"works plans" means the document of that name identified in the table in Schedule 14 (documents and plans to be certified) and which is certified as such by the Secretary of State for the purposes of this Order in accordance with article 43 (certification of plans, etc.).

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the airspace above its surface and references in this Order to the imposition of restrictions are references to restrictive covenants over land which interfere with the interests or rights of another and are for the benefit of land which is acquired, or rights over which are acquired, under this Order.

(3) All distances, directions, capacities and lengths referred to in this Order are approximate distances between lines or points on a numbered work comprised in the authorised development and

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(**b**) 2003 c. 21.

(**c**) "street authority" is defined in section 49, which was amended by paragraph 117 of Schedule 1 to the Infrastructure Act 2015 (c. 7).

(**a**) Section 121A was inserted by paragraph 70 of Schedule 8 to the 1991 Act, and subsequently amended by section 271 of the Greater London Authority Act 1999 (c. 29); section 1(6) of, and paragraphs 70 and 95 of Schedule 1 to the Infrastructure Act 2015; and S.I. 1999/1920 and S.I. 2001/1400.

shown on the works plans and streets, rights of way and access plans are to be taken to be measured along that work.

(4) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by this Order.

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

(6) In this Order "include" or "includes" must be construed without limitation unless the contrary intention appears.

(7) References in this Order to any statutory body include that body's successor in respect of functions which are relevant to this Order.

(8) In this Order, references to materially new or materially different environmental effects in comparison with those reported in the environmental statement must not be construed so as to include the avoidance, removal or reduction of an adverse environmental effect or positive environmental effect, or the increase of an assessed positive environmental effect, that was reported in the environmental statement as a result of the authorised development.

PART 2

Principal powers

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order including the requirements 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.

Maintenance of authorised development

4. 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.

Authorisation of use

5.—(1) The undertaker is authorised to operate and use the authorised development for which development consent is granted by this Order.

(2) Paragraph (1) does not relieve the undertaker of any duty to obtain any permit, licence or other obligation under any other legislation that may be required from time to time to authorise the operation of any part of the authorised development.

Benefit of the Order

6.—(1) Subject to article 7 (consent to transfer benefit of the Order) the provisions of this Order have effect solely for the benefit of EPL 001 Limited, save for—

(a) Work No. 3 in relation to which the provisions of this Order have effect for the benefit of EPL 001 Limited and UK Power Networks; and

(b) Work No. 4 in relation to which the provisions of this Order have effect for the benefit of EPL 001 Limited, National Grid and UK Power Networks.

(2) Paragraph (1) does not apply to the works for which consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

Consent to transfer benefit of the Order

7.—(1) Subject to paragraph (3), 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 between the undertaker and the lessee.

(2) Where a transfer or grant has been made in accordance with paragraph (1) references in this Order to the undertaker except in paragraph (8) are to include references to the transferee or the lessee.

(3) The prior written 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 National Grid or UK Power Networks;

(b) the transferee or lessee is the holder of a licence under section 6 (licences authorising supply etc.) of the 1989 Act; 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.

(4) Where the consent of the Secretary of State is not required, the undertaker must notify the Secretary of State, the local planning authority and Kent County Council 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 of 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 14 business 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 transferred 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 under paragraph (1) 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.

Disapplication, application and modification of legislative provisions

8.—(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, maintenance or decommissioning of any part of the authorised development—

(a) 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 in this Order; and

(b) the provisions of the Neighbourhood Planning Act 2017(**a**) insofar as they relate to the temporary possession of land under articles 31 (temporary use of land for carrying out the authorised development) and 33 (temporary use of land for maintaining the authorised development) of this Order.

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

"(k) or for the carrying out or the maintenance of development which has been authorised by the Stonestreet Green Solar Order 202*."

(3) For the purposes of section 9 (requirement of licence for felling) of the Forestry Act 1967(**c**) any felling comprised in the carrying out of any work or operation required for the purposes of, or in connection with, the construction of the authorised development is deemed to be immediately required for the purpose of carrying out development authorised by planning permission granted under the 1990 Act.

(4) Section 141 (restriction on planting trees etc. in or near carriageway) of the 1980 Act does not apply to any tree or shrub planted with the agreement of the highway authority in the course of the authorised development before completion of construction.

(5) Notwithstanding the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 of the Community Infrastructure Levy Regulations 2010(**d**) any building comprised in the authorised development is deemed to be—

(a) a building into which people do not normally go; or

(b) a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery.

(6) Section 42 (certain future local Acts, etc., to be subject to the planning enactments, etc., except as otherwise provided) of the Local Government (Miscellaneous Provisions) Act 1976(**e**) will not apply to the extent that it would make provisions of this Order authorising the construction, operation and maintenance and decommissioning of the authorised development subject to other provisions.

(7) Any enactment applying to land within, adjoining or sharing a common boundary with the Order limits has effect subject to the provisions of this Order.

Planning permission

9.—(1) The authorised development may be carried out or continue to be carried out pursuant to this Order notwithstanding the initiation of development pursuant to any planning permission which may be physically incompatible with the authorised development or inconsistent with any provision of this Order.

(**b**) 2017 c. 20.
(**c**) S.I. 1997/1160.
(**d**) 1967 c. 10. 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.
(**e**) S.I. 2010/948, amended by S.I. 2011/987. There are other amending instruments but none are relevant to this Order.
(**a**) 1976 c. 57. Section 42 was amended by section 15(6) of the Food and Environment Protection Act 1985 (c. 48).

(2) Any conditions of any planning permission granted prior to the date of this Order that are incompatible with the requirements of this Order or the authorised development shall cease to have effect from the date the authorised development is commenced and for the purpose of this article planning permissions deemed to be granted pursuant to the 2015 Regulations shall be deemed to be granted prior to the date of this Order.

(3) Where the undertaker identifies an incompatibility between a condition of a planning permission and this Order that engages paragraph (2), it must notify the local planning authority as soon as reasonably practicable.

(4) Nothing in this Order restricts the undertaker from seeking or implementing, or the local planning authority from granting, planning permission for development within the Order limits.

(5) In this article—

(a) "initiate" means when development of land shall be taken to be begun as per section 56 (time when development begun) of the 1990 Act, and "initiated" and "initiation" are defined accordingly; and

(b) "planning permission" means planning permission granted under the 1990 Act including planning permission deemed to be granted under article 3 (permitted development) of Schedule 2 to the 2015 Regulations.

Defence to proceedings in respect of statutory nuisance

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

(a) relates to premises used by the undertaker for the purposes of or in connection with the construction, maintenance, operation or decommissioning of the authorised development and that the nuisance is attributable to the carrying out or use of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974(**b**); or

(b) is a consequence of the construction, operation, maintenance or decommissioning of the authorised development and cannot reasonably be avoided.

(2) Section 61(9) (prior consent for work on construction sites) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction, operation, maintenance or decommissioning of the authorised development.

(3) In this article "premises" has the same meaning as in section 79 (Statutory nuisances and inspections therefor.) of the Environmental Protection Act 1990.

PART 3

Streets

Street works and temporary closure of streets and private means of access

11.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in the table in Schedule 4 (streets subject to street works) and may—

(a) break up or open the street, or any sewer, drain or tunnel under it;

(**b**) 1990 c. 43.

(**a**) 1974 c. 40. Section 61(9) was amended by section 162 and paragraph 15 of Schedule 3 to the Environment Protection Act 1990 (c. 25). There are other amendments to 1974 Act which are not relevant to this Order.

(b) drill, tunnel or bore under the street;

(c) place and keep apparatus in the street;

(d) maintain apparatus in the street, change its position or remove it;

(e) repair, replace or otherwise alter the surface or structure of the street or any culvert under 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) 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).

(4) The undertaker, during and for the purposes of carrying out or operating the authorised development, may temporarily close, alter or divert any street or private means of access and may for any reasonable time—

(a) divert the traffic from the street and prevent access via the private means of access; and

(b) subject to paragraph (6), prevent all persons from passing along the street.

(5) Without limiting the scope of paragraph (4), the undertaker may use as a temporary working site any street or private means of access which has been temporarily closed, altered or diverted under the powers conferred by this article.

(6) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary closure, alteration or diversion of a street under this article if there would otherwise be no such access.

Power to alter layout, etc., of streets

12.— (1)(1) The undertaker may for the purposes of the authorised development enter onto and permanently alter the layout of or carry out any works in the streets specified in column 2 of the table in Schedule 5 (alteration of streets) 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, maintaining or decommissioning the authorised development, enter onto and alter the layout of or carry out any works on any street whether or not within the Order limits and, without limitation on the scope of this paragraph, the undertaker may—

(a) alter the level or increase the width of any kerb, street, footpath, footway, cycleway, cycle track, verge or central reservation;

(b) make and maintain passing places;

(c) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycleway, cycle track verge or central reservation within the street;

(d) reduce the width of the carriageway of the street;

(e) execute any works to widen or alter the alignment of pavements;

(f) execute any works of surfacing or resurfacing of the street; and

(g) execute any works necessary to alter existing facilities for the management and protection of pedestrians.

(3) The undertaker must restore any street that has been temporarily altered pursuant to paragraph (2) to the reasonable satisfaction of the street authority.

(4) The powers conferred by paragraph (2) may not be exercised without the consent of 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.

Construction and maintenance of altered streets

13.—(1) Any alterations to the streets specified in Schedule 5 (alteration of streets) to this Order must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed by the street authority, 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.

(2) Those restoration works carried out pursuant to article 12(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.

(3) 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.

(4) For the purposes of a defence under paragraph (3), 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.

(5) Paragraphs (1) to (4) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

Use of private roads

14.—(1) The undertaker may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction, operation, maintenance or decommissioning of the authorised development.

(2) The undertaker must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of such compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Access to works

15.—(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 the table in Schedule 6 (access to works); and

(b) with the approval of the local 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 local planning authority receives an application for approval under paragraph 15(1)(b) and fails to notify the undertaker of its decision within 56 days of receiving the application, that authority will be deemed to have granted approval.

Agreements with street authorities

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

(a) the construction, strengthening, improvement, repair or reconstruction of any street including any structure carrying the street over or under the authorised development under the powers conferred by this Order;

(b) the maintenance of the structure of any bridge or tunnel carrying a street over or under the authorised development;

(c) any stopping up, prohibition, restriction, alteration or diversion of a street authorised by this Order;

(d) the undertaking in the street of any of the works referred to in article 11 (street works and temporary closure of streets and private means of access), article 12 (power to alter layout, etc of streets) and article 13 (construction and maintenance of altered streets);

(e) 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; and

(f) such works as the parties may agree.

(2) If such 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.

Traffic regulation measures

17.—(1) Subject to the provisions of this article the undertaker may at any time for the purposes of, or in connection with, the construction or decommissioning of the authorised development, temporarily place traffic signs and signals in the extents of the roads specified in column 2 of the table in Schedule 7 (traffic regulation measures) and the placing of those traffic signs and signals is deemed to have been permitted by the traffic authority for the purposes of section 65 (powers and duties of authorities as to placing of traffic signs) of the 1984 Act and the Traffic Signs Regulations and General Directions 2016(**a**).

(2) Subject to the provisions of this article and without limitation to the exercise of the powers conferred by paragraph (1), the undertaker may make temporary provision for the purposes of the construction or decommissioning of the authorised development—

(**a**) S.I. 2016/362.

(a) as to the speed at which vehicles may proceed along any road;

(b) permitting, prohibiting or restricting the stopping, waiting, loading or unloading of vehicles on any road;

(c) as to the prescribed routes for vehicular traffic or the direction or priority of vehicular traffic on any road;

(d) permitting, prohibiting or restricting the use by vehicular traffic or non-vehicular traffic of any road; and

(e) suspending or amending in whole or in part any order made, or having effect as if made, under the 1984 Act.

(3) No speed limit imposed by or under this Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011(**a**) when in accordance with regulation 3(5) of those regulations.

(4) Before exercising the power conferred by paragraph (2) the undertaker must—

(a) consult with the chief officer of police in whose area the road is situated; and

(b) obtain the written consent of the traffic authority such consent not to be unreasonably withheld.

(5) The undertaker must not exercise the powers in paragraphs (1) or (2) unless it has—

(a) given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the traffic authority in whose area the road is situated; and

(b) not less than 7 days before the provision is to take effect published the undertaker's intention to make the provision in one or more newspaper circulating in the area in which any road to which the provision relates is situated.

(6) Any provision made under the powers conferred by paragraphs (1) or (2) of this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (1) or (2).

(7) Any provision made by the undertaker under paragraphs (1) or (2)—

(a) must be made by written instrument in such form as the undertaker considers appropriate;

(b) has effect as if duly made by the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act and the instrument by which it is effected may specify specific savings and exemptions to which the provision is subject; and

(c) is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004(**b**) (road traffic contraventions subject to civil enforcement).

PART 4

Public rights of way

Public rights of way – stopping up and vehicular use on public rights of way

18.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development—

(a) permanently stop up each of the public rights of way specified in columns 1 and 2 of Part 1 (public rights of way to be permanently stopped up for which a substitute is to be provided) of Schedule 8 (public rights of way) to the extent specified in column 3 of that Part of that Schedule;

(b) provide the substitute public rights of way described in column 4 of Part 1 (public rights of way to be permanently stopped up for which a substitute is to be provided) of Schedule 8

(**b**) S.I. 2011/935.
(**a**) 2004 c. 18.

(public rights of way) between the specified terminus points and to the standard specified in the RoWAS for the relevant phase of the authorised development;

(c) temporarily stop up during the construction, operation and decommissioning of the authorised development each of the public rights of way specified in columns 1 and 2 of Part 2 (public rights of way to be temporarily stopped up for which a substitute is to be provided) of Schedule 8 (public rights of way) to the extent specified in column 3 of that Part of that Schedule;

(d) provide the substitute public rights of way described in column 4 of Part 2 (public rights of way to be temporarily stopped up for which a substitute is to be provided) of Schedule 8 (public rights of way) between the specified terminus points and to the standard specified in the RoWAS for the relevant phase of the authorised development for the period during which the relevant public right of way has been temporarily stopped up pursuant to paragraph 18(1)(c);

(e) temporarily stop up during the construction, operation and decommissioning of the authorised development public rights of way to the extent agreed with the relevant highway authority and provide substitute temporary public rights of way (for the period during which the relevant public right of way has been temporarily stopped up) between terminus points and on an alignment to be agreed with the relevant highway authority (in both respects agreement not to be unreasonably withheld or delayed);

(f) stop up each of the public rights of way specified in columns 1 and 2 of Part 3 (public rights of way to be permanently stopped up for which no substitute is to be provided) of Schedule 8 (public rights of way) to the extent specified in column 3 of that Part of that Schedule; and

(g) for any reasonable time, authorise the use of motor vehicles on classes of public rights of way where there is otherwise no public right to use motor vehicles.

(2) No public right of way may be stopped up pursuant to paragraph (1)(a) or 18(1)(c) unless the respective substitute public right of way has first been provided pursuant to paragraph (1)(b) or 18(1)(d) to the reasonable satisfaction of the relevant highway authority.

(3) No public right of way may be stopped up pursuant to paragraph 18(1)(e) unless the substitute temporary public right of way agreed with the relevant highway authority has been provided to the reasonable satisfaction of the relevant highway authority.

(4) In respect of any permanent or temporary diversion route provided under paragraph (2) or any temporary diversion route agreed by the relevant highway authority under paragraph (3), the undertaker must provide appropriate clear signage of the permanently diverted or temporarily diverted route.

(5) Where a public right of way has been stopped up under this article—

(a) all rights of way over or along the public right of way are extinguished; and

(b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the public right of way as is bounded on both sides by land owned by the undertaker.

(6) Any person who suffers loss by the suspension or extinguishment of any private rights of way under this article will be entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Status of public rights of way created or improved

19. With effect from the date on which the highway authority has confirmed that the public rights of way specified in column 1 of Schedule 9 (status of public rights of way created or improved) have been created or improved to the standard specified in the RoWAS for the relevant phase of the authorised development, the public rights of way in question will be deemed to have the status specified in column 2 of that Schedule.

PART 5

Supplemental powers

Discharge of water

20.—(1) Subject to paragraphs (3) and (4) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction, operation, maintenance or decommissioning 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 or the person or body otherwise having authority to give such consent; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not carry out any works to or make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river other than in accordance with a permit granted by the Environment Agency.

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

(7) This article does not authorise a groundwater activity or a water discharge activity within the meaning of the Environmental Permitting (England and Wales) Regulations 2016(**b**).

(8) In this article—

(a) "public sewer or drain" means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and

(b) other expressions, excluding watercourse, used both in this article and in the Environmental Permitting (England and Wales) Regulations 2016 have the same meaning as in those Regulations.

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

Authority to survey and investigate the land

21.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

(a) survey or investigate the land;

(**b**) 1991 c. 56. Section 106 was amended by section 35(8)(a) of the Competition and Service (Utilities) Act 1992 (c. 43) and sections 36(2) and 99 of the Water Act 2003 (c. 37). There are other amendments to the section which are not relevant to this Order.

(**a**) S.I. 2016/1154. "Groundwater activity" is defined in paragraph 3 of Schedule 22. "Water discharge activity" is defined in paragraph 3 of Schedule 21.

(b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;

(c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and

(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

(a) must, if so required entering the land, produce written evidence of their authority to do so; and

(b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes may be made under this article—

(a) in land located within the highway boundary without the consent of the highway authority; or

(b) in a private street without the consent of the street authority but such consent must not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) If either a highway authority or a street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

(a) under paragraph (4)(a) in the case of a highway authority; or

(b) under paragraph (4)(b) in the case of a street authority,

that authority is deemed to have granted consent.

PART 6

Powers of acquisition and possession of land

Compulsory acquisition of land

22.—(1) The undertaker may—

(a) acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it or as is incidental to it; and

(b) use any land so acquired for the purposes authorised by this Order or for any other purposes in connection with or ancillary to the authorised development.

(2) This article is subject to article 25 (time limit for exercise of authority to acquire land compulsorily), article 26 (compulsory acquisition of rights and imposition of restrictive covenants), article 29 (acquisition of subsoil and airspace only), article 31 (temporary use of land for carrying out the authorised development), article 42 (crown rights) and Schedule 13 (protective provisions).

Compulsory acquisition of land – incorporation of the mineral code

23.—(1) Parts 2 and 3 of Schedule 2 (Minerals) to the Acquisition of Land Act 1981(**a**) are incorporated in this Order subject to the modifications that—

(a) paragraph 8(3) is not incorporated;

(b) for "the acquiring authority" substitute "the undertaker"; and

(c) for "undertaking" substitute "authorised development".

Statutory authority to override easements and other rights

24.—(1) The carrying out or use of development authorised by this Order and the doing of anything else authorised by this Order is authorised, including for the purpose specified in section 158(2) (nuisance: statutory authority) of the 2008 Act, 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 contract.

(2) The undertaker will pay compensation to any person whose land is injuriously affected by—

(a) an interference with an interest or right to which this article applies; or

(b) a breach of a restriction as to user of land arising by virtue of contract,

authorised by virtue of this Order and the operation of section 158 (nuisance: statutory authority) of the 2008 Act.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and includes restrictions as to the user of land arising by the virtue of a contract.

(4) Subsection (2) of section 10 (further provision as to compensation for injurious affection) of the 1965 Act applies to paragraph (2) by virtue of section 152(5) (compensation in case where no right to claim in nuisance) of the 2008 Act.

(5) Any rule or principle applied to the construction of section 10 (further provision as to compensation for injurious affection) of the 1965 Act applies to the construction of paragraph (2) (with any necessary modifications).

Time limit for exercise of authority to acquire land compulsorily

25.—(1) After the end of the period of five years beginning on the day on which this Order is made—

(a) no notice to treat may be served under Part 1 (Compulsory Purchase under Acquisition of Land Act of 1946) of the 1965 Act; and

(b) no declaration may be executed under section 4 (execution of declaration)(**b**) of the 1981 Act as applied by article 28 (application of the 1981 Act),

in relation to any part of the Order land.

Compulsory acquisition of rights and imposition of restrictive covenants

26.—(1) Subject to paragraph 26(2), the undertaker may acquire compulsorily such rights over the Order land or impose restrictive covenants over the Order land as may be required for any

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(**b**) 1981 c. 67.

(**a**) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Sections 10 and 11 and Schedule 1 were amended by S.I. 2009/137. Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c. 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are other amendments to the 1981 Act which are not relevant to this Order.

purpose for which that land may be acquired under article 22 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column 1 of Schedule 10 (land in respect of which only 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 such restrictive covenants as may be required 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) of the 1965 Act, where the undertaker creates or acquires an existing right over land or the benefit of a restrictive covenant under paragraph (1), the undertaker will not be required to acquire a greater interest in that land.

(4) Schedule 11 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of 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 a restrictive covenant.

(5) In any case where the acquisition of rights or imposition of a restrictive covenant under paragraph (1) is required for the purposes of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights or impose restrictive covenants 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 42 (crown rights).

Private rights

27.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order will be extinguished—

(a) as 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 earlier.

(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 this Order 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,

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 will be suspended and unenforceable 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 to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) 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 where article 34 (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 of way specified in the notice; and

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

(7) Where 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 the 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

28.—(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 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 (earliest date for execution of declaration), in subsection (2), omit the words from ", and this subsection" to the end.

(5) Omit section 5A (time limit for general vesting declaration)(**a**).

(6) In section 5B (extension of time limit during challenge)(**b**)—

(a) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)" substitute "section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008"; and

(b) for "the applicable period for the purposes of section 5A" substitute "the five year period mentioned in article 25 (time limit for exercise of authority to acquire land compulsorily) of the Stonestreet Green Solar Order 202*".

(7) In section 6 (notices after execution of declaration)(**c**) for subsection (1)(b) substitute—

"(1)(b) on every other person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served under section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008."

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

(**b**) 1981 c. 66. Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22) and amended by section 185(3)(a) of the Levelling-up and Regeneration Act 2023 (c. 55).

(**c**) 1981 c. 66. Section 5B was as inserted by section 202(2) of the Housing and Planning Act 2016 (c. 22) and amended by section 185(3)(b) of the Levelling-up and Regeneration Act 2023 (c. 55).

(**d**) 1981 c. 66. Section 6 was amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 (c. 22).

(**e**) 1981 c. 66. Section 7 was amended by paragraph 3 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

(9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration)(**a**), omit paragraph 1(2).

(10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 of the 2008 Act (application of compulsory acquisition provisions) to the compulsory acquisition of land under this Order.

Acquisition of subsoil and airspace only

29.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of and the airspace over the land referred to in paragraph 22(1) of article 22 (compulsory acquisition of land) or article 26 (compulsory acquisition of rights and imposition of restrictive covenants) 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, or the airspace over, any 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 or airspace 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) do not apply where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory or airspace above a house, building or manufactory.

Modification of the 1965 Act

30.—(1) Part 1 of the 1965 Act, as applied to this Order by section 125 (Application of compulsory acquisition provisions) of the 2008 Act, is modified as follows—

(a) in section 4 (Time limit for giving notice to treat)(**b**) for "after the end of the applicable period beginning with the day on which the compulsory purchase order becomes operative" substitute "after the end of the period stated in article 25 (time limit for exercise of authority to acquire land compulsorily) of the Stonestreet Green Solar Order 202*".

(b) in section 4A(1) (Extension of time limit during challenge)(**c**) for "section 23 of the Acquisition of Land Act 1981 (Application to High Court in respect of compulsory purchase order), the applicable period for the purposes of section 4" substitute "section 118 of the Planning Act 2008 (Legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 25 (time limit for exercise of authority to acquire land compulsorily) of the Stonestreet Green Solar Order 202*"

(2) In section 11A (Powers of entry: further notice of entry)(**d**)—

(a) in subsection (1)(a), after "land" insert" "under that provision"; and

(b) in subsection (2), after "land" insert" "under that provision".

(3) 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 25

(**b**) As inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).
(**c**) 1965 c. 56. Section 4 was amended by section 185(2)(a) of the Levelling-up and Regeneration Act 2023 (c. 55).
(**d**) 1965 c. 56. Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22) and amended by section 185(2)(b) of the Levelling-up and Regeneration Act 2023 (c. 55).
(**a**) 1965 c. 56. Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).

(time limit for exercise of authority to acquire land compulsorily) of the Stonestreet Green Solar Order 202*".

(4) 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 29(3) (acquisition of subsoil and airspace only) of the Stonestreet Green Solar Order 202*, which excludes the acquisition of subsoil and airspace 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 articles 21 (authority to survey and investigate the land), 31 (temporary use of land for carrying out the authorised development), 33 (temporary use of land for maintaining the authorised development), or 39 (use of subsoil and airspace within the Order limits) of the Stonestreet Green Solar Order 202*."

Temporary use of land for carrying out the authorised development

31.—(1) The undertaker may, in connection with the construction of the authorised development—

(a) enter on and take temporary possession of any land within 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 (execution of declaration) of the 1981 Act(**a**));

(b) remove any electric line, electrical plant, structures, apparatus, fences, debris, buildings and vegetation from that land;

(c) construct temporary works, haul roads, security fencing, bridges, structures and buildings comprised within the authorised development on that land;

(d) use the land for the purposes of a temporary working site with access to the working site in connection with the authorised development;

(e) construct any works on that land as are set out in Schedule 1 (authorised development); and

(f) carry out mitigation works required under the requirements.

(2) 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.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession under this article after the end of the period of one year beginning with the date of completion of the part of the authorised development which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 (powers of entry) of the 1965 Act or made a declaration under section 4 (execution of declaration) of the 1981 Act in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must either acquire the land or, unless otherwise agreed with the owners of the land, remove all works and restore the land to the reasonable satisfaction of the owners of the land, except that the undertaker is not required to—

(**a**) 1981 c. 66. Section 4 was amended by section 184 and 185 of, and paragraphs 1 and 2 of Schedule 18 to, the Housing and Planning Act 2016 (c. 22).

(a) replace any electric line, electrical plant, structure, apparatus, fence, debris, building or vegetation 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);

(d) restore the land to a condition better than the relevant land was in before temporary possession;

(e) remove any ground strengthening works which have been placed on the land to facilitate construction, operation, maintenance or decommissioning of the authorised development;

(f) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development; or

(g) remove or reposition any apparatus belonging to statutory undertakers or necessary mitigation works.

(5) 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 any power conferred by this article and, for the avoidance of doubt, this will include compensation in respect of any loss or damage further to any ground strengthening works within paragraph (4)(e) carried out by the undertaker in or on that land.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, will be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) Any dispute as to the satisfactory removal of works and restoration of land under paragraph (4) does not prevent the undertaker giving up possession of the land.

(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(**a**) 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 (5).

(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 pursuant to 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 specified in paragraph (1).

Time limit for exercise of authority to temporarily use land for carrying out the authorised development

32.—(1) Subject to paragraph (2), the authority to enter onto land pursuant to article 31 (temporary use of land for carrying out the authorised development) ceases to apply to any land after the period of five years beginning on the day on which the Order is made.

(2) Paragraph (1) will not prevent 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.

Temporary use of land for maintaining the authorised development

33.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

(**a**) 2008 c. 29. Section 152 was amended by S.I. 2009/1307.

(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 is not required to serve notice under paragraph (2) where the undertaker has identified a potential risk to the safety of—

(a) the authorised development or any of its parts;

(b) the public; or

(c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practicable in the circumstances.

(5) 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.

(6) 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.

(7) 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.

(8) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, will be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(9) Nothing in this article affects any liability to pay compensation under section 10(2) (further provisions as to compensation for injurious affection) of the 1965 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 (7).

(10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to 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.

(12) In this article the "maintenance period" means the period of five years beginning with the first export date of the part of the authorised development for which temporary possession is required under this article except in relation to landscaping works where "the maintenance period" means such period as set out in the LEMP which is approved by the local planning authority pursuant to requirement 8 beginning with the date on which that part of the landscaping works are completed.

Statutory undertakers

34.—(1) Subject to the provisions of Schedule 13 (protective provisions), the undertaker may—

(a) acquire compulsorily the land belonging to statutory undertakers within the Order land and described in the book of reference;

(b) acquire compulsorily existing rights, create and acquire new rights and impose restrictive covenants over the land belonging to statutory undertakers within the Order land and described in the book of reference;

(c) extinguish or suspend the rights of, remove, alter, renew, relocate or reposition the apparatus belonging to statutory undertakers over or within the Order land; and

(d) construct the authorised development in such a way as to interfere with any highway or cross underneath or over apparatus belonging to statutory undertakers and other like bodies within the Order land.

Acquisition of wayleaves, easements and other rights

35. Schedule 12 (acquisition of wayleaves, easements and other rights) has effect.

Recovery of costs of new connections

36.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 34 (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 34 (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 sewage 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 meaning given in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003; and

"public utility undertaker" has the meaning given in section 329 (further provision as to interpretation) of the 1980 Act.

No double recovery

37.—(1) Compensation will not be payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

Protective provisions

38.—(1) Schedule 13 (protective provisions) has effect.

Use of subsoil and airspace within the Order limits

39.—(1) The undertaker may enter on, appropriate and use so much of the subsoil of or airspace over any land (including without limitation any street) within the Order limits as may be required for the authorised development and may use the subsoil or airspace for those purposes or any other purposes ancillary to the authorised development.

(2) The undertaker may exercise any power conferred by paragraph (1) in relation to land without being required to acquire any part of the land or any easement or right in the land.

(3) Paragraph (1) 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 (3) 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.

PART 7

Miscellaneous and general

Removal of human remains

40.—(1) Before the undertaker carries out any development or works which will or may disturb any human remains within the Order limits it must remove those human remains from the Order limits, or cause them to be removed, in accordance with the following provisions of this article.

(2) Subject to paragraph (11), before any such remains are removed from the Order limits the undertaker must give notice of the intended removal, describing the Order limits and stating the general effect of the following provisions of this article, by—

(a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and

(b) displaying a notice in a conspicuous place within or near the Order limits.

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to the local 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 within the Order limits may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

(5) Where a person has given notice under paragraph (4), and the remains in question can be identified, that person may cause such remains to be—

(a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or

(b) removed to, and cremated in, any crematorium,

and that person must, as soon as reasonably practicable alter such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10).

(6) If the undertaker is not satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question must be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

(7) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(8) If—

(a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains within the Order limits; or

(b) such notice is given and no application is made under paragraph (6) within 56 days alter the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or

(c) within 56 days after any order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the order fails to remove the remains; or

(d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (9) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves are to be 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 the person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(10) On the re-interment or cremation of any remains under this article—

(a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and

(b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (8) must be sent by the undertaker to the local authority mentioned in paragraph (3).

(11) No notice is required under paragraph (2) before the removal of any human remains where the undertaker is satisfied—

(a) that the remains were interred more than 100 years ago; and

(b) that no relative or personal representative of the deceased is likely to object to the remains being removed in accordance with this article.

(12) In this article references to a relative of the deceased are to a person who—

(a) is a husband, wife, civil partner, parent, grandparent, child or grandchild of the deceased; or

(b) is, or is a child of, a brother, sister, uncle or aunt of the deceased; or

(c) is the lawful executor of the estate of the deceased; or

(d) is the lawful administrator of the estate of the deceased.

(13) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

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

(15) Section 25 (Offence of removal of body from burial ground) of the Burial Act 1857(**a**) shall not apply to a removal carried out in accordance with this article.

(16) The Town and Country Planning (Churches, Places of Religious Worship and Burial Ground) Regulations 1950(**b**) do not apply to the authorised development.

(**b**) 1857 c. 81. Substituted by Church of England (Miscellaneous Provisions) Measure 2014, section 2 (January 1, 2015: substitution has effect subject to transitional and saving provisions specified in S.I. 2014/2077, Schedule paragraphs 1 and 2).
(**a**) S.I. 1950/792.

Operational land for the purposes of the 1990 Act

41. 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 not being operational land) of the 1990 Act.

Crown rights

42.—(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 lessee or 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 section 227 of 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.

Certification of plans, etc.

43.—(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 in Schedule 14 (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.

Service of notices

44.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

(a) by post;

(b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or

(c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(**a**) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

(a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and

(**a**) 1978 c. 30.

(b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

(a) addressing it to that person by name or by the description of "owner", or as the case may be "occupier", of the land; and

(b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

(a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;

(b) the notice or document is capable of being accessed by the recipient;

(c) the notice or document is legible in all material respects; and

(d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

(a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

(10) In this article "legible in all material respects" means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Felling or lopping of trees or removal of hedgerows

45.—(1) Subject to paragraphs (2) and (6), the undertaker may fell or lop any tree or shrub near any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

(a) from obstructing or interfering with the construction, maintenance operation or decommissioning of the authorised development or any apparatus used in connection with the authorised development; or

(b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(4) The undertaker may for the purposes of the authorised development—

(a) remove those parts of the important hedgerows within the Order limits and specified in Part 1 (removal of important hedgerows) of Schedule 15 (hedgerows); and

(b) remove those parts of the hedgerows as are within the Order limits and specified in Part 2 (removal of hedgerows) of Schedule 15 (hedgerows).

(5) In this article "hedgerow" and "important hedgerow" have the same meaning as in the Hedgerow Regulations 1997(**a**).

(6) The undertaker may fell or lop any tree that is subject to a tree preservation order within or overhanging land within the Order limits 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, operation or decommissioning of the authorised development or any apparatus used in connection with the authorised development.

(7) In carrying out any activity authorised by paragraph (6)—

(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.

(8) The authority given by paragraph (6) constitutes a deemed consent under the relevant tree preservation order.

(9) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Arbitration

46.—(1) Any difference under any provision of this Order, unless otherwise provided for, shall be referred to and settled in arbitration in accordance with the rules at Schedule 16 (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.

Requirements, appeals, etc.

47.—(1) Where an application is made to, or a request is made of, the local planning authority or any other relevant person for any consent, agreement or approval required or contemplated by any of the provisions of the Order (not including the requirements), such agreement or approval must, if given, be given in writing and must not be unreasonably withheld or delayed.

(2) Part 2 (procedure for discharge of requirements) of Schedule 2 (requirements) has effect in relation to all agreements or approvals granted, refused or withheld in relation to requirements in Part 1 of that Schedule.

Application of landlord and tenant law

48.—(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, operation, maintenance or decommissioning 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.

(**a**) S.I. 1997/1160.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants may prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law to which paragraph (2) applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

(a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

(b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

(c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Guarantees in respect of payment of compensation

49.—(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 22 (compulsory acquisition of land);

(b) article 26 (compulsory acquisition of rights and imposition of restrictive covenants);

(c) article 27 (private rights);

(d) article 29 (acquisition of subsoil and airspace only);

(e) article 31 (temporary use of land for carrying out the authorised development);

(f) article 33 (temporary use of land for maintaining the authorised development); and

(g) article 34 (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.

Signatory text

Name

Address
Date

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

In the district of Ashford and in the county of Kent, 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 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

1. A ground mounted solar photovoltaic generating station with a gross electrical output capacity of over 50 megawatts including—

(a) solar PV panels; and

(b) mounting structures,

along with associated development within the meaning of section 115(2) of the 2008 Act including—

Work No. 2

2. Balance of system and BESS works including—

(a) inverter stations;

(b) BESS;

(c) DC-DC converters;

(d) intermediate substations;

(e) fire hydrants;

(f) bunding and other water retention features; and

(g) acoustic barriers;

Work No. 3

3. Project substation and associated works including—

(a) project substation, including switchroom and control room buildings, circuit breakers, 132 kilovolt bus-bars, pad mounted transformers, earthing circuits, office facilities (to include welfare unit, water closet, cesspit) and ancillary equipment;

(b) monitoring and control systems for Work No. 1, Work No. 2 and Work No. 3;

(c) car parking;

(d) metal palisade security fencing with gates;

(e) access track with separate access provision;

(f) geotechnical works and retaining structures;

(g) drainage and water retention system works;

(h) acoustic barriers; and

(i) two spare parts storage containers;

Work No. 4

4. Works to lay high voltage electrical cables and to extend Sellindge Substation to facilitate grid connection including—

(a) laying of electrical cables to connect Work No. 3 to Sellindge Substation, including tunnelling, boring, open cut trenching and horizontal directional drilling works for trenchless crossings;

(b) works to allow electrical cable crossings of non-navigable rivers, other watercourses and drains, permissive paths, public rights of way and other highways;

(c) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains;

(d) crossing of Network Rail infrastructure either—

(i) using existing electrical ducts; or

(ii) through the installation of new cable ducts;

(e) laying down of internal access tracks, ramps, means of access, footpaths, roads, landscaping and vegetation management, signage, information boards and temporary secured construction laydown areas; and

(f) extension of the Sellindge Substation including—

(i) installation of new or amended structures, including outdoor air insulated switchgear or indoor gas insulated switchgear, circuit breakers, disconnectors, earth switches, bus-bars, steel supports and ancillary electrical infrastructure;

(ii) laying down of access tracks, ramps, means of access, footpaths and roads;

(iii) construction of a retaining wall, landscaping and vegetation management, signage, information boards and temporary construction laydown areas;

(iv) fencing, gates, boundary treatment and other means of enclosure;

(v) provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, cameras, and communication infrastructure; and

(vi) drainage works;

Work No. 5

5. Works including—

(a) fencing, gates, boundary treatment and other means of enclosure;

(b) provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, a fence detection system, cameras, weather stations, and communication infrastructure;

(c) laying of electrical cables, including but not limited to electrical cables connecting Work No. 1, Work No. 2 and Work No. 3, including works to allow electrical cables crossings of non-navigable rivers, other watercourses and drains, permissive paths, public rights of way and other highways;

(d) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains;

(e) laying down of internal access tracks (including fire access tracks), improvement of existing tracks, ramps, means of access, and roads, including construction signage and information boards;

(f) provision of water tanks and pipework connection to hydrants located at inverter stations where BESS installed; and

(g) equipment and materials storage during construction and decommissioning phases;

Work No. 6

6. Works to provide site access including—

(a) creation of accesses from the highway;

(b) creation of visibility splays;

(c) upgrading and repairing of existing accesses; and

(d) highways improvements;

Work No. 7

7. Construction and decommissioning works including—

(a) compound areas including hardstanding, turning and loading areas, car parking, offices/welfare facilities, storage areas, waste skip areas, solar PV panel testing area, bunded area for storage of fuels and hydrocarbons, security fencing and hoarding; and

(b) an internal haulage road comprising temporary permeable ground protection mats including passing bays, means of access, and signage;

Work No. 8

8. Works to create, enhance and maintain green infrastructure, boundary treatments and crossing structures including—

(a) landscape and biodiversity enhancement measures, including habitat creation and management and seating;

(b) mitigation and biodiversity enhancement planting;

(c) landscape reinforcement works;

(d) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains; and

(e) works to alter, maintain, repair or replace existing crossing structures over non-navigable rivers and other watercourses and drains; and

Site Wide Works

9. In connection with and in addition to Work Nos. 1–8, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the authorised development and which are within the Order limits and fall within the scope of work assessed by the environmental statement including—

(a) site preparation works and site clearance, including vegetation removal;

(b) earthworks;

(c) remediation of contamination;

(d) alteration to locations of services and utilities infrastructure;

(e) works for the benefit or protection of land affected by the authorised development;

(f) landscaping and biodiversity mitigation and enhancement measures including planting to the extent not undertaken under Work No. 8;

(g) sustainable drainage system ponds, depression storage, runoff outfalls, general drainage and irrigation infrastructure, including bunds, embankments, trenching, and swales, systems and improvements, maintenance or extensions to existing drainage and irrigation systems;

(h) laying down of public rights of way diversions, signage and information boards and extinguishment of existing public rights of way; and

(i) works to alter, maintain and repair streets and access roads, including relocation, removal or provision of street signage and furniture in, under or above a street and works to facilitate traffic management.

SCHEDULE 2

Article 3

REQUIREMENTS

PART 1

REQUIREMENTS

Time limit

1. The authorised development must not be commenced after the expiration of five years beginning with the date on which this Order comes into force.

Expiry of development consent

2.—(1) The authorised development must cease generating electricity on a commercial basis no later than the 40th anniversary of the first export date.

(2) Confirmation of the first export date must be provided by the undertaker to the local planning authority within one month of its occurrence.

Phases of authorised development

3.—(1) The authorised development must not be commenced until a written scheme setting out the phases and sequencing of construction of the authorised development has been submitted to and approved by the local planning authority.

(2) The authorised development must be carried out in accordance with the phasing scheme approved pursuant to sub-paragraph (1).

Detailed design approval

4.—(1) No phase of the authorised development may be commenced until written 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;

(g) refuse or other storage units, signs and lighting;

(h) power and communications cables and pipelines;

(i) fencing and other means of enclosure;

(j) security measures; and

(k) acoustic barriers,

relating to that phase have been submitted to and approved by the local planning authority.

(2) The written details that are submitted for approval pursuant to sub-paragraph (1) must accord with the design principles.

(3) The authorised development must be carried out in accordance with the details approved pursuant to sub-paragraph (1).

Battery safety management plan

5.—(1) Prior to the commencement of the BESS within Work No. 2, a BSMP must be submitted to and approved by the local planning authority in consultation with the Environment Agency and Kent Fire and Rescue Service.

(2) The submitted BSMP must either accord with the outline BSMP or detail such changes as the undertaker considers are required.

(3) The BSMP must be implemented as approved and maintained in accordance with the BSMP thereafter.

Construction environmental management plan

6.—(1) No phase of the authorised development may commence until a CEMP for that phase has been submitted to and approved by the local planning authority, such approval to be in consultation with the Environment Agency and Kent County Council.

(2) The CEMP for each phase of the authorised development must be in accordance with the outline CEMP.

(3) All construction works associated with the authorised development in each phase must be carried out in accordance with the approved CEMP for that phase.

Construction traffic management plan

7.—(1) No phase of the authorised development may commence until a CTMP for that phase has been submitted to and approved by the local planning authority, such approval to be in consultation with the relevant highway authority.

(2) The CTMP for each phase of the authorised development must be in accordance with the outline CTMP.

(3) All construction works associated with the authorised development in each phase must be carried out in accordance with the approved CTMP for that phase.

(4) For the purposes of this paragraph, "relevant highway authority" means the highway authority for the highways that are the subject of a CTMP submitted pursuant to sub-paragraph (1).

Landscape and biodiversity

8.—(1) The authorised development must not commence until a biodiversity design strategy has been submitted to and approved by the local planning authority, such approval to be in consultation with the Environment Agency, Kent County Council and the relevant statutory nature conservation body.

(2) No phase of the authorised development may commence until a LEMP covering that phase has been submitted to and approved by the local planning authority.

(3) The LEMP for each phase of the authorised development must—

(a) be in accordance with the outline LEMP, the biodiversity design strategy approved pursuant to sub-paragraph (1) and the design principles;

(b) provide details of the proposed hard and soft landscape and biodiversity enhancement works including (in so far as is relevant)—

(i) surveys, assessments and method statements;

(ii) location, number, species, size, plant protection measures and planting density of any proposed planting and the location of areas to be seeded;

(iii) cultivation, importing of materials and other operations to ensure plant establishment; and

(iv) implementation timetables for all landscape and biodiversity enhancement works; and

(c) provide details of how the landscape and biodiversity enhancement measures will be managed and maintained during the operation of the authorised development.

(4) All landscape and biodiversity enhancement works associated with the authorised development in each phase must be carried out in accordance with the approved LEMP for that phase.

(5) For the purposes of sub-paragraph (2), "commence" includes part (b) (site clearance and/or vegetation works) of the site enabling works.

Archaeology

9.—(1) No phase of the authorised development may commence until the details specified in sub-paragraph (2) for that phase have been submitted to and approved by the local planning authority, such approval to be in consultation with Kent County Council.

(2) The details for each phase to be submitted pursuant to sub-paragraph (1) must—

(a) include a written scheme for the investigation of areas of archaeological interest within that phase;

(b) identify any areas where a programme of archaeological investigation is required within that phase and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found; and

(c) be generally in accordance with the AMS.

(3) Any archaeological works or programme of archaeological investigation carried out pursuant to the details approved under sub-paragraph (1) must be carried out by an organisation registered with the Chartered Institute for Archaeologists or by a member of that Institute.

(4) Any archaeological works or programme of archaeological investigation for a phase of the authorised development must be carried out in accordance with the details approved pursuant to sub-paragraph (1) for that phase.

Public rights of way

10.—(1) No phase of the authorised development incorporating any part of a public right of way which is to be temporarily closed or permanently stopped up pursuant to article 18 (public rights of way – stopping up and vehicular use on public rights of way) may commence until a RoWAS for the phase has been submitted to and approved by the local planning authority, such approval to be in consultation with Kent County Council.

(2) The RoWAS submitted pursuant to sub-paragraph (1) must—

(a) include details of measures to minimise the distance of any sections of the public right of way to be temporarily closed or permanently stopped up;

(b) include details of advance publicity and signage in respect of any sections of public rights of way to be temporarily closed or permanently stopped up; and

(c) be generally in accordance with the outline RoWAS.

(3) The RoWAS for each phase of the authorised development must be implemented as approved and maintained for that phase.

Operational surface water drainage strategy and flood compensation storage

11.—(1) No phase of the authorised development may commence until—

(a) an OSWDS for that phase has been submitted to and approved by the local planning authority, such approval to be in consultation with the Environment Agency and the lead local flood authority; and

(b) a detailed floodplain compensation scheme for that phase has been submitted to and approved by the local planning authority, such approval to be in consultation with the Environment Agency.

(2) The OSWDS for each phase of the authorised development must be in accordance with the outline OSWDS.

(3) The OSWDS for each phase of the authorised development must be implemented as approved.

(4) When considered as a whole across all phases of the authorised development, the detailed floodplain compensation schemes approved pursuant to paragraph (1)(b) must include mitigation measures that are in accordance with the measures described in Appendix 10.2: Flood Risk Assessment of the environmental statement relating to flood storage upstream and downstream of the Aldington Flood Storage Area embankment.

(5) The detailed floodplain compensation scheme for each phase of the authorised development must be implemented and maintained as approved.

Operational management plan

12.—(1) Prior to the operation of the authorised development, an OMP must be submitted to and approved by the local planning authority, such approval to be in consultation with the Environment Agency.

(2) The OMP must be in accordance with the outline OMP.

(3) The OMP must be implemented as approved.

Operational noise mitigation and monitoring scheme

13. (1) Prior to the operation of Work No. 2 or Work No. 3, an ONMMS must be submitted to and approved by the local planning authority.

(2) The ONMMS must—

(a) include details of the plant specification, noise mitigation measures and monitoring procedures; and

(b) demonstrate that, with those noise mitigation measures and monitoring procedures in place, the authorised development is not likely to result in any materially new or materially different noise effects from those assessed in Volume 2, Chapter 14 (Noise) of the environmental statement.

(3) The ONMMS must be implemented as approved.

Decommissioning and site restoration

14.—(1) Decommissioning works must commence no later than the 40th anniversary of the first export date.

(2) Prior to commencement of any decommissioning works for any part of the authorised development—

(a) a DEMP for that part must be submitted to and approved by the local planning authority, such approval to be in consultation with the Environment Agency and Kent County Council; and

(b) a DTMP for that part must be submitted to and approved by the local planning authority, such approval to be in consultation with the relevant highway authority.

(3) The DEMP must be in accordance with the outline DEMP and the DTMP must be in accordance with the outline DTMP.

(4) The DEMP and DTMP must be implemented as approved for the relevant part of the authorised development.

(5) For the purposes of this paragraph, "relevant highway authority" means the highway authority for the highways that are the subject of a DTMP submitted pursuant to paragraph 14(2)(b).

Requirement for written approval

15. Where the approval, agreement or confirmation of the Secretary of State, the local planning authority or another person is required under a requirement that approval, agreement or confirmation must be given in writing.

Amendments to approved details

16.—(1) With respect to the documents certified in accordance with article 43 (certification of plans, 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 local planning authority for approval any amendments to any of the Approved Documents, Plans, Details or Schemes and, following approval by the local planning authority, 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 local planning authority 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.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under requirements

17.—(1) Where an application has been made to the local planning authority for any consent, agreement or approval required by a requirement contained in Part 1 of this Schedule, or for any consent, agreement or approval further to any document referred to in any such requirement, the local planning authority must give notice to the undertaker of its decision on the application within a period of eight weeks beginning with—

(a) the day immediately following that on which the application is received by the local planning authority; or

(b) where further information is requested under paragraph 18 the day immediately following that on which the further information has been supplied by the undertaker, or such longer period as may be agreed in writing by the undertaker and the local planning authority.

(2) In determining any application made to the local planning authority for any consent, agreement or approval required by a requirement contained in Part 1 of this Schedule, the local planning authority may—

(a) give or refuse its consent, agreement or approval; or

(b) give its consent, agreement or approval subject to reasonable conditions,

and where consent, agreement or approval is refused or granted subject to conditions the local planning authority must provide its reasons for that decision with the notice of the decision.

Further information regarding requirements

18.—(1) In relation to any application referred to in paragraph 17, the local planning authority may request such further information from the undertaker as it considers necessary to enable it to consider the application.

(2) In the event that the local 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 local planning authority must, within 20 business 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 local planning authority must issue the consultation to the requirement consultee within 10 business days of receipt of the application, and must notify the undertaker in writing specifying any further information the local planning authority considers necessary or that is requested by the requirement consultee within 10 business days of receipt of such a request and in any event within 20 business days of receipt of the application (or such other period as is agreed in writing between the undertaker and the local planning authority).

(4) In the event that the local 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 paragraphs 17 and 18.

Appeals

19.—(1) Where the undertaker makes an application to the local planning authority, the undertaker may appeal to the Secretary of State in the event that—

(a) the local planning authority refuses an application for any consent, agreement or approval required by—

(i) a requirement contained in Part 1 of this Schedule; or

(ii) a document referred to in any requirement contained in Part 1 of this Schedule;

(b) the local planning authority does not determine such an application within the time period set out in paragraph 17(1), or grants it subject to conditions;

(c) on receipt of a request for further information pursuant to paragraph 18 of this Part of this Schedule, the undertaker considers that either the whole or part of the specified information requested by the local planning authority is not necessary for consideration of the application; or

(d) on receipt of any further information requested, the local planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is as follows—

(a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) the expiry of the time period set out in paragraph 17(1), giving rise to the appeal referred to in sub-paragraph (1);

(b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the local planning authority and any consultee specified under the relevant requirement contained in Part 1 of this Schedule;

(c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to consider the appeal ("the appointed person") and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the attention of the appointed person should be sent;

(d) the local planning authority and any consultee (if applicable) must submit their written representations together with any other representations to the appointed person in respect of the appeal within ten business days of the start date specified by the appointed person and must ensure that copies of their written representations and any other representations as sent to the appointed person are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;

(e) the undertaker must make any counter-submissions to the appointed person within ten business days of receipt of written representations pursuant to paragraph (d) above; and

(f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable after the end of the ten day period for counter—submissions under paragraph (e).

(3) The appointment of the appointed person pursuant to sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(5) Any further information required pursuant to sub-paragraph (4) must be provided by the party from whom the information is sought to the appointed person and to the other appeal parties by the date specified by the appointed person. The appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within ten business days of the date specified by the appointed person, but must otherwise be in accordance with the process and time limits set out in sub-paragraphs (2)(c) to (2)(e).

(6) On an appeal under this paragraph, the appointed person may—

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision of the local planning authority (whether the appeal relates to that part of it or not), and may deal with the application as if it had been made to the appointed person in the first instance.

(7) The appointed person may proceed to a decision on an appeal taking into account such written representations as have been sent within the relevant time limits and in the sole discretion of the appointed person such written representations as have been sent outside of the relevant time limits.

(8) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(9) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for a judicial review.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the local planning authority, the reasonable costs of the appointed person are to be met by the undertaker.

(11) On application by the local planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the guidance on costs in the Planning Practice Guidance or any official circular or guidance which may from time to time replace it.

SCHEDULE 3

Article 8

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) County of Kent Act 1981(**a**);

(b) Kent County Council (Filming on Highways) Act 2010(**b**);

(c) Kent Water Act 1955(**c**);

(d) South Eastern Railway Act 1836(**d**);

(e) South Eastern Railway Act 1839(**e**); and

(f) Southern Water Authority Act 1988(**f**).

(**b**) 1981 c. 18.
(**c**) 2010 c. 4.
(**d**) 1955 c. 11.
(**e**) 1836 c. 75.
(**f**) 1839 c. 42.
(**a**) 1988 c. 33.

SCHEDULE 4

Article 11

STREETS SUBJECT TO STREET WORKS

(1) Area	*(2) Street*	*(3) Description of the street works*
Ashford Borough Council	Public right of way FNR-1 (AE385 Section 1 diversion)	Cable works beneath the width of the public right of way for the length shown in brown on sheet 1 of the streets, rights of way and access plans, reference SW-1.
Ashford Borough Council	Public right of way FN-AE380	Cable works beneath the width of the public right of way for the length shown in brown on sheet 1 of the streets, rights of way and access plans, reference SW-2.
Ashford Borough Council	Public right of way AE396 (Byway Open To All Traffic)	Cable works beneath the width of the public right of way for the length shown in brown on sheets 1 and 2 of the streets, rights of way and access plans, reference SW-6.
Ashford Borough Council	Public right of way FNR-3 (AE370 diversion)	Cable works beneath the width of the public right of way for the length shown in brown on sheets 1 and 2 of the streets, rights of way and access plans, references SW-5, SW-7 and SW-8.
Ashford Borough Council	Public right of way FNR-4 (AE377 diversion)	Cable works beneath the width of the public right of way for the length shown in brown on sheets 1 and 2 of the streets, rights of way and access plans, reference SW-9.
Ashford Borough Council	Public right of way FNR-5 (AE378 diversion)	Cable works beneath the width of the public right of way for the length shown in brown on sheet 2 of the streets, rights of way and access plans, references SW-10, SW-11 and SW-12.
Ashford Borough Council	Public right of way FN-7	Cable works beneath the width of the public right of way for the length shown in brown on sheets 2 and 3 of the streets, rights of way and access plans, reference SW-13.
Ashford Borough Council	Public right of way FNR-8 (AE431 diversion)	Cable works beneath the width of the public right of way for the length shown in brown on sheets 2 and 3 of the streets, rights of way and access plans, references SW-15 and SW-16.

Ashford Borough Council	Public right of way FNR-9 (AE436 diversion)	Cable works beneath the width of the public right of way for the length shown in brown on sheets 2 and 3 of the streets, rights of way and access plans, reference SW-18.
Ashford Borough Council	Public right of way FN-1	Cable works beneath the width of the public right of way for the length shown in brown on sheets 2 and 3 of the streets, rights of way and access plans, reference SW-19.
Ashford Borough Council	Public right of way AE657	Cable works beneath the width of the public right of way for the length shown in brown on sheets 2 and 3 of the streets, rights of way and access plans, reference SW-17A.
Ashford Borough Council	Public right of way FN-AE657	Cable works beneath the width of the public right of way for the length shown in brown on sheets 2 and 3 of the streets, rights of way and access plans, reference SW-17B.
Ashford Borough Council	Public right of way FN-3	Cable works beneath the width of the public right of way for the length shown in brown on sheet 3 of the streets, rights of way and access plans, reference SW-21.
Ashford Borough Council	Public right of way FNR-12 (AE657 and AE656 diversion)	Cable works beneath the width of the public right of way for the length shown in brown on sheet 3 of the streets, rights of way and access plans, reference SW-22.
Ashford Borough Council	Public right of way AE474	Cable works beneath the width of the public right of way for the length shown in brown on sheet 4 of the streets, rights of way and access plans, reference SW-23.
Ashford Borough Council	Public right of way AE475	Cable works beneath the width of the public right of way for the length shown in brown on sheet 4 of the streets, rights of way and access plans, reference SW-24.
Ashford Borough Council	Public right of way FNR-10 (AE454 diversion)	Cable works beneath the width of the public right of way for the length shown in brown on sheet 4 of the streets, rights of way and access plans, reference SW-25.
Ashford Borough Council	Public right of way FNR-11 (AE475 diversion)	Cable works beneath the width of the public right of way for

		the length shown in brown on sheet 4 of the streets, rights of way and access plans, reference SW-26.
Ashford Borough Council	AE656	Cable works beneath the width of the public right of way for the length shown in brown on sheet 5 of the streets, rights of way and access plans, reference SW-28.
Ashford Borough Council	Laws Lane	Cable works beneath the width of the street for the length shown in brown on sheet 6 of the streets, rights of way and access plans, reference SW-3.
Ashford Borough Council	Bank Road	Cable works beneath the width of the street for the length shown in brown on sheets 6 and 7 of the streets, rights of way and access plans, reference SW-4.
Ashford Borough Council	Station Road	Cable works beneath the width of the street for the length shown in brown on sheets 7 and 8 of the streets, rights of way and access plans, reference SW-14.
Ashford Borough Council	Goldwell Lane	Cable works beneath the width of the street for the length shown in brown on sheets 7, 8 and 9 of the streets, rights of way and access plans, reference SW-20.
Ashford Borough Council	Church Lane	Cable works beneath the width of the street for the length shown in brown on sheet 10 of the streets, rights of way and access plans, reference SW-27.

SCHEDULE 5

Article 12

ALTERATION OF STREETS

(1) Area	*(2) Streets subject to alteration*	*(3) Description of alteration*
Ashford Borough Council	Bank Road	Works for the provision of a permanent means of access to the authorised development including vegetation clearance for the creation of visibility splays within the area shown in green on sheets 6 and 7 of the streets, rights of way and access plans, references A-1, A-5, A-6 and A-10.
Ashford Borough Council	Laws Lane	Works for the provision of a permanent means of access to the authorised development including vegetation clearance for the creation of visibility splays within the area shown in green on sheet 6 of the streets, rights of way and access plans, references A-2, A-3 and A-4.
Ashford Borough Council	Public right of way AE396	Works for the provision of a permanent means of access to the authorised development including vegetation clearance for the creation of visibility splays within the area shown in green on sheets 6 and 7 of the streets, rights of way and access plans, references A-7, A-8 and A-9.
Ashford Borough Council	Calleywell Lane	Works for the provision of a permanent means of access to the authorised development including vegetation clearance for the creation of visibility splays within the area shown in green on sheets 7 and 8 of the streets, rights of way and access plans, references A-11 and A-12.
Ashford Borough Council	Station Road	Works for the provision of a permanent means of access to the authorised development including vegetation clearance for the creation of visibility splays within the area shown in green on sheets 7 and 8 of the streets, rights of way and access plans, references A-13, A-14 and A-15.
Ashford Borough Council	Goldwell Lane	Works for the provision of a permanent means of access to

		the authorised development including vegetation clearance for the creation of visibility splays within the area shown in green on sheet 9 of the streets, rights of way and access plans, reference A-16.
Ashford Borough Council	Church Lane	Works for the provision of a permanent means of access to the authorised development including vegetation clearance for the creation of visibility splays within the area shown in green on sheet 10 of the streets, rights of way and access plans, reference A-17.

SCHEDULE 6

Article 15

ACCESS TO WORKS

(1) Area	*(2) Street*	*(3) Description of means of access*
Ashford Borough Council	Bank Road #1 southbound	The provision of a permanent means of access to the authorised development from the point marked A-1 on sheet 6 of the streets, rights of way and access plans.
Ashford Borough Council	Laws Lane #1 westbound and eastbound	The provision of a permanent means of access to the authorised development from the point marked A-2 on sheet 6 of the streets, rights of way and access plans.
Ashford Borough Council	Laws Lane #2 westbound	The provision of a permanent means of access to the authorised development from the point marked A-3 on sheet 6 of the streets, rights of way and access plans.
Ashford Borough Council	Laws Lane #3 eastbound	The provision of a permanent means of access to the authorised development from the point marked A-4 on sheet 6 of the streets, rights of way and access plans.
Ashford Borough Council	Bank Road #2 southbound	The provision of a permanent means of access to the authorised development from the point marked A-5 on sheet 6 of the streets, rights of way and access plans.
Ashford Borough Council	Bank Road #3 northbound	The provision of a permanent means of access to the authorised development from the point marked A-6 on sheets 6 and 7 of the streets, rights of way and access plans.
Ashford Borough Council	Public right of way AE396 #1 westbound and eastbound	The provision of a permanent means of access to the authorised development from the point marked A-7 on sheets 6 and 7 of the streets, rights of way and access plans.
Ashford Borough Council	Public right of way AE396 #2 westbound and eastbound	The provision of a permanent means of access to the authorised development from the point marked A-8 on sheets 6 and 7 of the streets, rights of way and access plans.
Ashford Borough Council	Public right of way AE396 #3 westbound and eastbound	The provision of a permanent means of access to the authorised development from

		the point marked A-9 on sheet 6 of the streets, rights of way and access plans.
Ashford Borough Council	Bank Road #4 northbound and southbound	The provision of a permanent means of access to the authorised development from the point marked A-10 on sheets 6 and 7 of the streets, rights of way and access plans.
Ashford Borough Council	Calleywell Lane #1 westbound	The provision of a permanent means of access to the authorised development from the point marked A-11 on sheet 7 of the streets, rights of way and access plans.
Ashford Borough Council	Calleywell Lane #2 westbound	The provision of a permanent means of access to the authorised development from the point marked A-12 on sheet 7 and 8 of the streets, rights of way and access plans.
Ashford Borough Council	Station Road #1 eastbound	The provision of a permanent means of access to the authorised development from the point marked A-13 on sheets 7 and 8 of the streets, rights of way and access plans.
Ashford Borough Council	Station Road #2 eastbound	The provision of a permanent means of access to the authorised development from the point marked A-14 on sheets 7 and 8 of the streets, rights of way and access plans.
Ashford Borough Council	Station Road #3 eastbound	The provision of a permanent means of access to the authorised development from the point marked A-15 on sheet 8 of the streets, rights of way and access plans.
Ashford Borough Council	Goldwell Lane eastbound	The provision of a permanent means of access to the authorised development from the point marked A-16 on sheet 9 of the streets, rights of way and access plans.
Ashford Borough Council	Church Lane westbound and eastbound	The provision of a permanent means of access to the authorised development from the point marked A-17 on sheet 10 of the streets, rights of way and access plans.

SCHEDULE 7

Article 17

TRAFFIC REGULATION MEASURES

(1) Area	*(2) Extent of temporary traffic signal and banksman control area*
Ashford Borough Council	Laws Lane approximately 140 meters southwest of Bank Road. An area of existing highway in a generally south-westerly direction on Laws Lane for a distance of 300 metres as shown with a green broken line on sheet 1 of the traffic regulations measures plans, reference TR-1.
Ashford Borough Council	Byway Open to All Traffic AE396 southwest of Roman Road. An area of existing Byway Open to All Traffic in a generally south-westerly direction on Byway Open to All Traffic AE396 for a distance of 370 metres as shown with a green broken line on sheets 2 and 3 of the traffic regulations measures plans, reference TR-2.
Ashford Borough Council	Roman Road at access to Bank Farm and Bank Farm access at Roman Road. An area of existing highway in a generally north westerly direction on Bank Road for a distance of 680m and a south-easterly direction on Roman Road for a distance of 100 metres with and an area of existing private road in a generally south-westerly direction on Bank Farm access for a distance of 265 metres as shown with a green broken line on sheets 2 and 3 of the traffic regulations measures plans, reference TR-3.
Ashford Borough Council	Station Road north of Calleywell Lane and Goldwell Lane. An area of existing highway in a generally southerly direction on Station Road for a distance of 190 metres as shown with a green broken line on sheets 4 and 6 of the traffic regulations measures plans, reference TR-4.
Ashford Borough Council	Main access on Station Road approximately 115 metres south of the centre of HS1 bridge. An area of existing highway in a generally south-westerly direction on Station Road for a distance of 100 metres as shown with a green broken line on sheet 5 of the traffic regulations measures plans, reference TR-5.
Ashford Borough Council	Goldwell Lane Site access approximately 190 metres north of Roman Road. An area of existing highway in a generally south-westerly direction on Goldwell Lane for a distance of 100 metres as shown with a green broken line on sheet 6 of the traffic regulations measures plans, reference TR-6.
Ashford Borough Council	Goldwell Lane east of Calleywell Lane and north of Roman Road. An area of existing highway in a generally southerly direction on Goldwell Lane for a distance of 1030m meters as shown with a green broken line on sheets 4 and 6 of the traffic regulations measures plans, reference TR-7.
Ashford Borough Council	Church Lane south of the centre of M20 bridge. An area of existing highway in a generally southerly direction on Church Lane for a distance of 690m meters from the M20 bridge to 230m south of the HS1 bridge as shown with a green broken line on sheet 7 of the traffic regulations measures plans, reference TR-8.

SCHEDULE 8

Article 18

PUBLIC RIGHTS OF WAY

PART 1

PUBLIC RIGHTS OF WAY TO BE PERMANENTLY STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

(1) Area	*(2) Public rights of way to be stopped up*	*(3) Extent of stopping up*	*(4) New public right of way to be substituted*
Ashford Borough Council	AE385 (Section 1)	Part of footpath to be stopped up, shown as FTD-1 on sheet 1 of the streets, rights of way and access plans.	FNR-1, shown on sheet 1 of the streets, rights of way and access plans.
Ashford Borough Council	AE385 (Section 2)	Part of footpath to be stopped up, shown as FTD-2 on sheet 1 of the streets, rights of way and access plans.	FNR-2, shown on sheet 1 of the streets, rights of way and access plans.
Ashford Borough Council	AE370	Part of footpath to be stopped up, shown as FTD-3 on sheets 1 and 2 of the streets, rights of way and access plans.	FNR-3, shown on sheets 1 and 2 of the streets, rights of way and access plans.
Ashford Borough Council	AE377	Part of footpath to be stopped up, shown as FTD-4 on sheets 1 and 2 of the streets, rights of way and access plans.	FNR-4, shown on sheets 1 and 2 of the streets, rights of way and access plans.
Ashford Borough Council	AE657 and AE656	Part of AE657 and part of AE656 to be stopped up, shown as FTD-12 and FTD-13 on sheet 3 of the streets, rights of way and access plans.	FNR-12, shown on sheet 3 of the streets, rights of way and access plans.
Ashford Borough Council	AE475	Part of footpath to be stopped up, shown as FTD-11 on sheet 4 of the streets, rights of way and access plans.	FNR-11, shown on sheet 4 of the streets, rights of way and access plans.

PART 2

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

(1) Area	*(2) Public right of way to be stopped up*	*(3) Extent of stopping up*	*(4) New public right of way to be substituted*
Ashford Borough Council	AE378	Part of footpath to be stopped up, shown as FTD-5 on sheets 2 and 3 of the streets, rights of way and access plans.	FNR-5, shown on sheets 2 and 3 of the streets, rights of way and access plans.
Ashford Borough Council	AE428	Part of footpath to be stopped up, shown as FTD-6 on sheet 2 of the streets, rights of way and access plans.	FNR-6 shown on sheet 2 of the streets, rights of way and access plans.
Ashford Borough Council	AE448	Entire footpath to be stopped up, shown as FTD-7 on sheets 2 and 3 of the streets, rights of way and access plans.	FNR-7, shown on sheets 2 and 3 of the streets, rights of way and access plans.
Ashford Borough Council	AE431	Part of footpath to be stopped up, shown as FTD-8 on sheets 2 and 3 of the streets, rights of way and access plans.	FNR-8 shown on sheets 2 and 3 of the streets, rights of way and access plans.
Ashford Borough Council	AE436	Part of footpath to be stopped up, shown as FTD-9 on sheets 2 and 3 of the streets, rights of way and access plans.	FNR-9, shown on sheets 2 and 3 of the streets, rights of way and access plans.
Ashford Borough Council	AE454	Entire footpath to be stopped up, shown as FTD-10 on sheet 4 of the streets, rights of way and access plans.	FNR-10, shown on sheet 4 of the streets, rights of way and access plans.

PART 3

PUBLIC RIGHTS OF WAY TO BE PERMANENTLY STOPPED UP FOR WHICH NO SUBSTITUTE IS TO BE PROVIDED

(1) Area	*(2) Public right of way to be stopped up*	*(3) Extent of stopping up*
Ashford Borough Council	AE447, shown as FC-1 on sheet 2 of the streets, rights of way and access plans.	Entire footpath.
Ashford Borough Council	AE455, shown as FC-2 on sheet 4 of the streets, rights of way and access plans.	Part of footpath.

SCHEDULE 9

Article 19

STATUS OF PUBLIC RIGHTS OF WAY CREATED OR IMPROVED

(1) Existing or new highway (footpath)	*(2) New status*	*(3) Reference*
Extension of footpath AE380 across Bank Road to connect to FNR-1 (AE385 diversion), shown on sheet 1 of the streets, rights of way and access plans.	Footpath	FN-AE380, shown on sheet 1 of the streets, rights of way and access plans.
New footpath, running parallel to AE377 on Handen Farm driveway shown on sheet 2 of the streets, rights of way and access plans.	Footpath	FN-6, shown on sheet 2 of the streets, rights of way and access plans.
New footpath from FNR-9 (AE436 diversion) to AE657, shown on sheets 2 and 3 of the streets, rights of way and access plans.	Footpath	FN-1, shown on sheets 2 and 3 of the streets, rights of way and access plans.
Extension of footpath AE657 to connect to FNR-8 (AE431 diversion), shown on sheets 2 and 3 of the streets, rights of way and access plans.	Footpath	FN-AE657, shown on sheets 2 and 3 of the streets, rights of way and access plans.
New footpath from FNR-7 (AE448 diversion) to FNR-5 (AE378 diversion), shown on sheets 2 and 3 of the streets, rights of way and access plans.	Footpath	FN-7 shown on sheets 2 and 3 of the streets, rights of way and access plans.
New footpath from FN-3 to AE657, shown on sheet 3 of the streets, rights of way and access plans.	Footpath	FN-2, shown on sheet 3 of the streets, rights of way and access plans.
New footpath from AE431 to AE657, shown on sheet 3 of the streets, rights of way and access plans.	Footpath	FN-3, shown on sheet 3 of the streets, rights of way and access plans.
New footpath from AE657 to AE457, shown on sheet 3 of the streets, rights of way and access plans.	Footpath	FN-8, shown on sheet 3 of the streets, rights of way and access plans.

SCHEDULE 10

Article 26

LAND IN RESPECT OF WHICH ONLY RIGHTS ETC MAY BE ACQUIRED

(1) Plot reference (as shown on the land plans)	*(2) Work No.*	*(3) Purposes for which rights over land may be acquired and restrictive covenants imposed*
3/13, 3/18, 3/21, 3/24, 4/11	No Work No. Site Wide Works	(a) site preparation works and site clearance, including vegetation removal; (b) remediation of contamination; (c) alteration to locations of services and utilities infrastructure; (d) works for the benefit or protection of land affected by the authorised development; (e) landscaping and biodiversity mitigation and enhancement measures including planting to the extent not undertaken under Work No. 8; (f) sustainable drainage system ponds, depression storage, runoff outfalls, general drainage and irrigation infrastructure, including bunds, embankments, trenching, and swales, systems and improvements, maintenance or extensions to existing drainage and irrigation systems; (g) laying down of public rights of way diversions, signage and information boards and extinguishment of existing public rights of way; (h) works to alter, maintain and repair streets and access roads, including relocation, removal or provision of street signage and furniture in, under or above a street and works to facilitate traffic management; (i) 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 road widening and to remove

		impediments (including vegetation) to such access; (j) 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; (k) 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; and (l) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict 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.
3/50, 3/51, 5/5, 5/6, 5/7, 5/10, 5/11, 5/12, 5/14, 5/16, 5/17, 5/18, 5/19	Work No. 4 and Site Wide Works	(a) laying of electrical cables to connect Work No. 3 to Sellindge Substation, including tunnelling, boring, open cut trenching and horizontal directional drilling works for trenchless crossings; (b) works to allow electrical cable crossings of non-navigable rivers, other watercourses and drains, permissive paths, public rights of way and other highways; (c) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains; (d) crossing of Network Rail infrastructure either—

(i) using existing electrical ducts; or
(ii) through the installation of new cable ducts;
(e) laying down of internal access tracks, ramps, means of access, footpaths, roads, landscaping and vegetation management, signage, information boards and temporary secured construction laydown areas;
(f) extension of the Sellindge Substation including—
(i) installation of new or amended structures, including outdoor air insulated switchgear or indoor gas insulated switchgear, circuit breakers, disconnectors, earth switches, bus-bars, steel supports and ancillary electrical infrastructure;
(ii) laying down of access tracks, ramps, means of access, footpaths and roads;
(iii) construction of a retaining wall, landscaping and vegetation management, signage, information boards and temporary construction laydown areas;
(iv) fencing, gates, boundary treatment and other means of enclosure;
(v) provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, cameras, and communication infrastructure; and
(vi) drainage works;
(g) site preparation works and site clearance, including vegetation removal;
(h) earthworks;
(i) remediation of contamination;
(j) alteration to locations of services and utilities infrastructure;
(k) works for the benefit or protection of land affected by the authorised development;
(l) landscaping and biodiversity mitigation and

enhancement measures including planting to the extent not undertaken under Work No. 8;

(m) sustainable drainage system ponds, depression storage, runoff outfalls, general drainage and irrigation infrastructure, including bunds, embankments, trenching, and swales, systems and improvements, maintenance or extensions to existing drainage and irrigation systems;

(n) laying down of public rights of way diversions, signage and information boards and extinguishment of existing public rights of way;

(o) works to alter, maintain and repair streets and access roads, including relocation, removal or provision of street signage and furniture in, under or above a street and works to facilitate traffic management;

(p) 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 road widening and to remove impediments (including vegetation) to such access;

(q) 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;

(r) 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; and (s) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict 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.
5/8, 5/9, 5/13, 5/15	Work No. 4 and Site Wide Works	(a) laying of electrical cables to connect Work No. 3 to Sellindge Substation, including tunnelling, boring, open cut trenching and horizontal directional drilling works for trenchless crossings; (b) works to allow electrical cable crossings of non-navigable rivers, other watercourses and drains, permissive paths, public rights of way and other highways; (c) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains; (d) crossing of Network Rail infrastructure either— (i) using existing electrical ducts; or (ii) through the installation of new cable ducts; (e) laying down of internal access tracks, ramps, means of access, footpaths, roads, landscaping and vegetation management, signage, information boards and temporary secured construction laydown areas; (f) extension of the Sellindge Substation including— (i) installation of new or amended structures, including outdoor air insulated switchgear or indoor gas insulated switchgear, circuit breakers, disconnectors, earth switches, bus-bars, steel

supports and ancillary electrical infrastructure;

(ii) laying down of access tracks, ramps, means of access, footpaths and roads;

(iii) construction of a retaining wall, landscaping and vegetation management, signage, information boards and temporary construction laydown areas;

(iv) fencing, gates, boundary treatment and other means of enclosure;

(v) provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, cameras, and communication infrastructure; and

(vi) drainage works;

(g) site preparation works and site clearance, including vegetation removal;

(h) earthworks;

(i) remediation of contamination;

(j) alteration to locations of services and utilities infrastructure;

(k) works for the benefit or protection of land affected by the authorised development;

(l) landscaping and biodiversity mitigation and enhancement measures including planting to the extent not undertaken under Work No. 8;

(m) sustainable drainage system ponds, depression storage, runoff outfalls, general drainage and irrigation infrastructure, including bunds, embankments, trenching, and swales, systems and improvements, maintenance or extensions to existing drainage and irrigation systems;

(n) laying down of public rights of way diversions, signage and information boards and extinguishment of existing public rights of way;

(o) works to alter, maintain and repair streets and access roads, including relocation, removal or provision of street signage and furniture in, under or above a street and works to facilitate traffic management;

(p) 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 road widening and to remove impediments (including vegetation) to such access;

(q) 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;

(r) 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;

(s) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict 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;

(t) 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 Sellindge Substation; (u) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain watercourses, public sewers and drains and drainage apparatus and equipment; (v) 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 (w) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain soft landscaping and biodiversity measures.
3/8, 3/23, 4/5, 4/6, 4/7, 4/8	Work No. 5 and Site Wide Works	(a) fencing, gates, boundary treatment and other means of enclosure; (b) provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, a fence detection system, cameras, weather stations, and communication infrastructure; (c) laying of electrical cables, including but not limited to electrical cables connecting Work No. 1, Work No. 2 and Work No. 3, including works to allow electrical cables crossings of non-navigable rivers, other watercourses and drains, permissive paths, public rights of way and other highways;

(d) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains;
(e) laying down of internal access tracks (including fire access tracks), improvement of existing tracks, ramps, means of access, and roads, including construction signage and information boards;
(f) provision of water tanks and pipework connection to hydrants located at inverter stations where BESS installed;
(g) equipment and materials storage during construction and decommissioning phases;
(h) site preparation works and site clearance, including vegetation removal;
(i) earthworks;
(j) remediation of contamination;
(k) alteration to locations of services and utilities infrastructure;
(l) works for the benefit or protection of land affected by the authorised development;
(m) landscaping and biodiversity mitigation and enhancement measures including planting to the extent not undertaken under Work No. 8;
(n) sustainable drainage system ponds, depression storage, runoff outfalls, general drainage and irrigation infrastructure, including bunds, embankments, trenching, and swales, systems and improvements, maintenance or extensions to existing drainage and irrigation systems;
(o) laying down of public rights of way diversions, signage and information boards and extinguishment of existing public rights of way;
(p) works to alter, maintain and repair streets and access roads, including relocation, removal or provision of street

		signage and furniture in, under or above a street and works to facilitate traffic management; (q) 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 road widening and to remove impediments (including vegetation) to such access; (r) 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; (s) 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; and (t) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict 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.
3/2, 3/4	Work No. 8 and Site Wide Works	(a) landscape and biodiversity enhancement measures, including habitat creation and management and seating; (b) mitigation and biodiversity enhancement planting; (c) landscape reinforcement works;

(d) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains;

(e) works to alter, maintain, repair or replace existing crossing structures over non-navigable rivers and other watercourses and drains;

(f) site preparation works and site clearance, including vegetation removal;

(g) remediation of contamination;

(h) works for the benefit or protection of land affected by the authorised development;

(i) landscaping and biodiversity mitigation and enhancement measures including planting to the extent not undertaken under Work No. 8;

(j) 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 road widening and to remove impediments (including vegetation) to such access;

(k) 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;

(l) 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; and

		(m) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict 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.
5/1, 5/2, 5/3, 5/4	Work No. 4, Work No. 6 and Site Wide Works	(a) laying of electrical cables to connect Work No. 3 to Sellindge Substation, including tunnelling, boring, open cut trenching and horizontal directional drilling works for trenchless crossings; (b) works to allow electrical cable crossings of non-navigable rivers, other watercourses and drains, permissive paths, public rights of way and other highways; (c) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains; (d) crossing of Network Rail infrastructure either— (i) using existing electrical ducts; or (ii) through the installation of new cable ducts; (e) laying down of internal access tracks, ramps, means of access, footpaths, roads, landscaping and vegetation management, signage, information boards and temporary secured construction laydown areas; (f) extension of the Sellindge Substation including— (i) installation of new or amended structures, including outdoor air insulated switchgear or indoor gas insulated switchgear, circuit breakers, disconnectors, earth switches, bus-bars, steel supports and ancillary electrical infrastructure;

(ii) laying down of access tracks, ramps, means of access, footpaths and roads;
(iii) construction of a retaining wall, landscaping and vegetation management, signage, information boards and temporary construction laydown areas;
(iv) fencing, gates, boundary treatment and other means of enclosure;
(v) provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, cameras, and communication infrastructure; and
(vi) drainage works;
(g) creation of accesses from the highway;
(h) creation of visibility splays;
(i) upgrading and repairing of existing accesses;
(j) highways improvements;
(k) site preparation works and site clearance, including vegetation removal;
(l) earthworks;
(m) remediation of contamination;
(n) alteration to locations of services and utilities infrastructure;
(o) works for the benefit or protection of land affected by the authorised development;
(p) landscaping and biodiversity mitigation and enhancement measures including planting to the extent not undertaken under Work No. 8;
(q) sustainable drainage system ponds, depression storage, runoff outfalls, general drainage and irrigation infrastructure, including bunds, embankments, trenching, and swales, systems and improvements, maintenance or extensions to existing drainage and irrigation systems;

(r) laying down of public rights of way diversions, signage and information boards and extinguishment of existing public rights of way;

(s) works to alter, maintain and repair streets and access roads, including relocation, removal or provision of street signage and furniture in, under or above a street and works to facilitate traffic management;

(t) 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 road widening and to remove impediments (including vegetation) to such access;

(u) 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;

(v) 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; and

(w) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict 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.
3/35, 3/40, 3/46	Work No. 8 and Site Wide Works	(a) landscape and biodiversity enhancement measures, including habitat creation and management and seating; (b) mitigation and biodiversity enhancement planting; (c) landscape reinforcement works; (d) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains; (e) works to alter, maintain, repair or replace existing crossing structures over non-navigable rivers and other watercourses and drains; (f) site preparation works and site clearance, including vegetation removal; (g) remediation of contamination; (h) works for the benefit or protection of land affected by the authorised development; (i) landscaping and biodiversity mitigation and enhancement measures including planting to the extent not undertaken under Work No. 8; (j) earthworks; (k) sustainable drainage system ponds, depression storage, runoff outfalls, general drainage and irrigation infrastructure, including bunds, embankments, trenching, and swales, systems and improvements, maintenance or extensions to existing drainage and irrigation systems; (l) 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 road widening and to remove impediments (including vegetation) to such access;

		(m) 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; (n) 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; and (o) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict 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.
3/45	Work No. 4, Work No. 8 and Site Wide Works	(a) laying of electrical cables to connect Work No. 3 to Sellindge Substation, including tunnelling, boring, open cut trenching and horizontal directional drilling works for trenchless crossings; (b) works to allow electrical cable crossings of non-navigable rivers, other watercourses and drains, permissive paths, public rights of way and other highways; (c) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains; (d) crossing of Network Rail infrastructure either— (i) using existing electrical ducts; or

(ii) through the installation of new cable ducts;
(e) laying down of internal access tracks, ramps, means of access, footpaths, roads, landscaping and vegetation management, signage, information boards and temporary secured construction laydown areas;
(f) extension of the Sellindge Substation including—
(i) installation of new or amended structures, including outdoor air insulated switchgear or indoor gas insulated switchgear, circuit breakers, disconnectors, earth switches, bus-bars, steel supports and ancillary electrical infrastructure;
(ii) laying down of access tracks, ramps, means of access, footpaths and roads;
(iii) construction of a retaining wall, landscaping and vegetation management, signage, information boards and temporary construction laydown areas;
(iv) fencing, gates, boundary treatment and other means of enclosure;
(v) provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, cameras, and communication infrastructure; and
(vi) drainage works;
(g) landscape and biodiversity enhancement measures, including habitat creation and management and seating;
(h) mitigation and biodiversity enhancement planting;
(i) landscape reinforcement works;
(j) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains;
(k) works to alter, maintain, repair or replace existing crossing structures over non-

navigable rivers and other watercourses and drains;
(l) site preparation works and site clearance, including vegetation removal;
(m) remediation of contamination;
(n) works for the benefit or protection of land affected by the authorised development;
(o) landscaping and biodiversity mitigation and enhancement measures including planting to the extent not undertaken under Work No. 8;
(p) sustainable drainage system ponds, depression storage, runoff outfalls, general drainage and irrigation infrastructure, including bunds, embankments, trenching, and swales, systems and improvements, maintenance or extensions to existing drainage and irrigation systems;
(q) 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 road widening and to remove impediments (including vegetation) to such access;
(r) 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;
(s) 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; and (t) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict 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.
3/49	Work No. 4, Work No. 8 and Site Wide Works	(a) laying of electrical cables to connect Work No. 3 to Sellindge Substation, including tunnelling, boring, open cut trenching and horizontal directional drilling works for trenchless crossings; (b) works to allow electrical cable crossings of non-navigable rivers, other watercourses and drains, permissive paths, public rights of way and other highways; (c) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains; (d) crossing of Network Rail infrastructure either— (i) using existing electrical ducts; or (ii) through the installation of new cable ducts; (e) laying down of internal access tracks, ramps, means of access, footpaths, roads, landscaping and vegetation management, signage, information boards and temporary secured construction laydown areas; (f) extension of the Sellindge Substation including— (i) installation of new or amended structures, including outdoor air insulated switchgear or indoor gas insulated switchgear, circuit breakers, disconnectors, earth switches, bus-bars, steel

supports and ancillary electrical infrastructure;
(ii) laying down of access tracks, ramps, means of access, footpaths and roads;
(iii) construction of a retaining wall, landscaping and vegetation management, signage, information boards and temporary construction laydown areas;
(iv) fencing, gates, boundary treatment and other means of enclosure;
(v) provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, cameras, and communication infrastructure; and
(vi) drainage works;
(g) landscape and biodiversity enhancement measures, including habitat creation and management and seating;
(h) mitigation and biodiversity enhancement planting;
(i) landscape reinforcement works;
(j) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains;
(k) works to alter, maintain, repair or replace existing crossing structures over non-navigable rivers and other watercourses and drains;
(l) site preparation works and site clearance, including vegetation removal;
(m) earthworks;
(n) remediation of contamination;
(o) alteration to locations of services and utilities infrastructure;
(p) works for the benefit or protection of land affected by the authorised development;
(q) landscaping and biodiversity mitigation and enhancement measures including planting to the extent not undertaken under Work No. 8;

(r) sustainable drainage system ponds, depression storage, runoff outfalls, general drainage and irrigation infrastructure, including bunds, embankments, trenching, and swales, systems and improvements, maintenance or extensions to existing drainage and irrigation systems;

(s) 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 road widening and to remove impediments (including vegetation) to such access;

(t) 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;

(u) 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; and

(v) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict 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.

1/5, 4/1, 4/2, 4/3	Work No. 5, Work No. 6 and Site Wide Works	(a) fencing, gates, boundary treatment and other means of enclosure; (b) provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, a fence detection system, cameras, weather stations, and communication infrastructure; (c) laying of electrical cables, including but not limited to electrical cables connecting Work No. 1, Work No. 2 and Work No. 3, including works to allow electrical cables crossings of non-navigable rivers, other watercourses and drains, permissive paths, public rights of way and other highways; (d) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains; (e) laying down of internal access tracks (including fire access tracks), improvement of existing tracks, ramps, means of access, and roads, including construction signage and information boards; (f) provision of water tanks and pipework connection to hydrants located at inverter stations where BESS installed; (g) equipment and materials storage during construction and decommissioning phases; (h) creation of accesses from the highway; (i) creation of visibility splays; (j) upgrading and repairing of existing accesses; (k) highways improvements; (l) site preparation works and site clearance, including vegetation removal; (m) earthworks; (n) remediation of contamination; (o) alteration to locations of services and utilities infrastructure;

(p) works for the benefit or protection of land affected by the authorised development;

(q) landscaping and biodiversity mitigation and enhancement measures including planting to the extent not undertaken under Work No. 8;

(r) sustainable drainage system ponds, depression storage, runoff outfalls, general drainage and irrigation infrastructure, including bunds, embankments, trenching, and swales, systems and improvements, maintenance or extensions to existing drainage and irrigation systems;

(s) laying down of public rights of way diversions, signage and information boards and extinguishment of existing public rights of way;

(t) works to alter, maintain and repair streets and access roads, including relocation, removal or provision of street signage and furniture in, under or above a street and works to facilitate traffic management;

(u) 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 road widening and to remove impediments (including vegetation) to such access;

(v) 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;

		(w) 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; and (x) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict 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.
3/20, 3/22	Work No. 5, Work No. 7 and Site Wide Works	(a) fencing, gates, boundary treatment and other means of enclosure; (b) provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, a fence detection system, cameras, weather stations, and communication infrastructure; (c) laying of electrical cables, including but not limited to electrical cables connecting Work No. 1, Work No. 2 and Work No. 3, including works to allow electrical cables crossings of non-navigable rivers, other watercourses and drains, permissive paths, public rights of way and other highways; (d) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains; (e) laying down of internal access tracks (including fire access tracks), improvement of existing tracks, ramps, means of access, and roads, including construction signage and information boards; (f) provision of water tanks and pipework connection to

hydrants located at inverter stations where BESS installed;
(g) equipment and materials storage during construction and decommissioning phases;
(h) compound areas including hardstanding, turning and loading areas, car parking, offices/welfare facilities, storage areas, waste skip areas, solar PV panel testing area, bunded area for storage of fuels and hydrocarbons, security fencing and hoarding;
(i) an internal haulage road comprising temporary permeable ground protection mats including passing bays, means of access, and signage;
(j) site preparation works and site clearance, including vegetation removal;
(k) earthworks;
(l) remediation of contamination;
(m) alteration to locations of services and utilities infrastructure;
(n) works for the benefit or protection of land affected by the authorised development;
(o) landscaping and biodiversity mitigation and enhancement measures including planting to the extent not undertaken under Work No. 8;
(p) sustainable drainage system ponds, depression storage, runoff outfalls, general drainage and irrigation infrastructure, including bunds, embankments, trenching, and swales, systems and improvements, maintenance or extensions to existing drainage and irrigation systems;
(q) laying down of public rights of way diversions, signage and information boards and extinguishment of existing public rights of way;
(r) works to alter, maintain and repair streets and access roads, including relocation, removal

		or provision of street signage and furniture in, under or above a street and works to facilitate traffic management; (s) 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 road widening and to remove impediments (including vegetation) to such access; (t) 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; (u) 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; and (v) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict 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.
3/1, 3/6	Work No. 5, Work No. 8 and Site Wide Works	(a) fencing, gates, boundary treatment and other means of enclosure; (b) provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, a fence

detection system, cameras, weather stations, and communication infrastructure;

(c) laying of electrical cables, including but not limited to electrical cables connecting Work No. 1, Work No. 2 and Work No. 3, including works to allow electrical cables crossings of non-navigable rivers, other watercourses and drains, permissive paths, public rights of way and other highways;

(d) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains;

(e) laying down of internal access tracks (including fire access tracks), improvement of existing tracks, ramps, means of access, and roads, including construction signage and information boards;

(f) provision of water tanks and pipework connection to hydrants located at inverter stations where BESS installed;

(g) equipment and materials storage during construction and decommissioning phases;

(h) landscape and biodiversity enhancement measures, including habitat creation and management and seating;

(i) mitigation and biodiversity enhancement planting;

(j) landscape reinforcement works;

(k) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains;

(l) works to alter, maintain, repair or replace existing crossing structures over non-navigable rivers and other watercourses and drains;

(m) site preparation works and site clearance, including vegetation removal;

(n) earthworks;

(o) remediation of contamination;

(p) alteration to locations of services and utilities infrastructure;
(q) works for the benefit or protection of land affected by the authorised development;
(r) landscaping and biodiversity mitigation and enhancement measures including planting to the extent not undertaken under Work No. 8;
(s) sustainable drainage system ponds, depression storage, runoff outfalls, general drainage and irrigation infrastructure, including bunds, embankments, trenching, and swales, systems and improvements, maintenance or extensions to existing drainage and irrigation systems;
(t) laying down of public rights of way diversions, signage and information boards and extinguishment of existing public rights of way;
(u) works to alter, maintain and repair streets and access roads, including relocation, removal or provision of street signage and furniture in, under or above a street and works to facilitate traffic management;
(v) 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 road widening and to remove impediments (including vegetation) to such access;
(w) 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; (x) 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; and (y) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict 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.
1/18, 3/14, 3/15, 3/16, 3/17	Work No. 5, Work No. 6, Work No. 7 and Site Wide Works	(a) fencing, gates, boundary treatment and other means of enclosure; (b) provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, a fence detection system, cameras, weather stations, and communication infrastructure; (c) laying of electrical cables, including but not limited to electrical cables connecting Work No. 1, Work No. 2 and Work No. 3, including works to allow electrical cables crossings of non-navigable rivers, other watercourses and drains, permissive paths, public rights of way and other highways; (d) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains; (e) laying down of internal access tracks (including fire access tracks), improvement of existing tracks, ramps, means of access, and roads, including construction signage and information boards;

(f) provision of water tanks and pipework connection to hydrants located at inverter stations where BESS installed;
(g) equipment and materials storage during construction and decommissioning phases;
(h) creation of accesses from the highway;
(i) creation of visibility splays;
(j) upgrading and repairing of existing accesses;
(k) highways improvements;
(l) compound areas including hardstanding, turning and loading areas, car parking, offices/welfare facilities, storage areas, waste skip areas, solar PV panel testing area, bunded area for storage of fuels and hydrocarbons, security fencing and hoarding;
(m) an internal haulage road comprising temporary permeable ground protection mats including passing bays, means of access, and signage;
(n) site preparation works and site clearance, including vegetation removal;
(o) earthworks;
(p) remediation of contamination;
(q) alteration to locations of services and utilities infrastructure;
(r) works for the benefit or protection of land affected by the authorised development;
(s) landscaping and biodiversity mitigation and enhancement measures including planting to the extent not undertaken under Work No. 8;
(t) sustainable drainage system ponds, depression storage, runoff outfalls, general drainage and irrigation infrastructure, including bunds, embankments, trenching, and swales, systems and improvements, maintenance or extensions to existing drainage and irrigation systems;

(u) laying down of public rights of way diversions, signage and information boards and extinguishment of existing public rights of way;

(v) works to alter, maintain and repair streets and access roads, including relocation, removal or provision of street signage and furniture in, under or above a street and works to facilitate traffic management;

(w) 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 road widening and to remove impediments (including vegetation) to such access;

(x) 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;

(y) 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; and

(z) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict 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.
1/6, 1/13, 1/15	Work No. 5, Work No. 6, Work No. 8 and Site Wide Works	(a) fencing, gates, boundary treatment and other means of enclosure; (b) provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, a fence detection system, cameras, weather stations, and communication infrastructure; (c) laying of electrical cables, including but not limited to electrical cables connecting Work No. 1, Work No. 2 and Work No. 3, including works to allow electrical cables crossings of non-navigable rivers, other watercourses and drains, permissive paths, public rights of way and other highways; (d) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains; (e) laying down of internal access tracks (including fire access tracks), improvement of existing tracks, ramps, means of access, and roads, including construction signage and information boards; (f) provision of water tanks and pipework connection to hydrants located at inverter stations where BESS installed; (g) equipment and materials storage during construction and decommissioning phases; (h) creation of accesses from the highway; (i) creation of visibility splays; (j) upgrading and repairing of existing accesses; (k) highways improvements; (l) landscape and biodiversity enhancement measures, including habitat creation and management and seating; (m) mitigation and biodiversity enhancement planting; (n) landscape reinforcement works;

(o) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains;
(p) works to alter, maintain, repair or replace existing crossing structures over non-navigable rivers and other watercourses and drains;
(q) site preparation works and site clearance, including vegetation removal;
(r) earthworks;
(s) remediation of contamination;
(t) alteration to locations of services and utilities infrastructure;
(u) works for the benefit or protection of land affected by the authorised development;
(v) landscaping and biodiversity mitigation and enhancement measures including planting to the extent not undertaken under Work No. 8;
(w) sustainable drainage system ponds, depression storage, runoff outfalls, general drainage and irrigation infrastructure, including bunds, embankments, trenching, and swales, systems and improvements, maintenance or extensions to existing drainage and irrigation systems;
(x) laying down of public rights of way diversions, signage and information boards and extinguishment of existing public rights of way;
(y) works to alter, maintain and repair streets and access roads, including relocation, removal or provision of street signage and furniture in, under or above a street and works to facilitate traffic management;
(z) 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 road widening and to remove impediments (including vegetation) to such access; (aa) 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; (bb) 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; and (cc) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict 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.
2/13, 3/7, 3/9, 3/11, 4/9	Work No. 5, Work No. 7, Work No. 8 and Site Wide Works	(a) fencing, gates, boundary treatment and other means of enclosure; (b) provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, a fence detection system, cameras, weather stations, and communication infrastructure; (c) laying of electrical cables, including but not limited to electrical cables connecting Work No. 1, Work No. 2 and Work No. 3, including works to allow electrical cables crossings of non-navigable

rivers, other watercourses and drains, permissive paths, public rights of way and other highways;
(d) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains;
(e) laying down of internal access tracks (including fire access tracks), improvement of existing tracks, ramps, means of access, and roads, including construction signage and information boards;
(f) provision of water tanks and pipework connection to hydrants located at inverter stations where BESS installed;
(g) equipment and materials storage during construction and decommissioning phases;
(h) compound areas including hardstanding, turning and loading areas, car parking, offices/welfare facilities, storage areas, waste skip areas, solar PV panel testing area, bunded area for storage of fuels and hydrocarbons, security fencing and hoarding;
(i) an internal haulage road comprising temporary permeable ground protection mats including passing bays, means of access, and signage;
(j) landscape and biodiversity enhancement measures, including habitat creation and management and seating;
(k) mitigation and biodiversity enhancement planting;
(l) landscape reinforcement works;
(m) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains;
(n) works to alter, maintain, repair or replace existing crossing structures over non-navigable rivers and other watercourses and drains;
(o) site preparation works and site clearance, including vegetation removal;

(p) earthworks;
(q) remediation of contamination;
(r) alteration to locations of services and utilities infrastructure;
(s) works for the benefit or protection of land affected by the authorised development;
(t) landscaping and biodiversity mitigation and enhancement measures including planting to the extent not undertaken under Work No. 8;
(u) sustainable drainage system ponds, depression storage, runoff outfalls, general drainage and irrigation infrastructure, including bunds, embankments, trenching, and swales, systems and improvements, maintenance or extensions to existing drainage and irrigation systems;
(v) laying down of public rights of way diversions, signage and information boards and extinguishment of existing public rights of way;
(w) works to alter, maintain and repair streets and access roads, including relocation, removal or provision of street signage and furniture in, under or above a street and works to facilitate traffic management;
(x) 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 road widening and to remove impediments (including vegetation) to such access;
(y) 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; (z) 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; and (aa) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict 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.
2/11, 4/4	Work No. 5, Work No. 6, Work No. 7, Work No. 8 and Site Wide Works	(a) fencing, gates, boundary treatment and other means of enclosure; (b) provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, a fence detection system, cameras, weather stations, and communication infrastructure; (c) laying of electrical cables, including but not limited to electrical cables connecting Work No. 1, Work No. 2 and Work No. 3, including works to allow electrical cables crossings of non-navigable rivers, other watercourses and drains, permissive paths, public rights of way and other highways; (d) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains; (e) laying down of internal access tracks (including fire access tracks), improvement of existing tracks, ramps, means

	of access, and roads, including construction signage and information boards; (f) provision of water tanks and pipework connection to hydrants located at inverter stations where BESS installed; (g) equipment and materials storage during construction and decommissioning phases; (h) creation of accesses from the highway; (i) creation of visibility splays; (j) upgrading and repairing of existing accesses; (k) highways improvements; (l) compound areas including hardstanding, turning and loading areas, car parking, offices/welfare facilities, storage areas, waste skip areas, solar PV panel testing area, bunded area for storage of fuels and hydrocarbons, security fencing and hoarding; (m) an internal haulage road comprising temporary permeable ground protection mats including passing bays, means of access, and signage; (n) landscape and biodiversity enhancement measures, including habitat creation and management and seating; (o) mitigation and biodiversity enhancement planting; (p) landscape reinforcement works; (q) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains; (r) works to alter, maintain, repair or replace existing crossing structures over non-navigable rivers and other watercourses and drains; (s) site preparation works and site clearance, including vegetation removal; (t) earthworks; (u) remediation of contamination; (v) alteration to locations of services and utilities infrastructure;

(w) works for the benefit or protection of land affected by the authorised development;
(x) landscaping and biodiversity mitigation and enhancement measures including planting to the extent not undertaken under Work No. 8;
(y) sustainable drainage system ponds, depression storage, runoff outfalls, general drainage and irrigation infrastructure, including bunds, embankments, trenching, and swales, systems and improvements, maintenance or extensions to existing drainage and irrigation systems;
(z) laying down of public rights of way diversions, signage and information boards and extinguishment of existing public rights of way;
(aa) works to alter, maintain and repair streets and access roads, including relocation, removal or provision of street signage and furniture in, under or above a street and works to facilitate traffic management;
(bb) 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 road widening and to remove impediments (including vegetation) to such access;
(cc) 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;

		(dd) 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; and (ee) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict 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.

SCHEDULE 11

Article 26

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF RESTRICTIVE COVENANTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land 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 limiting 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 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act (measure of compensation in case of severance) as substituted by paragraph 5—

(a) for "land is acquired or taken from" substitute "a right or restrictive covenant over land is purchased from or imposed on"; and

(b) for "acquired or taken from him" substitute "over which the right or the restrictive covenant is enforceable".

3.—(1) Without limiting the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A(5A) of the 1961 Act (Relevant valuation date), after "If" 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 7 of Schedule 11 to the Stonestreet Green Solar Order 202*;

(b) the acquiring authority is subsequently required by a determination under paragraph 3 of Schedule 2A to the 1965 Act (as modified by paragraph 10 of Schedule 11 to the Stonestreet Green Solar Order 202*) to take the additional 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 when it entered on that land for the purpose of exercising that right."

Application of the 1965 Act

4.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land must 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 or is to be enforceable.

(2) Without limiting the scope of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right or, in relation to the imposition of a restriction, with the modifications specified in the following provisions of this Schedule.

(**a**) 1973 c. 26.

5. For section 7 of the 1965 Act (Measure of compensation in case of severance) substitute—

"**Measure of compensation in case of severance**

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."

6. 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) (Refusal to convey, failure to make title, etc);

(b) paragraph 10(3) of Schedule 1 (Persons without power to sell their interests);

(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.

7. Section 11 of the 1965 Act (Powers of entry) 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 restriction, 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), 11B (Counter-notice requiring possession to be taken on specified date), 12 (Unauthorised entry) and 13 (Refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

8. Section 20 of the 1965 Act (Tenants at will, etc) 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.

9. Section 22 of the 1965 Act (Interests omitted from purchase) is modified so 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, subject to compliance with that section as respects compensation.

10. For Schedule 2A of the 1965 Act substitute—

"SCHEDULE 2A

Counter-notice requiring purchase of land

Introduction

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 28 (application of the 1981 Act) of the Stonestreet Green Solar Order 202* in respect of the land to which the notice to treat relates.

(2) But see article 29 (acquisition of subsoil and airspace only) of the Stonestreet Green Solar Order 202* which excludes acquisition of subsoil or airspace 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 3 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 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 6 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 12

Article 35

ACQUISITION OF WAYLEAVES, EASEMENTS AND OTHER RIGHTS

PART 1

ON BEHALF OF LICENCE HOLDERS

Acquisition of necessary wayleaves

1.—(1) This paragraph applies where—

(a) a licence holder has agreed in writing with the undertaker that it is necessary or expedient to remove an electric line within the Order limits and to install and keep installed an electric line in substitution for it on, under or over specified land;

(b) the licence holder has agreed in writing that the undertaker may seek a necessary wayleave on behalf of the licence holder in respect of the specified land; and

(c) the owner or occupier of the specified land, having been given a notice by the undertaker or the licence holder requiring him to give the necessary wayleave to the licence holder within a period (not being less than 21 days) specified in the notice—

(i) has failed to give the wayleave before the end of that period; or

(ii) has given the wayleave subject to terms and conditions to which the undertaker,

following consultation with the licence holder, objects.

(2) Subject to sub-paragraphs (3) and (4) below, the Secretary of State may, on the application of the undertaker, himself grant the necessary wayleave to the licence holder subject to such terms and conditions as he thinks fit; and a necessary wayleave so granted shall, unless previously terminated in accordance with a term contained in the wayleave, continue in force for such period as may be specified in the wayleave.

(3) The Secretary of State shall not entertain an application under sub-paragraph (2) above in any case where—

(a) the specified land is covered by a dwelling, or will be so covered on the assumption that any planning permission which is in force is acted on; and

(b) the line is to be installed on or over the specified land.

(4) Before granting the necessary wayleave to the licence holder, the Secretary of State shall afford—

(a) the occupier of the specified land; and

(b) where the occupier is not also the owner of the specified land, the owner, an opportunity of being heard by a person appointed by the Secretary of State.

(5) A necessary wayleave granted to the licence holder under this paragraph—

(a) shall not be subject to the provisions of any enactment requiring the registration of interests in, charges over or other obligations affecting land; but

(b) shall bind any person who is at any time the owner or occupier of the specified land.

(6) Where in pursuance of a necessary wayleave granted under this paragraph a licence holder has erected on any land supports for an electric line, he shall be deemed to have an interest in that land for the purposes of section 7 of the Mines (Working Facilities and Support) Act 1966.

(7) Where a wayleave is granted to a licence holder under this paragraph—

(a) the occupier of the specified land; and

(b) where the occupier is not also the owner of the specified land, the owner, may recover from the undertaker compensation in respect of the grant.

(8) Where in the exercise of any right conferred by such a wayleave any damage is caused to the specified land or to movables, any person interested in the specified land or movables may recover from the undertaker compensation in respect of that damage; and where in consequence of the exercise of such a right a person is disturbed in his enjoyment of any land or movables he may recover from the undertaker compensation in respect of that disturbance.

(9) Compensation under this paragraph may be recovered as a lump sum or by periodical payments or partly in one way and partly in the other.

(10) Any question of disputed compensation under this paragraph shall be determined by the Tribunal; and section 4 of the Land Compensation Act 1961 shall apply to any such determination.

Compulsory acquisition of easements or other rights

2.—(1) This paragraph applies where—

(a) a licence holder has agreed in writing with the undertaker that it is necessary or expedient to remove an electric line within the Order limits and to install and keep installed an electric line in substitution for it on, under or over specified land; and

(b) the licence holder has agreed in writing that the undertaker may seek an easement or other right in land on behalf of the licence holder in respect of the specified land.

(2) Subject to sub-paragraph (3) and (4), where a compulsory purchase order is sought by the undertaker pursuant to sub-paragraph (1), the Secretary of State may authorise the relevant licence holder to purchase compulsorily an easement or right over the specified land where the Secretary of State is satisfied that it is required for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on.

(3) Part I (paragraphs 2 onwards) and Part II of Schedule 3 of the Electricity Act 1989 shall apply in respect of powers of compulsory purchase sought pursuant to this paragraph.

(4) Unless otherwise agreed between the undertaker and the licence holder in writing, where the undertaker seeks a compulsory purchase order on behalf of a licence holder pursuant to this paragraph, the negotiation of consideration and compensation shall be undertaken by the undertaker and any consideration or compensation agreed or determined shall be payable by the undertaker and Schedule 3 of the Electricity Act 1989 as applied by this paragraph shall be interpreted accordingly.

Interpretation

3. In this Part of this Schedule—

"dwelling" means a building or part of a building occupied, or (if not occupied) last occupied or intended to be occupied, as a private dwelling and includes any garden, yard, outhouses and appurtenances belonging to or usually enjoyed with that building or part;

"licence holder" means a person holding a licence under section 6 of the Electricity Act 1989;

"necessary wayleave" means consent for the licence holder to install and keep installed the electric line on, under or over the specified land and to have access to the specified land for the purpose of inspecting, maintaining, adjusting, repairing, altering, replacing or removing the electric line;

"specified land" means the land within or outside the Order limits on, under or over which a licence holder agrees, pursuant to paragraph 1 or 2, that an electric line should be relocated in substitution for an existing electric line; and

"Tribunal" means the Upper Tribunal in relation to England and Wales.

PART 2

ON BEHALF OF CODE OPERATORS

Court imposition of code rights

4.—(1) This paragraph applies where—

(a) a code operator has agreed in writing with the undertaker that for the purpose of the authorised development it is necessary or expedient to remove electronic communications apparatus owned by the code operator within the Order limits and to install and keep installed electronic communications apparatus in substitution for it on, under or over specified land;

(b) the code operator has agreed in writing that the undertaker may seek code rights on behalf of the code operator in respect of the specified land, including all of the other terms of the agreement sought; and

(c) the code operator or the undertaker has given the relevant person a notice in writing—

(i) setting out the code rights, and all of the other terms of the agreement sought, and

(ii) stating that the person's agreement to those terms is sought.

(2) The undertaker may apply to the court for an order under this paragraph if the relevant person does not, before the end of 28 days beginning with the day on which the notice in subparagraph (1)(c) is given, agree to confer or be otherwise bound by the code rights.

(3) An order under this paragraph is one which imposes on the code operator and the relevant person an agreement between them which—

(a) confers the code rights on the operator, or

(b) provides for the code rights to bind the relevant person.

(4) Where the undertaker makes an application to the court under sub-paragraph (2), paragraph 21, 22, 23, 24 and 26 of Part 4 of Schedule 3A (The Electronic Communications Code) and Part 14 (Compensation under The Code) of the Communications Act 2003 shall apply as if—

(a) (reference to the making of an 'order under paragraph 20' were substituted for the making of an order under Schedule 12 (acquisition of wayleaves, easements and other rights) of the Stonestreet Green Solar Order 202*; and

(b) unless otherwise agreed on a case-by-case basis in writing between the undertaker and the code operator, all references to 'consideration' or 'compensation' provided for in any agreement or order or otherwise to be determined shall be read as being payable by the undertaker.

Compulsory acquisition of easements or other rights

5.—(1) The undertaker may seek a compulsory purchase order on behalf of a code operator where—

(a) the code operator has agreed in writing with the undertaker that for the purpose of the authorised development it is necessary or expedient to remove electronic communications apparatus owned by the operator within the Order limits and to install and keep installed electronic communications apparatus in substitution for it on, under or over specified land;

(b) the code operator has agreed in writing that the undertaker may seek an easement or other rights over land on behalf of the code operator in respect of the specified land.

(2) Subject to sub-paragraph (3) and (4), where a compulsory purchase order is sought by the undertaker pursuant to sub-paragraph (1), the Secretary of State may authorise the relevant code operator to purchase compulsorily the specified land or an easement or right over the specified land if the Secretary of State is satisfied that it is required by the code operator—

(a) for, or in connection with, the establishment or running of the code operator's network; or

(b) as to which it can reasonably be foreseen that it will be so required.

(3) Subject to sub-paragraph (4), paragraphs 3(2) to 3(7) of Schedule 4 of the Communications Act 2003 shall apply in respect of powers of compulsory purchase sought pursuant to this paragraph.

(4) Unless otherwise agreed between the undertaker and the licence holder in writing, where the undertaker seeks a compulsory purchase order on behalf of a code operator pursuant to this paragraph, all negotiations of compensation shall be undertaken by the undertaker and any consideration or compensation agreed or determined in respect of any easements or rights acquired shall be payable by the undertaker and Schedule 4 of the Communications Act 2003 shall be interpreted accordingly as it applies to this paragraph.

Interpretation

6. In this Part of this Schedule, the following terms have the following meanings—

"code operator's network" has the meaning given for 'operator's network' in paragraph 6 of Schedule 3A of the Communications Act 2003;

"code rights" has the meaning given in paragraph 3 of Schedule 3A of the Communications Act 2003;

"court" has the meaning given in paragraph 94 of Schedule 3A of the Communications Act 2003;

"electronic communications apparatus" has the meaning given in paragraph 5 of Schedule 3A of the Communications Act 2003;

"code operator" has the meaning given for an 'operator' in paragraph 2 of Schedule 3A of the Communications Act 2003;

"relevant person" means the person in respect of whose interest in land a code right is required;

"specified land" means the land within or outside the Order limits on, under or over which an operator agrees, pursuant to paragraph 4(1), that electronic communications apparatus should be relocated in substitution for existing electronic communications apparatus.

PART 3

ON BEHALF OF WATER AND SEWERAGE UNDERTAKERS

Compulsory acquisition of easements or other rights

7.—(1) The undertaker may seek a compulsory purchase order on behalf of a water or sewerage undertaker where—

(a) the water or sewerage undertaker has agreed in writing with the undertaker that for the purpose of the authorised development it is necessary or expedient to remove water or sewerage apparatus owned by the water or sewerage undertaker within the Order limits and to install and keep installed alternative apparatus in substitution for it on, under or over specified land;

(b) the water or sewerage undertaker has agreed in writing that the undertaker may seek an easement or other rights over land on behalf of the water or sewerage undertaker in respect of the specified land.

(2) Subject to sub-paragraph (3), where a compulsory purchase order is sought by the undertaker pursuant to sub-paragraph (1), the Secretary of State may authorise the relevant water or sewerage undertaker to purchase compulsorily the specified land or an easement or right over the specified land where the Secretary of State is satisfied that it is required by the water or sewerage undertaker for the purposes of, or in connection with, the carrying out of its functions.

(3) Section 155(3) to (6) of the Water Industry Act 1991 shall apply in respect of powers of compulsory purchase sought pursuant to this paragraph.

(4) Unless otherwise agreed between the undertaker and the water or sewerage undertaker in writing, where the undertaker seeks a compulsory purchase order on behalf of a water or sewerage

undertaker pursuant to this paragraph, all negotiations of compensation shall be undertaken by the undertaker and any consideration or compensation agreed or determined in respect of any easements or rights acquired shall be payable by the undertaker.

(5) In this paragraph—

"alternative apparatus" means alternative water or sewerage apparatus adequate to enable the water or sewerage undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

"specified land" means the land within or outside the Order limits on, under or over which a water or sewerage undertaker agrees, pursuant to sub-paragraph (1), that alternative apparatus should be relocated in substitution for existing relevant water or sewerage apparatus.

"water or sewerage undertaker" means 'water undertaker' or 'sewerage undertaker' as defined in the Water Industry Act 1991; and

"water or sewerage apparatus" means (i) mains, pipes or other water apparatus belonging to or maintained by a water undertaker for the purposes of water supply; and (ii) any drain or works vested in a sewerage undertaker, and any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of the Water Industry Act 1991 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, pimps, or other accessories forming part of any such sewer, drain or works, and in each case includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus.

PART 4

ON BEHALF OF GAS TRANSPORTERS

Compulsory acquisition of easements or other rights

8.—(1) The undertaker may seek a compulsory purchase order on behalf of a gas transporter where—

(a) the gas transporter has agreed in writing with the undertaker that for the purpose of the authorised development it is necessary or expedient to remove gas apparatus owned by the gas transporter within the Order limits and to install and keep installed gas apparatus in substitution for it on, under or over specified land; or

(b) the gas transporter has agreed in writing that the undertaker may seek an easement or other rights over land on behalf of the gas transporter in respect of the specified land.

(2) Subject to sub-paragraph (3) and (4), where a compulsory purchase order is sought by the undertaker pursuant to sub-paragraph (1), the Secretary of State may authorise the relevant gas transporter to purchase compulsorily an easement or right over the specified land.

(3) Schedule 3 of the Gas Act 1986 shall apply in respect of powers of compulsory purchase sought pursuant to this paragraph.

(4) Where the undertaker seeks a compulsory purchase order on behalf of a gas transporter pursuant to this paragraph, all negotiations of compensation shall be undertaken by the undertaker, unless otherwise agreed with the gas transporter, and any consideration or compensation agreed or determined in respect of any easements or rights acquired shall be payable by the undertaker only (unless otherwise agreed with the operator).

(5) In this paragraph—

"alternative apparatus" means alternative gas apparatus adequate to enable the gas transporter in question to fulfil its statutory functions in a manner not less efficient than previously;

"gas apparatus" means any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purpose of gas supply;

"gas transporter" has the meaning given in Part 1 of the Gas Act 1986; and

"specified land" means land within or outside the Order limits on, under or over which a gas transporter agrees, pursuant to sub-paragraph (1), that alternative apparatus should be relocated in substitution for existing gas apparatus.

SCHEDULE 13

Article 38

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

Application

1. For the protection of the affected undertakers referred to in this Part of this Schedule (save for any utility undertakers which are specifically protected by any other Part of this Schedule, which will take precedence) the following provisions have effect, unless otherwise agreed in writing between the undertaker and the affected undertaker concerned.

Interpretation

2. In this Part of this Schedule—

"affected undertaker" means—

(a) any licence holder within the meaning of Part 1 (electricity supply) of the 1989 Act;

(b) a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986(**a**);

(c) a water undertaker within the meaning of the Water Industry Act 1991(**b**); or

(d) a sewerage undertaker within the meaning of Part 1 (preliminary) of the Water Industry Act 1991,

for the area of the authorised development but, for the avoidance of doubt, does not include the undertakers specified in Parts 3 to 7 of this Schedule, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained;

"alternative apparatus" means alternative apparatus adequate to enable the affected undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means—

(a) in the case of an electricity undertaker, electric lines or electric plant (as defined in the 1989 Act), belonging to or maintained by that affected undertaker;

(b) in the case 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 affected undertaker for the purposes of water supply; and

(ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A (agreements to adopt water main or service pipe at future date) of the Water Industry Act 1991;

(d) in the case of a sewerage undertaker—

(i) any drain or works vested in the affected undertaker under the Water Industry Act 1991; and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 of that Act,

(**b**) 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).

(**a**) 1991 c. 56.

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"functions" includes powers and duties; and

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

Precedence of the 1991 Act in respect of apparatus in the streets

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the affected undertaker are regulated by the provisions of Part 3 (water supply) of the Water Industry Act 1991.

Removal of apparatus

4.—(1) If, for the purpose of executing any works in, on or under any land purchased, held, or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the affected undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an affected undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (2), afford to the affected undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(2) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (1), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the affected undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(3) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the affected undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(4) The affected undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 46 (arbitration) and after the grant to the affected undertaker of any such facilities and rights as are referred to in sub-paragraph (1) or (2), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(5) Regardless of anything in sub-paragraph (4), if the undertaker gives notice in writing to the affected undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the affected undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the affected undertaker.

Facilities and rights for alternative apparatus

5.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to an affected undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker

and the affected undertaker in question or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the affected undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that affected undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

6.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 4(1) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 4(1), the undertaker must submit to the affected undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the affected undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the affected undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by an affected undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If an affected undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 5 apply as if the removal of the apparatus had been required by the undertaker under paragraph 4(1).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the affected undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses and costs

7.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to an affected undertaker the reasonable expenses incurred by that affected undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 4(1).

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 46 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the affected undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to an affected undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the affected undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

8.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 4(1), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of an affected undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any affected undertaker, the undertaker must—

(a) bear and pay the cost reasonably incurred by that affected undertaker in making good such damage or restoring the supply; and

(b) provide reasonable compensation to that affected undertaker for any other expenses, loss, damages, penalty or costs incurred by the affected undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an affected undertaker, its officers, servants, contractors or agents.

(3) An affected undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the consent of the undertaker which, if it withholds such consent, will have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Enactments and agreements

9. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an affected undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

10. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

11. In this Part of this Schedule—

"the 2003 Act" means the Communications Act 2003(**a**);

"the code rights" has the same meaning as in the Paragraph 3 of the electronic communications code(**b**);

"electronic communications apparatus" has the same meaning as in the electronic communications code;

"the electronic communications code" has the same meaning as in Chapter 1 of Part 2 of the 2003 Act;

"electronic communications code network" means—

(a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 (Application of the electronic communications code) of the 2003 Act; and

(b) an electronic communications network which the undertaker is providing or proposing to provide.

"electronic communications code operator" means a person in whose case the electronic communications code is applied by a direction under section 106 (Application of the electronic communications code) of the 2003 Act;

"infrastructure system" has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

"operator" means the operator of an electronic communications code network.

12. The exercise of the powers conferred by this Order is subject to Part 10 (undertaker's works affecting electronic communications apparatus) of the electronic communications code.

13.—(1) Subject to sub-paragraph (2), if as a result of the authorised development or its construction, or of any subsidence resulting from any of the authorised development—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other reasonable expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

14. 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

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(**b**) 2003 c. 21.
(**a**) See section 106 of the 2003 Act. Section 106 was amended by section 4(3) of the Digital Economy Act 2017 (c. 30).

and if such consent, is withheld, the undertaker has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

15. 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 46 (arbitration).

16. 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.

17. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF SOUTHERN WATER

18. For the protection of Southern Water, the following provisions have effect, unless otherwise agreed in writing between the undertaker and Southern Water.

19. In this Part of this Schedule—

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

"apparatus" means—

(a) any works, mains, pipes, pumping stations, connections, water booster stations or any other ancillary apparatus belonging to or maintained by Southern Water for the purposes of water supply, water removal or drainage;

(b) any drain or works vested in Southern Water under the Water Industry Act 1991; and

(c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of the Water Industry Act 1991 or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at a future date) of that Act,

and includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain, or works (within the meaning of section 219 (general interpretation) of that Act) and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"functions" includes powers and duties;

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

"plan" includes all designs, drawings, design principles, site locations, accesses, soil reports, programmes, calculations, risk assessments, standoff distances, sections, drawings, specifications, method statements and other documents that are reasonably necessary to properly and sufficiently to describe the works to be executed; and

"Southern Water" means Southern Water Services Limited, company number 02366670, whose registered office is at Southern House, Yeoman Road, Worthing, West Sussex, BN13 3NX.

Precedence of the 1991 Act in respect of apparatus in streets

20. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Southern Water are regulated by the provisions of Part 3 (water supply) of the 1991 Act.

Apparatus in stopped up streets

21. Regardless of the temporary stopping up or diversion of any street under the powers conferred by article 18 (public rights of way – stopping up and vehicular use on public rights of way), Southern Water is at liberty at all times to take all necessary access across any such stopped up 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 stopping up or diversion was in that street subject to serving 7 days' notice on the undertaker (save in cases of emergency).

Removal of apparatus

22.—(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 Southern Water's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of Southern Water 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 Southern Water in accordance with sub-paragraphs (1) to (8) and until—

(a) any requirement for a permit under the Environmental Permitting (England and Wales) Regulations 2016(**a**) or other legislation and any other associated consents are obtained, and any approval or agreement required from Southern Water on alternative locations as a result of such re-location are approved, such approvals from Southern Water not to be unreasonably withheld or delayed; and

(b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Southern Water has agreed all of the documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Southern Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Southern Water 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 Southern Water reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Southern 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, Southern Water must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Southern Water to use its compulsory purchase powers to this end unless it elects to do so.

(**a**) S.I. 2016/1154.

(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 Southern Water and the undertaker or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(5) Southern Water must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 46 (arbitration) and after the grant to Southern 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 the undertaker gives notice in writing to Southern Water 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, and Southern Water will refer to its own guidance, policies and specifications for carrying out works of that nature, and if agreed by Southern Water (such agreement not to be unreasonably withheld or delayed), that work, instead of being executed by Southern Water, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Southern Water.

(7) Whenever alternative apparatus is to be or is being substituted for existing apparatus, the undertaker will, before taking any steps that will trigger the need for those substitution works, use best endeavours to comply with Southern Water's reasonable requests for a reasonable period of time to enable Southern 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.

(8) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench)) within the standoff distances agreed between the parties under sub-paragraph (2) and for the purposes of a sewer or rising main is the standard protective strip which is the strip of land falling 3 metres either side of the sewer or rising main or so as to require any special measures that are outside industry standard measures other than in accordance with paragraph 26 (retained apparatus) below unless otherwise agreed with Southern Water, such agreement not to be unreasonably withheld or delayed, with such provision being brought promptly to the attention of any agent or contractor responsible for carrying out any work on behalf of the undertaker.

Access

23.—(1) If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is obstructed or rendered materially less convenient (in Southern Water's opinion, acting reasonably) the undertaker must provide such alternative means of access to such apparatus as will enable Southern Water to maintain or use the apparatus no less effectively or conveniently than was possible before such obstruction.

(2) Where the undertaker proposes to provide to Southern Water an alternative means of access to any apparatus in compliance with sub-paragraph (1), the powers conferred by the Order must not be exercised until Southern Water has approved the proposed alternative means of access (such approval not to be unreasonably withheld or delayed).

Facilities and rights for alternative apparatus

24.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Southern Water 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 Southern Water or in default of agreement settled by arbitration in accordance with article 46 (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 Southern 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 Southern Water as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Identification and notification of apparatus

25. If in consequence of the exercise of the powers conferred by the Order, previously unmapped sewers, lateral drains or other apparatus are identified by the undertaker, notification of the location of such assets must immediately be given to Southern Water and afforded the same protection of other Southern Water assets.

Retained apparatus

26.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used pursuant to the powers of this Order that are near to, or will or may affect, any apparatus where the removal of which has not been required by the undertaker, the undertaker must submit to Southern Water for approval a plan, section and description of the works to be executed.

(2) The undertaker must not commence the works outlined in sub-paragraph (1) until the plan of works has been approved by Southern Water (such approval not to be unreasonably withheld or delayed).

(3) Those works must be executed only in accordance with the plan, section and description submitted and approved under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (4) by Southern Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Southern Water is entitled to watch and inspect the execution of those works.

(4) Any reasonable requirements made by Southern Water under sub-paragraph (3) shall be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(5) If the revised plan of works is not approved within 21 days, either the undertaker or Southern Water may require a meeting to be held within 28 days of submission of the revised plan of works between the chief engineers or a suitably qualified alternative representative of the undertaker and Southern Water to agree the plan of works.

(6) If the undertaker and Southern Water fail to reach an agreement on the plan of works, the dispute shall be resolved in accordance with article 46 (arbitration).

(7) If Southern Water 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, sub-paragraphs 18 to 20 and 23 to 25 apply as if the removal of the apparatus had been required by the undertaker under paragraph 22(2).

(8) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan, section and description.

(9) The undertaker is not required to comply with sub-paragraph 26(1) in a case of emergency but in that case it must give to Southern Water notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

(10) For the purposes of sub-paragraph (1), works are deemed to be in land near Southern Water's apparatus if those works fall within the standoff distances agreed between the parties under sub-paragraph (2).

Expenses and costs

27.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Southern Water the reasonable expenses incurred by Southern 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 paragraph 22(2).

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 46 (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 Southern Water in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be 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 Southern Water in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Southern Water 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.

28.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 22(1) any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Southern Water, or there is any interruption in any service provided, or in the supply of any goods, by Southern Water, the undertaker must—

(a) bear and pay the cost reasonably incurred by Southern Water in making good such damage or restoring the supply; and

(b) provide reasonable compensation to Southern Water for any other expenses, loss, damages, penalty or costs incurred by Southern Water,

by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by Southern Water on behalf of the undertaker or in accordance with a plan approved by Southern Water or in accordance with any

requirement of Southern Water or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(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 act, neglect or default of Southern Water, its officers, servants, contractors or agents.

(4) Southern Water must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the consent of the undertaker which, if it withholds such consent, will have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Arbitration

29. For the avoidance of doubt any difference under any provision of this Part of this Schedule, unless otherwise provided for, shall be referred to and settled by arbitration in accordance with article 46 (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.

Acquisition of land

30. Regardless of any provision in the Order or anything shown on the land plans, the undertaker must not acquire any apparatus other by agreement with Southern Water.

Enactments and agreements

31. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Southern Water in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 4

FOR THE PROTECTION OF SOUTH EASTERN POWER NETWORKS PLC

Application

32.—(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) The provisions of this Part of this Schedule will not apply to any authorised development carried out by UK Power Networks or National Grid pursuant to article 6 (benefit of the Order) or article 7 (consent to transfer benefit of the Order) of this Order.

Interpretation

33. 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 no less efficient than previously;

"apparatus" means electric lines and electrical plant (as defined in section 64(1) of the Electricity Act 1989) belonging to or maintained by the utility undertaker;

"functions" includes powers and duties;

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

"plan" 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 the works to be executed;

"specified works" means any of the authorised development which—

(a) will or may be situated within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 37(2) or otherwise; or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 37(2) or otherwise; and

"utility undertaker" means South Eastern Power Networks plc, whose registered office is at Newington House, 237, Southwark Bridge Road, London, SE1 6NP.

On street apparatus

34. 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.

Apparatus in stopped up rights of way

35.—(1) Where any public right of way is stopped up under article 18 (public rights of way – stopping up and vehicular use on public rights of way) and the utility undertaker has apparatus in that public right of way, the utility undertaker will continue to have the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 37 (removal of apparatus) or the power of the undertaker to carry out works under paragraph 39 (retained apparatus).

(2) Regardless of the temporary closure or diversion of any street under the powers of article 11 (street works and temporary closure of streets and private means of access), the utility undertaker is at liberty at all times to take all necessary access across any such closed or diverted street and to execute and do all such works and things in any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the closure or diversion was in that street.

Acquisition of land

36. 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 with the utility undertaker.

Removal of apparatus

37.—(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 apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of the utility undertaker in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any specified 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 no less than 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 the 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 and use 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 must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, save that this obligation does not extend to the requirement for the utility undertaker to use its powers of compulsory acquisition unless it elects to do so.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker and the undertaker or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(5) The utility undertaker must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 46 (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 that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

Facilities and rights for alternative apparatus

38.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to the utility undertaker necessary facilities and rights in land for the construction and maintenance of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms as may be agreed between the undertaker and the utility undertaker and must be no less favourable on the whole to the utility undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed, unless otherwise agreed by the utility undertaker, such agreement not to be unreasonably withheld.

(2) If the facilities and rights to be afforded by the undertaker and agreed with the utility undertaker under sub-paragraph (1) above 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 the utility undertaker 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 45 (arbitration) and the arbitrator must make such provision for the payment of compensation by the undertaker to the utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

39.—(1) Not less than 28 days before the commencement of any specified works, the undertaker must submit to the utility undertaker a plan of the works to be executed.

(2) The plan to be submitted to the utility undertaker under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which they are proposed to be constructed or renewed;

(c) the manner of their construction or renewal;

(d) the position of all apparatus; and

(e) by way of detailed drawings, every alteration proposed to be made to such apparatus.

(3) The undertaker must not commence any specified works until the utility undertaker has given written approval of the plan so submitted.

(4) Any approval of the utility undertaker given under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph 39(5);

(b) must not be unreasonably withheld; and

(c) will be deemed approved if no response is provided by the utility undertaker within 28 days.

(5) The utility undertaker may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Specified works must be executed 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 39(5) 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 will be entitled to watch and inspect the execution of those works where reasonably practicable to do so and in accordance with any relevant health and safety legislation.

(7) Any requirements made by the utility undertaker under sub-paragraph 39(5) are to be made within a period of 14 days beginning with the date on which the plan is submitted to it.

(8) If the utility undertaker, in accordance with sub-paragraph 39(5) 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 32 to 34 and 36 to 38 apply as if the removal of the apparatus had been required by the undertaker under paragraph 37(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 28 days before commencing the execution of any specified 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.

(10) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency works but in that case it must give to the utility undertaker 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 39(5) in so far as is reasonably practicable in the circumstances.

(11) In sub-paragraph (10), "emergency works" means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

Expenses and costs

40.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the utility undertaker within 30 days of receipt of an itemised VAT invoice from the utility undertaker all expenses reasonably and properly incurred by the utility undertaker in, or in connection with the inspection, removal, alteration, relaying, replacing or protection of any apparatus or the construction of any alternative apparatus which may be required in consequence of the execution of any specified works.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was 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 46 (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 by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus must not 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 specified works; 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 must 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 the 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.

41.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified 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 the utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by the utility undertaker, the undertaker must—

(a) bear and pay within 30 days of receipt of an itemised invoice from the utility undertaker the cost reasonably and properly incurred by the utility undertaker in making good such damage or restoring the supply; and

(b) reimburse the utility undertaker for and indemnify for any other losses, expenses, demands, proceedings, damages, claims, penalty or costs properly incurred by or recovered from the utility undertaker, by reason or in consequence of any such damage or interruption or the utility undertaker becoming liable to any third party as aforesaid other than arising from any default of the utility undertaker.

(2) The fact that any act or thing may have been done by the utility undertaker on behalf of the undertaker or in accordance with a plan approved by the utility undertaker or in accordance with any requirement of utility undertaker or under its supervision will not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1), unless utility undertaker fails to carry out and execute the works properly with due care and attention and in a skillful and workman like manner or in a manner that does not accord with the approved plan agreed by utility undertaker in accordance with paragraph 37(4) and paragraph 39(4).

(3) Nothing in sub-paragraph (1) imposes 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 the utility undertaker , its officers, servants, contractors or agents;

(b) any part of the specified works carried out by the utility undertaker in the exercise of any functions conferred by this Order pursuant to a transfer or grant under article 7 (consent to transfer benefit of the Order); 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) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) The utility undertaker must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must be made without the consent of the undertaker and, if such consent is withheld, the undertaker shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) The utility undertaker 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) The utility undertaker must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies and if reasonably requested to do so by the undertaker the utility undertaker must provide an explanation of how the claim has been minimised.

Enactments and agreements

42. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and the utility undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Cooperation

43.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or the utility undertaker requires the removal of apparatus under paragraph 37(2) or the utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 39 (retained apparatus), the undertaker must use 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 the utility undertaker's undertaking and the utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever the utility undertaker'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

44. If in consequence of the exercise of the powers conferred by this Order the access to any apparatus is materially obstructed the undertaker must provide such alternative means of access to that apparatus as will enable the utility undertaker to maintain or use the apparatus no less effectively than was possible before the obstruction.

Arbitration

45. Any difference or dispute arising between the undertaker and the utility undertaker under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and the utility undertaker, be determined by arbitration in accordance with article 46 (arbitration).

PART 5

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER

Application

46.—(1) For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 7 (consent to transfer benefit of the Order)—

(a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Grid 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 Grid (but without prejudice to paragraph 55(3)(b)).

Interpretation

47. In this Part of this Schedule—

"acceptable credit provider" means a bank or financial institution with a credit rating that is not lower than: (i) "A-" if the rating is assigned by Standard & Poor's Ratings Group or Fitch Ratings; and "A3" if the rating is assigned by Moody's Investors Services Inc.;

"acceptable insurance" means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than a sum to be notified to the undertaker by National Grid and agreed in writing between the parties. Evidence of that insurance must be provided to National Grid on request. Such insurance shall be maintained—

(a) during the construction period of the specified works; and

(b) after the construction period of the specified works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an "acceptable credit provider", such insurance shall include (without limitation)—

(i) a waiver of subrogation and an indemnity to principal clause in favour of National Grid; and

(ii) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than a sum to be notified to the undertaker by National Grid and agreed in writing between the parties;

"acceptable security" means either—

(a) a parent company guarantee from a parent company in favour of National Grid to cover the undertaker's liability to National Grid to a total liability cap to be notified to the undertaker by National Grid and agreed in writing between the parties (in a form reasonably satisfactory to National Grid), and where required by National Grid accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid to cover the undertaker's liability to National Grid for an amount to be agreed in writing

between the undertaker and National Grid (both parties acting reasonably and in a form reasonably satisfactory to National Grid);

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid 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 National Grid together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution 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 Part of this Schedule;

"commence" and "commencement" in this Part of this Schedule includes 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 Grid (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, must require the undertaker to submit for National Grid'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 National Grid 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" includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid: construct, use, repair, alter, inspect, renew or remove the apparatus;

"NESO" means as defined in the STC;

"parent company" means a parent company of the undertaker acceptable to and which shall have been approved by National Grid acting reasonably;

"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 (but excluding under) 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 51(2) (removal of apparatus) or otherwise; and

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 51(2) (removal of apparatus) or otherwise; and

(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 NESO as modified from time to time;

"STC claims" means any claim made under the STC against National Grid 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 National Grid's transmission system which arises as a result of the authorised works; and

"transmission owner" means as defined in the STC.

On street apparatus

48. Except for paragraphs 48 (apparatus of National Grid in closed streets), 53 (retained apparatus: protection), 54 (expenses) and 55 (indemnity) of this Part 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 Grid, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid in closed streets or in public rights of way that are stopped up

49.—(1) Where any street is closed under article 11 (street works and temporary closure of streets and private means of access) or stopped up under article 18 (public rights of way – stopping up and vehicular use on public rights of way) as specified in Schedule 8 (public rights of way) to this Order, if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the closure or stopping up and the undertaker must grant to National Grid, or use reasonable endeavours to procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the closure of any such street but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 51 (removal of apparatus) or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 53 (retained apparatus: protection).

(2) Notwithstanding the temporary closure or diversion of any street under the powers of article 11 (street works and temporary closure of streets and private means of access) or are stopped up under article 18 (public rights of way – stopping up and vehicular use on public rights of way) as specified in Schedule 8 (public rights of way) to this Order, National Grid is at liberty at all times to take all necessary access across any such closed street or stopped up public right of way 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 closure or diversion was in that street.

Acquisition of land

50.—(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 Grid 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 Grid 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 Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid 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 Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid , 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 Grid and the undertaker, the undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation 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 Grid or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule will prevail.

(4) Any agreement or consent granted by National Grid under paragraph 53 (retained apparatus: protection) or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

51.—(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 Grid 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 Grid 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 Grid 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 direct consequence of the exercise of any of the powers conferred by this Order National Grid 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 Grid to its satisfaction (taking into account paragraph 52(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 Grid may in its sole discretion, 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 will not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to do so.

(4) Any alternative apparatus to be constructed in land of 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 Grid and the undertaker.

(5) National Grid 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 Grid 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

52.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid 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 Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(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 Grid (in National Grid's opinion, acting reasonably)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 59 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

53.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity assets.

(2) In relation to specified works the plan to be submitted to National Grid 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;

(g) an assessment of risks of rise of earth issues; and

(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 National Grid'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 National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraph (4)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8);

(b) must not be unreasonably withheld or delayed.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid 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 National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where National Grid 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 Grid's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required and National Grid must give notice of its requirement for such works within 14 days of the date of submission of a plan pursuant to sub-paragraph (1) (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the specified works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 46 to 48 and 50 to 52 apply as if the removal of the apparatus had been required by the undertaker under paragraph 51(2) (removal of apparatus).

(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 will 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 National Grid 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 this Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

54.—(1) Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised VAT invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid 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 Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid—

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 51(3) (removal of apparatus); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;

(b) 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 under this part of this Schedule;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this 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 59 (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 Grid 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 Grid 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 Grid 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

55.—(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 it) 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 Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid 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 Grid the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and

(b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party and including STC claims or an incentive deduction other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of sub-paragraph (1) unless National Grid 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) imposes 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 Grid, 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 Grid pursuant to article 6 (benefit of the Order) or as a transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 7 (consent to transfer benefit of the Order) subject to the proviso that once such works become apparatus, any authorised works yet to be executed and not falling within this sub-paragraph will be subject to the full terms of this Part of this Schedule including this paragraph; 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 Grid 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 its representations.

(5) National Grid 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 Grid 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 Grid'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 Grid's control and if reasonably requested to do so by the undertaker National Grid 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 acceptable insurance with a reputable insurer the coverage and level of cover to be first agreed in writing between the undertaker and National Grid, 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) Before carrying out any specified works the undertaker must put in place acceptable security, and evidence of such acceptable security is to be provided on request and thereafter maintained for the duration of the carrying out of any specified works.

(9) Any dispute between the undertaker and National Grid regarding the terms, cover or insured level of the insurance policy or regarding the form and level of acceptable security shall be resolved in accordance with paragraph 59 (arbitration).

Enactments and agreements

56. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid 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 Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Cooperation

57.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 51(2) (removal of apparatus) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 53 (retained apparatus: protection), the undertaker will 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 Grid's undertaking and National Grid will use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid'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

58. If in consequence of the agreement reached in accordance with paragraph 50(1) (acquisition of land) 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 Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

59. Save for any differences or disputes arising under paragraph 51(2), 51(4), 53(1) and 54, any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 46 (arbitration).

Notices

60. Notwithstanding article 44 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph 53 (retained apparatus: protection) must be submitted using the LSBUD system (https://lsbud.co.uk/) or to such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 6

FOR THE PROTECTION OF NATIONAL GRID INTERCONNECTORS LIMITED AS ELECTRICITY UNDERTAKER

Application

61.—(1) For the protection of National Grid Interconnectors as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid Interconnectors.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid Interconnectors, where the benefit of this Order is transferred or granted to another person under article 7 (consent to transfer benefit of the Order) written notice of the transfer or grant must be given to National Grid Interconnectors 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 Grid Interconnectors (but without prejudice to paragraph 68(3)(b) (indemnity)).

Interpretation

62. In this Part of this Schedule—

"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 National Grid Interconnectors together with any apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid Interconnectors for the purposes of transmission, distribution 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 Part of this Schedule;

"commence" and "commencement" in this Part of this Schedule includes 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 Grid Interconnectors 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, must require the undertaker to submit for National Grid Interconnectors' 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 in land includes a reference to apparatus under, over, across, along or upon such land;

"Incentive Deduction" means any incentive deduction National Grid Interconnectors 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" includes the ability and right to do any of the following in relation to any apparatus of National Grid Interconnectors: construct, use, repair or inspect the apparatus;

"National Grid Interconnectors" means National Grid Interconnectors Limited, company number 3385525, who registered office is at 1-3 Strand, London, WC2N 5EH;

"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.

"STC" means the System Operator Transmission Owner Code prepared by the electricity Transmission Owners and NESO as modified from time to time; and

"STC Claims" means any claim made under the STC against National Grid Interconnectors 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 National Grid Interconnectors' transmission system which arises as a result of the authorised works.

On street apparatus

63. Except for paragraphs 64 (apparatus of National Grid Interconnectors Limited in closed streets), 66 (apparatus: protection), 67 (expenses) and 68 (indemnity) of this Part 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 Grid Interconnectors, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid Interconnectors are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid Interconnectors Limited in closed streets

64.—(1) Where any street is closed under article 11 (street works and temporary closure of streets and private means of access), if National Grid Interconnectors has any apparatus in the street or accessed via that street National Grid Interconnectors has the same rights in respect of that apparatus as it enjoyed immediately before the closure and the undertaker must grant to National Grid Interconnectors, or procure the granting to National Grid Interconnectors of, legal easements reasonably satisfactory to National Grid Interconnectors in respect of such apparatus and access to it prior to the closure of any such street but nothing in this paragraph affects any rights of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 66 (apparatus: protection).

(2) Notwithstanding the temporary closure or diversion of any street under the powers of article 11 (street works and temporary closure of streets and private means of access), National Grid Interconnectors is at liberty at all times to take all necessary access across any such closed 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 closure or diversion was in that street.

Acquisition of land

65.—(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 of National Grid Interconnectors; or

(b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right or apparatus of National Grid Interconnectors,

otherwise than by agreement between the undertaker and National Grid Interconnectors (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 National Grid Interconnectors 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 Grid Interconnectors or affect the provisions of any enactment or agreement regulating the relations between National Grid Interconnectors 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 Grid Interconnectors requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid Interconnectors and the undertaker (each acting reasonably) and which must be no less favourable on the whole to National Grid Interconnectors, unless otherwise agreed by National Grid Interconnectors, and it will be the responsibility of the undertaker to use best endeavours to procure or secure (or both) 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) Any agreement or consent granted by National Grid Interconnectors under paragraph 66 (apparatus: protection) or any other paragraph of this Part of this Schedule must not be taken to constitute agreement under sub-paragraph (1).

Apparatus: protection

66.—(1) Not less than 28 days before the commencement of any specified works the undertaker must submit to National Grid Interconnectors a plan of the works to be executed and seek from National Grid Interconnectors details of the underground extent of their electricity assets.

(2) In relation to specified works the plan to be submitted to National Grid Interconnectors 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;

(g) an assessment of risks of rise of earth issues; and

(h) a ground monitoring scheme, where required.

(3) The undertaker must not commence any works to which sub-paragraph (2) applies until National Grid Interconnectors has given written approval of the plan so submitted.

(4) Any approval of National Grid Interconnectors required under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7);

(b) must not be unreasonably withheld; and

(c) will be deemed approved if no response is provided by National Grid Interconnectors within 28 days of a request for approval being submitted by the undertaker.

(5) In relation to any work to which sub-paragraph (2) applies National Grid Interconnectors 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 National Grid Interconnectors and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Grid Interconnectors for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid Interconnectors will be entitled to watch and inspect the execution of those works.

(7) Where National Grid Interconnectors 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 Grid Interconnectors' satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required and National Grid Interconnectors will give notice of its requirement for such works within 14 days of the date of submission of a plan pursuant to sub-paragraph (1) (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 28 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.

(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 National Grid Interconnectors 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

67.—(1) Save where otherwise agreed in writing between National Grid Interconnectors and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid Interconnectors within 30 days of receipt of an itemised VAT invoice or claim from National Grid Interconnectors all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid Interconnectors 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 National Grid Interconnectors in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid Interconnectors as a consequence of National Grid Interconnectors exercising any compulsory acquisition powers in the Order transferred to or benefitting National Grid Interconnectors;

(b) the approval of plans under this part of this Schedule;

(c) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and

(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

68.—(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 it) 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 (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 Grid Interconnectors, or there is any interruption in any service provided, or in the supply of any goods, by National Grid Interconnectors, or National Grid Interconnectors 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 Grid Interconnectors the cost reasonably and properly incurred by National Grid Interconnectors in making good such damage or restoring the supply; and

(b) indemnify National Grid Interconnectors for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid Interconnectors, by reason or in consequence of any such damage or interruption or National Grid Interconnectors becoming liable to any third party and including STC Claims or Incentive Deduction other than arising from any default of National Grid Interconnectors.

(2) The fact that any act or thing may have been done by National Grid Interconnectors on behalf of the undertaker or in accordance with a plan approved by National Grid Interconnectors or in accordance with any requirement of National Grid Interconnectors or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless National Grid Interconnectors 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) imposes 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 Grid Interconnectors, its officers, servants, contractors or agents;

(b) any authorised works or any other works authorised by this Part of this Schedule carried out by National Grid Interconnectors pursuant to article 6 (benefit of the Order) or 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 7 (consent to transfer benefit of the Order) subject to the proviso that once such works become apparatus, any authorised works yet to be executed and not falling within this sub-paragraph 68(3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph; 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 Grid Interconnectors 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 its representations.

(5) National Grid Interconnectors 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 Grid Interconnectors 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 Grid Interconnectors 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 Grid Interconnectors' control and if reasonably requested to do so by the undertaker, National Grid Interconnectors must provide an explanation of how the claim has been minimised, where relevant.

Enactments and agreements

69. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid Interconnectors 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 Grid Interconnectors 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

70.—(1) Where in consequence of the proposed construction of any part of the authorised works National Grid Interconnectors makes requirements for the protection of apparatus under paragraph 66 (apparatus: protection), the undertaker must 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 Grid Interconnectors' undertaking and National Grid Interconnectors must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid Interconnectors' 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

71. If in consequence of the agreement reached in accordance with paragraph 65(1) (acquisition of land) 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 Grid Interconnectors to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

72. Any difference or dispute arising between the undertaker and National Grid Interconnectors under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid Interconnectors, be determined by arbitration in accordance with article 46 (arbitration).

Notices

73. Notwithstanding article 44 (service of notices), any plans submitted to National Grid Interconnectors by the undertaker pursuant to paragraph 66 (apparatus: protection) must be submitted using the LSBUD system (https://lsbud.co.uk/) or to such other address as National Grid Interconnectors may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 7

FOR THE PROTECTION OF NETWORK RAIL

74. 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 88 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

75. 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 by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993(**a**);

"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—

(a) the Railways Act 1993;

(b) the network licence; or

(c) any other relevant statutory or regulatory provisions,

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

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 4 (maintenance of authorised development) in respect of such works; and

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

76.—(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.

77.—(1) The undertaker must not exercise the powers conferred by—

(a) article 3 (development consent granted by the Order);

(b) article 4 (maintenance of authorised development);

(c) article 15 (access to works)

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

(d) article 20 (discharge of water);

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

(f) article 22 (compulsory acquisition of land);

(g) article 24 (statutory authority to override easements and other rights)

(h) article 26 (compulsory acquisition of rights and imposition of restrictive covenants);

(i) article 27 (private rights);

(j) article 29 (acquisition of subsoil and airspace only);

(k) article 35 (acquisition of wayleaves, easements and other rights);

(l) article 31 (temporary use of land for carrying out the authorised development);

(m) article 33 (temporary use of land for maintaining the authorised development);

(n) article 34 (statutory undertakers);

(o) article 45 (felling or lopping of trees or shrubs);

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

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

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

(s) any powers under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017;

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

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

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 34 (statutory undertakers), article 35 (acquisition of wayleaves, easements and other rights) or article 27 (private rights) in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.

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

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

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

78.—(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.

(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.

79.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 78(3) 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 76;

(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.

80. 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.

81. 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.

82.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction or completion of a specified work (during a period of 24 months after the completion of that work) in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), 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 78, 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 83(1)(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

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

83.—(1) 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 78 or in constructing any protective works under the provisions of paragraph 78(3) 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.

84.—(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 78(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 78(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 paragraph (a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to 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 78(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; and

(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 79.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 88(2) 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 83(1)(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 46 (arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.

85. 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.

86. 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.

87. 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.

88.—(1) 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 (2); 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.

(2) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article 37 (no double recovery)) 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;

(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; and

(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.

(3) 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.

(4) The sums payable by the undertaker under sub-paragraph (2) shall if relevant include a sum equivalent to the relevant costs.

(5) 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 (4) which relates to the relevant costs of that train operator.

(6) The obligation under sub-paragraph (4) 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 (5).

89. 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 88) 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).

90. 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.

91. 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 plans and land plans and described in the book of reference;

(b) any land, 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.

92. 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.

93. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 7 (consent to transfer

benefit of the Order) of this Order and any such notice must be given no later than 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.

94. 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 43 (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.

95. In relation to any dispute arising under this part of this Part of this Schedule (except for those disputes referred to in paragraph 84(11)), the provisions of article 46 (arbitration) shall not apply and any such dispute, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) to the President of the Institution of Civil Engineers.

PART 8

FOR THE PROTECTION OF LONDON ST PANCRAS HIGHSPEED

96. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the Company.

97. In this Part of this Schedule—

"CDM Regulations" means the Construction (Design and Management) Regulations 2015(**a**);

"Company" means HS1 Limited, trading as London St. Pancras Highspeed (company number 03539665, whose registered office is at 5th Floor, Kings Place, 90 York Way, London N1 9AG) and any HS1 Group Company which holds property for railway purposes;

"concession agreement" means the agreement between the Secretary of State for Transport and the Company for the design, construction, financing, operation, repair and maintenance of High Speed 1 as amended or supplemented from time to time;

"construction" includes execution, placing, alteration, testing and commissioning (and, where relevant, the removal, alteration, re-carrying out after testing/commissioning or re-testing/commissioning) and reconstruction and construct and constructed have corresponding meanings;

"contamination" means the presence of any substance at, in, on or under any given property, that is capable of causing harm to the environment;

"emergency" means fouling of the line, any plant and/or equipment failing and/or falling within the fence, anything touching the overheads, any breach of the security fence, or any activity which adversely affects the stability or safety of any earthwork or structure (including track, overheads and/or stanchions);

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

"environment" means any one or more of—

(a) air (including air within natural or manmade structures, above or below ground);

(b) water (including water under or within land, or in drains or sewers, and surface, ground, coastal and inland waters);

(c) land (including surface land, sub-surface strata, land under water and natural and man-made structures); and

(**a**) S.I. 2015/51.

(d) living organisms (including humans) including the ecological systems of which they form part, and, in the case of man, his senses and his property;

"High Speed 1" means the high speed rail link between St Pancras in the London Borough of Camden and the Channel Tunnel Portal at Castle Hill, Folkestone, Kent and the international stations at St Pancras, Stratford and Ebbsfleet and Ashford and all associated track, facilities and installations, including the Waterloo Connection and the maintenance depots at Temple Mills and Singlewell;

"HS1 group company" means any subsidiary or holding company of the Company or of another subsidiary or holding company of the Company, as "subsidiary" and "holding company" are understood within section 1159, Companies Act 2006, but on the basis that the holding of not less than one quarter of voting rights shall be deemed to satisfy the condition in section 1159(1)(a);

"HS1 property" means any land (whether freehold or leasehold), easement, property interest, railway, infrastructure, structure (or any part of any of the foregoing) including works, apparatus or equipment, leased, owned, held or used by the Company for the purposes of High Speed 1 that may be affected by the authorised development;

"network licence" means the network licence, as is amended from time to time, granted to the Company by the Secretary of State in exercise of powers pursuant to the Railways Act 1993(**a**);

"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 HS1 property;

"protective works" means any works specified by the engineer under paragraph 100;

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

"specified work" means so much of any of the authorised development as is, or is to be, situated upon, across, under, over or within 15 metres of, or may (or whose maintenance may) in any way adversely affect, HS1 property.

98.—(1) Where under this Part of this Schedule the Company is required to give its consent, agreement or approval in respect of any matter, that consent, agreement or approval is subject to the condition that the Company must comply with any relevant railway operational procedures, any obligations under statute and the concession agreement.

(2) In so far as any specified work or the acquisition or use of HS1 property or rights over HS1 property is or may be subject to railway operational procedures, the Company must—

(a) co-operate with the undertaker and use its reasonable endeavours to avoid delay and secure conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

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

99.—(1) The undertaker shall not exercise the powers conferred by articles 21 (authority to survey and investigate the land), 22 (compulsory acquisition of land), 24 (statutory authority to override easements and other rights), 26 (compulsory acquisition of rights and imposition of restrictive covenants), 27 (private rights), 29 (acquisition of subsoil and airspace only), 31 (temporary use of land for carrying out the authorised development), 33 (temporary use of land for maintaining the authorised development), 34 (statutory undertakers), and 39 (use of subsoil and airspace within the Order limits) of the Order or the powers conferred by section 11(3) of the Compulsory Purchase Act 1965 in respect of any HS1 property unless the exercise of such powers is with the consent of the Company.

(**a**) 1993 c.43

(2) The undertaker shall not in the exercise of the powers conferred by the Order prevent pedestrian or vehicular access to any HS1 property, unless preventing such access is with the consent of the Company.

(3) The undertaker shall not under the powers of the Order acquire or use or acquire new rights over any HS1 property except with the consent of the Company.

100.—(1) Where the Company is asked to give its consent pursuant to this paragraph, such consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

(2) The undertaker must, before commencing construction of any specified work, supply to the Company 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 46 (arbitration).

(3) The approval of the engineer under sub-paragraph (2) must not be unreasonably withheld, and if by the end of the period of 30 business days beginning with the date on which such plans have been supplied to the Company the engineer has not intimated disapproval of those plans and the grounds of disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 10 business days beginning with the date upon which the engineer receives written notice from the undertaker and if, by the expiry of the further 10 business days period specified in the written notice the engineer has not intimated approval or disapproval, the engineer is deemed to have refused the plans as submitted and the undertaker shall be entitled to refer the dispute for arbitration in accordance with the provisions of article 46 (arbitration) of this Order. Where the engineer notifies the undertaker that it withholds its approval under sub-paragraph (2) and gives its reasons, the undertaker shall resubmit such plans amended to address the engineer's reasons as soon as practicable and the provisions of this paragraph 100 shall apply to the revised plans.

(4) The undertaker shall ensure compliance with any conditions imposed by the engineer if and when approving any given plans.

(5) If the Company gives notice to the undertaker that it desires itself to construct any part of a specified work or protective work (including in either case some or all of the requisite design) which in the reasonable opinion of the engineer will or may affect the stability of HS1 property or the safe operation of traffic on High Speed 1 then, if the undertaker desires such part of the specified work to be constructed and subject to sub-paragraph (4), the Company must construct it (together with any adjoining part of the specified work which the undertaker reasonably requires to be constructed with that work with all reasonable dispatch 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.

(6) When signifying approval of the plans under sub-paragraph (2) the engineer may specify any protective works (whether temporary or permanent) which in the engineer's reasonable opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of HS1 property or the continuation of safe and efficient operation of High Speed 1 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 the Company, or by the undertaker, if the Company 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 the engineer's reasonable satisfaction.

(7) Without prejudice to the provisions of sub-paragraph (6), in a case of emergency the Company may elect to carry out itself any protective works or any alteration or addition (or other work) as may be specified under paragraph 104, in which case such work shall be carried out by the Company with all reasonable dispatch.

(8) Subject to sub-paragraph (9), if, in any case, the carrying out of the specified works requires the diversion or other alteration of any road or the alteration, removal, replacement or protection of

any apparatus belonging to third parties (including mains, sewers, pipes, drains and cables), the undertaker shall be responsible for—

(a) obtaining all requisite consents and approvals for such works;

(b) ensuring such works do not significantly impact on any access or any use of any utilities by the Company; and

(c) meeting any and all costs, fees, charges and expenses associated with such works, including any compensation or other amounts payable to third parties.

(9) Where the Company is carrying out any specified works pursuant to sub-paragraph (5) and the carrying out of the specified works requires the diversion or other alteration of any road or the alteration, removal, replacement or protection of any apparatus belonging to third parties (including mains, sewers, pipes, drains and cables), the Company shall be responsible for—

(a) obtaining all requisite consents and approvals for such works; and

(b) ensuring such works do not significantly impact on any access or any use of any utilities by the undertaker.

101.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 100(5) 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 100;

(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 reasonably possible to HS1 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 the Company or the traffic on it and the use by passengers of HS1 property.

(2) The undertaker shall forthwith halt the carrying out of any specified work or protective work or do anything reasonably required by the engineer (including the carrying out of emergency works) to ensure the safety, security, stability, operation or maintenance of High Speed 1. The engineer shall notify the undertaker of the action required to be taken by the undertaker in order to rectify the situation. The undertaker shall be entitled to recommence performance of the specified work or protective work provided that they are in accordance with such action as the engineer requires the undertaker to take.

(3) If any damage to HS1 property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of, a specified work by the undertaker or any person for whom the undertaker is responsible or a protective work carried out by the undertaker or any person for whom the undertaker is responsible, the undertaker must, regardless of any such approval, make good such damage and must pay to the Company all expenses properly and reasonably incurred by the Company and compensation for any direct loss which it may sustain by reason of any such damage, interference or obstruction.

(4) If the carrying out of the specified works or the protective works or any act, omission, neglect or default on the part of the undertaker or any person for whom the undertaker is responsible, results in any contamination which has the potential to adversely affect HS1 property, or disturbs or causes to be disturbed any existing contamination which has the potential to adversely affect HS1 property in addition to any other rights—

(a) the Company may give the undertaker a notice specifying the remedial action it reasonably requires and a reasonable period for the undertaker to do it; and

(b) the undertaker shall undertake the remedial action within the stated period at its own costs and to the Company's reasonable satisfaction.

(5) If the undertaker does not complete the remedial action within the stated period, the Company may do so and the undertaker shall pay the costs which the Company incurs in doing so plus 7% on account of overheads (on demand and as a debt) provided that any such delay could have been avoided by the undertaker acting reasonably.

(6) 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 the Company or its servants, contractors or agents, or any liability on the Company with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or the undertaker's employees, contractors or agents.

102. The undertaker must—

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

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

103. The Company must at all times afford reasonable facilities to the undertaker and the undertaker's agents for access to any works carried out by the Company under this Part of this Schedule during their construction and must supply the undertaker with such information as the undertaker may reasonably require with regard to such works or the method of constructing them.

104.—(1) If any permanent or temporary alterations or additions to HS1 property are reasonably necessary in consequence of the construction of a specified work or a protective work, or during a period of 12 months after the completion of that work in order to ensure the safety of HS1 property or the continued safe operation of the railway of the Company, such alterations and additions may be carried out by the Company and if the Company gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (and the notice must specify details of alterations and additions including the costs of carrying out, and in the case of any permanent alterations or additions, maintaining, working and, when necessary, renewing such alterations or additions), the undertaker must pay to the Company 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 properly and reasonably incurred by the Company in maintaining, working and, when necessary, renewing any such alterations or additions provided the undertaker acting reasonably approves the costs contained in the notice provided under this paragraph prior to the works being carried out.

(2) If during the construction of a specified work or a protective work by the undertaker, the Company gives notice to the undertaker that the Company desires itself to construct that part of the specified work or protective work which in the reasonable opinion of the engineer is endangering the stability of HS1 property or the safe operation of traffic on High Speed 1 then, if the undertaker decides that part of the specified work or protective work is to be constructed, the Company must assume construction of that part of the specified work or protective work and the undertaker must, regardless of any such approval of a specified work or protective work under paragraph 100, pay to the Company all expenses properly and reasonably incurred by the Company and compensation for any direct loss which it may suffer by reason of the execution by the Company of that specified work or protective work provided that the undertaker is not liable under this paragraph for any injury, loss, damage, costs arising from the negligence of the Company or any person for whom it is responsible in respect of any specified or protective works under.

(3) If the cost of maintaining, working or renewing HS1 property are reduced in consequence of any such alterations or additions a capitalised sum representing such saving is to be notified to the undertaker by the Company as soon as reasonably practicable and is to be set off against any sum payable by the undertaker to the Company under this paragraph.

(4) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 105 provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(5) Other than as expressly set out in this Part of this Schedule, the Company shall have no liability to the undertaker arising out of or in consequence of any works to which this Part of this Schedule applies save where the Company or its contractors have been negligent. This applies whatever the manner in which liability might otherwise have arisen (whether for breach of contract, in tort, for breach of statutory duty or otherwise) and whether such liability would otherwise have arisen in respect of losses, damages, costs, liabilities, injuries, actions, claims, proceedings or matters

suffered or incurred by or brought against the undertaker (including, without limitation, in respect of any works carried out pursuant to paragraphs 100(6), 100(8) or 104(2) of this Part of this Schedule) of the Company or otherwise.

(6) Where has liability to the undertaker under this Schedule shall use best endeavours to pursue its appointed consultant(s) and contractor(s) in respect of the remedying defects in the relevant works in accordance with the terms of their appointments. To the extent that recovers any monies from such consultant(s) or contractor(s) the Company shall pay or apply such monies as can, in its reasonable opinion, be apportioned works—

(a) first in meeting its own costs, liabilities and losses (current, anticipated or otherwise) (if any); and

(b) any balance then being paid to the undertaker.

105.—(1) The undertaker must repay to the Company all fees, costs, charges and expenses properly and reasonably incurred by the Company—

(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 100 or in constructing any protective works 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 reasonable approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work or a protective work;

(c) in respect of the employment or procurement of the services of any inspectors, signallers, watchkeepers and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting HS1 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 or a protective work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the reasonable opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or a protective 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 HS1 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 or a protective work,

provided that the undertaker is not liable for any injury, loss, damage, costs nor is the undertaker required to repay any sums under paragraphs (a) to (e) which arise from, or in connection with, the Company in carrying out any specified works or protective works negligently.

106.—(1) In this paragraph—

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

"Company'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 the Company 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 the Company's apparatus carried out after approval of plans under paragraph 100(2) 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 the Company (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 the Company as early as reasonably practicable to identify all of the Company's apparatus which may be at risk of EMI, and must continue to consult with the Company (both before and after formal submission of plans under paragraph 100(2)) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) the Company must make available to the undertaker all information in the possession of the Company reasonably requested by the undertaker in respect of the Company's apparatus identified under paragraph (a); and

(c) the Company must allow the undertaker reasonable facilities for the inspection of the Company's apparatus identified under paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to the Company's apparatus, the Company must not withhold or delay its consent unreasonably to modifications of the Company's apparatus, but the means of prevention and the method of their execution must be selected at the reasonable discretion of the Company, and in relation to such modifications paragraph 100(2) has effect subject to this paragraph.

(6) If at any time prior to the completion of the authorised development and regardless of any measures adopted under sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by the Company 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 the Company's apparatus.

(7) In the event of EMI having occurred—

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

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

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

(8) Where the Company approves modifications to the Company's apparatus under sub-paragraphs (5) or (6)—

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

(b) any modifications to the Company's apparatus approved under those paragraphs must be carried out and completed by the undertaker in accordance with paragraph 101.

(9) If any changes in the operation of High Speed 1 cause EMI (whether or not measures have been adopted pursuant to sub-paragraph (3)) then the undertaker shall as quickly as reasonably practicable after notification by the Company of EMI take all measures necessary to remedy the same by way of modification to the source of such EMI or (as the case may be) further protective works or modification to the specified works or the Company's apparatus (subject to the Company's approval under sub-paragraph (5)).

(10) To the extent that it would not otherwise do so, and unless otherwise expressly stated, the indemnity in paragraph 110(1) applies to the costs and expenses reasonably incurred or losses suffered by the Company 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 the Company's apparatus) or in consequence of any EMI to which sub-paragraph (7) applies.

(11) For the purpose of paragraph 104(1) any modifications to the Company's apparatus under this paragraph are deemed to be protective works referred to in that paragraph.

(12) In relation to any dispute arising under this paragraph the reference in article 46 (arbitration) to a single arbitrator to be agreed between the parties is to be read as a reference to an arbitrator being a member of the Institution of Engineering and Technology to be agreed.

107. If at any time after the completion of a specified work or a protective work, not being a work vested in the Company, the Company gives notice to the undertaker informing it that the state of maintenance of any part of the specified work or protective work appears to be such as adversely affects the operation of HS1 property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work or protective work in such state of maintenance as to not adversely affect HS1 property.

108. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work or a protective work in the vicinity of any railway belonging to the Company unless the undertaker has first consulted the Company and the undertaker must comply with the Company'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.

109. Any additional expenses which the Company may properly and reasonably incur in altering, reconstructing or maintaining HS1 property under any powers existing at the making of this Order by reason of the existence of a specified work or a protective work must-provided that 5 business days' previous written notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker be repaid by the undertaker to the Company.

110.—(1) The undertaker must pay to the Company all reasonable and properly incurred costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (but subject always to the remaining provisions of this paragraph and to article 37 (no double recovery)) which may be occasioned to or reasonably incurred by the Company—

(a) by reason of the construction or maintenance of a specified work or a protective work or the failure of it by the undertaker or of any person in the undertaker's employ or of the undertaker's contractors; or

(b) by reason of any act or omission of the undertaker or of any person in the undertaker's employ or of the undertaker's contractors whilst engaged upon a specified work or a protective work,

and the undertaker must indemnify and keep indemnified the Company from and against each and all losses, claims, demands, actions, proceedings, damages, matters, costs, expenses and liabilities whatsoever arising in any way from, in connection with or relating to a specified work or a protective work or any such failure, act or omission; save where the Company or its contractors have been negligent and the fact that any act or thing may have been done by the Company 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 will not (provided it is done without negligence on the part of the Company or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

(2) The indemnity in sub-paragraph (1) shall include but shall not be limited to any losses, claims, demands, actions, proceedings, damages, matters, costs, expenses and liabilities which arise out of the works in respect of—

(a) any disruption caused to High Speed 1 during the period of the specified works;

(b) any claims for personal injury or death to/concerning employees or third parties;

(c) any loss, damage or environmental damage (to include pollution, contamination, the presence of hazardous substances or waste, and nuisance) to High Speed 1 and/or HS1 property whether temporary or permanent or to any adjoining or neighbouring property (whether real or personal) belonging to, used by or in the possession of the Company and/or any third parties or for which the Company or any such third parties are responsible or liable which results from the specified works;

(d) any financial loss claims brought against the Company, any HS1 group company, any train or freight operating company, or any infrastructure manager, whether or not loss or damage to material property is suffered or incurred;

(e) the carrying out of the specified works, or the failure of any such works;

(f) any act, omission or neglect on the part undertaker, or any person involved in the carrying out of any specified works.

(3) During the period of the specified works, the undertaker shall procure that the undertaker's contractor is insured against the liabilities referred to herein for an amount to be agreed between the parties (both acting reasonably), and shall provide details of such insurance upon request by the Company. The specified works shall not commence until such insurance has been procured and where requested by the Company evidence of such insurance has been provided.

(4) The Company must—

(a) give the undertaker written notice of any such claims or demands as soon as reasonably possible after the Company became aware of any such claims or demands;

(b) not admit liability or make any offer to settle or settle or compromise any such claim or demand without the prior 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);

(c) take all reasonable steps to mitigate any liabilities relating to such claims or demands; and

(d) keep the undertaker informed in relation to the progress of any such claims and demands and pay due regard to the undertaker's reasonable representations in relation to them.

111. The Company must, on receipt of a request from the undertaker, from time to time, provide the undertaker free of charge with a written breakdown of the 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 110 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 under this Part of this Schedule (including any claim relating to those relevant costs).

112. In the assessment of any sums payable to the Company 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 the Company 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.

113. The undertaker and the Company may, subject to compliance with the terms of the concession agreement, enter into, and carry into effect, agreements for the transfer to the undertaker of—

(a) any HS1 property shown on the works plans or land plans and described in the book of reference;

(b) any lands, works or other property held in connection with any such HS1 property; and

(c) any rights and obligations (whether or not statutory) of the Company relating to any HS1 property or any lands, works or other property referred to in this paragraph.

114. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 (the provision of railway services) of the Railways Act 1993.

115. Unless and to the extent agreed otherwise in writing by the parties, to the extent that the protective works and the specified works constitute a single project for the purposes of the CDM Regulations, the undertaker is to act as the only client for the purposes of the CDM Regulations and is to indemnify the Company from and against any, each and all reasonably foreseeable and properly mitigated losses, claims, demands, actions, proceedings, damages, costs, expenses and liabilities arising directly from, in connection with or out of any breach (by the undertaker) of the CDM

Regulations provided that the Company shall comply with all health and safety laws and with its obligations under the CDM Regulations, and shall (without prejudice to the generality of the aforesaid) provide all information required by the undertaker in a timely manner and co-operate with the undertaker so as to enable the undertaker to fulfil its duties as the client.

116. The undertaker must give written notice to the Company if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 7 (consent to transfer benefit of Order) of this Order in relation to HS1 property or any specified works and any such notice must be given no later than 10 business days before any such application is made and must describe or give (as appropriate)—

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

(b) 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.

117. The undertaker must no later than 20 Business Days from the date that the documents referred to in article 43 (certification of plans, etc.) are submitted to and certified by the Secretary of State in accordance with article 43 (certification of plans, etc.), provide a set of those documents to the Company in a digital format reasonably specified by the Company.

118. Any notice—

(a) from the undertaker which may be provided to the Company under this Part may be given by a contractor of the undertaker; and

(b) from the Company which may be provided to the undertaker, may be provided to the contractor of the undertaker,

provided the undertaker has provided written notification of the contractor to the Company.

SCHEDULE 14

Article 43

DOCUMENTS AND PLANS TO BE CERTIFIED

PART 1

DOCUMENTS AND PLANS

(1) Document name	*(2) Document reference*	*(3) Revision number*	*(4) Date*
AMS	7.17(A)	2	May 2025
Book of reference	4.1(A)	2	May 2025
Crown land plans	2.2	1	June 2024
Design principles	7.5(C)	4	April 2025
Environmental statement	5.1-5.4	1	June 2024
Land plans	2.1	1	June 2024
Outline battery safety management plan	7.16(A)	1	April 2025
Outline construction environmental management plan	7.8(A)	2	December 2024
Outline construction traffic management plan	7.9(C)	4	January 2025
Outline decommissioning environmental management plan	7.12	1	June 2024
Outline decommissioning traffic management plan	7.13(C)	4	January 2025
Outline landscape and ecological management plan	7.10(B)	3	January 2025
Outline operational management plan	7.11(A)	2	December 2024
Outline operational surface water drainage strategy	7.14(C)	4	March 2025
Outline rights of way and access strategy	7.15(A)	2	December 2024
Streets, rights of way and access plans	2.5	1	June 2024
Traffic regulations measures plans	2.4	1	June 2024
Vegetation removal plan	2.8	1	June 2024
Works plans	2.3(B)	3	December 2024

PART 2

SUBSTITUTE DOCUMENTS

(1) Originating document	*(2) Replacement or supplementary part*	*(3) Document reference*	*(4) Date*	*(5) Examination library reference*
Environmental statement	Chapter 2: Site and Context	5.2(A)	December 2024	[REP1-016]
Environmental statement	Chapter 3: Project Description	5.2(B)	April 2025	[REP5-009]
Environmental statement	Chapter 5: Alternatives and Design Evolution	5.2(A)	July 2024	[AS-101]
Environmental statement	Chapter 6: EIA Methodology	5.2(A)	December 2024	[REP1-020]
Environmental statement	Chapter 7: Cultural Heritage	5.2(A)	July 2024	[AS-011]
Environmental statement	Chapter 8: Landscape and Views	5.2(A)	July 2024	[AS-012]
Environmental statement	Chapter 10: Water Environment	5.2(B)	December 2024	[REP1-022]
Environmental statement	Chapter 12: Socio-economics	5.2(B)	December 2024	[REP1-024]
Environmental statement	Chapter 13: Traffic and Access	5.2(D)	January 2025	[REP3-012]
Environmental statement	Figures 10.1 - 10.8: Water Environment	5.3(A)	April 2025	[REP5-011]
Environmental statement	Appendix 8.2: LVIA Methodology	5.4(A)	July 2024	[AS-016]
Environmental statement	Appendix 8.10: LVIA Visualisations	5.4(A)	July 2024	[AS-014]
Environmental statement	Appendix 8.11: Cumulative LVIA Visualisations	5.4(A)	July 2024	[AS-015]
Environmental statement	Appendix 8.12: Cumulative Effects Table	5.4(B)	January 2025	[REP3-014]
Environmental statement	Appendix 9.3: Arboricultural Impact Assessment	5.4(A)	July 2024	[AS-017]
Environmental statement	Appendix 9.6: Air Quality Biodiversity Screening Report	5.4(A)	December 2024	[REP1-030]

Environmental statement	Appendix 9.7: Assessment of Effects	5.4(A)	December 2024	[REP1-032]
Environmental statement	Appendix 10.2: Flood Risk Assessment	5.4(B)	April 2025	[REP5-015]
Environmental statement	Appendix 10.3: Water Framework Directive Assessment	5.4(A)	July 2024	[AS-013]
Environmental statement	Appendix 10.4: Aldington Flood Risk Storage Area Risk Assessment	5.4(A)	December 2024	[REP1-042]
Environmental Statement	Appendix 16.1: Soils and Agricultural Land Report	5.4(A)	April 2025	[REP5-013]

SCHEDULE 15

Article 45

HEDGEROWS

PART 1

REMOVAL OF IMPORTANT HEDGEROWS

(1) Area	*(2) Number of hedgerow and extent of removal*
Ashford Borough Council	Removal of one section of hedgerow shown approximately within the area identified H3 on sheet 1 of the vegetation removal plan.
Ashford Borough Council	Removal of two sections of the hedgerow shown approximately within the areas identified H4 on sheet 1 of the vegetation removal plan.
Ashford Borough Council	Removal of two sections of the hedgerow shown approximately within the areas identified H5 on sheet 1 of the vegetation removal plan.
Ashford Borough Council	Removal of two sections of hedgerow shown approximately within the area identified H6 on sheet 1 of the vegetation removal plan.
Ashford Borough Council	Removal of one section of hedgerow shown approximately within the area identified H10 on sheet 1 of the vegetation removal plan.
Ashford Borough Council	Removal of one section of hedgerow shown approximately within the area identified H11 on sheets 1 and 2 of the vegetation removal plan.
Ashford Borough Council	Removal of two sections of hedgerow shown approximately within the areas identified H13 on sheet 1 of the vegetation removal plan.
Ashford Borough Council	Removal of one section of hedgerow shown approximately within the area identified H17 on sheets 1 and 2 of the vegetation removal plan.
Ashford Borough Council	Removal of one section of hedgerow shown approximately within the area identified H25 on sheets 1 and 2 of the vegetation removal plan.
Ashford Borough Council	Removal of one section of hedgerow shown approximately within the area identified H26 on sheets 1 and 2 of the vegetation removal plan.
Ashford Borough Council	Removal of one section of hedgerow shown approximately within the area identified H33 on sheets 2 and 3 of the vegetation removal plan.
Ashford Borough Council	Removal of one section of hedgerow shown approximately within the area identified H49 on sheets 2 and 3 of the vegetation removal plan.
Ashford Borough Council	Removal of one section of hedgerow shown approximately within the area identified H51 on sheets 2 and 3 of the vegetation removal plan.

PART 2

REMOVAL OF HEDGEROWS

(1) Area	*(2) Number of hedgerow and extent of removal*

Ashford Borough Council	Removal of one section of hedgerow shown approximately within the area identified H22 on sheets 1 and 2 of the vegetation removal plan.
Ashford Borough Council	Removal of one section of hedgerow shown approximately within the area identified H28 on sheet 2 of the vegetation removal plan.
Ashford Borough Council	Removal of one section of hedgerow shown approximately within the area identified H34 on sheet 2 of the vegetation removal plan.
Ashford Borough Council	Removal of one section of hedgerow shown approximately within the area identified H54 on sheet 3 of the vegetation removal plan.
Ashford Borough Council	Removal of one section of hedgerow shown approximately within the area identified H60 on sheet 4 of the vegetation removal plan.
Ashford Borough Council	Removal of one section of hedgerow shown approximately within the area identified H56 on sheet 5 of the vegetation removal plan.

SCHEDULE 16

Article 46

ARBITRATION RULES

Primary objective

1.—(1) The primary objective of these arbitration rales is to achieve a fair, impartial, final and binding award on the substantive difference between the parties (save as to costs) within four months from the date the arbitrator is appointed pursuant to article 46 (arbitration) of the Order.

(2) The arbitration is deemed to have commenced when a party ("the claimant") serves a written notice of arbitration on the other party ("the respondent").

Time periods

2.—(1) All time periods in these arbitration rules will be measured in days and this is to include weekends, but not bank or public holidays.

(2) Time periods will be calculated from the day after the arbitrator is appointed which must be either—

(a) the date the arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or

(b) the date the arbitrator is appointed by the Secretary of State.

Timetable

3.—(1) The timetable for the arbitration is to be that set out in sub-paragraphs (2) to (4) unless amended in accordance with paragraph 5(3).

(2) Within 14 days of the arbitrator being appointed, the claimant must provide both the respondent and the arbitrator with—

(a) a written statement of claim which describes the nature of the differences between the parties, the legal and factual issues, the claimant's contentions as to those issues, the amount of its claim and the remedy it is seeking; and

(b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

(3) Within 14 days of receipt of the claimant's statements under sub-paragraph (2) by the arbitrator and respondent, the respondent must provide the claimant and the arbitrator with—

(a) a written statement of defence 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 report(s) (if submitted by the claimant) and explanations for 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. No single pleading is to exceed 30 single-sided A4 pages using 10pt Arial font.

(2) The arbitrator must make an award on the substantive difference(s) based solely on the written material submitted by the parties unless the arbitrator decides that a hearing is necessary to explain or resolve any matters.

(3) Either party may, within 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 ten days of the arbitrator advising the parties that he/she is to hold a hearing, the date and venue for the hearing must be fixed by agreement with the parties, save that if there is no agreement the arbitrator must direct a date and venue which he/she considers is fair and reasonable in all the circumstances. The date for the hearing must not be less than 35 days from the date of the arbitrator's direction confirming the date and venue of the hearing.

(6) A decision will be made by the arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the arbitrator, then any expert(s) attending the hearing may be asked questions by the arbitrator.

(7) There will be no process of examination and cross-examination of experts, but the arbitrator will invite the parties to ask questions of the experts by way of clarification of any answers given by the expert(s) in response to the arbitrator's questions. Prior to the hearing the procedure for the expert(s) will be that—

(a) at least 28 days before a hearing, the arbitrator will provide a list of issues to be addressed by the expert(s);

(b) if more than one expert is called, they will jointly confer and produce a joint report or reports within 14 days of the issues being provided; and

(c) the form and content of a joint report must be as directed by the arbitrator and must be provided at least 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 submitted information 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 will accept that the extent to which reasons are given must be proportionate to the issues in dispute and the time available to the arbitrator to deliver the award.

Arbitrator's powers

5.—(1) The arbitrator has all the powers of the Arbitration Act 1996(**a**), including the non-mandatory sections, save where modified by these arbitration rules in this Schedule.

(2) There will be no discovery or disclosure, except that the arbitrator will have the power to order the parties to produce such documents as are reasonably requested by another party no later than the Statement of Reply, or by the arbitrator, where the documents are manifestly relevant, specifically identified and the burden of production is not excessive. Any application and orders should be made by way of a Redfern Schedule without any hearing.

(3) Any time limits fixed in accordance with this procedure or by the arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the arbitrator. In the absence of agreement, the arbitrator may vary the timescales and/or procedure—

(a) if the arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice; and

(b) only for such a period that is necessary to achieve fairness between the parties.

(4) On the date the award is made, the arbitrator will notify the parties that the award is completed, signed and dated, and that it will be issued to the parties on receipt of cleared funds for the arbitrator's fees and expenses.

Costs

6.—(1) The costs of the arbitration must include the fees and expenses of the arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the arbitration.

(2) Where the difference involves connected/interrelated issues, the arbitrator will consider the relevant costs collectively.

(3) The final award must fix the costs of the arbitration and decide which of the parties will bear them or in what proportion they will be borne by the parties.

(4) The arbitrator 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) The parties agree that any hearings held as part of the arbitration will take place in private.

(2) The parties and arbitrator agree that any matters, materials, documents, awards, expert reports and the like are confidential and must not be disclosed to any third party without prior written consent of the other party, save for any application to the Courts or where disclosure is required under any legislative or regulatory requirement.

(**h**) 1996 c. 23.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises EPL 001 Limited to construct a new solar power generating station on land located to the north of the village of Aldington in Kent and to carry out all associated works.

The Order also makes provision for the construction, operation, maintenance and decommissioning of the authorised development.

A copy of the plans, the environmental statement and other documents mentioned in this Order and certified in accordance with article 43 (certification of plans, etc.) of this Order may be inspected free of charge during working hours at Ashford Borough Council Offices, Civic Centre, Tannery Lane, Ashford, Kent TN23 1PL.

The Planning Inspectorate **ERRATA SHEET – Stonestreet Green Solar**
Ref. EN010135

Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for the Department of Energy Security and Net Zero, dated 11 August 2025.

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

PDF Page No.	Para	Error	Correction
172	6.5.29	South Eastern Water	Should be 'South East Water'
43 and 162	3.4 and 5.4.12	Alternate use of 'Heritage' and 'Historic Environment'	Should be either 'Heritage' or 'Historic Environment'